



Karimi & 3 others (Suing on Their Own and on Behalf of Bahati Business Community) v Nakuru Revenue Authority & another (Petition E016 of 2025) [2025] KEHC 6535 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6535 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
PETITION E016 OF 2025**

SM MOHOCHI, J

MAY 22, 2025

**IN THE MATTER OF ARTICLES 2, 3, 35, 185 (2) & (4)
(A) 196 (2) AND 201 THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTIONS 87 AND 115 OF THE COUNTY GOVERNMENT ACT

AND

IN THE MATTER OF SECTIONS 3 AND 4 OF THE NAKURU COUNTY TRADE ACT, 2020

AND

**IN THE MATTER OF SECTION 13 (1) (I) AND (II)
OF THE NAKURU COUNTY FINANCE ACT 2023**

BETWEEN

DAVID M. KARIMI 1ST APPLICANT

GODFREY KARIUKI WANJIRU 2ND APPLICANT

JOHN MWANGI NJUGUNA 3RD APPLICANT

HANNAH NUNGARI MWANGI 4TH APPLICANT

**SUING ON THEIR OWN AND ON BEHALF OF BAHATI BUSINESS
COMMUNITY**

AND

NAKURU REVENUE AUTHORITY 1ST RESPONDENT

NAKURU COUNTY GOVERNMENT 2ND RESPONDENT



RULING

1. The Application before me dated 5th March 2025 as amended on 6th April, 2025 is anchored on the grounds set out on the face of it and further supported by the averments contained in the Supporting Affidavit of David M. Karimi, chairman of Bahati Business Community, the Petitioner herein sworn on the same day on his own behalf and that of Applicant officials and members. The following are the prayers sought in the said Application:-
 - i. Spent
 - ii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue conservatory order barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing the Nakuru County Finance Act, 2023 for want of reasonable public participation, stakeholder consultations and administratively fair procedures;
 - iii. That pending the hearing and determination of this Application, this Honourable Court be pleased to issue conservatory order barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing the Unified Trade Permit as provided under Section 13 (i) and (ii) for want of reasonable public participation, stakeholder consultations and administratively fair procedures;
 - iv. That pending the hearing and determination of this Application inter partes, this Honourable Court be pleased to issue a conservatory order barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing Section 2 of the Nakuru County Finance Act, 2023 (where the Applicant has been shifted from zone D to C) for want of reasonable public participation, stakeholder consultations and administratively fair process.
 - v. That costs of this Application be provided for.
2. The Applicant's case is hinged on the fact that, they have been paying licence fee to the 1st Respondent as a collector of the 2nd Respondent and from the year 2022 there has been exponential rise in licence fee without justification from the Respondents.
3. That when the 2nd Respondent introduced the Unified Trade Licence, there was no consultation nor Public Participation prior to the introduction and if it was done they were never invited to the same. That they have been victimized from lack of it and that the Unified trade licence is discriminatory as the itemized figures on the licence to be paid for the same businesses vary.
4. That they had been classified under Zone D and there was no public participation to move them to Zone C which is a higher economic zone. Prior to that they were classified in Zone B which was a higher economic zone before being moved to Zone D but are still paying rates as if they were in Zone B.
5. That in 2023 they called a Baraza with the County officials and in the Baraza, the County Revenue officer stated that they had not increased revenue in any way and the same would operate as it used to in 2022 but upon applying renewal of licence the same was found to have been increased.
6. That several Complaints were made through their MCA but there was no resolve. Attempts to seek audience with the Respondents have not borne fruits and have been left with no option but to pay the exorbitant fees.



7. As a response, the Respondents filed a Replying Affidavit sworn by Everlyne B. Kakai on 20th March, 2025. She averred that the Governor appointed a committee on 23rd January, 2023 to guide the development of the Finance Act 2023/2024 and the Committee was tasked with the duty of conducting business census database of all business for ease of documentation and to guide the development of the Nakuru County Finance Act 2023/2024.
8. The Committee's proposal was submitted to the County Assembly on 15th June, 2023 following the approval by the County Executive Community on 8th June, 2023. That on 12th October, 2023 the 2nd Respondent through the office of the Clerk notified the general public and stakeholders through 'The Standard' and 'Daily Nation' newspapers that the Nakuru County Finance Bill, 2023 was submitted and subsequently tabled in the County Assembly and as such invited members of the public and stakeholders to submit their views in written Memoranda on the Bill.
9. That following the newspaper adverts, the 2nd Respondent conducted a public participation forum on the diverse dates but the Applicants failed to capitalize on the opportunity to air out their grievances at the said meetings.
10. That following the exercise the 2nd Respondent did embark on drafting the report of the Finance Committee on its consideration of the Nakuru County Finance Bill dated November, 2023. The Bill was tabled before the County Assembly and passed as law. The bill was assented into law on 13th November, 2023 as the Nakuru County Finance Act, 2023 and gazetted on 13th December, 2023 vide the Kenya Gazette Supplement No. 11.
11. That it is a misrepresentation of facts from the Applicant to state that they were not afforded an opportunity to give suggestions. That it is in the best interests of the general public, interests of administration of justice and fairness that the Application should be dismissed and the entire suit.
12. The Respondents also filed a Notice of Preliminary Objection dated 24th March, 2025 seeking dismissal on the ground that the Petition and attendant Application are misconceived, ill-advised and bad in law and ought to be struck out on the grounds that the Petitioner has no legal capacity to sue or be sued in its own name.
13. The Applicant in its Further Affidavit sworn on 15th April, 2025 averred that Applicant is a registered organization and a certificate of registration has since been issued. That the photos annexed by the Respondent of the purported public participation did not bear any record to show when the same were taken, time and from what forum and it would be prejudicial to infer that the said pictures were taken during the purported public participation on 9th November, 2023.
14. That aside from the Gazette Notice to show when public participation was conducted there is no members register to show who attended, no minutes or resolutions or the crucial information obtained from the members to show that indeed reasonable public participation was conducted.
15. The Court on 8th of April, 2025 that the Amended Application dated 6th April, 2025 and the Preliminary Objection dated 24th April, 2025 shall be heard by way of written submissions. Only the Applicant complied.

Applicant's Submissions

16. In further support of its case, the Applicant filed written submissions and a bundle of authorities both dated 15th April, 2025. Counsel urged that public participation is a fundamental value and governance principle enshrined under Article 10, 118 and 232 of *the Constitution*... Article 10 reinforces Article 1 on that decision should not be made affecting the people of Kenya without recourse to them.



17. That Article 118 of *the Constitution* requires Parliament to ensure public participation in the process of legislation/ That the principle of public participation extends beyond Parliament as Articles 10 and 232 of *the Constitution* bind all state organs, state offices and public officers when applying interpreting and enacting *the Constitution* or implementing public policy.
18. Counsel made reference to the case in *Bundid & Another v Ministry of East African Community (EAC), the Asals and Regional Development & 3 Others* [2024] KEHC 3479 (KLR) to submit that the Applicant has demonstrated the above threshold and therefore seek for conservatory orders pending the hearing and determination of the Petition.
19. As regards the Preliminary Objection, it was submitted that it has been overtaken by events as the amendments addressed the same.

Analysis and Determination

20. I have considered the Amended Application, the response, the Preliminary Objection, and the submissions by the Applicants' counsel. The Preliminary Objection having been overtaken by events as the Orders of 8th April, 2025 allowed amendments and the Applicant availed a registration certificate addressing the error of parties and representation, the only issue which is budding for determination is; whether the Applicants have met the threshold for grant of conservatory orders.
21. The principles guiding grant of conservatory orders in Kenya were settled by the Supreme Court in *Munya v Dickson Mwenda Kithinji & 2 others* [2014] KESC 30 (KLR) where the nature of conservatory orders was discussed as follows:-

[86]“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.
22. Conservatory Orders are remedies under Article 23 (3) of *the Constitution* meant to maintain the status quo pending determination of a suit. Therefore, in the interim, the Court must be careful so as not to make any definitive finding, either of fact or law.
23. In considering the Application the Applicant has to satisfy certain conditions as were laid out in *Nkunja vs the Magistrate and Judges Vetting Board and Other* [2016] KEHC 7269 (KLR) the Court stated as follows:-

“ An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*; Whether if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and The public interest must be considered before grant of a conservatory order.”
24. The application is founded on the claim that there was no public participation and stakeholder engagement prior to the enactment of the Nakuru County Finance Act, 2023. That the introduction the Unified Trade Licence was done without mandatory public participation and it is discriminatory



- and victimizes the members of the Business Community as there was introduction of trade licences fees which were not uniform and varied with the same businesses.
25. It was also argued that the classification under Zone C, a higher Economic Zone, was without public participation and that they are still paying rates of Zone B another higher Economic Zone despite being initially classified under Zone D.
 26. The Respondent on the other hand insisted that there was public participation and availed photos and public notice that was published in the dailies. That all the necessary steps were followed up to assenting if the Bill to law. It was also argued that despite the various invitations the Applicants failed to utilize the opportunity to present their grievances.
 27. On whether a prima facie case has been established, it is not a requirement that a case must succeed in the main suit but the case has to not be frivolous and has to disclose serious arguable constitutional issues. The public notice published on 12th October, 2023 by the 2nd Respondent and the arguments propounded by the Respondents in their response suggest that that the process was to take place and eventually did take place on 6th November, 2023, 9th November, 2023 and November, 2023 in 11 avenues.
 28. According to the Respondent there were no minutes of the meeting or attendance register or feedback obtained from the public to suggest that public participation was conducted. That the photos presented do not show that they were taken from the same venue. The Court at this point must be careful not to delve of matters of facts or law but the Applicants have indeed raised valid questions as to the validity of the impugned public participation and as such established a prima facie case.
 29. On the condition that unless the conservatory order is granted there is a real danger that may be prejudicial to them or the substratum of the Petition will be rendered nugatory, the Applicants contend that on top of being classified in a higher economic zone and being subjected to exorbitance licence fees the introduced Unified Trade Licence is discriminatory as the itemized figures on the licences to be paid for the same businesses vary. The Respondents failed to address this particular issue on whether the argument itself is valid or not.
 30. County Governments are mandated to collect revenue to fund essential services that directly affect their members. If the substratum of the Petition is not preserved there is a danger of rendering the Petition nugatory as there will be the implementation of the Nakuru County Finance Act, the 1st Respondent will continue with the collection revenue under the proposed or introduced Unified Trade Licences within the introduced zones. Should the Petition succeed, the Applicants will have been mitigated from being subjected to unconstitutional process. Should the Petition fail the 2nd Respondent can still collect revenue and arrears or penalties if need be.
 31. In *Kariuki & others v County Government of Nyandarua & another* [2023] KEHC 2246 (KLR) the Court in allowing conservatory orders and in weighing which Party's interests outweigh the interest of the other was of the view that:-

...In any case, it is my finding that if the applicants get the conservatory orders sought and the petition succeeds, they may not be adequately compensated by the county government for the damage, which may entail even the collapse of their businesses. On the contrary, if the petition fails, the respondent can be compensated through charging levies prescribed and any other remedy available before this court, as petitioners will still be running their businesses.



32. On the condition of whether the interest of the Public can be concerned, it is worth noting that revenue collection and the Finance Act is a matter of public Interest and the public has a stake in it if it is used by the 2nd Respondent as a regulation and if the issues raised are on a constitutional from.
33. The Respondents did not show that allowing the application herein would work against the public interest. They insisted that Public Participation was conducted and ignored all the other issues raised by the Applicants. The Respondents have also not demonstrated the prejudice that they stood to suffer should the Application be allowed. There was no argument from them that County Government will have challenges in its financial operations.
34. In the result, I find that the Applicants have made out a case to warrant the issuance of conservatory orders as hereunder:
 - a. An interim conservatory order is hereby issued barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing the Nakuru County Finance Act, 2023;
 - b. An interim conservatory order is hereby issued barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing the Unified Trade Permit as provided under Section 13 (i) and (ii).
 - c. An Interim Conservatory order barring the Respondents by themselves, agents, officers working under them and or instructed, from implementing Section 2 of the Nakuru County Finance Act, 2023 (where the Applicant has been shifted from zone D to C);
 - d. For the avoidance of doubt the predecessor provisions in the predecessor Act shall apply until the determination of the Petition is or until further orders of the court;
 - e. In order to fast track the Petition, the Respondent to forthwith respond to the Amended Petition within 14 days.
 - f. The Applicants shall thereafter file written submissions within 14 days and the Respondent have corresponding 14 days within which to file submissions.
 - g. Costs to abide by the cause.

It is so ordered

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 22ND DAY OF MAY, 2025

MOHOCHI S.M

JUDGE.

