



County Assemblies Forum v Attorney General & others (Constitutional Petition E001 of 2025) [2025] KEHC 3276 (KLR) (10 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3276 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E001 OF 2025**

DO CHEPKWONY, J

MARCH 10, 2025

IN THE MATTER OF: ARTICLES 10(2), 96(1)(2) AND (3), 118, 174, 175(B), 185, 201, 202(1) AND 203(1) OF THE CONSTITUTION OF KENYA, 2010, THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013, AND ALL ENABLING PROVISIONS OF LAW.

AND

IN THE MATTER OF: THE CONTRAVENTION AND THREATENED CONTRAVENTION OF ARTICLES 10(2), 118, 174, 175, 185, 202, 202(1) AND 203(1) OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF: DEVOLUTION AND REVENUE SHARING BETWEEN THE NATIONAL GOVERNMENT AND COUNTY GOVERNMENTS.

AND

IN THE MATTER OF: THE VIOLATION, INFRINGEMENT, AND THREATENED CONTRAVENTION OF THE PRINCIPLES OF GOVERNANCE SUCH AS SHARING AND DEVOLUTION OF POWER, PARTICIPATION OF THE PEOPLE, GOOD GOVERNANCE, INTEGRITY, TRANSPARENCY, AND EQUITABLES SHARING OF NATIONAL REVENUE

AND

IN THE MATTER OF: IMPLEMENTATION OF THE COUNTY ALLOCATION OF REVENUE ACT, 2024 AND DIVISION OF REVENUE ACT, 2024.

BETWEEN

COUNTY ASSEMBLIES FORUM PETITIONER

AND

ATTORNEY GENERAL & OTHERS RESPONDENT



RULING

1. This is a ruling in respect of numerous applications filed by the County Governments, County Assemblies and other devolved units seeking to be enjoined in this suit, in which the Petitioner, County Assemblies Forum, has filed a Petition dated 6th January, 2025 challenging the constitutionality of the County Allocation of Revenue Act, 2024 (herein after referred to as “CARA,2024”). As such, the Petitioner seeks inter alia, the following reliefs from this Honourable Court:-
 - a. This Honourable court be pleased to declare County Allocation of Revenue Act, 2024 as unconstitutional to the extent that it violates Articles 10, 118, 174, 175, 185, 201, 202 and 203 of the Constitution of Kenya, 2010.
 - b. This Honourable court does declare that the County Allocation of Revenue Act, 2024 is unconstitutional to the extent that it undermines the functions and roles of the County Assemblies in Kenya.
 - c. The costs be provided.
2. Alongside the Petition, the Petitioner filed an interlocutory application dated 6th January, 2025 seeking interim conservatory orders staying the application and operation of Section 5 of County Allocation of Revenue Act, 2024, (CARA,2024) as read with the Second Schedule, in so far as it reduces the budget ceilings for the recurrent expenditure of all County Assemblies across Kenya.
3. An application for joinder of parties is governed by the provisions under Order 1 of the Civil Procedure Rules which is about the subject of parties to suits and about the joinder, mis-joinder and non-joinder of parties, and to some extent, with the joinder of cause-of-action. Order 1 Rule 1 of the Civil Procedure Rules provides as hereunder:-

[Order 1 rule 1.] Who may be joined as Plaintiffs.

 1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.
Order 1 Rule 10(2) of the said Rules provides that:-
 2. The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
4. For determination before this Court is whether the application for joinder of the Intended Interested Parties to these proceedings ought to be granted. The guiding principles for determination on whether or not to join an intending party in the proceedings were restated in the case of King’ori –vs- Chege & 3 Others [2002]eKLR 243 by Nambuye, J (as she then was) as follows:-
 1. He must be a necessary party.
 2. He must be a proper party



3. In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff
 4. The ultimate order or decree cannot be enforced without his presence in the matter.
 5. His presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.
5. In the case of *Departed Asians Property Custodian Board –vs- Jaffer Brothers Ltd* [1999]1EA 55, the Court held as follows:-

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involve in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involve in the cause or matter...For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the Defendant effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person”.

6. And in the case of *Civicon Limited –vs- Kivumatta Limited and 2 Others* [2015]eKLR, the Court observed that:-

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

7. The principle of joinder is well established under Rule 5(d)(ii) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which provides that:-

“An interested party may be enjoined in a Constitutional Petition where they demonstrate an identifiable state or legal interest in the proceedings”.



8. In the present case, the County Assemblies seek to be enjoined in the suit particularly for the reason that they are key state holders and play a crucial role in devolution governance and oversight at the County Level as stipulated under Article 185 of *the Constitution*. So the decision to be made in this suit will have far reaching implications on the constitutional and devolution issues as well as their day to day operations. The County Governments on the other hand, seek to be enjoined in these proceedings because they are charged with specific functions critical to service delivery, which include, but not limited to Agriculture, health, road works, trade, infrastructure for which they require resources to be able to deliver.
9. Thus, County Allocation of Revenue Act, 2024 is the legislative mechanism for operationalizing the requirements of Articles 202 and 218(1)(b) of *the Constitution* by specifying how the revenue allocated collectively to County Governments from the National Budget is to be distributed among them. In seeking to be enjoined in these proceedings, the County Governments are seeking a platform to address the effect of the conservatory orders issued by this Court on 9th January, 2025 whereby the implementation of Section 5 of County Allocation of Revenue Act, 2024 County Allocation of Revenue Act, 2024 was suspended pending the hearing of the Notice of Motion application dated 6th January, 2025 and thus has affected their operation and capacity to serve the public effectively.
10. It is worth-noting that the court already allowed some of the applications for joinder on 21st January, 2025 and for determination are those that were filed later. In view of this, and having taken into consideration the reasons upon which the Proposed Interested Parties are seeking to be enjoined in these proceedings, this Court finds that the presence of the said Proposed Interested Parties in these proceedings is not only necessary for enabling the court to effectively and completely adjudicate upon and settle all the questions involved in the Petition but more particularly orders that may be issued herein are likely to have effect on their interests. The court has also taken note of the relationship between the parties herein as well as the Proposed Interested Party, that it would be prudent and expedient to join the Proposed Interested Parties to these proceedings so as to avoid a multiplicity of suits since they stand to be affected by any orders in this suit.
11. Accordingly, this Court finds merit in every application for joinder and proceeds to allow all of them as presented.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 10TH DAY OF MARCH, 2025.

D. O. CHEPKWONY

JUDGE

