



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. 1 OF 2021**

**IN THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER**

**ARTICLES 27 (1), 27 (2), 27 (4), 28 AND 40 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF ARTICLES 10, 48, 69 (1) AND 232 OF THE CONSTITUTION OF KENYA SECTION 5 (1) OF THE**

**COUNTY GOVERNMENT ACT, NO. 17 OF 2012, SECTIONS 3, 7, 9 AND 10 OF THE VALUATION FOR RATING ACT**

**(CAP, 266)**

**SECTIONS 15, 16, 17 AND 19 OF THE RATING ACT (CAP. 267)**

**SECTIONS 4 (1) AND 5 (B) OF THE FAIR ADMINISTRATIVE ACTIONS ACT, NO. 4 OF 2015**

**AND**

**IN MATTER OF THE COUNTY GOVERNMENT OF KISUMU DRAFT VALUATION ROLL, 2017**

**BETWEEN**

**ISAAC E. N. OKERO.....PETITIONER**

**-VERSUS-**

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

**RULING**

On the 14/1/2021, Isaack E. N. Okero came to this court by way of Petition stating that he is the owner of the of two freehold parcels of land within the County of Kisumu namely KISUMU/NYALENDA “:B”/928 and KISUMU/NYALENDA “B” 1602. That by 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 the respondent notified the general public of the availability for inspection of its Draft Valuation Roll 2017 prepared under Section 9(3) of the of the Valuation for Rating act (Cap. 266). That if they were aggrieved by wither inclusion or omission of any property from the draft valuation roll or by the valuation ascribed to any property 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/=.

On the 7<sup>th</sup> January 2021 the petitioner attended the offices of the respondent at the Town Hall Kisumu to physically inspect the Draft Valuation Roll, 2017 and discovered that the properties were included therein. Officers of the respondent informed the petitioner that what he was shown for inspection was a supplementary roll under Section 9 (2) of Cap. 266 completed in December 2020 and laid before the County Assembly on the 23<sup>rd</sup> December 2020 into which the properties had been included.

The respondent’s officers then issued to the petitioner notices under Section 9 (4) of Cap. 266 disclosing to the petitioner the valuations ascribed to the properties and advising that after 28 days a demand notice for payment of rates calculated on said valuations would be sent to the rateable owner.

The respondent’s officers confirmed to the petitioner that the prescribed form for an objection was available thereat upon payment of the requisite statutory fee of Kshs. 500/= but upon the petitioner requesting for objection forms for the properties and proposing to pay the prescribed fees, the respondent’s officers declined the request on the basis that the petitioner was required to first ‘register’ the properties with the respondent by providing details set out in a list entitled ‘Requirement for Plot Registration’ and pay rate arrears and penalties on each of the properties from the year 2008 to 2020 in terms of a standard computation thereof on a table prepared and entitled ‘RATES FOR FREEHOLD PLOTS JANAURY 2021’ which calculate said rate arrears and penalties at an aggregate sum of Kshs. 363,458.00. The petitioner noted that other property owners making similar enquiries were being given the same response by the respondent’s officers.

The petitioner had never received from the respondent before the 7<sup>th</sup> January 2020 any notice under Section 9 (4) of Cap. 266 of the inclusion of either of the properties in any valuation roll and has never received from the respondent at all a demand notice under Section 15 of the Rating Act (Cap.267) for payment of rates on either of the properties wherefore there has never arisen in respect of said properties a statutory obligation to pay any rates on the properties.

Consequently the demands by the respondent through its officers: for the ‘registration’ by the petitioner of the properties with the respondent is not grounded on any law and is therefore unlawful, oppressive and discriminatory given that it is the obligation of the respondent under Section 3 of the Cap. 266 to cause a valuation of the properties and to enter said valuation in a valuation roll and not incumbent upon the petitioner to register the properties with the respondent; and for the payment by the petitioner of the sum of Kshs. 363,458.00 purportedly in rate arrears and penalties for freehold property is extortionate, illegal, discriminatory, oppressive and a violation of the property rights of the petitioner and of other freehold land owners given that this alleged debt is purported to be for rates accruing before any valuation roll and without any demand notice for the payment of any rates due on the properties having been issued for the period in question.

The petitioner wrote to the respondent on the 8<sup>th</sup> January 2021 requiring written confirmation by return before 10 a.m. on the 11<sup>th</sup> January 2021 that he is not required to pay to the respondent any rate arrears or penalties as demanded by its officers and that he shall be issued with the prescribed objection forms upon payment of the requisite non-refundable fee of Kshs. 500/=. No response has been made by the respondent as requested or at all.

The petitioner claims that in violation of the petitioner’s constitutional rights to equal protection and equal benefit of the law, not to be discriminated by the respondent, to have his dignity respected and protected and to have his right to the ownership of the properties protected. In breach of its constitutional and statutory duties to ensure sustainable management of the natural resource which is the land within the

county and to utilize the same for the benefit of the public, to discharge its function of the management of the land resource within the county in accordance with national values, to provide a service that is responsive, prompt, effective, impartial and equitable and to be accountable for administrative acts in conformity with the values and principles of public service. Likely to permanently alienate the petitioner from the properties by unlawfully impeding his right to object to the inclusion and/or valuation of the properties in the raft Valuation Roll 2017 thereby rendering them as uncontested under Section 11 of Cap 266 and condemning him to the accrual of statutory debts on the properties under Sections 19 and 20 of Cap. 267 and to enforcement action for the recovery thereof under Section 17 of cap 267.

The petitioner has learnt from other freehold property owners within the County of Kisumu that they have, after discovering the fresh inclusion of their properties in the supplementary roll, also been prevented from objecting until they pay rates and penalties from 2008 to 2020 notwithstanding that no demand notices for this period has ever been issued to them wherefore it is necessary that the orders sought by this period has ever been issued to them wherefore it is necessary that the orders sought by this petition of apply not just to the properties of the petitioner but to any freehold property freshly included in the respondent's Draft Valuation Roll. 2017.

The Petitioner prays that this court does declare that the requirement for Kisumu/Nyalenda "B"/928 and Kisumu/Nyalenda 'B'/1602 and any freehold property within the County of Kisumu freshly included in the supplementary roll of the draft valuation Roll 2017 to be 'registered' with the respondent is unlawful, null and void;

Further he prays that this court does declare that the requirement that an objection to the inclusion and/or valuation in the Draft Valuation Roll 2017 of Kisumu/Nyalenda "B"/928 and Kisumu/Nyalenda 'B'/1602 and any freehold property freshly included in the supplementary roll of the Draft Valuation Ro.. 2017 must be preceded by the payment of rate arrears and penalties from 2008 to 2020 in the sum of Kshs. 363,458.00 or in any other amount is unlawful, null and void.

Moreover, that his court does direct that the respondent to be permanently restrained from declining and/or refusing to receive the non-refundable fee for an objection for Kisumu/Nyalenda "B"/928 and Kisumu/Nyalenda 'B'/1602 and any freehold property freshly included in the supplementary roll of the Draft Valuation Roll 2017 and from requiring the payment of rate arrears and penalties from 200 to 2020 in the sum of Kshs. 363,458.00 or in any other amount; and to be compelled to issue upon payment of said non-refundable fee the prescribed objection form to the petitioner and to an owner of freehold property desirous of objecting to the inclusion and/or valuation in the Draft Valuation Roll 2017 of freehold property and to receive said form duly completed.

The application is accompanied with a Notice of Motion dated 12/1/2021 where the petitioner seeks that conservatory orders of injunction do issue against the respondent to restrain it from declining and/or refusing to receive the non-refundable fee for an objection for **Kisumu/Nyalenda "B"/928 and Kisumu/Nyalenda 'B'/1602** and any freehold property freshly included in the supplementary roll of the Draft Valuation Roll 2017 and from requiring the payment of rate arrears and penalties from 2008 to 2020 in the sum of Kshs. 363,458.00 or in any other amount and to compel it to issue upon payment of the requisite non-refundable fee the prescribed objection form to the petitioner and to any owner of freehold property described objection form to the petitioner and to any owner of freehold property desirous of objecting to the inclusion and/or valuation in the Draft Valuation Roll 207 of freehold property freshly included in the supplementary roll and to receive said form duly completed pending the hearing and determination of the petition.

The grounds of the application are that the respondents through its offices is preventing the petitioner and any owner of the freehold property in the County of Kisumu that has been freshly included in the supplementary roll of its Draft Valuation Roll 2017 from lodging an objection under Section 10 of the Valuation for Rating Act (cap. 266) before registering said property with it and payment to it of a sum of Kshs. 368,458.00 per property purportedly in rate arrears and penalties for the years 2008 to 2020.

The demand for registration of properties with the respondent is not grounded in any law as the inclusion

of any property in a valuation roll is the statutory responsibility of the respondent and not dependent on any registration process by any land owner.

The purported debt for rate arrears and penalties for the years 2008 to 2020 is extortionate, illegal, discriminatory, oppressive and a violation of the petitioner's property rights given that this alleged debt is purported to be for rates accruing before any notice has been issued to the petitioner of the inclusion and valuation of the properties in any valuation roll and without any demand notice for the payment of any rates due on the properties having been issued to the petitioner.

It is therefore in the interests of justice that the orders sought be granted pending the hearing and determination of the petition.

This court is aware that on 28/1/2021, it issued an order in Miscellaneous Application E003 of 2021 granting leave to apply for orders of certiorari prohibition and Mandamus. Moreover, the court issued an order that leave granted to operate as a suspension of gazette notice No. 11063 published on 24/12/2020 in the Kenya Gazette Volume CXX11 No. 235 and to act as a stay of all and any proceeding and processes arising therefrom pending hearing and determination of the application for Judicial Review.

I do find that there is no need to revisit a Gazette Notice that has been stayed. This matter should be mentioned with Kisumu Misc. Application No. E003 of 2021 for purposes of consolidation. I do decline to grant the orders sought as they will be superfluous. Costs in the cause.

**DATED AT KISUMU THIS 4<sup>th</sup> DAY OF FEBRUARY, 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Ruling 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 2019.**

**ANTONY OMBWAYO**

**JUDGE**