

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

REPUBLIC APPLICANT

VERSUS

THE SENATE OF THE REPUBLIC OF KENYA..... 1ST RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MOMBASA2ND RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KWALE.....3RD RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KILIFI.....4TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF TANA RIVER5TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF LAMU.....6TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF TAITA/TAVETA.....7TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF GARISSA8TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF WAJIR.....9TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MANDERA.....10TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MARSABIT.....11TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF ISIOLO.....12TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MERU.....13TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF THARAKA NITHI14THRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF EMBU.....15THRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KITUI.....16TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MACHAKOS.....17TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MAKUENI.....18TH RESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYANDARUA..... ..19THRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF NYERI20THRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KIRINYAGA..... ..21STRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF MURANG'A.....22NDRESPONDENT
SPEAKER, COUNTY ASSEMBLY OF KIAMBU23RDRESPONDENT

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
RICHARD OSEKO OGETO
CPA BENSON ORINA BOSIRE
WILLIAM ANDREW KINANGA OBAGA
JARED MOMANY

CERTIFICATE OF URGENCY

I ERICK OMARIBA of Post Office Box Number 2012 - 00100, Nairobi in the Republic of Kenya, an Advocate of the High Court of Kenya do hereby certify this matter as urgent for the following reasons.

1. The Senate of the Republic of Kenya has issued Notice to appear before the Sessional Committee of County Public Accounts and Investment (hereinafter also referred to as (CPA&I Committee) for consideration of Reports of the Auditor General on Financial Statements for the financial year 2018/2019 hereinafter referred to as Audit Reports to the Chief Executives of the entities listed in the notice being County Executives in purported oversighting of the County Government entities to which it has no Constitutional or statutory mandate. Hence the said act is *ultra-vires* their mandate.
2. The process is a fallacy that will be funded by the taxpayers and as such any expenditure by the Senate committee traveling to the counties or the County entities travelling to Nairobi, directly costs the taxpayers in terms of expenses running the sessions
3. The intended hearings are therefore irregular have no legal backing hence void ab initial
4. The 2nd- 48th Respondent have failed to perform their Constitutional and Statutory duty of diligently planning, guiding and leading debates and considering the Auditor General's reports on financial statements and making recommendations and should not continue to hold office.
5. The 49th-95th Respondents have failed to discharge their Constitutional and Statutory mandates by interrogating, considering and giving recommendations on the Auditor General's Reports on financial statement as required by the Constitution.
6. 1st Respondent has usurped the mandate of the 49th -95th Respondents causing serious breach of the Constitution and wastage of public resources.
7. The Constitution has stipulated clear timelines for the performance of the review of the Auditor General's reports to the various entities at both National and County level which timelines have not been respected.
8. If this application is not heard and directions given urgently the 1st Respondent through its County Public Accounts and Investment Committee will cause the members of the 1st interested parties to incur expense in attendance costs and

preparation of documents and responses to illegal summons at the expense of development.

9. The Respondents will suffer no harm or loss should the orders sought be granted pending the hearing and determination of this application.

DATED at NAIROBI this ^{5TH} day of ^{MAY} 2021.

Gekonde Omariba
Advocate
LSK/2021/2530 P.105/4394/2001
OMARIBA & COMPANY
ADVOCATES FOR THE APPLICANTS

DRAWN AND FILED BY

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