



**Imani Contractors and General Supplies Limited & 12 others v
County Government of Nyandarua & another (Constitutional Petition
3 of 2023) [2025] KEHC 1570 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CONSTITUTIONAL PETITION 3 OF 2023**

CM KARIUKI, J

FEBRUARY 6, 2025

**IN THE MATTER OF ARTICLES
1,2,3,10,20,21,22,23,27,35,48,73,159,165,174,185,196,118,209,
AND 258 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 3,87,104 AND
115 OF THE COUNTY GOVERNMENT ACT**

AND

**IN THE MATTER OF CODES 1000,1001,1002,1003,1004,1005,1006,1007,1008,1009,1010
AND 1256 OF THE NYANDARUA COUNTY FINANCE ACT 2023**

AND

IN THE MATTER OF THE NYANDARUA COUNTY FINANCE ACT 2023

BETWEEN

**IMANI CONTRACTORS AND GENERAL SUPPLIES LIMITED & 12 OTHERS
& 12 OTHERS & 12 OTHERS & 12 OTHERS & 12 OTHERS & 12 OTHERS &
12 OTHERS PETITIONER**

AND

THE COUNTY GOVERNMENT OF NYANDARUA 1ST RESPONDENT

THE COUNTY ASSEMBLY OF NYANDARUA 2ND RESPONDENT

JUDGMENT

1. The petitioners in the Petition dated 28/3/2023 had sought for the following reliefs:-



1. A declaration that the provisions of the second schedule of the Nyandarua County Finance Act 2023 and in particular code 1000- 1010 and 1256 in respect to the transport of building stones is unconstitutional, null, and void as no public participation was conducted when enacting the said Act by the respondents as required under Articles 10, 118 of *the Constitution* and Sections 87 and 115 of the *County Governments Act* which provides for the principle of public participation.
 2. A declaration that the provisions of the second schedule of the Nyandarua County Finance Act 2023 and in particular code 1000- 1010 and code 1256, unconstitutional and irregular as it offends the provisions of Article 209 of *the Constitution* of Kenya 2010, as such, the same be declared null and void.
 3. A declaration that the respondents have acted unreasonably by passing the Nyandarua County Finance Act 2023, which contains unreasonable provisions and, in particular, third schedule code 1256 of the said Act, which provisions result in subjecting the petitioners to double taxation and usurping the role of the National Government such the said provisions should be quashed.
 4. An order of Certiorari is issued, Quashing the charges provided for in Code 1000-1010 and 1256 Nyandarua County Finance Act 2023. Moreover, the 1st Respondent is to be barred from implementing/enforcing the second and third schedules, in particular codes 1000-1010 and 1256 of the Nyandarua County Finance Act 2023.
 5. A declaration that the fees of Kshs. 80,500/- collected by the 1st Respondent from the petitioners for business permit and license fees violates Section 15 of the Nyandarua County Finance Act, 2023, and an order for a refund of the amounts collected in excess of what is provided for under code 429 (a) of the Nyandarua County Finance Act 2023.
 6. The Honourable Court is to issue any such orders that may be deemed fit to meet the ends of justice.
 7. The cost of the Petition will be awarded to the petitioners.
2. The Petition is supported on the facts set out in the Petition, the supporting affidavit sworn on 28/3/2023 by Alfred Lenana Wambugu and the seven annexures thereon, and the supplementary affidavit sworn on 29/5/2023 and filed in Court on the same date.
 3. The Petition is opposed by the 1st respondent vide a replying affidavit sworn by Mary Wanjiku Kamande on 4/4/2023 and the five annexures therein and by the 2nd Respondent vide a replying affidavit sworn by Gideon Mukiri Muchiri on 24/4/2023 and the five annexures attached therein.
 4. The petitioners are business entities and persons operating quarry businesses within Nyandarua County. Copies of their business registration and licenses are marked as annexures ALW2 and ALW3 A-H. The Petition challenges the fees, levies, and cess charged by the 1st Respondent for quarry businesses through the Nyandarua County Finance Act 2023. The codes affecting the petitioners in the Act are as follows:-
 5. Business Single Permit
 - a. Code 429: Stone Cutting Machine/Mechanized Quarry operations: per business 80,500 (old) - 50,000 (new).



- b. Second Schedule Part 1 - Fees For Market Services And Cess Traders Produce Inspection - All Quarry products (within and outside the County)
 - i. Code 1000 Murram Lorry 7 tones and above per trip New 1200
 - ii. Code 1001 Pick Up/Car to 1.5 Tonnes per trip 200 - 300
 - iii. Code 1002 Canter 1.6 to 3.5 Tonnes per trip 400 (old) - 600 (new)
 - iv. Code 1003 Tractor trailer per trip 400 (old)-600 (new)
 - v. Code 1008 (a) Lorry 3.6-6.9 Tonnes (FH, FSSR, FRR) per trip 650-900
 - vi. Code 1009 (a) Lorry 7-12 Tonnes (FVR fuso) per trip 1000 (new) -1200 (old)
 - vii. Code 1010 (a) Lorry 13 Tonnes and above per trip 1200 (old)
 - viii. Within the County, 1,500 (new)
 - ix. Outside the County 2,200 (new)
 - c) Transport of Building Stones in and out of the County.CODE 1256 (a) Quarry Stone Extracted Machine Cut per piece New 3/-.
6. The petitioners deny there being public participation by the respondents leading to the enactment of the NCFA 2023 and that stakeholders in the quarry business were not involved in and did not participate in the levying of the new charges and increment of the earlier charges as per the NCFA 2022.
 7. Levying of the fee under CODE 1256 is unconstitutional as the same amounts to double taxation; the amount is unexplained, and there is no service attached to it.
 8. It was the petitioners' submission that the respondents have in their replying affidavits purported to being public participation, and they have attached fictitious documents to support the same and that the respondents have not explained or even attempted to justify the increment, particularly the charge under Code 1256.
 9. The 2nd Respondent published the Nyandarua County Finance Bill, 2022, on 12 October 2022 and tabled the same for the legislative process on 25 October 2022 and on 5 December 2022, the Committee on Finance Economic Planning, and 1. C.T., pursuant to Standing Orders No. 124(1) & 126, gave a comprehensive and conclusive report on the bill for adoption by the House.
 10. The 2nd Respondent, through its Clerk, invited the members of the public for public participation on diverse days between 14 November 2022 and 18 November 2022, with meetings being held across the County among the relevant stakeholders.
 11. The 2nd Respondent passed the bill. The memorandum was subsequently referred to the Committee for consideration, and the same was done. On 23 February 2023, the bill commenced its operations as an act.
 12. The main issues for determination herein are whether the Nyandarua County Finance Act 2023, the impugned Act hereinafter and in particular code 1000- 1010 and 1256 in respect to the transport of building stones is unconstitutional, null or void as no public participation was conducted and whether code 1256 is unconstitutional and amounts to double taxation and usurping the role of the national government.



13. The Petitioner's case is that the impugned Act is unlawful because no public participation was conducted in accordance with Articles 196 and 201 of *the Constitution* on public participation. The concept of public participation is one of the national values and principles of good governance under Article 10 of *the Constitution*, which provides:-
1. The National Values and principles of governance in this Article bind all state organs, state officers, public officers, and all persons whenever any of them:
 - a. Applies or interprets *the Constitution*;
 - b. Enacts, applies, or interprets any decisions;
 - c. Makes or implements public policy and decisions.
 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;
 - b. Human dignity, equity, social justice, inclusiveness, equality;
 - c. Good governance, integrity, transparency and accountability;
 - d. Sustainable development.
14. Public participation is also captured in Article 174 of *the Constitution* as one of the objects of devolution. It provides:-
- a. "The objects of the devolution of government are:
 - (a)
 - (b)
 - (c) To give power of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them;
 - (d)"
15. Article 196 of *the Constitution* provides as follows:
- 196
- (1) A County Assembly shall:
 - a. Openly conduct its business and hold its sittings and those of its committees in public and
 - b. Facilitate public participation and involvement in the legislative and other business of the Assembly and its committees;
 2. A County Assembly may not exclude the public or any media from any sitting unless in exceptional circumstances.
16. Article 201 of *the Constitution* also provides for public participation in financial matters. It states:-
- a. "The following principles shall guide all aspects of public finance in the Republic:-



- a. There shall be openness and accountability, including public participation in financial matters.
- b. The public finance system shall promote an equitable society, and in particular:-
- c. The burden of taxation shall be shared fairly;
 - (ii)"

17. Additionally, the County Government Act 2012 provides for public participation. Section 87 of the Act enumerates the principles of the citizen's participation in the County Governments. In contrast, Section 88 of the same Act provides for interaction between the citizens and the County Governments on any matters under the responsibility of the County Governments.

18. J. Odunga, in the decision of Robert Gakuru & others [2014] eKLR, dealt at length with what amounts to public participation, quoting extensively from South African decisions of *Doctors for Life International v Speaker of the National Assembly & others CCT.12/05 (2006)ZACC 11:2006 (12) BCLR.1399(CC); 2006 (6) S.A.416 (CC)* at paragraph 56 where the judge said:

- a. "The phrase 'facilitate public involvement' is a broad concept that relates to the duty to ensure public participation in the lawmaking process. The keywords in this phrase are 'facilitate' and 'involvement'. To 'facilitate' means to 'make easy' or 'easier,' 'promote' or 'help forward.' The phrase 'public involvement' is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of 'involve' includes to 'bring a person into the matter' while participation is defined as 'taking part with others (in an action or matter)'.....the active involvement of members of a community or organization in decisions which affect them 'According to their plain and ordinary meaning, the words public involvement or public participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participates in the legislative process."

19. The Court further considered who and to what extent the issue of public participation ought to be determined, and it quoted Sachs J, in the minority judgment in *Minister of Health and another v New Click's case South Africa (Pty) Ltd & others 2006(2) SA 311 (CC)* J. Sachs where he said:-

- a. "The forms of facilitating an appropriate degree of participation in the lawmaking process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.
- b.
- c. The passage from the *Doctor's for Life* Majority judgment, referred to by the applicants, states the reasons for constitutionally obliging legislatures to facilitate public involvement. However, being involved does not mean that one's views must necessarily prevail. There is no authority for the proposition that the views expressed by the public are binding on the legislature if they are in direct conflict with the policies of the government. The government certainly can be expected to be responsive to the needs and wishes of minorities or interest groups, but our constitutional system of government would not be able to function if these views bound the legislature."



20. Ngcobo J, in *Matatiele Municipality and Others vs. President of the Republic of South Africa and Others* (2) (CCT 73/05 A [2006] ZACC 12; 2007 (1) BCLR 47 (CC) stated:-
- a. "The representative and participative elements of our democracy should not be seen as being in tension with each other...What our constitutional scheme requires is "the achievement of a balanced relationship between representative and participatory elements in our democracy." The public involvement provisions of *the Constitution* address this symbolic relationship, and they lie at the heart of the legislative function. *The Constitution* contemplates that the people will have a voice in the legislative organs of the state not only through elected representatives but also through participation in the lawmaking process.
 - b.
 - c. The obligation to facilitate public involvement is a material part of the lawmaking process. It is a requirement of manner and form. Failure to comply with this obligation renders the resulting legislation invalid. In my judgment, this Court not only has a right but also has a duty to ensure that the lawmaking process prescribed by *the Constitution* is observed. Furthermore, if the conditions for lawmaking processes have not been complied with, it has the duty to say so and declare the resulting statute invalid. Our Constitution manifestly contemplated public participation in the legislative and other processes of the NCOP, including those of its committees. A statute adopted in violation of section 72(1)(a) precludes the public from participating in the legislative processes of the NCOP and is therefore invalid. The argument that the only power that this Court has in the present case is to issue a declaratory order must therefore be rejected."
21. Justice Emukule also considered the issue of public participation in *Diani Business Welfare Association and others v County Government of Kwale* Pet.39/2014 (2015) e KLR, where he stated:
- a. "The second challenge advanced by Prof. Cheeseman is the challenge of aggregating public opinion, that even where effective participation takes place, County Governments face the challenge of aggregating public opinion into a specific set of actionable ideas. Citizens may not agree on all ideas, mainly because consultation does not take place in one meeting, but often, different groups select different priorities.
 - b. In as much as Citizens' views must not be ignored, the Citizens and public at large also need to understand that Counties, like the National Government, will not be able to respond to all their demands."
22. The petitioners asserted that the 1st Respondent has attached a newspaper advertisement from the Daily Nation dated 20/9/2022 as proof of there being public participation. The advertisement invites interested members of the public, organized groups, and all stakeholders to present their memoranda on the Nyandarua County Government Finance Bill 2022/2023, the impugned bill herein, to the county government on or before 28/9/2022. They contended that the period given was 8 days, which was not sufficient, and that many Kenyans may not be able to afford Kshs. 60/- to purchase the Daily Nation. Further, it was argued that the advertisement was in English, which a majority of Kenyans, especially in rural areas where Nyandarua County lies, do not understand, and that the bill was to be accessed on the County website, whereas a majority of Kenyans have no access to the internet.
23. Moreover, the Petitioner argued that expecting residents of Nyandarua County, who are scattered all over the County, to obtain copies of the bill, study the same, and present memoranda in 8 days was not sufficient. Further, the advertisement did not provide for physical consultation meetings.



24. The Petitioner went on to state that it is not known how the public notice attached by the 1st Respondent was circulated, that the meetings to be held between 14/11/2022 – and 18/11/2022 were not held, and that they were not made aware of the same. They stated that the photographs, which spoke of public participation, were of no probative value.
25. On the part, the second Respondent submitted that they conducted proper public participation and that concerns and recommendations from the public were taken into consideration before the impugned bill was passed into law. It was asserted that the consultative meetings held on 9th and 10th November 2022 at Buraha Zenoni Hotel and KALRO in Naivasha are evidence of the same.
26. The 2nd Respondent averred that they released a schedule for public participation at a time that would enable the residents to plan effectively and gave notice via a nationwide newspaper, Daily Nation, on Tuesday, 20 September 2022. It was stated that the meetings were conducted in rural areas; for instance, on 17 November 2022, the committee members held the public participation meeting at Ndunyu Njeru Social Hall in North Kinangop, and the language used was vernacular.
27. The second Respondent contended that members of the public discussed code 1009, where they suggested that the proposed charge of Kshs. 1000 per trip should be reduced to Kshs 800 as the transporters were carrying fewer loads due to the strict adherence to KeNHA's regulations.
28. In *Thuranira & 4 others v Attorney General & 2 others; Registrar of Political Parties & 3 others (Interested Parties)* (Petition E043, E057 & E109 of 2022) [2022] KEHC 482 (KLR) the Court stated that:-
- a. Public participation and consultation were constitutional principles that were part of the constitutional tenet of the sovereignty of the people. It was through public participation that the people continued to find their sovereign place in the governance they had delegated to both the National and County Governments.
 - b. The guiding principles for public participation were:Public participation is applied to all aspects of governance.The public officer and or entity charged with the performance of a particular duty bore the onus of ensuring and facilitating public participation.The lack of a prescribed legal framework for public participation was no excuse for not conducting public participation; the onus was on the public entity to give effect to that constitutional principle using reasonable means.Public participation had to be real and not illusory. It was not a cosmetic or a public relations act. It was not a mere formality to be undertaken as a matter of course to 'fulfill' a constitutional requirement. There was a need for both quantitative and qualitative components in public participation.Public participation was not an abstract notion; it had to be purposive and meaningful.Public participation had to be accompanied by reasonable notice and reasonable opportunity. Reasonableness would be determined on a case-to-case basis.Public participation was not necessarily a process consisting of oral hearings. Written submissions could also be made. The fact that someone was not heard was not enough to annul the process.Allegations of lack of public participation did not automatically vitiate the process. The allegations had to be considered within the peculiar circumstances of each case: the mode, degree, scope, and extent of public participation would be determined on a case-to-case basis.
 - c. Components of meaningful public participation included the following:clarity of the subject matter for the public to understand;structures and processes (medium of engagement) of participation that were clear and simple;opportunity for balanced influence from the public in general; commitment to the process; inclusive and effective representation; integrity and



transparency of the process; Capacity to engage on the part of the public, including that the public had to be first sensitized on the subject matter.

29. I agree with the holding of the Court in *Francis Nyahoro & 25 others v County Government of Nyandarua* [2019] eKLR that public participation will vary from case to case, and the particulars need not be absolute but reasonable.
30. On amounts to public participation facilitation, Ngcobo, J in *Doctors for Life International vs. Speaker of the National Assembly and Others* (supra) held that:-
 - a. "The phrase "facilitate public involvement" is a broad concept that relates to the duty to ensure public participation in the lawmaking process. The key words in this phrase are "facilitate" and "involvement." To "facilitate" means to "make easy or easier," "promote" or "help forward." The phrase "public involvement" is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of "involve" includes to "bring a person into a matter" while participation is defined as "[a] taking part with others (in an action or matter); . . . the active involvement of members of a community or organization in decisions which affect them". According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participates in the legislative process. That is the plain meaning of section 72(1)(a). This construction of section 72(1)(a) is consistent with the participative nature of our democracy. As this Court held in *New Clicks*, "[t]he Constitution calls for open and transparent government, and requires public participation in the making of laws by Parliament and deliberative legislative assemblies." The democratic government that is contemplated in *the Constitution* is thus a representative and participatory democracy that is accountable, responsive and transparent and that makes provision for the public to participate in the lawmaking process."
31. Additionally, Odunga J (as he then was) stated in *Truckers Association of Kenya v County Government of Machakos* [2020] eKLR:-
 - a. However, public participation ought not to be equated with mere consultation. Meanwhile, "consultation" is defined by Black's Law Dictionary 9th Edn. at page 358 as "the act of asking the advice or opinion of someone." "participation," on the other hand, is defined on page 1229 thereof as "the act of taking part in something, such as partnership..." Therefore, public participation is not a mere cosmetic venture or a public relations exercise. In my view, whereas it is not to be expected that the legislature would be beholden to the public in a manner that enslaves it to the public, to contend that public views ought not to count at all in deciding whether or not a draft bill ought to be enacted would be to negate the spirit of public participation as enshrined in *the Constitution*. In my view, public views ought to be considered in the decision-making process, and as far as possible, the product of the legislative process ought to be an accurate reflection of public participation so that the end product bears the seal of approval by the public. In other words, the end product ought to be owned by the public.
 - b.
 - c. However, it must be appreciated that the yardstick for public participation is that a reasonable opportunity has been given to the members of the public and all interested parties to know about the issue and to have an adequate say. It cannot be expected of the legislature that a personal hearing will be given to every individual who claims to be affected by the laws or regulations that are being made. What is necessary is that the nature of the concerns of



different sectors of the parties is communicated to the lawmakers and taken into account when formulating the final regulations.

- d. Therefore, the mere fact that particular views have not been incorporated in the enactment does not justify the Court in invalidating the enactment in question.
32. Accordingly, from the evidence presented in Court, it is clear that an opportunity for public participation was presented to the public. The 2nd Respondent, through its advertisement in the Daily Nation dated 20 September 2022, invited members to participate by submitting their memoranda on the impugned bill. Contrary to the Petitioner's assertion, the public was advised that copies of the bill were available on the county website and at all sub-county administrator's offices. Further, there is no evidence that any member of the public that the 8 days provided and the language used deprived them of an opportunity to participate in the lawmaking process. In any case, the 2nd Respondent asserted that some of the meetings held were conducted in vernacular to afford everyone the chance to participate. Members of the public were given a reasonable opportunity to give their views and opinions on the impugned Bill and codes 1000- 1010 and 1256 with respect to the transport of building stones, as highlighted by the petitioners.
 33. It is shown through the evidence attached to the 1st Respondent's affidavit that the public did, in fact, participate in the enactment of the bill in various wards; the Court would be reluctant to nullify the enactment in the absence of any evidence that a member of the public was as a result of the short notice locked out from presenting his views. Additionally, public notice was issued indicating when and where public participation meetings would be scheduled. I have also taken note of the report by the 1st Respondent on the public submissions made during the public participation process and the photos of the public participation meetings held in Kinangop, Kipipiri, Ndaragwa, Ol Joro Orok, and Ol Kalou sub-counties. Apart from their assertions, the petitioners did not provide any evidence that the photos were doctored or belonged to any other meeting and/or forum.
 34. It is my considered view that the Petitioners have not satisfied the Court that the notice given was too short, resulting in them being unable to adequately prepare and meaningfully participate in the process of the enactment of the bill. Similarly, there is no satisfactory material placed before me to convince me that the petitioners were deprived of an opportunity to participate in the process because the advertisement was in English; in any case, the impugned bill itself was written in English. I opine that public participation meetings were held concerning the impugned bill, the respondents invited the public at large, there was clarity about the matters under discussion, and resolutions were made. Resultingly, I find that there was meaningful and inclusive public participation prior to the enactment of the impugned) Act, and therefore, the grounds for the lack of public participation were not demonstrated.
 35. On whether code 1256 is unconstitutional and amounts to double taxation and usurping the role of the national government.
 36. Article 185 of *the Constitution* provides for the legislative authority of the County Assemblies. Article 185(2) provides:
 - a. "A County Assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the Forth Schedule."
 37. Article 209(3) and (4) of *the Constitution* provides as follows:-
 - (3) A county may impose—



- a. property rates;
 - b. entertainment taxes, and
 - c. other tax that it is authorized to impose by an Act of Parliament.
- (4) The national and County governments may impose charges for the services they provide.
38. Under Article 290(4), the County Government is also allowed to impose charges for the services the County Government provides. Section 104 1(d) of the *Public Finance Management Act, 2012*, on its part, empowers the County Government to mobilize resources for funding its budgetary requirements and putting in place mechanisms for raising revenue and resources.
39. Black's Law Dictionary 5th Edition, 1979, defines double taxation in the following terms:
- a. To constitute 'double taxation,' that tax must be imposed on the same property by the same governing body during the same taxing period and for the same taxing purpose.
40. In *Francis Nyahoro & 25 others v County Government of Nyandarua [2019] eKLR*, the Court stated that:-
- a. "The Respondent has the mandate to provide services to the people of Nyandarua, which includes maintenance of roads, security, water, etc. To realize its mandate, the Respondent has to raise revenue funds through charges, levies, permit fees, licenses, etc. It is, therefore, at the discretion of the Respondent, the finding of ways of raising the revenue provided it acts within the law. The Respondent is empowered to levy taxes and charges under Article 209 3(c). The Article could not be specific on the levies and charges because the kind of trades engaged in by each County varies from County to County."
41. Further in *Robert Gakuru & others [2014] eKLR*, the Court held that:-
- a. "I must, however, stress that County Governments are, under Article 175(b) of *the Constitution*, entitled to have reliable sources of revenue to enable them to govern and deliver services effectively. However, this entitlement must be exercised in accordance with *the Constitution* and the law. Where the existing legislation is not adequate for ensuring the efficient governance and delivery of services, the County Government ought to petition the National Government to increase the allocation to them or enact appropriate legislation to enable them to carry out their constitutional mandate as required under Articles 190(1), 202 and 203 of *the Constitution*."
42. I have already determined that the 1st Respondent afforded the petitioners a reasonable opportunity to give their views during the public participation processes held; it is my considered opinion that the petitioners' should have availed themselves during these meetings and consultative processes to air their views on matters affecting their industry.
43. The petitioners asserted that the taxes imposed through code 1256 amount to double taxation because the cess fees imposed on stones are a preserve of the National Government as per the *Mining Act, 2016*; thus, any additional levy from the County Government amounts to double taxation. However, I agree with the 2nd Respondent that quarry stones are not classified as minerals under the context of the *Mining Act*. In *Bustra Saving and Credit Co-operative Society Limited & another vs. County Government of Tharaka Nithi County [2019] eKLR*, it was held as follows:
- a. "A look at the list of what constitutes "minerals" as per the list given in the first schedule, which includes minerals like diatomite, fluorite, phosphates, precious stones (diamond, rubies), rare



minerals, etc. The quarry stones or quarry products like the one specified in Part I of the 9th Schedule of the impugned Act certainly are not included. I am therefore not persuaded by the Petitioner's contention that the Respondent has charged fees on a product that is within the ambit of the National Government. Quarry stones, murrum, quarry chips, and other quarry products are not minerals governed under the Mining Act No.12 of 2016."

44. Additionally, the Court in *Pwani Super Capacity Transporters Savings & another vs. County Government of Mombasa* [2020] eKLR stated as follows:-
- a. "From the foregoing, I find and hold that coral blocks, ballast stone chips, and sand are not minerals as contemplated under the first schedule of the Mining Act No. 12 of 2016. Therefore, they do not fall within the realms of the National Government. As a result, the Respondent is not acting ultra vires in levying cess on the said goods."
45. Accordingly, quarry stones are not classified as minerals under the Mining Act; therefore, taxing quarry items is not exclusively under the purview of the national government, as alleged by the petitioners. Thus, the county government's actions in imposing a tax on the same do not amount to double taxation.
46. The petitioners also averred that the fees provided for in code 1010 of the impugned Act are entirely different from what is on the impugned bill, rendering code 1010 and code 1256 unconstitutional. The 2nd Respondent clarified that the charge under code 1001 – 1010 is on quarry products, which is different from code 1256, which is for the transportation of quarry products. They explained that the county government poses this charge in order to provide better infrastructure, especially constructing and maintaining the road network in the County.
47. The Court in *Base Titanium Limited v The County Government of Mombasa & Another* [2017] eKLR correctly stated that whereas a county can levy charges, it must do so in exchange for an amenity. In my considered opinion and as asserted by the 2nd Respondent, the charge on transportation of the quarry products, which is different from the charge on the quarry products themselves, is for the construction and maintenance of the County's road network, which is what they offer in exchange. The Court, in the aforementioned case, went on to further explain this distinction by holding that:-
- a. "However, to extrapolate the interpretation to conclude that a levy charged on the vehicles that transport the titanium mineral, as with the transportation of any other goods, is prohibited by the Constitution is, in my view, erroneous. With respect, I do not accept that a charge on the transportation thereof, as a charge for road service provided by the County Government, is a charge on the mineral product itself, which is the province of the national government. The cess charges are on the vehicles transporting goods of any kind entering and off-loading in Mombasa and are not a tax or charge on the product.
- b. I find and hold that the tax charge on the stone is not the same as that of transportation, and it is not the same as the one charged to the owners of the stone. The tax under challenge is for doing business in the Respondent's County, such as transporting coral stones, etc. So far, the petitioners have not demonstrated that they are taxed twice on the same income."
48. Accordingly, the charge on the product and the transportation of the product does not amount to double taxation.
49. Having considered the Petition and all the issues raised, I find no merit in the Petition. Thus, I make the orders;
- i. The is hereby dismissed with no orders as to costs.



DATED AND DELIVERED ON LINE FROM NAROK THIS 6TH DAY OF FEBRUARY, 2025

CHARLES KARIUKI

JUDGE

