

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CONSTITUTIONAL PETITION NO 5 OF 2014

(FORMERLY NAIROBI HC CONSTITUTIONAL PETITION NO 446 OF

2014)

1. HOSEA MWANGI KAGUMO

2. CHARLES KAMAU

3. MARY MUTHONI GICHUHI

(Suing as Chairman, Secretary and Treasurer of

Samakake Welfare Transporters Association.....PETITIONERS

VERSUS

COUNTY GOVERNMENT OF MURANG'A.....RESPONDENT

R U L I N G

1. In their petition dated 09/09/2014 the Petitioners herein challenge the new cess or levy of KShs 500/00 per lorry (up from KShs 200/00) charged them by the Respondent, the **County Government of Murang'a**, on transport "of sand, stones, ballast, clay, hard-core, timber, poles, rafts, manure, firewood and scrap metal" within the County of Murang'a upon the ground that the **Murang'a County Finance Act, 2013** under which the new cess/levy is charged is unconstitutional for want of public participation before its enactment. That petition is pending disposal.

2. Together with the petition the Petitioners filed **notice of motion dated 09/09/2014** seeking the main order to restrain the Respondent from enforcing the new cess/levy pending disposal of the petition.

3. The Respondent has opposed the application upon the main ground that the issue of the constitutionality of the **Murang'a County Finance Act, 2013** has been litigated upon before and decided, and that therefore it cannot be litigated again.

4. The application was canvassed by way of written submissions. The Petitioners' submissions were filed on 06/06/2016 while those of the Respondent were filed on 28/09/2016. On 21/11/2016 the parties' learned counsels informed the court that they did not wish to highlight. The judge was away on his annual leave from early December 2016 to mid-February 2017; hence the delay in preparation and delivery of this ruling.

5. I have considered the submissions of the parties. Indeed in **Murang'a High Court Constitutional Petition No 24 of 2014** this very court was faced with the same issue of the constitutionality or otherwise of the **Murang'a County Finance Act, 2013** which was challenged upon the same main ground of lack of public participation before its enactment. In a judgment delivered on 22/05/2015 this court found that there was indeed public participation before enactment of the Act. It is unlikely that this court will permit litigation of the same issue in the present petition.

6. In the circumstances I decline to grant the orders sought in the notice of motion dated 09/09/2014. The same is hereby dismissed. It is so ordered. Costs shall abide disposal of the petition.

DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF MARCH 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 24TH DAY OF MARCH 2017