



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

JUDICIAL REVIEW NO. 1 OF 2020

IN THE MATTER OF: ORDERS 53 RULE I OF THE CIVIL PROCEDURE RULES. 2010

AND

IN THE MATTER OF: AN APPLICICTION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF: ARTICLES 2.3 (1), 10, 19, 20, 21, 22, 23(1) & (3), 27, 28, 35, 40, 42, 43(1) (e), 47, 48, 50, 159(1) & (2), 165(3) (b) & (d), 174, 196, 201 & 258(1) & (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: SECTIONS 8, 9 & 10 OF THE LAW REFORM ACT 2009

AND

IN THE MATTER OF: SECTIONS 3, 4, 9(1) (2) (3) (4) & 5(1) & (2), 6 (1) (2) (3) (4) & (5), 7 (1) (2) (3), 8, 9(1) (4), 10, 1(1) & (2) OF THE FAIR ADMINISTRATION OF ACTION ACT. 2015

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 18 & 22 OF THE VALUATION FOR RATING ACT, 2016

AND

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF RULES 3, 4, 6, 9, 10, 12 & 14 OF THE VALUATION FOR RATING (PUBLIC LAND) RULES, 2015

AND

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 18 OF THE RATING ACT 2016

AND

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF SECTION 2 & 6 OF THE KILIFI COUNTY VALUATION FOR RATING ACT 2016

AND

IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF SECTION 3, 87, 91, 03, 96, 104, 115 OF THE COUNTY GOVERNMENT ACT, 2012

AND

IN THE MATTER OF: PUBLIC PARTICIPATION IN THE PREPARATION AND PUBLICATION OF KILIFI COUNTY VALUATION ROLL, 2019

BETWEEN

KENYA NATIONAL CHAMBERS OF COMMERCE AND

INDUSTRY (KILIFI CHAPTER).....PLAINTIFF

VERSUS

1. COUNTY GOVERNMENT OF KILIFI

2. COUNTRY EXECUTIVE COMMITTEE MEMBER

3. KILIFI COUNTY LAND REGISTRAR

4. FAIRLANCE VALUERS LIMITED.....DEFENDANTS

JUDGMENT

1. By the Notice of Motion dated 9th October 2019, the Kenya National Chamber of Commerce and Industry-Kilifi Chapter (the Ex-Parte Applicant) prays for: -

1. A declaration that the 1st and 2nd Respondents failed, neglected and/or refused to facilitate public participation by the Applicant Property Owners, Rate Payers and/or Residents of Kilifi County in the process of preparing and/or publishing the Kilifi County Draft Valuation Roll published on 5th April 2019 thereby violating and/or threatening to violate their right to property and certainty of Rates Taxation by the County Government as well as responsible imposition of the same;

2. A declaration that the Kilifi County Draft Valuation Roll published on 5th April 2019 in its totality is unconstitutional;

3. A declaration that the imposition of the Kilifi County Draft Valuation roll published on 5th April 2019 offends the establishment principles and canons of taxation, to wit, equity, lack of arbitrariness, uncertainty about tax liabilities, convenience, neutrality, political responsibility and fairness which are a prerequisite for a legitimate property tax/rating system;

4. An order of certiorari to remove into the High Court for the purpose of its being quashed Kilifi County Draft Valuation Roll published on 5th April 2019 comprising: -

(1) Draft Valuation Roll Barani Area Agricultural;

(2) Private Land Draft Valuation Roll Mtwapa Area;

(3) Private Land Valuation Roll Kilifi Mtwapa Area;

(4) Private Land Valuation Roll Roka Area;

(5) Private land Valuation Roll Shella Area;

(6) Private Land Draft Valuation Roll Watamu Township Area;

(7) Private Land Valuation Roll Gala Area;

(8) Private Land Valuation Roll Residential Mambrui Township;

(9) Public Land Valuation Roll Mazeras Area (Kenya railways);

(10) Public Land Valuation Roll Residential Baya Magonzi S.S.S.;

(11) Public Land Valuation Roll Vipingo Area.

5. An order of prohibition stopping the certification, operationalization and/or implementation of the Kilifi County Draft Valuation Roll published on 5th April 2019;

6. An order of mandamus directed to the 1st and 2nd Respondents to compel and/or require them to reinstate the existing

Valuation Rolls and further initiate a transparent and accountable process of appointing a County Surveyor and developing a Valuation Roll that is accurate and complete;

7. An order of mandamus directed to the 3rd Respondent to compel and/or require the Registrar to publish and/or provide the Kilifi County Lands Register for purposes of developing a Valuation Roll that is accurate and complete;

9. Damages arising from the matters herein and interest thereon.

10.....and

11.An order for costs.

2. The Motion is supported by a Statutory Statement of facts dated 3rd October 2019 as well as both a Verifying and a Supporting Affidavits sworn by Majid Swaleh, the Chairman of the Ex-parte Applicant in support of the Ex-parte Chamber Summons application seeking leave to apply for the Judicial Review Orders sought herein.

3. The Statutory Statement lists the grounds upon which the Reliefs are sought at paragraph E thereof as follows: -

i) The 1st Respondent published the Kilifi County Draft Valuation Roll on 5th April 2019;

ii) The 1st Respondent failed, neglected and/or refused to involve the rate payers and/or residents affected by the published Kilifi County Draft Valuation Roll;

iii) The 1st Respondent has declined to address issues raised by the Applicant together with rate payers and/or residents affected by the published Kilifi County Draft Valuation Roll;

iv) The Kilifi County Draft Valuation Roll contains grave inconsistencies, incorrect names, details and/or particulars of plot owners and plot locations and is replete with incredibly inflated figures purporting to be the rateable figures contrary to the actual position on the ground;

v) The 1st Respondent is intent upon adopting the flawed published Kilifi County Draft Valuation Roll;

vi) The 1st Respondent is intent on demanding rates based on a hopelessly defective Valuation Roll;

vii) The primary and glaring errors include the following:

a) Rateable figures being the unimproved site value are abnormally high and are otherwise exaggerated and unsubstantiated;

b) Details and particulars of the property/plot owners, rate payers, are wrong and mixed up despite the existence of correct and upto date payment receipts issued by the self-same 1st Respondent;

c) Property/Plot locations are incorrect and completely wrongly identified in multiple cases;

d) There are instances of some plot owners missing from the Draft Valuation Roll despite holding upto date payment receipts issued by the 1st Respondent.

e) There are neighbours who are completely omitted having been selectively omitted from the Draft Valuation Roll;

f) There are neighbouring properties/plots which are adjacent to each other and being identical in nature but which have been assigned different valuations.

viii) The Draft Valuation Roll is shambolic and marred by a myriad of discrepancies which ought to be identified, considered and canvassed in an open and transparent process;

ix) The Applicant is concerned that the Kilifi Draft Valuation Roll, 2019 as published is subjective and prone to illegal manipulation and is not suitable for the task whatsoever;

x) The 1st Respondent is intent on infringing upon the constitutionally enshrined rights to public participation and to property of the members of the Applicant, the rate payers and/or residents of Kilifi County;

xi) The Applicant together with various rate payers and/or residents have made several attempts to engage with the 1st Respondent which have consistently been brushed aside;

xii) The sic (6) month period within which to bring an application for certiorari is rapidly shrinking; and

xiii) That it is just and fair to have this matter dispensed with urgently in the interest of equity and justice.

4. The County Government of Kilifi (the 1st Respondent) and its Executive Committee Member in Charge of Lands, Energy, Housing, Physical Planning and Urban Development (the 2nd Respondent) are opposed to the application. In a Replying Affidavit sworn on their behalf by the County Attorney and Head of Legal Services Michelle Bibi Fondo, the two Respondents assert that the Motion is incurably defective and that it does not properly lie before the Court for inter alia the following reasons: -

a) The Applicant is not a natural or a juristic person. Consequently, the Applicant cannot bring these proceedings in its own names;

b) Though the Applicant has described itself as a non-profit company limited by guarantee under the Companies Act, 2015, no evidence of such registration has been adduced to demonstrate its legal status. Further, no evidence of the alleged membership of these claimed property and business owners has been provided; and

c) It is therefore difficult to determine who exactly owns these proceedings and whose interests they are meant to serve as the membership of the Applicant does not draw from the common citizens of Kilifi which the 1st and 2nd Respondents herein serve.

5. The 1st and 2nd Respondents aver that contrary to the claims made by the Applicant, the 1st Respondent has on various occasions facilitated meaningful, qualitative and quantitative public participation in respect of the Draft Valuation Roll and all stakeholders in Kilifi County including the Petitioners were publicly invited for consultative meetings to deliberate on and interrogate the Draft Roll.

6. The 1st and 2nd Respondents further aver that they took deliberate steps to avail the Draft Roll for inspection and submissions of views including by publishing the same in the Kenya Gazette advertising the same and having it published on the 1st Respondent's Website.

7. The two Respondents assert that in any event the Kilifi County Draft Valuation Roll 2019 is still a draft document and work in progress and that consequently the public including the Applicant's claimed members are at liberty to submit their views thereon and the Court ought not to interfere with the process. The Respondents further aver that any alleged errors on the Draft Valuation Roll are in the process of being rectified as the Valuation Roll is still a draft undergoing critical evaluation as the 1st Respondent continues receiving views thereon.

8. In addition, the 1st and 2nd Respondents aver that if the Applicants have any grievances on the Valuation Roll, they should submit the same to the Valuation Court currently being set up by the 1st Respondent as envisaged under Section 12 of the Kilifi County Valuation for Rating Act, 2016 for hearing and determination.

9. The two Respondents otherwise insist that the preparation of the Valuation Roll is being undertaken in accordance with the Kilifi County Valuation for Rating act 2016 which empowers the 1st Respondent to value land for the purposes of collection of rates and other incidental or connected purposes. They assert that the Applicants have not demonstrated to this Court that the Draft Roll has failed to comply with the requirements of the Act, the known principles and/or cannons of taxation as well as the Constitution of Kenya.

10. The 1st and 2nd Respondents aver that these proceedings have been instituted with a view to pursue certain private interest under the guise of advocating for public interest. It is further their case that granting the orders sought herein would impair the ability of the 1st Respondent to raise much needed revenue for use in the provision of essential services to the people of Kilifi County.

11. In addition, the Respondents aver that granting the orders would set a bad precedent that would entitle parties to proceed on whimsical grounds to prevent County Governments from executing their Constitutional and statutory mandate in legislative and policy formulation where such parties fail to get an expected feedback or concrete evidence that their views are being considered and/or incorporated in the working drafts, with the real likelihood of grounding the operations of the County Governments.

12. Despite entering appearance in the proceedings through the Honourable the Attorney General, the Kilifi County Land Registrar named herein as the 3rd Respondent did not file any response to the application. At the same time, Messrs Fairlane Valuers Ltd named as the 4th Respondent neither entered appearance nor responded to the application.

13. I have given full consideration to the application for Judicial review, the response thereto as well as the rival submissions and authorities placed before me by the Learned Advocates in urging their respective Clients' positions on the matter. This, no doubt is a matter of grave and delicate import as this Court is conscious of the fact that these proceedings may impact greatly on the ability of the 1st Respondent to generate the much needed revenue for use to enable it continue in the provision of essential services to the people of Kilifi County.

14. The Ex-parte Applicant the Kenya National Chamber of Commerce and Industry-Kilifi Branch describes itself as a membership based trade support institution working to protect commercial and industrial interests of the Kenyan business Community. The Ex-parte Applicant states that it is a not-for-profit private company that advocates for the creation of a favourable commercial, trade and investment environment that supports enterprise expansion and that its membership constitutes small micro-enterprise as well as medium and large enterprises throughout the 47 Counties in the Republic of Kenya.

15. In this respect the Ex-parte Applicant asserts that its membership came to learn of a Draft Valuation Roll, 2019 published by the County Government of Kilifi (the 1st Respondent) sometime on 5th April 2019. The Ex-parte Applicant asserts that the said Draft Valuation Roll was arrived at without the public participation of its membership and that the same contains grave inconsistencies, incorrect names and details of plot Numbers and that the same is replete with incredibly inflated figures purporting to be the rateable figures contrary to the actual position on the ground.

16. The Ex-parte Applicant accuses the 1st and 2nd Respondent of insisting on adopting the Draft Valuation Roll as it is and proceeding to demand the payment of rates based on the same. Aggrieved by that position, the Ex-parte Applicants urge this Court to declare that the 1st and 2nd Respondents have failed, neglected and/or refused to facilitate public participation and that the Draft Valuation Roll published on the said 5th day of April 2019 is hence unconstitutional and offensive to the established canons of taxation.

17. The Ex-parte Applicant further urges this Court to issue an Order of Certiorari to quash the Draft Valuation Roll as published as well as an Order of Prohibition stopping its operationalization and implementation. They also crave an order of mandamus requiring the 1st and 2nd Respondents to reinstate the existing Valuation Rolls and to initiate a transparent and accountable process of appointing a County Surveyor and developing a Valuation Roll that is accurate and complete.

18. From the outset therefore, it is important that we set out the purpose and scope of Judicial review. In *Municipal Council of Mombasa – vs- Republic ex parte Umoja Consultants Ltd (Nairobi Civil Appeal No. 185 of 2007 (2002) eKLR*, the Court of Appeal held that: -

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power i.e the jurisdiction to make it? Were the persons affected by the decision heard before it was made? In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters?. These are the kind of questions a Court hearing a matter by way of Judicial review is concerned with and such Court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal Court over the decider would involve going into the merits of the decision itself-such as whether there was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review.”

19. As was stated in the *Ugandan case of Pastoli –vs- Kabale District Local Government Council & Others (2008) 2 EA 300*: -

“In order to succeed in an application for Judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety....

Illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, an illegality where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee when the power to do so are vested by law in the District Service Commission.

Irrationality is when there is such gross unreasonableness in the decision taken or the act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...

Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision.

The unfairness may be in the non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

20. From the foregoing it is clear that where the authority whose decision is challenged displays gross unreasonableness in the decision taken or the act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision such as where a decision is in defiance of logic and acceptable moral standards, the Court would interfere even if there is no illegality or procedural impropriety.

21. It was also clear to this Court that the scope and extent of Judicial review has been greatly expanded following the promulgation of the Constitution of Kenya 2010. Article 23 (3) (f) thereof gives Courts powers to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of rights. Of greater significance however is Article 47 thereof which entitles every person who has been or is likely to be affected by administrative action to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

22. The Fair Administrative Action Act, 2015 enacted pursuant to Article 47(3) of the Constitution has radically altered the Judicial review landscape in Kenya in conformity with the transformative Constitution of Kenya 2010. That Act defines “administrative action” to include “powers, functions and duties exercised by authorities or quasi-judicial tribunals”, or “any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.”

23. Section 4 of the Fair Administrative Action Act echoes Article 47 of the Constitution and reiterates the entitlement of every Kenyan to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. At the same time, every person has to be given written reasons for any administrative action taken against him. In all cases where a person’s rights or fundamental freedoms is likely to be affected by an administrative decision, the administrator must give the person prior and adequate notice of the nature and reasons for the proposed administrative action; an opportunity to be heard and to make representations thereon. Such a person is equally entitled to be supplied with information, materials and evidence to be relied upon in making the decision.

24. In recognition of the status of public participation as a national value and principle of governance under Article 10 of the Constitution, the Act codifies public participation as an integral part of public administrative action. Accordingly, where any proposed administrative action is likely to materially and adversely affect a group of persons or the general public, the administrator is required to issue a public notice of the proposed administrative actions and invite public views on the proposal.

25. In the matter before me, the Ex-parte Applicants contend that the 1st Respondent has failed, neglected and/or refused to involve the rate payers and other affected residents in the preparation and drafting of the Kilifi County Draft Valuation Roll 2019 and that as a result, their Constitutional rights have been infringed. While not disputing that the Draft Valuation Roll was published on 5th April 2019 as contended by the Ex-parte Applicants, the 1st and 2nd Respondents assert that the Draft Roll remains a draft and that the same is still undergoing preparation and hence the public and anyone else can still submit views to be incorporated therein.

26. From the material placed before me, I had no doubt that the Ex-parte Applicants are ratepayers within the County Government of Kilifi. They have attached to the Supporting Affidavit a Schedule of the properties and the names and addresses of the owners thereof and it is evident that they stand to be affected by the Roll.

27. Section 3 of the Valuation for Rating Act (Cap 266) provides as follows; -

“Every local authority shall from time to time, but at least once in every ten years or such longer period as the Minister may approve, cause a valuation to be made of every rateable property within the area of the local authority in respect of which a rate on the value of land is, or is to be, imposed, and the values to be entered in a Valuation Roll.”

28. As admitted in the Replying Affidavit, the 1st Respondent has embarked on the process of causing a Valuation Roll to be made of the rateable properties within its area of jurisdiction. In this respect, the 1st and 2nd Respondents further concede that they have since published a Draft Valuation Roll 2019 but assert that the same is still work in progress and that the Ex-parte Applicants and other members of the public are still free to submit their views thereon for consideration.

29. I did not however think that once the Draft Valuation Roll is published, it could still be subjected to public participation as submitted by the Respondents. I say so because to buttress the provisions of Section 3 of the Valuation for Rating Act, Section 4 thereof authorizes the local authorities to bring onto the Valuation Roll any new properties or those that may have been omitted by a Supplementary Valuation Roll to be prepared after a valuation is carried out under Section 5 unless, at the request of a local authority, the Minister dispenses with the Valuation.

30. Upon completion of the Valuation or where the same has been dispensed with, Section 9 of the Act requires the Valuer to prepare and sign a Draft Valuation Roll and transmit it to the Town Clerk who shall lay it before a meeting of the local authority and thereafter publish a notice of it and invite objections to it, if any. After the Draft Valuation Roll is laid before the meeting of the local authority, Section 18 of the Act provides as follows: -

“18. Coming into force of draft rolls and validity of Valuation rolls

(1) A draft valuation roll or draft supplementary roll which has been laid before the local authority in accordance with Section 9(2) shall, for the purposes of any law providing for the imposition of rates on land by a local authority, be deemed to be the Valuation roll or Supplementary roll, as the case may be, and to have come into force at the commencement of the financial year for which it has been prepared.

(2) A Valuation roll shall remain in force, as amended from time to time by a Supplementary Valuation roll, until it is wholly superseded by a new valuation roll.”

31. That being the case, it was apparent to me that the preparation and publishing of the Draft Valuation Roll comes towards the tail end of the process and that any objections that one may have thereto at that stage did not have to be determined before the Roll can be the basis for the imposition and demand for new rates by the local authority. The contention by the Respondents that public participation remained ongoing and/or that the ex-parte Applicant could still participate in the process of arriving at the Valuation Roll at this stage was therefore clearly untenable.

32. As it were, public participation ought not to be equated with mere consultation. Whereas “consultation” is defined by Black’s Law Dictionary 9th Edition at page 358 as “the act of asking the advice or opinion of someone”, participation on the other hand is defined by the same dictionary at page 1229 thereof as “the act of taking part in something, such as partnership.....”

33. That being the case public participation is not a mere cosmetic venture or a public relations gimmick. Whereas it is not to be expected that administrative authorities would at all times be beholden to the public in a manner which enslaves such authorities to the public, to contend that public views ought not to count at all in making a decision to draft a Valuation Roll that touches on their property and other rights would be to negate the spirit of public participation as enshrined in the Constitution and the Fair Administrative Action Act, 2015.

34. In my view, public views ought to be considered in the decision making process and as far as possible the product of the legislature ought to be a true reflection of the public participation so that the end product bears the seal of approval of the public. That is the only way the end product can be said to be owned by the public.

35. As was stated in the South African Case of ***Doctors for Life International –vs- Speaker of the National Assembly & Others (CCT 12/05) (2006) ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC)***: -

“If legislation is infused with a decree of openness and participation, this will minimize dangers of arbitrariness and irrationality in the formulation of legislation. The objective in involving the public in the law-making process is to ensure that the Legislators are aware of the concerns of the public. And if the legislators are aware of those concerns, this will promote the legitimacy, and thus the acceptance, of the legislation. This not only improves the quality of the law-making process, but it also serves as an important

principle that government should be open, accessible, accountable and responsive. And this enhances our democracy.”

36. In this respect, my perusal of Section 9 of the Valuation for Rating Act reveals that no meaningful public participation can take place after the draft valuation roll has been completed. That section provides thus: -

“9. Deposit of draft valuation and Supplementary Valuation rolls.

(1) When a draft Valuation roll or draft Supplementary valuation roll has been completed, the valuer shall sign the roll and insert therein the date of completion thereof, and shall transmit the roll to the town clerk.

(2) As soon as may be after a draft valuation roll or draft supplementary valuation rolls has been transmitted to him by the valuer, the town clerk shall lay the roll before a meeting of the local authority, and the roll shall thereafter be available at the office of the local authority for public inspection, and any person may, during ordinary business hours, inspect it and take copies or extracts from it.

(3) The town Clerk shall publish notice in respect of every draft valuation roll and draft supplementary valuation roll that it has been so laid and may be inspected, and such notice shall state the manner in which and the latest date by which objections to the same may be made.

(4) Every local authority shall, within twenty-one days after the laying before a meeting of the local authority of a draft valuation roll or draft supplementary valuation roll send to every rateable owner of a rateable property comprised in the roll a notice of the valuation thereof inserted in the roll, whether or not the new valuation makes any change.”

37. In the matter before me, it was not contested that the 2nd Respondent had caused a notice of the Draft Valuation Roll to be published in the Gazette Notice No. 3567 of 12th April 2019. The said notice reads in the relevant part as follows: -

“Inspection of the Kilifi County Draft Valuation Roll, 2016

Take Notice that the Draft Valuation Roll, 2016 in respect of the County Government of Kilifi, has now been completed and laid before a meeting of the County Government of Kilifi on 12th March 2019 and will be available for public inspection as from 12th April 2019 to 10th May 2019.

The said roll is now available at the Department of Lands, Energy, Housing and Physical Planning Headquarters (Valuation Office), Kilifi and at various stations within the seven sub-counties for public inspection from 9.00 a.m. to 4.00 p. on week days.

.....

Any person who is aggrieved by-

a) The inclusion of any rateable property in or by omission of any reateable property from the said Draft Valuation Roll.

b) Any value ascribed in the said Draft Valuation Roll to any rateable property or by any other statements made, or omitted to be made, in the same with respect to any rateable property, may on payment of a non-refundable fee of Kshs 1000/- per entry, lodge an objection with the Chief Officer.

c) Mode of payment will be by M-pesa Pay Bill No. 000003 at any County Revenue Office where a receipt will be issued after payment is done. The invoice number issued will be the account number while making the payments.

Objections must be made in writing on the form prescribed (copies of which may be obtained on application) and must be received at the Department of Lands, Energy, Housing and Physical Planning Headquarters (Valuation Office) Kilifi at any time before expiration of the twenty-eight (28) days from the commencement of public inspection of the Draft Valuation Roll.

38. This clearly was a notice issued towards the very end of the process. The ex-parte Applicants are not saying that they needed time to inspect the Roll. Their concern is that they were kept in the dark, were unaware and did not participate in the process that picked up Fairlane Valuers Ltd (the 4th Respondent) to carry out the Valuation of their properties and that they did not participate in the valuation and the subsequent preparation of the Draft Roll before it was laid before the 1st Respondent’s Assembly.

39. As it were the 4th Respondent neither entered appearance nor filed any response to the application. The 1st and 2nd Respondents equally decided to remain mute of silence as to how the valuers were identified and/or how they undertook the valuation of the properties within the County. Given the aspersions cast on the appointment of the 4th Respondent as the County Valuer, I think it was incumbent upon the 1st, 2nd and 4th Respondents to demonstrate that the 4th Respondents appointment had been done in accordance with Sections 27 (1) as read with Section 29 (1) of the Public Procurement and Disposal Act No. 3 of 2005 and that their appointment was approved by a resolution of the 1st Respondent’s Assembly as required under Section 7 of the Valuation for Rating Act.

40. It was also expected of the 4th Respondent to explain how it came up with the impugned Draft Valuation Roll. It did not. The Ex-parte Applicants are stating here that they should have been involved in the process of coming up with the applicable rates and that they were not

so involved.

41. As Odunga J stated in **Republic –vs- County Government of Kiambu Ex-parte Robert Gakuru & Another (2016) eKLR**: -

“.....public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who can to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspects, as payment of taxes and levies the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora as possible such as churches, mosques, temples, public barrazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action. Article 196 (1) (b) just like the South African position requires just that.”

42. The upshot is that I find merit in the Notice of Motion dated 9th October 2019. I allow the same in terms of Prayers 1 to 8 thereof. As I did not find any basis for the demand for payment of damages, I decline to award the same.

43. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 28TH DAY OF MAY, 2021.

J.O. OLOLA

JUDGE