



THE SUPREME COURT OF KENYA

**IN THE MATTER OF AN APPLICATION BY THE COMMISSION ON
ADMINISTRATIVE JUSTICE FOR AN ADVISORY OPINION UNDER ARTICLE 163
(6) OF THE CONSTITUTION OF KENYA**

SC ADVISORY OPINION NO. E001 OF 2025

DATE OF JUDGEMENT: 20TH FEBRUARY 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: The Court dismisses the Reference.

Background

The Commission on Administrative Justice (CAJ), the Applicant, took issue with the decision of the Supreme Court in *Vision 2030 Delivery Board Vs Commission on Administrative Justice & 2 others* [2021] KESC 35 (KLR) stating that the finding of the Court, that CAJ recommendations are not binding but discretionary, negatively impacts the policies on its mandate as vested by the Constitution and the law. Secondly, it took issue with the Court's over-emphasis of the CAJ's reporting requirements to Parliament under Section 42(4) of the Commission on Administrative Justice Act (CAJ Act), as the only means for enforcing its recommendations and directives. Finally, the applicant averred that, the Court was not asked and did not consider, interpret or decide on its mandate under Article 59(2) of the Constitution, and argued that had the Court interpreted the said provisions, it would have made a different finding. For these reasons, the applicant argued that *Vision 2030 Delivery Board Case* was made per incuriam, necessitating the request for the Court's interpretation of Article 59 of the Constitution.

To demonstrate its predicament, it discussed the summons to the Judicial Service Commission (JSC), where it issued summons under Articles 59(2) and 252(3) of the Constitution and Sections 26, 27, and 29 of the CAJ Act, to all the JSC Commissioners on 28th February 2025 over alleged

failure to publish and publicise all complaints against judicial officers received by JSC and the Judiciary Ombudsperson. It alleged that the Commissioners ignored the summons on grounds that they were unlawful, unwarranted and unconstitutional. Second, it alleged unresolved complaints against various county governments including Mombasa County, where it alleged complaints over unpaid work injury benefits, and the delayed settlement of hospital bills to the Aga Khan Hospital (the county had committed to settle the bill) and Kisumu County, over complaints on the delayed settlement of dues to various parties, and complaints of noise pollution by the residents of Kimute Housing Society. The applicant argued that it could not resolve these complaints because its intervention and enforcements mechanisms were limited in Vision 2030 Delivery Board Case.

The Supreme Court framed the following issues for determination:

- i. Whether this Court has jurisdiction to render the advisory opinion and if so;*
- ii. Whether the Court should exercise its discretion to give an advisory opinion in this matter?*

Upon consideration, the Supreme Court has dismissed the Reference for the following reasons:

- 1. Issue 1:** The Court affirmed its jurisdiction to render an advisory opinion in this matter.
- 2. Issue 2:** In this matter, there was no indication of any challenges or any disputes arising from the applicant exercise of its powers or functions, neither had the applicant demonstrated the difficulties in requiring the production of any documents or record relevant to any investigation by the Commission over county government officers, state officers, or constitutional commissioners.

While it is not in doubt that the Supreme Court may depart from its previous decisions as per article 163 (7) of Constitution, such departure must be premised upon a clear and well-reasoned justification. A litigant cannot urge the Court to depart from its previous decision simply because he disagrees with it, or that the decision, militates against his case. Any party intending to steer the Court in that direction, ought to ideally make a formal application in which he states the reasons in justification of such a motion.

Accordingly, the Supreme Court grants the following orders:

- i) We decline to exercise our discretion in rendering an opinion in this matter.***
- ii) We shall make no Order as to costs.***

.....