



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CONSTITUTIONAL PETITION NO. 55 OF 2018

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ARTICLES 22 (2) (C) & 258(2) (C) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 10(2) (B),

27(4), 47, 116(1) AND 199(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015

AND

IN THE MATTER OF THE PROVISIONS OF SECTION 7 OF THE

SIXTH SCHEDULE TO THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE PROVISIONS OF SECTION 6(1)(A)(I)

OF THE KENYA LAW REFORM COMMISSION ACT NO. 19 OF 2013

IN THE MATTER OF SECTION 7 & 8 OF THE REVISION OF LAWS ACT

AND

IN THE MATTER OF THE PROVISIONS OF SECTION 69 OF THE

INTERPRETATION AND GENERAL PROVISIONS ACT CAP 2 LAWS OF KENYA

AND

IN THE MATTER OF THE PROVISIONS OF SECTION 85

OF THE EVIDENCE ACT CAP 80 LAWS OF KENYA

AND

IN THE MATTER OF KENYA GAZETTE NOTICE NO. 2263 DATED 9TH MARCH 2018

BETWEEN

EINTRETEN ASSOCIATION SUING IN THE INTEREST OF THE PUBLIC.....PETITIONER

AND

THE COUNTY GOVERNMENT OF KIAMBU.....1ST RESPONDENT

THE CHIEF MAGISTRATE’S COURT AT KIAMBU.....2ND RESPONDENT

THE CHIEF MAGISTRATE’S COURT AT THIKA.....3RD RESPONDENT

THE PRINCIPAL MAGISTRATE’S COURT AT GATUNDU.....4TH RESPONDENT

THE PRINCIPAL MAGISTRATE’S COURT AT GITHUNGURI.....5TH RESPONDENT

THE PRINCIPAL MAGISTRATE’S COURT AT LIMURU.....6TH RESPONDENT

THE PRINCIPAL MAGISTRATE’S COURT AT KIKUYU.....7TH RESPONDENT

THE OFFICER COMMANDING MAKONGENI POLICE STATION.....8TH RESPONDENT

THE OFFICER COMMANDING THIKA POLICE STATION.....9TH RESPONDENT

THE OFFICER COMMANDING GATUNDU POLICE STATION.....10TH RESPONDENT

THE OFFICER COMMANDING KIBICHOI POLICE STATION.....11TH RESPONDENT

THE OFFICER COMMANDING JUJA POLICE STATION.....12TH RESPONDENT

THE OFFICER COMMANDING RUIRU POLICE STATION.....13TH RESPONDENT

THE OFFICER COMMANDING KIAMBU POLICE STATION.....14TH RESPONDENT

THE OFFICER COMMANDING GITHUNGURI POLICE STATION.....15TH RESPONDENT

THE OFFICER COMMANDING KIKUYU POLICE STATION.....16TH RESPONDENT

THE OFFICER COMMANDING KABETE POLICE STATION.....17TH RESPONDENT

THE OFFICER COMMANDING TIGONI POLICE STATION.....18TH RESPONDENT

THE OFFICER COMMANDING KING’EERO POLICE STATION.....20TH RESPONDENT

THE OFFICER COMMANDING LARI POLICE STATION.....21ST RESPONDENT

THE OFFICER COMMANDING KARURI POLICE STATION.....22ND RESPONDENT

THE OFFICER COMMANDING KAMWANGI POLICE STATION.....23RD RESPONDENT

THE KIAMBU COUNTY COMMISSIONER.....24TH RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....25TH RESPONDENT

THE KENYA LAW REFORM COMMISSION.....26TH RESPONDENT

THE HON. ATTORNEY GENERAL.....27TH RESPONDENT

JUDGMENT

1. The parties in this petition are Eintreten Association (the Petitioner), through **James Gacheru Kariuki**, suing the Kiambu County Government, the Executive Officers at Kiambu, Thika, Gatundu, Githunguri, Limuru and Kikuyu Magistrate's Courts (1st to 7th Respondents respectively); the Officers Commanding Makongeni, Thika, Gatundu, Kibicho, Juja, Ruiru, Kiambu, Githunguri, Kikuyu, Kabete, Tigoni, Kijabe, King'eero, Lari, Karuri and Kamwangi Police Stations (the 8th to 23rd Respondents respectively); the County Commissioner Kiambu, the Director of Public Prosecutions, the Kenya Law Reform Commission; the Hon. Attorney General and the National Council for Law Reporting (the 24 to 28th Respondents respectively).

2. The key issue raised in the petition relates to the application or construction, in view of the provisions of Section 7(1) of the Sixth Schedule to the Constitution among others, of Section 69 of the Interpretation and General Provisions Act and Section 85 of the Evidence Act, to the 1st Respondent's Gazette Notice No. 2263 dated 9th March, 2018 and published by the Government Printer, in relation to the legislative process in respect of the Kiambu County Alcoholic Drinks Control Act. The Kiambu County Alcoholic Drinks Control Act, has itself been the subject of several petitions brought before this court, including **Petition No. 48 of 2018 Okiya Omtatah Okoiti v County Government of Kiambu** and **Petition No. 47 of 2018 Richard Mungai Kagiri (suing as a member and in the interest of Kiambu Liquor Welfare Group) v the County Government of Kiambu and 2 Others**.

3. The gazette notice impugned herein reads as follows:

“GAZETTE NOTICE NO. 2263

THE COUNTY GOVERNMENTS ACT

Notice is given to general information of the public that the Kiambu County Alcoholic Drinks Control Act has been published and can be accessed on the County Government website: www.kiambu.go.ke or at the County Government Offices in Kiambu Town.

Dated the 7th March, 2018.

MARGARET RUINGE

County Government of Kiambu

MR/4187354.” (sic)

4. The Petitioner's key grievances regarding this notice are stated at paragraphs 16-21 of the petition and can be summarized as follows:

a) The 1st respondent had published the impugned gazette notice *“instead of publishing a county legislation as such in the Kenya Gazette.”*

b) The 2nd to 25th Respondents have been enforcing or aiding enforcement of *“documents”* purporting to be county legislation on the basis of the provisions of Sections 69 of the Interpretation and General Provisions Act (IGP Act) and Section 85 of the Evidence Act.

c) The 26th Respondent has neglected its duty to *“keep under review”* the provisions of Section 69 of the IGP Act and Section 85 of the Evidence Act as mandated under Section 7 of the Sixth Schedule to the Constitution of Kenya 2010, as read together with Section 6(1) of the Kenya Law Reform Act.

d) The 27th and the 28th Respondents have neglected their duty under Section 7 of the Sixth Schedule to the Constitution as read with section 7 & 8 of the Revision of Laws Act.

e) As a result, of the foregoing, and this is deduced from the content of the petition's obtuse averments, judicial officers in the courts and law enforcement agencies in Kiambu County sued herein have applied the Kiambu County Alcoholic Drinks Control Act in respect of persons charged thereunder, in contravention of Articles 10(2) (b), 27(4), 47, 116(1) and 199(1) of the Constitution, and thereby causing them prejudice.

5. No affidavit was sworn in support of the petition, but the Petitioner had sworn an affidavit through James Gacheru Kariuki in support of the motion filed contemporaneously with the petition. The said affidavit repeats the grievances in the petition, but further directly asserts that Section 69 of the IGP Act and Section 85 of the Evidence Act are inconsistent with the provisions of Article 199(1) of the Constitution, to the extent that the former Act contains a phrase *“or a notice.... or.... or a notice purporting to be printed by the Government Printer”*, while the latter Act includes the phrase *“or any notice purporting to be made pursuant to a written law, where such law or notice (as the case may be) purports to be printed by the Government Printer”*.

6. The Petitioner therefore prays that: -

“(a) A declaration do issue that Section 69 of the Interpretation and General Provisions Act CAP 2 Laws of Kenya is inconsistent with the Constitution of Kenya 2010 to the extent that it uses the phrase “or a notice purporting to be printed by the Government printer”;

(b) A declaration do issue that section 85 of the Evidence Act Cap 80 Laws of Kenya is inconsistent with the Constitution of Kenya 2010 to the extent that it uses the phrase “or any notice purporting to be made in pursuance of a written law, where such law or notice (as the case may be) purports to be printed by the government printer”;

(c) A declaration do issue that a Kenya gazette supplement is an addition to a specific primary Kenya gazette for the purposes of publication of legislation in the Kenya gazette;

(d) A declaration do issue that any document purporting to be a Kenya gazette supplement which is not an addition to a specific primary Kenya gazette is invalid in all courts and for all purposes whatsoever of the due making and tenor of legislation;

(e) A declaration do issue that Kenya gazette notice No. 2263 dated 9th March, 2018 and/or any other notice in the Kenya Gazette which is not a publication of County Legislation is invalid for all purposes whatsoever of the due making and tenor of the county legislation”.(sic)

7. The petition was opposed. The 1st Respondent filed a replying affidavit sworn by **Dr Martin N. Mbugua**, the County Secretary. He deposed that after the related legislative process had been duly concluded, and upon receiving due assent by the Governor, the Kiambu County Alcoholic Drinks Control Act was forwarded to Government Printer for publication, in strict compliance with section 25 of the County Governments Act and Article 199(1) of the Constitution. That the impugned gazette notice was published on 9th March 2018 for the sole purpose and intent of notifying the general public of the existence of the Act and does not in any way purport to be a means of complying with the requirement for gazette publication of county legislation. It was further deposed that the Petitioner has not demonstrated any inconsistency between the wording of Article 199(1) of the Constitution and that of section 69 of the IGP Act and section 85 of the Evidence Act. The 1st Respondent asserts that the function of construing legislation is not the exclusive province of the 26th, 27th and 28th Respondents. The court was therefore urged to dismiss the petition.

8. On their part, the 2nd to 24th, 26th to 28th Respondent filed grounds of opposition to the effect that every legislation enacted enjoys a rebuttable presumption that it is consistent with the Constitution; that the petition as drawn does not disclose any constitutional violations, infringement and/or threat of infringement by the Respondents; no evidence has been tendered to demonstrate any harm, damage, or injury occasioned through the alleged violation and infringements and or threat of infringement or violation; that the petition is frivolous, without merit and an abuse of the process of the court.

9. The 25th Respondent also filed grounds of opposition. To the effect that the petition does not raise any constitutional issue; is couched in an amorphous manner and does not set out with a reasonable degree of precision the Petitioner’s complaint, the rights infringed, by which party and in what manner, or the injuries suffered; that the petition seeks remedies that are unavailable; is frivolous and vexatious.

10. The petition was canvassed by way of written submissions. The Petitioner submitted that the duty of reviewing all the laws existing prior to the coming into force of the 2010 Constitution with a view to bringing such laws into conformity with the new Constitution lies with the Law Reform Commission by dint of the provisions of Section 6 of the Kenya Law Reform Commissions Act. It was further submitted that the provisions of sections 69 of the IGP Act and 85 of the Evidence Act which existed prior to the effective date, have not been “construed” in accordance with Section 7(1) of the Sixth Schedule to the Constitution and are therefore inconsistent with the Constitution.

11. With regard to county legislation, it is asserted that pursuant to Article 199(1) such legislation only take effect upon being published in the Kenya Gazette, and that such publication cannot be done by way of gazette notice such as gazette notice no. 2263 of 9th March, 2018. The point is made that to the extent that the impugned gazette notice would by dint of Section 69 of the IGP Act and Section 85 of the Evidence Act pass as *prima facie* evidence of the due making and tenor of county legislation the subject thereof, the stated provisions of the IGP Act and Evidence Act are unconstitutional and should be declared as such. The Petitioner contends that the two provisions are incapable of giving effect to county legislation. It was contended that the alleged failure by the 26th, 27th and 28th Respondents to “construe” the said provisions has adversely affected the “*public including the petitioner while dealing with the subordinate courts in relation to legislation*”. (sic) The Court was therefore urged to grant the prayers in the petition.

12. For the 1st Respondent, it was reiterated as explained in their replying affidavit that the impugned gazette notice was not intended to be a form of compliance with the requirement for publication of county legislation, and that the notice was merely to notify the general public of the enactment of the Kiambu County Alcoholic Drinks Control Act. Reliance was placed on the decision in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2014] eKLR** as to the definition and import of a gazette notice. They therefore assert that the gazette notice no. 2263 of 9th March, 2018 was not intended to pass as county legislation and that the Petitioner’s reading of the notice is misguided because it is merely a notice of the existence of the Kiambu County Alcoholic Drinks Control Act which Act is not challenged in this petition.

13. As regards the duty to construe legal provisions in accordance with Section 7(1) of the Sixth Schedule to the Constitution, it was submitted that it resided with courts and not the 26th to 27th Respondents. The case of **Republic v Kiambu County Executive Committee & 3 Others ex parte James Gacheru Kariuki & 9 others [2017] eKLR** was relied upon. The 1st Respondent asserted that the Petitioner had failed to demonstrate how the impugned provisions of the IGP Act, and the Evidence Act are inconsistent with the Constitution and that the petition is bad for lack of specificity. The court was urged to dismiss the petition.

14. The 2nd to 24th, 26 to 28th Respondents did not file submissions.

For their part, the 25th Respondent submitted that the petition was incompetent, amorphous and did not meet the threshold to warrant this court to grant the reliefs being sought. The 25th respondent mainly relied on the decision in **Anarita Karimi Njeru v Republic [1979] eKLR** in opposition to the petition.

15. The court has considered the material canvassed in respect of the petition. The Court is called upon to determine the purport and intent of the impugned gazette notice, the true import of sections 69 of the IGP Act and 85 of the Evidence Act and whether they are inconsistent with Article 199(1) of the Constitution, whether construing of laws to bring them into conformity as required in section 7(1) of the Sixth Schedule to the Constitution is the exclusive mandate of the 26th and 27th Respondents, and ultimately whether the prayers sought are merited.

16. First, it is not disputed that the 1st Respondent enacted the Kiambu County Alcoholic Drinks Control Act in 2018. The depositions of the 1st Respondent as to the publications thereof in the Kenya Gazette are not disputed. Whether the gazettment of the said law in the Kenya Gazette Supplement no. 7 of 2018 of 9th March 2018 was proper or not is the *sub judice* question in **Petition No. 47 of 2018 Richard Mungai Kagiri (suing as a member and in the interest of Kiambu Liquor Welfare Group) v the County Government of Kiambu and 2 others**.

17. In that case, this court had opportunity to rule on the petitioner's motion seeking "*conservatory orders to stay the implementation of the illegitimate document going by the name Kiambu County Alcoholic Drinks Control Act*" (sic). In the ruling delivered on 29th June, 2018, this court observed inter alia that:

"21. It is a legal truism that every statute passed by the national or county legislature enjoys a presumption of legality..."

23. In the present case, the impugned law has already come into effect and based on the presumption of legality, will stand unless otherwise overturned... The burden of rebutting the presumption of legality of an act of the legislature, even at *prima facie* level lies, with the person challenging that act. On the face of it the impugned law was published and what the applicant seems to be inviting the court to do at this preliminary stage, is to investigate the finer details behind the apparent publication."

18. Similarly, this court in its judgment delivered on 2nd November, 2018 in **Petition no. 48 of 2018 Okiya Omtatah Okoiti v County Government of Kiambu** which challenged the Kiambu County Alcoholic Drinks Control Act, 2018, the court in identifying agreed and contentious issues raised in the petition stated:

"14. There is no dispute that the Kiambu County Alcoholic Drinks Control Act 2018 was commenced on the date of its gazettment on 9th March, 2018. The preamble to the Act describes it as:

"An Act of the County Assembly of Kiambu to establish a framework for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising of alcoholic drinks, and for connected purpose."

19. The key factual premise upon which the entire petition herein rests is found at paragraph 16 of the petition which states that: -

"The 1st Respondent has published Kenya Gazette Notice no. 2263 dated 9th March, 2018 instead of publishing a county legislating as such in the Kenya Gazette".

The petitioner appears to be under the impression that the impugned notice was a substitute for the publication requirement in Article 199(1) of the Constitution and is facilitated by the "unconstrued" provisions of Section 69 of the IGP Act and Section 85 of the Evidence Act which has resulted in the 2nd to 25th Respondents "*enforcing or aiding the enforcement of documents in the name of County Legislation and which documents have not taken effect*" (sic).

20. The 1st Respondent's contention that the Kiambu County Alcoholic Drinks Control Act had in fact been published as required by law has not been controverted by the Petitioner herein. Neither their explanation that gazette notice no. 2263 of 9th March, 2017 was intended as a notice for the general information to the public. A plain reading of the notice reveals that it was a notice to the general public of the fact that the Kiambu County Alcoholic Drinks Control Act had been published and could be accessed on the County website. The notice does not purport to be anything more. It does not make reference to Article 199(1) of the Constitution but generally cites the County Governments Act. It is true that there is no constitutional or statutory requirement under the County Governments Act for the giving of such notice. However, it is difficult to comprehend how, given the undisputed gazettment of the Kiambu County Alcoholic Drinks Control Act vide Supplement No. 7 of the Kenya Gazette of 9th March 2018, which incidentally is also the date of the Kenya Gazette carrying the impugned notice, the Petitioner herein concluded that the notice was intended as the vehicle for publication of the Kiambu County Alcoholic Drinks Control Act in compliance with Article 199(1) of the Constitution and the County Governments Act..

21. Moreover, in terms of the decision in **Mumo Matemu**, for the purpose of this case, the gazette notice is a notification to the public of the publication of the county legislation concerned but is not in and of itself the legislative instrument. The 1st Respondents would have been in serious error had they relied on the notice as evidence of compliance with Article 199(1) of the Constitution which expressly provides that:

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

Gazette is defined in Article 260 of the Constitution to mean “**the Kenya Gazette Published by authority of the national government, or a supplement to the Kenya Gazette**”.

22. The impugned notice is what it says it is on plain reading: a notice to the public on the enactment of the legislation stated. It does not purport to contain or to be the legislation in question. Evidently, therefore the Petitioner herein leapt from a false factual premise which led to a false legal premise as I shall demonstrate shortly.

23. Having presumed the impugned gazette notice to be evidence of compliance by the 1st respondent with Article 199(1) of the Constitution, the Petitioner further surmised that this was only possible because sections 69 of the IGP Act and 85 of the Evidence Act have not been accordingly construed by the 26th and 27th Respondents as required by Section 7(1) of the Sixth Schedule to the Constitution in order to render them compliant with Article 199(1) of the Constitution. Before considering the assertion that the duty to construe and or review the said law lies exclusively with the 26th and 27th Respondents, it is necessary to examine impugned statutory provisions in light of the Petitioner's claims.

24. The objects of the IGP Act are stated in the preamble to be:

“An Act of Parliament to make provision in regard to construction, application and interpretation of written laws; to make certain general provisions with regard to such law and for other like purposes.”

The Act has been amended on many occasions since commencement in December 1956. It has been amended on three occasions since 2010, the latest such amendment being in 2014. Section 69 of the Act falls under “Part VII- GENERAL MISCELLANEOUS PROVISIONS” and is headed “**Gazette etc., to be prima facie evidence**”.

25. Section 69 is in the following terms:

“The production of a copy of the Gazette containing a written law or a notice, or of a copy of a written law or a notice, purporting to be printed by the Government Printer shall be prima facie evidence in all courts and for all purposes whatsoever of the due making and tenor of the written law or notice”.

26. On the other hand, Section 85 of the Evidence Act is located in **Part V** aptly entitled “**PRESUMPTIONS AS TO DOCUMENTS**”.

The wording is almost similar to the sections above. Section 85 of the Evidence Act is headed: “**Gazette, etc., to be prima facie evidence**”. The section is in terms that:

“The production of a copy of any written law, or a copy of the Gazette containing any written law or any notice purporting to be made in pursuance of a written law, where such law or notice (as the case may be) purports to be printed by the Government Printer, shall be prima facie evidence in all courts and for all purposes whatsoever of the due making and tenor of such written law or notice”.

27. The five- judge bench in **Murugi Gateria Mugo v Judges and Magistrates Vetting Board & Others [2018] e KLR; Constitutional Petition No 325 of 2013** had this to say regarding interpretation of statutes:

“It is trite that, in construing a statutory provision, the first and foremost rule of construction is that of literal construction. All that the court has to see at the very outset is what does the provision say in its plain, grammatical and ordinary language. If the provision is unambiguous and if from that provision the legislative intent is clear, the other rules of construction of statutes need not be called into aid save when the legislation intention is not clear. However, the courts would not be justified in so straining the language of the statutory provision as to ascribe the meaning which cannot be warranted by the words displayed by the legislature. In the words of Lord Greene M.R in the case of Re A debtor (No. 335 of 1947) (1948) 1 ALL ER 533 at Page 536 it was stated that: -

“there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used”.

28. The provisions above must be construed literally in the first instance. The provisions in this case are plain and unambiguous. First of all, the separate and independent documents to be deemed *prima facie* evidence in both provisions are:

a) copy of the Gazette containing a written law or a notice.

b) copy of written law or a notice.

In either case, the conjunction “or” between the words requires that the item “notice” (even if made under a written law) be read to stand as a separate alternate item from other items, namely, copy of gazette bearing the written law or copy of the written law. Therefore, a notice produced would be *prima facie* evidence of its being made and tenor thereof, and not of the due making or tenor of any law it may refer to, as the Petitioner appears to suppose. It is also important, in order to glean the complete meaning of the section, to read it as a whole.

29. Secondly, the documentary proof anticipated in the sections must purport to be printed by the Government Printer. Thirdly and most importantly, the material will be taken as *prima facie* evidence in all courts and for all purposes whatsoever of the due making and tenor of

the written law or notice. The term “*prima facie*” is defined in **Black’s Law Dictionary, Tenth Edition** as:

“Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue”.

30. The contents of Section 85 of the Evidence Act and Section 69 of the IGP Act are similar save for the additional words contained in the former after the word “notice” namely, “*purporting to be made in pursuance of a written law.*” In both instances the production of the copy of written law, or gazette containing such law or notice is *prima facie* evidence of the due making and tenor of such written law or notice.

31. Both sections envisage production in court proceedings and for all other purposes for which such production is made and create a presumption in favour of the producer that the written law or notice was duly made and of the contents thereof. The presumption is rebuttable by the opposing party. There is uncontroverted evidence that in this case the 1st Respondent did not rely on the impugned notice as a way of complying with Article 199 (1) of the Constitution and have already published the legislation in compliance with Article 199(1). It must be evident that while Sections 69 and 85 of the IGP Act and Evidence Act respectively, are fundamentally rules of evidence while Article 199(1) relates to the process of the making and to the validity of county legislation.

32. Thus, the two impugned statutory provisions provide, not for the manner in which county or other legislation comes into effect, but the manner of proving such county legislation or legal notices before a court or for other purposes. The language of the impugned sections is not absolute as the presumption raised through production of copies of laws or notices is rebuttable. Where is the inconsistency with Article 199(1)? The procedure for enactment of county legislation is clearly stipulated in the Constitution and the County Governments Act.

33. As **Ngaah J** observed in the case of **John Kinyua Munyaka & 11 Others v County Government of Kiambu & 3 Others (2014) e KLR**, the object, purpose and effect of an impugned legislation becomes an important consideration where a constitutional challenge is raised thereto:

“Talking about importance of the object and effect of a statute in evaluating its constitutionality the court in Queen v Big M. Drug Mart Ltd (1985) 1 SCR 295, ... said:

“... both purpose and effects are relevant as determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. The object is realized through impact produced by the operation and application of the legislation. Purpose and effect respectively, are clearly linked. Intended and achieved effects have been looked to for guidance in assessing the legislations object and thus validity.”

34. Having examined the provisions of Section 69 of the IGP Act and Section 85 of the Evidence Act beside the provisions of Article 199 (1) of the Constitution, I am unable to accept the Petitioner’s assertion that in this case, the former statutory provisions as they stand have facilitated the enforcement of a law that has not properly come into effect. The purpose and effect of the two statutory provisions is, by object, removed from the realm of the process of enactment of laws being, merely rules of evidence. On the other hand, Article 199(1) provides for the requirement that to come into effect, a county law must be published. The presumption in the statutory provisions does not in any way contravene the provisions of Article 199(1) as the former expressly state that any notice or law produced that purports to be printed by the Government printer is only *prima facie* evidence of the making and tenor thereof. The presumption will be effectively displaced where a party demonstrates that in fact the law (or notice) is invalid for failure to comply with the legislation process set out in the Constitution and the law, or in the case of a notice, failing to comply with the law under which is said to be made, or for whatever other reason.

35. Remarkably in this case, the Petitioner has not challenged the assertion by the 1st Respondent that the Kiambu County Alcoholic Drinks Control Act was indeed published as required by Article 199(1). Instead, the Petitioner has clung onto the notion that the 1st Respondent’s notice despite its clear wording that it is a general notice to the public of the publication of the Act, was intended to be the actual publication of the law in terms of Article 199(1). Moreover, apart from making oblique generalizations, the Petitioner has not tendered any material to demonstrate the alleged enforcement of county legislation by the 2nd to the 25th Respondents and the harm or injury caused by such enforcement to the residents of Kiambu County.

36. Finally, concerning the duty to review the laws existing prior to the 2010 Constitution for the purpose of bringing them into conformity with the Constitution, there can be no dispute that mandate lies with the 26th and 27th Respondents pursuant to the provision of the Kenya Law Reform Commission Act and the Revision of Laws Act. However, the duty to construe laws to bring them into conformity with the Constitution as stipulated in Section 7(1) of the Sixth Schedule to the Constitution is not the sole prerogative or duty of these two offices.

37. On that score, this court can do no better than cite the erudite words of **Ngugi, J** in **Republic v Kiambu County Executive Committee & 3 Others Exparte James Gacheru Kariuki & 9 Others (2017) eKLR**. The learned Judge posed and answered this same question: -

“Does the Constitution and the laws contemplate that only the Attorney General, or, in his failure, the Kenya Law Reform Commission should “construe” laws to bring them into conformance with the Constitution after the effective date?

The short and only possibly correct answer to that question is in the negative..... indeed, the Constitution of Kenya 2010 is unique in giving every public official and public organ a duty to interpret, defend and obey the Constitution and the values underpinning it – See Article 3 and 10 of the Constitution. The transformation of the Kenyan society would not happen if the duty of construing laws to bring them into conformity with the Constitution was left to the monopoly of the Honourable Attorney General. The Constitution commands every individual or public organ that interprets the Constitution to do so in

a manner that takes into consideration national values and principles of governance. This must of necessity include the duty to construe any existing laws to bring them into conformity with the Constitution.... This is to say that (there) is no such position as “chief construer” with the sole task of construing laws to bring them into conformity with the Constitution.”

38. The court had then proceeded to reiterate the role of the court in construing laws generally and in accordance with the requirements of Section 7(1) of the Sixth Schedule to the Constitution. Considering all the foregoing findings, the court does not find any merit in the accusation of dereliction of duty averred in the petition against the 26th and 27th Respondents. This whole petition appears to spring from conjecture and surmises that the 1st Respondent had, instead of publishing the Kiambu County Alcoholic Drinks Control Act, published the Gazette Notice No. 2263 of 9th March, 2018, the consequences being that the said law never took effect, that it was nevertheless being enforced and applied by the 2nd to 25th Respondents because sections 69 of the IGP Act and 85 of the Evidence Act allowed such enforcement and application, in contravention of the provisions of Article 199(1) of the Constitution. The factual premise upon which the petition was founded is as faulty as the legal posture adopted and the assumed consequences.

39. Equally, the Petitioner has utterly failed to demonstrate the alleged rights violated or manner thereof, or the “*prejudice in the nature of justice being administered in subordinate courts with the application of the unconstrued sections 69 of the Interpretation and General Provisions Act... and/or Section 85 of the Evidence Act*”(sic) as allegedly suffered by Kiambu residents, or their alleged “*disability to carry out ordinary day to day activities in criminal courts.*” As drafted and prosecuted, the petition did not demonstrate with a reasonable degree of precision the violation complained of, the manner of infringement or the injury thereby suffered. See **Anarita Karimi Njeru v R (1979)eKLR.**

40. The upshot is that the petition fails and the prayers (a), (b) and (e) as sought are not available. Equally, prayers (c) and (d) seem disconnected and unrelated to the averments in the petition, were literally hanging and are obscure. These equally fail. The petition is accordingly dismissed in its entirety.

SIGNED AND DATED ELECTRONICALLY THIS 16TH DAY OF MARCH 2021

C. MEOLI

JUDGE

Delivered and Signed at Kiambu on this 23rd day of March 2021.

M. KASANGO

JUDGE

IN THE PRESENCE OF:

.....**For the Petitioner**

.....**For the Respondents**