



**Kamakias Business Community v County Government of Kiambu (Constitutional Petition E063 of 2023) [2025] KEHC 11431 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 11431 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CONSTITUTIONAL PETITION E063 OF 2023  
DO CHEPKWONY, J  
MAY 23, 2025**

**BETWEEN**

**KAMAKIAS BUSINESS COMMUNITY ..... PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF KIAMBU ..... RESPONDENT**

**RULING**

1. This is a ruling in respect of the Notice of Motion application dated 15<sup>th</sup> November, 2023 filed pursuant to Rule 23 and 24 of *the Constitution* of Kenya (Protection of rights and fundamental freedom) Practice and Procedure Rules 2013. The Application seeks the following orders:
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. Spent.
  - e. That pending the hearing and determination of the Petition, this court be pleased to issue temporary conservatory orders spending the decision by the County Government to impose the parking levy on business and individuals in Kiambu County.
  - f. That pending the hearing and determination of the Petition, this court be pleased to issue conservatory orders suspending the implementation of the notice by the Respondent imposing parking levy on business and individuals in Kiambu County.
  - g. That pending hearing of the Petition a conservatory order be and is hereby issued suspending any further action by the respondent including attempts to deliberate or legalize the unlawful levy.



- h. That costs of the application be provided for.
2. The Application is based on the grounds set on its face and reiterated in the Supporting Affidavit of Stephen Ngatia Kamanu sworn on 15<sup>th</sup> November 2023. It is the Applicant's case that he is a member of Kamakis Business Community and a business owner in Kamakis area along Eastern Bypass known as Continuum Favour PPTY. According to the Applicant, he has filed a Constitutional Petition dated 15<sup>th</sup> November, 2023 challenging the actions of the County Government of Kiambu in imposing arbitrary parking fees along the Eastern Bypass in the Kamakis area, alleging that it is a violation of constitutional rights particularly Articles 10, 118, 185, 201, 210 all of *the Constitution* of Kenya, 2010.
  3. The Petitioner contends that the imposition of parking fees is not backed by any lawful authority and is thus a prima facie violation of constitutional rights of the entire community, the Respondents of Kiambu County. The Applicant contends that the arbitrary imposition of parking fees without due regard to *the Constitution* threatens the economic stability, the untold financial loss and survival of business operating in the area. He holds that he is ready and willing to abide by the terms of the court in granting the conservatory orders.
  4. The Respondents opposed the application through the Replying Affidavit of their Legal Counsel, Claire Ruth Nguru sworn on 5<sup>th</sup> December, 2023 wherein she has stated that the County Government is established under Article 176 of *the Constitution* which empowers it to impose two types of taxes and charges being property rates and entertainment taxes as provided for under Article 209 (3) of *the Constitution*. The Respondent maintains that these sources of revenue include land rates, single business permits, parking fees, building permits, fees from billboards and advertisement.
  5. According to the Respondent, on 22<sup>nd</sup> November, 2023, the Governor of the County Government of Kiambu, Dr. Kimani Wamatangi signed into law the Finance Act allowing it to impose their own source of revenue and thus maintains that there is proper legal framework for the collection and imposition of parking fees in Kiambu County, including Kamakis area, being an urban area within Kiambu County, thus the laws of Kiambu County are applicable to it. The Respondents also maintains that in the said Finance Act, had followed the proper legislative procedure before it was passed into law as the public participation was conducted in July, 2023. The Respondent therefore holds that the application is dead on arrival, unmeritorious, an abuse of the court process and should be dismissed with costs to the Respondents.
  6. In rejoinder, the Applicant filed a Further Affidavit sworn by the same deponent Stephen Ngatia Kamanu on 4<sup>th</sup> January, 2024, wherein he has stated that the Respondents claim that the Finance Act was passed one week after filing of the Petition to justify the Respondent's actions. The deponent maintains that the Replying Affidavit has not explained the impugned collections prior to the enactment of the Finance Act. Further, the Applicant claims that the Respondents has not provided the Kenya Gazette or Supplement to the Kenya Gazette to show that the Act has the full force of law.
  7. The Applicant maintains that it does not dispute the power of the county government to charge parking fees but urges that the same should be done only in designated parking places. He holds that none of the provisions of the Kiambu Finance Act have listed the designated parking places in Kiambu and there is no law in place on the same. The Applicant maintains that the application raises serious constitutional issues which should be considered by this court.



## Submissions

8. The court directed that the Notice of Motion application to be canvassed by way of written submissions by the parties, which the court has read through for consideration in its determination of the issue(s) raised therein.
9. In the Applicant's submissions dated 4<sup>th</sup> January, 2024 three issues are raised for determination. They are:-
  - a. Whether the case by the applicants bears a public interest connotation deserving of conservatory orders;
  - b. Whether the applicants have presented a prima facie case.
  - c. Whether the petition or its substratum will be rendered nugatory if the conservatory orders are not granted.

## Analysis and Determination

10. Having read the application alongside its Supporting Affidavit, the Replying Affidavit, Further Affidavit and respective submissions filed by the parties, this court finds that the main issues for determination are:-
  - a. Whether temporary conservatory orders should issue pending the decision by the County Government of Kiambu to impose parking levy.
  - b. Whether conservatory orders should issue suspending the implementation of the notice by the Respondent imposing parking levy on business and individuals of Kiambu County.
  - c. Whether conservatory orders should issue suspending any further action by the Respondent including attempts to deliberate or legalise the unlawful levy.
11. On the first issue, it is worth-noting that this application is dated 15<sup>th</sup> November, 2023. And in its response, the Respondent acknowledges that the Governor of the County Government of Kiambu, Dr, Kimani Wamatangi signed into law the Finance Act, which allowed the County Government to impose their own source of revenue, thus providing a proper legal framework for collection and imposition of parking fees in Kiambu County, including Kamakis area. In its further affidavit in response to this averment, the Applicant pointed out that this law was passed a week after the filing of the Petition. And even though the Applicant has stated that there is no Gazette Notice to confirm that the said Act has a full force of the law, it has not demonstrated that this was done in disregard to the court order and invited the court to hold the Respondent in contempt. The Applicant confirms that the Finance Act was signed by the Governor and appears to condone that the orders and law. In view of this, the court finds this issue having been overtaken by events.
12. From the arguments by the parties herein, the main issue for determination is on the second and third issues, whether the court should grant conservatory orders to either suspend the implementation of the notice by the Respondent in imposing parking levy on the business and individuals of Kiambu County or suspend any further action by the Respondents including an attempt to deliberate or legalise the unlawful levy. In doing this, the court is charged with the duty to balance between the rights of the Petitioner and the rights of the Respondents with the interest of justice and while at it, determine whether the conservatory orders will be prejudicial to either of the parties herein.



13. In the case of *Gatirau Peter Munya –vs- Dickson Mwenda Kithinji & 2 Others* [2014] eKLR, the court had this to say on conservatory order:-

“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 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 applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

14. Therefore, what the Court is required to consider are the merits of the case, the public interest, and constitutional values. It is trite that the County Government is empowered to designate parking places and collect parking fees as a way of raising revenue. The *Traffic Act* gives the local authority power to designate parking places. Section 72A of the said Act provides that:-

- (1) A local authority may, by By-laws—
  - (a) designate parking places on roads, within its area of jurisdiction for vehicles or vehicles of any particular class or description, having regard to both the interests of traffic and the interests of owners and occupiers of adjoining property;
  - (b) prescribe the manner in which vehicles shall stand in or be driven into or out of the designated parking place;
  - (c) provide that a vehicle may not be left continuously in the designated parking place for longer than a specified period;
  - (d) provide that a vehicle which has been taken away from the space in which it was left in the designated parking place shall not again be left in that designated parking place until after the expiration of such interval as may be prescribed;
  - (e) empower an inspector, or police officer or any specified person to effect the moving, in case of emergency, of vehicles left in a designated parking place, or the moving of vehicles left in a designated parking place in contravention of this Part or any by-laws made thereunder, to suspend the use of a parking place or any part thereof when expedient and to provide for the temporary removal of a parking meter;
  - (f) provide for the reservation of spaces in a parking place for the exclusive use of Ministers, Assistant Ministers, Permanent Secretaries of Ministries and heads of diplomatic missions;
  - (g) provide for the removal from a parking place, and the safe custody, of any vehicle in respect of which any requirement of this Part has been contravened in relation to a parking place, and for the recovery of the cost of removal and safe custody;
  - (h) prohibiting or restricting the carrying on of trades or other activities or the doing of any other thing within a designated parking place;
  - (i) prescribe anything which under this Part may be prescribed;



- (j) make such incidental or consequential provision as appears to the local authority requisite for the purpose of the satisfactory operation of a parking place or for giving effect to the provisions and purposes of this Part.
- (2) The procedure for the making, approval and publication of by-laws made under subsection (1) shall be that prescribed in the Local Government Act (Cap. 265), and, for the purposes of their enforcement and the disposal of fines imposed for their contravention, such by-laws shall be deemed to be by-laws made by the same local authority under that Act.
- (3) Notwithstanding anything to the contrary contained in any written law, bylaws made by a local authority under subsection (1) may provide for the use of clamps on motor vehicles parked elsewhere than in a designated parking place.

Section 72B states that:-

“There shall be paid to the local authority in respect of a vehicle left in a designated parking place charges calculated in accordance with this section or in such other manner as the local authority may by by-laws prescribe”.

15. In view of the Constitutional and statutory provisions set out above, this court has taken into consideration that the Respondents were acting on their mandate to collect parking fees as revenue for the County Government for the benefit of the general public to grant conservatory orders at this interlocutory stage as this will curtail the Respondents duty of collecting the same to the detriment of the general public and economy, before the main Petition is heard on its merit so as to have the benefit of each party’s position on the issue of how the collection of parking levy has infringed on the public and or residents.
16. For these reasons, the Notice of Motion application dated 15<sup>th</sup> November, 2023 is found to be without merit and is hereby dismissed with costs to the Respondent.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

M/S Mburu counsel for the Respondent

Court Assistant - Martin

