



**IN THE HIGH COURT AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. 570 OF 2013**

**BETWEEN**

SIMEON KIOKO KITHEKA.....1<sup>ST</sup> PETITIONER

ANTHONY KYENGO.....2<sup>ND</sup> PETITIONER

MUTUNGA KALELI.....3<sup>RD</sup> PETITIONER

**AND**

**THE COUNTY GOVERNMENT OF**

**MACHAKOS.....1<sup>ST</sup> RESPONDENT**

**H.E. ALFRED MUTUA, GOVERNOR, THE COUNTY**

**GOVERNMENT OF MACHAKOS.....2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The petition in this matter challenges the *Machakos Finance Act, 2013* and more specifically the Eighth Schedule on Fees and Charges charged within the Machakos County for various economic activities. When the matter came up for directions on 18<sup>th</sup> December 2013, I directed that petitioners' counsel to show cause why the matter should not be heard at the Machakos High Court.
2. Dr Khaminwa submitted that all the counsel conducting the matter on behalf of the parties are all based in Nairobi. That the Constitutional Court is based in Nairobi and it has developed expertise and resources to determine such issues. That Machakos being a small town may not be an ideal

venue as justice may not be seen to be done due to proximity of judicial officers and the administration and hence the need to see that justice is seen to be done. He also submits that the matter is sensitive in nature concerning governance in Machakos County.

3. Mr Nyamu, counsel for the first and second respondents, concedes that though the advocates are based in Nairobi, this is not a decisive consideration. He states that the reasons advanced by the petitioners cannot stand as the High Court in Machakos has jurisdiction and can dispense justice in the case. He however asserts that the matter is sensitive and in view of the interests concerned, it ought to be heard in Nairobi.
4. I think this issue ought to be approached from the point of view of the values and principles of the Constitution. First, devolution is one of the key values of the Constitution under **Article 10**. It buttresses the right of access to justice which is enshrined in **Article 48** of the Constitution. This means that in a matter such as this where the cause of action concerns Machakos County laws and various interests in Machakos are concerned, justice is served by the matter being heard in the local jurisdiction as the local people are able to participate and follow the proceedings easily.
5. Dispensation of justice is not about the convenience of the advocates on record but the interests of the parties. **Rule 8(1)** of the *Constitution of Kenya (Protection of Fundamental Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (“the Rules”)* provides for the place of filing petitions of this nature. **Rule 8(1)** of the states that;

**8. (1) Every case shall be instituted in the High Court within whose jurisdiction the alleged violation took place.**

**(2) Despite sub rule (1), the High Court may order that a petition be transferred to another court of competent jurisdiction either on its own motion or on the application of a party.**

6. **Rule 8(1)** of *the Rules* comports with the ideals I have referred to and further, the High Court at Machakos has jurisdiction to hear and determine the case. There is no constitutional court that exercises monopoly over such cases and as the Court of Appeal has stated in the case of **Peter Ng’ang’a Muiruri v Credit Bank Ltd & 2 others, Nairobi Civil Appeal No. 203 of 2006 [2008] eKLR**, divisions in Nairobi and Mombasa are matter of administrative convenience and each High Court judge is vested with jurisdiction to determine constitutional issues. Nothing shows that the petitioners will not receive justice if the matter is heard in Machakos.
7. Everyone whether hawkers, *boda boda* riders and sand harvesters are entitled to attend Court to follow the case of such enormous public interest. It is their right and the Court has the obligation to facilitate their attendance the sensitivity of the matter notwithstanding. **Rule 3(7)** of *the Rules* mandates the court to pursue access to justice for all persons including the poor, illiterate and the uninformed.
8. This matter be and is hereby transferred to Machakos High Court for hearing and disposal.

**DATED and DELIVERED at NAIROBI this 17<sup>th</sup> day of January 2014.**

**D.S. MAJANJA**

**JUDGE**

**COURT**– (1) Ruling read and delivered in open court.

(2) Mention on **21.1.2014 at 2.00 pm** at the **Machakos**

**High Court** for directions/hearing.

**D.S. MAJANJA**

**JUDGE**

Dr Khaminwa instructed by Khaminwa and Khaminwa Advocates for the petitioners.

Mr Nyamu instructed by Nyamu and Nyamu Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

Mr Moimbo instructed by the State Law Office for the Attorney General.