



**Eintreten Association v Kajiado County Executive Committee; Tata  
Chemicals Magadi Limited (Interested Party) (Constitutional Petition  
E002 of 2023) [2023] KEELC 22345 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22345 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**CONSTITUTIONAL PETITION E002 OF 2023**

**MN GICHERU, J**

**DECEMBER 20, 2023**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ARTICLES 22 (2) (C) OF HE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF AN ALLEGED INFRINGEMENT/DENIAL/VIOLATION OF  
CONSTITUTIONAL RIGHTS OF THE PUBLIC IN KAJIADO COUNTY TO THE RULE  
OF LAW & PARTICIPATION OF THE PEOPLE UNDER ARTICLES 10 (2) (A), 174(C)  
& 183 (1)(B) OF THE CONSTITUTION OF KENYA 2010 AND WHICH RIGHTS ARE  
RECOGNISED AND/OR CONFERRED BY THE PROVISIONS OF SECTION 3 OF THE  
VALUATION FOR RATING ACT CAP 266 LAWS OF KENYA, SECTIONS 4 & 5 OF THE  
RATING ACT CAP 267 LAWS OF KENYA, (SECTIONS 8(2), 52, 53, PART VIII, IX & X OF  
THE COUNTY GOVERNMENT ACT NO 17 OF 2012), THE NATIONAL GOVERNMENT  
COORDINATION ACT NO. 1 OF 2013 AND/OR SECTION 10 OF THE PUBLIC OFFICER  
ETHICS ACT NO. 4 OF 2003 AMONG OTHER WRITTEN LAWS PURSUANT TO  
AND/OR UNDER ARITCLE 19 (3)(B) OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**EINTRETEN ASSOCIATION ..... PETITIONER**

**AND**

**THE KAJIADO COUNTY EXECUTIVE COMMITTEE ..... RESPONDENT**

**AND**

**TATA CHEMICALS MAGADI LIMITED ..... INTERESTED PARTY**



## RULING

1. This ruling is on the notice of motion dated 10/7/2023. The motion seeks the following orders:
  - b. That a conservatory order do issue staying and/or suspending and/or halting any demand and/or receipt of any monies in the name of property rates in Kajiado pending the hearing and determination of the petition or until further orders of this court.
  - c. That the court be pleased to certify the petition herein as raising very important and substantial points of law and place the file before the Honourable the Chief Justice to constitute a bench of preferably five (5) judges to hear and determine the matter herein on a priority basis.
  - e. That the costs of this application be in the cause.
2. The motion which is under Section 13 of the *Constitution of Kenya (Protection of rights and Fundamental Freedoms) Practice and Procedure Rules* 2013, Section 11 (1) (i) of the *Fair Administrative Actions Act* (Act No. 4 of 2015) Article 165 of the *Constitution* and all other enabling provisions of the law is based on twelve (12) grounds and is supported by an affidavit of James Gacheru Kariuki dated 10/7/2023 which has five (5) annexures.
3. The gist of the grounds, affidavit and annexures is as follows:

Firstly, the respondent has been levying property rates under the County Government Public Finance Management Transition Act (Act No. 8 of 2013) despite the Act having been self repealed on 31/9/2013.
4. Secondly, the respondent has neglected, ignored and or refused to implement Sections 8 (2), 52, 53, part VIII, IX and X of the *County Government Act* (Act No. 17 of 2012), Section 3 of the *Valuation for Rating Act* (Cap 266), the *Rating Act* (Cap 267) which is a Constitutional requirement under Article 183 (1) (b) of the *Constitution* of Kenya.
5. Thirdly, the respondent has placed the people of Kenya in a perpetual transition mode in Kajiado County notwithstanding the fact that the statutory transition to the Devolved System of Governance lapsed on 9/3/2016.
6. Fourthly, what the respondent collects is money and not revenue, which cannot be accounted for.
7. Fifthly, if the orders sought are allowed neither the respondent nor the interested party will suffer any prejudice since the unlawfully paid property rates do not have a limitation period within which they must be paid.
8. Sixthly, the petition herein raises substantial points of law as the matter in controversy falls within the provision of Article 165 (3) (d) of the *Constitution* of Kenya, the issue directly and substantially affects the rights of petitioners, the issue is of great public interest and the prayers sought have a great effect in the public domain, that because of the complexity of the issue, substantial time is required to dispose of the same and the petition meets the constitution threshold for certification as raising substantial points of law.
9. Finally, the points of law in the matter herein have eluded the Honourable the Attorney General and the superior courts up to the level of the Supreme Court for 10 years and therefore without much ado are very substantial points of law.



10. The motion though served upon the respondent and the interested party as per the affidavit of service dated 2/10/2023, is not opposed.
11. I have carefully considered the motion in its entirety and I find that it raises the following issues:
  - a. Whether a case has been made, *prima facie*, for staying, suspending or halting the respondent's demand or receipt of property rates; pending the hearing of the petition.
  - b. Whether the petition, as presented, raises a substantial question of law to warrant its being placed before the Hon, the Chief Justice for appointing a bench of five judges to determine it.
12. On the first issue it is trite law that for a conservatory order to issue, the applicant must demonstrate an arguable *prima facie* case with a likelihood of success, and to show that in the absence of the conservatory order he is likely to suffer prejudice. The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights. Thirdly, the court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. The final principle for consideration is whether the public interest will be served or prejudiced by the discretion to grant or deny a conservatory order. See the [Board of Management of Uhuru Secondary School v City County Director of Education and 2 others](#) (2015) eKLR
13. Applying the above test to the current motion, I find that it falls short of the same for the following reasons. The petitioners have not demonstrated a *prima facie* case with a likelihood of success. There is nothing to support the deposition in the affidavit about the law applicable in demand or receipt of property rates in Kajiado County. The newspaper report in the Daily Nation of December 2, 2022 does not mention the applicable Law
14. Secondly, the petitioner has not shown what the respondent has demanded from it. There is no mention of any interest that they have in land or environment within Kajiado County that is at risk if the order sought is not issued. Thirdly, the urgency of the matter has not been demonstrated. If the respondent has been levying illegal property rates since 2013, why is it urgent that an interlocutory order be issued about ten (10) years later? The petition does not bring this out.
15. Coming to the second issue for determination, I find that the motion and the entire petition as presented fails the test for the Constitution of a bench of uneven number of judges not being less than three as per the case of *Maina Kiai v The IEBC and another* (2017) eKLR where the test was set as follows:
  - a. Whether, directly, or indirectly, it affects the substantial rights of the parties,
  - b. Whether the question is of general public importance or
  - c. Whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or any other superior court or
  - d. The issue is not free from difficulty and
  - e. It calls for a discussion of an alternative view. The rights of the petitioner have not been demonstrated because it has not named any property that it owns in Kajiado County. The general public Kajiado is not involved in the petition which is signed by five people who seem to be residents of Kiambu County. The issue is not a difficult one because if the petition is proved, then the respondent will only be compelled to operate under then current law rather than the repeated one and the issue has not invoked a debate of an alternative way of demanding and



levying property rates. For the above stated reasons, I dismiss the motion dated 10/7/2023.  
Costs in the cause. It is so ordered.

**DELIVERED, SIGNED AND DATED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF  
DECEMBER 2023**

**M. N. GICHERU**

**JUDGE**

