



**Republic v Nairobi City County Government & 2 others; Attorney General (Interested Party) (Environment and Land Judicial Review Case 56 of 2019) [2021] KEELC 4 (KLR) (25 November 2021) (Judgment)**

*Republic v Nairobi City County Government & 2 others; Attorney General (Interested Party) [2021] eKLR*

Neutral citation: [2021] KEELC 4 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 56 OF 2019**

**EO OBAGA, J**

**NOVEMBER 25, 2021**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY  
FOR ORDERS OF MANDAMUS, CERTIORARI AND PROHIBITION**

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 23,  
126, 127 & 258 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF SECTIONS 2, 3 & 25 OF THE  
VALUATION FOR RATING ACT (CAP 266, LAWS OF KENYA)**

**IN THE MATTER OF SECTION 23 OF THE RATING ACT (CAP 267, LAWS OF KENYA)**

**IN THE MATTER OF RULE 3 OF THE VALUATION FOR RATING (PUBLIC LAND) RULES**

**IN THE MATTER OF THE DECISION BY THE NAIROBI CITY COUNTY  
GOVERNMENT RECEIVED BY THE PARLIAMENTARY SERVICE COMMISSION  
ON VARIOUS DATES DEMANDING PAYMENT OF LAND RATES ON VARIOUS  
PROPERTIES OWNED BY THE PARLIAMENTARY SERVICE COMMISSION**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**GOVERNOR, NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**C.E.C.M-FINANCE & ECONOMIC PLANNING NAIROBI CITY  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**ATTORNEY GENERAL ..... INTERESTED PARTY**



**The Parliamentary Service Commission being a state organ was not required to pay land rates to the Nairobi City County Government but it was expected to pay contribution in lieu of rates.**

Reported by Kakai Toili

**Land Law** – *land rates – payment of land rates by state organs - whether the Parliamentary Service Commission being a state organ was liable to pay land rates to the Nairobi City County Government – Constitution of Kenya, 2010, article 62; Valuation for Rating Act (cap 266) sections 25, 26 and 27.*

**Words and Phrases** – *arbitrary – definition of arbitrary - not supported by fair, solid, and substantial cause, and without reason given - Black’s Law Dictionary, online legal Dictionary 2<sup>nd</sup> Edition.*

**Brief facts**

On diverse dates between June 2013 and October 2019, the respondents demanded from the applicant, the Parliamentary Service Commission (PSC) various amounts on account of land rates and penalties. A meeting was held on July 14, 2014 between the PSC and the respondent where it was agreed that a legal opinion be sought from the Attorney General as regards what the PSC was expected to pay. During the meeting the representatives of the PSC were of the view that since PSC was a state organ, it was not supposed to pay rates to the 1<sup>st</sup> respondent but were expected to pay contribution in lieu of rates.

The Attorney General rendered his legal opinion in which he referred to the provisions of and article 62 of the Constitution of Kenya, 2010 (Constitution) and advised that since PSC was a state organ, it was expected to pay contribution in lieu of rates which were to be assessed in accordance with the provisions of the . The PSC contended that whereas the respondents were agreeable with the Attorney General’s legal opinion, they continued to demand for rates and even went ahead to threaten that they were going to halt the construction which PSC was undertaking until rates were paid. The PSC contended that the respondents’ actions were tainted with illegality, were arbitrary and unreasonable.

The applicant (PSC) filed the instant judicial review application seeking among others; an order of *certiorari* to quash the decisions of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents demanding payment of land rates from the PSCS; an order of *mandamus* compelling the respondents to implement section 25 of the . CAP 266 of the Laws of Kenya and rule 3 of the Valuation for Rating (Public Land) Rules requiring a Rating Authority to prepare a Public Land Valuation Roll for purposes of assessing contribution in lieu of rates.

**Issues**

Whether the Parliamentary Service Commission being a state organ was liable to pay land rates to the Nairobi City County Government.

**Relevant provisions of the Law**

**Constitution of Kenya, 2010**

**Article 62 - Public Land**

1. *Public land is—*
  1. *land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;*
  2. *land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;*

**Held**

1. The respondents were bound to proceed in accordance with the provisions of the Valuation for Rating Act Cap 266. The Act defined rateable property as including; land, except—any land used or reserved for roads, streets (including private streets), car parks, squares, parks, gardens or other open or enclosed spaces vested in a local authority; public land as defined and provided for in section 25; community



- land as defined and provided for in section 26; and any land used for any of the purposes specified in section 27 or under any rule made thereunder.
2. Section 25(6) of the Valuation for Rating Act defined public land as land for the time being unalienated. Even though that was the definition of public land under the Valuation for Rating Act, the Constitution of Kenya, 2010 went on to expound on public land under article 62. Article 260 of the Constitution defined a state organ as meaning a commission, office, agency or other body established under the Constitution. The PSC was established under the Constitution and was therefore a state organ.
  3. The respondents did not comply with the law which they were bound to follow. Even when the Attorney General gave his legal opinion to which they were in agreement, they did not comply with the requirements of the law. The respondents were under obligation to assess the contribution in *lieu* of rates which was payable from PSC but they did not do that. The respondents were supposed to assess contribution in accordance with regulation 3 of the Valuation for Rating (Public Land) rates and in accordance with section 25 of the Valuation for Rating Act.
  4. The respondents' demands were materially influenced by an error of law as exhibited in their interpretation of the Valuation for Rating Act during the meeting which PSC held with them where upon it was agreed that the opinion of the Attorney General be sought. The respondents were solely relying on the interpretation of un-alienated land as defined in section 25 of the Valuation for Rating Act and as was defined under the repealed Government Lands Act. The respondents did not read section 25 together with article 62(1)(a) and (b) of the Constitution of Kenya, 2010.
  5. The demands from the respondents were arbitrary. The respondents were asked on a number of occasions to give a breakdown of the rates they were demanding. They did not bother to give any breakdown or reason for the amounts demanded. The respondents kept on demanding varying amounts without assigning any reason as to why that was happening.

*Application allowed; no order as to costs.*

#### **Citations**

#### **Statutes**

1. Constitution of Kenya, 2010 — article 62(1)(a)(b), 47(3), 93 — Interpreted
2. Fair Administrative Action (No. 4 of 2015) — section 7(2) — Interpreted
3. Rating Act (Cap. 267) — section 23 — Interpreted
4. Valuation For Rating Act (Cap. 266) — section 25, 27 — Interpreted

#### **Texts**

1. Black's law Dictionary (2nd Edition)

#### **Advocates**

*M/s Thanji* for for the Ex-parte Applicants

## **JUDGMENT**

1. The ex-parte applicant, Parliamentary Service Commission (PSC) is a Constitutional Commission established under article 93 of the Constitution of Kenya. The 1<sup>st</sup> respondent is Nairobi City County. The 2<sup>nd</sup> respondent is the Governor of Nairobi City County. The 3<sup>rd</sup> respondent is the County Executive of Nairobi City County. The interested party is the Attorney General.



2. On January 29, 2020, the PSC filed a notice of motion dated 28<sup>th</sup> January in which it sought the following reliefs:-
  - A. An order of *certiorari* do issue to remove into this honourable court and to quash the decisions of the 1, 2 and 3d respondents communicated to the applicant vide the letters dated June 3, 2013, August 26, 2013 and July 20, 2014, July 6, 2017 and the demand notices dated October 8, 2019, demanding payment of land rates from the applicant over parcels of Land Reference numbers 209/5444, 209/4991/13, 209/9677, 209/4335, 209/5412, 209/8000/42, 26964, 12836/9, 209/4316, 209/11456, 209/4314 and 28172 that the Applicant holds, uses and/or occupies (the "said properties").
  - B. An order of *mandamus* do issue to compel the respondents to implement the provisions of section 25 of the [Valuation for Rating Act](#), Cap 266 of the Laws of Kenya and rule 3 of the [Valuation for Rating \(Public Land\) Rules](#) requiring a Rating Authority to prepare a Public Land Valuation Roll for purposes of assessing contribution in lieu of rates.
  - C. An order of *mandamus* do issue to compel the respondents to implement the provisions of section 23 of the [Rating Act](#), Cap 267 of the Laws of Kenya, which require the applicant to pay contribution in lieu of rates to the Rating Authority.
  - D. Orders of prohibition do issue to permanently prohibit the respondents from further demanding and/or requiring the applicant to pay land rates in respect of the said properties.
  - E. Costs of and incidental to these Judicial Review proceedings.
3. All the three respondents including the interested party who were duly served did not file any replying affidavit or grounds of opposition to the motion by PSC. It is only the 1<sup>st</sup> respondent which entered appearance through the firm of Kithi and Company Advocates which notice of appointment erroneously described the 1<sup>st</sup> respondent as the 3<sup>rd</sup> respondent.
4. The PSC contends that it is a Constitutional Commission which is mandated to ensure that both the Senate and National Assembly conduct their business smoothly. To achieve this, the PSC had acquired premises from where both the Senate and National Assembly members operate from. These properties are on LR Nos. 209/5444, 209/4991/13, 209/9677, 209/4335, 209/5412, 209/8000/43, 26964, 12836/9, 209/4316, 209/11456, 209/4314 and 28172.
5. On diverse dates between June 2013 and October 2019, the respondents demanded from PSC various amounts on account of land rates and penalties. As at October 8, 2019, the amount demanded had risen to Kshs 396,797,087/=. For instance on June 3, 2013 the respondents claimed a sum of Kshs 336,897,287/=.
6. On August 26, 2013, the respondents demanded rates arrears of Kshs 163,718,873/= in respect of LR No 209/5444. Again on July 2, 2014, the respondents claimed a total of Kshs 538,354,558/= in respect of 8 properties under the use of PSC. This demand prompted the PSC to call for a meeting with the respondent in order to solve the issue of these huge demands for rates.



7. A meeting was held on July 14, 2014 where it was agreed that a legal opinion be sought from the Attorney General as regards what the PSC was expected to pay. During the meeting the representatives of the PSC were of the view that since PSC was a state organ, it was not supposed to pay rates to the 1<sup>st</sup> respondent but were expected to pay contribution in lieu of rates as provided for under the *Valuation for Rating Act* Cap 266 of Laws of Kenya.
8. The Attorney General rendered his legal opinion vide his letter of December 4, 2014 in which he referred to the provisions of *Valuation for Rating Act* and article 62 of the Constitution and advised that since PSC was a State Organ, it was expected to pay contribution in lieu of rates which were to be assessed in accordance with the provisions of the *Valuation for Rating Act*.
9. The PSC contends that whereas the Respondents were agreeable with the Attorney General's legal opinion, the respondents still continued to demand for rates and even went ahead to threaten that they were going to halt constructions which PSC was undertaking until rates were paid.
10. The PSC asked the respondents to provide a break down of contribution in lieu of rates as per the Attorney General's legal opinion. The respondents wrote back and asked the PSC to pay Kshs 29,270,192/= as contribution in lieu of rates. The respondents wrote a letter dated 12<sup>th</sup> April 2015 asking for a breakdown of how the respondents arrived at the amount of Kshs 29,270,192/= . There was no response to this letter.
11. The respondents instead of answering what PSC had asked, they instructed their lawyers who demanded for rates of Kshs 78,338,126/= vide letter of June 10, 2015. Again on April 5, 2016, a demand of Kshs 111,936,139/= was made. Another firm of Advocates wrote demanding rates of Kshs 48,668,742/= through letter of November 16, 2016. On May 16, 2017, yet another firm of Advocates wrote demanding rates of Kshs 13,905,716. The respondents also demanded Kshs 52,488,117/= through letter dated July 6, 2017. As at October 8, 2019, the amount demanded had increased to kshs 396,7997,087/= . This is what prompted the PSC to seek redress from the court by filing this application.
12. The PSC contends that the respondents actions are tainted with illegality, are arbitrary and unreasonable. The PSC also contends that the actions of the respondents' are irrational and are ultra vires. The actions display abuse of power, are made in bad faith and are tainted with procedural impropriety.
13. I have carefully considered the PSC's application as well as its submissions. The PSC's application is unopposed but I am under obligation to ensure that it has reached the threshold for grant of the reliefs prayed for.
14. Article 47 (1) and (2) of the Constitution provides as follows:-
 

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action”.
15. It is pursuant to article 47(3) that the *Fair Administrative Action Act* was enacted. Section 7(2) of the Act gives instances when a court can review an administrative decision. The administrative decision which is subject of these judicial review proceedings was made after the 2010 constitution had come into force.



16. The respondents were bound to proceed in accordance with the provisions of the *Valuation for Rating Act* Cap 266 . The Act defines rateable property as follows:-

“rateable property” includes land, except—

- (a) any land used or reserved for roads, streets (including private streets), car parks, squares, parks, gardens or other open or enclosed spaces vested in a local authority;
- (b) public land as defined and provided for in in section 25;
- (c) Community land as defined and provided for in section 26; and
- (d) any land used for any of the purposes specified in section 27 or under any rule made thereunder;

17. Section 25(6) of the Act defines public land as land for the time being unalienated. Even though this is the definition of public land under the *Valuation for Rating Act*, the 2010 Constitution went on to expound on Public Land under article 62 as follows:

- “(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;
- (b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease”

18. There is no contention that PSC is a state organ . Article 260 of the Constitution defines “state organ” means a commission, office, agency or other body established under this constitution. The PSC is established under the Constitution of 2010. It is therefore a state organ.

19. The respondents did not comply with the law which they were bound to follow. Even when the Attorney General gave his legal opinion to which they were in agreement, they did not comply with the requirements of the law. The respondents were under obligation to assess the contribution in lieu of rates which was payable from PSC but they did not do this. The respondents were supposed to assess contribution in accordance with regulation 3 of the Valuation for Rating (Public Land) rates and in accordance with section 25 of the *Valuation for Rating Act*.

20. It is therefore clear that the respondents’ demand were materially influenced by an error of law as exhibited in their interpretation of the *Valuation for Rating Act* during the meeting which PSC held with them where upon it was agreed that the opinion of the Attorney General be sought. The respondents were solely relying on the interpretation of un-alienated land as defined in section 25 of the *Valuation for Rating Act* and as was defined under the Government Lands Act (now repealed). The respondents did not read this section together with article 62(1) (a) and (b) of the Constitution.

21. The demands from the respondents were arbitrary. *Black’s Law Dictionary, Online Legal Dictionary* 2<sup>nd</sup> Edition defines arbitrary as follows:

“Not supported by fair, solid, and substantial cause, and without reason given”

22. The respondents were asked on a number of occasions to give a breakdown of the rates they were demanding . They did not bother to give any breakdown or reason for the amounts demanded. The respondentskept on demanding varying amounts without assigning any reason as to why this was happening.



23. From the analysis given herein-above, I find that PSC has proved that there is reason for this court grant the orders sought. I therefore allow the notice of motion dated January 28, 2020 in terms of prayer A, B, C and D. I make no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25<sup>TH</sup> DAY OF NOVEMBER 2021**

**E.O. OBAGA**

**JUDGE**

In the Virtual Presence of :-

M/s Thanji for Ex-parte Applicants

Court Assistant: Mercy

**E.O. OBAGA**

**JUDGE**

