



**Ledama v Narok County Government (Petition E512 of 2023) [2024] KEHC 11465 (KLR)  
(Constitutional and Human Rights) (27 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11465 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
PETITION E512 OF 2023  
EC MWITA, J  
SEPTEMBER 27, 2024**

**BETWEEN**

**HON OLEKINA LEDAMA ..... PETITIONER**

**AND**

**NAROK COUNTY GOVERNMENT ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Narok County Government, the respondent invited bid for 6 tenders during the Financial Year 2023/2024 including tender No NCG/OT/31/2023-2024 on proposed development of county revenue collection and management system, (the impugned tender). The bids were to close on 30<sup>th</sup> November 2023.
2. the respondent county government invited bidders to participate in 6 tenders which were set to close on 30/11/2023. However, on 29<sup>th</sup> November 2023, the closing date was extended to 5<sup>th</sup> December 2023.

**The petitioners' case**

3. The petitioner, the Senator of Narok County, filed a petition challenging the tender processes. The petition is supported by affidavits sworn by the petitioner and written submissions. The petitioner stated that the tendering process was being undertaken despite there being an existing comprehensive integrated county revenue management as well as valid contracts with service providers.
4. To support this contention, the petitioner asserted first; that there is a 10-year renewable contract between the respondent and Kenya Airports Parking Services (KAPS) limited dated 18<sup>th</sup> February 2014, with a subcontract to Regional Connection Limited, for collection of revenues outside Maasai Mara.



5. Second; there is a 15-year renewable contract between the respondent and Mara Conservancy, dated 1<sup>st</sup> June 2022 for collection of revenue within the Maasai Mara National Reserve.
6. Third, there is a 3-year renewable contract between the respondent and Web tribe (Jambo Pay), entered into on 9<sup>th</sup> March 2023, for supply, delivery, installation, testing and commissioning of an integrated county revenue management system arising from tender No. NCG/RFP/003/2022-2023.
7. The petitioner argues, therefore, that a further contract for the same services would be uneconomical since the new tenders would be costly. Pre mature termination of the existing contracts would also cost the respondent massive resources in form of compensation for the terminated contracts. The petitioner further argued that despite raising the issue regarding the tenders in a meeting with the county Governor/ Chief Executive and letters to the county accounting officer, the effort was in vain.
8. The petitioner maintained that it was not true that the contracts with KAPS, the Mara Conservancy and Jambo Pay only covered revenue collection within the Mara Triangle and the Maasai Mara National Reserve. Further, that the contracts with KAPS does not indicate that it covers the Mara Triangle and the Maasai Mara National Reserve. Pursuant to clause 3.7 of that contract, the respondent entered into a sub-contract with Regional Business Connection Limited. KAPS subcontracted some revenue collection in the Single Business Permit Fees and other revenues outside the Maasai Mara National Game Reserve. That contract also lists the revenues the sub-contractor would collect outside the Maasai Mara.
9. According to the petitioner, the contract with Jambo Pay expressly includes supply, delivery, installation, testing and commissioning of an integrated county revenue management system. The goal of the contract was to implement a suitable electronic ICT solution to cover the entire county. The system's objectives were to also ensure that citizens have access to easy and secure ways of paying for different services provided by the respondent as well as provide the county authorities with the ability to monitor revenue collection from multiple sources on a real time basis.
10. The petitioner took the view, that the scope of the Jambo Pay contract is to have a system with the ability to support multiple revenues, namely; parking fees, market rates, rent collections, bill boards, permits, hospital collections among others. Further, support electronic bill presentment for revenue streams with recurring bills such as single business permits, rents, rates and construction permits among others.
11. The system to be rolled out by Jambo Pay would have features capable of providing an electronic platform for the collection of revenue across all revenue streams as captured in the Narok County Government Finance Act.
12. The petitioner maintains that he was aware that the system installed by Jambo Pay is responsible for the collection of sheep and goat cess; advertisement and promotion; parking services; quarry cess; Single Business Permit; Land Management; Cattle Cess among others. All of these are under the categories of revenue provided for under the Fourteenth Schedules to the Finance Act.
13. The petitioner maintains that the impugned tender lacks legitimate justification given the existing contracts with KAPS, the Mara Conservancy and Jambo Pay with the mandate to collect revenue from different sources, including outside the Maasai Mara National Reserve.
14. The petitioner down played the respondent's argument that there was no intention of prematurely terminating the contracts. He argued that this would not justify new and unnecessary tender since whichever way, the respondent stood to lose. The impugned tender was based on ulterior motives and



would lead to uneconomical use of public funds for the benefit of those who seek to illegally acquire public resources in contravention of Articles 227 (1) and 232 (1), (2) of *the Constitution*.

15. The petitioner relied on Article 2(4) of *the Constitution* and the decision in *Law Society of Kenya v Office of the Attorney General & Another; Judicial Service Commission (Interested Party) (Constitutional Petition 203 of 2020)* [2021] KEHC 454 (KLR) (Constitutional and Human Rights) (10 June 2021) (Judgment), to urge that the impugned tender be quashed.
16. The petitioner maintained that the impugned tender would violate Articles 1, 10, 201, 227 and 232(1) of *the Constitution* and sought the following reliefs:
  - i. A declaration that Tender Number NCG/OT/31/2023-2024 for proposed development of a county revenue collection and management system, as far as it intended for procuring services that are already being provided by other service providers duly contracted to do so and which will lead to further expenses, violates articles 1, 10, 201, 227 and 232 of *the Constitution*.
  - ii. An order of certiorari quashing Tender Number NCG/OT/31/2023-2024.

### **Respondent's case**

17. The respondent has opposed the petition through a replying affidavit sworn by John Mayiani Tuya, the County Secretary) and written submissions. It is deposed that the petition is intended to champion private interests of KAPS, the Mara Conservancy and Jambo Pay since the petitioner is not a party to the existing contracts, and the companies with contracts have not raised any issue regarding the impugned tenders.
18. The respondent argued that this being an open tender, it is in public knowledge and the petitioner's job as Senator, is to protect the County and not champion commercial interests of specific people and or groups.
19. According to the respondent, the proposed development of county revenue collection and management system is different from the existing contracts. The new system is intended to ensure that the respondent has its own internal module for revenue collection in the future as it focuses on other revenue systems outside the existing ones which are for collection of revenue within the Mara Triangle and the Maasai Mara National Reserve.
20. The respondent argues that apart from the revenue collection from the Maasai Mara Reserve, there are many other streams of revenue such as Cess and own source revenue, among others, that have nothing to do with the existing contracts. The respondent asserts that the purpose of the impugned tender is to assist in revenue collection that falls outside the ambit of the existing contracts. In that regard, the existing contracts do not prevent a new contract for purposes of developing county revenue collection and management system.
21. The respondent argues that it is aware of its mandate and obligations under the existing contracts and their implications. There is no intention to prematurely terminate the contracts hence the petitioner's concerns are speculative. In addition, the contract with KAPS was set to expire in early February, 2024 and it had the discretion to renew it, or not.
22. The respondent denies violating any constitutional provisions. The respondent asserts, relying on the decisions in *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemu v Trusted Society of Human Rights Alliance and 5 others* (2013) eKLR, that the petition does not meet the precision threshold to warrant grant of the reliefs sought in the petition.



23. The respondent argues that although the petition has cited Articles 201, 227 and 232 (1) of *the Constitution*, it has not established how these Articles have been violated. Further, the allegations regarding the cost to be incurred as well as the claim that the impugned tender would benefit those who seek to illegally acquire public resources, have not been substantiated.
24. According to the respondent, the impugned tender is being undertaken in accordance with the *Public Procurement and Asset Disposal Act*, thus promotes integrity, fairness, transparency and accountability. There is, therefore, no violation of *the Constitution* and/or statute.
25. The respondent relies on the decisions in *Thuku Kiroro & 4 others vs County Government of Muranga* [2014] eKLR and *Joy Brenda Masinde v Law Society of Kenya & Another* [2015] eKLR, for the position that an order of certiorari cannot issue in the circumstances of this case as it is carrying out its constitutional and statutory mandate.
26. Moreover, the petitioner has not demonstrated that it has acted illegally, unreasonably or in breach of natural justice. The impugned tender also meets the requirements in Article 227(1) of *the Constitution*.

### **Determination**

27. I have considered the petition, response, submissions and decisions relied on by parties. The single issue that arises for determination is whether the petition discloses violation of *the Constitution*.
28. The petitioner challenges the respondent's decision to commence procurement process by advertising Tender Number NCG/OT/31/2023-2024 and calling for bids. The tendering process initiated by the respondent is for the development of a revenue collection system within the respondent county. The petitioner argues the services being procured already exist and if the procurement process is allowed to continue to its conclusion, it will amount to misuse of public resources.
29. The respondent on its part, maintains the proposed development of county revenue collection and management system is different from the existing one. The new system, the respondent argues, will enable the respondent have its own internal module for revenue collection that focuses on other revenue collection systems outside the existing models which are limited for revenue collection within certain areas only.
30. Tendering processes are guided by *the Constitution* (Article 227) and the *Public Procurement and Asset Disposal Act* and the Regulations made there under. Article 227 (1) provides that State organs or public entities contracting for goods or services, should do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
31. Section 53 of the *Public Procurement and Asset Disposal Act* further provides that an accounting officer has to prepare an annual procurement plan which is realistic (in a format set out in the Regulations) within the approved budget prior to commencement of each financial year as part of the annual budget preparation process. Under sub section (2), a public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under the Act.
32. Again, section 53 (5) states that a procurement and asset disposal planning should be based on indicative or approved budgets which should be integrated with applicable budget processes and in the case of a State Department or County Department, such plans should be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.



33. Under section 53 (8), an accounting officer should not commence any procurement process until satisfied that there are sufficient funds to meet the obligations of the resulting contract which funds must be reflected in its approved budget estimates.
34. The section further states at subsection (9), that an accounting officer who knowingly commences a procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence.
35. Section 53 thus, gives broad guidelines to be followed by procurement entities as well as consequences and sanctions in case of failure to follow the law.
36. What is clear from the provisions highlighted above, is that procurement of goods and services must be planned and budgeted for, and must comply with the constitutional principles of fairness, equity, transparency competitiveness and cost-effectiveness.
37. The petition states that the respondent advertised tenders, including the impugned Tender Number NCG/OT/31/2023-2024, calling for bids for procurement of service. The fact that the tender was advertised meets one of the constitutional principles, namely; openness. The tendering process having not gone through the other stages it is not complete for one to assess whether it conforms with *the constitution* and the law.
38. The petition, as I see it, does not complain that the process does not comply with the constitutional principles or statutory requirements. The petitioner's argument is that the impugned tender lacks legitimate justification since the existing contracts have the mandate to collect revenue from different sources, including those the new system is intended to target thus, the tendering process will violate Articles 1, 10, 201, 227 and 232(1) of *the Constitution*.
39. Article 1 is on the sovereignty of the people and the delegation of that authority to State organs to exercise the authority on their behalf. On the other hand, Article 201 is on the principles of public finance, including the requirement that there should be openness and accountability, such as public participation and that public money should be used in a prudent and responsible way, among others.
40. Whether the proposed procurement will result into loss of revenue or public resources is not, in my respectful view, a matter for this court at this stage. One may argue, and it is true, that Article 201 demands prudent use of public resources. So is Article 232 on values and principles of public Service which demands efficient, effective and prudent use of resources.
41. The principles of public finance are well articulated in Article 227 of *the Constitution* which has already been alluded to and the Act (section 53) which provides what accounting officers are required to do before embarking on procurement processes. If the provisions of *the constitution* or the Act are violated leading to loss of revenue, there are consequences that follow.
42. Further, any loss of money or revenue due to unnecessary procurement, would still be a violation of the law and there are entities that have mandate to deal with such an eventuality.
43. In a claim that there is violation of *the Constitution*, the violation must be real or a discernible apprehension or threat to violate *the Constitution*. That is the scheme of Article 165(3)(d)(ii) which would lead to the court to intervene. However, in the circumstances of this petition, I do not see any clear and valid constitutional violation or threat to violate *the constitution*.



## **Conclusion**

44. Having considers this petition, arguments, *the Constitution* and the law, I find no violation of *the Constitution* or the law at this stage. Consequently, the petition is declined and dismissed.

45. This being a public interest litigation, each party will bear own costs.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2024**

**E C MWITA**

**JUDGE**

