



**Sheria Mtaani Na Shadrack Wambui & 6 others v Kajiado County
Assembly & 3 others (Environment & Land Petition 2 of 2024)
[2024] KEELC 13540 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND PETITION 2 OF 2024
LC KOMINGOI, J
DECEMBER 4, 2024**

BETWEEN

**SHERIA MTAANI NA SHADRACK WAMBUI 1ST PETITIONER
OLKERI RESIDENTS ASSOCIATION 2ND PETITIONER
ACACIA ESTATE RESIDENTS ASSOCIATION 3RD PETITIONER
OLOOSURUTIA RESIDENTS ASSOCIATION 4TH PETITIONER
RAPASI MEMUSI SAINA RESIDENTS ASSOCIATION 5TH PETITIONER
ALICE NAMALWA SITUMA 6TH PETITIONER
JOSEPH NJUGUNA MUMIRA 7TH PETITIONER**

AND

**KAJIADO COUNTY ASSEMBLY 1ST RESPONDENT
COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT
THE HON ATTORNEY GENERAL 3RD RESPONDENT
HON NGATHO KINUTHIA 4TH RESPONDENT**

RULING

1. What is before this Court for determination is the Notice of Motion application dated 9th September 2024 supported by the Affidavit of Shadrack Wambui, the Chairperson of the 1st Petitioner. The same is brought pursuant to Articles 2, 10, 19, 20, 21, 23, 27, 40, 57, 60, 64, 165(2), 174, 184, 186, 196, 201 and Paragraph 2 of the 4th Schedule of *the Constitution*; and Section 2 and 5 of the *Land Act*, 2012. It seeks Orders;



- i. Spent
 - ii. That a conservatory order do issue temporarily suspending the implementation the implementation and enforcement of Section 14(8) as read together with Part 2 of the eighth Schedule of the Kajiado County Finance Act 2023 requiring the payment of land rates on freehold properties within the zoned regions at Kshs. 5,000 for commercial freehold land, Kshs. 2500 for residential freehold land and Kshs. 4,000 for residential multi dwelling or mixed dwelling freehold properties less than or equal to 0.05 Hectares
 - iii. That pending the hearing and determination of the Petition, a conservatory order do issue temporarily suspending the implementation and enforcement of Section 14(8) as read together with Part 2 of the eighth Schedule of the Kajiado County Finance Act 2023 requiring the payment of land rates on freehold properties within the zoned regions at Kshs. 5,000 for commercial freehold land, Kshs. 2,500 for residential freehold land and Kshs. 4,000 for residential multi dwelling or mixed dwelling freehold properties less than or equal to 0.05 Hectares.
 - iv. Costs of the Application
 - v. Any other relief that this court will be pleased to issue in the circumstances.
2. The Petitioners' case is that on 5th September 2024, the County Government of Kajiado held a consultative public sensitization meeting at Matasia Social Hall, to sensitise land and plot owners of Olkeri ward, Kajiado North Constituency on key provisions of the Kajiado County Finance Act 2023 regarding rent and land rates. In attendance were the Petitioner's in their personal capacities and representative members.
 3. However, the meeting ended unceremoniously because the Petitioners walked out in protest when they learnt that the Kajiado County Government had enacted a law that was imposing rates on freehold lands of less than 0.05 hectares and this was done without their consultation. The implementation starts from 1st January 2024 with a 25% per annum penalty on all outstanding rates as of 30th June 2024. Additionally, non-payment of these rates is a criminal offence which attracts a fine of Kshs. 200,000 or one year imprisonment or both.
 4. Following widespread dissatisfaction, the 4th Respondent who is a Member of the County Assembly of the 1st Respondent representing Olkeri Ward and a Member of the Committee on Finance, Economic Planning and ICT on the 6th day of September 2024, in the company of four other County assembly members called a press briefing where he stated that the impugned provisions of the Kajiado Finance Act 2023 requiring payment of land rates on freehold properties were not part of the clauses that were discussed and passed by the 1st Respondent and that they were 'sneaked' in by the 2nd Respondent at the printing and gazette stage. That on 7th September 2024, the 4th Respondent repeated these sentiments at the consultative meeting held at Matasia KAG Church initiated by the 1st Petitioner.
 5. The introduction of payment of land rates on freehold properties without public participation is unconstitutional, unreasonable, unfair and discriminative to some people as well as the elderly such as the 6th and 7th Defendants who were dependent on the Government's monthly stipend. This would also render the petitioner's among others, homeless or susceptible to imprisonment for non-payment.
 6. Subsequently the Petitioners filed a Notice of Motion application dated 13th September 2024 brought under; (Articles 21, 22, 23, 24, 25, 40, 57, 60, 65, 162 and 165 of *the Constitution* of Kenya, Rules 4, 13, 19 and 23, Constitutions of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rule of 2013 and all other enabling provisions of the law). It seeks Orders;



- i. Spent.
 - ii. That this Honourable Court be pleased to certify the instant Petition dated the 9th September 2024 and/or any matter related or concerned with the instant Petition as raising substantial questions of law under article 165(3)(b) and (d) requiring to be heard by an uneven number of judges, being not less than three assigned by the Chief Justice.
 - iii. That the Honourable Court be pleased to forward the request to the Honourable Chief Justice of the empanelment of an uneven number of judges to hear and determine the constitutional controversies raised by the petitioners herein in their Petition dated 9th September 2024.
 - iv. Any other relief that this court will be pleased to issue in the circumstances
 - v. Costs be provided.
7. This Application equally supported by the sworn Affidavit of Shadrack Wambui, the Chairperson of the 1st Petitioner, is on the grounds that the Kajiado Finance Act, 2023 goes contrary to provisions of *the Constitution* and thus raises substantial questions of law and fundamental freedoms under the Bill of rights. It was therefore imperative that an expanded bench be constituted to determine whether the Kajiado County Government has the right and powers to charge land rates of freehold properties as per its part II of the 8th Schedule of the said Act.
8. The Application is opposed.

There is a Replying Affidavit by Josiah Leboo Saisa Yiaro, the Clerk to the Kajiado County Assembly dated 24th September 2024. He confirmed that the 4th Respondent was a member of the 1st respondent representing Olkeri Ward as well as a member of the Sectoral Committee on Finance, Economic Planning and ICT. He deponed that the allegations in the application and the Petition were false because the 1st Respondent conducted sufficient public participation in Kajiado County before the passing of the Kajiado Finance Act, 2023. He indicated that on 13th July 2023, the Bill was uploaded on the County Assembly's website for the public to familiarise itself with its contents. On 21st August 2023, advertisements were published on the Daily and Standard Newspapers informing people of Kajiado County of public participation for as and calling them to attend the hearings and submit their input both orally or through written Memorandum on the Bill. As such, the enactment of the said legislation went through the necessary stages reading stages as provided for in Article 185(1) as read together with Article 209(3)(a) of *the Constitution*, being the 1st reading, 2nd reading, Committee of the whole house, and 3rd reading where public views and proposed amendments were taken into consideration. This Petition was therefore an attempt to illegitimise a legitimate process which was a kin to making the 1st Respondent's mandate an exercise in futility. Adding that the provisions in question were equally captured in the Kajiado County Finance Act, 2020. On the issue of the 4th Respondents remarks, he deponed that the 4th respondent was protected by Section 11(2) of the County Assemblies (Powers and Privileges) Act from civil action of acts committed in the discharge of his functions of representation. As such, the application and Petition should be dismissed with costs.

9. There is a Replying Affidavit sworn by Alais Kisota County Executive Committee Member of Finance dated 24th September 2024. He deponed that Sections 3, 4 and 5 of the *Rating Act* Cap 267, mandated the 2nd Respondent with coming up with different forms of rating for purposes of levying rates. As such, Schedule 8 of the Kajiado County Finance Act, 2023 was passed on this strength. The Petitioners allegation that Section 14(8) of that Act was meant to convert freehold titles to leasehold titles by introduction of these land rates was therefore false and misleading. Adding that there was no Constitutional provision estopping payment of rates by freehold title holders adding that the Section



2 of the *Valuation for Rating Act* equally did not exclude freehold properties from the list of excluded rateable properties and a freehold property owner was exclusively included under Section 7(8) of the *Valuation for Rating Act*. The Respondent went on to state aver that suspending implementation of Section 14(8) read together with part 2 of the 8th Schedule of the Kajiado Finance Act, 2023 would deny the County revenue collection which is an important duty for service delivery. He also rehashed that there was extensive public participation that was undertaken by the 1st Respondent within Kajiado County and the Act operationalised in November 2023. He also deponed that the issue of discrimination on land acreage was wrong because there were other factors of consideration such as the use of the land. And what was discriminatory was the argument that the elderly should not be part of the tax paying bracket. He went on to indicate that the issue of non-payment of rates being a criminal offence was equally incorrect and that Section 13 of the Kajiado County *Rating Act* had a provision that unpaid rates were recoverable by instituting court proceedings which was in line with Section 17 of the *Rating Act*. Similarly, the Petitioners had not provided evidence of arrest or attempted arrests and their Petition was only meant to evoke emotions. Adding that penalisation for not compliance with tax obligations was a global practice not unique to Kajiado County. As such, public interest tilts in favour of not granting the conservatory orders and the Petitioners had not met the threshold for grant of such orders.

10. The Petitioners in their Further Affidavit dated 28th September 2024, contested the Respondents averments that the Act was subjected to public participation throughout Kajiado, stating that one day was not sufficient time for adequate public participation.
11. The 1st and 2nd Respondents in their Supplementary Affidavits maintained that public participation was duly undertaken and the legislation enacted within the set standards.
12. The 3rd Respondent did not file any response.
13. The Notice of Motions were canvassed by way of written submissions.

The Petitioner's Submissions

14. On whether the Petitioners' have established a case for conservatory orders pending the hearing and determination of the Petition, counsel submitted that Article 23(3) of *the Constitution* empowers Courts to grant appropriate reliefs in proceedings seeking to enforce fundamental rights and freedoms citing the Supreme Court in *Gatirau Peter Munya vs Dickson Mwenda Kithinji* [2014] eKLR where the Court held: "... in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely: iii) that it is in the public interest that the order of stay be granted. This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through *the Constitution*..."
15. Counsel for the Petitioners also cited the following cases *Mrima J. in Isaiah Luyara Odando & another v Kenya Revenue Authority & 6 others*; *Nairobi Branch Law Society of Kenya (Interested Party)* [2022] eKLR; *Odunga J (as he then was) in Coalition for reform and Democracy (CORD) & another v Republic of Kenya & another* [2015] eKLR and the Court of Appeal in *AG & another v Coalition for reform and Democracy (CORD) & 7 others* [2015] eKLR where the Courts held that where an Applicant has a prima facie case with a likelihood of success and that unless conservatory orders are granted, then there is real danger that they would suffer prejudice as a result of the violation or threatened violation of *the Constitution*, the conservatory orders should be issued.
16. On whether the Petition was arguable and not frivolous Counsel submitted that the Supreme Court in *George Mike Wanjohi v Steven Kariuki* [2014] eKLR held that an arguable case is one that elicits cognisable Constitutional controversies. On this he argued that the Petition had raised important issues



such as the provisions had not be subjected to public participation and that they were discriminative on land owners, the elderly and social status which was contrary to Article 27 of *the Constitution*. Counsel also pointed out that subjecting freehold titles to land rates was similar to converting them to leaseholds titles which was contrary to Article 40 of *the Constitution* on the right to own property. Therefore, the Petition was arguable with a possibility of success.

17. On whether if the Petition is successful it would be rendered nugatory without the conservatory orders, counsel submitted that if the orders are not granted, the Petitioners were at risk of losing their liberty due to the fine imposed for non-payment of the rates. Therefore, as held by Odunga J. (as he then was) in the CORD case above, temporary suspension of the provisions would be necessary to avert the imminent loss of liberty for the Petitioners. Also citing Odunga J. (as he then was) in Stanley waweru & 2 others (suing as officials of Kitengela Bar Association) vs National Assembly & 2 others [2021] KEHC 455 (KLR). Counsel went on to submit that in matters of public interests, courts should interpret *the Constitution* in a manner that enables the citizens to enjoy their rights as was held in Jacqueling Okuta & another v AG & 2 others [2017] eKLR.
18. On the issue of empanelment of a Bench, counsel submitted that Article 165(4) of *the Constitution* empowers the Chief Justice to empanel an uneven number of Judges to determine matters that raise substantial questions of law and this Petition was such. Reference was made to: R vs Public Service Commission & Keriako Tobiko ex parte Nelson Havi [2017] eKLR, *Law Society of Kenya vs AG & another Petition 3 of 2016*, Esther Awuor Adero Ang'awa v Cabinet Secretary Responsible for Matters Relating to Basic Education & 7 others; Kenya Private Schools Association (KPSA) & 4 others (Interested Parties) [2021] eKLR.

The 1st and 4th Respondents' submissions

19. On issuance of conservatory orders, while making reference to the Supreme Court case of Gatirau Peter Munya counsel submitted that the Court must maintain a balance and allow parties to prosecute their cases without giving final orders. Reiterating that the County was mandated under Article 209(3)(a) of *the Constitution* to impose property rates. And that revenue collection was the County's way of getting revenue for service provision which would be hampered by issuance of conservatory orders.
20. On the issue of empanelment of a bench, Counsel submitted that the Court as currently constituted was competent to hear and determine the Petition.

The 2nd Respondent's submissions

21. Counsel for the 2nd Respondent also agreed that issuing conservatory orders would mean suspending its revenue collection and it was important to take into consideration the element of presumption of Constitutionality. Counsel also submitted that the Petitioners had not established a prima facie restating that the Act was enacted following the due process. Counsel also submitted that the allegation that collection of rates on freehold titles was converting them to leasehold titles was false because that could only be done by the Land Regulations, 2017. Counsel also submitted that the issue of discrimination on age was false and that criminal liability for non-payment of taxes was not a novel issue. And that the Petitioners had not demonstrated the prejudice they would suffer if the orders sought were not granted. As such, the orders sought were unmerited and the application should be dismissed. Reference was made to the following cases: Institute of Social Accountability & another v National Assembly & 4 others [2015] eKLR; Secretary Lands & 13 others [2024] KEHC 8475 (KLR); National Assembly & 47 others v Okoiti & 169 others [2024] KECA 39; Centre For Rights Education and Awareness (CREAW) & 8 others vs Attorney General & Another [2012] eKLR; Martin Nyaga Wambora v Speaker of The County of Assembly of Embu & 3 others [2014] eKLR; Progress Welfare



Association of Malindi & 3 others v County Government of Kilifi & 4 others [2020] eKLR; Gikenyi & 41 others v Cabinet Secretary Lands & 13 others [2024] KEHC 8475 (KLR); and National Treasury and Planning & 4 others v Okoiti & 52 others [2024] KESC 47 (KLR).

Analysis and Determination

22. I have considered the Applications, the affidavits in support, the responses thereto, the written submissions and the authorities cited. The issues for determination are;
- i. Whether the Plaintiffs'/Applicants have satisfied the conditions for grant of conservatory orders.
 - ii. What Orders should issue?
 - iii. Whether the Petition herein raises substantial questions under Article 165 (3) (b) and (d) requiring it to be heard by an uneven number of Judges being not less than three assigned by the Honourable CJ.

Whether the Petitioners/Applicants have satisfied the conditions for grant of Conservatory Orders.

23. Grant of Conservatory Orders is enshrined in *the Constitution* under Article 23 (3) which provides that:

“In any proceedings brought under Article 22, a court may grant appropriate relief, including-

- a. a declaration of rights;
- b. an injunction;
- c. a conservatory order;
- d. a declaration of invalidity of any law that denies, violates, infringes or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- e. an order of compensation;
- f. an order of Judicial Review.”

24. In the case of Judicial Service Commission Vs. Speaker of National Assembly & Another (2013) eKLR the court stated thus;

“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *the Constitution*, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ.

Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person. Given the nature of conservatory orders, it is argued, that there is need for a court to exercise caution when dealing with any request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the petition ought not to be dealt with finality at the interlocutory stage.”



25. Similarly the Supreme Court, in a *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR laid down the threshold for grant of conservatory orders as:

(86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

26. The principles applicable for grant of Conservatory Orders have been the subject of discussion by various courts. In the case of *Wilson Kaberia Nkunja Vs. The Magistrates and Judges Vetting Board and Others* (2016) eKLR the court rightly summarized three main principles for consideration on whether to grant Conservatory Orders as follows:

- a. An Applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the Conservatory Order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the constitution*.
- b. Whether, if a Conservatory Order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
- c. The public interest must be considered before grant of a Conservatory Order.”

27. The Court of Appeal in the case of *Mrao Limited Vs. First American Bank of Kenya Limited & 2 Others* (2003) KLR stated what amounts to a prima facie case.

28. It is the Petitioners’/Applicants’ case that Section 14(8) of the Kajiado County Finance Act 2023 as read together with part II of the Eighth Schedule, seeks to impose rates on free hold properties measuring less than or equal to 0.05 Hectares. That the law as it is discriminates against small scale land owners. It is their case that the law is an invitation to limit the Petitioners’ right to property. It is in violation of Articles 10, 24, 27, 40, 57 of *the Constitution*.

29. It is also their case that the impugned parts of the Kajiado County Finance Act 2022, was not subjected to Public participation throughout the County of Kajiado. They sought to dispel the notion that the newspaper advertisement for one day is sufficient for effective public participation. This is because it was assumed that the target group can afford newspapers and are literate which is not the case.

I have gone through the responses by the Respondents and I find that the Petitioners’ claim have not been rebutted.

30. It is also the Petitioners’/Applicants’ case that the impugned provisions by imposing land rates on freehold properties amounts to conversion of freehold properties to leasehold properties against Section 5 of the *Land Act*.

A free hold title means complete ownership with no time limit. The same is not subject to any encumbrances including payment of land rates.

31. I agree with the Petitioners’/Applicants’ submission that freehold titles must first be converted to leasehold in order to be subjected to land rates. The process of this conversion is well laid out. It is not



in dispute that this has not been done. At least the 1st and 2nd Respondents have not demonstrated that this was done.

32. The Respondents on the other hand claim that public participation was effectively undertaken though they have not demonstrated as much.
33. I have considered the rival submissions and I find that the Petitioners herein have established a prima facie case.
34. The Petitioners'/Applicants' have sought conservatory orders against the implementation of Section 14(8) of the Kajiado Finance Act as read together with Part 2 of the Eighth Schedule on the grounds that if this is not granted, they stand the risk of losing their liberty. This is because one of the penalties for non-payment of the land rates is being arrested, charged and either being fined, confined in prison or both. They also contend that if the conservatory orders are granted, they stand the risk of losing their property if the same is allowed to be implemented by the County government. They argue that the Petition is arguable with high probability of success and if these orders are not granted, the Petition would be rendered nugatory. The Respondents however contested this position arguing that suspending the implementation of those provisions will cause the County Government to lose revenue collected.
35. It is the Respondents case that no evidence of demand for rates has been provided hence there is no evidence of any threat of arrest mentioned by the Petitioners'/Applicants. That these are mere apprehensions as the threat is remote and should not attract the court's attention.
36. I disagree. It is my view that nothing prevents the 2nd Respondent from going ahead to implement of impugned Sections of the Finance Act, 2023, even as of now. I find that the Petitioners' apprehension is well founded. I find that the Petitioners who are residents of Kajiado County stand to suffer irreparable loss if these orders are not granted. There is need to maintain the status quo as the courts determines the constitutionality of the impugned Sections of the Kajiado County Finance Act, 2023.
37. In the case of Bishop Joseph Kimani & Others Vs. A.G. & Others (2010) eKLR Mohammed J (as he then was) observed as follows;

“It is a very serious legal and Constitutional step to suspend the operation of statutes and Statutory Provisions. The Courts must wade with care, prudence and judicious wisdom. For the High Court to grant interim orders in this regard; I think one must at the interlocutory stage, actually show that the operation of the legislative provision are a danger to life and limb at that very moment.....”

I agree with the Petitioners'/Applicants' submissions that the intended enforcement of the impugned Sections of the Kajiado Finance Act 2023 threaten and violates the rights and fundamental freedoms of the Petitioners and small scale freehold land owners in the said areas. The Respondents are bound by Article 21 (1) of *the Constitution* to observe, protect, respect, promote and fulfil the rights and freedoms in the Bill of Rights including the Petitioners' individual rights and freedoms.

38. I am persuaded that public interest in these circumstances ought to prevail as the court determines the issues in the Petition.



Whether the Petition herein raises Substantial questions under Article 165 (3) (b) and (d) (4) of *the Constitution* requiring it to be heard by an uneven number of Judges being not less than three assigned by the Honourable Chief Justice.

39. Does the Petition herein therefore raise substantial questions of law? In determining whether a Petition raises substantial questions of law, Lenaola J. (as he then was) in the case of Law Society of Kenya v The National Assembly & another; Centre for Enhancing Democracy and Good Governance & 5 others (Interested Parties); International Commission of Jurists & 3 others (Amicus Curiae) (Petition 3 of 2016) [2016] KEHC 7268 (KLR) outlined that the Court must be guided by:
- (a) Whether the matter is complex.
 - (b) Whether the matter raises a novel point.
 - (c) Whether the matter by itself requires a substantial amount of time to be disposed of.
 - (d) The effect of the prayers sought in the Petition.
 - (e) The level of public interest generated by the Petition.
40. The gist of the Petition is that Section 14(8) of the Kajiado Finance Act as read together with Part 2 of the Eighth Schedule is discriminatory against the Petitioners on basis of their age and social status, and hampers the Petitioners' right to own property by attempting to convert freehold land to leasehold. Additionally, it was 'sneaked' into the Act without undergoing public participation.
41. While empanelment of a bench is etched in *the Constitution*, the issues raised in the Petition should be substantial and novel as cited in the case above. This court notes that the issues raised in the Petition are of public importance. However, these issues are not new as they have in the past been litigated and settled by both Courts including superior Courts. An example is the question of public participation which has been litigated all the way to the Supreme Court, and so have the other issues such as discrimination and right to ownership of property. In the case of Peter Solomon Gichira v The Attorney General & National Gender and Equality Commission [2015] KEHC 3019 (KLR) Odunga J. (as he then was) in addressing an application where the prayer for certifying the Petition for empanelment of a Bench was raised stated:
- “...In my view the decision whether or nor to empanel a bench of more than one Judge ought to be made only where it is absolutely necessary and in strict compliance with the relevant Constitutional and statutory provisions. This country, despite great strides made in the enlargement of the bench in the recent past still does not enjoy the luxury of granting such orders at the whims of the parties. Judicial resources in terms of judicial officers in this country are still very scarce and although the time taken for hearing a petition by a single judge may not be any different from that taken by a bench empanelled pursuant to Article 165(4) of *the Constitution*, it must be appreciated that the empanelling such a bench invariably leads to delays in determining cases already in the queue hence worsening the problem of backlog crisis in this country...”
42. This notwithstanding, the Court of Appeal in Peter Nganga Muiruri v Credit Bank Limited & 2 others [2008] eKLR approved that a single judge equally has the power and jurisdiction to determine Constitutional questions. And looking at the issues at hand in the Petition, I am not convinced that the Petitioners have satisfied the threshold laid down by *the Constitution* and the decided cases for certification for empanelment. Accordingly, I find no justification for certification under article 165



(4) of *the Constitution* for the Hon Chief Justice to empanel a bench of uneven number of judges to hear and determine this petition herein. This prayer is therefore dismissed.

43. In conclusion I find that the Petition herein has laid a basis for the grant of the Orders sought in the Notice of Motion dated 9th September 2024.

44. Accordingly I grant the following Orders;

- a. That pending the hearing and determination of the Petition, a Conservatory order to issue temporarily suspending the implementation and enforcement of Section 14(8) as read together with Part 2 of the eighth Schedule of the Kajiado County Finance Act, 2023 requiring the payment of land rates on freehold properties within the zoned regions at Kshs. 5,000 for commercial freehold land, Kshs. 2,500 for residential freehold land and Kshs. 4,000 for residential multi dwelling or mixed dwelling freehold properties less than or equal to 0.05 Hectares.
- b. That costs of the applications shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4TH DAY OF DECEMBER 2024.

L. KOMINGOI

JUDGE.

In the presence of:

Mr. S. Wambui with Mr. Karanja for the Petitioners

Ms. Leboo for the 1st Respondent.

Ms. Muranja for Mr. Paul Momanyi for the 2nd Respondent.

N/A for the 3rd Respondent.

Court Assistant - Mutisya

