



**Muchoki & 2 others v Marugu & 6 others (Judicial Review
E006 of 2024) [2025] KEHC 7251 (KLR) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
JUDICIAL REVIEW E006 OF 2024**

RC RUTTO, J

MAY 23, 2025

BETWEEN

MR PHILIP MUCHOKI 1ST APPLICANT

MR JOSEPH MWAURA 2ND APPLICANT

MRS VERONICA WANGUI 3RD APPLICANT

AND

MR GEORGE KOINE MARUGU 1ST RESPONDENT

MRS MARY NJAMBI MBURU 2ND RESPONDENT

MR JACKSON MWAURA MUCHUKU 3RD RESPONDENT

MR FRANCIS KIMUHU 4TH RESPONDENT

MR APOLLO NDERITU MURIITHI 5TH RESPONDENT

THE JUJA SUB-COUNTY TRADE OFFICER 6TH RESPONDENT

COUNTY ATTORNEY, KIAMBU COUNTY 7TH RESPONDENT

JUDGMENT

1. The Applicants herein filed Judicial Review application seeking leave to file a substantive Judicial Review application. The application was considered and leave granted to the Applicants to file their substantive Judicial Review application. Thus, before this Court is the Applicants' Notice of Motion application dated 17th June 2024 seeking the following orders, that:
 - a. The court do hereby call and quash the decision of the 6th & 7th Respondents of 1.03.2024 which declared the 1st to 5th Respondents elected officials of the Juja Modern Market Traders



- b. An order of prohibition restraining the implementation or further implementation by any person of the elections conducted on 01.03.2024.
 - c. Any other relief the court may deem fit to grant.
2. The application is premised on the grounds that on 1/3/2024 the 6th and 7th respondents conducted elections and declared the election of the 1st to 5th respondents; the elections were a sham in many respects since the verifiability and transparency of the elections was not guaranteed since non-members voted, there was double voting and agents were not given a chance to participate in the tallying of results. The application is further supported by the affidavit of Philip Muchoki sworn on 17th June 2024. He deposed that he is the chairman of the committee of the Juja Modern Market, that on 22/12/23 he received a letter from the Juja Sub County Trade Officer directing that the next election of the market committee shall be held on the 1st week of February 2024. On 23/12/2023 as the Chairperson, he wrote a protest letter against the calling of the elections on the basis that the calling of elections was against the traders' constitution. Later, on 29/12/2023 another protest letter warning against the purported elections was done through their advocate on record.
 3. It was contended that the protest letters have never received a response prompting the filing of this application. The applicant's then narrated the sequence of events as follows; that again on 26/2/2024 they received an election letter by the Juja Trading Officer notifying the Juja market traders that elections would be held on 1st March 2024, on 29th February 2024 the Juja Sub-County Trade Officer posted on the traders notice board a list of aspirants; on 1st March 2024 the elections were conducted and the winners were declared. That the elections were not properly conducted in that non-stall owners were not only allowed to vote but also to be aspirants, elections were not conducted in accordance with the Constitution; the purported officials who were elected were nominated by the trade officer long before the voting day; the electoral officials were not members of the IEBC neither were the electoral materials upto standards; some stall members were denied a chance to vote in the morning as the voting started at noon; and there was no verification of the register.
 4. It was averred that the purported elections and the calling for the elections was against the constitution of the market members as clause 7 of the constitution provides for election of the committee officials after 10 years which period has not lapsed. That the respondents' action amounted to violation of the applicant's and the whole of Juja modern market fraternity constitutional right to assemble. They urged that it was only fair and just that the purported elections of 1st March /2024 be quashed by this court.

6th & 7th Respondent's Grounds of Opposition ___**

5. The 6th and 7th Respondents opposed the application by filing grounds of opposition dated 18th June 2024. They stated that the applicants have not made any valid claims against the 6th & 7th Respondents; rule 7 of the fourth schedule of the Constitution provides for the functions and mandate of the county government which includes development and regulation of markets; that the applicants' have based their application on a document that has no legal standing to interfere with the constitutional mandate of the County Government, that this is an affront to the supremacy of the Constitution; the prayer seeking to quash the decision of the 6th respondent of 1st March 2024 which declared the 1st to 5th respondents elected is not based on any legal underpinning and is unmerited; the applicants have not demonstrated violation of constitutional rights and not all rights are absolute; the application is a non-starter, frivolous, vexatious and an abuse of the court process. They urged the court to dismiss the application against the 6th and 7th respondents.



6. The application was heard by way of written submissions. The applicants' submissions are dated 9th October 2024 while the respondents are dated 18th September 2024.

Applicants' Submissions __**

7. The applicants set out the background leading to this application and set out the issue for determination as whether the purported elections conducted on 1st March 2024 should be set aside. It was their submission that the elections must be quashed for the following reasons; their constitution provides for elections after ten years. The officials had been elected in office for hardly 2 years thus calling for the elections was against clause 7 of *the constitution*; persons who were not members were allowed to participate in the elections and that genuine members were denied a chance to participate in the elections. They urged that this were serious issues that warrant the nullification of the purported elections.
8. To buttress their argument, reliance was placed on the case of William Odhiambo Oduol v Independent Electoral and Boundaries Commission & 2 Others [2013] eKLR; Joho V Nyange & another [2008] eKLR and the case of Morgan v Simpson [1974] 3 All ER 722 to urge that an election can be nullified if it is not conducted substantially in accordance with the law.
9. The applicants submitted that they had made out a case on the required standard for the alleged elections to be nullified and urged the court to nullify the purported elections.

Respondent's Submissions __**

10. Only the 6th and 7th Respondents filed their submissions. They submitted that the application lacks merit and is an affront to the supremacy of *the Constitution* as it seeks to interfere with the constitutional mandate of the county government. They relied on the case of Zacharia Wagunza & Another v Office of Registrar, Academic Kenyatta University & 2 others [2013] eKLR to reiterate the broad grounds on which the court exercises its judicial review jurisdiction.
11. The 6th and 7th respondents set out the following issues for determination namely; whether the application is merited and with legal basis; whether their decision of conducting the 1st March, 2024 elections was legal, rational and with procedural propriety; and whether the orders of Judicial Review are available?
12. It was submitted that Juja Market is a public market falling under the jurisdiction of the County of Kiambu and by virtue of Article 186(1) of *the Constitution*, it is the County government that has the power to develop and regulate markets. That the Juja Market Constitution is a document devoid of legal merit to challenge the constitutional mandate of the County. It was further submitted that regulation of markets is a function of the County Government - a mandate that the 6th Respondent has dutifully fulfilled; therefore, the applicants herein do not have a genuine and arguable case to warrant the grant for orders of certiorari and/or prohibition. Importantly, the decision of the 6th Respondent, to conduct the elections on 1st March 2024, which led to the election of the 1st - 5th Respondents, is not only legally sound but also devoid of any infringement of constitutional rights. Reliance was on the case of Zachariah Wagunza & another (Supra).
13. On the second issue, it was submitted that principles governing Judicial Review are well settled. Thus, the court should assess the legality, rationality, and procedural propriety of the administrative action. See Council of Civil Service Unions versus Minister for the Civil Service (1985) A.C. 374,410. On legality, it was submitted that the election carried out on 1st March, 2024 was lawful and done within the confines of the law since Part Two of the Fourth Schedule, paragraph 7(a) of *the Constitution*



explicitly stipulates that trade development and regulation of markets is a power and Function of County Government. See the case of Peter Owino - Chairman & 2 others of Kenya Pharmaceutical Association & another v Nairobi City County and the 46 other County Governments; Council of Governors (Interested Party) [2017] eKLR.

14. On rationality, it was submitted that the decision made by the 6th Respondent is entirely reasonable and falls well within the range of responses open to a reasonable decision-maker and is not so absurd that no sensible person who had applied their mind to the question to be decided could have arrived at it. Reference was made to the case of Pastoli vs Kabale District Local Government council and Other (2008) 2 EA 300.
15. On procedural impropriety, it was submitted that the applicants have not provided or demonstrated any violation of constitutional rights, principles of natural justice nor have they provided evidence of procedural impropriety on the part of the 6th and 7th respondents. Reference was made to the case of Commission for Human Rights and Justice V. Torrut & 5 Others Petition E024 of 2021 [2022] eKLR.
16. As to whether the orders for judicial review were available, it was submitted that the county government, having given clear and precise provisions of the law empowering it to regulate markets and having established that the decision of the Juja Sub-County Trade officer in conducting the said elections was legal, reasonable and followed due process, it follows that the Orders as sought in the application are incapable of being granted and or issued. Reference was to the case of Jipe House Kindergarten Limited v City Council of Nairobi [2012] KEHC 3268 (KLR); and Republic Vs Kenya National Examination Council Ex parte Gathenji and others Appeal No.266 of 1996 among others. They urged the court to find that the application is devoid of merit, substance, and legal backing, it frivolous and vexatious and an abuse of the court process and to dismiss it with costs to the 6th and 7th respondent.

Analysis and Determination __//**

17. Upon considering the application, the supporting affidavit, the grounds of opposition and the submissions of both parties, the main issue for determination is whether the court should grant the Judicial Review orders sought.
18. Judicial review jurisdiction, was discussed in the Ugandan case of Pastoli vs Kabale District Local Government Council & Others, (2008) 2 EA 300, that:

“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: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, Miscellaneous Application Number 643 of 2005 (UR). Illegality is when the decision making authority commits an error of law in the process of taking the decision 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.... Irrationality is when there is such gross unreasonableness in the decision taken or 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: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph “E”. Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in 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 and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876).”

19. Article 165(6) of *the Constitution* provides that this Court has supervisory jurisdiction over any person, body or authority that exercises a quasi-judicial function or a function that is likely to affect a person’s rights.
20. In this case the applicants alleged that the 6th and 7th Respondents vide a letter dated 22nd December 2023 notified the members of the Juja Modern Market that the next election of the committee shall be held on the first week of February 2024. The applicants have moved this court alleging breach of the Juja Modern Market Constitution which they allege manage the conduct of the members of the Juja Modern Market. The applicants’ contention is that the said notice for election was in violation of the Juja Traders Constitution which under clause 7 provides that elections are to be held after every ten years. The clause provides that;
 - “7(1) elections will be held after every ten years since it is not a political office and the office bearers are not paid salaries or remuneration but only sitting allowances when the executive council sits at any particular time or hold meetings at the county or national government or any official duties
 - (2) all disputes between the traders will be settled by the executive council and one or two committee members and the conflicting parties will pay the cost of the sittings.”
21. The 6th and 7th respondents on the other hand submitted that Part Two of the Fourth Schedule, paragraph 7(a) of *the Constitution* explicitly stipulates that trade development and regulation of markets is a power and function of County Government. That this provision gives them the mandate to development and regulate markets under Trade. They further averred that Juja market being a public market falling under the jurisdiction of County Government of Kiambu it was their responsibility to undertake the elections which according to them were done within the confines of the law.
22. Further, they challenged the authority of the Juja Market Constitution, and stated that it was a document devoid of legal merit as to form a basis to challenge the constitutional mandate of the County Government. That it only meant to undermine the supremacy of *the Constitution* and to inappropriately leverage the authority of this Honourable Court to sanction an illegality.
23. Indeed, Part Two of the Fourth Schedule, paragraph 7(a) of *the Constitution* explicitly provides that trade development and regulation of markets is a power and function of County Government. While *the constitution* grants such a function to the 6th and 7th respondent, this court notes that the 6th and 7th respondents have not provided the basis and or regulation that govern and guide the county in regulating and governing the market. They have not provided the appropriate County Laws, Regulation and or the guiding rules that gives the mandate to call and conducted the elections by members of the Juja Modern Market.
24. The contention as this court perceives it is not on the county government’s mandate but specific to the manner in which the election process culminating in the election of 1st March 2024 was conducted. This court proceeds to determine whether there was procedural impropriety in the election of officials for the Juja Market Elections. Upon reviewing the documents presented, it is evident that the Notice of Election letter dated 22nd December 2023 and the Juja Market Election letter dated 26th February



2024 were both addressed to the Chairman and members of Juja Modern Market. This indicates the existence of a group of individuals identifying themselves as Juja Traders, which was properly constituted and acknowledged by the 6th and 7th respondents.

25. Furthermore, following the purported elections, a letter from the county government dated 6th May 2024, referenced "Handing Over of Official Documents and Facilities," was addressed to Mr. Philip Muchoki, Former Chairman of Juja Market. This supports the 1st applicant's claim that he was indeed the Chairman of Juja Market Traders prior to the election of 1st March 2024. It further aligns with the Juja Market constitution which lists the 1st applicant as the chairman of the traders.
26. The applicant argues that the elections were not conducted in accordance with the constitution that governs the operations of the Juja Market Traders. He contends that, as per the constitution, elections are to be held every 10 years, and since the last elections took place in 2020, the required term period had not yet elapsed. This court finds in favor of the applicant's argument, confirming that the 10-year election cycle had not yet expired as stipulated in the constitution.
27. The 6th and 7th respondents assert that the said constitution lacks legal merit. However, they have failed to provide any substantive evidence to impugn or counter the legitimacy of the constitution governing the Juja Market Traders. Their assertion remains unsupported by any regulatory framework that would justify or guide the manner in which the elections were conducted.
28. Additionally, the respondents did not respond to the protests issued by the 1st applicant and its advocate or indicate the manner in which they arrived at the contestants, eligible voters and members or even the manner of conducting the elections. This would have been covered under a legal regime beyond the constitutional mandate relied upon by the 6th and 7th respondents. Given this lack of proper guidelines and regulatory support, the court has no choice but to conclude that the elections should have been, unless otherwise countermanded by a clear legislative framework, conducted in accordance with the constitution provided by the applicant. The failure to adhere to these constitutional provisions constitutes a breach by the 6th and 7th respondents.
29. Thus, this court finds that the said elections were procedurally flawed, having been conducted in violation of the governing constitution and without any proper regulations from the respondents to justify the electoral process. As no relief on costs was sought, the court will not make any order as to costs.
30. Consequently, the court finds merit in the application and makes the following orders:
 - a. an order is issued to quash the decision of the 6th & 7th Respondents of 1.03.2024 which declared the 1st to 5th Respondents elected.
 - b. An order of prohibition is hereby issued restraining the implementation or further implementation by any person of the elections conducted on 01.03.2024
 - c. No orders as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 23RD DAY OF MAY, 2025.

RHODA RUTTO

JUDGE

In the presence of;



Applicants

Respondents

Sam Court Assistant

