REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILINMANI LAW COURTS

JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NO. 480 OF 2016

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF CONSTITUTIONAL RIGHTS PURSUANT TO ARTICLES 2(1), 3(1), 10, 21 (1), 22 (1), 23 (1) (F), 27 (1),47 (1),50 (2), 174, 175, 176, 181, 185 (3), 229 (8),236 *A) & (B) OF THE CONSTITUTION OF KENYA,2010

AND

IN THE MATTER OF THE LAW REFORM ACT, SECTION 8 AND 9,CAP 26, LAWS OF KENYA

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012, LAWS OF KENYA

AND

IN THE MATTER OF THE NAIROBI CITY COUNTY ASSEMBLY STANDING ORDERS

BETWEEN

HON. DR. EVANS KIDERO.....APPLICANT

VERSUS

THE SPEAKER OF NAIROBI

CITY COUNTY ASSEMBLY.....1ST RESPONDENT

THE NAIROBI CITY COUNTY ASSEMBLY.....2ND RESPONDENT

JUDGMENT

Introduction.

1. The facts disclosed in this case bring into sharp focus the law of mootness which inquires whether events subsequent to the filing of a suit have eliminated the controversy between the parties. Interestingly, the parties did not address this pertinent issue at all. I find it appropriate to spare some ink and paper to address it since it is an important point of law which this Court cannot ignore.

2. Mootness issues can arise in cases in which the plaintiff challenges actions or policies which are temporary in nature, in which factual

developments after the suit is filed resolve the harm alleged, and in which claims have been settled.

3. Generally, a case is not moot so long as the plaintiff continues to have an injury for which the court can award relief, even if entitlement to the primary relief has been mooted and what remains is small.[1] Put differently, the presence of a "collateral" injury is an exception to mootness.[2] As a result, distinguishing claims for injunctive relief from claims for damages is important. Because damage claims seek compensation for past harm, they cannot become moot.[3] Short of paying plaintiff the damages sought, a defendant can do little to moot a damage claim.

4. A matter is **moot** if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. **Mootness** arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.

5. The *ex parte* applicant was the Governor of Nairobi County having been elected in the 2013 General Elections for a term of five years which lapsed on **8th** August 2017. His re-election bid failed. He is no-longer the Governor. The *ex parte* applicant filed this Judicial Review application challenging a Motion of Impeachment filed at the County Assembly against him during his tenure as the governor for Nairobi County.

6. It is trite that as a general principle, the rights and liabilities of parties to any judicial proceedings pending before court are determined in accordance with the law as it was at the time when the suit was instituted and by applying the facts to the law and circumstances. Time and again, it has been expressed that a court should not act in vain.[4] The *ex parte* applicant having ceased to be the Governor of Nairobi County, these proceedings are now moot and a mere academic exercise.

7. No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. In the instant case, a consideration of this case based on provisions of the law that relates to sitting Governors by an applicant who has ceased to be a Governor is an academic and cosmetic exercise of no utilitarian value or benefit as the aim of the case has been overtaken by events.[5]A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.[6]

8. A case or issue is considered moot and academic when it **ceases to present a justiciable controversy** by virtue of supervening events, so that an adjudication of the case or **a declaration on the issue would be of no practical value or use**. In such instance, there is **no actual substantial relief which a petitioner or applicant would be entitled to**, and which would be negated by the dismissal of the case. Courts generally decline jurisdiction over such cases or dismiss them on grounds of mootness, save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.[7]

9. Applying the above time tasted and refined principles of law to the instant case, it is obvious that there remains no unresolved justiciable controversy in the present Judicial Review Application. Because courts generally only have subject-matter jurisdiction over live controversies, when a case becomes moot during its pendency, the appropriate first step is a dismissal of the case.[8] On this ground alone, this case falls for dismissal.

10. Notwithstanding my above finding, I will examine this case on merits.

The Facts.

11. *In the application dated **7th** November 2016, the ex parte applicant seeks orders that:-*

> *a. An order of Certiorari to quash the summons dated **5th** October 2016 issued to the ex parte applicant by the first Respondent to enter appearance before the Nairobi City Assembly on **11th** October 2016.*
>
> *b. An order of prohibition to prohibit the Respondents from purporting to conduct the hearing slated for **11th** October 2016 at 2.30 pm based on the summons dated **5th** October 2016.*
>
> *c. An order of prohibition to prohibit the Respondents from purporting to commence an impeachment process against the applicant based on the Auditor's Report for the Financial Years 2013/2014, alleged violations of principles of public finance management of the office of the County Attorney and alleged scuffles between the Applicant and unnamed elected representatives of Nairobi County Government.*
>
> *d. Costs of the application and any other relief the court may deem just and expedient.*
>
> *i.* The core grounds in support of the application are that:- ***(i)** On **5th** October 2016, the ex parte applicant received summons to appear before the Nairobi City County Assembly on **11th** Tuesday 2016 at **2.30** pm to defend himself against allegations for his impeachment contained in a Notice of Motion dated **20th** July 2016; **(ii)** That the summons were issued in violation of Standing Order 63 (1) (a) & 63 (2) of the Nairobi City County Assembly Standing Orders which provide that the ex parte applicant must first appear before the Select Committee, whose Report must be tabled before the County Assembly for debate; **(iii)**That failure to appear before the Select Committee is a violation of the applicants Rights under Articles 50 and 47 of the Constitution; **(iv)** That the signatures in support of the Motion were obtained in violation of Standing Order 60 (1) (a) of the Nairobi City County Assembly Standing Orders on grounds that they were obtained through misrepresentation and material non-disclosure of facts, and that some*

Members of the County Assembly had sworn affidavits denouncing their signatures in support of the impeachment; ***(v)*** *That the summons violated sub judice since the auditor's report for the Financial Year 2013/2014 was currently before the Senate, and was subject to High Court Civil Number 588 of 2015, that the decision was irrational, illegal and violated the principles of natural justice..*

The Respondents Replying Affidavit.

12. **Alex Magelo**, the then Deputy Speaker of the Nairobi City County Assembly Swore the Replying Affidavit dated **20th** March 2017. He averred that the County Assembly's constitutional and statutory mandate include oversight over the County Executive and its organs to ensure accountability and transparency in the execution of the functions of the County Executive; and the application of the resources of the County Executive, and that I exercise of this oversight role, the County Assembly is vested with powers to remove various offices among them the Governor.

13. He averred that Courts have no jurisdiction to supervise, injunct and or otherwise interfere with the internal workings, organization, rules, procedures and conventions of legislative bodies. Further, he averred that the jurisdiction of this Court is limited to challenging the constitutionality of the second Respondent's decisions, but does not extent to meddling with ongoing processes before the second Respondent.

14. **Mr. Magelo** averred that the impeachment motion was properly filed, and the ex parte applicant was notified to attend the sitting, and instead of attending, the ex parte applicant moved to this Court. He averred that it is not a mandatory requirement that the ex parte applicant appears before a Select Committee, and that the application falls short of the threshold for Judicial Review. He also averred that the application is based on unfounded claims.

Issues for determination.

15. Flowing from the above facts is the issue whether or not the ex parte applicant has established grounds for the grant of any of the Judicial Review Orders sought.

16. The Applicant's Counsel submitted that the summons were issued contrary to Standing Order No. **63 (1) (a)** and **63 (2)** which provides in mandatory terms that the applicant must first appear before the select committee. Counsel cited breach of procedure in that the applicant was not required to appear before the Select Committee as required[9] and that he was denied the opportunity to cross-examine witnesses.[10]

17. The Respondent's Counsel argued that the standing orders do not contain a mandatory requirement for appearance before a Select Committee and in any event, jurisdiction to interpret Standing Orders falls outside the jurisdiction of this Court.[11]He argued that the applicant was notified of the impeachment motion and the allegations as averred in paragraphs **16** and **30** of the Replying Affidavit of **Alex Magelo** and instead of honoring the summons, the ex parte applicant filed this case.[12] In any event, counsel argued that there are situations where the right to a hearing is not required, e.g. where the impugned investigation is clearly preliminary, where the accused will be offered an exhaustive chance to adequately address the complaints and allegations, or where no penalty or serious damage to reputation is inflicted by proceeding to the next stage.[13]

18. Article **181** of the Constitution provides for grounds for the removal of a County Governor. The Article provides that a county governor may be removed from office on the following grounds:- Gross violation of the Constitution or any other law; Where there are serious reasons to believe that the county governor has committed a crime under national or international law; Abuse of office or gross misconduct, Physical or mental incapacity to perform the functions of the office of the County Governor. The Article mandated Parliament to come up with legislation providing the procedure to remove a County Governor from office on any of the grounds provided above. The Parliament incorporated this procedure in the County Governments Act.[14]

19. The procedure for the removal of a County Governor is provided under Section **33** of the County Governments Act.[15] A member of the county assembly (MCA) by a notice to the Speaker may move a motion for the removal of a Governor under Article **181** of the Constitution. However, the Member must be supported by at least a third of all the members of the County Assembly to move the motion. If two thirds of all the members of the County Assembly support and pass the motion to have the County Governor impeached, the Speaker of the County Assembly informs the Speaker of the Senate (in writing) about that resolution within two days. The Governor, nevertheless, continues to perform the functions of the office pending the outcome of the impeachment proceedings.

20. The Speaker of the Senate then convenes a meeting of the Senate to hear the charges brought against the governor by the County Assembly. The Senate, by a determination, then appoints a Special Committee comprising of eleven of its members to investigate the matter. These two actions should take place within seven days after the Speaker of the Senate receives the notice of the resolution to impeach the governor from the Speaker of the County Assembly. The 11-member Special Committee of the Senate should then investigate the matter and report to the House within ten days on whether it finds the charges brought against the Governor as being substantiated. The Governor has the right to appear and to be represented before the Committee during the duration of its investigations.

21. If the special committee reports the allegations or particulars of the allegations against the Governor have not been substantiated, further proceedings shall not be taken in respect to the allegation. However, if it reports that the allegations or particulars of the allegations are substantiated, then the Senate shall vote on the impeachment charges, but only after ensuring that the Governor has been given a fair opportunity to be heard.

22. If a majority of the members of the Senate vote to uphold the impeachment charge, the Governor shall cease to hold office. Nevertheless, if the members of the Senate vote to reject the impeachment charge, then the Speaker of the Senate shall notify the Speaker of the concerned County Assembly accordingly. The impeachment motion on the same charges may then be introduced again before the County Assembly only after the end of three months from the date of such a vote by the Senate.

23. The basic rules for interpreting legislation are worth remembering. The Act has to be read as a whole; and the Act has to be interpreted in such a way as to give effect to its purpose or object. Section **33** enumerated above is the basic law and takes precedent over any subsidiary legislation including Standing Orders. Standing Order Number **63** must be read and appreciated within the purview, purposes an architecture of Section **33** of the Act and Article **181** and the values, purposes and principles of the Constitution. The Rules or Standing Orders cannot be applied to defeat the enforcement of the act and constitutional values and principles. Interpreting legislation in such a way as to give effect to its purpose or object is called the 'purposive approach.'

24. In terms of the basic elements of the hierarchy, a Constitution states the grounding legal and democratic principles that its government is obligated to uphold, and because of this is considered the supreme law in a country to which all other laws must adhere. A statute is a law enacted by a legislature to govern society, and its authority is derived from the Constitution or founding document of a country, which authorizes the legislature to enact it. Regulations, Subsidiary legislation or Standing Orders are issued under the authority of a statute by a government Department or by a special body. For this reason, they are sometimes referred to as "delegated" legislation, and they provide administrative and technical detail to carry out the purpose of the statute. Finally, procedures describe the required steps necessary to complete a process, and are generally written by an administrative body to ensure that the law and regulations are applied consistently and fairly to all parties.

25. This leads me to the pertinent question of what is the role of the Committees in the Assembly.

26. An Assembly Committee is a group of Members of the Assembly designated to do the detailed work of the Assembly. The Members are expected to work together toward a common goal, and may work without the restrictions of formality. Section **14 (1)(b)** of the County Governments Act, provides that subject to the standing orders, a County Assembly "may establish committees in such a manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established". Committees perform specific roles on behalf of the Assembly. Therefore, their mandate and powers are given by the Assembly, through the Standing Orders (Rules of Procedure).

27. Committees are integral parts for the conduct of Assembly business. They provide opportunities for public input into the legislative processes. They relieve the pressure of business on the floor of the Assembly and therefore contribute to the achievement of efficiency. Committees conduct detailed investigation into an issue which may not be carried out efficiently and effectively by the whole parliament and therefore contributes to the attainment of democratic ideals especially transparency and accountability. Committees can conduct public hearings where representatives or organizations and experts on particular subjects may be invited to give advice. This allows Committees to be more effective. Committees perform functions which the County Assembly while in Plenary is not well-suited to perform in its corporate form, such as receiving views from the public, summoning witnesses to present oral evidence, written memoranda or documents, frequent sittings away from the precincts of the County Assembly and for longer unregulated hours, sifting evidence and formulating reasoned conclusions without observing strict rules of procedure; carrying out inspection tours and inquiries on matters for subsequent reporting to the House.

28. My reading of Standing Order number **63 (1) (a)** is that the Respondent's ought to have complied with it and require the ex parte Applicant to appear before the Select Committee to be accorded a hearing as provided under the said provision. A county Assembly seeking to enforce compliance with the Constitution and the law should be the last one to flout is Standing Orders. It is not enough to argue that the Standing Order is not mandatory. The intention of the drafters and the full intention of the Constitution and the Act must be given effect to.

29. The ex parte applicant argued that the signatures in support of the motion were obtained in violation of standing order number **60 (1) (a)** of the Nairobi City County Assembly Standing Orders. Citing authorities, counsel argued that the Court has jurisdiction to intervene where there is failure to abide by standing orders and that the Respondent was under a duty to act fairly.[16] The Respondent's counsel also argued that the application is based on unfounded allegations in that the alleged forged signatures were not proved.

30. Its trite law that he who alleges fraud must prove it. Allegations of fraud must strictly be proved. Great care needs to be taken in pleading allegations of fraud or dishonesty. In particular the pleader needs to be sure that there is sufficient evidence to justify the pleading. This was considered in some detail by Lewison J in *Mullarkey -v- Broad*.[17] In ***Central Bank of Kenya Ltd -Vs- Trust Bank Ltd & 4 Others*****[18]** the Court of Appeal in considering the standard of proof required where fraud is alleged had this to say-

> *"The Appellant has made vague and very general allegations of fraud against the Respondent. Fraud and conspiracy to defraud are very serious allegations. The onus of prima facie proof was much heavier on the Appellant in this case than in an ordinary Civil Case."*

31. The burden of proof lies on the applicant in establishing the fraud/dishonesty that he alleges. The parties opted to adopt their pleadings as opposed to oral evidence. In my view, whereas it is proper to proceed by way of written submissions and pleadings, where allegations of fraud or dishonesty are alleged, the higher standard of prove required under the law may not be realized. This is because such a high standard of prove may require oral evidence and cross-examination for both parties test the veracity of the allegations.

32. In *Hornal vs Neuberger Products Ltd****[19]*** it was held that in civil proceedings the standard of proof is that of the balance of probabilities, even where the allegation is one of fraud. However, as the court pointed out in the said case the standard is not inflexible; because the degree of probability required to prove an allegation may vary with the seriousness of the allegation. Lord Nicholls of Birkenhead explained this at greater length in *Re H and Others (Minors)****[20]***

> ***"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. … Built into the preponderance of probability standard is a generous degree of flexibility in respect of***

the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."

33. In *Belmont Finance Corporation Ltd. vs. Williams Furniture Ltd* [21]Buckley L.J. said:-

"An allegation of dishonesty must be pleaded clearly and with particularity. That is laid down by the rules and it is a well-recognised rule of practice. This does not import that the word 'fraud' or the word 'dishonesty' must be necessarily used. The facts alleged may sufficiently demonstrate that dishonesty is allegedly involved, but where the facts are complicated this may not be so clear, and in such a case it is incumbent upon the pleader to make it clear when dishonesty is alleged. If he uses language which is equivocal, rendering it doubtful whether he is in fact relying on the alleged dishonesty of the transaction, this will be fatal; the allegation of its dishonest nature will not have been pleaded with sufficient clarity."

34. In *Armitage vs Nurse**[22]*** Millett L.J. having cited this passage continued:-

"In order to allege fraud it is not sufficient to sprinkle a pleading with words like "wilfully" and "recklessly" (but not "fraudulently" or "dishonestly"). This may still leave it in doubt whether the words are being used in a technical sense or merely to give colour by way of pejorative emphasis to the complaint."

35. In *Paragon Finance plc vs D B Thakerar & Co**[23]*** the court stated as follows:-

"It is well established that fraud must be distinctly alleged and as distinctly proved, and that if the facts pleaded are consistent with innocence it is not open to the court to find fraud. An allegation that the defendant 'knew or ought to have known' is not a clear and unequivocal allegation of actual knowledge and will not support a finding of fraud even if the court is satisfied that there was actual knowledge. An allegation that the defendant had actual knowledge of the existence of a fraud perpetrated by others and failed to disclose the fact to the victim is consistent with an inadvertent failure to make disclosure and is not a charge of fraud. It will not support a finding of fraud even if the court is satisfied that the failure to disclose was deliberate and dishonest. Where it is expressly alleged that such failure was negligent and in breach of a contractual obligation of disclosure, but not that it was deliberate and dishonest, there is no room for treating it as an allegation of fraud."

36. The burden is always on the claimant to prove fraud on the part of the respondent. The standard of proof where fraud or dishonesty is alleged is high. Though it is the same civil standard of proof on a balance of probabilities, it is certainly higher than the ordinary proof on a balance of probabilities but lower than proof beyond reasonable doubt. It all depends on the nature of the issue and its gravity. (see ***Hornal – v- Neubeger Production Ltd)***. Evidence of especially high strength and quality is required to meet the civil standard of proof in fraud cases. It is more burdensome: (see also the cases of ***Mpungu & Sons Transporters Ltd –v- Attorney General & another**[24]**)*.**

37. In *Jennifer Nyambura Kamau v Humphrey Nandi*,[25] the Court of appeal, Nyeri, emphasized that fraud must be proved as a fact by *evidence*; and, more importantly, that the standard of proof is *beyond* a balance of probabilities. In the instant case, looking at the affidavit evidence provided, I am unable to accept that this high standard has been achieved.

38. The applicant also alleged *t*hat there is a previous civil suit is pending on the same issues, hence the impeachment proceedings are *sub-judice*[26] and that the impeachment is actuated by ulterior motives. However, only a copy of a defence and list of documents filed in 2016 in Civil Case number **588** of 2015 has been annexed. The plaint or other documents relating to suit were not annexed for the Court to appreciate the nature of the dispute in the said case and how it relates to the issues in this case.

39. Counsel for the Respondent summarized the law on judicial review as being concerned with illegality, procedural impropriety and irrationality of administrative decisions,[27]that it is concerned with the decision making process as opposed to the merit or wisdom of an impugned decision.[28] Further he argued that the order of *certiorari* operates retrospectively to annul or quash a decision tainted with illegality, procedural impropriety, or irrationality[29]while the order of prohibition operates prospectively to preclude the intended making of a decision tainted with illegality, procedural impropriety, or irrationality,[30] hence, he argued that an order of prohibition cannot issue in the circumstances of this case. Council also submitted that Judicial Review orders are discretionary and may be denied even if the case falls into one of the categories where Judicial Review orders would issue.[31]

40. He also submitted that the applicant has not demonstrated that the impugned summons fall within the province of Judicial Review. He argued that the *ex parte* applicant did not demonstrate that the Respondents had no constitutional, statutory or other legal authority to issue the impugned summons. It has not been demonstrated that the decision was tainted with illegality. He also urged the Court to exercise judicial restraint, and that Courts have no jurisdiction to supervise internal workings of organizations and in any event, under Article 185 (3) of the Constitution, County Assemblies are mandated to exercise oversight over the County Executive Committee and any other County Executive Organ and that Courts cannot supervise the workings of Parliament.[32]

41. Judicial review is about the decision making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal and should not attempt to adopt the 'forbidden appellate approach' Judicial review is the review by a judge of the High Court of a decision; proposed decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction - reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised.

42. Judicial review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the processes followed by the decision-maker are proper, and the decision is within the confines of the law, a court will not interfere. As was held in *Republic vs Attorney General & 4 others ex-parte Diamond Hashim Lalji and Ahmed Hasham Lalji**[33]*:-

> *"Judicial review applications do not deal with the merits of the case but only with the process. In other words judicial review only determines whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters. It follows that where an applicant brings judicial review proceedings with a view to determining contested matters of facts and in effect urges the Court to determine the merits of two or more different versions presented by the parties the Court would not have jurisdiction in a judicial review proceeding to determine such a matter and will leave the parties to resort to the normal forums where such matters ought to be resolved. Therefore judicial review proceedings are not the proper forum in which the innocence or otherwise of the applicant is to be determined and a party ought not to institute judicial review proceedings with a view to having the Court determine his innocence or otherwise. To do so in my view amounts to abuse of the judicial process. The Court in judicial review proceedings is mainly concerned with the question of fairness to the applicant....."*

43. The grant of the orders or certiorari, mandamus and prohibition is discretionary. The court is entitled to take into account the nature of the process against which judicial review is sought and satisfy itself that there is reasonable basis to justify the orders sought.

44. It is not disputed that the Respondents has the Constitutional Statutory mandate to issue the summons. On that ground alone, the summons are legal. The only ground cited by the applicant is that that Standing Order Number 63 was violated. In my view, he could have raised the objection upon honoring the summons. Alternatively, he could have raised his objection in writing before attending and approach the Court if persuaded that his objection would be ignored.

45. In any event, as earlier held, the orders sought have been overtaken by events. The Court cannot issue orders in vain.

46. The upshot is that I dismiss this Judicial Review application with no orders as to costs.

Orders accordingly.

Signed, Delivered and Dated at Nairobi this 26th day of June 2018.

JOHN M. MATIVO

JUDGE

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[1] In *Chafin vs. Chafin*, 133 S. Ct. 1017 (2013), the Supreme Court discussed mootness at length in a complex child abduction case and held that the dispute between the parents was not moot because issues regarding the custody of the child remained unresolved. The Court noted that the prospects of success of the suit were irrelevant to the mootness question, and uncertainty about the effectiveness and enforceability of any future order did not moot the case. *Chafin*, 133 S. Ct. at 1024-26. A case is moot, however, when the court cannot give any "effectual" relief to the party seeking it. *See Knox v. Service Employees International Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012); *Church of Scientology of California vs. United States*, 506 U.S. 9, 12 (1992); *Firefighter's Local 1784 vs. Stotts*, 467 U.S. 561, 571 (1984); *see also Tory vs. Cochran*, 544 U.S. 734, 736-37 (2005) (death of attorney Johnnie Cochran did not moot injunction enjoining plaintiff from defaming Cochran). A case can, of course, become moot when the plaintiff has abandoned their claims, but such abandonment must be unequivocal. *Pacific Bell Telephone Company vs. Linkline Communications*, 555 U.S. 438, 446 (2009).

[2] *In re Burrell*, 415 F.3d 994, 998 (9th Cir. 2005).

[3] *Board of Pardons vs. Allen*, 482 U.S. 369, 370 n.1 (1987), illustrates the use of a damage claim to avoid mootness. Prisoners who were denied parole without a statement of reasons challenged the denial. They claimed that the state statute mandating release under certain circumstances created a liberty interest in eligibility for parole protected by the Fourteenth Amendment. Plaintiffs sought damages as well as declaratory and injunctive relief. Although plaintiffs were later released, mooting their individual claims for injunctive relief, their damage claims remained alive. Because the immunity of defendants was not settled, the Supreme Court reached the merits, holding that plaintiffs had a cognizable liberty interest in the processing of their parole applications. The Court remanded the case for further proceedings. *See also City of Richmond vs. J.A. Croson Company*, 488 U.S. 469, 478 n.l (1989). An inability to pay a damages judgment at present does not moot a claim. *See United States vs. Behrman*, 235 F.3d 1049, 1053 (7th Cir. 2000). However, if the judgment seemingly could never be paid, a claim might be dismissed on prudential grounds. *See, e.g.*, *Federal Deposit Insurance Corporation vs. Kooyomjian*, 220 F.3d 10, 14-15 (1st Cir. 2000).

[4] *Political Parties Forum Coalition & 3 others v s Registrar of Political Parties & 8 others* [2016] eKLR

[5] *Oladipo vs. Oyelami* {1989} 5 NWLR (Pt. 120) 210; Ukejianya vs. Uchendu }1950} 13 WACA 45

[6] See *Plateau State vs. A.G.F*. {2006} 3 NWLR (Pt. 967) 346 at 419 paras. F-G wherein the Nigerian Supreme court defined an academic suit or petition the above terms

[7]*Osmeña III vs. Social Security System of the Philippines* G.R. No. 165272, 13 September 2007, 533 SCRA 313, citing *Province of Batangas vs. Romulo*, G.R. No. 152774, 27 May 2004, 429 SCRA 736, 754; *Olanolan v. Comelec*, 494 Phil. 749,759 (2005); *Paloma v. CA*,

461 Phil. 269, 276-277 (2003).,

[8] *Mills vs. Green, 159 U.S. 651, 653 (1895)*

[9] Counsel cited *Rees vs Crane* {1994}ALL ER 833, *Nancy Baraza vs JSC & 9 Others* {2012}eKLR.

[10] Counsel cited *Bhandari vs Gautama* {1964} E.A 606.

[11] Counsel *cited Nthaniel Nganga Reuben vs Speaker, Machakos County Assembly & Another*, Constitutional Petition No. 6 of 2016.

[12] *Bernard Muia Tom Kiala vs Speaker of the County Assembly of Machakos & Others* {2014} eKLR.

[13] Evan Rees & Others vs Richard Alfred Crane {1994} 2 W.L.R 476 at 55 cited.

[14] Act No. 17 of 2012.

[15] Ibid.

[16] Counsel cited *Ridge vs Baldwin* {1964} AC 40, *Judicial Service Commission vs Mbalu Mutava & Another* {2015} eKLR & *Wiseman vs Borneman* {1969}3ALL ER.

[17] [2007] EWHC 3400 (Ch)

[18] **Civil Appeal No. 215 of 1996**

[19] [1957] 1 QB 247

[20] [1996] AC 563, 586:

[21] {1979} Ch. 250, 268

[22] **{1957} 1 QB 247**

[23] {1999}1 All E.R. 400

[24] **[2006] 1EA 212.**

[25]Civil Appeal 342 of 2010 [2013] eKLR.

[26] Counsel cited *Dr.Kiama Wangai vs John Mugambi & Republic* {2012}eKLR.

[27] *Council of Civil Service Unions & Others vs Minister for Civil Service* {1985}A.C.374 at 410 cited.

[28] *Uwe Meixner & Another vs. Attorney General*, Civil ApealNo.131 of 2005.

[29] *Kenya Ant-Corruption Commission vs Republic & 4 Others* Civil Appeal No.284 of 2009.

[30] Ibid.

[31] *Republic vs. Kiambu County Government & 4 Others Others Ex parte Samuel Thinguri Waruathe & 2 Others* {2015} eKLR.

[32] Speaker of the Senate & Another vs A.G & 4 Others {2013}eKLR.

[33] {2014} eKLR.