



**Wanjohi & another v County Government of Uasin Gishu (Environment & Land
Petition E006 of 2022) [2025] KEELC 5076 (KLR) (7 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5076 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ENVIRONMENT & LAND PETITION E006 OF 2022

EM WASHE, J

JULY 7, 2025

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES
19.20,21(1),22,23,165(3)(B)(D)(I)(II) AND (E) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF INTERPRETATION OF THE
CONSTITUTION UNDER ARTICLES 2(1),(2),**

(4),10,24,28,29,40,42,43,47,50 & 70

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION AC, 2015

AND

IN THE MATTER OF UASIN GISHU COUNTY TRADE AND MARKETS ACT, 2022

AND

IN THE MATTER OF UASIN GISHU INSPECTORATE SERVICE ACT, 2022

AND

**IN THE MATTER OF THE DECISION/DECLARATION/ANNOUNCEMENT TO
CLOSE AND/OR OTHERWISE RENDER INACCESSIBLE ELDORET CHAMPOINS
MARKET AND SIXTY FOUR MARKET MADE ON 18TH NOVEMBER 2022**

AND

**IN THE MATTER OF THE UNPROCEDURAL/ILLEGAL RELOCATION
OF 6000 MARKET TRADERS TO KAHOYA AND KIMUMU MARKETS**

BETWEEN

PETER KIMANI WANJOHI 1ST PETITIONER

ELDORET MARKETS TRADERS ASSOCIATION 2ND PETITIONER



AND

COUNTY GOVERNMENT OF UASIN GISHU RESPONDENT

JUDGMENT

1. The 1st and 2nd Petitioners (hereinafter referred to as “the Petitioners”) filed the Petition dated 26.12.2022 (hereinafter referred to as “the present Petition”) against the Respondent seeking for the following Orders;-
 - a. A declaration that the decision to close Champions Market and Sixty-Four Market as communicated by the Deputy Governor at the press briefing held on 18th November, 2022 outside the county offices at 10.14am or thereabouts, and as affirmed in a public address in Eldoret Town on the same date, at 10.48am or thereabouts, is unconstitutional, null and void and of no effect whatsoever.
 - b. A declaration that the decision to close the two markets aforesaid and failure to re-open them within the defined period of time ostensibly as a response to the security situation was irrational and excessive and disproportionate under the circumstances.
 - c. A declaration that the decision to relocate the traders including members of the 2nd Petitioner to Kahoya and Kimumu Markets, or to any other markets other than Champions and Sixty-Four communicated and affirmed as above is unconstitutional, null and void and of no legal effect whatsoever.
 - d. A declaration that the relocation of traders the relocation of traders including members of the 2nd Petitioner from Champions and Sixty-Four Markets to alternative markets without conducting an environmental impact assessment of the implications of such decision was contrary to the Sections 58 and 59 of the Environmental Management and Coordination Act, and as such constituted a violation thereof, or a threat to, the right to a clean and healthy environment.
 - e. A Judicial Review Order of Certiorari calling up the said decisions (closing the two markets and relocating traders to other markets) into this Honourable Court for purposes of their being quashed.
 - f. An order of mandatory injunction compelling the Respondent to restore the traders including 2nd Petitioner’s members into the two markets and/or otherwise compelling the Respondent herein to reopen, and allow access to, and use of, the Eldoret Champions Market and Sixty-Four Market located in Eldoret Town, by traders including members of the 2nd Petitioner herein.
 - g. An order that members of the 2nd Petitioner are entitled to such compensation as may be assessed by this court.
 - h. Such other or further relief as the court may deem fit and just to grant.
 - i. Costs of the Petition.
2. The facts pleaded by the Petitioners in support of the prayers above can be summarised as follows; -



- i. That the Petitioners herein were allocated and/or assigned various stalls and/or open spaces to undertake their businesses and regularly pay for their licences and other charges that were levied by the Respondent from time to time.
- ii. That on 17th November 2022, the Respondent's Enforcement Officers unannounced and in the company of civilian gangs descended on Eldoret Champions market with an intention of arresting all the hand cart fruit vendors commonly known as "Bang Bang" from the premises of Eldoret Champions Market for non-payment of county fees and other levies.
- iii. On the material day, the Hand Cart fruit vendors resisted the efforts of the Respondent's Enforcement Officers from forcefully evicting them and in the process the hand cart fruit vendors over powered the Respondent's Enforcement Officers who then retreated from the Eldoret Champions Market.
- iv. The Respondent's Enforcement Officers then regrouped and returned to the Champions Market with the assistance of Police Officers from Eldoret Police station and managed to contain the violence and arrest the people who were resisting the efforts of the Respondent's Enforcement Officers.
- v. Thereafter, the lawful occupants of Champions market who had been assigned stalls and spaces continued with their operations for the rest of the day.
- vi. On the morning of 18th November, 2022, the Respondent's Enforcement Officers in the company of unidentified people returned to Eldoret Champions market in the wee hours of the night and intercepted the lorries and trucks that were offloading agricultural produce ordered by the 2nd Petitioners members and towed them to an unknown destination.
- vii. Similarly, the Respondent's Enforcement Officers blocked and/or closed all the entries to the Eldoret champions market in the early hours of 18th November 2022 hence denying access and/or entry to anyone including members of the 2nd Petitioner who were entitled to entry, use and occupation of the same.
- viii. On the morning of 18th November 2022, the Deputy Governor of the Respondent held a press briefing and communicated that Eldoret Champions market also known as Eldoret wholesale market would be closed for a period of 7 days to enable a sanitation exercise after a meeting involving the County Executives, the County Commissioner and Deputy County Commander had ratified the said action.
- ix. However, until the filing of the petition on 28th December 2022, the sanitation exercise within Eldoret Champions Market as disclosed by the Deputy Governor had not commenced and/or concluded.
- x. Upon the Petitioners being evicted from the Eldoret Champions Market, the Respondent directed them to Kahoya market and Kimumu market which in the Petitioners' considered view were far away from their customers.
- xi. Similarly, the two alternative markets (that is Kahoya Market and Kimumu Market) could hold only 800 people in total as opposed to the 5000 people accommodated at the Eldoret Champions Market.
- xii. As a result of the congestion in these two alternative markets, namely Kahoya and Kimumu Markets, there was no adequate sanitation or health amenities that could be used by both the traders and the customers.



- xiii. Similarly, the roads leading to both the alternative markets, namely Kahoya Market and Kimumu Market became impassable during the rainy season and would cause heavy traffic jams involving matatus, busses and trucks that either supplied goods to the market or were on transit to other towns.
- xiv. Despite all these challenges in the two alternative markets namely Kahoya and Kimumu markets, the Respondent has failed, refused and/or neglected to either open Eldoret Champions Market or improve and expand the alternative markets namely Kahoya and Kimumu markets.
3. Based on the above facts, the Petitioners herein have pleaded the infringement of the following rights under *the constitution*; -
- a. The Petitioners have alleged that the Respondent infringed their rights of Public Participation as provided under Article 10(2)(a) of *the Constitution* by deciding to close Eldoret Champions Market without participation of the traders who had been legally and lawful allocated stalls and spaces.
 - b. The Petitioners alleged that the Respondent did not apply the rules of Fair Administrative Action as provided at Article 47 of *the Constitution* keeping in mind that its decision of 18th November 2022 to close Eldoret Champions Market would adversely affect their lawful and legitimate rights as licensed stall and open spaces owners.
 - c. The Petitioners further pleaded that their right to legitimate expectation to do peaceful business within Eldoret Champions Market was breached by the unilateral closure of the market for a 7-day sanitation exercise but the market has never been opened to date.
 - d. The Petitioners state that the Respondent acted irrationally, unreasonably and in bad faith by denying lawful and legitimate traders from returning to their rightful places within Eldoret Champions Market and continue doing peaceful business after the purported sanitation period of 7 days from 22nd November, 2022.
 - e. The Petitioners were of the considered view that the action undertaken by the Respondent was punitive and in bad faith as the people who engaged the Respondent's Enforcement Officers were the hand cart fruit vendors known as Bang bang but the decision to close the market was visited upon the lawful and legitimate traders.
 - f. The Petitioners further pleaded that the Respondent's Enforcement Officers interfered with their right to property as provided at Article 40(1) of *the Constitution* by obstructing the lorries and trucks which had come with farm produce on the night of 18th November, 2022 and unlawfully impounding of the said lorries and trucks which ended up making it impossible for lawful traders to offload their property and therefore incurring immense losses.
 - g. Lastly, the Petitioners pleaded that the directive by the Respondent that the lawful and legitimate traders of Eldoret Champions Market do operate from the two alternative markets namely Kahoya market and Kimumu Market resulted in having congested, dirty and unhygienic spaces contrary to Article 42 of *the Constitution* which guarantees a clean and healthy environment.
4. The Petition was duly served on the Respondent who opposed the same by filing a Replying Affidavit dated 6th October, 2023 and whose facts are summarised as follows; -



- i. The Respondent expressly denied the facts as pleaded by the Petitioners and termed the petition misguided, bad in law, brought in bad faith and an abuse of the Court process hence should be dismissed forthwith.
- ii. The Respondent acknowledged that the Petitioners were given a right to operate within Eldoret Central Business District and in particular Eldoret champions market and 64 market.
- iii. According to the Respondent, the Petitioners right to operate in either Eldoret Champions Market or 64 market was of a temporary nature for a period of 3 years from the year 2019 which period has since lapsed.
- iv. Despite the period of 3 years granted in the Letters of Allotment issued in the year 2019 having lapsed, the Petitioners continued to invade and occupy the highway streets and other undesignated stations within the Central Business District and therefore made movement within Eldoret town impossible to navigate.
- v. The Respondent insisted that no permits have been issued to the Petitioners or any traders to carry out business in the areas known as Eldoret Champions Market and 64 market as these were undesignated areas for business and carrying out any trade therein was illegal.
- vi. The Respondent denied that their Enforcement Officers are the ones who caused the mayhem or skirmishes that occurred in the afternoon of 17th November 2022 and in their considered view, it was the Petitioners and the other traders who instigated these actions.
- vii. The Respondent then referred to 2 notices dated 2nd September, 2022 and 14th October, 2022 which were issued to the petitioners barring any further trading and/or hawking in the undesignated areas until renewal of the tenancy if any.
- viii. According to the Respondent, the area known as Champions Market had a capacity of 998 stalls and spaces while the area known as 64 market had a capacity of 311 stalls and spaces, hence any other person over and above this recognised capacities was occupying the space unlawfully and illegally thereby straining the facilities like latrines, water drainage and other utilities contrary to the law.
- ix. In recognition of the excessive occupation by traders, a Statutory Notice was issued on 4th November, 2022 under section 118 of the Public Health Act CAP 242 by the Department of Health to the Department of Trade and Industrialisation directing the improvement of the facilities in champions market within 14 days from the date of the notice.
- x. The Department of Trade and Industrialisation were unable to implement the notice issued on 4th November 2022 by the Department of Health because the Petitioners and the other traders denied access into the market to facilitate the improvement of the public amenities.
- xi. Due to the non-compliance by the Department of ICT Trade & Industrialisation, officers from the Public Health Department filed a complaint under section 119 of the Public Health Act at the Eldoret Magistrate's Court which resulted to the Summoning of the officials from the Department of ICT, Trade and Industrialisation to explain why it had not complied with the notice issued under section 118 of the Public Health Act dated 4th November, 2022.
- xii. The Respondent raised concerns that the Eldoret Champions Market and the 64 market were in deplorable state and unsafe for human occupation due to rodent infestation, existence of illegal temporary timber stalls, inadequate access routes, missing gutter pipes, missing water pipes and sinks, broken latrines, insecurity among other challenges.



- xiii. In an effort to resolve all these issues, the President of the Republic of Kenya directed that both the Eldoret Champions Market and the 64 market be upgraded to ultra-modern multiple storey buildings to accommodate all the traders and provide a conducive environment for their businesses.
- xiv. As at the date of swearing the Replying Affidavit, the Respondent indicated that both Eldoret Champions Market and the 64 market were yet to undergo the reconstruction although the process commenced under the National Government.
- xv. However, pursuant to the Eldoret Criminal Case no. 1019 of 2022, the Health Department obtained an Order of Closure by virtue of non-compliance of Section 118 of the Public Health Act which was issued pursuant to Section 122 of the Public Health Act.
- xvi. The Respondent disclosed to Court that the construction and improvement of both the Eldoret Champions Market and 64 market is in the National Government agenda as well as the 3rd Generation Uasin Gishu County CIPD.
- xvii. The Respondent disclosed that the architectural designs for Eldoret Champions Market and 64 market were presented for stakeholders' comments o 25th August, 2023 which included a site visit to the market.
- xviii. The Respondent similarly has commenced the supporting infrastructure to the upcoming improved and upgraded markets by providing and installing wide culverts, building a 60-meter retaining wall and improving the drainage systems and lastly, gravelling the 200-meter roads.
- xix. In response to the Petitioners allegation that they were denied an opportunity to collect their goods, the Respondent stated that all traders in both Eldoret Champions Market and 64 market were allowed to collect their goods on verification of the genuine owners based on their receipts.
- xx. The Respondent denied the allegation that there were over 1000 registered traders as of 2nd September 2022 and insisted that in their records only 180 traders had renewed their licences as of the said date.
- xxi. The Respondent confirmed that all the genuine and recognised traders were relocated to Kahoya Market, West market, Langas Market and Kimumu Market after the closure of Eldoret Champions Market and 64 market as the alternative trading centres and they continued with their trade without disturbance.
- xxii. If the alternative trading areas are congested as alleged by the Petitioners, then such a congestion has been occasioned by unlicensed traders.
- xxiii. Be that as it may, the upgraded and improved Eldoret Champions Market and 64 market will accommodate approximately 10,000 traders after its completion in 2 years and enable Eldoret to be a 24-hour economy.
- xxiv. In reply to the Petitioners' allegation that the Eldoret Champions Market was closed without notice, the Respondent denied the allegation and relied on the notice dated 4th November, 2022 issued by the Health Department and the orders of the Chief Magistrate's court directing the closure of the markets, which Orders were beyond the scope of the Respondent.



- xxv. The Respondent stated that the Notice dated 4th November 2022 and the Court Order of 24th November 2022 did not give an option to the Respondent to undertake public participation before implementation of the Orders.
- xxvi. In essence therefore, the Respondents denied any infringement of the Petitioners' rights and reiterated that all legitimate paid up traders were assigned to other markets and are continuing with their business.
- xxvii. As regards the issue of the environmental and social impacts, the Respondent stated that the designs of the new upgraded markets are open to public participation and any allegation that Eldoret Champions Market and 64 markets do not provide adequate facilities is premature.
- xxviii. According to the Respondent, the closure of Eldoret Champions Market and 64 Markets is for the bigger and wider interest which clearly outweighs the narrow private interests of the Petitioners in having the two markets reopened in deplorable conditions rather than wait for the new upgraded market.
- xxix. Nevertheless, the Respondent categorically stated that the Petitioners are illegal and unlicensed traders whose occupation both at Eldoret Champion Market and/or 64 market was unlawful and they cannot claim that their constitutional rights have been violated.
- xxx. In conclusion, the present petition does not disclose the infringement of any Constitutional Rights due to the Petitioners and should be dismissed with costs.
5. The Replying Affidavit by the Respondent was duly served on the Petitioners who filed a Further Affidavit sworn on 11th January 2023 that stated as follows; -
- i. The Petitioners averred that the Replying Affidavit was largely full of misleading facts aimed at stealing a march from the Petitioners by manufacturing evidence to escape liability.
 - ii. According to the Petitioners, the reason that Eldoret Champions Market and 64 Market were closed on 18th November 2022 was because of preventing the Hand Cart fruit vendors from engaging in violent acts.
 - iii. The Petitioners stated that the issue of the Public Health Notice is a manufacturing of evidence as both the Health department and the ICT, Trade and Industrialisation Department were departments in the Respondent hence easy and convenient to obtain documents to justify their illegal acts.
 - iv. The Petitioners stated that even if there was an Order for removal of the nuisance caused by the Hand Cart fruit vendors known as bang bang, such a notice did not state that the markets should be closed.
 - v. The Petitioners were of the view that there is no explanation why the notice of 4th November, 2024 issued by the Health department was not implemented until 2 weeks later.
 - vi. The Petitioners specifically denied that there was such a Notice dated 4th November 2022 from the Department of Health that was posted on any Notice Boards within the markets for closure.
 - vii. The Petitioners informed the Court that in the year 2018, the Respondent had closed the two markets for extensive renovations and thereafter allowed the traders to re-enter and continue doing business.



- viii. In other words, the Petitioners viewed the allegation that the same markets are again being renovated and upgraded to be a complete lie.
 - ix. As regards the Court Order issued on 22nd November 2022, the Petitioners were of the considered view that the criminal charges were merely to cover up the illegal closure of both the Eldoret Champions Market and 64 market which affected many traders that are not party to these proceedings.
 - x. The Petitioners averred that so far, the County Assembly of Uasin Gishu has not allocated any funds for appropriation to enable the renovation and upgrading of the two markets as alleged.
 - xi. The Petitioners insisted that the traders within Eldoret Champions Market and 64 Market had a very well organised leadership which provided security through 24-hour CCTV surveillance in and around the markets, and in any event the County headquarters are a stone throw way thereby making the allegation of insecurity unsustainable.
 - xii. The Petitioners challenged the number of licensed traders within Eldoret Champions Market and 64 Market by stating that there were more people licensed to operate within these two markets based on the stalls as there were many open spaces within which the traders operated in and the allegation that all the lawful and legitimate traders were given stall and spaces in the other markets is not true because most of the other markets deal with clothes and not farm produce.
 - xiii. In conclusion, the Petitioners reiterated that the closure of Eldoret Champions Market and 64 Markets was unplanned and irrational and also contrary to law.
6. The Petitioners with leave of Court granted on 2nd July, 2025 filed their submissions dated 27th June 2025 while the Respondent filed their submissions dated 11th June, 2025.
7. The Court has carefully gone through the Petition, the Replying Affidavit, the Further Affidavit and both submissions by the parties and identifies the following issues for determination;-
- Issue No. 1- Whether or not the petitioners have raised consittutional issues in the present petition?
 - Issue No.2- What are the constitutional issues raised in the present petition?
 - Issue No. 3-What are the merits and or demerits of the constitutional issues rised in this petition?
 - Issue No. 4- Are the prayers sought in the present petition merited?
 - Issue No. 5-Who bears the cost of this petition?
8. The Court having identified the above issues for determination, the same will now be discussed as herein below.

Issue No. 1 - Whether or Not the Petitioners Have Raised Consittutional Issues In The Present Petition?

- 9. The first issue for determination is to establish whether or not the present Petition identifies with clarity and certainty any breach or infringement of the Petitioners constitutional rights under *the constitution*.
- 10. On the face of the present Petition, the Petitioners have alleged an infringement of their Constitutional rights based on Article 10(2)(a) which relates to Public Participation, infringement of Article 47 on



Fair Administrative Action, Article 40(1) of *the Constitution* touching on the right to property, Article 42 of *the Constitution* dealing with the right to a clean and healthy environment as read with Section 2 of the Uasin Gishu County Trade and Markets *Act No. 6 of 2022*.

11. The Respondents on the other hand have pleaded in their response and submitted that the present petition does not raise any constitutional issues.
12. To resolve this matter, the Court is of the considered view and finding that based on the provisions cited in the present petition regarding the various infringement are precise, concise and raise Constitutional issues for determination.

Issue No. 2 – What are the Constitutional Issues Raised In The Present Petition?

13. The second issue is the identification of the Constitutional infringements alleged by the Petitioners that require the Court's determination as to whether they are merited or not.
14. From the present Petition, the first Constitutional issue raised by the Petitioners is based on Article 10(2)(a) which provides for public participation.
15. The second issue raised in the present Petition is whether or not Article 47 of *the Constitution* which deals with Fair Administrative Action was infringed by the Respondent or not.
16. The third issue relates to the provisions of Article 40(1) of *the Constitution* which deals with the right to property and whether the Respondent infringed this right or not.
17. The fourth issue is whether or not the Petitioners right under Article 42 which provides for the right to clean and healthy environment was infringed or not.
18. The fifth issue is whether or not the Respondent's decision to close Eldoret Champions Market and 64 Market amounted to a breach of legitimate expectation based on Section 2 of the County Trade and Markets *Act No. 6 of 2022*.
19. The sixth and last issue is if the decision and actions of the Respondent were irrational, unreasonable hence mad in bad faith to the detriment of the Petitioners.

Issue No. 3 – What are the Merits and or Demerits of the Constitutional Issues Raised In This Petition?

20. Based on the Constitutional Issues identified above, the Court will now proceed to discuss the merits and demerits of the same under this heading.
21. The first Constitutional Issue for evaluation is that which deals with Article 10(2)(a), regarding public participation.
22. The Petitioners foundation in this Constitutional Issue is that they were legitimate and recognised tenants of the two markets namely Eldoret Champions market and 64 Market based on the permits and the Letters of Allocation from the department of ICT, Trade and Industrialisation within the Respondent.
23. The Petitioners attached copies of the Letters of Allocation by the Department of ICT, Trade and Industrialisation as well as the annual permit receipts from page 44 - page 99 of the Petition.
24. The Respondents in their Replying affidavit admitted that the Department of ICT, Trade and Industrialisation had given Letters of Allotment to various individuals in the year 2019 for a period of three years renewable.



25. The Respondent further pleaded that as at 17th November, 2022 the Letters of Allotment issued in the year 2019 had since lapsed and no new Letters of Allocation had been issued to the Petitioners.
26. However, looking at the annexures contained in the Petition and in particular page 46, 47, 55, 56, 57, 59, 60, 61, 64, 65, 69, 70 and 71 the same contains various Letters of Allocation issued by the Department of ICT, Trade and Industrialisation to various members of the 2nd Petitioner's members for a period of 3 years from 1st September, 2022.
27. To reinstate the above position, there is a notice done on 2nd September 2022 by the Department of ICT, Trade and Industrialisation contained at page 12 of the Replying Affidavit which specifically stated that the traders holding letter issued in 2019 had been again reallocated the said stalls for a further three years from 2022 and they were required to collect new Letters of Allotments from the Respondent's offices at KVDA Plaza.
28. Clearly therefore, based on some of these letters and the Notice issued by the Respondent on 2nd September 2022 contained in the Replying Affidavit, the members belonging to the 2nd Petitioner had lawful and legitimate right to occupy the stalls and open spaces within Eldoret Champions Market and 64 Market from 1st September, 2022 for a period of 3 years thereafter.
29. The Court having found that indeed there was existence of a legal relationship between members of the 2nd petitioners and the Respondent, the question to be answered then is whether the provisions of Article 10(2)(a) of the Constitution were infringed by the decision made on 17th November, 2022 by the Respondent.
30. For avoidance of doubt, Article 10(2)(a) reads as follows: -
 - “2. The national values and principles of governance include-
 - (a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.”
31. According to the Petitioners, the Respondents on the 17th November 2022 and 18th November 2022 abruptly, without notice and participation of the Petitioners closed down the two markets namely Eldoret Champions Market and 64 market.
32. It is critical to identify the origin of the dispute in this petition.
33. From the pleadings by the Petitioners and the Respondent, the dispute arose on the afternoon of 17th November 2022 by the unilateral closure and impounding of the lorries and trucks that had delivered goods to the petitioners.
34. Further, in the morning hours of 18th November, 2022 the Deputy Governor in a press conference declared the two markets closed.
35. The Petitioners allegation is that the Respondent failed to accord them an opportunity to participate in the conversation to close the two markets and thereby infringed their Constitutional to Public Participation.
36. The Respondent has not denied the fact that the two markets were closed on the night of 17th November 2022 and thereafter a formal communication done through the press conference by the Deputy Governor on 18th November 2022.



37. It is crucial to point out that members of the 2nd Petitioner were in a legal relationship with the Respondent based on the Letters of Allocation dated 1st September, 2022 for a period of 3 years.
38. It is therefore the Court's view that the Respondent was under a duty in law to communicate their intention of any closure or taking back possession of the stalls and open spaces within Eldoret Champions Market and 64 Market before such a decision would be arrived at.
39. The essence of public participation as provided in the Constitution is to create and give an opportunity to the party who is going to be adversely affected to understand the reason why their rights are being terminated or altered to their disadvantage.
40. Looking at the conduct of the Respondent to unilaterally close the two markets on the night of 17th November, 2022 and 18th November, 2022 without inviting the legitimate members of the 2nd Petitioner who were in those establishments and giving them an opportunity to give their comments, suggestions and solutions before their rights were terminated or altered adversely was contrary to the provisions of the Constitution as pleaded by the Petitioners.
41. The Respondent raised an issue that the Department of Health within the Respondent wrote a Notice dated 4th November 2024 raising health issues in Eldoret Champions market and 64 Market.
42. The Respondent further submitted that based on this Notice dated 4th November 2022 from the Department of Health and Court Order issued on 24th November 2022 in the proceedings known as CRIMINAL CASE NO. 1019 OF 2022 directed the closure of the two markets immediately and therefore Public Participation would not have been possibly with the Petitioners.
43. The Court has taken time and looked at the Notice dated 4th November 2022 and it confirms that the Notice given to the Department of ICT, Trade and Industrialisation pointed out various health issues that required to be rectified and/or improved within 14 days from the date of the Notice.
44. What is critical about this period of 14 days' period provided in the Notice dated 4th November 2022 by the Department of Health is that the Department of ICT, Trade and industrialisation were required to carry out improvements and/or remedy the issues raised in the said Notice.
45. If the Department ICT, Trade and Industrialisation were not able to comply with the demands in the Notice dated 4th November 2022, then there was sufficient time within the 14 DAYS provided in the notice to inform the traders and/or members of the 2nd Petitioner about the challenges raised by the Department of Health and get their comments, proposals and/or suggestions before arriving at a determination to close the said markets.
46. In essence, this Court does not agree with the Respondent's submission that there was no sufficient time to undertake public participation with the legitimate stall owners in the two markets and discuss the challenges outlined in the letter of 4th November, 2022 before their rights were terminated or altered adversely.
47. As to the issue of the document attached on page 17 of the Replying Affidavit relating to the Eldoret Criminal Case No. 1019 of 2022, it shows that a Complaint was filed before the Chief Magistrates Court Eldoret by the Department of Health against the Officials of the Department of ICT, Trade & Industrialisation due to none compliance with the Notice dated 4th November 2022.
48. On the same 24th of November 2022, one Abraham Mengich appeared before the Court on behalf of the Department of ICT, Trade and Industrialisation to answer charges of failing to Comply with the



- Notice issued on 4th November 2022 and was released on a personal bond of Kenya Shillings (KShs. 50,000/).
49. However, there was no Court Order of 24th November 2022 in the proceedings known as Eldoret Criminal Case No. 1019 of 2022 that directed the Department of ICT, Trade and Industrialisation to close down the two markets known as Eldoret Champions Market and 64 Markets.
 50. In conclusion, both the Notice dated 4th November, 2022 issued by the Department of Health and the proceedings undertaken on the 24th November 2022 in the proceedings known as Eldoret Criminal Case NO. 1019 OF 2022 cannot justify the failure and omission of the Respondent to undertake public participation before closing the two markets known as Eldoret Champions Market and 64 market.
 51. The second Constitutional issue for determination was whether the decision by the Respondent to close the two markets namely Eldoret Champions Market and 64 Market contravened the provisions of the Article 47 of *the Constitution* as read with *Fair Administrative Action Act*, 2015.
 52. It is important to start this issue by recognising the provisions of Section 5 of the Fair Administrative Actions Act, 2015 which imposes a duty on public entities to undertake certain actions before it can make a decision that affects legal rights or interests of the general public or groups of persons.
 53. Section 5(1)(a)(b)(c) and (d) of the Fair Administrative Actions Act expressly requires that an Administrator of any public body must to issue a public notice of the administrative action that it wishes to take and inviting public views regarding the same.
 54. Similarly, the Administrator is required to consider the views of the public or groups of persons to be affected and the material facts that touch on that administrative action.
 55. Most importantly, the administrator must upon making his decision, give reasons for the decision taken, issue a public notice specifying the internal mechanisms which the affected people can apply for appeal and the manner in which the appeal will be handled within a specific period from the time it was lodged.
 56. Section 5 of the Fair Administrative Actions Act enforces the provisions of Article 47 of *the Constitution* which protects the public from unfair administrative actions by public bodies through the provisions of Article 47(1),(2),(3)(a)(b).
 57. There is no doubt that the Respondent is a public entity that is guided by the provisions of Article 47 as read with Section 5 of the Fair Administrative Actions Act, 2015.
 58. The Respondent in its Replying Affidavit have not demonstrated any compliance with Section 5 of the Fair Administrative Actions Act, 2015 prior to the decision to close the two markets namely Eldoret Champions Market or 64 Market was made on 17th November, 2022 and 18th November, 2022.
 59. It is even made worse by the fact that the Respondent referred to a decision by the County Security Team resolving to close the two markets namely Eldoret Champions Market and 64 Market but never attached the purported resolution if any to clarify the reason for the closure.
 60. This failure, omission and avoidance to place the purported Resolution of the County Security Committee if any before the Court clearly demonstrates that the Respondent failed to comply with Article 47 of *the Constitution* in exercise of their power as a public body and this court makes a finding that indeed the respondent infringed the Petitioners' rights under Article 47.



61. The third Constitutional Issue for determination is whether there was infringement of the right provided under Article 40(1) of *the Constitution*.
62. According to the Petitioners, the actions of the Respondent on the night of 17th November, 2022 and 18th November, 2022 to close the 2 markets namely Eldoret Champions market and 64 market including the impounding of lorries and trucks that were delivering food stuff to legitimate owners of the stalls within the two markets denied them their right to property.
63. The Petitioners pleaded that the Respondent's actions resulted in massive losses through expired, damaged or even lost food commodities which were the properties of legitimate stall owners within the 2 markets.
64. The Petitioners further stated that the actions of the Respondent on the night of 17th November, 2022 and 18th November, 2022 contravened Section 23 of the Uasin Gishu County Inspectorate *Act, No. 2 of 2022* which makes it mandatory that any impounding of perishable goods must be accompanied with an inventory which identifies the product for destruction.
65. In other words, the Petitioners are of the considered view that the Respondent's action to unlawfully and illegally impound the perishable goods in the trucks and lorries on the night of 17th November, 2022 interfered with their right to property contrary to Article 40(1) of *the Constitution*.
66. The Respondent in their Replying Affidavit did not deny or comment on the allegation that the Petitioners goods were impounded on 17th November 2022.
67. The Petitioners in demonstrating that there was infringement of Article 40(1) of *the Constitution* had a duty under Section 107 of the *Evidence Act* to prove ownership of the goods which are alleged to have been destroyed or taken away by the Respondent on the night of 17th November, 2022.
68. Unfortunately, none of the Petitioners attached any form of document to show which goods and what amount of goods had been ordered by them and were to be delivered to Eldoret Champions Markets and 64 Market on the night of 17th November 2022 or 18th November 2022.
69. Alternatively, the Petitioners were under duty to give the specific motor vehicles registration numbers carrying their products on the night of 17th November, 2022 and 18th November 2022 and were either sent away or impounded by the Respondents Enforcement Officers on these two nights.
70. In the absence of the Petitioners demonstration to own any goods delivered on the night of 17th November 2022 and 18th November 2022, then this Court is unable to arrive at a decision that the Respondent infringed on the Petitioners' rights under Article 40(1), and this is the finding of the court.
71. The fourth Constitutional Issue relates to Article 42 of *the Constitution* which deals with the right to a clean and healthy environment.
72. The Petitioners pleaded in the Petition that upon closure of the two markets namely Eldoret Champions market and 64 Market, the over 800 traders were directed to alternative markets namely Kahoya and Kimumu markets to undertake their businesses.
73. The Petitioners stated that their reallocation to the alternative markets being Kahoya and Kimumu resulted in congestion and thereby putting pressure on the available facilities in the alternative markets.
74. The Petitioners further pleaded that while Eldoret Champions market and 64 market largely dealt with farm commodities, the alternative markets namely Kimumu and Kahoya dealt with second hand clothes and other household goods.



75. The Petitioners were of the considered view that the Respondent failed to make appropriate arrangements in terms of giving a clean and healthy environment for the traders from the two markets dealing with farm produce to occupy and use the alternative markets namely Kahoya and Kimumu.
76. Further to that, the Petitioners stated that the relocation of the traders from Eldoret Champions Market and 64 Market caused a lot of vehicular and human traffic that posed a risk to the general well being of all the traders.
77. The Respondent on the other hand denied the allegation that the alternative markets namely Kimumu and Kahoya failed to meet the standards provided under Article 42 of *the Constitution*.
78. The Respondent insisted that the traders who were in Eldoret champions market and 64 market were not 800 members but 180.
79. The Respondents further stated that the 180 legitimate traders within Eldoret Champion Market and 64 Market were allocated sufficient and clean stalls and open spaces within the alternative markets known as Kimumu and Kahoya.
80. The Respondent nevertheless averred that if the alternative markets known as Kahoya and Kimumu were crowded, it is because of unlicensed traders who had invaded the two markets.
81. Indeed, Article 42 of *the Constitution* which provides the right to a clean and healthy environment is a very crucial Article of our Constitution.
82. However, the Petitioners were under a duty as provided under section 107 of the *Evidence Act* to demonstrate and provide evidence of their occupation within the alternative markets known as Kahoya and Kimumu.
83. The Court's expectation was that the Petitioners would at least present a Health Report from a Public Health Expert to demonstrate the unhygienic and/or failure of the Respondent to provide the basic hygiene facilities within the two markets.
84. Unfortunately, the Petitioners failed to present any evidence, either by way of Photographs or a Health Report from a Public Health Expert to demonstrate and give insight to the court of the unhygienic conditions existed in these alternative markets known as Kahoya and Kimumu markets.
85. As such, the Court does not have any evidence to make a declaration that the Respondent infringed on the Petitioners rights under Article 42 by providing them alternative markets namely Kimumu and Kahoya that were not hygienic or did not have the necessary infrastructure to provide for a clean and healthy environment.
86. The fifth Constitutional issue is whether there was any legitimate expectation by the Petitioners which was infringed by the Respondent.
87. The Petitioners' legitimate expectation as pleaded in the Petition was that they were the legitimate and rightful owners of various stalls and open spaces within Eldoret Champions market and 64 market.
88. The Petitioners further legitimate expectation was to use the spaces and open spaces within Eldoret champions market and 64 market for a period of 3 years firstly from the year 2019 to 2022 and 2022 to 2025 based on the original Letters of Allotments issued in the year 2019 and renewed from 2nd September 2022.



89. The question then is, was this legitimate expectation still in existence as at 17th and 18th November, 2022 when the Respondent decided to close the two markets namely Eldoret Champions Market and 64 market.
90. Looking at the Public Notice dated 2nd September 2022 contained in Page 17 of the Replying Affidavit, it clear that the Respondent publicly offered and in fact renewed the Letters of Allotment issued in 2019 in the two markets namely Eldoret Champions Market and 64 Market including but not limited to the members of the 2nd Petitioner.
91. From various annexures in the Petition, there are quite a number of Letters of Allotment issued by the Respondent on or after the 2nd of September 2022.
92. It is therefore clear in the mind of the Court that indeed the Petitioners had a legitimate expectation to occupy and use various stalls and open spaces within the two markets known as Eldoret champions market and 64 market between 1st September, 2022 and 31st August, 2025.
93. The action by the Respondent to close the two markets namely Eldoret champions market and 64 Market on the 17th November 2022 and 18th November 2022 infringed on the Petitioners legitimate expectation based on the commitment by the Respondent to renew their rights as published in the notice of 2nd September, 2022 produced by the Respondents.
94. The last issue is whether the decision of the Respondent to close the two markets namely Eldoret Champions Market and 64 market made on 17th November, 2022 and 18th November, 2022 were laced with irrationality, unreasonableness and in bad faith.
95. The Petitioners pleaded that the decision to close the two markets namely Eldoret Champions Market and 64 Market on the 17th November 2022 and 18th November 2022 were not based on any valid reason, did not emanate from any actions of the Petitioners and was not to address issues that had been raised by the Petitioners.
96. The Petitioners pointed out that the skirmishes which occurred on the 17th November 2022 daytime involved the hand cart fruit vendors known as bang bang who were operating outside the market without licences.
97. The Petitioners further stated that the Respondent's Enforcement Officers in their operation to get rid of the hand cart fruit vendors on 17th November, 2022 succeeded by arresting them and taking away their hand carts to the police station.
98. In essence therefore, the activities of the Respondent's Enforcement Officers did not involve the legitimate stall owners within the Eldoret Champion Market and 64 Market to warrant a decision for their closure.
99. Further to that, the Petitioners stated that by the end of the day on 17th November 2022, the police had restored order and security within the two markets namely Eldoret Champions Market and 64 Market and business was ongoing as normal.
100. It is on this basis that the Petitioners strongly submitted that the decision to close the two markets namely Eldoret Champions Market and 64 Market was irrational, unreasonable and in bad faith.
101. The Respondents on the other hand responded by insisting that the decision to close the two markets namely Eldoret champion Market and 64 Market was premised on the letter from the department of health dated 4th November, 2022 and the Court Order of 24th November, 2022.



102. The Respondent was of the view that the closure of these two markets namely Eldoret Champion Market and 64 Market was complying of the demands from the Department of Health, the Court Order issued on 24th November 2022 as well as the Resolution of the County Security Committee.
103. As held earlier, the letter dated 4th November, 2022 from the Department of Health only called for improvement of various amenities which were not in compliance with the *Health Act*.
104. The letter of 4th November, 2022 from the Department of Health did not direct the Respondent to close the two markets namely Eldoret Champion Market and 64 Market.
105. It only made a demand to the Department of ICT, Trade and Industrialisation to improve the two markets in terms of their hygiene levels.
106. As regards the proceedings of 24th November, 2022 in the proceedings known as CRIMINAL CASE NO. 1019 OF 2022, the Court on this material day did not issue any orders for closure of the two markets namely Eldoret Champion Market or 64 Market save that one Abraham Mengich had been released on a free bond for failing to comply with the notice of 4th November, 2022.
107. Based on the above facts, this Court is convinced and makes a finding that the Respondent's decision to close the two markets namely Eldoret Champion Market and 64 Market on 17th and 18th November 2022 was unreasonable, irrational and in bad faith.

Issue No. 4 – Are the Prayers Sought in the Present Petition Merited?

108. Based on the findings as regards the first, second and fifth Constitutional Issues, the Plaintiff is entitled to Prayer No. A, B, C, E and F.
109. As to Prayer No. G on the petition, the Petitioners are seeking compensation as may be assessed by the Court.
110. However, the Petitioners did not table any evidence to demonstrate the nature and amount of loss that they seek for this court to compensate them.
111. As such the Court declines to make any orders for compensation to the Petitioners.

Issue No. 5 – Who Bears the Cost of this Petition?

112. As to costs, the Petitioners have succeeded in the petition and are entitled to costs from the respondent.

Conclusion

113. In conclusion therefore, the petition dated 26th December, 2024 is determined by the following orders:
 - a. A declaration be and is hereby made that the respondent's decision to close Eldoret Champions Market and 64 Market on the 17th of November, 2022 and 18th November, 2022 was in violation of articles 10(2)(a) & article 47 of *the constitution* and breached the legitimate expectation of the petitioners to occupy and use the stalls and open spaces within the said markets and therefore null and void.
 - b. A declaration be and is hereby made that the decision to relocate the members of the 2nd petitioner to the alternative markets known as kahoya and kimumu markets without complying with article 10(2)(a) and article 47 infringed their constitutional rights and is therefore null and void.



- c. An order of certiorari be and is hereby issued quashing the decision of the respondent made on 17th november, 2022 and 18th november, 2022 to close eldoret champions market and 64 market and to relocate the 2nd petitioners members to the alternative markets known as kimumu and kahoya markets for being in contravention of article 10(2)(a) & 47 of the constitution.
- d. An order of mandatory injunction be and is hereby issued compelling the respondent to restore the 2nd petitioners' members and the 1st petitioner to their legitimate stalls and open spaces within eldoret champions market and 64 market based on the allocation of 2019 and renewed through the public notice issued on the 2nd of september 2022 within 60 days from the date of this judgment or at the completion of the renovated & ungraded markets known as eldoret champions market & 64 market.
- e. The petitioners are granted costs of the petition payable by the respondent.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 7TH DAY OF JULY 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court assistant: Brian

Plaintiff: Mr. Oduor for the Petitioner

Defendant: Ms. Chesoo for Respondent

