



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT KISUMU**

**MISCELLANEOUS APPLICATION NO. E 3 OF 2021**

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

**THE VALUATION FOR RATING ACT (CAP 266)**

**THE RATING ACT (CAP 267)**

**THE REPUBLIC FINANCE MANAGEMENT ACT (NO.18 OF 2012)**

**THE COUNTY GOVERNMENTS ACT (NO.17 OF 2012)**

**THE URBAN AREAS AND CITIES ACT (NO.17 OF 2011)**

**THE KISUMU COUNTY PUBLIC PARTICIPATION ACT, 2015**

**AND**

**IN THE MATTER OF AN APPLICATION BY JOHN MICHAEL OBURE**

**OBURE FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI,**

**PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT OF KISUMU**

**AND**

**THE DRAFT VALUATION ROLL, 2017**

**REPUBLIC.....APPLICANT**

**(EX-PARTE JOHN MICHAEL OBURE OBURE)**

**VERSUS**

**COUNTY GOVERNMENT OF KISUMU.....RESPONDENT**

**JUDGMENT**

**John Michael Oubre the Applicant herein filed this suit seeking for the following orders:**

1. An order of certiorari TO ISSUE to quash the notice of the Respondent contained in Gazette Notice No. 11063 (hereinafter “the gazette notice”) published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol. CXXII No. 235.
2. An order of prohibition to prohibit the Respondent from demanding or collecting any rates on the basis of the valuations contained in its Draft Valuation Roll 2017 laid before the County Assembly on 23<sup>rd</sup> December 2020 (hereinafter “the Draft Valuation Roll

2017”).

3. That leave so granted to the Applicant to institute Judicial Review proceedings do operate as suspension of the gazette notice and as a stay of all and any proceedings and processes arising therefrom pending the hearing and determination of the Applicant’s application for judicial review or further orders.

Brief facts of the matter are that the Applicant herein is a resident of the County Government of Kisumu and a tenant in rented property in Manyatta area within the City of Kisumu County and a member of the public and therefore affected by the valuation for rating of property within Kisumu County .By Gazette Notice No. 11063 published on 24<sup>th</sup> December 2020 the Respondent notified the public of the availability for inspection of the Draft Valuation Roll 2017 prepared under Section 9(3) of the Valuation for Rating Act (Cap 266) and that if they were aggrieved by either inclusion in or omission of any property from the Draft Valuation Roll 2017 or by the valuation ascribed therein to any property included, they were entitled to lodge an objection within 28 days of the publication of the notice upon payment of the requisite non-refundable fee of Kshs.500/=.

That upon perusal of the Draft Valuation Roll 2017, it reveals valuations that indicate dramatic increases in the proposed annual rates of up to 7,275% on freehold land and of up to 5,343% on leasehold land. It is the Applicant’s case that the process of the preparation of the Draft Valuation Roll 2017 was contrary to the law as there was no public participation by the people of the County Government of Kisumu and there was no adherence to the requirements of the Public Finance Management Act.

The suit was filed together with a Notice of Motion Application where the Applicant sought for orders that this Honourable Court be pleased to grant to the applicant leave to apply for orders of certiorari, prohibition and mandamus in terms of the statement dated 15<sup>th</sup> January 2021 lodged herein that the grant of leave do operate as a suspension of Gazette Notice No.11063 published on 24<sup>th</sup> December 2020 in Kenya Gazette Vol.CXXII No.235 and a stay of all and any proceedings arising therefrom pending the hearing and determination of the Applicant’s Application for Judicial Review or further orders and the costs of this application follow the cause.

The matter came up for interparties hearing and the court granted the Applicant the orders sought. The court directed the Applicant to file a substantive Notice of Motion within 3 days and the Respondent to reply, the Applicant to file a Supplementary Affidavit with submissions and the Respondent to also file its Submissions. The Applicant herein filed the substantive Notice of Motion dated 29<sup>th</sup> January 2021 where he sought for the following orders:

1. An order or certiorari do issue to remove into this Honourable court for the purpose of quashing the Gazette Notice No.11063 published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol.CXXII No.235.
2. An order of prohibition do issue to prohibit the Respondent from commencing, instituting, undertaking, continuing or proceeding with all and any proceedings and processes on, of and concerning the Draft Valuation Roll 2017 arising from the Gazette Notice No.11063 published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol.CXXII No.235.
3. An order of mandamus do issue compelling the Respondent to undertake the process for the preparation of the Draft Valuation Roll 2017 and any supplementary rolls prepared thereunder including policy decisions made on the process for the valuation of properties pursuant thereto and /or in respect thereof in strict compliance with the provisions of Article 201 (a) of the Constitution of Kenya, Sections 125(2) and 207 of the Public Finance Management Act (No.13 of 2012), sections 36 and 39 of the Urban Areas and Cities Act(No.13 of 2011), section 6 (6) , Part VIII and Section 115 of the County Governments Act(No. 17 of 2012), section 4 and 8 Sub-sections (1) and (6) and of paragraphs 6,7 and 13 of the First Schedule to the Kisumu County Public Participation Act,2015 and in full adherence to the requirements of Sections 132,161,162 and 207 of the Public Finance Management Act ( No.18 of 2012).
4. The Applicant’s costs of this Application be paid by the Respondent.

The Application was based on grounds that the Respondent’s the Gazette Notice No.11063 published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol.CXXII No.235 is a culmination of a process in the development and preparation of the Draft Valuation Roll including supplementary rolls laid before the County Assembly of the Respondent on 23<sup>rd</sup> December 2020 is indelibly and incurably tainted by the failure of the Respondent to adhere to mandatory provisions of the law requiring public participation.

That the Respondent proposes to increase property rates within the County on the basis of the valuation contained in the Draft Valuation Roll 2017 by up to 7,275% on freehold land and 5,343% on leasehold land which increases are unreasonable. That the proposed increases in property rates have been undertaken by a process that breaches the law since there was no public participation.

It is also the Applicant’s case that the proposed increase in property rates is certain to distort property prices, levels of rent and the price of commodities and services at a time that the country is struggling with the effects of COVID -19. The Application was supported by the Affidavit of the Applicant.

The Respondent herein filed its Replying Affidavit on 10<sup>th</sup> February 2021 where Moses Orege the Chief Officer for Land, Housing and Urban Development stated that the Respondent’s previous Valuation Roll expired in 2017 by operation of the law under section 3 of the Valuation for Rating Act Cap 266 which requires that a Valuation Roll to be made at least once every 10 years and the Respondent commenced the process and has spent approximately Kshs.70,000,000/=.

He stated that Order 123 (3) of the County Assembly Standing Orders bestows the obligation to undertake public participation on the County Assembly and that the Applicant’s averment that there was no public participation in the process of preparation of the Draft Valuation Roll 2017 is not true and the allegations are unsubstantiated further stated that the process of public participation of the Draft Valuation Roll 2017 commenced in the year 2017 and was budgeted for in the budget statements for the financial year 2017/2018 and 2019/2020 as per the

attached "MO2" which is a copy of the proposed executive summary by the County Executive of 2016 where need for development of property valuation was proposed.

It is the Respondent's case that the Applicant had a number of fora to raise his views for consideration in the process just as the vast majority of people did and the Applicant can raise his grievances since the Draft Valuation Roll is a draft subjected to public scrutiny. He further stated that the process of public participation is still ongoing and therefore his prayer for an order of certiorari is intended to quash the gazette notice.

That the process of coming up with the Draft Valuation Roll from inception has conformed with the legal requirements on public participation under the various provisions of the law. That the Applicant's allegations that the Respondent proposes to increase the property rates by up to 7,275% on freehold land and 5,343% on leasehold land are false. It is the Respondent's case that the rates are pegged on the value of property and the valuer is guided by law when carrying out valuation and the Respondent has lowered its rating track which was at 1.5% of the property value in the previous valuation roll to 0.75% in the current Draft Valuation Roll 2017 which is a significant decrease by 50% of the previous roll.

The Respondent stated in the Affidavit that the Applicant's allegations that the draft valuation roll 2017 will affect the prices of property in Kisumu and lead to increase in rent is false and meant to mislead the court.

The Applicant herein filed a further Affidavit pursuant to the directions of the court given on 28<sup>th</sup> January 2021 where he stated that the Replying Affidavit reference to public participation and all documents shown as exhibits do not speak to the public participation and development of the Draft Valuation Roll 2017. That upon perusal of the Respondent's County Budget Review and Outlook Paper 2018, County Budget Review and Outlook Paper 2019/2020, County Integrated Development Plan II 2018-2022, County Report 2019 and the Governor's Speech on the 3<sup>rd</sup> Annual State of the County Address on 26<sup>th</sup> November 2020, which informed the public of its activities and plans in the county between 2017 and 2020, there was no reference to public participation process or event on the preparation of the Valuation Roll.

### **Applicant's Submissions**

The Applicant submitted that by the Respondent neglecting, failing and/or refusing to engage in public participation contrary to the law, the Respondent effected policy decisions and undertook processes during the preparation and development of the Valuation Roll that excluded the public. That there was no statutory public participation timetable by the Respondent's Physical Planning, Lands, Housing and Urban Development Department or its Finance and Planning Department or from the County Executive Committee.

It is submitted by the Applicant that the document produced as a statutory timetable is the Budget Preparation Calendar for the Financial Year 2019/2020 which is not a statutory public participation timetable. The Applicant placed reliance in the case of **Wifred Manthi Musyoka v County Assembly of Machakos, Governor-County Government of Machakos & 2 Others (Interested Parties (2019) eKLR** where Odunga J observed as follows:

**Apart from merely averring that this was done, there is completely no evidence that the public participation was taken into account in the said process. I agree with Mwita, J in Kenya Human Rights Commission vs. Attorney General & Another [2018] eKLR where he held that:**

***"Once a petitioner attacks the legislative process on grounds that the law making process did not meet the constitutional standard of public participation, the respondent is under a legal obligation to demonstrate that the legislative process did meet the constitutional standards of public participation...there was no attempt on the part of the respondent to show that there was any semblance of public participation in the legislative process leading to the enactment of the impugned Contempt of Court Act. That being the state of affairs, the court has no option but to agree with the petitioner that there was violation of an important constitutional step in the form of public participation and the Act fails this constitutional compliance step."***

The Applicant further submitted that the Respondent must show evidence of public participation and therefore prayed that he be granted the orders sought in his Application.

### **Respondent's Submissions**

The Respondent filed its Submission on 9<sup>th</sup> March 2021 where it stated that the Applicant's main complaint is that there was no public participation of the Draft Valuation Roll, 2017. That the Application is premature since the Draft Valuation Roll was presented to the County Assembly and the County Assembly is required to take it through public participation before presenting it back to the County Assembly for deliberations.

It is the Respondent's submissions that the Applicant has mistaken the formulation of the Valuation Roll which requires key stakeholders to come up with the Draft Valuation Roll which is subjected to public participation before it can be passed and it is the duty of the County Assembly to conduct public participation as per Standing Order 123(3).

The Respondent stated in its submissions that the process of preparation of the Draft Valuation Roll commenced by the executive budget summary which indicated that the Respondent intended to engage in the development of property valuation. The Respondent then allocated funds for the said exercise and engaged the technical people and stakeholders for purposes of coming up with a Draft Valuation Roll. The Draft Valuation Roll is to go through the process of public participation where the County Assembly is to conduct the process and therefore section 8 (6) of the Kisumu Public Participation Act (No. 11 of 2015) was not breached.

The Respondent explained the process of public participation at various levels and therefore raised a number of issues for determination. On the issue of whether there was public participation in the process of formulating the Draft Valuation Roll; the Respondent submitted that there is an opportunity for public participation which is yet to take place. On the issue of which stage should there be public participation, it is the Respondent's submissions that it has indicated the stages of public participation and no stage has been skipped as public participation has not taken place. Whether the cause is premature, the Respondent submitted that the orders sought by the Applicant are premature as the public is yet to be engaged in various forums and the Respondent should be entitled to the costs of this suit.

It is the Respondent's submissions that it has the intention to engage in public participation in the process of having a new valuation roll as dictated by section 3 of the Valuation for Rating Act and therefore the court should allow the process to continue owing to the fact that public participation shall be undertaken in all stages.

#### **Applicant's Submissions in Reply to the Respondent's Submissions.**

The Applicant herein filed Submissions on 18<sup>th</sup> March 2021 in response to the Respondent's Submissions where he stated that the Respondent's submissions are misconstructions the Applicant's complaint in the sense that there was public participation on the Draft Valuation Roll, 2017 yet the Applicant's complaint is that the preparation and development of the Draft Valuation Roll, 2017 was not subjected to public participation. That the Respondent purports that public participation that is carried out by the County Assembly of Kisumu after the Draft Valuation Roll, 2017 was presented to it is a process done under section 9 and 10 of the Valuation for Rating Act (Cap 266).

The Applicant stated in his submission that the County Assembly has no role or function in the process of public participation in the preparation and development of a draft roll which is completed by the time the draft is laid before the County Assembly. That the role of the County Assembly is limited to receiving a draft valuation roll upon which the public is informed that it is ready for inspection. The Applicant further stated that no evidence has been given by the Respondent in the form of a Hansard record which establishes the laying of the Draft Valuation Roll, 2017 before the County Assembly of Kisumu for debate.

It is the Applicant's submissions that a draft valuation roll ceases to be a draft upon its signing and certification which occurs after all objections before the valuation court are withdrawn before hearing or upon the hearing and determination of the objections by the valuation court. The Respondent did not produce any document that was submitted in the preparation and development of the Draft Valuation Roll, 2017 to public participation and therefore the court should issue the orders sought.

#### **DETERMINATION**

It is the Applicant's case that the Respondent's Draft Valuation Roll 2017 proposes to increase the property rates by up to 7,275% on freehold land and 5,343% on leasehold land. On the other hand, the Respondent disputed this fact and stated in its Replying Affidavit that the averment by the Applicant that the Respondent proposes to increase property rates is false as the rates are pegged on the value of the property and the valuer is guided by law when carrying out valuation.

**Article 209 (3) of the Constitution of Kenya** allows a County to impose, property rates, entertainment taxes and any other tax that it is authorized to impose by an Act of Parliament. **Article 210(1) of the Constitution** provides that provides that no tax or licensing fee may be *imposed*, waived or *varied* except as provided by legislation and the word "*legislation*" is defined at Article 260 thereof as either an Act of Parliament, or a law made under authority conferred by an Act of Parliament; or a law made by an assembly of a County Government, or under authority conferred by such a law.

**Section 3 of the Valuation for Rating Act (Cap 266) provides as follows; -**

***"Every local authority shall from time to time, but at least once in every ten years or such longer period as the Minister may approve, cause a valuation to be made of every rateable property within the area of the local authority in respect of which a rate on the value of land is, or is to be, imposed, and the values to be entered in a Valuation Roll."***

It is not in dispute that the County Government of Kisumu, the Respondent herein prepared a Draft Valuation Roll as required by the Valuation for Rating Act (Cap 266). The issue in dispute is how the process for preparation was undertaken. The Applicant avers that the process undertaken by the Respondent breaches various provisions of the law as there was no public participation.

The Respondent in its Replying Affidavit stated that the general public was notified on the preparation of the Draft Valuation Roll through a newspaper advertisement published on Tuesday 11<sup>th</sup> July 2017 where the said advertisement listed the appointed valuers and indicated the time for valuation for purposes of preparing the Draft Valuation and that the public was notified by making a declaration on the content of the valuation roll and the form of rating through Gazette Notice No. 10022,1003,10024 and 10025 published on 28<sup>th</sup> September 2018. The Respondent has further stated that it did a sensitization to all stakeholders on the process of the valuation Roll vide a letter from the land department on sensitization.

This court has looked into the said newspaper and the Gazette notices published on 28<sup>th</sup> September 2018 and finds that the public was only notified that valuation was to take place. The Public was not directly involved in the preparation of the Draft Valuation Roll, 2017 as alleged by the Respondent. On the letter dated 7<sup>th</sup> December 2018 from the Ministry of Lands, the same was requesting the relevant stakeholders to conduct sensitization. The Respondent has not confirmed to this court whether the sensitization took place or not.

**Richard Owuor & 2 others (suing on behalf of Busia Sugarcane Importers Association) v Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries & Cooperatives & 7 others [2021] eKLR** the court defined as:

“The processes of engaging the public or a representative sector while developing laws and formulating policies that affect them. The processes may take different forms. At times it may include consultations. **The Black’s Law Dictionary 10th Edition** defines ‘consultation’ as follows: -

The act of asking the advice or opinion of someone. A meeting in which parties consult or confer.”

**Constitutional Petition Nos. 305 of 2012, 34 of 2013 and 12 of 2014 (Formerly Nairobi Constitutional Petition 43 of 2014) Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others [2015] eKLR** the Court addressed the concept of consultation in the following manner: -

*“... A public participation programme, must...show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.”*

**Petition no. 21 of 2013 John Muraya Mwangi & 495 Others v. Minister for State for Provincial Administration & Internal Security & 2 Others**, in which the Court held:

*“The concept of public participation in matters of governance is as important as it is vexing. It is derived from the Constitution. Under Articles 1(1), (2), (3). The sovereign power is vested in the people and is exercised by them directly or through elected officials. Article 10 further provides that the national values and principles of governance which binds all state organs, state officers and all persons whenever any of them applies or interprets the Constitution or makes or implements public policy decisions include democracy and participation of the people, good governance, integrity, transparency and accountability.”*

Section 9 of the Valuation for Rating Act provides as follows:

**“9. Deposit of draft valuation and Supplementary Valuation rolls.**

**(1) When a draft Valuation roll or draft Supplementary valuation roll has been completed, the valuer shall sign the roll and insert therein the date of completion thereof, and shall transmit the roll to the town clerk.**

**(2) As soon as may be after a draft valuation roll or draft supplementary valuation rolls has been transmitted to him by the valuer, the town clerk shall lay the roll before a meeting of the local authority, and the roll shall thereafter be available at the office of the local authority for public inspection, and any person may, during ordinary business hours, inspect it and take copies or extracts from it.**

**(3) The town Clerk shall publish notice in respect of every draft valuation roll and draft supplementary valuation roll that it has been so laid and may be inspected, and such notice shall state the manner in which and the latest date by which objections to the same may be made.**

**(4) Every local authority shall, within twenty-one days after the laying before a meeting of the local authority of a draft valuation roll or draft supplementary valuation roll send to every rateable owner of a rateable property comprised in the roll a notice of the valuation thereof inserted in the roll, whether or not the new valuation makes any change.”**

Section 4 of the Kisumu County Public Participation Act,2015 provides for the guiding principles of public participation as follows:

**a) the communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision making process;**

**b) public contributions shall be taken into consideration when making the decisions;**

**c) promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers;**

**d) facilitation of the involvement of communities, organizations and citizens potentially affected by or interested in a decision;**

**e) mandatory participants consultation and input in designing how they participate;**

**f) participants equitable access to the information they need to participate in a meaningful manner;**

**g) communication to participants on how their input affected the decision;**

**h) adherence to the national values and principles of governance set out under Article 10 of the Constitution;**

i) adherence to the values and principles of public service set out by Article 232 of the Constitution;

j) adherence to the principles of leadership and integrity set out in Chapter Six of the Constitution; and

k) adherence to the principles of citizen participation set out in Section 87 of the County Governments Act, 2012.

The first schedule to the Kisumu County Public Participation Act provides for the public participation guidelines where the Office of Public Participation shall disclose all information relevant for the public to understand and evaluate the decision, ensure that stakeholders have fair and equal access to the public participation process and their opportunity to influence decisions and the office should not engage in conduct involving dishonesty, fraud, deceit, misrepresentation or discrimination.

This court has looked into the exhibits filed by the Respondent and it is clear that there was no public participation. The Respondent in its submissions stated that it was yet to reach the public participation stage as provided for by the Valuation for Rating Act and section 123(3) of the Kisumu County Assembly Standing Order. The Applicant on the other hand brought a complaint on the process of preparation of the development of the Draft Valuation Roll, 2017 that was not subjected to any public participation. The county Assembly has no role to play in the process of development of the Draft Valuation Roll. The role of the County Assembly is to receive the Draft Valuation Roll as provided for under section 9(2) of the Valuation for Rating Act where the public is then invited for inspection.

**Bradbury and others vs. Enfield London Borough Council (1976) I W L R P 1311 in which it was stated that:**

**“... It is imperative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty’s subjects. Public bodies and Ministers must be compelled to observe the law; and it is essential that bureaucracy should be kept in its place ...”**

**Odunga J stated in *Republic –vs- County Government of Kiambu Ex-parte Robert Gakuru & Another (2016) eKLR*: -**

***“.....public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who can to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspects, as payment of taxes and levies the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora as possible such as churches, mosques, temples, public barrazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action. Article 196 (1) (b) just like the South African position requires just that.”***

The Draft Valuation Roll 2017 proposes to increase the property rates by up to 7,275% on freehold land and 5,343% on leasehold land. The Applicant has stated that the proposed increase is not reflective of any commensurate increase in the quantity or quality of services provided to land owners by the Respondent and that the proposed increase shall affect levels of rent and of the price of commodities and services within the County Government of Kisumu at a time that the public is grappling with the effects of COVID-19. It is also the Applicant’s case that the increase shall impact upon the cost of living and working in Kisumu as it will prejudice the public residing or working in Kisumu, economic activities and the mobility of goods. The Respondent on the other hand has stated that the preparation of the Draft Valuation Roll, 2017 is based on the fact that the County Government needs to raise revenue to meet its revenue targets, that the old valuation roll was limited on coverage of rates collection and was discriminatory in terms of property included in the valuation roll, property not included in the roll and property that needed to be included in the roll.

The Respondent further stated that there was need to shift from the flat rate system of rates collection in certain areas to the new system of Unimproved site value and that the previous valuation roll omitted several areas that were not included in the valuation roll. It is the Respondent’s case that an increase in property rates will affect the economic activities and the prices of property is false as alleged by the Applicant.

In the case of **Robert N. Gakuru and others –versus- The Governor, Kiambu County and Others, Petition Number 532 of 2013 Consolidated with Petition Numbers 12, 35, 36, 42 and 72 of 2014** it was submitted that:

**“It is therefore clear that the County Assembly may only impose property rates and entertainment taxes unless otherwise authorized by an Act of Parliament and this position is emphasized by the provisions of Article 210(1) of the Constitution which expressly provides that no tax or licence fee may be imposed, waived or varied except as provided by the legislation. County Governments are however empowered to impose charges on services they provide...I must however stress that County Governments are under Article 175(b) entitled to have reliable sources of revenue to enable them to govern and deliver services effectively. However, these entitlements must be exercised in accordance with the constitution and the law and where the existing legislation is not adequate for the purposes of efficient governance and delivery of service the County Government ought to petition the National Government to increase allocation to them or enact appropriate legislation to enable them carry out their constitutional mandate as required under Articles 190(1) 202 and 203 of the Constitution”.**

Based on the above case, this court has looked into the evidence adduced by both parties and it is clear that the Respondent did not follow the law in increasing the rates of the property. The Respondent has also failed to demonstrate how it prepared the Draft Valuation Roll 2017. County Governments are required to raise revenue as required by the Constitution, the Public Finance Management Act (No.18 of 2012) and the County Government Act however, the same should conform to the principles of Article 10, 174, 209, 201 and 232 of the Constitution.

Although the Respondent has alleged that public participation is yet to take place in the Draft Valuation Roll, 2017, there was no public participation in the process of development of the Draft Valuation Roll, 2017. The documents annexed by the Respondent show that there was no public participation in the process of development of the Draft Valuation Roll, 2017.

This court therefore finds that the Applicant has established his case for the grant of judicial review orders and issues the following orders:

1. An order of certiorari quashing the Gazette Notice No.11063 published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol.CXXII No.235.
2. An order of prohibition prohibiting the Respondent from commencing, instituting, undertaking, continuing or proceeding with all and any proceedings and processes on, of and concerning the Draft Valuation Roll 2017 arising from the Gazette Notice No.11063 published on the 24<sup>th</sup> December 2020 in the Kenya Gazette Vol.CXXII No.235.
3. An order of mandamus compelling the Respondent to undertake the process for the preparation of the Draft Valuation Roll 2017 and any supplementary rolls prepared thereunder including policy decisions made on the process for the valuation of properties pursuant thereto and /or in respect thereof in strict compliance with the provisions of Article 201 (a) of the Constitution of Kenya, Sections 125(2) and 207 of the Public Finance Management Act (No.13 of 2012), sections 36 and 39 of the Urban Areas and Cities Act(No.13 of 2011), section 6 (6) , Part VIII and Section 115 of the County Governments Act(No. 17 of 2012), section 4 and 8 Sub-sections (1) and (6) and of paragraphs 6,7 and 13 of the First Schedule to the Kisumu County Public Participation Act,2015 and in full adherence to the requirements of Sections 132,161,162 and 207 of the Public Finance Management Act ( No.18 of 2012). The costs of this Application be paid by the Respondent.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 28<sup>th</sup> DAY OF JANUARY, 2022**

**ANTONY OMBWAYO**

**JUDGE**

*This Judgement has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**