

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI LAW COURTS)
JUDICIAL REVIEW DIVISION
JR APPLICATION NO. _____ OF 2021
IN THE MATTER OF LAW REFORM ACT SECTION 7&8 CHAPTER 26 LAWS OF
KENYA
AND
IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES
AND
IN THE MATTER OF APPLICATION UNDER ARTICLE 1(3), 2(2), 3, 6(2), 10, 11,
94, 95, 96, 163(3)(d)(I) & (3) 174(1), 175, 179(1) & (4), 183(1), 185(3) & 189(1), 200 201(d),
212, 225, 259 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF CONTRAVENTION OF COUNTY GOVERNMENTS ACT
AND
IN THE MATTER OF CONTRAVENTION OF THE PUBLIC FINANCE
MANAGEMENT ACT 2012
AND
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW
BETWEEN

REPUBLICAPPLICANT

VERSUS

THE SENATE OF THE REPUBLIC OF KENYA.....	1 ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MOMBASA	2 ND RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KWALE.....	3 RD RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KILIFI.....	4 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF TANA RIVER	5 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF LAMU.....	6 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF TAITA/TAVETA.....	7 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF GARISSA	8 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF WAJIR.....	9 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MANDERA.....	10 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MARSABIT.....	11 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF ISIOLO.....	12 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MERU.....	13 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF THARAKA NITHI	14 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF EMBU.....	15 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KITUI.....	16 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MACHAKOS.....	17 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MAKUENI.....	18 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYANDARUA.....	19 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYERI	20 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KIRINYAGA.....	21 ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MURANG'A.....	22 ND RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KIAMBU	23 RD RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF TURKANA.....	24 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF WEST POKOT.....	25 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF SAMBURU.....	26 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF TRANS NZOIA.....	27 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF UASIN GISHU.....	28 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF ELGEYO/MARAKWET...	29 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NANDI.....	30 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF BARINGO.....	31 ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF LAIKIPIA	32 ND RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NAKURU.....	33 RD RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NAROK.....	34 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KAJIANDO.....	35 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KERICHO.....	36 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF BOMET.....	37 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KAKAMEGA.....	38 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF VIHIGA.....	39 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF BUNGOMA.....	40 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF BUSIA	41 ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF SIAYA.....	42 ND RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KISUMU.....	43 RD RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF HOMA BAY.....	44 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MIGORI.....	45 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KISII.....	46 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYAMIRA.....	47 TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NAIROBI.....	48 TH RESPONDENT
COUNTY ASSEMBLY OF MOMBASA	49 TH RESPONDENT
COUNTY ASSEMBLY OF KWALE.....	50 TH RESPONDENT
COUNTY ASSEMBLY OF KILIFI.....	51 ST RESPONDENT
COUNTY ASSEMBLY OF TANA RIVER	52 ND RESPONDENT
COUNTY ASSEMBLY OF LAMU.....	53 RD RESPONDENT
COUNTY ASSEMBLY OF TAITA/TAVETA.....	54 TH RESPONDENT
COUNTY ASSEMBLY OF GARISSA	55 TH RESPONDENT
COUNTY ASSEMBLY OF WAJIR.....	56 TH RESPONDENT
COUNTY ASSEMBLY OF MANDERA.....	57 TH RESPONDENT
COUNTY ASSEMBLY OF MARSABIT.....	58 TH RESPONDENT
COUNTY ASSEMBLY OF ISIOLO.....	59 TH RESPONDENT
COUNTY ASSEMBLY OF MERU.....	60 TH RESPONDENT
COUNTY ASSEMBLY OF THARAKA NITHI	61 ST RESPONDENT
COUNTY ASSEMBLY OF EMBU.....	62 ND RESPONDENT
COUNTY ASSEMBLY OF KITUI.....	63 RD RESPONDENT
COUNTY ASSEMBLY OF MACHAKOS.....	64 TH RESPONDENT
COUNTY ASSEMBLY OF MAKUENI.....	65 TH RESPONDENT
COUNTY ASSEMBLY OF NYANDARUA.....	66 TH RESPONDENT
COUNTY ASSEMBLY OF NYERI	67 TH RESPONDENT
COUNTY ASSEMBLY OF KIRINYAGA.....	68 TH RESPONDENT
COUNTY ASSEMBLY OF MURANG'A.....	69 TH RESPONDENT
COUNTY ASSEMBLY OF KIAMBU	70 TH RESPONDENT

COUNTY ASSEMBLY OF TURKANA.....	71 ST RESPONDENT
COUNTY ASSEMBLY OF WEST POKOT.....	72 ND RESPONDENT
COUNTY ASSEMBLY OF SAMBURU.....	73 RD RESPONDENT
COUNTY ASSEMBLY OF TRANS NZOIA.....	74 TH RESPONDENT
COUNTY ASSEMBLY OF UASIN GISHU.....	75 TH RESPONDENT
COUNTY ASSEMBLY OF ELGEYO/MARAKWET.....	76 TH RESPONDENT
COUNTY ASSEMBLY OF NANDI.....	77 TH RESPONDENT
COUNTY ASSEMBLY OF BARINGO.....	78 TH RESPONDENT
COUNTY ASSEMBLY OF LAIKIPIA	79 TH RESPONDENT
COUNTY ASSEMBLY OF NAKURU.....	80 TH RESPONDENT
COUNTY ASSEMBLY OF NAROK.....	81 ST RESPONDENT
COUNTY ASSEMBLY OF KAJIANDO.....	82 ND RESPONDENT
COUNTY ASSEMBLY OF KERICHO.....	83 RD RESPONDENT
COUNTY ASSEMBLY OF BOMET.....	84 TH RESPONDENT
COUNTY ASSEMBLY OF KAKAMEGA.....	85 TH RESPONDENT
COUNTY ASSEMBLY OF VIHIGA.....	86 TH RESPONDENT
COUNTY ASSEMBLY OF BUNGOMA.....	87 TH RESPONDENT
COUNTY ASSEMBLY OF BUSIA	88 TH RESPONDENT
COUNTY ASSEMBLY OF SIAYA.....	89 TH RESPONDENT
COUNTY ASSEMBLY OF KISUMU.....	90 TH RESPONDENT
COUNTY ASSEMBLY OF HOMA BAY.....	91 ST RESPONDENT
COUNTY ASSEMBLY OF MIGORI.....	92 ND RESPONDENT
COUNTY ASSEMBLY OF KISII.....	93 RD RESPONDENT
COUNTY ASSEMBLY OF NYAMIRA.....	94 TH RESPONDENT
COUNTY ASSEMBLY OF NAIROBI.....	95 TH RESPONDENT

AND

COUNCIL OF GOVERNERS	1 ST INTERESTED PARTY
ATTORNEY GENERAL	2 ND INTERESTED PARTY

EXPARTE:

CHARLES ONGARO KIAGE
CPA BENSON ORINA BOSIRE
RICHARD OSEKO OGETO
WILLIAM ANDREW KINANGA OBAGA
JARED MOMANYI

STATEMENT

[Order 53 rule 1 (2) of the Civil Procedure Rules]

NAME, ADDRESS AND DESCRIPTION OF THE APPLICANT

The 1st Applicant is **CHARLES ONGARO KIAGE**, holder of national identity card number 0946536 of P.O. Box 8182-00200 Nairobi,

The 2nd Applicant is **CPA BENSON ORINA BOSIRE**, Holder of National Identity Card 6935161 of P.O. Box 28166-00200 Nairobi

The 3rd Applicant is, **RICHARD OSEKO OGETO** Holder of National Identity Card 0407016 of P.O. Box 31 - 00200 Nairobi

The 4th Applicant is **WILLIAM ANDREW KINANGA OBAGA**, Holder of National Identity Card 60453758 of P.O. Box 28166 - 00200 Nairobi

The 5th Applicant is **JARED MOMANYI**, Holder of National Identity Card 13482166 of P.O. Box 28166 - 00200 Nairobi

Who are all Kenyan Citizens.

B. JUDGEMENT, ORDER, DECISION OR OTHER PROCEEDING IN RESPECT OF WHICH RELIEF IS SOUGHT

1. The decision of the Senate of the Republic of Kenya the 1st Respondent herein to summon for questioning or explanation, the Chief Executive Officers of the of the 47 County Executive with regards to the Auditor General's reports on Financial statements for the year 2018/2019.
2. The failure by the Speakers of the respective County Assemblies to discharge their Constitutional and statutory mandate.
3. Failure by the respective County Assemblies to evaluate, debate and, make recommendations on the Auditor Generals Reports on Financial Statements 2018/2018 in regard to their respective Counties.

C. RELIEF SOUGHT

Judicial review by way of: -

1. A declaration that the decision of the Senate of the Republic of Kenya by a Notice to appear published in the Standard Newspaper on 23rd April 2021 to summon for questioning the Chief Executive Officers of the 47 County Executive on the Auditor Generals reports on Financial statements for the year 2018/19 is ultra vires of its Constitutional mandate hence invalid, void and of no effect.

2. An order of Prohibition directed at the Senate of the Republic of Kenya whether as a Committee of the County Public Accounts and Investment or full plenary from summoning for questioning the Chief Executive Officers of the 47 County Executive for consideration of reports of the Auditor General on the Financial Statements for the financial year 2018/2019.
3. A declaration that the Speakers of the respective County Assembly who have not periodically complied with the provisions of Article 229(8) of the Constitution of Kenya by ensuring that all the reports of the Auditor General on the Financial Statements for the County Executives are debated and recommendations made within the Constitutional timelines are in breach of their Constitutional and statutory duty and are therefore unfit to continue holding public office.
4. An order of mandamus directed to the Respective County Assemblies to debate and consider the Report of the Auditor General on the financial statements and take appropriate action and recommendations as required by article 229(7) & (8) of the Constitution of Kenya.
5. [Further or in the alternative] damages arising from the matters herein and interest thereon.
6. If leave to apply is granted, an ex parte injunction to restrain the Senate of the Republic of Kenya whether as a Committee of the County Public Accounts and Investment or whole plenary or howsoever otherwise from Summoning the Chief Executive officers of the County Executive for questioning over any report of the Auditor General on Financial Statement for the financial year 2018/2019 pending the hearing of the application for judicial review or further orders.
7. That the Honourable Court do give directions that the hearing of the application for Judicial Review be expedited.
8. An order for costs.

D. GROUND'S UPON WHICH RELIEF IS SOUGHT

- (i) The Senate of the Republic of Kenya through the Clerk has by a notice published in the Standard Newspaper of 23rd April 2021 issued a Notice to Appear before the County Public Accounts and Investment Committee of the

Senate in the months of May, June, July, August and September directed to the Chief executive Officers of the 47 County Executive to appear before the said Committee but does not have the requisite Constitutional authority as envisaged in Article 2(2) and 226(2) of the Constitution.

- (ii) The Constitution has clearly defined the role of the Senate at Article 96 and the function of questioning of considering the reports of the Auditor General on the financial statement of the County entities is not among them.
- (iii) The Constitution provides that the Chief Executive Officer to the County Executive/unit is expressly answerable to the County Assembly on issues of financial resource management and therefore by dint of Article 6(2) and Article 189(1) that function needs to be exercised by the rightful authority.
- (iv) The persons sought to be questioned by the 1st Respondent are the Chief Executive Officers of the County Executive who are also the accounting officers and by virtue of Article 226(2) are accountable to the County Assemblies
- (v) The Report sought to be evaluated and or discussed is foreign to the Senate as the same is prepared by the Auditor General and submitted to the County Assembly as per the provisions of Article 229(7) as read with Article 226(2) as contra-distinguished with Article 93 of the Constitution.
- (vi) The execution of the subject decision will contravene the express provisions of article 1(3), 2, 6, 10, 11, 94, 96, 174, 175, 179, 183, 185, 189(1), 190, 201 and 259 of the Constitution.
- (vii) The execution of the subject decision has led to wastage and or imprudent use of public resources whereby there is duplication of roles leading to loss of public funds by way of travel, accommodation to and from Nairobi for the Governor and his handlers, and the Committee of the Senate in the event the Senate conducts the sittings at the county level. Wastage of time which could have otherwise used to serve the citizenry contrary to the provisions of Article 201(d) of the Constitution.
- (viii) The practice and conduct of the Senate has led to the Speakers of the various County Assemblies to abdicate their roles as mandated by the Constitution

which would have led to closer assessment and inquiry while serving the citizenry, development and enhancement of capacity to interrogate Financial Statements, Budgets and Audit Reports in contravention of Article 73 of the Constitution.

- (ix) There is a clear demonstration that the all the National Values and Principles as envisaged at Article 10 of the Constitution have not been applied by the Senate with regard to separation of powers and recognition of devolution.
- (x) Notwithstanding the erroneous acts of the various committees of the Senate in the past eight years there has been no recommendations to ride home emanating therefrom hence the exercise can only be said to be a public embarrassment process, potential extortion and muscle flexing opportunities which is not a worthy investment of public money.
- (xi) The law on separation of powers and functions is now well settled, and where there is express Authority, implied authority cannot override.
- (xii) The Senate has usurped the powers of the County Assembly and purports to take up a function of devolved unit without undertaking a referendum under Article 225 and the Speakers have willingly allowed the same to happen.
- (xiii) This Honourable Court is clothed with the requisite jurisdiction to hear and determine the issues herein.

DATED at NAIROBI this 5TH day of MAY 2021

GEKONDE OMARIBA

ADVOCATE

LSK/2021/2530 P.105/4394/01

OMARIBA & COMPANY

ADVOCATES FOR THE APPLICANTS

DRAWN AND FILED BY

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TO BE SERVED UPON: -

The Senate of the Republic of Kenya
Parliament
Nairobi.

Speakers of the 47 Counties (through their respective offices)

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