



**Mughanga v County Government of Taita Taveta & 2 others (Constitutional  
Petition E001 of 2024) [2024] KEHC 11017 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 11017 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CONSTITUTIONAL PETITION E001 OF 2024  
GMA DULU, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**BENEDICT MUGHANGA ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF TAITA TAVETA ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY ASSEMBLY OF TAITA TAVETA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Before me is a petition dated 21<sup>st</sup> February 2024 filed by Benedict Mughanga (petitioner) through counsel Musamali & Associates Advocates seeking the following orders:-
  - a. That the court do halt, stay, stop any process of recruitment, nomination, vetting/and or appointment of members of the Voi and Taveta Municipal Boards pending the determination of validity of the process at all.
  - b. That the process or recruitment, nomination, vetting and appointment of the Voi and Taveta Municipal Boards be nullified.
  - c. That the respondents be compelled and obliged by the court to commence a fresh process that complies with the provisions of the law and practice in line with the Constitution, County Government Act Urban Areas Act and any other law.
  - d. That the respondents be compelled to adhere to the principles of public participation, competitiveness and integrity and involvement of all stakeholders in the advertisement, nomination, vetting and appointment of members of the Voi and Taveta Municipal Boards.
  - e. Costs of this petition be provided for.



2. The petition is grounded on several particulars and was brought under Article 22(1), 258, 2, 3, 10, 19, 20, 22, 23, 35, 165, 232 & 259 of *the Constitution*, as well as *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules 2013, and the County Government Act 2012, and the *Urban Areas and Cities Act* (Cap.275).
3. The particulars of the petition are that the respondents failed to provide the petitioner with signed minutes as evidence of accountability in the nomination process; that the respondents failed to invite applications through advertisement for the positions of the Member of the Boards for Voi and Taveta Municipalities; that the respondents failed to conduct proper and lawful recruitment; and failure of the respondents to conduct proper and lawful recruitment process contrary to Articles 35, 10 and 232 of *the Constitution* of Kenya 2010.
4. The petition was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondent through a joint replying affidavit sworn by Habib M. Mruttu acting County Secretary working for the 2<sup>nd</sup> respondent the County Government of Taita Taveta, in which it was deponed that the petition is incompetent as it raises no constitutional issues; that the provisions of the *Urban Areas and Cities Act* on nominations to the boards of Voi and Taveta Municipalities were complied with; that advertisements were done on 4<sup>th</sup> February 2023 by the County Secretary inviting applications from interested persons; that applications were then submitted by both persons nominated by organizations as well as directly by individuals as required by the law; that due process was then followed and shortlisting done in accordance with the law and selection and appointment then done in compliance with equality requirements. Lastly, that the allegations of the petitioner that no advertisements were done or due process followed, were denied in the replying affidavit.
5. The petition was canvassed through written submissions, after the interlocutory application filed by the petitioner through a Notice of Motion dated 21<sup>st</sup> February 2024 was overtaken by events, as in the course of the proceedings herein, the contested appointments to the Boards were done.
6. I note that, in the submissions of the petitioner filed through Musamali & Associates Advocates, the issues were identified as whether the petition meets the legal requirements for a constitutional petition; secondly, whether there was adequate public participation conducted on the appointments as required by the law; and thirdly, whether the petitioner should be awarded the costs.
7. On the first issue whether the petition meet the legal requirements for constitutional petitions, the case of Benedict Sabala Tenwa =Versus= County Government of Kakamega (2019) eKLR and the case of Meme =Versus= Republic (2004) eKLR were relied upon. Also relied upon by counsel for the petitioner was the case of Trusted Society of Human Rights Alliance =Versus= Attorney General & Others (2012) eKLR.
8. On the second issue whether adequate public participation was conducted, regarding the appointments, Article 196 of *the Constitution* was relied upon by counsel for the petitioner, which requires the 3<sup>rd</sup> respondents (County Assembly) to embrace public participation in its legislative and other business. In addition; Section 87 of the County Government Act and the case of Kaps Parking Ltd =Versus= County Assembly of Nairobi (2021) eKLR were relied upon by counsel.
9. On the third issue of costs, the case of Jennifer Muthoni Njoroge & Others =Versus= Attorney General (2012) eKLR was relied upon by counsel for the petitioners. Counsel urged this court to find in favour of the petitioner, and grant the prayers sought.
10. On their part, counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents G. N. Orina & Company in their submissions, relied on the replying affidavit filed for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and stated that the County Assembly



of Taita Taveta (3<sup>rd</sup> respondent) conducted due process in vetting the candidates for appointment herein under the law, and that the requirement of adequate public participation was fulfilled. Counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondent in particular relied upon Section 13 and 14 of the [Urban Areas and Cities Act](#) No. 13 of 2011 to back their contention.

11. Counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondents further identified the issues for determination herein as firstly, whether the petition raises constitutional issues; secondly, whether the required process for the nomination of members of the Voi and Taveta Municipal Boards was duly complied with; and thirdly, whether the principles of fair competition, merit and public participation were adhered to; and lastly, who should bear the costs of the suit.
12. In buttressing their arguments, counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondents relied on several cases, including the case of Anarita Karimi Njeru =Versus= Republic (1979) eKLR and the case of Mumo Matemu =Versus= Trusted Society of Human Rights Alliance & Others (2013) eKLR.
13. I will start with the issue whether the petition herein satisfies the requirements of a proper constitutional petition. Having perused and considered the petition, the responses filed thereto, and the submissions of the counsel for the parties, and authorities relied upon, I am of the view that the petition herein satisfies the requirements for a constitutional petition in form and in substance.
14. With regard to form, it satisfies the said requirements as it complies with the format of [the Constitution](#) of Kenya (Protection of Rights and Fundamental Freedoms) Practice & Procedure Rules and raises constitutional issues for determination, in relation to alleged violation of particular Articles of [the Constitution](#).
15. With regard to substance, the contest as to whether the process adopted in nomination, vetting and appointment complied with the constitutional requirements of inclusivity and public participation which are constitutional imperatives under Article 10, together with other various Articles of [the Constitution](#), are valid constitutional complaints, to be determined under the constitutional jurisdiction of this court – under Article 165 of [the Constitution](#). As such I find that the petition is a proper constitutional petition.
16. Was the requirement of public participation complied with? I note that both from the pleadings of the parties filed herein, and even in submissions of counsel on record, the party or institution whose actions are mainly complained of, in the alleged violations of due process and public participation, is the 3<sup>rd</sup> respondent, the County Assembly of Taita Taveta. Curiously however, the County Assembly of Taita Taveta, neither entered appearance herein nor participated in these proceedings. In effect therefore, what the 1<sup>st</sup> and 2<sup>nd</sup> respondents have stated, and filed and in respect of acts of defaults attributed to the 3<sup>rd</sup> respondent, is not helpful to explain the required compliance, as there is no direct evidence on record from the 3<sup>rd</sup> respondent to demonstrate compliance. In addition, no reason was given to justify the 3<sup>rd</sup> respondent's failure to attend court and put their own case and explain what transpired, and confirm compliance. As such, it cannot be said that public participation was facilitated or conducted by the 3<sup>rd</sup> respondent, or due process was followed by the 3<sup>rd</sup> respondent even if it is said that the same was done by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
17. Secondly, it is obvious from documents filed herein, that the names of initial applicants for appointment to the two Boards of Voi and Taveta municipalities, were different from those ultimately nominated and appointed as Members of the Boards of the Voi Municipality and those of Taveta Municipality. The said names, according to documents filed and the 1<sup>st</sup> and 2<sup>nd</sup> respondent's advocates submissions, kept changing, and the persons who were ultimately appointed and gazetted were not the original applicants or nominees Idris Mwakio Rajab, Wilson Mwanjumwa, Valerie David Mazola,



Emily Mbashu, Rev. Godfrey Mwanjulu, and Benard Mwanjala. This is because on 26<sup>th</sup> March 2024 the 3<sup>rd</sup> respondent approved the nomination of CPA Wilson Mwakesi Mwachia, Ahmed Itambo, Angeline Wawuda Mnene, and Rita Kavashe Nariangai to the posts of Board Members of Voi and Taveta Municipalities, and who were gazetted, who were different from the original applicants or nominees.

18. Thus, even assuming that public participation was conducted, the interchanging of the names would still make the exercise and process of nomination and appointment of the Board members a sham. Consequently, in my view, the process for the nomination and appointment of Board Members for Voi and Taveta Municipalities herein, was not transparent and was riddled with manipulations, and dishonesty and was thus a sham which is not legally sustainable in our present constitutional dispensation. It cannot thus stand the test of honesty and accountability and public participation. On that account, I find that public participation was not adequately conducted, with regard to the appointments that were ultimately made to the Voi Municipal and Taveta Municipal Boards. I will thus allow the petition on that account.
19. With regard to who bears the costs of the petition, in my view the natural course in litigation is to award costs in favour of the winning party, the petitioner. As the 3<sup>rd</sup> respondent did not defend the petition, they will not be condemned to costs. The 1<sup>st</sup> and 2<sup>nd</sup> respondent will however, bear the costs because they defended the petition. I thus order that the 1<sup>st</sup> and 2<sup>nd</sup> respondent herein will jointly and severally pay the petitioner's costs of these proceedings.
20. The final orders of this court are thus as follows:-
  - i. I allow the petition herein and find that the nominations and subsequent appointments and gazettment to the Voi and Taveta Municipal Boards complained of herein, did not comply with the principles of public participation, competitiveness and integrity, and are thus hereby nullified.
  - ii. The costs of this petition are awarded to the petitioner to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> respondents jointly and severally.

**DATED, SIGNED AND DELIVERED THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred – Court Assistant

Mr. Musamali for petitioner

Mr. Orina for 1<sup>st</sup> and 2<sup>nd</sup> respondents

No appearance for 3<sup>rd</sup> respondent

