



Nyabuto v County Assembly of Nairobi City County & 2 others; Commission on Revenue Allocation (Interested Party) (Petition E040 of 2025)
[2025] KEHC 8865 (KLR) (Constitutional and Human Rights) (19 June 2025) (Judgment)

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REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E040 OF 2025

AB MWAMUYE, J

JUNE 19, 2025

IN THE MATTER OF ARTICLES 1,2,3,10,174,201,209,210
AND 216 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 120 OF THE COUNTY GOVERNMENTS ACT, 2012

AND

IN THE MATTER OF SECTIONS 102,104,105,107,125,131,132 AND
161 OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012

AND

IN THE MATTER OF THE FINANCE ACT OF NAIROBI
CITY COUNTY GOVERNMENT, 2023/2024/2025

BETWEEN

JARED NGISA NYABUTO PETITIONER

AND

THE COUNTY ASSEMBLY OF NAIROBI CITY COUNTY 1ST RESPONDENT

THE SPEAKER OF THE COUNTY ASSEMBLY COUNTY GOVERNMENT OF
NAIROBI CITY 2ND RESPONDENT

THE COUNTY GOVERNMENT OF NAIROBI CITY 3RD RESPONDENT

AND

THE COMMISSION ON REVENUE ALLOCATION INTERESTED PARTY



JUDGMENT

Introduction

1. This Petition invites the Court to interrogate the constitutionality and legality of the [Nairobi City County Finance Act](#), 2023 (the impugned Finance Act), primarily on grounds of procedural impropriety and substantive illegality. The Petitioner, invoking Articles 22 and 258 of the [Constitution](#), seeks to challenge the enactment and implementation of the said legislation for failure to comply with essential constitutional and statutory requirements, including public participation and the development of a tariffs and pricing policy.
2. The challenge lies at the intersection of legislative authority and constitutional accountability. The impugned [Finance Act](#), 2023, which will affect Nairobi residents financially for the 2024-2025 fiscal year, is alleged to have been enacted without the procedural and participatory measures outlined in the [Constitution](#).
3. The gravamen of the challenge is that the Nairobi City County Government enacted and implemented revenue-raising measures introducing, revising, and increasing numerous fees, levies, and charges under the impugned [Finance Act](#) without first developing, adopting, and implementing a county tariffs and pricing policy as required under section 120 of the [County Governments Act](#), 2012 (“CGA”). In consequence, the public lacked the requisite information to engage meaningfully in the public participation exercise, rendering it illusory, ineffective, and constitutionally defective. Further, the Petitioner contends that the process violated Articles 10, 35, 174, 185, 196, 201, 209, 210, 232, and 258 of the [Constitution](#), as well as statutory provisions in the [Public Finance Management Act](#), 2012 (“PFMA”) and other legislation governing county finance and legislative processes. Thus, the Petitioner seeks the following orders:
 - i. A declaration that the impugned [Finance Act](#) of County Government of Nairobi City County for 2023 is unconstitutional for failure by the Respondents to develop a tariff and pricing policy to guide the determination of the charges, fees, levies and taxes.
 - ii. An order to suspend the implementation of the impugned [Finance Act](#), 2023 pending review by the County Assembly to align it with constitutional principles on public finance.
 - iii. An order of certiorari be issued to quash the impugned [Finance Act](#), 2023 that is being implemented without proper tariff and pricing policy that guides the determination of taxes, fees and charges.
 - iv. A permanent injunction be hereby issued against the Respondents from raising revenue without developing a tariff and pricing policy as required under section 120 of the [County Governments Act](#), 2012.
 - v. An order of mandamus be and is hereby issued to compel the Respondents to develop a tariff and pricing policy to determine and guide setting of charges by the Respondents that are proportional to the attendant services.
 - vi. Costs of the petition.
4. The Petition raises fundamental issues concerning fiscal governance, legality of subordinate financial legislation, and the extent to which County Governments must comply with the procedural rigours prescribed in the [Public Finance Management Act](#) and the [County Governments Act](#).



5. The main issue pertains to the absence of a tariff and pricing policy as mandated by Section 120 of the *County Governments Act*. The Petitioner argues that without this policy, the enforcement of taxes, levies, and charges under the contested impugned *Finance Act* is arbitrary, unclear, and contravenes Articles 10, 201, and 210 of the *Constitution*.
6. The matter, therefore, calls for judicial scrutiny of not just the substantive contents of the *Finance Act*, but the process that gave birth to it, and whether the citizenry was afforded a fair, informed, and effective opportunity to participate in its making.
7. Notably, none of the Respondents filed any replying affidavit or submissions to controvert the Petitioner's detailed pleadings. As such, the Petition remains unopposed, and the Court is left to determine its merits based on the unrebutted factual and legal claims presented by the Petitioner.
8. The jurisprudential burden of this Court, therefore, is to examine whether the enactment and application of the *Finance Act*, 2023 meets the test of legality, rationality, and procedural propriety as required by law.
9. The *Constitution*, being the supreme law of the land under Article 2(1), demands that all acts, omissions, and legislative frameworks conform strictly to its spirit, letter, and values. Any deviation from this standard must be confronted firmly to preserve the integrity of the constitutional framework.
10. With that in mind, this Court now turns to review the factual and legal foundation of the Petition before proceeding to distil the legal issues for determination.

Petitioner's Case

11. The Petitioner's case is founded on the dual limbs of illegality and procedural impropriety. The Petitioner avers that the impugned *Finance Act*, 2023 violates multiple constitutional provisions, including Articles 1, 2, 10, 201, and 210, as well as statutory obligations under Section 120 of the *County Governments Act* and Sections 125, 129, 132, and 161 of the *Public Finance Management Act*.
12. Central to the Petitioner's grievance is the absence of a tariffs and pricing policy, which the law mandates to be developed prior to any imposition of fees, levies, or charges by a county government. Without such a policy, the basis for determining revenue measures is alleged to be non-existent, irrational, and opaque.
13. The Petitioner argues that the requirement for a tariffs and pricing policy is not aspirational but mandatory. The language of Section 120 employs the term "shall," denoting an obligatory legislative duty which must precede any fiscal enactment by a county government.
14. The Petitioner further alleges that the lack of a pricing policy severely undermined the public participation process. In the absence of data or a structure showing how fees were calculated, the public was deprived of the essential information needed to express informed opinions, rendering the process meaningless and ineffective.
15. The Petitioner contends that this contradicts Articles 10, 174, and 196 of the *Constitution*, which require that all public administration and financial policies are guided by principles of openness, transparency, accountability, and inclusive public engagement.
16. The Petitioner also asserts that the impugned *Finance Act* introduces a plethora of new and revised charges which, in the absence of any justification or link to actual services, breach the principles of fair taxation under Article 210(1) of the *Constitution*. Additionally, that some of the charges include doubled landing fees for animals, increased cremation fees, new environmental charges, and



unexplained market stall levies, none of which, it is argued, are tethered to any commensurate service improvements or costings.

17. The Petitioner also challenges supplementary budgets and Appropriation Acts based on the impugned Finance Act, arguing that amendments introduced without explanation breach PFMA requirements for description of additional expenditure, fiscal responsibility, and transparency. The Petitioner avers that the supplementary budgets were presented hastily, without clear justification for block adjustments, contravening PFMA Regulations requiring alignment with fiscal responsibility principles.
18. The Petitioner relies on the Commission on Revenue Allocation advisory of April 2023 urging counties to enact revenue-raising legislation in compliance with constitutional requirements, which Nairobi City County allegedly disregarded. The Petitioner emphasizes that this advisory underscore mandatory nature of tariffs and pricing policy in preparing revenue legislation.
19. Accordingly, the Petitioner seeks a declaration that the impugned Finance Act is unconstitutional and invalid, an order of certiorari quashing it, a mandamus compelling the development of a tariffs and pricing policy, and an injunction against further implementation of the Act pending compliance with the law.

Petitioner's Submissions

20. The Petitioner, through his written submissions dated 2nd April, 2025 filed by his counsel, argues that the enactment of the impugned Finance Act, 2023 contravened express constitutional and statutory obligations, particularly with respect to the development of a Tariffs and Pricing Policy as required under Section 120 of the County Governments Act, 2012.
21. It is the Petitioner's submission that the statutory mandate under Section 120 is couched in mandatory terms. The provision uses the word "shall," signifying that the formulation and adoption of a Tariffs and Pricing Policy is a legal precondition to any imposition of fiscal charges by a county government.
22. In support of this argument, the Petitioner relies on the decision in Robert N. Gakuru & Others v Governor Kiambu County & 3 Others [2014] eKLR, where the Court emphasized that failure to comply with mandatory statutory procedures vitiates the resultant legislation.
23. The Petitioner further submits that the absence of a Tariffs and Pricing Policy undermines transparency, fairness, and proportionality in revenue collection. Charges imposed under the impugned Act are arbitrary, as they are not anchored on any disclosed costing or service correlation. This, he argues, offends Articles 10 and 201 of the Constitution, which enshrine the principles of openness, accountability, and transparency in public finance.
24. Counsel for the Petitioner invoked the principle of the "noumenal exercise of power," arguing that all state power must be exercised with justification. He refers to Thomas M. Besch's formulation of the principle, which holds that power is legitimate only when exercised in a reasoned, accountable, and transparent manner, consistent with the Constitution. Any imposition of obligations on citizens without reasons or justification negates the essence of constitutional governance.
25. On the issue of public participation, it was argued that no meaningful engagement was possible in the absence of the Tariffs and Pricing Policy. Citizens were denied access to information essential for interrogating the rationale behind the proposed charges. As such, the process violated Articles 10, 174, and 196 of the Constitution. He submits that public participation requires an informed citizenry, and that meaningful engagement cannot occur in an informational vacuum.



26. In support of the above argument, reliance was placed in the South African Constitutional Court decision in *Doctors for Life International v Speaker of the National Assembly & Others* (CCT 12/05) [2006] ZACC 11, where it was underscored that public participation must be real and capable of influencing the legislative outcome.
27. The Petitioner further placed reliance in the Supreme Court decision in *British American Tobacco Kenya, PLC formerly British American Tobacco Kenya Limited v Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* [2019] eKLR, where the Court laid down guiding principles for public participation, including the requirement that such participation be genuine, not cosmetic, and informed by adequate notice and disclosure. The Court cautioned against tokenistic or proceduralist engagement.
28. It was further submitted that public participation is both a procedural and substantive requirement. It is not enough to merely invite comments from the public; government agencies must ensure that the public is empowered to critique, comment, and influence the policy-making process. In the absence of the Tariffs and Pricing Policy, public engagement was neither substantive nor lawful.
29. The Petitioner relied on the decision from the Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* [2018] eKLR, which reaffirmed that meaningful public participation entails proper notice, accessible information, and an opportunity to be heard. He submits that the Nairobi City County failed on all these fronts, thus invalidating the legislative process.
30. Additionally, the Petitioner contends that the impugned *Finance Act* contains fiscal measures such as cess, market stall fees, and inspection levies, which have no corresponding revenue legislation authorizing their imposition. This, he argues, violates Article 210(1) of the *Constitution*, which prohibits the imposition of any tax or licensing fee without a legal foundation.
31. Accordingly, the Petitioner contends that the *Finance Act*, 2023 is unconstitutional for having been enacted in violation of mandatory preconditions under the law. He therefore prays for the declarations and reliefs as set out in the Petition, asserting that public interest and constitutional integrity demand no less. He maintains that unless the *Act* is quashed, it would set a dangerous precedent for law-making in disregard of transparency, accountability, and citizen inclusion.

Analysis and Determination

32. It is trite that a suit that is not opposed need not automatically succeed. The petitioner has a duty to prove his case and the court will determine the same on merit. (See *Sitelu Konchellab v Julius Lekakeny Ole Sunkuli & Sunkuli & 2 others* (2018) eKLR.)
33. Having carefully considered the Application, the Supporting Affidavit, the Petition, and the Petitioner's submissions, it is my view that the primary issues for determination are:
 - i. Whether this Court is the forum to deal with the Petitioners' claim on account of the doctrine of separation of powers.
 - ii. Whether the Nairobi City County Government violated Section 120 of the *County Governments Act*, 2012 and other applicable laws by enacting the *Nairobi City County Finance Act*, 2023 without first developing and adopting a Tariffs and Pricing Policy.
 - iii. Whether the enactment of the *Nairobi City County Finance Act*, 2023 violated the constitutional principles of public participation under Articles 10, 174, 196, and 201 of the *Constitution* due to the absence of a Tariffs and Pricing Policy.



- iv. Whether the *Nairobi City County Finance Act, 2023* is unconstitutional and invalid for want of legal justification, transparency, and compliance with statutory and constitutional preconditions relating to the imposition of taxes, fees, and charges.
- v. Whether the Petitioner is entitled to the relief sought

Whether this Court is the forum to deal with the Petitioners' claim on account of the doctrine of separation of powers.

34. The first is whether this Court is the forum to deal with the Petitioners' claim on account of the doctrine of separation of powers. My view on this issue is that it is indeed the correct position that Courts should not ordinarily interfere with the exercise of the legislative authority or executive functions of a constitutional body in line with the doctrine of separation of powers, and ought to exercise judicial restraint in matters which deal with legislative authority of County Governments.
35. However, I must also state that under Article 2(4) of the *Constitution*, any law that is inconsistent with the *Constitution* is void to the extent of the inconsistency, and any act or omission in contravention of the *Constitution* is invalid. In addition, under Article 165(3)(d)(i) and (ii) the High Court is clothed with the jurisdiction to hear any question respecting the interpretation of the *Constitution* including the determination of the question whether any law is inconsistent with or in contravention of the *Constitution*, and the question whether anything said to be done under the authority of the *Constitution* or of any law is inconsistent with, or in contravention of, the *Constitution*.
36. Therefore, whereas the legislative authority vests in Parliament and the County legislative assemblies, and executive authority in the Presidency and Governors of Counties, where a question arises as to whether an enactment or act is inconsistent with the *Constitution* or is passed in contravention of the *Constitution*, as is the case in the instant Petition, the High Court is the institution constitutionally empowered to determine such an issue, subject to appellate jurisdiction given to the Court of Appeal and the Supreme Court. This Court therefore not only has jurisdiction to hear and determine this Petition, but is also in the circumstances exercising its constitutional function within the doctrine of separation of powers.

Whether the Nairobi City County Government violated Section 120 of the *County Governments Act, 2012* and other applicable laws by enacting the Nairobi City County Finance Act, 2023 without first developing and adopting a Tariffs and Pricing Policy

37. Section 120(1) of the *County Governments Act, 2012* expressly requires county governments or any agency delivering services in the county to adopt and implement a tariffs and pricing policy. The statutory language is mandatory and prescriptive. It admits of no discretion. Section 120(1) of that *Act* provides:

“A county government or any agency delivering services in the county shall adopt and implement a tariffs and pricing policy for the provision of public services.”
38. The impugned *Finance Act, 2023* introduced various charges, levies, and fees across multiple sectors of the Nairobi City County without any accompanying or prior published tariffs and pricing policy. This is not denied by the Respondents, who failed to file any replying affidavit to challenge the Petitioner's allegations.



39. The absence of a tariffs and pricing policy renders the imposition of such charges arbitrary and unlawful. The policy serves as a benchmark for rationalizing county charges, ensuring that fees are commensurate to services rendered and are not exploitative.
40. In *Robert N. Gakuru & Others v Governor Kiambu County & 3 Others* [2014] KEHC 7516 (KLR), the Court underscored that:

“It is therefore clear that the County Assembly may only impose property rates and entertainment taxes unless otherwise authorised by an Act of Parliament and this position is emphasised by the provisions of Article 210(1) of the *Constitution* which expressly provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. County Governments are however empowered to impose charges on services they provide. Such service would include parking and market fees. However to levy charges on the stones quarried unless authorised by an Act of Parliament or any services rendered by the County Governments towards that end would be clearly illegal. Further the levying of such taxes ought not to be such as to prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour. Tariffs and pricing of services must however comply with the provisions of section 120 of the *County Government Act*. The Court however is not entitled to interfere with the Tariffs and pricing of services simply on the ground that the Court would have decided otherwise since the Court ought not to substitute its opinion for that of the County Government. As long as the provisions of the *Constitution* and the relevant legal provisions are complied with and the applicable principles are taken into account the Court ought not to interfere.”

41. The principle of legality, a constitutional doctrine, dictates that all acts of public bodies must find justification in law. In the present case, the lack of a foundational policy document vitiates the process and outcome of the impugned *Finance Act*, 2023.
42. Moreover, the adoption of such a policy is central to the realisation of Articles 10 and 201 of the *Constitution*. These Articles impose a duty upon all state organs to uphold transparency, accountability, and public participation in public finance. Articles 201(a) and (d) require public finance to be managed openly, accountably, and with public participation. Article 10 obliges transparency and accountability in exercise of power. Article 209(3)–(5) grants counties power to raise revenue but within constitutional constraints not to jeopardize national policies or mobility of goods, and Article 210(1) prohibits imposition of taxes or licensing fees except as provided by legislation. A tariffs and pricing policy forms part of the legislative framework required to satisfy Article 210(1), by providing justification and legislative backing for fees.
43. The right to participate in the conduct of public affairs is a crucial element of democracy. Therefore, Parliament must facilitate meaningful participation in legislative processes. This affirms the need for supporting structures like a tariffs and pricing policy. As was aptly put in *Merafong Demarcation Forum and Others v. President of the Republic of South Africa and Others* (CCT 41/07) [2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC):

“Once structured processes of consultation were put in place, with tangible consequences for the legislative process and of central importance to the community, the principle of participatory democracy required the establishment of appropriately formal lines of communication, at least to clarify, if not to justify, the negation of those consequences. In my view, then, it was constitutionally incumbent on the Legislature to communicate



and explain to the community the fact of and the reasons for the complete deviation from what the community had been led to believe was to be the fruit of the earlier consultation, and to pay serious attention to the community's response. Arms-length democracy is not participatory democracy, and the consequent and predictable rupture in the relationship between the community and the Legislature tore at the heart of what participatory democracy aims to achieve..... I would hold that, after making a good start to fulfil its obligation to facilitate public involvement, the Legislature stumbled badly at the last hurdle. It ended up failing to exercise its responsibilities in a reasonable manner, with the result that it seriously violated the integrity of the process of participatory democracy. In choosing not to face the music (which, incidentally, it had itself composed) it breached the constitutional compact requiring mutuality of open and good- faith dealing between citizenry and government, and thereby rendered the legislative process invalid.”

44. In the Supreme Court case of *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* [2019] KESC 15 (KLR), the Court stated that:

“public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments.”

45. Policy guidelines underscore that tariffs and pricing policy serves to map services to costs, justify fees, align revenue streams with service delivery, ensure affordability, equity, financial sustainability, environmental considerations, promotion of local economic development, and compliance with regional or international obligations. Without adoption of policy, fees imposed lack transparency, rationality, and public justification, undermining trust in governance.
46. The Petitioner's uncontroverted evidence shows that Nairobi City County did not develop, adopt, publish, or implement any tariffs and pricing policy before enacting the impugned *Finance Act*, 2023. Public participation involved presenting schedules of proposed fees without underlying policy or cost analyses. There is no record of policy deliberations, debates, or approval by County Executive or Assembly. This omission is fatal to legality of imposing fees.
47. Every exercise of public power must conform to law and be rationally connected to legitimate aims. Imposition of fees without policy lacks rational connection to service costs; arbitrary increases such as doubling landing fees without cost basis violate rationality. There is need for genuine consultation and consideration of industry views when imposing regulatory burdens; by analogy, county fees must reflect genuine cost assessments and policy rationale.
48. The County Assembly holds legislative authority under Article 185 and must ensure that enacted laws comply with constitutional and statutory requirements. In failing to demand evidence of a tariffs and pricing policy, the Assembly abdicated oversight. The County Executive similarly failed *PFMA* duties under sections 125, 129, 132 to publish and publicize supporting documents, including policy frameworks. Such procedural breaches undermine separation of powers and checks and balances.
49. The tariffs and pricing policy acts as a public information tool. Its absence not only violates the statute but creates an opaque fiscal environment, contravening the constitutional expectation of reasoned decision-making under Article 47 of the *Constitution*.



50. The statutory requirement under section 120 of the *CGA* to adopt and implement a tariffs and pricing policy before imposing fees is mandatory. Constitutional and *PFMA* contexts reinforce the need for transparent, rational frameworks for revenue measures. Nairobi City County’s failure to develop or adopt any tariffs and pricing policy before enacting the impugned *Finance Act, 2023* renders the imposition of fees unlawful, unconstitutional, and void to the extent of non-compliance. The Court finds a breach of constitutional and statutory requirements.
51. Accordingly, the Court finds and holds that the enactment of the *Nairobi City County Finance Act, 2023* in the absence of a tariffs and pricing policy contravenes Section 120 of the *County Governments Act*, Articles 10, 201, and 47 of the *Constitution*.

Whether the enactment of the Nairobi City County Finance Act, 2023 violated the constitutional principles of public participation under Articles 10, 174, 196, and 201 of the *Constitution* due to the absence of a Tariffs and Pricing Policy

52. Public participation is not a procedural formality but a substantive constitutional imperative entrenched in Articles 10, 174(c), 196, and 201 of the *Constitution*. Public participation must not be cosmetic or superficial. It must be meaningful, effective, and informed. The legislative process that does not meet this threshold is unlawful.
53. The issue that is in dispute is whether the efforts by the Respondents at public participation met the threshold set by the *Constitution*. This threshold can only be set within the context of the elements of effective public participation, which depends on dedicated education, information and outreach strategies aimed at providing the knowledge, and means to access institutions of governance including legislative assemblies. The purpose of such strategies is to bring those who exist on the margins and periphery of society into the mainstream political process, creating a system of governance that is inclusive, responsive and transparent. The goal is to consolidate a form of democracy that engages with and recognises the interests of all.
54. The test set by the South Africa Constitutional Court in this regard in *Doctors for Life International v. Speaker of the National Assembly and Others*, (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) is whether the legislature acted reasonably in discharging the duty to facilitate public involvement. It was held that the following factors are to be taken into account in determining the said reasonableness:
- (i) the nature of the legislation concerned;
 - (ii) the importance of the legislation;
 - (iii) intensity of the impact on the public, and other relevant factors which will depend on the circumstances of each case.

Furthermore, that at least two elements are encompassed by the duty to facilitate public involvement; first, to provide meaningful opportunities for public participation in the law-making process and secondly, to make sure that people have the ability to take advantage of the opportunities provided.

55. Sachs J, concurring with the majority judgment, emphasised the “special meaning” of public participation within a democracy, and said the effect of public participation should be that:

“All parties interested in legislation should feel that they have been given a real opportunity to have their say, that they are taken seriously as citizens and that their views matter and will receive due consideration at the moments when they could possibly influence decisions in a



meaningful fashion. The objective is both symbolical and practical: the persons concerned must be manifestly shown the respect due to them as concerned citizens, and the legislators must have the benefit of all inputs that will enable them to produce the best possible laws”.

56. It is with the above requirements and threshold in mind that the [County Governments Act](#) and the [Nairobi City County Public Participation Act](#) of 2015 set out elaborate structures for public participation. Section 87 of the [County Government Act](#) provides for the principles governing citizen participation in county governments as follows in this regard.

“Citizen participation in county governments shall be based upon the following principles—

- (a) timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;
- (b) reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;
- (c) protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;
- (d) legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;
- (e) reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;
- (f) promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and
- (g) recognition and promotion of the reciprocal roles of non-state actors’ participation and governmental facilitation and oversight.”

57. The [Nairobi City County Public Participation Act](#) of 2015 defines the word “public”, when used in relation to public participation in this Act, means-

- (a) the residents of the County;
- (b) the rate payers of the County;
- (c) any civic organisation with an interest in the governance of the County;
- (d) non-resident persons who because of their temporary presence in the County, make use of services or facilities provided by the County; and
- (e) “public participation” means the involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, program, plan, legislation or policy that is subject to a decision-making process in an open, accountable and inclusive process



through which individual citizens, community and interest groups, and other stakeholders can exchange views and make or influence the decisions that affect their lives.”

58. The guiding principles for public participation in the Nairobi City County government are further elaborated under section 4 of the [Nairobi City County Public Participation Act](#) of 2015 as follows: Subject to section 87 of the [County Governments Act](#), 2012, public participation in the activities of the County Government shall be guided by the following principles-
- (a) the communities, organizations and citizens to be affected by a decision shall have a right to be consulted and involved in the decision-making process;
 - (b) contributions by the public shall be taken into consideration when making decisions;
 - (c) promotion of sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers;
 - (d) mobilize and facilitate effective involvement of communities, organizations and citizens potentially affected by or interested in a decision;
 - (e) the public shall have timely access to appropriate information which shall be publicised or provided by the County to enable their participation in a meaningful manner;
 - (f) communication to the public on how their input affected the decision;
 - (g) adherence to the national values and principles of governance set out under Article 10 of the [Constitution](#);
 - (h) adherence to the values and principles of public service set out by Article 232 of the [Constitution](#);
 - (i) adherence to the principles of leadership and integrity set out in Chapter Six of the [Constitution](#); and 0) adherence to the principles of citizen participation set out in section 87 of the [County Governments Act](#), 2012.

59. The Petitioner averred that no Tariffs and Pricing Policy was availed to the public during the purported public participation process. It is not merely the existence of public forums that satisfies the requirements of public participation. The government must also provide the public with information to enable them to make meaningful contributions. In [Legal Advice Centre & 2 others v County Government of Mombasa & 4 others](#) [2018] KECA 381 (KLR), the court observed that:

“Public participation should always be real and not treated as a mere formality for the purposes of fulfilling the constitutional requirement. It is not a public relations exercise. See *Robert N. Gakuru & Others v. Governor Kiambu County & 3 others* (*supra*). Whether the mode or degree of public participation is adequate can only be determined on a case by case basis. See this Court’s decision in *Independent Electoral and Boundaries Commission (IEBC) v. National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR. This position was aptly set out by a three Judge bench of the High Court in *Institute of Social Accountability & Another v. National Assembly & 4 others* [2015] eKLR in the following manner:

“The issue as to whether there was public participation is not merely a matter of form but one of substance. The court must look at the process to determine whether it meets constitutional muster.”



60. In *Erick Okeyo v. County Government of Kisumu & 2 Others* [2014] eKLR wherein Muchelule, J. held:

“Lastly, the *Constitution* and the *County Governments Act* (No. 17 of 2012) provide for citizen participation in elections and appointments; legislation; policy formulation, planning and development; effective resources mobilization and use of sustainable development; project identification, prioritisation, planning and implementation; and alignment of county financial and institutional resources to agreed policy objectives and programmes.”

61. Courts have held that meaningful participation requires disclosure of material information underlying legislative proposals. In the context of revenue measures, this includes cost structures, service delivery frameworks, policy objectives, and alternatives. Without such information, citizens cannot critically evaluate proposals or propose informed alternatives. Participation without information is “like debating blindfolded” and amounts to tokenism.

62. In Nairobi City County, public participation is alleged to have been conducted on schedules of proposed fees without providing a tariffs and pricing policy or underlying cost analyses. Citizens were not informed of how fees were determined, the rationale for increases, or alternatives considered. There was no documentation explaining service delivery costs or financial sustainability considerations. Therefore, participants could not meaningfully engage, critique, or influence outcomes.

63. The *PFMA* requires that budget estimates and supporting documents be published and publicized “as soon as is practicable” after submission to the county assembly; that public participation be ensured throughout the budget process; and that revenue measures be accompanied by policy statements. In Nairobi City County, no such publication of policy occurred. Notice given was insufficient as participants lacked substantive material. The modalities, presenting figures without rationale did not facilitate real engagement. There is no evidence of consideration of public inputs or feedback mechanisms explaining acceptance or rejection of views.

64. The right to participate in governance processes, especially those involving taxation or public finance, must be real and not illusory. Given these detailed requirements set by the laws that have been enacted to give effect to the constitutional requirement of public participation, I am in agreement with the decision by Odunga J. in *Robert N. Gakuru & Others v Governor Kiambu County & 3 Others* (2014) eKLR (*supra*) wherein the learned Judge while relying on the South African Constitutional Court’s decision in *Doctors for Life International v. Speaker of the National Assembly and Others*, (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC), explored in great detail what is required for effective public participation as follows:

“75. In my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as may fora as possible such as churches, mosques,



temples, public barazas national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action. Article 196(1)(b) just like the South African position requires just that. Dealing with the issue I wish to reiterate what was held in *Doctors for Life International v. Speaker of the National Assembly and Others (supra)* to the effect that:

“The phrase “facilitate public involvement” is a broad concept, which relates to the duty to ensure public participation in the law-making 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 participate 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 which is accountable, responsive and transparent and which makes provision for the public to participate in the law-making process.”

65. The court further stated:

“Merely to allow public participation in the law-making process is, in the prevailing circumstances, not enough. More is required. Measures need to be taken to facilitate public participation in the law-making process. Thus, Parliament and the provincial legislatures must provide notice of and information about the legislation under consideration and the opportunities for participation that are available. To achieve this, it may be desirable to provide public education that builds capacity for such participation. Public involvement in the legislative process requires access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens.... [the Assembly] should create conditions that are conducive to the effective exercise of the right to participate in the law-making process. This can be realised in various ways, including through road shows, regional workshops, radio programs and publications aimed at educating and informing the public about ways to influence Parliament, to mention a few.....It is implicit, if not explicit, from the duty to facilitate public participation in



the law-making process that the Constitution values public participation in the lawmaking process. The duty to facilitate public participation in the law-making process would be meaningless unless it sought to ensure that the public participates in that process. The very purpose in facilitating public participation in legislative and other processes is to ensure that the public participates in the law-making process consistent with our democracy. Indeed, it is apparent from the powers and duties of the legislative organs of state that the Constitution contemplates that the public will participate in the law-making process.....In determining whether Parliament has complied with its duty to facilitate public participation in any particular case, the Court will consider what Parliament has done in that case. The question will be whether what Parliament has done is reasonable in all the circumstances. And factors relevant to determining reasonableness would include rules, if any, adopted by Parliament to facilitate public participation, the nature of the legislation under consideration, and whether the legislation needed to be enacted urgently. Ultimately, what Parliament must determine in each case is what methods of facilitating public participation would be appropriate. In determining whether what Parliament has done is reasonable, this Court will pay respect to what Parliament has assessed as being the appropriate method. In determining the appropriate level of scrutiny of Parliament's duty to facilitate public involvement, the Court must balance, on the one hand, the need to respect parliamentary institutional autonomy, and on the other, the right of the public to participate in public affairs. In my view, this balance is best struck by this Court considering whether what Parliament does in each case is reasonable.”

66. Public participation process must include clarity of subject matter, accessible information, and reasonable opportunity for input. These prerequisites were absent in the enactment of the impugned Finance Act.
67. The process of enacting fiscal policy must ensure that affected parties are not only notified but are also made aware of the justification and implications of proposed measures. The absence of a Tariffs and Pricing Policy meant that stakeholders could not interrogate or question the economic rationale behind the imposition or increase of charges. As a result, the process lacked integrity and violated the right to information under Article 35 of the Constitution.
68. What is critical is a reasonable notice and reasonable opportunity for public participation. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made. The Petitioner's evidence demonstrates that public forums or hearings, if held, were based on mere schedules of numbers without policy context. This amounts to tokenistic consultation aimed at fulfilling a procedural box-ticking exercise rather than genuine engagement. Consultation must be meaningful; otherwise, legislative outcomes lack legitimacy. The Nairobi City County process undermined the sovereignty of the people by denying them effective voice in decisions imposing financial burdens.
69. Meaningful public participation must include protection of marginalized groups. In Nairobi City County, lack of information disproportionately affected less educated, rural, or disadvantaged residents who could not decipher or analyze schedules without policy guides. This undermines inclusiveness and equity under Article 10, compounding constitutional defects.
70. Effective participation requires that public views be considered and reasons given for acceptance or rejection. There is no evidence that Nairobi City County responded to submissions or provided reasons, violating principles articulated in Kenyan and South African jurisprudence. Absence of such consideration renders the participation process hollow.



71. While county governments may face time and resource constraints, these cannot justify inadequate disclosure or superficial consultation when matters affect citizens' rights and obligations. Reasonableness standard requires balancing urgency with depth of participation. Nairobi City County's failure to provide policy information cannot be excused by expediency, as PFMA timelines and constitutional obligations require sufficient time for informed engagement.
72. When participation is defective, resultant legislation is tainted. Article 2(4) renders acts contrary to the Constitution invalid. The Finance Act, enacted on the basis of defective participation lacking policy context, is unconstitutional. The Court must declare such provisions invalid to uphold constitutional governance and deter recurrence.
73. The Finance Act introduced sweeping fiscal changes without demonstrating any consultation based on intelligible, accessible information. The public was denied a chance to influence decision-making, undermining the very foundation of participatory democracy.
74. The very essence of checks-and-balances touches on the principles of public participation, inclusiveness, integrity, accountability and transparency.
75. In conclusion, this Court finds that the enactment of the impugned Finance Act, 2023 without providing the public with a Tariffs and Pricing Policy deprived the process of transparency, legitimacy, and democratic value. The public participation process, in the absence of such critical information, was constitutionally deficient, violating Articles 10, 174, 185, 196 and 201 of the Constitution and statutory requirements under PFMA and CGA.

Whether the Nairobi City County Finance Act, 2023 is unconstitutional and invalid for want of legal justification, transparency, and compliance with statutory and constitutional preconditions

76. The relevant principles that guide this Court in making a determination of this issue were set out in Institute of Social Accountability & another v National Assembly & 4 others [2015] eKLR as follows:

- “ 56. First, this Court is enjoined under Article 259 of the *Constitution* to interpret the *Constitution* in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and that contributes to good governance. In exercising its judicial authority, this Court is obliged under Article 159(2)(e) of the *Constitution* to protect and promote the purpose and principles of the *Constitution*.
57. Second, there is the general presumption that every Act of Parliament is constitutional and the burden of proof lies on any person who alleges otherwise (see *Ndyanabo v Attorney General of Tanzania* [2001] EA 495). We therefore reiterate that this Court will start by assuming that the CDF Act 2013 is constitutional and valid unless the contrary is established by the petitioners.
58. Third, in determining whether a Statute is constitutional, the Court must determine the object and purpose of the impugned statute for it is important to discern the intention expressed in the Act itself (see *Murang'a Bar Operators and Another v Minister of State for Provincial Administration and Internal Security and Others*, Nairobi Petition No. 3 of 2011 [2011] eKLR, *Samuel G. Momanyi v Attorney General and Another* (supra)). Further, in examining whether a particular statutory provision is unconstitutional, the court must



have regard not only to its purpose but also its effect. The Canadian Supreme Court in the *R v Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 enunciated this principle as follows;

“Both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realized through impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of the legislation’s object and its ultimate impact, are clearly linked, if not indivisible. Intended and achieved effects have been looked to for guidance in assessing the legislation’s object and thus the validity.

59. Fourth, the *Constitution* should be given a purposive, liberal interpretation. The Supreme Court in *Re The Matter of the Interim Independent Electoral Commission* Constitutional Application (supra) at para. 51 adopted the words of Mohamed A J in the Namibian case of *State v Acheson*, 1991(20 SA 805, 813) where he stated that;

“the *Constitution* of a nation is not simply a statute which mechanically defines the structures of government and the relationship government and the governed. It is a mirror reflecting the “national soul” the identification of ideas and aspirations of a nation, the articulation of the values bonding its people and disciplining its government. The spirit and tenor of the *Constitution* must, therefore preside and permeate the process of judicial interpretation and judicial discretion.

60. Lastly and fundamentally, it is the principle that the provisions of the *Constitution* must be read as an integrated whole, without any one particular provision destroying the other but each sustaining the other (see *Tinyefuza v Attorney General of Uganda* Constitutional Petition No. 1 of 1997 (1997 UGCC 3)).”

77. In the present petition, it is mainly the process of legislating, and not the substance of the impugned *Finance Act* that is being challenged, and it is the legal position that if the process leading to the enactment of an *Act* is constitutionally flawed, then the resulting legislation is also constitutionally defective. This Court has already discussed the requirements of public participation in light of the principles of democratic and good governance and found that the required constitutional threshold was not met by the Respondents in the enactment of the impugned *Finance Act*, 2023.

78. In addition, Article 196 of the *Constitution* provides that the county assembly should facilitate public participation and involvement in the legislative and other business of the assembly and its committees. This is therefore a key constitutional procedural requirement in the enactment of legislation, which if not complied with makes any legislation so enacted unconstitutional. To this extent therefore, the effect of the procedure of enactment of the impugned *Finance Act* 2023 is that it did not follow the due process provided by the *Constitution*, and also thereby infringed on the constitutional rights of the Petitioner and other residents to public participation.



79. The Constitution under Article 210(1) provides that no tax or licensing fee may be imposed, waived, or varied except as authorised by legislation. This provision establishes a strict legality principle: the imposition of fiscal obligations must have a clear statutory basis.
80. The Petitioner has contended, and the Court agrees, that many of the levies and fees introduced under the impugned Finance Act, 2023 were not supported by a corresponding enabling framework or explanatory justification, particularly in the absence of a tariffs and pricing policy.
81. The absence of justification violates the principle of transparency enshrined under Article 201 of the Constitution, which mandates that there shall be openness and accountability in financial matters and public finance.
82. A statutory instrument that imposes obligations without adequate legal, factual or procedural grounding offends the principle of legality and is, therefore, invalid. Additionally, transparency in public finance is not optional; it is a constitutional imperative that ensures public funds and burdens are justified, accountable and not arbitrarily imposed.
83. The impugned Finance Act, 2023 introduced burdens on residents of Nairobi County without demonstrating a rational basis for the quantum or categorization of charges, thus violating both Article 47 on fair administrative action and Article 232 on values and principles of public service. Any public authority must act within the law and must give adequate reasons for its actions. The doctrine of legality demands no less.
84. It is also critical to observe that taxation measures impact the socioeconomic rights of individuals and businesses. Where such measures are introduced without policy or empirical justification, they risk being declared unreasonable and disproportionate.
85. The introduction of new revenue measures must meet the threshold of reasonableness, proportionality, and non-discrimination, as well as the constitutional expectations of transparency and participation. The failure to table or rely upon a tariffs and pricing policy deprived the legislative process of any structured reasoning, in turn offending the public's right to access information and to challenge irrational state actions.
86. In *Olum & Another v The Attorney General*, (2000) 2 EA 508 in determining the constitutionality of statutes, the court had to consider the purpose and effect of the impugned statutes and the sections thereof, and if the purpose was not to infringe a right guaranteed by the Constitution, the court is to go further to investigate the effect of the implementation. It is only when the purpose or the effect infringes a right guaranteed in the Constitution, that the statute or section in question would be declared unconstitutional.
87. This Court finds that the cumulative effect of procedural lapses, the absence of lawful justification, and failure to provide information rendered the impugned Finance Act, 2023 constitutionally infirm. It offends the principles of rule of law, good governance, and accountable taxation.
88. Accordingly, the Nairobi City County Finance Act, 2023 is declared unconstitutional, null, and void *ab initio* for want of legal justification, transparency, and compliance with constitutional and statutory prerequisites.

Whether the Petitioner is entitled to the relief sought

89. Where legislation is found unconstitutional, the High Court has power under Article 165 and 259 to declare it invalid to the extent of inconsistency and grant appropriate remedies. Remedies include



declarations of invalidity, orders of certiorari, injunctions to prevent enforcement, mandamus to compel compliance, and shaping orders to mitigate disruption.

90. The relief that can be availed by this Court in a constitutional petition is provided for in Article 23(3) of the Constitution as follows:

- “(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including-
- (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and
 - (f) an order of judicial review.”

91. Orders sought by the Petitioner including those of prohibition and mandamus can therefore be granted by this Court if it is found that a Petitioner’s and other residents of Nairobi City County constitutional rights have been denied, infringed or violated. The issue as to whether the Petitioner’s rights and that of other residents in the Bill of Rights have been infringed was also raised by the Petitioner. In this respect it is notable that emphasize has been placed timely access to information for greater and more meaningful public participation, and the right to information is one of the rights provided for in the Bill of Rights in Article 35 of the Constitution.

92. In addition, the right to public participation is a fundamental human right based on provisions of Article 33 of the Bill of Rights concerning the freedom of expression, which includes a general right to take part in the conduct of public affairs. The infringement of these rights has been demonstrated in the foregoing, in terms of the lack of opportunity availed to the Petitioner and other residents to exercise their rights in the enactment of the impugned Finance Act of 2023 and absence of a tariffs and pricing policy. The Petitioner is therefore entitled to the relief sought.

93. Having found that the orders sought can apply, I am in addition guided by the scope of the judicial review remedies of mandamus and prohibition as held in the Court of Appeal decision in Kenya National Examinations Council v. Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR in which the said Court held *inter alia* as follows:

“Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice



may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way... These principles mean that an order of mandamus compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law, then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done....”

94. I find that in the present petition, the orders of prohibition and mandamus may not lie, as the Respondents did attempt to undertake their constitutional duty, but were largely ineffective or incomplete in their attempt. In addition, this Court cannot order them to undertake the duty of facilitating public participation in a particular way, and it is largely left to the Respondents to determine the best way possible to undertake the same in light of their circumstances, means and budgetary calendar.
95. This Court is also mindful that the orders of prohibition and mandamus sought in this Petition may have unintended negative consequences given the budgetary cycle. It is prudent to allow the Respondents to read this Judgment and apply the same to their applicable processes going forward.
96. That being said, the Respondents are advised to be prudent and to take all necessary steps and actions to ensure that litigation on the same issues as have been raised in this Petition does not arise with respect to future revenue raising enactments.
97. While upholding constitutional governance is paramount, abrupt suspension of revenue collection may threaten essential county services, undermining public welfare. Remedies must balance enforcement of constitutional standards with preservation of continuity in service delivery. Transitional or saving-arrangements may be appropriate to allow the county to develop required policy without sudden revenue shortfall.
98. Likewise, this Court cannot prohibit the Respondents from collecting any charges, levies, fees or payments due, or implementing the provisions of the *Nairobi City County Finance Act, 2023* in its totality, as this would lead to a paralysis of the Respondents’ operations, and it is therefore necessary that an alternative and appropriate remedy be provided.
199. I accordingly order as follows:
 - a. A Declaratory Order be and is hereby issued that the *Nairobi City County Finance Act, 2023* as enacted and assented to is hereby declared unconstitutional and against the provisions of Articles 196 and 201 of the *Constitution of Kenya*, 2010 and Section 120 of the *County Governments Act* AND an order of certiorari be and is hereby issued with respect to the same is removed into this Court and quashed accordingly;



- b. Consequent to (a) above, all new levies, rates and fees imposed by law and in force under the enactment of the [Nairobi City County Finance Act](#), 2023 are quashed and accordingly the levies, rates and fees imposed by law and in force immediately before the enactment of the [Nairobi City County Finance Act](#), 2023, which has been quashed, being those under the [Nairobi City County Finance Act](#) of 2022 or earlier shall now continue to apply and shall continue to be paid by all affected persons pending the enactment of a new Finance Act compliant with this Judgment and which shall be in compliance with due process and requirements of public participation as provided by the [Constitution of Kenya](#), and the [County Governments Act](#) and the [Nairobi City County Public Participation Act](#) of 2015 and Section 120 of the [County Governments Act](#);
- c. A Declaratory Order be and is hereby issued that the Nairobi County Residents' and the Petitioner's right to participation in the process leading to the enactment of the [Nairobi City County Finance Act](#), 2023 and as guaranteed under Article 196 and 201 of the [Constitution](#), their right to information under Article 35 of the [Constitution](#), and right to expression under Article 33 of the [Constitution](#) were violated by the processes leading to the enact the said [Act](#);
- d. The prayer that a permanent injunction be and is hereby issued against the Respondents from raising revenue without developing a tariff and pricing policy as required under Section 120 of the [County Governments Act](#), 2012 is declined;
- e. The prayer that an order of mandamus be and is hereby issued to compel the Respondents to develop a tariff and pricing policy to determine and guide the setting of charges by the Respondents and payable by the public is hereby declined;
- f. The Respondents are directed to secure compliance with all applicable constitutional and statutory provisions in crafting, enacting, and implementing revenue raising measures; and
- g. There shall be no order as to costs as this Petition involves a public interest issue.

Orders accordingly. File closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF JUNE 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner -Mr. Ongiti

Counsel for the Respondents – No Appearance

Court Assistant – Ms. Neema

