



**Lake Region Traders Association v County Government of Kisumu (Constitutional
Petition E001 of 2024) [2025] KEELC 511 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 511 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

CONSTITUTIONAL PETITION E001 OF 2024

E ASATI, J

FEBRUARY 6, 2025

**IN THE MATTER OF: ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23,
24, 162(2)(B) & 160 OF THE CONSTITUTION}} OF KENYA 2010**

AND

**IN THE MATTER OF: ARTICLES 10, 20, 21, 23, 27, 35, 39, 40, 43,
47, 48, 60, 174, 185, 186 (1), 189, 190, 191, 196, 201, 209(3) AND
(5), 210(1), 232, AND 260 OF THE CONSTITUTION}} OF KENYA**

AND

IN THE MATTER OF: THE RATING ACT CAP 267 LAWS OF KENYA

AND

IN THE MATTER OF: THE VALUATION FOR RATING ACT, CAP 266 LAWS OF KENYA

AND

IN THE MATTER OF: PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2012

AND

IN THE MATTER OF: FAIR ADMINISTRATIVE ACTION ACT NO.4 OF 2015

AND

IN THE MATER OF: THE ACCESS TO INFORMATION ACT NO.31 OF 2016

AND

**IN THE MATTER OF; SECTIONS 2, 3, 4, 5, 6, 7, 10, 11 &
12 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

AND

IN THE MATTER OF: THE URBAN AREAS AND CITIES ACT NO. 13 OF 2011



AND
IN THE MATTER OF: THE KISUMU COUNTY PUBLIC PARTICIPATION ACT, 2015
AND
IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS
AND
IN THE MATTER OF THE COUNTY GOVERNMENT OF KISUMU
AND
IN THE MATTER OF: THE DRAFT VALUATION ROLL, 2017
AND
IN THE MATTER OF: PUBLIC INTEREST

BETWEEN

LAKE REGION TRADERS ASSOCIATION PETITIONER

AND

COUNTY GOVERNMENT OF KISUMU RESPONDENT

RULING

1. This ruling is in respect of two matters firstly; the Notice of Motion application dated 13th February 2024 and expressed to be brought pursuant to the provisions of articles 22, 23(3), 159(2) (a), (b) and (d) and 162 (2) (b) of the Constitution of Kenya, sections 1, 1A, 3 & 3A of the Civil Procedure Act Cap 21; Rules 21, 22 and 23 of the Environment and Land Court (Procedure) Rules and Order 51 Rule 1 of the Civil Procedure Rules and secondly, the Preliminary Objection dated 1st March 2024.
2. The application seeks for orders that:
 1. A temporary conservatory order do issue barring the Respondent its agents and servants and those drawing authority under it, jointly and severally from implementing the Draft Valuation Roll, 2017 and Gazette Notice No.15453 published by the Respondent on the 10th November 2023 in the Kenya Gazette Vol. CXXV No. 240 together with all consequential decisions and notices pending the hearing and determination of the substantive petition.
 2. The costs of this application be borne by the Respondent.
 3. Other and further orders do issue as the honorable court deems just, fit and expedient under the circumstances.
3. The grounds upon which the application was brought are that the Respondent in Gazette Notice No. 15453 published on 10th November 2023 in the Kenya Gazette Vol. CXXV 240 notified the public that Draft Valuation Roll, 2017 had been laid before the County Assembly and invited aggrieved persons to lodge objection, if at all ,on payment of a non-refundable fee of Kshs.500/-. That the said public notice was issued in spite of the judgement in Republic vs County Government of Kisumu Ex parte



John Michael Obure Obure [2022]eKLR wherein the court, inter alia, prohibited the Respondent from “commencing, instituting, undertaking, continuing or proceeding with all and any proceedings and process.” That the court impugned the process of preparation of the Draft Valuation Roll, 2017 for failing to adhere to the principles in articles 10, 174, 209 and 232 of the Constitution. That in utter contempt of court and disregard for the Constitution and other laws the Respondent has sneaked back the very draft.

4. That in that Draft Valuation Roll the Respondent has demonstrated whim and caprice in the amounts demanded as new rates from various property owners with a few property owners getting as much as 26 percent decrease in the rate demanded compared to previous years and a majority being slapped with unconscionable increase of rates payable to as much as over 300. That no explanation about the huge increase and inconsistency in the rates demanded has been offered to the public.
5. That due to lack of meaningful, quantitative and qualitative public participation, the Respondent has failed to demonstrate compliance and consistency with the approved Fiscal Framework and the County Allocation of Revenue Act, in violation of section 132 (3) of the Public Finance Management Act 2012. That as a result of the unconstitutional and unlawful actions and omissions of the Respondent, the public including the Petitioner herein have been slapped with demand notices for rates under the Draft Valuation Roll 2017 and are therefore prejudiced presently and fear that the prejudice will be worse in the future if the Respondent is allowed to continue in entrenching the culture of impunity and lack of accountability.
6. That the court in ELCLPJR/E002/2023 John Obure Obure vs County Government of Kisumu issued an order suspending Gazette Notice No. 15453 published on 10th November 2023 in Kenya Gazette Vol. CXXV No 240 and that for equality and fairness in the application of the law it is just and fit that the suspension applies to all the property owners and rate payers in Kisumu County.
7. The application was opposed by the Respondent vide the grounds contained in the Notice of preliminary Objection dated 1st March 2024. The objection is that the petitioner, being a society within the meaning of section 2 of the Societies’ Act Cap 108 Laws of Kenya, is not a body corporate capable of suing or being sued in its name hence cannot in law maintain this petition which is incompetent and therefore fit for striking out. That the matters framed as constitutional issues are not the only cause that can give the applicants the relief sought hence not yet ripe for determination by way of a Constitutional Petition by dint of the doctrines of ripeness and constitutional avoidance as there exists avenues such as judicial review or ordinary suit. That the main issue being rates and valuation by which resolution of the same can be effectively achieved hence the petition is an abuse of the court process in the circumstances of this case.
7. When the matter first came before court for inter partes hearing on 4th March 2024 parties sought for and the court granted time for amicable settlement. Later parties indicated to court that they were unable to reach amicable settlement and the court gave directions, inter alia, that both the application and the preliminary objection be canvassed together by way of written submissions.
8. It was submitted on behalf of the petitioner/applicant vide the written submissions filed by Joshua Odhiambo Nyamori & Associates Advocates on behalf of the petitioner that under ordinary circumstances an association registered under the Societies Act cannot maintain an ordinary civil suit because it is not a body corporate capable of suing and being sued in its own name. But that this does not apply to petitions brought as constitutional petitions under the Constitution of Kenya 2010 which allows associations and other bodies whether incorporated or unincorporated to sue for enforcement of rights and/or access to the honourable court.



9. Counsel referred to the provisions of articles 22 and 258 and the definition of ‘a person’ under article 260 of the Constitution of Kenya 2010 and the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Procedure Rules 2013 (Mutunga Rules) that “a person includes associations or any other body of persons whether incorporated or unincorporated.”
10. Counsel further submitted that existing decisions from the High Court that unincorporated bodies like the applicant cannot maintain constitutional petitions in their own names are not binding on this court hence the court can depart from them.
11. Counsel relied, among others, on the case of Kenya Council of Employment and Migration Agencies vs Francis Mwangi Njoroge & 10 others (Constitutional Petition No. 11 of 2016) (2017) eKLR where the court held partly that the Constitution of Kenya 2010 under articles 22 and 258 came in to enable persons and organizations to come out and pursue issues of infringement of the Constitution and Fundamental Freedoms under the Bill of Rights without fetter. That although a society is not a legal person that can sue or be sued in its name in civil proceedings, the broader meaning of ‘person’ under article 260 and the locus standi under articles 22 and 258 of the Constitution enables such an organization to sue on behalf of the interest of the Kenyan people.
12. Counsel submitted further that the petition herein is related to the violation or threat to violation of rights related to the use and occupation of and title to land and is brought in national interest. That from the list of members attached to the Supporting Affidavit it is possible to track members and to lay liability on costs or any other consequential order of the court.
13. On the Notice of Motion application, Counsel submitted that the matters of fact and grounds supporting the application were not responded to by the Respondent and have been by implication admitted by the Respondent.
14. Counsel relied on decided cases to support its prayer for conservatory orders among them the case of Njuguna S. Ndungu vs Ethics and Anti-Corruption Commission & 3 others {2015} eKLR. Counsel also relied on the case of Obuya Bagaka vs Kenya School of Government where it was held that there is more to consider beyond the criteria in Giella vs Cassman Brown when considering an application for conservatory orders- that considerations such as public interest should be borne in mind by the court when considering whether to grant conservatory orders.
15. That in the present case there are prospects of irreparable harm occurring to members of the petitioner during the pendency of the petition unless the order sought is granted because they will be compelled to pay the unlawful rates arrived at through an unconstitutional process. That the petition has high chances of success.
16. On behalf of the Respondent written submissions dated 23rd September 2024 were filed by the Office of the County Attorney, Kisumu County. The Respondent framed the following as issues for determination
 - a. Whether or not the petition herein is competent for having been originated by a society registered under the Societies Act Cap 108 Laws of Kenya in its own name.
 - b. Whether the petitioners case meet the constitutional threshold for grant of the interlocutory orders sort.
 - c. What orders ought to be granted at this interlocutory stage.
17. Counsel relied on the definition of preliminary objection in the case of Mukisa Biscuits Mmanufacturing Company Limited -vs- West End Distributors (1969) EA 696 and the case of



Aviation & Allied Workers' Union of Kenya vs Kenya Airways Limited & 3 others [2015]eKLR. Counsel submitted that it is not in dispute that the petitioner is a society registered under the provisions of the Societies' Act Cap 108 Laws of Kenya. That although the applicant invoked the provisions of articles 3 as read with article 22 and 258 of the Constitutions as the basis for the legal standing to institute the petition, a society registered under the Societies' Act is an un-incorporated body that lacks capacity to sue or be sued in its own name or otherwise originate judicial proceedings.

18. Counsel relied on the cases of Trustees Kenya Redeemed Church and another -vs- Samuel M'obiya & 5 others (2021) eKLR, Free Pentecostal Fellowship in Kenya -vs- Kenya Commercial Bank Nairobi HCC No 4116 of 1992 and African Orthodox church of Kenya vs Reverend Charles Omuroka and another (2014))eKLR to support the submission. Counsel further relied on Kisumu Bar Owners Association vs Cabinet Secretary Ministry of Interior & Coordination of National Government & 2 others. (Constitutional Pet E002 of 2024) (2024) KEHC 6003(KLR) 27 May 2024 where the court concluded that the petitioner being a society did not have capacity to originate litigation in its own name and can only do so in the names of its officials and entire membership.
19. I have considered the application, the notice of Preliminary Objection and the submissions made. In light of the decided and existing litigation in respect of the subject matter of the petition namely the draft valuation roll 2017, there is no doubt that the petition and the application raise weighty matters concerning the raising of revenue by the Respondent vis a vis the right of the members of the petitioner to fair taxation, public participation and related constitutional rights. It is not in dispute that the petitioner/applicant is a society registered under the Societies' Act Cap 108 Laws of Kenya. There is no doubt that Societies have a right to commence litigation, however the manner of originating such litigation or approaching the court is important namely; that such society can only originate litigation in the names of its officials or the entire membership as such society is an unincorporated body hence not a legal person. In Kisumu Bar Owners Association case (supra), relied on by the Respondent, the court posed the question whether a society being 'a person' under article 260 of the Constitution is capacitated to sue. The court noted that the question was not whether the association can sue or be sued but how it should approach the court since it is also a person under article 260 of the Constitution. That this is an issue that courts have settled through judicial constitutional interpretation. That only a person recognized in law can sue or be sued on behalf of the members of the association or a group and that such person will then demonstrate that they have consent of the members to bring the action on their behalf.
20. In the present case, the petition and the application are commenced in the name of Lake Region Traders' Association. Counsel for the petitioner referred the court to a letter of authority and list of members of the association attached to the Supporting Affidavit. Perusal of these documents reveals that the letter of authority is signed by a person described as secretary to the petitioner. The letter gives authority to the legal officer of the petitioner to swear the Supporting Affidavit and to sign the application. Assuming that the said Secretary to the petitioner had powers to give such authority to the legal officer, the authority given did not include authority to sue on behalf of the members of the petitioner. Hence the petition was filed in the name of the association. Further the list of people attached to the Supporting Affidavit is not signed by the people listed therein or at all.
21. Guided by the decided cases on the issue and the law, I find that the petition is incompetent and incurably defective.
22. In the premises, I find that the preliminary objection has merit and hereby uphold it. The result is that both the application dated 13th February 2024 and the petition of even date are hereby struck out. No orders as to costs.



Orders accordingly.

**RULING READ AND SIGNED AT KISUMU AND DELIVERED THIS 6TH FEBRUARY, 2025
VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Joshua Nyamori for the Petitioner/Applicant.

No appearance for the Respondent.

