



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION NO 2 OF 2016.

**IN THE MATTER OF PRINCIPLES OF GOVERNANCE UNDER ARTICLE 10 OF THE
CONSTITUTION**

AND

**IN THE MATTER OF THE RIGHT TO PUBLIC PARTICIPATION AND PARTICIPATORY
GOVERNANCE IN MAKING OF LAWS**

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT AND RELATED LAWS

AND

**IN THE MATTER OF THE OBJECTS OF DEVOLUTION AND DEVOLVED GOVERNMENTS
UNDER CHAPTER ELEVEN OF THE CONSTITUTION**

AND

**IN THE MATTER OF ARTICLE 196 AND RELATED LEGISLATIONS BY THE COUNTY
GOVERNMENT OF MACHAKOS**

AND

**IN THE MATTER OF THE FINANCE ACT, 2015 ENACTED BY THE COUNTY ASSEMBLY
OF MACHAKOS TO OPERATIONALISE THE FINANCIAL OBLIGATIONS OF THE
COUNTY**

AND

IN THE MATTER OF ARTICLES 19,20,21,22 AND 23 OF THE CONSTITUTION

AND

IN THE MATTER OF THE SOVEREIGNTY OF THE PEOPLE UNDER BETWEEN

DRICON TRANSPORTERS SAVINGS

AND CREDIT CO-OPERATIVE SOCIETY LIMITED.....APPLICANT

VERSUS

RULING

Introduction

The Petitioner is a registered society under the Cooperative Societies Act Cap 490 of the Laws of Kenya. The 1st Respondent is the devolved government established under the Constitution charged with overseeing the affairs of Machakos County. The 2nd Respondent is the legislative organ of the 1st Respondent as mandated under the Constitution.

The Petitioner filed a petition wherein it contended that it is a transport company charged with ferrying of quarry and sand material to and from Machakos County. Further, that the Respondents have enacted the Finance Act 2015 which legislation has led to the increment in fees, charges and or levies imposed in the County. It was stated that the legislation provides for increment in the charges or fees levied for sand harvesting and quarrying all of which form the core economic venture carried out by the Petitioner, therefore the increment will cause economic hardship on it and higher financial obligations on the citizens.

The Petitioner also contended that in effecting the increment the Respondents were jointly and severally obligated under Article 10 and 196 of the Constitution as read together with section 117 of the County Governments Act to ensure adequate all inclusive public participation process where citizens are familiar, informed or educated about the intended legislative business.

The Petitioner is seeking the following reliefs in the Petition:

1. A declaration to be issued to the effect that a devolved government is obligated under Articles 10 and 96 of the Constitution as read together with Section 117 of the County Government Act to initiate and conduct adequate citizen participation prior to enactment of any legislation.
2. A declaration to be issued to the effect that the Respondents jointly and severally in enacting the Finance Act, 2015 failed to undertake extensive, adequate public and citizen participation with the Petitioner on matters relating to sand harvesting and quarry services consequently rendering the fees, levies and or charges contained in the enacted legislation void and contrary to Articles 10 and 196 of the Constitution as read together with Section 117 of the County Governments Act.
3. A declaration to be issued to the effect that the Respondents jointly and severally in enacting the Finance Act, 2015 introducing levies, charges and or fees for quarry and sand harvesting services without adequate public participation and awareness rendered the provisions arising therefrom void.
4. A prohibition to be issued barring the Respondents jointly and severally through their officers, agents, servants, assigns, employees or any such persons acting under their control, direction and supervision from collecting any charges, levies, fees or payments due as arising from any sand harvesting, quarrying and related activities carried out by the petitioner or its members based on the Finance Act, 2015.
5. An order of mandamus compelling the Respondents jointly and severally to resubmit the proposals on any intended variance of fees, charges, payments and or levies arising from sand harvesting and quarrying services within Machakos County and consequently ensure due process is followed prior to any change in taxation or financial burden of the citizenry.

The Petitioner's Application

The Petitioner also filed an application by a Notice of Motion dated 3rd February 2016 which is the subject of this ruling. The Petitioner is seeking orders that pending hearing and determination of the petition, the implementation of Machakos County Finance Act 2015 with respect to fees, charges and or

levies in respect of quarrying and sand harvesting activities carried out by the Petitioner and or other members be stayed on condition that;

- i. The Petitioner and its members shall continue to pay whatever fees, levies and or charges they have been paying prior to enactment of the Machakos County Finance, 2015;
- ii. The Petitioner and its members undertake that should the petition fail, they will pay whatever sum that will be outstanding under the Finance Act 2015 as at that date.

Secondly, that pending hearing and determination of petition filed the implementation of Machakos County Finance Act 2015 with respect to fees, charges and or levies in respect of quarrying and sand harvesting activities carried out by the petitioners and or their members be stayed.

The application was premised on grounds that as a result of the enactment of the Finance Act 2015, there has been change in the fees and charges levied by the 1st Respondent which has been authorized by the members of the 2nd respondent, who ought to undertake their processes by giving an opportunity, to the persons likely to be affected or within the County to present their concerns or views. Further, that with the Finance Act 2014 still in force there is no prejudice whatsoever occasioned on the Respondents jointly and severally since the fees collected under the impugned legislation are also available under the former Act.

The Petitioner filed a supporting affidavit to the application sworn on 3rd February 2016 by Bernard Githaka Kamau, its chairman. In summary, he averred therein that there was a fundamental principle of good governance and public finance that there is public participation in financial matters as the implication of such decisions had economic ramifications to the public.

The Response

The 1st Respondent's response was in a replying affidavit sworn on 18th February 2016 by James M. Kathili, its Chief Legal Officer. It is averred therein that the 1st Respondent acting pursuant to its constitutional and statutory powers enacted the Machakos County Finance Act, 2015 to regulate and govern the taxes, duties, levies and charges. Further, that the County Executive Committee Member for Finance and Revenue Administration, Elizabeth M. Nzyoka presented a budget statement on 25th June, 2015 to kick start the process of revenue raising through the Machakos Finance Act, 2015. The said budget statement was annexed as an exhibit.

It was further stated that the County Assembly invited representations and recommendations from members of the public by way of notice in accordance with Article 221 (5) of the Constitution, and a copy of the said notice was annexed. According to the 1st Respondent, the 2nd Respondent conducted hearings of the public views in Mavoko, Kathiani, Matungulu, Kangundo, Yatta, Masinga, Mwala and Machakos as indicated in the said notice.

According to the 1st Respondent there is in place the Machakos County Sand Harvesting Act 2014 which imposes licence fees on the Petitioner and its members based on market rates of sand. Further, that the licence fees are prescribed by the Executive Committee member. It was also contended by the 1st Respondent that the Petitioners have not demonstrated to this court that they have a *prima facie* case with probability of success or that they would suffer irreparable injury that cannot be compensated by damages.

Further, the balance of convenience tilts the scales in favour of the Respondents who would suffer a great prejudice because of the high revenue it may lose, and the great inconvenience it may incur considering its anticipated revenue generation and budget implementation were the suspension to be granted. It was stated that the Respondents are capable of compensating the Petitioners in the event that this Court finds in favour of the Petitioners.

The 2nd Respondent on its part opposed the application in a replying affidavit sworn on 22nd February 2016 By Hon. Bernard Muteti Mungata, Speaker of the County Assembly of Machakos who stated that the orders sought in the Notice of Motion herein are final and if granted, there will be nothing to adjudicate upon by the Court. Further, that the reliefs sought are omnibus and cannot be granted by this Court as they seek a suspension of the increases levies rates, taxes and other licencing fees levied by the Respondents without specifying what exactly is to be suspended.

It was contended that the deponent of the Supporting Affidavit has not stated whether he has authority from the Petitioner or from its unspecified members to bring the application. Further, that the Petitioner's pleadings do not disclose adequate particulars in support of their alleged cause of action relating to the alleged violations of the Constitution to enable this Court grant the reliefs sought herein.

The 2nd Respondent also claimed that the Petitioner's pleadings offend the doctrine of separation of powers as the same invite this Court to direct County Assemblies which are legislative branches of government on their procedures, and how they ought to run their affairs, and seek to impede the functions of Constitutional office holders.

According to the 2nd Respondent, it is incorrect for the Petitioner to state that the enactment of the Machakos County Finance Act 2015 was done without adequate participatory public participation. It was further stated that on the 16th September, 2015 the Clerk of the County Assembly of Machakos, caused an advertisement to be placed in the *Standard* newspaper and in the said advertisement, all stakeholders were invited to several forums to present their views and written memoranda. Copies of the excerpt from the said newspaper containing the advertisement and the correspondence relating to the same were annexed by the 3rd Respondent.

Further, that in the premises, the 2nd Respondent in compliance with the provisions of Articles 10(2) and 196(1)(b) did facilitate and there was some reasonable level of public participation and involvement of all stakeholders in the legislative process that led to the enactment of the Act. It was also contended that the Finance and Revenue Collection Committee of the 2nd Respondent as established its Standing Orders prepared and tabled the Finance Bill, 2015 which was tabled before the County Assembly for deliberation and adoption. The Report of the said Committee was annexed as well as copies of the Report of combined views and the list and photographs of participants of the said Committee.

The 2nd Respondent also decried lack of evidence that the taxes, charges and or levies contained in the said Act are prejudicial to national economic policies or activities or that they were either unfair or unreasonable in the circumstances of the County of Machakos. The 2nd Respondent averred that the raise of the charges and taxes as contained in the said Act was reasonable and necessary in order to continue offering services to the people. Further, that the paralysation of the operations of the entire Machakos County is highly probable given that the County relies on the taxes, charges and other fees paid for sustainability of its budget in order to realize the full effect and objectives of devolution.

The Issues and Determination

The Court directed that the applications by the Petitioner be canvassed by way of written direction and direction were given in this regard. However, the Petitioner's learned counsel, Mbiyu Kamau and Co. Advocates failed to comply with the timelines set by the Court in this regard, and the ruling on the application was reserved on the basis of the pleadings already filed.

I have read and carefully considered the pleadings made herein. A number of preliminary issues have been raised by the Respondents which this Court will first address. The first is whether this Court is the forum to deal with the Petitioners' claim on account of the doctrine of separation of powers, and it was urged that the Court should show deference to the legislative and executive arms of government. My view on this issue is that it is indeed the correct position that Courts should not ordinarily interfere with the exercise of the legislative authority of a constitutional body in line with the doctrine of separation of powers, and ought to exercise judicial restraint in matters which deal with legislative authority of County

Governments.

However, I must also state that under Article 2(4) of the Constitution, any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. In addition, under Article 165(3)(d)(i) and (ii) the High Court is clothed with the jurisdiction to hear any question respecting the interpretation of the Constitution including the determination of the question whether any law is inconsistent with or in contravention of the Constitution and the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution.

Therefore, whereas the legislative authority vests in Parliament and the County legislative assemblies, and executive authority in the Presidency and Governors of Counties, where a question arises as to whether an enactment or act is inconsistent with the Constitution or is passed in contravention of the Constitution, as is the case in the instant applications and Petition, the High Court is the institution constitutionally empowered to determine such an issue, subject to appellate jurisdiction given to the Court of Appeal and the Supreme Court.

The second preliminary issue that has been raised is about the Petitioner's standing to bring this suit, and particularly if they are doing so in a representative capacity. The answer to this issue is in Article 22 of the Constitution which grants any person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened. Article 22 (2) has greatly expands the standing to bring constitutional claims as follows:

“(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.”

These provisions are also emphasized in Rule 4 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013.

The import of these provisions is that under the Constitution a person acting on behalf of the grievant may file a claim. The Petitioner is a Co-operative society and falls in the category of an association acting in the interests of its members and is therefore properly before this Court.

The substantive issue that remains for determination in the applications before the Court is whether the Petitioner has shown a *prima facie* case with a likelihood of success so as to be granted the conservatory orders it seeks in terms of stay of the implementation of the Machakos County Finance Act 2015 in respect to the fees, charges and levies in respect of quarrying and sand harvesting activities.

This Court is granted powers to issue conservatory orders in constitutional petitions under Article 23 (3) (c) of the Constitution, and Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013. The applicable principles for the grant of a conservatory were aptly summarised by Onguto J. in **Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others** [2015] eKLR as follows:

25. “Foremost, the applicant ought to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. As was stated by Musinga J (as he then was) in the case of Centre for Rights Education and Awareness and 7 Others –v- The Attorney General [HCCP No. 16 of 2011]:

“[Arguments] in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution”.

26. It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis. In these respects, I would quickly make reference to M. Ibrahim J (as he then was) in the case of Muslims for Human Rights [MUHURI] & Others –v- Attorney General & Others CP No. 7 of 2011, who whilst agreeing with Musinga J’s statement in Centre for Rights Education and Awareness [CREAW] and 7 Others –v- The Attorney General (Supra) stated as follows:-

“I would agree with my brother that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success” (emphasis).

28. Recently the same pertinent observations were made by Ngugi J and Muriithi J sitting separately in Jimaldin Adan Ahmed & 10 Others –v- Ali Ibrahim Roba and 2 Others [2015] eKLR and Micro Small Enterprises Association of Kenya (Mombasa Branch) –v- Mombasa County Government [2014] eKLR respectively.

29. Once the applicant has established to the court’s satisfaction a prima facie case with a likelihood of success the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of rights: see Patrick Musimba –v- The National Land Commission & 4 Others HCCP 613 of 2014 (No. 1) [2015] eKLR and also Satrose Ayuma & 11 Others –v- Registered Trustees of Kenya Railways Staff Retirements Benefits Scheme [2011] eKLR.

29. Thirdly, flowing from the first two principles, is whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice. In these respects the case of Martin Nyaga Wambora –v- Speaker of the County Assembly of Embu & 3 Others CP No. 7 of 2014, is relevant, especially paragraphs [59] [60] and [61] thereof.

30. The fourth principle which emerges from the various cases and is well captured by the Supreme Court of Kenya in the case of Gatirau Peter Munya –v- Dickson Mwenda Githinji & 2 Others [2014] eKLR is that the court must consider conservatory orders also in the face of the public interest dogma.

31. Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicants credentials, the prima facie correctness of the availed information, whether the grievances are genuine legitimate and deserving and finally whether the grievances and allegations are grave and serious or merely vague and reckless: see Centre for Human Rights and Democracy & 2 Others –v- Judges and Magistrates Vetting Board & 2 Others CP No. 11 of 2012 as well as Suleiman –v- Amboseli Resort Ltd [2004] 2 KLR 589.”

It is not in dispute that the 3rd Respondent did cause an advertisement to be placed in *The Standard* newspaper of Wednesday September 16 2015 which it annexed to its replying affidavit as exhibit “BMM-a”, wherein made an invitation for persons to present their views and written memoranda on the Machakos County Finance Bill for the financial year 2015/2016 at various sub-county venues. The 3rd Respondent also provided evidence of the combined views from the said fora.

The facts that are in dispute are to what the efforts by the Respondents at public participation were, and whether the same met the threshold set by the law as regards public participation. While the said facts cannot be decided at this stage, this Court is of the view that in order to decide the issue whether Petitioner has shown an arguable case with a likelihood of success, an examination of what public participation entails is necessary.

I will in this respect extensively quote the decision by Odunga J. in **Robert N. Gakuru & Others vs Governor Kiambu County & 3 Others** (2014) e KLR wherein the learned Judge while relying on the South African Constitutional Court's decision in **Doctors for Life International vs. Speaker of the National Assembly and Others**, (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC), explored in great detail what is required for effective public participation as follows;

75. "In my view 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 care 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 aspect 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 *barazas* 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. Dealing with the issue I wish to reiterate what was held in **Doctors for Life International vs. Speaker of the National Assembly and Others** (supra) to the effect that:

"The phrase "facilitate public involvement" is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this phrase are "facilitate" and "involvement". To "facilitate" means to "make easy or easier", "promote" or "help forward". The phrase "public involvement" is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of "involve" includes to "bring a person into a matter" while participation is defined as "[a] taking part with others (in an action or matter); . . . the active involvement of members of a community or organization in decisions which affect them". According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process. That is the plain meaning of section 72(1)(a). This construction of section 72(1)(a) is consistent with the participative nature of our democracy. As this Court held in *New Clicks*, "[t]he Constitution calls for open and transparent government, and requires public participation in the making of laws by Parliament and deliberative legislative assemblies." The democratic government that is contemplated in the Constitution is thus a representative and participatory democracy which is accountable, responsive and transparent and which makes provision for the public to participate in the law-making process."

76. In my view to huddle a few people in a 5 star hotel on one day cannot by any stretch of imagination be termed as public participation for the purposes of meeting constitutional and legislative threshold. Whereas the magnitude of the publicity required may depend from one action to another a one day newspaper advertisement in a country such as ours where a majority of the populace survive on less than a dollar per day and to whom newspapers are a luxury leave alone the level of illiteracy in some parts of this country may not suffice for the purposes of seeking public views and public participation. As was held in **Doctors for Life International vs.**

Speaker of the National Assembly and Others (supra):

“Merely to allow public participation in the law-making process is, in the prevailing circumstances, not enough. More is required. Measures need to be taken to facilitate public participation in the law-making process. Thus, Parliament and the provincial legislatures must provide notice of and information about the legislation under consideration and the opportunities for participation that are available. To achieve this, it may be desirable to provide public education that builds capacity for such participation. Public involvement in the legislative process requires access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens....[the Assembly] should create conditions that are conducive to the effective exercise of the right to participate in the law-making process. This can be realised in various ways, including through road shows, regional workshops, radio programs and publications aimed at educating and informing the public about ways to influence Parliament, to mention a few.....It is implicit, if not explicit, from the duty to facilitate public participation in the law-making process that the Constitution values public participation in the lawmaking process. The duty to facilitate public participation in the law-making process would be meaningless unless it sought to ensure that the public participates in that process. The very purpose in facilitating public participation in legislative and other processes is to ensure that the public participates in the law-making process consistent with our democracy. Indeed, it is apparent from the powers and duties of the legislative organs of state that the Constitution contemplates that the public will participate in the law-making process.....In determining whether Parliament has complied with its duty to facilitate public participation in any particular case, the Court will consider what Parliament has done in that case. The question will be whether what Parliament has done is reasonable in all the circumstances. And factors relevant to determining reasonableness would include rules, if any, adopted by Parliament to facilitate public participation, the nature of the legislation under consideration, and whether the legislation needed to be enacted urgently. Ultimately, what Parliament must determine in each case is what methods of facilitating public participation would be appropriate. In determining whether what Parliament has done is reasonable, this Court will pay respect to what Parliament has assessed as being the appropriate method. In determining the appropriate level of scrutiny of Parliament’s duty to facilitate public involvement, the Court must balance, on the one hand, the need to respect parliamentary institutional autonomy, and on the other, the right of the public to participate in public affairs. In my view, this balance is best struck by this Court considering whether what Parliament does in each case is reasonable.”

Arising from this holding which I wholly adopt, I note that the Petitioners have raised an arguable point that the evidence of facilitation of, and involvement of the public in the enactment of the Machakos Finance Act of 2015 so far provided by the Respondents of an invitation in an advertisement in the *Standard* newspaper to various fora to discuss the Act, is limited in scope, in light of the requirements set out above for effective public participation.

I also find that the Petitioners being persons who are likely to be directly affected by the said legislation as they are persons engaged in various businesses in Machakos County, have not raised a frivolous claim and are credible litigants in their quest to be involved in the decision making about the revenue raising initiatives proposed by Machakos Finance Act of 2015.

The Constitution and other applicable laws place a high premium on public participation in legislation being enacted and implemented by the Machakos County Government, particularly as demonstrated by Articles 2(4), 10, 174, 196 (1)(b) and 201 of the Constitution, as well as sections 87, 88, and 115 of the County Government Act and section 175 of the Public Finance Management Act. Given the cross-cutting emphasis on public participation in the values and principles that underpin the provisions set out in the Constitution, and that guide the implementation of devolution in the County Government Act, the correct application of the said value and principle is as much a public interest issue as is the economic development activities and gains sought by the Respondents.

The petition herein in my view would therefore be rendered nugatory for the Petitioner at two fronts if the conservatory orders sought are not granted. In the first instance at the legal front, if this Petition succeeds, the Petitioners would have been affected by a legislation without having had the opportunity benefit and to exercise their right of direct participation as enshrined in the Constitution.

At the more practical front, the balance of convenience tilts in favour of the Petitioners in terms of the prejudice they are likely to suffer if the Petition herein succeeds as opposed to the Respondents, in terms of payment of the increased fees, and the ability to recover the same in the event this petition is successful, as they are individually in a comparatively weaker position, both economically and politically.

I therefore allow the Petitioners' Notice of Motion dated 18th February 2016 and find no merit in the 1st Respondent's Notice of Motion dated 14th March 2016 for the foregoing reasons. I am also of the view that the Petitioner's Preliminary Objection did not raise nor urge any pure point of law outside what was already argued in their Notice of Motion and the same is dismissed.

I accordingly order as follows:

1. The implementation of the levies, rates, and other fees imposed by the Respondents pursuant to the Machakos County Finance Act of 2015 in respect to the fees, charges and levies for quarrying and sand harvesting activities be and are hereby stayed pending the hearing and determination of the Petition filed herein, and with respect to all persons affected by the said Act.
2. For the avoidance of doubt the Machakos County Sand Harvesting Act 2014, and the levies, rates and fees imposed by law and in force immediately before the enactment of the Machakos Finance Act 2015 for quarrying and sand harvesting activities shall continue to apply and shall continue to be paid by all affected persons pending the hearing and determination of the Petition filed herein.
3. There shall be no order as to costs as this application involves a public interest issue.

Orders accordingly.

Dated and Signed at Machakos this 22nd day of April 2016

P. NYAMWEYA

JUDGE

Delivered at Machakos this 26th day of April 2016

E. MURIITHI

JUDGE