



**Kariuki & another v CEC Nyandarua County & 7 others (Constitutional Petition E012 of 2021) [2022] KEHC 16665 (KLR) (21 December 2022) (Judgment)**

Neutral citation: [2022] KEHC 16665 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CONSTITUTIONAL PETITION E012 OF 2021  
CM KARIUKI, J  
DECEMBER 21, 2022**

**BETWEEN**

**JAMES GACHERU KARIUKI & ANOTHER ..... PETITIONER**

**AND**

**CEC NYANDARUA COUNTY & 7 OTHERS ..... RESPONDENT**

**JUDGMENT**

1. By a petition dated December 1, 2021, the petitioners seek the following reliefs;
  - i. That a declaration does issue that a supplement of the Kenya Gazette becomes a supplement to the Kenya Gazette only upon its publication as such in the Kenya Gazette.
  - ii. That a declaration does issue that any Document of the County Government of Nyandarua purporting to be a legislation of the Nyandarua County Assembly and contained in a supplement of the Kenya Gazette and which supplement of the Kenya Gazette is not published as such in the Kenya Gazette is only a Draft County Legislation (Bill/ Act) that has not taken effect.
  - iii. That a declaration does issue that the Nyandarua County Government has not as yet established a Nyandarua County Gazette.
  - iv. That a declaration does issue that the Nyandarua County Government has not published any Nyandarua County assembly legislation, including any Nyandarua County Appropriation Bill/Act in the Kenya Gazette at any one time or at all.
  - v. That a declaration does issue that at all times when the Nyandarua County Government has not published the Annual Nyandarua County



Appropriation Act in the Kenya Gazette or in a supplement of the Kenya gazette which is subsequently published as such in the Kenya gazette and in a Nyandarua County Gazette, the provisions of section 134 of the Public Finance Management Act suffices.

- vi. That a declaration does issue that the Respondents herein have infringed on the constitutional right to property under Article 40 of the Constitution of Kenya 2010 of the petitioner.
  - vii. That a declaration does issue that the Respondents herein have infringed on the constitutional right to equal protection and benefit of the law under Article 27 of the Constitution of Kenya 2010 of the petitioners herein.
  - viii. That a declaration do issue that the Respondents herein have infringed on the constitutional right to a fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair under Article 47 of the Constitution of Kenya 2010 of the group of the petitioners herein.
  - ix. That a declaration does issue that the Respondents herein have infringed on the constitutional right to freedom and security of the person, including the right not to be subjected to psychological torture under Article 29 of the Constitution of Kenya 2010 of the group of the petitioner.
  - x. Aggravated damages included in General damages for the infringement of the Constitutional right to property under Article 40 of the Constitution of Kenya 2010 of the group of the petitioner herein.
  - xi. Aggravated damages included in General damages for the infringement of the constitutional right to equality and freedom from discrimination under Article 27 of the Constitution of Kenya 2010 of the group of the petitioner herein.
  - xii. Aggravated damages included in General damages for the infringement of the constitutional right to a fair administrative action under Article 47 of the Constitution of Kenya 2010 of the group of the petitioner herein.
  - xiii. Aggravated damages included in General damages for the infringement of the constitutional right freedom and security of the person under Article 29 (d) of the Constitution of Kenya 2010 of the group of the petitioner herein.
  - xiv. Exemplary damages to vindicate the strength of the law o. Costs of the petition herein and interest at court rates until the full settlement of the awards.
  - xv. Any other or further relief that the honorable court may deem fit to grant.
2. The Petitioner complains that All Nyandarua County Appropriations Bills and/or Acts have not been published in Kenya Gazette in line with Article 199(1) Constitution and thereafter in County Gazette if need be, which need is given Section 23 and 25 (2) Bills of County Government Act No 17 of 2012. Thus, the Respondent has been Acting irregularly, illegally, and unconstitutionally.
  3. Thus, Petitioner could not participate in tendering process to be paid under any Nyandarua County Assembly Legislations.



4. That there is no Nyandarua County Gazette under Article 183(1) b of the Constitution as read with County Gazette in Provisions of Section 2 of County Government Act No 17 of 2012.
5. According to the Petitioner, Section 23 of the County Government Act (supra) provides County Assembly shall be published by including the Bill as Supplement in County Gazette and the Kenya Gazette, thus, can take effect after that in terms of Article 199(1) of the Constitution in default of that same is void for all the intent and purposes abinitio.
6. Thus, the aforementioned breaches rendered all that has been borne under Legislations subject herein null and void abinitio as a consequence and thus violating a multiple for fundamental rights pleaded by the Petitioner that entitling Petitioner to be compensated with damages sought in Petition.
7. The 204-page Petition and Bundle of documents attached thereto inform of submissions rather than a pleading which, if it were not for that Petitioner acting in person, same would have attracted striking out or expunging a bulk of its paragraph if not entire record host of documents for violating the rules of pleadings and being argumentative rather than pleading the fact but the law and arguments.
8. The Petition is supported by a supporting affidavit and a supplementary Affidavit sworn by James Gacheru Kariuki on May 24, 2022.
9. Respondents 1,3 and 6 filed an affidavit sworn by Joseph Mugo Gachambi on March 10, 2022 along/ together with submissions dated May 19, 2022 to oppose the petition.
10. The 2nd and 4th Respondents filed grounds of opposition dated May 25, 2022 to oppose the Petition and also filed submissions dated July 19, 2022.
11. 5th Respondent filed grounds of opposition along with submissions dated May 23, 2022 to oppose Petition.
12. The 7th Respondent filed submissions dated May 31, 2022 to oppose the Petition. The Petitioners also filed a further supplementary Affidavit sworn on June 4, 2022. The 8th Respondent filed submissions dated July 19, 2022 to oppose the Petition. Petitioner also filed submissions dated May 24, 2022.
13. The court gave directions that the petition be canvassed via submissions.
14. Summarily, the petitioners assert that pursuant to and/or under the provisions of Section 23 of the County Government Act No 17 of 2012, a Nyandarua County Assembly Bill shall only take effect upon it being included as a supplement in a Nyandarua County Gazette and in the Kenya Gazette (in line with provisions of Article 199 (1) of the Constitution of Kenya.
15. Any document purporting to have been or to be a Nyandarua County Assembly Appropriation Bill that has not been included as a supplement in a Nyandarua County Gazette and the Kenya Gazette is void ab initio.
16. That the Annual Appropriation Bill of Nyandarua County Assembly is a county legislation that cannot take effect without the same being published in the Kenya Gazette and in a Nyandarua County Gazette 'whichever comes earlier' unless the legislation stipulates a different date and/or time at which it shall come into force.
17. Reliance was placed on [James Gacheru Kariuki & 3 Others v Attorney General & 11 Others \[2017\] eKLR](#)



18. The petitioners asserted that the Annual Nyandarua County Appropriation Act is invalid because the 1<sup>st</sup> and 2<sup>nd</sup> respondents' failure to establish a Nyandarua County Gazette since 2013 makes it impossible to have a Nyandarua County Appropriation Act that has taken effect.
19. The issues that the petitioner intends to be determined are: -
- I. Whether Article 260 of the Constitution of Kenya 2010 in the definition of the word gazette refers to a supplement of the Kenya Gazette or a supplement to the Kenya Gazette
  - II. Whether a supplement of the Kenya Gazette can be a supplement to the Kenya Gazette before it is published as such in the Kenya Gazette.
  - III. Whether Nyandarua county assembly legislations published in the supplements of the Kenya Gazette and which supplements of the Kenya gazette have not been published as such in the Kenya gazette have taken effect.
  - IV. Whether supplements of the Kenya Gazette which have not been published as such in the Kenya Gazette are draft publications that should only be published as such in the Kenya Gazette.
20. The core issue or epicentre of the instant Petition is whether failure to publish County legislation in County renders same invalid and of no legal effect plus costs.
21. In summary, the Petition in James Gacheru Kariuki & 3 Others vs Attorney General & 11 Others [supra] challenged the constitutionality of several Kiambu County legislations, which the Petitioners maintained that they had not been published in the Kenya Gazette as mandated by the Constitution. Justice Lenaola pronounced himself on the status of county legislation that has not been published in the Kenya Gazette. He stated that the Constitution specifically provides for the publication of legislation in the Kenya Gazette for that legislation to take effect in line with Article 199(1) of the Constitution and thereafter in the County Gazette if necessary. He further noted that the concept of a 'County Gazette' was introduced by the County Governments Act of 2012. The Constitution explicitly requires County legislation to be published in the Kenya Gazette for them to take effect.
22. He also averred that Section 25(2) of the County Government Act is unconstitutional because it states that county legislation can come into force without necessarily being published in the Kenya Gazette. Yet, the only Gazette contemplated by the Constitution is the Kenya Gazette. This led to the invalidation of legislation.
23. Further, in Republic vs Kiambu County Executive Committee & 3 others exparte James Gacheru Kariuki & 9 others [2017] eKLR, Justice Joel Ngugi echoed the sentiments by asserting that any notices published in the County Gazette without first having been published in the Kenya Gazette are null.
24. Section 25 of the County Governments Act provides as follows;
1. A legislation passed by the County Assembly and assented to by the Governor shall be published in the county Gazette and Kenya Gazette within seven days after assent.
  2. Subject to subsection (3), the County Assembly legislation shall come into force on the fourteenth day after its publication in the County Gazette and Kenya Gazette, whichever comes earlier, unless the legislation stipulates a different date or time at which it shall come into force.



3. A County Assembly legislation that confers a direct benefit, whether financial or in-kind, on members of the county assembly shall come into force after the next general election of members of the County Assembly.
  4. Subsection (3) does not apply to an interest that members of the County Assembly have as members of the public
25. Article 199 of the Constitution on publication of county legislation stated that: -
1. County legislation does not take effect unless published in the Gazette.
  2. National and county legislation may prescribe additional requirements in respect of the publication of county legislation.
26. Article 260 states that: -
- In this Constitution, unless the context requires otherwise— 'Gazette' means the Kenya Gazette published by the authority of the national government or a supplement to the Kenya Gazette;
27. Further, in the County Government of Kiambu v Kariuki & 3 others (Civil Appeal 137 of 2017) [2021] KECA 351 (KLR), the Court of Appeal affirmed the High Court's decision by holding that the Constitution explicitly requires county legislation to be published in the Kenya Gazette for the same to take effect. County legislation ought to be published in the Kenya Gazette to gain legitimacy.
28. In my view, the petitioner's attempt to distinguish between a supplement to and/or the Kenya Gazette of and the Kenya Gazette is fruitless and a misinterpretation of the law as they are one and the same thing according to Article 260 of the Constitution. Within the ordinary meaning, a supplement means a thing added to something else in order to complete or enhance it. Supplemental means completing or making an addition to, in this case, the Kenya Gazette and does not denote something that is completely different from the Gazette. There was no material difference between the supplement to the Kenya gazette and the Kenya gazette as was held in *James Gacheru Kariuki & 3 Others v Attorney General & 11 Others* [supra]
29. In addition, the High Court, in the aforementioned case, distinguished the publication of legislation in the Kenya Gazette and the County Gazette. The Court rendered itself as follows: -

' I shall begin my analysis on this issue by making reference to Article 199(1) of the Constitution, which provides as follows;

County legislation does not take effect unless published in the Gazette.

Article 260 goes ahead to define a 'Gazette' as; the Kenya Gazette published by the authority of the National Government or a supplement to the Kenya Gazette.

Thus, Article 199(1) may equally be read as, 'County legislation does not take effect unless published in the Kenya Gazette or a supplement to the Kenya Gazette.'

It is also not in doubt that Article 199(1) of the Constitution imposes a mandatory obligation for publication of all County legislations in the Kenya Gazette or a supplement to the Kenya Gazette. It is only through such publication that county legislation can gain legitimacy. What therefore is a County Gazette, if at all, and is there any relationship between a County Gazette and the Kenya Gazette?

The term 'County Gazette' is not defined nor provided for in the Constitution, which only provides for a Gazette, which has been defined as the Kenya Gazette published by the



authority of the National Government or a supplement to the Kenya Gazette. However, the *County Governments Act* defines a ‘County Gazette’ as a Gazette published by the authority of the County Government or a supplement of such a Gazette. This shows that there is a clear distinction between a ‘County Gazette’ and a ‘Kenya Gazette’ and the difference, as can be seen above, is; whereas the ‘Kenya Gazette’ is published under the authority of the National Government, the ‘County Gazette’ is published under the authority of a County Government.

In essence, while the *County Governments Act* introduced the concept of a ‘County Gazette,’ the *Constitution* explicitly requires County legislation to be published in the Kenya Gazette for them to take effect. I so find.

County legislation only gains legitimacy upon its publication in the Kenya Gazette or a supplement to the Kenya Gazette. Further, as already elaborated upon, the definition of a County Gazette completely departs from the meaning of the term ‘Gazette’ as used in Article 199 and defined in Article 260 of the *Constitution*. A County Gazette and which is a creation of the *County Governments Act* and not the *Constitution*, cannot, in any event, supersede in its publication, the Kenya Gazette.’

30. Accordingly, although the *County Governments Act* dictates that county legislation should be published in both the Kenya Gazette and County Gazette, the legislation only gain legitimacy after being published in the Kenya Gazette or a supplement to the Kenya Gazette.
31. Consequently, the Nyandarua County legislations from 2018-2021, including the Nyandarua County Appropriation Act, were published in the supplement to the Kenya Gazette and are, therefore legitimate and take effect. The law does not envisage a position where the same could be illegitimate only because of the failure to publish in the Nyandarua County Gazette. The *Constitution* explicitly required county legislation to be published in the Kenya Gazette for the same to take effect. In any case, those that were not published in the Kenya gazette can be regularized by the county, as was the finding in the James Kariuki Case on legislation in Kiambu County.
32. As stated earlier, the *County Governments Act* provides for additional publications of County legislation in the County Gazette. Still, such publications must have met the constitutional requirement of publications in the Kenya Gazette for the effectiveness of such legislation. Therefore, the publication in the County Gazette does not supersede that of the Kenya Gazette; the latter is a constitutional requirement and thus is mandatory in nature as opposed to publishing in the County Gazette, which in my view, is not a mandatory requirement.
33. In my finding, the petition has no merit, and thus the court makes the following orders-
  - i. The petition is thus dismissed for want of merit.
  - ii. No orders as to costs as it is a matter of public interests.

**DATED, SIGNED, AND DELIVERED AT NYAHURURU THIS 21<sup>ST</sup> DAY OF DECEMBER 2022.**

**CHARLES KARIUKI**

**JUDGE**

