



**Kenya Driving Schools Association v County Government of  
Mombasa & 47 others (Constitutional Petition E014 of 2021)  
[2023] KEHC 23836 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 23836 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CONSTITUTIONAL PETITION E014 OF 2021**

**OA SEWE, J**

**SEPTEMBER 29, 2023**

**IN THE MATTER OF ARTICLES 2(1), 2(2), 2(4), 22(2), 185(2),  
209(3), 209(5), 210(1) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE TRAFFIC ACT, CHAPTER 403 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012**

**AND**

**IN THE MATTER OF THE TRAFFIC (DRIVING SCHOOLS,  
DRIVING INSTRUCTORS AND DRIVING LICENCES) RULES, 2018**

**AND**

**IN THE MATTER OF COUNTIES FINANCE ACTS**

**AND**

**IN THE MATTER OF UNLAWFUL IMPOSITION  
OF BRANDING TAXES ON DRIVING SCHOOLS**

**BETWEEN**

**KENYA DRIVING SCHOOLS ASSOCIATION ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KWALE ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KILIFI ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY GOVERNMENT OF TANA RIVER ..... 4<sup>TH</sup> RESPONDENT**



COUNTY GOVERNMENT OF LAMU .....	5 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF TAITA TAVETA .....	6 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF GARISA .....	7 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF WAJIR .....	8 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MANDERA .....	9 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MARSABIT .....	10 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF ISIOLO .....	11 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MERU .....	12 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF THARAKA NITHI .....	13 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF EMBU .....	14 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF KITUI .....	15 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MACHAKOS .....	16 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MAKUENI .....	17 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF NYANDARUA .....	18 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF NYERI .....	19 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF KIRINYAGA .....	20 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF MURANG'A .....	21 <sup>ST</sup> RESPONDENT
COUNTY GOVERNMENT OF KIAMBU .....	22 <sup>ND</sup> RESPONDENT
COUNTY GOVERNMENT OF TURKANA .....	23 <sup>RD</sup> RESPONDENT
COUNTY GOVERNMENT OF WEST POKOT .....	24 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF SAMBURU .....	25 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF TRANS NZOIA .....	26 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF UASIN GISHU .....	27 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF ELGEYO MARAKWET .....	28 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF NANDI .....	29 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF BARINGO .....	30 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF LAIKIPIA .....	31 <sup>ST</sup> RESPONDENT
COUNTY GOVERNMENT OF NAKURU .....	32 <sup>ND</sup> RESPONDENT
COUNTY GOVERNMENT OF NAROK .....	33 <sup>RD</sup> RESPONDENT
COUNTY GOVERNMENT OF KAJIADO .....	34 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF KERICHO .....	35 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF BOMET .....	36 <sup>TH</sup> RESPONDENT



COUNTY GOVERNMENT OF KAKAMEGA .....	37 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF VIHIGA .....	38 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF BUNGOMA .....	39 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF BUSIA .....	40 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF SIAYA .....	41 <sup>ST</sup> RESPONDENT
COUNTY GOVERNMENT OF KISUMU .....	42 <sup>ND</sup> RESPONDENT
COUNTY GOVERNMENT OF HOMA BAY .....	43 <sup>RD</sup> RESPONDENT
COUNTY GOVERNMENT OF MIGORI .....	44 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF KISII .....	45 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF NYAMIRA .....	46 <sup>TH</sup> RESPONDENT
COUNTY GOVERNMENT OF NAIROBI CITY .....	47 <sup>TH</sup> RESPONDENT
COUNCIL OF GOVERNORS .....	48 <sup>TH</sup> RESPONDENT

## JUDGMENT

1. 1 The petitioner, Kenya Driving Schools Association, is a registered entity under Section 10 of the *Societies Act*, Chapter 108 of the Laws of Kenya. Its members are driving schools licenced under Rule 4(1) of the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*. It filed this Petition on 19<sup>th</sup> February 2021 against the 47 devolved units of Government (hereinafter the respondents) as well as the Council of Governors, (the 48<sup>th</sup> respondent) alleging violation of various provisions of the *Constitution of Kenya*, the *Traffic Act*, Chapter 403 of the Laws of Kenya and the *County Governments Act*, No. 17 of 2012. It alleged that the respondents enacted similar Finance Acts to legislate on taxes, fees and charges for services and other revenue generating activities and have in the process imposed different charges for branding of driving school motor vehicles.
2. Thus, the petitioner raised the question whether a party is liable to pay taxes or levies for undertaking an act that is mandated by statute; and by extension whether the actions of members of the petitioner of displaying the name of the driving schools as mandated by Rule 21(2)(b) of the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2018 amounted to branding and/or advertising. Accordingly, the petitioner prayed for the following reliefs on behalf of its members:
  - (a) A declaration that display of names and addresses of driving schools on driving school motor vehicles and marking the driving school motor vehicles with the “Driver under Instructions” banner/sign/symbol as mandated by Rule 21(2)(b) of the *Traffic Driving Schools, Driving Instructors and Driving Licences) Rules*, does not amount to branding, marketing or advertisement.
  - (b) A declaration that any County Government legislation that imposes an obligation on driving schools licensed under the *Traffic Act* to pay branding/advertisement/marketing taxes, fees, levies and charges when displaying their names and addresses on their driving school vehicles offends the provisions of Article 209(5) of the *Constitution* and therefore unconstitutional, null and void.



- (c) A declaration that driving schools licensed under the *Traffic Act* are exempted from paying branding/advertisement/marketing taxes, levies, fees, charges imposed by County Governments when displaying their names and addresses on driving school vehicles.
- (d) An order that the costs of the Petition be borne by the respondents.
- 3 The Petition was supported by the affidavit sworn by one of the members of the petitioner, John Osiemo Magara, who is the proprietor of Ndovu Driving & Technical School Ltd, Mombasa. He averred that, under the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, he was required to:
- (a) Exhibit/display the name and address of his driving school on his driving school motor vehicles;
- (b) Exhibit/display a visible mark with words “Caution-driver Under Instruction”
4. Mr. Magara further stated that the display mentioned is for the sole purpose of compliance with statutory obligation is not intended to market or attract business; and therefore does not fall under the category of advertisement, marketing or branding. He averred that the said taxes, levies, fees and charges imposed by the respondents on driving schools offend the provisions of Article 209(5) of the *Constitution* and therefore ought to be declared null and void. He added that he had been approached several times by the agents of the 1<sup>st</sup> respondent to pay taxes on his driving school motor vehicles, and that it is only just and equitable that the orders sought in the Petition be granted. He annexed to his affidavit a copy of the petitioner’s Certificate of Registration No. 13765 as well as a copy of the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2018.
- 5 The Petition was served by way of advertisement in the print media, pursuant to the directions issued herein by Hon. Ogola, J. on 10<sup>th</sup> May 2021. Accordingly, although several respondents filed their responses to the Petition, not all of them complied. The record shows that the first respondent to respond to the Petition by way of a Notice of Preliminary Objection dated 22<sup>nd</sup> November 2021 was the 22<sup>nd</sup> respondent, namely the County Government of Kiambu. In its Notice of Preliminary Objection, the 22<sup>nd</sup> respondent contended that:
- (a) the petitioner lacks the locus standi to institute this Petition, thereby depriving the Court of the jurisdiction to hear and determine the Petition;
- (b) No provision under the *Societies Act* allows a society to sue or be sued in its own name; and that the lack of capacity to sue or be sued is a weighty matter that goes to the validity of the Petition;
- (c) That the suit is incompetent and therefore a nullity in law.
6. In the Replying Affidavit sworn on 20<sup>th</sup> May 2022 on behalf of the County Government of Kiambu by Mr. Daniel Kirathe, it was averred that, under Section 41(1) of the *Societies Act*, a society such as the petitioner cannot sue or appear in a suit in its own name. Mr. Kirathe further deposed that since Articles 185 and 209(3) of the *Constitution* empowers County Governments to enact legislation and impose taxes for the services they provide, and since the County Assembly of Kiambu passed the *Kiambu County Finance Act*, 2021 which provides for charges for branding of motor vehicles, the Petition has no basis. He annexed a copy thereof to the Replying Affidavit as Exhibit DK1 and explained that the fees have been charged, not for the signage stating “Caution-driver Under Instruction” or for displaying the driving schools’ addresses, but purely for branding of the driving school vehicles. Thus, Mr. Kirathe prayed for the dismissal of the Petition.



- 7 The County Government of Nyeri, sued herein as the 19<sup>th</sup> respondent, also resisted the Petition. It relied on the Replying Affidavit sworn on 20<sup>th</sup> April 2022 by its County Attorney, Mr. Kimani Rucuiya. Mr. Rucuiya similarly adverted to the constitutional provisions that give the respondents the mandate to impose taxes, fees, rates, rents and other charges in order to raise the revenue required to finance County operations. He therefore averred that since the impugned charges were imposed in accordance with the Constitution and the applicable Nyeri County legislation, it was upon the petitioner to demonstrate ways in which the imposition of taxes has prejudiced national economic policies or economic activities across the country.
- 8 Mr. Rucuiya further deposed that, although at paragraph 22 of its Petition, the petitioner alleged contravention of public policy under Article 209(5) of the Constitution, it failed to provide particulars of its allegations or the manner of the infringements complained of. Consequently, he stated that the petitioner has not pleaded with precision or tendered cogent evidence to prove the alleged violations. He posited that the manner in which the names and addresses of the driving schools have been displayed on their motor vehicles clearly show that the members of the petitioner have taken advantage of the provisions of Rule 21(2)(b) of the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules to market and advertise their business.
- 9 Mr. Rucuiya pointed out that the Nyeri County Outdoor Advertising Control Act defines advertisement as any notice or representation employed wholly or partly for the purposes of drawing attention of the public or promoting any product or service; and therefore the 19<sup>th</sup> respondent is justified to deem as advertisement the displays of branded vehicles of members of the petitioner and charge advertising and marketing levies as the displays are beyond the requirements of Rule 21(2)(b) of the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules. Consequently, he prayed for the dismissal of the Petition with costs.
- 10 On the 27<sup>th</sup> May 2022, Grounds of Opposition were filed herein by the County Attorney of the Government of Kakamega, . The 37<sup>th</sup> respondent thereby contended that:
- (a) The petitioner lacks locus standi to sue the respondents in its capacity as a society registered under the Societies Act;
  - (b) The Petition discloses no cause of action that competently arises as against the 37<sup>th</sup> respondent as the Petition does not allege or demonstrate evidence of contravention of the petitioner's members' constitutional rights by the 37<sup>th</sup> respondent;
  - (c) Other than outlining Articles of the Constitution, the petitioner has not demonstrated with specificity the manner in which the 37<sup>th</sup> respondent has violated its members' constitutional rights.
  - (d) The petitioners' suit against the 37<sup>th</sup> respondent is incompetent, misconceived, misplaced, in bad faith and an abuse of the process of the Court; and the same ought to be dismissed with costs.
- 11 In the same vein, the 3<sup>rd</sup> respondent, the County Government of Kilifi, relied on Grounds of Opposition filed on 30<sup>th</sup> May 2022 by its County Legal Counsel,\*\* Mr. Faraji Chipinde, to the effect that:
- (a) The Petition is bad in law, misconceived, incompetent, oppressive, frivolous and an abuse of the process of the Court;



- (b) The Petition as formulated and drawn has laid no basis, legal or factual, to warrant the issuance of the declaratory orders prayed for; and therefore the Petition is untenable, misconceived and an abuse of the process of the Court;
  - (c) The current suit is res judicata and made mala fide and an outright abuse of the Court’s process and ought to be dismissed with costs to the 3<sup>rd</sup> respondent;
12. On behalf of the 27<sup>th</sup> respondent, the County Government of Uasin Gishu, a Replying Affidavit was filed on 30<sup>th</sup> May 2022, sworn by its County Attorney, Mr. S.K. Lel. He averred that the 27<sup>th</sup> respondent, by powers conferred upon it by Article 209 of the Constitution, enacted and implemented the Uasin Gishu Finance Act, 2014 to provide for the various taxes, fees and charges for the County. He further pointed out that, at the heart of devolution is the need to bring basic amenities and services closer to the people, including health care, infrastructure, education and clean water; and that this objective can only be achieved through revenue collection.
12. Mr. Lel further stated that, whereas Rule 21(2)(b) of the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules* places a requirement for the members of the petitioner to display names and addresses of their driving schools as well as the words “Caution, Driver Under Instruction” on their vehicles, the members of the petitioner, in complying with the said rule have acted in a manner that goes over and beyond the text and spirit of the Rules; and therefore invite commercial gain by way of advertisement with a view of achieving a competitive edge over their competition in the same industry. Thus, Mr. Lel, in urging for the dismissal of the Petition with costs, pointed out that:
- (a) The pomp and colour exhibited by the display of the names and addresses of the driving schools on their vehicles elicits public attention and can speak to advertising;
  - (b) The lack of uniformity in the method of display of the names and addresses and the use of distinctive signs labels and signs of the driving schools in their vehicles all fit into the meaning and definition of branding;
  - (c) The use of bright corporate colours by the members of the petitioner ensures that no eye can miss the name of the driving schools; and therefore amounts to promoting and directing attention of the public to the services being offered by the driving school.
13. On behalf of the 48<sup>th</sup> respondent, the Council of Governors, a Replying Affidavit was filed herein sworn on 30<sup>th</sup> May 2022 by its Chief Executive Officer, Mary Mwiti. She averred that the revenue raising powers of the County Governments is provided for under Article 209(3) of the *Constitution*, which mandates Counties to impose taxes. She therefore posited that the respondents’ actions of imposing taxes and charges on driving schools are constitutional and well within their mandate in so far as they are authorized by County Finance Acts.
14. At paragraph 11 of her Replying Affidavit, Ms. Mwiti averred that the manner in which the petitioner’s members display their names and addresses on the vehicles amounts to branding and advertisement. She added that driving schools do not fall within the exemptions provided for in the *County Outdoor Advertisement Act*, No. 19 of 2020; and therefore the respondents’ action of imposing taxes is not in contravention of public policy and does not prejudice national economic policies or activities across county boundaries as alleged by the petitioner. She added that the Petition discloses no cause of action that arises out of the actions/omissions of the 48<sup>th</sup> respondent; and therefore urged for the dismissal of the Petition with costs.
15. The 12<sup>th</sup> respondent, the County Government of Meru, also opposed the Petition. It relied on the affidavit of the Chief Executive Officer of the Revenue Board, Mr. Francis Mungai, and denied the



assertions by the petitioner in its Petition dated 17<sup>th</sup> February 2021 in their totality. Mr. Mungai reiterated that the revenue raising power of the County Government is provided for under Article 209(3) of the Constitution and the Meru County Finance Act. He reiterated the averments of Ms. Mwiti and averred that the 12<sup>th</sup> respondent lawfully imposed taxes on members of the petitioner operating within its realm; and that the Petition does not disclose a cause of action against the 12<sup>th</sup> respondent.

16. On the 7<sup>th</sup> February 2023, Mr. Mokaya, Advocate, filed Grounds of Opposition on behalf of the County Government of Nyandarua, the 18<sup>th</sup> respondent, contending that:
- (a) The Petition discloses no cause of action against the 18<sup>th</sup> Respondent as the Petition alleges but does not demonstrate evidence of any contravention of the petitioners' members' constitutional rights;
  - (b) The petitioner has not demonstrated with precision and specificity the manner in which the 18<sup>th</sup> respondent has violated its members' constitutional rights;
  - (c) The petitioner has not produced any evidence to the effect that the 18<sup>th</sup> respondent has imposed any branding charges; and that the petitioner only mentioned the 1<sup>st</sup>, 14<sup>th</sup> and 38<sup>th</sup> respondents as having imposed the impugned charges;
  - (d) The Petition does not state and does not name the particular law and sections of the law enacted by the 18<sup>th</sup> respondent that is unconstitutional;
  - (e) The Petition as against the 18<sup>th</sup> respondent is incompetent and misconceived and an abuse of the process of the Court and as such should be dismissed with costs to the 18<sup>th</sup> respondent.
17. The last Replying Affidavit was filed on 9<sup>th</sup> March 2023 by M/s B.M. Musyoki & Co. Advocates on behalf of the 14<sup>th</sup> respondent, the County Government of Embu. The affidavit was sworn on 2<sup>nd</sup> March 2023 by Ms. Amy Ruria, the County Secretary. She averred that the Petition is misplaced, jumbled and convoluted in that each of the County Governments works on their own finance bills, laws and regulations and joining them in one Petition for payers as shown in this Petition is confusing.
18. Ms. Ruria further deposed that, under Part XI, Section 105(1)(f) of the County Government Act, the 14<sup>th</sup> respondent has the mandate and discretion to impose fees for various activities and undertakings such as the one complained of herein. She posited that the petitioner has not shown any constitutional rights of its members which have been violated or threatened with violation. She concluded by averring that, since the rule that is the mainstay of the Petition was not the product of the 14<sup>th</sup> respondent's legislation, the petitioner ought to have sued the National Assembly instead.
19. The Petition was canvassed by way of written submissions pursuant to the directions given herein on 31<sup>st</sup> May 2022. Accordingly, Mr. Mwabonje filed his written submissions herein on 8<sup>th</sup> December 2022 and reiterated that the petitioner is a duly registered Society and was registered on 21<sup>st</sup> September 1987 as per the Certificate of Registration marked as Annexure JOM-1 to the Supporting Affidavit. It is therefore a person for purposes of Article 22(2)(d) and Article 258(d) of the Constitution with full rights to petition the Court for the protection of its members constitutional rights. Similarly, counsel referred to Association of Kenya Insurers (AKI) (suing through its Chairman Mr. Mathew Koech) v Kenya Revenue Authority & 3 Others; Insurance Regulatory Authority (IRA) Interested Party [2020] eKLR on the question of locus standi.
20. Mr. Mwabonje further submitted that Section 119 of the Traffic Act gives the Cabinet Secretary in charge of Transport the power to formulate rules for driving schools, including their inspection,



premises and fees payable; and that, pursuant to the powers donated under Section 119 of the *Act*, the Cabinet Secretary formulated the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*. He added that, to comply with Rule 21(2)(b) of the *Traffic Rules*, the petitioners' members displayed the names of the driving schools and a board with the words "Caution-driver Under Instructions" on the motor vehicles; which the respondents have misinterpreted to amount to advertising. He posited therefore that, whereas the respondents have the right to generate revenue by levying taxes, fees and charges pursuant to Articles 185(2), 209(3) and 210(1), the same should not be levied on actions mandated by legislation or measures taken to comply with legislation.

21. On behalf of the 3<sup>rd</sup> respondent, Mr. Faraji, filed his written submissions on 18<sup>th</sup> October 2022 and proposed the following issues for determination:
- (a) Whether the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules* as relied on by the petitioner were valid;
  - (b) Whether the Petition can be sustained on the basis of unconstitutional Regulation/Law/Policy;
  - (c) In the alternative, whether the display of names and addresses of driving schools or driving school motor vehicles with the banner reading "Caution - Driver Under Instruction" amounts to branding, marketing or advertisement; and,
  - (d) Whether the respondents, in imposing taxes and levies to driving schools contravened public policy as enshrined in Article 209(5) of the *Constitution*.
22. Mr. Faraji submitted that, although the Rules were published on 26<sup>th</sup> April, 2018 vide Legal Notice No. 81 of 2018, they were not adopted by Parliament as required by Section 11(4) of the *Statutory Instruments Act*, No. 23 of 2013; and therefore became void, unenforceable and inoperative. He further submitted that the Rules failed to comply with the Constitution as stipulated in Articles 2, 10, 94 and 118 thereof, as well as Section 13 of the *Statutory Instruments Act*. As such, they were annulled by the National Assembly on 14<sup>th</sup> August 2018. He further made reference to Petition No. 97 of 2018: *Okiya Omtatah Okoiti v The National Transport and Safety Authority and Another* and *MacFoy v United Africa Co. Ltd* [1961] 3 All ER 1169 to support his argument that the said Rules cannot therefore be the basis of the Petition.
23. Mr. Faraji also submitted that Schedule 4 Paragraphs (2) and (3) of the *Constitution* identifies outdoor advertising as one of the functions of the County Government; and that in ensuring that this function is realized Parliament enacted the *County Outdoor Advertising Control Act*, No. 19 of 2020 which defines advertisement as:
- "any notice or representation employed wholly or partly for the purposes of drawing the attention of the public to or promoting any product or service."
24. Thus, in Mr. Faraji's view, the display of names and addresses of driving schools on the driving school motor vehicles amounts to advertising as it is done solely for the purpose of drawing attention of the public to the services offered by the schools. He added that the *Act*, being primary legislation, takes precedence over the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*.
25. On whether the respondents, in imposing taxes and levies on the driving schools contravened public policy as enshrined in Article 209(5) of the *Constitution*, Mr. Faraji argued that, since branding of motor vehicles is a form of outdoor advertising and therefore taxable, the respondents would be in order to impose the tax so long as it is provided for in the respective County legislations. He added that the 3<sup>rd</sup> respondent duly enacted its County Finance Act by dint of the power conferred to them



- by Article 185(1) and 183(2) of the Constitution, and thereby complied with the provisions of Part XI, Section 105(1)(f) of the County Government Act.
26. Counsel relied on Andrew Wasswa Atetwe t/a Kilimanjaro Auctioneers & 21 others v Mombasa County Government & Another [2015] eKLR and Base Titanium Limited v The County Government of Mombasa & Another [2017] eKLR for the proposition that devolution ought to be encouraged as long as the acts done in furtherance thereof are *intra vires* the Constitution and the applicable statutes. He accordingly prayed for the dismissal of this Petition with costs.
27. On behalf of the 12<sup>th</sup> respondent, Mr. Kiunga filed written submissions dated 13<sup>th</sup> December 2022. He proposed for determination the following questions:
- (a) Whether the display of names and addresses of driving schools on driving school vehicles and marking the driving schools' vehicles with the "Driver under instructions" banner amounts to branding, marketing or advertisement; and,
  - (b) Whether the 12<sup>th</sup> respondent's legislation that imposes an obligation on driving schools licenced under the Traffic Act to pay branding/advertisement/marketing taxes, fees, levies and charges when displaying their names and addresses on their driving schools' vehicles offends the provisions of Article 209(5) of the Constitution and therefore unconstitutional, null and void.
28. Counsel submitted that the action of the petitioner's members of displaying their names and addresses on the vehicles amounts to advertisement within the meaning of Section 2 of the County Outdoor Advertisement Act. He relied on Council of Governors & 6 others v Senate [2015] eKLR. He further submitted that the 12<sup>th</sup> respondent's action of imposing taxes is not in contravention of public policy, granted the provisions of Section 119 of the Traffic Act. Thus, counsel submitted that the Petition discloses no cause of action and therefore ought to be dismissed with costs.
29. The written submissions of the 14<sup>th</sup> respondent was filed on 19<sup>th</sup> January 2023 by Mr. Musyoki. He took the posturing that the Petition is speculative considering that the petitioner has not exhibited or cited the legislation it has come before the Court to challenge; and therefore that it has left it to the Court to assume the particulars of the legislation challenged. He further pointed out that the Petition is general and attempts to cut through all the 47 Counties in the country, yet the County Governments do not operate in similar circumstances and their laws are not necessarily uniform. Mr. Musyoka was also of the view that failure by the petitioner to enjoin the County Assemblies that passed the impugned Finance legislations was a fatal omission.
30. Mr. Musyoki further submitted that the Petitioner failed to establish how the said taxes are prejudicial to the national economy or national mobility of their services; and therefore the Court should be reluctant to intervene on its behalf. He relied on Nairobi Metropolitan PSV Saccos v County Government of Nairobi to buttress his submissions.
31. On his part, Mr. Mokaya, learned counsel for the 18<sup>th</sup> respondent, filed his written submissions on 7<sup>th</sup> February 2023. He similarly suggested the following issues for determination:
- (a) Whether the petitioner has laid out the infringement of rights and the unconstitutionality of the Finance Acts with specificity and precision.
  - (b) Whether failure by the petitioner to bring to this Court the relevant Finance Acts complained of is fatal to the Petition;
  - (c) Who bears the costs of the Petition?



32. According to Mr. Mokaya, there is misjoinder of the 18<sup>th</sup> respondent because it has not been shown that it imposed any advertising or marketing tax on any of the members of the petitioner. He submitted that the fact that this is a constitutional petition does not shield the petitioner from discharging its burden of proof as required by Section 107 of the *Evidence Act*, Chapter 80 of the Laws of Kenya. Counsel relied on *Japheth Ododa Origa v Vice Chancellor University of Nairobi & 2 Others* [2018] eKLR and *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & Others* [2014] eKLR to buttress his submission that the Petition ought to fail, even on that ground alone.
33. Mr. Mokaya further submitted that the petitioner is on a fishing expedition in so far as the Finance Acts it is challenging were never produced before the Court. He urged the Court to note that there is no claim of double taxation; and in particular no proof of payment of taxes for the signs in question to the 18<sup>th</sup> respondent. He therefore prayed for the dismissal of the Petition with costs as the respondents have the legislative discretion to impose taxes and charges for services rendered under Article 209(4) of the *Constitution*.
34. On behalf of the 19<sup>th</sup> respondent, Mr. Kamotho filed his written submissions on 20<sup>th</sup> February 2023. He made reference to the 19<sup>th</sup> respondent's Replying Affidavit dated 20<sup>th</sup> April 2022 and proposed the following issues for determination:
- (a) Whether the Petition has met the threshold of a constitutional petition;
  - (b) Whether the 19<sup>th</sup> respondent is justified in imposing levies and taxes to members of the Petitioner.
35. Thus, Mr. Kamotho submitted that, although the petitioner alleges that the 19<sup>th</sup> respondent has contravened Article 209(5) of the *Constitution*, it has not demonstrated that:
- (a) The particular levies and taxes that have been levied by the 19<sup>th</sup> respondent and which apply to the petitioner;
  - (b) The identifiable ways through which the imposition of the said taxes and levies has been prejudicial to national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour;
  - (c) The ways in which the imposition of the levies and taxes has led to contravention of public policy.
36. Mr. Kamotho reiterated the principle that a party that alleges violation of the *Constitution* must plead with reasonable and higher degree of precision in regard to the manner in which the violation has occurred. He accordingly relied on *Edward Karanja Chogo & 2 Others v County Government of Kakamega* [2018] eKLR in which it was held that a constitutional petition is meant to deal with clear constitutional matters; and is therefore to be applied in clear cases where the facts can be ascertained. He submitted that the petitioner has not provided any facts to demonstrate the charges levied by the 19<sup>th</sup> respondent on branding of motor vehicles or how the levying of those charges, if any, has led to a contravention of Article 209(5) of the *Constitution*, which the petitioner relied on. Counsel relied on *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* (supra) to augment his submission that the Petition lacks merit as there are no facts to support the alleged violations of the *Constitution* by the 19<sup>th</sup> respondent.
37. On whether the 19<sup>th</sup> respondent is justified in imposing levies and taxes to members of the petitioner, Mr. Kamotho submitted that the manner in which the names and addresses of the driving schools have been displayed by the members of the petitioner clearly shows that the members have taken advantage



of Rule 21(2)(b) of the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules to market and advertise their businesses. According to him, the names and addresses have been turned into a display of the driving school with the most colourful, huge, eye-catching and conspicuous writings; and therefore that the members of the petitioner have gone over and beyond what is provided for in law and branded their motor vehicles in a manner designed to attract public attention on their businesses. He therefore concluded his submissions by asserting that the 19<sup>th</sup> respondent is justified to deem as advertisement the displays and branding on the vehicles of the members of the petitioner.

38 On behalf of the 37<sup>th</sup> respondent, Mrs. Mbaka relied on her written submissions dated 24<sup>th</sup> January 2023. She also relied on the Grounds of Opposition filed by the 37<sup>th</sup> respondent dated 27<sup>th</sup> May 2022 and the Notice of Preliminary Objection filed by the 22<sup>nd</sup> Respondent dated 22<sup>nd</sup> November 2021. Accordingly, counsel proposed the following issues for determination:

- (a) Whether the petitioner herein has capacity to sue in its own name;
- (b) Whether the Petition discloses any cause of action against the 37<sup>th</sup> respondent;
- (c) Whether the Petition meets the threshold of a constitutional petition.

39 Counsel submitted that, since the petitioner is not a body corporate, it lacks the capacity to institute proceedings in its own name. She relied on Republic v Registrar of Societies Ex Parte Narok Muslim Welfare Association [2017] eKLR and African Orthodox Church of Kenya v Rev. Charles Omuroka & Another [2014] eKLR and prayed that the Petition be struck out on that account. On whether the Petition discloses a cause of action, Mrs. Mbaka pointed out that there is no allegation of contravention in the Petition against the 37<sup>th</sup> respondent; and therefore that the petitioner did not demonstrate with specificity the manner in which the 37<sup>th</sup> respondent violated its members' constitutional rights. In this regard, counsel relied on Anarita Karimi Njeru v Republic [1979] eKLR and David Gathu Thuo v Attorney General & Another [2021] eKLR among others and urged for the striking out or dismissal of the Petition with costs.

40 The written submissions of the 48<sup>th</sup> respondent was filed herein on 28<sup>th</sup> January 2023 by Mr. Lawi in which he proposed the following issues for determination:

- (a) Whether the respondents' action of charging taxes and levies to members of the petitioner is lawful;
- (b) Whether displaying the names on the driving schools amounts to branding and advertising;
- (c) Whether the Petition is pleaded with a reasonable degree of precision and specificity as required in law.

41 Mr. Lawi then proceeded to submit that the action of the respondents, in imposing taxes on members of the petitioner, is constitutional, lawful and well within their mandate as it is set out in the Constitution as well as the respective County Finance Acts. He added that the revenue raising powers of the County Governments is provided for under Article 209(3) of the Constitution which endows Counties with the power to impose taxes and charges. Counsel further posited that the manner in which the members of the petitioner display their names on the driving school motor vehicles amounts to branding and advertising within the meaning of Section 2 of the County Outdoor Advertisement Act; and therefore, in so far as the members of the petitioner are not exempted from payment of taxes under Section 3 of the Act, the Petition is baseless.

42 Lastly, it was the submission of Mr. Lawi that the Petition has not been pleaded with the required level of precision and therefore does not meet the threshold of a constitutional petition. He likewise relied



on Anarita Karimi Njeru case and Communication Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others, Petition No. 14 of 2014 and prayed for the dismissal of the Petition with costs.

43 I have given careful consideration to the Petition, its Supporting Affidavit and the documents annexed thereto. I have similarly given due consideration to the responses filed herein by some of the respondents, comprising of Notices of Preliminary Objection as well as Replying Affidavits with annexures. There is no dispute that the petitioner is a society registered under Section 10 of the Societies Act vide Registration No. SOC/23927. The Certificate of Registration was annexed to the affidavit in support of the Petition as Annexure JOM-1. There is also no dispute that the petitioner has as its members licenced driving schools operating in the various Counties of the Republic of Kenya.

44 The County Governments, the 1<sup>st</sup> to 47<sup>th</sup> respondents are creatures of the Constitution by dint of Articles 1(4) as well as Article 6 thereof. Hence Article 6 provides that:

- (1) The territory of Kenya is divided into the counties specified in the First Schedule.
- (2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.
- (3) A national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.”

45 There is therefore no denying that the County Governments have the power to impose tax and charges as revenue raising measures for the services they provide. In this connection, Article 209 of the Constitution is explicit in Sub-articles (3), (4) and (5) thus:

- (3) A county may impose—
  - (a) property rates;
  - (b) entertainment taxes; and
  - (c) any other tax that it is authorised to impose by an Act of Parliament.
- (4) The national and county governments may impose charges for the services they provide.
- (5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

46 There is no gainsaying that, as a requirement of the Traffic Act, Chapter 403 of the Laws of Kenya and the rules thereunder, driving schools are obligated to exhibit the name and address of the driving school and ensure the driving school motor vehicles are marked in such a manner as to be clearly visible by a person at the front or at the rear of the vehicles with the words “Caution-driver Under Instruction”. This is in compliance with Rule 21(2)(b) of the Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules. There appears to be no dispute that, generally speaking, the respondents have found it necessary to deem such displays as outdoor advertisement for which they are entitled to impose taxes for purposes of Article 209(2) of the Constitution. Accordingly, the petitioner has brought the instant petition seeking clarification as to whether such taxes are in accord with Article 209(5) of the Constitution.

47 In the premises, the issues for determination in this Petition are:



- (a) Whether the display of names and addresses of driving schools or driving school motor vehicles with the words “Driver under instruction” banner/sign/symbol amounts to branding, marketing or advertisement; and,
- (b) Whether the respondents, in imposing taxes and levies to driving schools contravened public policy as enshrined in Article 209(5) of the Constitution.

48 However, before engaging in a merit consideration of the two issues, it is imperative for the Court to consider the issues raised by the 22<sup>nd</sup> respondent in the Notice of Preliminary Objection dated 22<sup>nd</sup> May 2023, namely: whether the petitioner, as a society, has the *locus standi* to bring this Petition in its own name, granted the provisions of Section 41(1) of the Societies Act, which simply states:

“Where a society is charged with an offence under this Act or any rules made thereunder, the society may appear by a representative, who may enter a plea on behalf of the society and conduct the society’s defence on its behalf.”

49 While the petitioner is not here to defend a criminal charge against it, Mr. Cheserek’s argument appears to be that an unincorporated body like the petitioner can only sue or be sued through a representative. Accordingly, he relied on Peter Taracha & Another v Holiness Church & Another [2016] eKLR in which it was held:

I have carefully gone through the entire Societies Act Chapter 108 of the Laws of Kenya and I have not come across a single provision that provides for the institution of suits by or against entities registered under the Act. I thus wholly agree with the sentiments expressed by Justice Bosire (as he then was) in John Ottenyo Amwai & Others v Reg. George Abura & Others HCCC No. 6339 of 1990 when he stated as follows:

“The Societies Act does not contain provisions with regard to the presentation and prosecution of suits by or against unincorporated societies. It would appear to me that the legislature did not intend that suits be brought by or against those societies in their own names ....”

It is important to appreciate that lack of capacity to sue or be sued is a weighty matter that goes to the root of the validity of proceedings before a court. It is not a mere procedural issue. The consequences of instituting a suit without legal capacity to sue are grave: such a suit is incompetent and any proceedings flowing from it are a nullity in law.

50 In the same line of thought, Ms. Mbaka for the 37<sup>th</sup> respondent also relied on Republic v Registrar of Societies Ex Parte Narok Muslim Welfare Association [2017] eKLR in which the case of Peter Taracha & Another v Holiness Church & Another (*supra*) was followed, and the suit accordingly struck out. The suit was by way of a judicial review application for an order of Certiorari. Similarly, in African Orthodox Church of Kenya v Rev. Charles Omuroka & Another [2014] eKLR, Mwita, J. was of the same posturing in a civil suit filed by an unincorporated body registered under the Societies Act. He held:

- “14. The plaintiff has pleaded in paragraph 1 of its Pleint that it is a duly registered church. At paragraph 3 of the Pleint, the plaintiff has described the 2nd defendant as a duly registered church or organization. Obviously, churches are societies registered under the Societies Act. Societies do not have capacity to sue or be sued in their own names.
- 15. In the circumstances, I find that the Preliminary Objection is well founded and must succeed. The plaintiff’s suit is hereby struck out with costs to the Defendants.”



51 I note however that the decisions are merely of persuasive and that none of them had anything to do with allegations of breach of violation or threats of violation of the *Constitution*. This is significant because it is now settled that when it comes to constitutional petitions, the issue of *locus standi* assumes a more permissive dimension. Indeed, access to justice is a cardinal tenet of the *Constitution*; and therefore Article 22 thereof is explicit that:

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
  - (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.
- (3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—
  - (a) the rights of standing provided for in clause (2) are fully facilitated;
  - (b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;
  - (c) no fee may be charged for commencing the proceedings;
  - (d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and
  - (e) an organisation or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

52 Moreover, Article 258 of the *Constitution* reiterates that:

- (1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.
- (2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
  - (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.



53 It is plain from the foregoing that, as an association, the petitioner was well in its place to file the instant Petition in the interest of its members. Hence, I am of the same persuasion as expressed in *Council of County Governors v Lake Basin Development Authority & 6 others* [2017] eKLR that:

"...the provisions of Article 22 have lifted the veil on the hitherto locus standi doctrine that for a long time blocked many a people from accessing justice. Under this provision, "Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, to is threatened." Further under Article 258(1), "Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention." In both cases, a person can institute proceedings in their won interest, they may institute in the interest of a group or class of persons. Article 260 seals it all by defining the term 'person' to include a company, association or other body of persons whether incorporated or unincorporated."

54 Similarly, in *Association of Kenya Insurers (AKI) (suing through its Chairman Mr. Mathew Koech) v Kenya Revenue Authority & 2 Others* (*supra*) it was held, at paragraph 28 thereof, that:

"the Constitution is clear on "locus standi" as to who has the right to institute court proceedings. Article 22 and 258 of the Constitution states in no uncertain terms, every person has the right to institute court proceedings claiming violation of Constitutional right or threatened violation or claiming that the Constitution has been contravened or is threatened with contravention. This can be done by person on his/her behalf in addition in acting on behalf of another person or as a member of or in the interest of a group or class of persons or in public interest or in the interest of one or more of its members. Article 260 of the Constitution defines, a person as including a company, association, or other body of persons whether incorporated or unincorporated. I therefore find the 3rd Respondent's Preliminary Objection to be misplaced and contrary to clear provisions of the Constitution..."

55 Lastly, and more importantly, the Supreme Court has also expressed itself on the issue of *locus standi* in *Mumo Matemu v. Trusted Society of Human Rights Alliance & 5 Others* (*Supra*) and held:

"...we think that the fact that it is unincorporated does not necessarily deny it capacity to litigate claims of this nature under the Constitution. Under Article 260 of the Constitution, a person includes a company, association, or other body of persons whether incorporated or unincorporated..."

56 In the premises, I find no merit in the respondents' submission as to the locus standi of the petitioner to file this Petition in its own name as an unincorporated body on behalf of its members.

57 An argument was also pitched by Mr. Faraji, counsel for the 3<sup>rd</sup> respondent that the Petition as formulated and drawn has no basis, legal or factual, to warrant the issuance of the declaratory orders sought in view of the judgments and decrees in Petition No. 97 of 2018: *Okiya Omtatab Okoiti v National Transport & Safety Authority & Another*; Petition No. 319 of 2019: *Okiya Omtatab Okoiti v National Transport & Safety Authority & Another* and Nairobi Constitutional Petition No. 251 of 2020: *Kenya Driving School Association v National Transport & Safety Authority & Another*. Indeed, the first of the petitioner's prayers is a declaration that display of names and addresses of driving schools on driving school motor vehicles and marking the driving school motor vehicles with the "Driver under Instructions" banner/sign/symbol as mandated by Rule 21(2)(b) of the *Traffic Driving Schools, Driving Instructors and Driving Licences* Rules, does not amount to branding, marketing or



advertisement. At paragraphs 13 and 21 of the Petition, Rule 21(2)(b) of the *Traffic Driving Schools, Driving Instructors and Driving Licences) Rules*, 2018 features prominently as the cornerstone of the Petition.

58 Now, Section 11(4) of the *Statutory Instruments Act* is explicit that:

"If a copy of a statutory instrument that is required to be tabled before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void."

59 It is indeed true that attempts have been made by the National Transport & Safety Authority (NTSA) to streamline the policy and legal framework for the regulation of driving schools; and therefore draft rules have been formulated pursuant to Section 119 of the *Traffic Act*. To that end, the *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules* 2018 were formulated but the same were declared unconstitutional for lack of public participation. Hon. Mrima, J. traced the legislative history of the rules back to 2014 when the *Traffic (Driving Schools and Instructors) Rules*, 2014 (hereinafter referred to as 'the 2014 Rules') were wholly rejected by the Justice and Legal Affairs Committee for various reasons. The NTSA was directed to relook at the 2014 Rules and revert to the National Assembly after having taken into account the issues raised. Thereafter, the NTSA formulated the *Traffic (Driving Schools and Instructors) Rules*, 2018 which were, likewise, found to be void in Nairobi High Court Constitutional Petition No 319 of 2019: *Okiya Omtatah Okoiti v National Transport and Safety Authority & Another*. Mr. Faraji therefore correctly pointed out that this Petition was premised on non-existent rules.

60 Moreover, it is manifest from the judgment in Petition E251 of 2020 that after the Omtatah decision, the NTSA proceeded to improve on the rules and submitted them, not to the National Assembly as required under the *Constitution*, but instead sent them to the Senate. In the result, Hon. Mrima, J. issued orders as hereunder:

- (a) The implementation of The *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2020 be and is hereby stayed and suspended pending a reconsideration of The *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2020 by the two Houses of Parliament.
- (b) The Cabinet Secretary in the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works shall re-transmit a copy of The *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2020 and the explanatory memorandum together with a copy of this judgment to the Speakers of both Houses of Parliament. That shall be in the next 14 days.
- (c) In view of the remainder of the terms of the Houses of Parliament, the respective Speakers of Parliament shall take steps to ensure that The *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2020 are expeditiously dealt with by the respective Houses.
- (d) In the event that any or both of the Houses of Parliament are/is unable to finalize the dealing with The *Traffic (Driving Schools, Driving Instructors and Driving Licences) Rules*, 2020 within the remainder of the current terms of the Houses of Parliament, the said Rules shall be dealt with in the next term of Parliament.

61 The above decision was rendered on 27<sup>th</sup> January 2022 and there being no indication that the rules were thereafter presented before the National Assembly and the Senate as by law required, and as ordered by



the Court in the above-mentioned judgment it would follow that, as at the time the Petition was filed, there were no rules to speak of; and therefore the Petition was premised on quicksand for having been premised on the 2018 Rules which were nullified by the Court. It is further manifest that subsequent efforts by NTSA to have the 2020 Rules validated have been put on hold by the Court.

62 In effect, the Petition was premised on a void piece of legislation; and as aptly put by Lord Denning in *Mcfoy v. United Africa Company Limited* [1961] 3 ALLER 1169:

...if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse...”

63 In the circumstances, it would be superfluous to engage in a merit consideration of the Petition to determine whether the display of names and addresses of driving schools or driving school motor vehicles with the words “Driver under instruction” banner/sign/symbol pursuant to Rule 21(2)(b) of the Traffic Driving Schools, Driving Instructors and Driving Licences) Rules, 2018 amounts to branding, marketing or advertisement.

64 In the result, the Petition is hereby struck out with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2023**

**OLGA SEWE**

**JUDGE**

