



Kenya National Chamber of Commerce and Industry - Makueni Branch v Makueni County Government; Makueni County Assembly (Interested Party) (Constitutional Petition E001 of 2020) [2022] KEHC 15871 (KLR) (30 November 2022) (Judgment)

Neutral citation: [2022] KEHC 15871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CONSTITUTIONAL PETITION E001 OF 2020
GMA DULU, J
NOVEMBER 30, 2022**

BETWEEN

**KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY -
MAKUENI BRANCH PETITIONER**

AND

MAKUENI COUNTY GOVERNMENT RESPONDENT

AND

MAKUENI COUNTY ASSEMBLY INTERESTED PARTY

JUDGMENT

1. Before me is a petition dated October 16, 2020 filed by Kenya National Chamber of Commerce and Industry Makueni Branch under the Constitution of Kenya 2010, the County Government Act 2012, the Statutory Instruments Act 2013, and the Makueni County Trade and Public Markets Act 2020, seeking the following orders –
 - i. A declaration that the Makueni County Trade and Public Markets Bill 2020 gazetted under special issue of the Kenya Gazette Supplement No. 9 (Makueni County Bill No. 5) at Nairobi on September 1, 2020 is null and void in its entirety having failed to comply with the applicable provisions of the Constitution of Kenya 2010 the County Government Act No. 7 of 2012 and Statutory Instruments Act 2013.
 - ii. An order that the County Government of Makueni be compelled to do public participation in the drafting of the Makueni County Trade and Public Markets Bill 2020 and to invite all stakeholders including the petitioners and all other interested parties.



- iii. An order that the respondent be compelled to follow all due process in the drafting of any Makueni County Trade and Public Markets Bill for tabling in the Makueni County Assembly for debate and enactment.
 - iv. That the interested party's members of the Makueni County Assembly or members of any committee thereof be prohibited from debating and enacting the Makueni County Trade and Public Markets Bill 2020 as drafted and gazette to enable a proper public participation and stakeholder input and participation in the drafting of a Bill affecting the rights of the petitioners members and traders in the Makueni County generally.
 - v. Any further or other order or relief that this court may deem fit to make to meet the provisions of the Constitution, the County Government Act, the Statutory Instruments Act and the interests of justice.
 - vi. That the costs of this petition be awarded to the petitioners.
2. The petition was filed with a verifying affidavit sworn by Festus Muindi Maii who claims to be the petitioner, but is not the petitioner, as the petitioner named is the Kenya National Chamber of Commerce and Industry Makueni Branch.
 3. With the petition, were filed a number of documents, which were neither annexed to the petition nor the verifying affidavit. These documents in particular are a copy of the Makueni County Trade and Public Markets Bill 2020; and a newspaper extract of invitation to public hearings and submissions of memoranda in a paper which was not identified.
 4. The petition was filed together with a Notice of Motion of the same date, which was however disposed of earlier by this court.
 5. The petition has been opposed through a replying affidavit sworn on January 10, 2021 by Jonah Kyathe, Chief Officer Department of Trade, Industry, Marketing, Tourism and Cooperative Development of the respondent.
 6. It is deponed in the replying affidavit, that meetings were held in July 2020 and legislative proposals made, which were forwarded to the interested party (County Assembly), and thereafter advertisements made in the Standard newspaper on 25/09/2020 calling for public participation and views to be made on the draft Bill and that such views were actually collected on 1st and 2nd October 2020 through submission of memoranda.
 7. It was deponed further that, instead of submitting memoranda, or participating in the public hearings, the petitioner had chosen to prematurely file this petition and a Notice of Motion.
 8. The interested party (County Assembly) responded to the petition through an affidavit sworn on 11/02/2021 by Kevin Mutua Mutuku its clerk.
 9. In a further affidavit sworn on 11/06/2021 Festus Muindi Maii swore that he was chairman of the petitioner, and responded to the two replying affidavits.
 10. The petition was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwangela & Company advocates for the petitioners and the submission filed by Mutheu Muthiani & Company advocates for the respondent and interested party.
 11. Having considered the petition, documents filed, the submissions of the parties and the law, this petition will have to fail.



12. The first reason is that the petitioner, neither in the heading of the petition nor in the main body of the petition pleaded with precision the provisions of the Constitution that were violated against the petitioner or how the said provisions were so violated. As was stated in the case of Anarita Karimi Njeru v Republic (1979) e KLR and reiterated in the later case of Mumo Matemu v Trusted Society of Human Rights Alliance (2014) e KLR

“pleadings assist in that regard and are a tenet of substantive justice as they give fair notice to the other party. The principle in Anarita Karimi Njeru (*supra*) that established the rule that requires reasonable precision of issues in constitutional petitions is an extension of this principle.

13. It is worth noting also that in line with the above requirements, the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 (Mutunga Rules) have taken in the above stated legal principles as part of the applicable Rules of Procedure in constitutional matters. The petitioner not having satisfied the above legal requirement, the petition herein cannot stand and is for dismissal.

14. Even if I am wrong on the above, in my view, from the evidence placed before me, sufficient public participation in formulating the bill was facilitated by the respondent and interested party in their advertisement of October 25, 2020.

15. In my view, the petitioner herein, seems to be seeking for special treatment which is not justified, as they have not disclosed any special incapacity to so participate, nor were they restricted in any way from participating in the public forums, to give their views.

16. Thus in my view, the requirements for public participation stated in the case of Republic v County Government of Kiambu – ex parte Robert Gakuru & another (2016) e KLR were fulfilled. For clarity, in the above case the court stated as follows –

“However, it must be appreciated that the yardstick for public participation is that a reasonable opportunity has been given to the members of the public and all interested parties to know about the issue and to have an adequate say.”

17. In the present case reasonable opportunity for public participation was given. To sum up, from what has been disclosed to this court, these proceedings, the members of the public and interested parties including the petitioner herein, were aware of legislative proposals and were given an opportunity to put in their views, in order to have their say considered in the intended creation of the law, as envisaged in the Constitution of Kenya 2010.

18. I thus find that the petition herein has no merits, and I will thus dismiss the same.

19. As regards costs, as this is in the nature of public interest litigation, I will order that parties to bear their respective costs.

20. Consequently and for the above reasons, I dismiss the petition herein. I order that parties will bear their respective costs of the proceedings.

DELIVERED, SIGNED & DATED THIS 30TH DAY OF NOVEMBER 2022, VIRTUALLY AT MAKUENI.

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George Dulu



Judge

