THE ALL-KENYAN MOOT COURT COMPETITION

11TH EDITION (2023)

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THE MOOT CATEGORY COMPROMIS

Dates: 20th- 24th March, 2023

Theme: SOCIO-ECONOMIC JUSTICE: Enhancing Government's Transparency and Accountability in the Protection of Human Rights

Venue: Kenyatta University School of Law

REPUBLIC OF WUEH

IN THE HIGH COURT OF WUEH

PETITION NO. E003 OF 2022

IN THE MATTER CONCERNING THE ALLEGED CONTRAVENTION OF THE PRINCIPLES OF PUBLIC FINANCE AND THE VIOLATION OF HUMAN RIGHTS

BETWEEN

WUEH HUMAN RIGHTS COMMISSION……PETITIONER

VERSUS

ATTORNEY GENERAL……..……1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF TREASURY AND PLANNING…….....…… 2ND RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE…….…….……3RD RESPONDENT

ALL KENYAN MOOT COURT COMPETITION 11th Edition

1. The Republic of Wueh is a sovereign and a constitutional democratic Republic with a Constitution that has been hailed worldwide due to its transformative nature. The Country has consistently prided itself as a country in which equity, access to resources, participation and human rights prevail. It is situated on the Eastern side of the Soea continent, bordered by Sol to the North, Keringa in the South and Tile and Shinski in the East and West respectively. Its capital city is Wahala, a cosmopolitan and economic hub of Wueh.

2. Wueh is a developing country with a Gross Domestic Product (GDP) of approximately 95.5 Billion USD and a Human Development Index (HDI) of 0.598. According to a 2022 World Bank Report, Wueh has a population growth rate of about 2.3% per year with 71% of the total population living in rural areas and 54.7% living in Informal Settlements.

3. Wueh is a member of the **United Nations**, the Soea and East Soea regional trading bloc and coexists well with its neighbors. It has also ratified the following international instruments: the **International Covenant on Civil and Political Rights**(ICCPR), the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), the **United Nations Convention on the Rights of the Child** (UNCRC), the **Soea Charter on Human and People's Rights** (SCHPR) and its subsequent protocols including the **Protocol to the Soea Charter on the Establishment of the Soea Court on Human and Peoples'**

Rights, the **East Soea Community (ESC) Treaty**, and **the ESC Monetary Union Protocol**.

4. Internet access in Wueh has increased over the last decade leading to the development of social media presence in the Country. Ninety Percent (90%) of the population engages in important governance discussions on various social media platforms through online campaigns to voice their concerns. Most of these campaigns are orchestrated by a human rights activist and investigative journalist, with versatility in use of social media, and vast knowledge on governance issues, dubbed 'Shawry for the Media'.

5. Wueh was colonized by the Republic of Chukua from the early 1920s. It gained its Independence from its colonial master in 1970. Given the critical state of the economy, essential social services such as health and education were mostly provided by the private sector. This was attributed to the minimal funds allocated to social welfare and high levels of corruption in the Country. However this changed when the government of Daniel Nyundo came into power in 1980 as the public sector took over the provision of social services. This was characterized by expansion of health facilities, primary and secondary schools that were funded mostly by grants, aids and loans from the Western Countries.

6. However, some of the financial aid given was also used in the development of infrastructure including the construction of the Bazenga Kenyaka International

Airport that increased economic growth in Wueh. During the next President's regime, there was a rise in the number of children going to school as the government introduced Free Primary School Education and granting of loans to institutions of higher learning. The government also introduced free healthcare services but was required to borrow more funds in order to provide the same.

7. The promulgation of the 2010 Constitution was a game changer that saw the inclusion of a plethora of provisions on socio-economic justice, transparency and accountability. One of the major tools enshrined in the Constitution was the guarantee of socio-economic rights including the right to housing, education and health under Article 43. This was in a move to alleviate poverty levels and socio-economic deprivation. Given their resource dependent nature, the Constitution of Wueh allowed for the progressive realization of these rights through seeking international assistance from other states and International Organizations.

8. **Chapter 12** of the Constitution of Wueh is fully devoted to Public Finance. The Constitution further provided for the Principles of Public Finance which *inter alia* include the prudent and responsible use of public funds. To achieve the full implementation of this chapter, Parliament passed into law **The Public Finance Management Act, 2012, the Public Finance Management Regulations and the Public Procurement and Disposal Act 2015.**

9. To regulate the acquisition of public debt and borrowing by the Government, there was established the **Public Debt Management Office [PDMO]** within the National Treasury to minimize the cost of public debt and borrowing over the long-term, taking account of risks involved in both long term and short term loans. The Constitution also established various institutions to promote accountability in the management of public funds. These institutions include; **The Commission for Revenue Allocation, The Office of the Auditor General, The Controller of Budget, the Ethics and Anti-Corruption Commission (EACC), and the Commission on Administration of Justice.**

10. All these institutions were established to ensure that borrowed public funds were used in a prudent manner consistent with the requirements of the Constitution. The Government of Fello Kinyan was the first under the 2010 Constitution and since his appointment to office, President Kinyan had been highly criticized due to huge external borrowing from foreign countries, the International Monetary Fund (IMF) and the World Bank. However, in defending the borrowing, Fello Kinyan has argued that most of it was taken on concessional terms for purposes of realizing socio economic rights and that Wueh had the capacity to repay the loans.

11. Amid heavy demand from the growing population for social services, Wueh invested in its First Eurobond [EB] in 2014. The $ 2 Billion EB, the largest debt to be seen in the Soea Continent, was estimated to yield a return of $ 8.8 Billion.

The returns from the EB were used for the construction of roads and railways that connected various rural towns with urban centers thus boosting the local economy. Moreover, the number of health and education facilities in the rural areas were also increased. By the end of 2016, Wueh's public debt had risen from 2 trillion to 3 trillion with 57% of the external debt owed to the State of Wu-Yi.

12. When the Government planned to borrow another 900 Billion in order to fill the gap required for the 2017/2018 Budget, the World Bank Cautioned Wueh's 'borrowing spree', stating that even though still sustainable, the debt was approaching dangerous levels. The Government, heeding to this observation opted for concessional loans through a second 230 Billion Eurobond, with an interest of 325 Billion that would be paid by taxpayer's money. This caused uproar among citizens with some highlighting the pertinent question of whether the Government was paying more to borrow. A prominent singer turned politician emphasized this through a post on twitter.



13. During this period, a documentary done by 'Shawry for the Media' through careful analysis of financial reports done by the PDMO also revealed that the Government had not accounted for 100 Billion from the Eurobond. Afterwards, a leaked version of the Auditor General Quarterly Economic and Budgetary Review revealed that the money had been looted after it was deposited in an offshore account instead of the Consolidated Fund. The EACC in a bid to curb the situation, commenced investigations on the mismanagement of the Funds, which are still ongoing up to date.

14. In 2019, after a request by the Cabinet Secretary National Treasury, Members of Parliament amended the Public Finance Management Regulations and raised the Country's debt ceiling from 7 Trillion to 10 Trillion allowing for more loans to be acquired. However, MPs were accused of not only failing to carry out enough consultations with experts on the effects of the decision but also that some had ulterior motives for instance seeking an increase in their salaries.

15. Economic analysts from the IMF encouraged the Government to depart from external borrowing given the financial risks involved including exchange rate fluctuations that raised the cost of borrowing. In an attempt to curb the debt situation and develop domestic markets, the Government introduced a retail infrastructure bond where citizens could save and invest money through the Government and receive the money after three years with interest. The Government raised about 1 Billion intended to fund the rest of Government

infrastructural development projects and also enhance Wuehians' savings and investment culture.

16. These steps taken by the Government, relatively curbed the debt situation albeit the debt levels being within high debt crisis risk. Nonetheless, in 2020, due to a pandemic-induced global recession, the Government was left with no option but to acquire more loans from the IMF and World Bank for purposes of provision of health care services. The pandemic had been caused by the spread of a strange respiratory disease, Tao-19, which was rapidly transmitted and forced many countries across the world to impose stringent measures including cessation of movement and a ban on all public gatherings. Overburdened by the lack of adequate health facilities to accommodate patients, the government relied on the loans to acquire vaccines for its population. At this point, the debt of Wueh had risen massively to 9 Trillion of which 51% was external debt.

17. In 2021, the Country was hit by a catastrophic drought that saw the food supply levels in the Country decrease by almost 22% according to the Ministry of Agriculture. The Country experienced massive loss of life especially the North-Eastern region that is usually arid. Once the end of the drought, the Cabinet Secretary of Agriculture and a delegation from the National Treasury embarked on a visit to Wu-Yi to benchmark on sustainable agricultural

practices as well as infrastructural developments that would help the Country get back on its feet.

18. In a dinner party organized by the host state, a representative of the CS Treasury convinced the executive director on the possibility of the construction of a multi-billion-dollar irrigation scheme to guarantee the country's food security as well as a state-of-the-art Express way that would give a facelift to the capital of Wueh, Wahala. During this dinner, the representative unilaterally signed a Memorandum of Agreement with the Cheng Agricultural Society and Cheng Roads and Construction Company for the conduct of a feasibility study on the viability of the two projects. The agreement stated that upon the conduct of the study and on approval of the same by the Wueh government, the contract award would be granted to the two companies and funding secured by the Tam Bank of Wu-Yi.

19. On their return to the Country, the CS Treasury drafted the necessary documents for the implementation of both contracts estimated at a combined cost of 14 Billion Shillings after the feasibility study proved viable. The award of the contract to the two companies, which was shrouded in mystery was only made known to the public in a highly televised signing ceremony. Government audit reports revealed that both loans were taken on commercial terms and not on concessional terms. This was despite the Medium Debt Term Management

strategy that had advised against the borrowing of commercial loans due to the country's economic status after the famine of 2019.

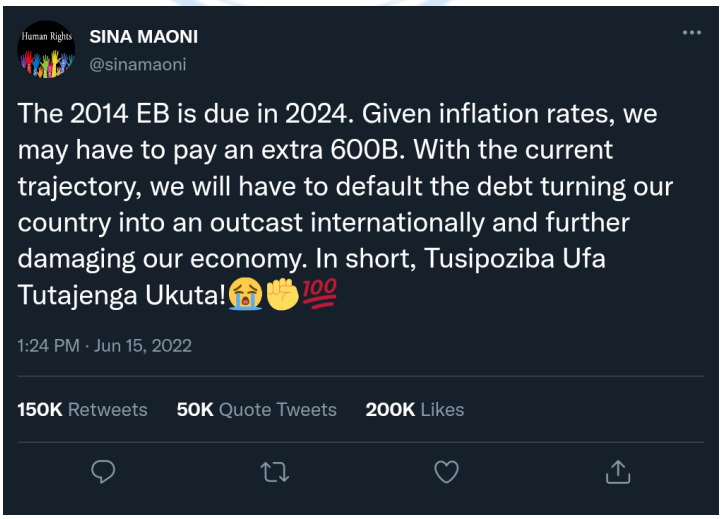
20. However, in a speech at a Government press conference the Cabinet Secretary for National Treasury defended the move by the Government highlighting that access to concessional loans from the World Bank and IMF were curtailed. He emphasized that due to increased cost of Eurobonds caused by fluctuating exchange rates, concessional loans were unaffordable.

21. Further, the conditions of these loan agreements have never been made accessible to the public and requests to avail the same have been denied on the basis that they relate to national security. In a release done by 'Shawry for the Media', who used documents that were marked 'CONFIDENTIAL', obtained from unidentified public officers to reveal that the tenders had been inflated and that the two companies awarded with contracts for infrastructure were linked to cabinet secretaries of the Government of Wueh. With the debt at an alarming level of 9.83 Trillion, there was uproar among citizens, economists and lawmakers on the sustainability of the debt across the Country.

22. Despite these concerns, a Debt Sustainability Assessment (DSA) done by the IMF in March 2022 showed that the debt in Wueh was still sustainable albeit with high risk of debt distress. In addressing this assessment, through a campaign on twitter dubbed #Notwithourtaxes, a lawmaker stated that the concern that the IMF DSA was insufficient as it focuses almost solely on the

country's ability to pay the debt. He highlighted that the assessment fails to take into account that most of the Country's revenue would go into debt payment thus placing a burden on its capacity to provide for socio economic needs.

23. Moreover, economic experts also raised other concerns over the debt situation in the country. They noted that the Wueh shilling was depreciating against the US Dollar due to increased demand for dollars from importers thus bringing about an increase in prices of imported goods. It would also put pressure on the Country's debt repayment given that most external debt is repaid in Dollars. One Mr. Sina Maoni commented the following during a heated debate on Twitter:



As it stands, the Debt to GDP ratio in Wueh has risen from 40% in 2013 to 65% in 2022.

24. In Government reports carried out by the Auditor General, it was revealed that for the past one year, the Government has defaulted payment of the commercial loans taken for construction of the Expressway and the irrigation scheme. Consequently, most of the funds in the budget were allocated to the repayment of the loans in line with the Government's obligations under the loan agreement. This has led to limited public funding and inadequate budget allocation to various government ministries thus impeding their ability to ensure the realization of various rights guaranteed under the Constitution.

25. One of the most affected ministries was the Ministry of Education which has just rolled out a new curriculum, Competence Based Curriculum, for the education system dubbed the CBC and had been allocated 23% of the budget compared to debt servicing that had taken up 70%. Moreover, the Ministry had also been promised 50% of the loans borrowed but had only received 30% with the rest being allocated to infrastructure. The CBC curriculum required students to have a wide range of materials including painting kits, knitting materials, and computers among others. Unfortunately, these materials were not provided by the Government as originally promised.

26. In a survey conducted by the Wueh Education Monitoring Board, it was established that about 60% of students from low income families and rural areas were forced to forgo school attendance as most parents were unable to afford the requirements under the CBC. Additionally, teachers were also

inadequately trained on how to conduct classes under the CBC and for one month teaching in the rural areas stalled. This led to protests from parents across the Country with activists such as 'Shawry for the Media' taking to twitter under the campaign #CBCmustgo. It was also revealed that certain employees of the Ministry who contested the implementation of the CBC due inadequate preparations were either fired or transferred to other ministries.

27. Following the budgetary constraints, Wueh's National Treasury, through the Finance Bill 2022 sought to generate at least Sh51.6 billion in revenue to finance the budget for the financial year starting July 1. The Treasury proposed to remove basic commodities like maize, wheat and cassava flour from the tax-exempt list, a move that would have increased the price of these commodities by more than ten percent (10%). MPs amended the Treasury's proposals but retained the suggestion to impose taxes on basic commodities like maize, wheat and cassava flour.

28. However, they rejected a proposal to exempt excise duty on imported fertilized poultry eggs in a move to protect local poultry farmers and individuals with local hatcheries. President Fello Kinyan signed the Finance Bill 2022 after lawmakers approved tax measures aimed at raising the required funds. The resultant effect of this action was that prices of basic commodities shot up leading to high cost of living among the people of Wueh. Hundreds of Wuehians, led by Shawry for the Media took to the streets of Wahala, to protest

against the high cost of living, which was putting pressure on households struggling to make ends meet.

29. This was after a two-day notice of their intent to hold the protest submitted to the area Officer in Charge of the Police Station upon which police officers were deployed to maintain peace and order during the gathering. Specifically, they claimed that a liter of cooking oil cost an average of Sh407, up from Sh350 in April, while maize and wheat flour prices were retailing at Sh230 per 2kg packet from Shs. 100. The protestors who were carrying sufurias, empty packets of sugar and flour, traversed Wahala's Central Business District (CBD) and terminated their protests at the office of the President.
30. The protests began peacefully but later turned violent with protesters chanting war songs, throwing stones and charging at police officers. The police, in response and armed with anti-riot gear, truncheons, water cannons and tear gas, forcefully dispersed demonstrators. In the process, about 30 people were seriously injured and rushed to the nearest hospital. Some protesters were also arrested by police and charged with taking part in an illegal assembly in Wahala and later released on bond of 1000 USD. However, despite multiple reports by civil society organizations and the media, the National Police Service has not taken responsibility for any injuries by its officers and have further denied the use of excessive force during the demonstrations.

31. Two days later, Shawry for the Media was arrested from her house by police officers for questioning. The arresting officers indicated that they suspected that she was involved in unlawful incitement of citizens particularly on social media. She was taken to the Directorate of Criminal Investigations (DCI) in Wahala where she was questioned for several hours. Later, she was released, and the DCI in a press statement said that investigations into her conduct would be ongoing, and should new information emerge, she would be summoned to respond. Later that evening, Shawry for the Media stated the following:



Afterwards, she also revealed names of some government officials who had fraudulently acquired funds set aside for the agricultural sector and linked it to the increase in food prices.

32. A week later, at around 7.30pm, three gentlemen visited Shawry for the Media's house. They were dressed in plain, civilian clothes and claimed to be

detectives from the DCI. They then informed Shawry for the Media that they had obtained new evidence and information regarding the investigation against her, and as such, she was under arrest and would be arraigned in court the following day to answer to the incitement charges leveled against her. She was taken to a waiting black car, and driven off.

33. However, three days later, Shawry for the Media was reported missing by her friends and relatives. When they probed the authorities on the same, the police denied any linkage to her disappearance stating that she had been released the same day after she was arrested. Unfortunately, news emerged that evening that 'Shawry for the Media's body was found on the shores of River Wahala about 10 miles from the City Center. Police reports indicated that she had been strangled and there were other signs of torture before his death. A few protests arose with the DCI assuring that the perpetrators of 'Shawry for the Media's gruesome murder would be found and brought to book.

34. Shawry for the Media's death became an addition to the statistics on the number of political activists who disappeared and were later found dead under very disturbing circumstances. Following several complaints brought by members of the public and after consultation with the family of 'Shawry for the Media', Wueh Human Rights Commission filed a case before the High Court in Wahala in March 2023 asking for adjudication of the following issues:

a) **Whether the Government failed to follow due process in acquisition of Public Debt and violated the principles of Public Finance in the Constitution, International Laws and all other applicable laws.**

b) **Whether the Government ensured sustainability in public debt acquisition and management in relation to the enjoyment of the socio-economic rights under Article 43 of the Constitution and other relevant International Laws.**

c) **Whether the police violated their obligations under the Constitution and International law regarding the use of force and the disappearance of 'Shawry for the Media'.**

TAKE NOTICE;

1. ***All Laws in the Republic of Wueh are analogous to the Laws in Kenya***
2. ***All laws in Soea and East Soea Continent are analogous to the Laws of Africa and East Africa.***
3. ***You are required to prepare cogent submissions for both the petitioner and the respondents addressing the issues of jurisdiction and admissibility.***