



**Mohamed & 8 others v The Speaker Wajir County Assembly & 3 others (Petition E014 of 2024) [2024] KEHC 15622 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15622 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA**

**PETITION E014 OF 2024**

**JN ONYIEGO, J**

**DECEMBER 3, 2024**

**IN THE MATTER OF ARTICLES 1,2,2,6,10,48,74,174,179,185,196,201,228,232,258(1)  
AND 259(1) OF THE CONSTITUTION 2010**

**AND**

**IN THE MATTER OF SECTIONS 6A,8,9 & 21 OF THE COUNTY GOVERNMENTS ACT**

**AND**

**IN THE MATTER OF MEMBERS OF THE COUNTY ASSEMBLY OF WAJIR**

**AND**

**IN THE MATTER OF WAJIR COUNTY APPROPRIATION BILL 2024**

**AND**

**IN THE MATTER OF; UNCONSTITUTIONAL, UNFAIR & OPAQUE APPROVAL  
OF WAJIR COUNTY BASED BUDGET FOR THE FINANCIAL YEAR 2024/2025**

**BETWEEN**

**HON. ABDIKADIR BUBOW MOHAMED ..... 1<sup>ST</sup> PETITIONER**  
**HON. IBRAHIM HUSSEIN ..... 2<sup>ND</sup> PETITIONER**  
**HON. YUSSUF HUSSEIN ..... 3<sup>RD</sup> PETITIONER**  
**HON. SANAL MOGOW ..... 4<sup>TH</sup> PETITIONER**  
**HON. FATUMA FILE ..... 5<sup>TH</sup> PETITIONER**  
**HON. AMINA IBRAHIM ..... 6<sup>TH</sup> PETITIONER**  
**HON. ABDI MOHAMED ..... 7<sup>TH</sup> PETITIONER**  
**HON. MOHAMED IBRAHIM ..... 8<sup>TH</sup> PETITIONER**  
**HON. YUSUF MOHAMED ..... 9<sup>TH</sup> PETITIONER**



AND

THE SPEAKER WAJIR COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT  
THE CLERK, WAJIR COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT  
THE CECM FINANCE, WAJIR COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT  
THE CONTROLLER OF BUDGET ..... 4<sup>TH</sup> RESPONDENT

JUDGMENT

1. Before this court is the petitioners’ petition dated 06.08.2024 seeking the prayers listed below:
  - i. A declaration be issued that the national values stipulated in article 10 of *the constitution* and principles of public service set out in article 232 of *the constitution* apply to all state organs.
  - ii. A declaration be issued that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents violated article 230 of *the constitution* and principles of accountability and fairness by reducing their mileage and abolishing plenary allowances without public participation.
  - iii. A declaration be issued that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents violated article 10 of *the constitution* on principles of good governance.
  - iv. A declaration be issued that the procedure for approval of the Wajir County Program based budget for the Financial Year 2024/2025 ad all the processes flowing from the said notice were unprocedural, illegal and null and void.
  - v. A declaration be issued that the letter of the decision of the 2<sup>nd</sup> respondent in the 2<sup>nd</sup> gazette identifying Makoror as the new county headquarters as unconstitutional.
  - vi. That the court do find that the petitioners are entitled to damages for violation of their constitutional rights.
  - vii. An order be issued in the nature of a permanent injunction restraining the 4<sup>th</sup> respondent either on their own and/or through their agents, employees, servants and/or any other person acting and or purporting to act under their instructions and/or orders from implementing and enforcing the Wajir County Program based budget for the Financial Year 2024/2025.
  - viii. Any other order that the court deems fit for purposes of administering justice to the case.
  - ix. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents be condemned to pay the petitioners the cost of the petition.

**Petitioners’ Case**

2. The petitioners’ case is hinged on the fact that on 26.07.2024, the 1<sup>st</sup> respondent published in the Kenya Gazette Vol. CXXVI – N0. 113. Gazette Notice No. 9231 (hereinafter the 1<sup>st</sup> gazette), the venue, time and place for special sittings of the County Assembly for Assembly business inter alia; approval of the Wajir County Appropriation Bill, 2024. That in the 1<sup>st</sup> gazette notice, the 1<sup>st</sup> respondent stated that the venue of the special sittings was to be at the county assembly of Wajir Chamber commencing at 9.00 a.m. and 2.30 p.m., both dates being Tuesday 30th and Wednesday 31<sup>st</sup> July respectively.



3. It was averred that the venue in the 1<sup>st</sup> gazette is the legally known location headquarters of Wajir County since the inception of County Governments and the same is located in Township, Barwaqo Ward, Wajir East Constituency.
4. That on 30.07.2024, again the 1<sup>st</sup> respondent published in the Kenya Gazette Vol. CXXVI – No. 115, Gazette Notice No. 9480 a revocation of special sitting notification in relation to the Gazette Notice No. 9231 dated 26.07.2024. He averred that, In the 2<sup>nd</sup> Gazette Notice, there was a complete departure of the venue from that indicated in the 1<sup>st</sup> gazette to Makoror which venue was unauthorized, unknown and /or unfamiliar to the law. That the venue was selected to serve the personal interest of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents who solely handpicked attendants of the special sitting to the exclusion of others.
5. It was indicated that holding of assembly sittings in unapproved county headquarters is contrary to the provisions of the County Governments Act which outlines the process of changing the physical location of the county government headquarters. That the sudden, abrupt and/or unexpected change of venues and/or location of the special sittings of the county assembly disenfranchised the petitioners who are equally members of the County Assembly of Wajir and who have the right to perform oversight, legislative and/or statutory role.
6. The petitioners were outright that they were opposed to the approval of the bill with their reservations having been communicated to the speaker, clerk and the CEC Finance Wajir County who disregarded the same. That the decision to change the venue was done with the aim to deprive the petitioners their right to exercise legislative role. They averred that, there was no public participation from the people themselves and their representatives due to the change of the venue. It was further stated that the residents of Wajir South and Tarbaj in Wajir County were not involved in the budget making process and their views were not factored in the making of Wajir County Program based budget for the Financial Year 2024/2025.
7. It was stated that the conduct of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents promoted a culture of impunity and total disregard to the rule of law. They urged this court to step in by allowing the orders sought to ensure constitutionalism is upheld.

### **1<sup>st</sup> and 2<sup>nd</sup> respondents' response**

8. The 1<sup>st</sup> and 2<sup>nd</sup> respondents in their response dated 28.09.2024, denied the allegations in the petition thus stating that the change of the venue was within the confines of the law and further, the same was necessitated due to chaos and destruction caused by the petitioners in the old county chamber. They deponed that public participation across Wajir County was held between 22.07.2024 and 24.07.2024 as evidenced in the report by the Wajir County Budget, Finance and Appropriation Committee and the notices that were sent out. It was averred that out of a total 45 members, only the petitioners refused and/or neglected to take part in the special sitting and exercise their legislative authority as enshrined in article 185 of the constitution.
9. That there is no limit in law on the amount of time to be taken to discuss a bill as alleged and therefore, the Wajir Program Based Budget was tabled and discussed as per the strict confines of the law on 01.08.2024 by the members of the County Assembly of Wajir. It was further argued that a mere opposition or dissent to a bill by the minority does not defeat a bill and therefore, the prayers sought cannot issue. It was urged that the petition was filed in bad faith and as such, the orders sought before this court ought not issue for the reason that the alleged violation of rights were not proved.



### 3<sup>rd</sup> respondent's response

10. The 3<sup>rd</sup> respondent filed a response sworn on 19.09.2024 deponing that in compliance with article 47(3)(a) of *the constitution* and section 9(2) & (3) of the Fair Administrative Actions Act, there is no proper petition filed capable of meeting the threshold for a constitutional petition as set out in the case of Anarita Karimi Njru vs Republic [1979] KLR 154.
11. That the petition lacks reasonable degree of precision as to which right was been violated and to what degree. That the petition has been overtaken by events as the same seeks to stop the Wajir County Programme Based Budget Estimates FY 2024 – 2025, whose budget making process is already finalized upon passing the Wajir County Appropriation Act 2024 into law.
12. It was deponed that this court lacks jurisdiction to grant the orders sought by the petitioners as the same seeks to stop the County Assembly from discharging its mandate and further, the same would go contra the provisions of article 185 of *the constitution*. That by allowing the petition, the same would be akin to offending and contravening the doctrine of separation of powers as enshrined in article 185(2) of *the constitution*.
13. It was also argued that the petition violates the doctrine of presumption of constitutionality of county legislation, constitutional avoidance and separation of powers as it only seeks to restrict the legislative authority of the County Assembly of Wajir. Further, the reliefs sought will affect and halt several operations of the County Government of Wajir as it stands to cause great financial loss in terms of revenue allocation which will in turn greatly prejudice the citizenry.
14. The court directed that the petition be canvassed by way of written submissions.

### Petitioners' submissions

15. The petitioners in their submissions dated 11.10.2024 came up with five issues for determination as follows:
  - i. Whether there was meaningful, effective and/or conducive public participation before passing the Wajir County Programme Based Budget Estimates FY 2024 – 2025?
  - ii. Whether the change of venue combined with the deployment of police officers was aimed at disenfranchising the petitioners from accessing the venue?
  - iii. Whether the hurried passing of the Wajir County Programme Based Budget Estimates FY 2024 – 2025 without allowing meaningful participation was lawful, legitimate and/or legal?
  - iv. Whether the passing of the Wajir County Programme Based Budget Estimates FY 2024 – 2025 was shrouded in secrecy therefore violating the provisions of article 196 of *the constitution*?
  - v. Whether there was non-conformity with section 217 of the Wajir Standing Orders on Presentation of the Budget Estimates and committal to Committees
16. On the first issue, the petitioners averred that over 70% of the residents of Wajir are largely semi illiterate and therefore the level of public participation should be deeper and not merely giving notice and collecting views. That in the case of Doctors for Life International vs Speaker of the National Assembly and Others, CCT12/05 [2006] the Constitutional Court of South Africa held that parliament should create conditions conducive to the effective exercise of the right to participate in the law making process. That the same could be done through road shows, regional workshops amongst other ways.



17. It was further contended that, having noted that the Wajir residents are largely semi illiterate, the respondents ought to have provided an elaborate and comprehensive public participation program and stakeholder engagement which should have sensitized the masses through radio programmes, road shows, public barazas for people to sufficiently contribute.
18. On the second issue, it was averred that the Notice for the special sitting and change of venue was issued on the eve of the sittings whereas the respondents deployed the Kenya Defence Forces, Rapid Deployment Unit and the police in targeting the petitioners thus denying them access into the venue. That the same was akin to infringing on their rights to represent the electorate.
19. It was submitted that if in any case the petitioners had conducted themselves in an unbecoming manner, then, they ought to have been subjected to the available disciplinary processes pursuant to Wajir County Assembly Standing Orders, but not to be denied their right to represent their electorate. By deploying the security agents, it showed a well-orchestrated move by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondents to deny the petitioners access.
20. On the third issue, the petitioners argued that contrary to the content of the Gazette Notice, the Assembly hurriedly, quickly and/or hastily held a single sitting on Wednesday that only lasted for 2 hours and 13 minutes to pass the Bill. That this was contrary to the provisions in the Gazette Vol. CXXVI – No. 115 Gazette Notice No. 9481 dated 30.07.2024 which provided that the special sitting would commence at 9.00 a.m. till 2.30 p.m., both days being Wednesday 31<sup>st</sup> and Thursday 1<sup>st</sup> of August.
21. On the fourth issue, it was submitted that the special sitting in exclusion of the fourth estate was contrary to article 196(2) of *the constitution*. Additionally, on 14.08.2024, the Media Council of Kenya wrote to the 1<sup>st</sup> respondent complaining of various injustices committed against the journalists who were supposed to cover the special sittings but were denied the opportunity without a good reason. In the end, it was urged that the making of Wajir County Appropriation Bill, 2024 was marred with irregularities. That in making the same right, the orders sought herein ought to be allowed.

### **1<sup>st</sup> and 2<sup>nd</sup> respondents' submissions**

22. The 1<sup>st</sup> and 2<sup>nd</sup> respondents via submissions dated 14.10.2024 drew up four issues for determination to wit:
  - i. Whether public participation was conducted in accordance with the law?
  - ii. Whether a special sitting of the County Assembly can be held at any place within the County?
  - iii. Whether the Wajir County Appropriation Act is unconstitutional?
  - iv. Whether orders, declarations and or reliefs should be granted by this Honourable Court.
23. On the first issue, it was submitted that public participation is one tool of good governance under the new constitution and the same was introduced to create an opportunity for the citizens to inform those in authority their views and priorities on different matters, reduce corruption and empower the marginalized. To that end, reliance was placed on the Supreme Court decision in the case of British American Tobacco Kenya PLC (formerly British American Tobacco Kenya Limited) vs Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & Another (Interested Parties) Mastermind Tobacco Kenya Limited (The affected Party) [2019] eKLR. (Petition No. 5 of 2017), where the court reiterated the importance of public participation as a tool for good governance.



24. That the public participation as conducted by the 1<sup>st</sup> and 2<sup>nd</sup> respondents met the threshold as required by the law for the reason that notices of the dates, venue, purpose and manner of public participation were provided. It was further submitted that, the notice explained to the public the manner of presentation of views and further, a notice to the public on where a copy of the Wajir County Programme Based Budget Estimates FY 2024 – 2025 could be obtained. In that regard, it was urged that the public was adequately informed and members turned up to give their views and therefore, the petitioners cannot be heard alleging that the process did not meet the provisions of article 10 of *the constitution*.
25. On whether the special sitting of the County Assembly could be held at any place within the county, it was contended that location of a sitting of a county assembly is provided for under section 7B of the *County Governments Act*. That a textual reading of the same shows that any sitting of the County Assembly except for the first sitting of a new county assembly, may be held at any place within the county as the county assembly may appoint. That the said law does not bar the County Assembly from gazetting any place within the county for a special sitting of the House. Therefore, the special sitting held at Makoror was not only legal but also within the confines of the County Assembly Act.
26. On whether the Wajir County Appropriation Act is unconstitutional, it was submitted that the processes flowed from the gazette notices of the special sitting as already explained in strict adherence to the provisions of *the constitution*, *County Governments Act*, *Public Finance Management Act*, Wajir County Assembly Standing Orders among others. It was urged that the said Bill passed through the required stages as required by the statutes before being presented to the house for approval where 36 members out of 45 debated and thereafter passed the Bill.
27. Further, it was urged that despite the petitioners' claim that their rights were violated, it was not demonstrated with reasonable degree of precision how it was violated in compliance with the holding in the case of Mumo Matemu vs Trusted Society of Human Rights alliance & 5 Others [2013] eKLR. That notably, despite fronting the allegations of lack of public participation, the petitioners did not particularize how or which element of public participation was omitted by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. This court was therefore urged to dismiss this suit as the 1<sup>st</sup> and 2<sup>nd</sup> respondents discharged their duties as provided by the law.

### **3<sup>rd</sup> respondent's submissions**

28. The 3<sup>rd</sup> respondent in his submissions dated 10.10.2024 submitted in reference to two issues as follows:
  - i. Whether the petition meets the threshold of reasonable precision in pleading constitutional violations.
  - ii. Whether the petition meets the threshold for grant of the orders sought.
29. On the first issue, it was urged that in reference to the guidelines provided in the case of Anarita Karimi Njeru vs Republic [supra], the petitioners did not demonstrate with the required degree of precision, the manner in which their constitutional rights were violated. That the petitioners merely listed generalized constitutional violations in the petition without actually laying out with a reasonable degree of precision which rights were infringed and how they were infringed.
30. That the alleged violations are far-fetched, baseless and too remotely linked to the respondents to warrant grant of audience by this Honourable Court. Equally, that the petition did not demonstrate which human right has been or will be limited/infringed by the Wajir County Based Budget and to what degree and/or whether the said limitation is not that which is provided for under article 24 of *the constitution*.



31. It was urged that the County Assembly as well as the respondents were not in any way at fault for conducting the sitting or changing its venue. That the same was pursuant to section 7B of the County Governments Act which clearly depicts that except for a sitting of a new county assembly, sitting of a county assembly may be held anywhere. Similarly, the special sitting was in accordance with Standing Order 30(3) of the County Assembly of Wajir Standing Orders which provide that the speaker may, on the request of the Leader of the Majority Party or the Leader of the Minority Party, appoint a day for special sitting of the County Assembly. That the speaker is empowered through notice in the gazette, to notify the members of the place, date and time appointed for the special sitting of the County Assembly. That this was realized vide Gazette Volume CXXVI – No. 115 of 30.07.2023.
32. It was further contended that the petitioners were guilty of concealing material information to this court for the reason that the revocation of the 30.07.2024 special sitting was as a result of the acts of violence witnessed in the premises of the assembly which inhibited the house to conduct business, which information is in the public domain. That more than two thirds of the members of the County Assembly were present and by a majority vote, resolved to pass the Wajir County Based Budget which shows that there was enough representation of the people of Wajir in the House.
33. It was urged that the Wajir Appropriations Act 2024 prima facie enjoys presumption of constitutionality and therefore the petition fails on the doctrine of presumption of constitutionality. That this court lacks the jurisdiction to grant orders sought as the same would violate article 185 of the constitution. To that end, the 3<sup>rd</sup> respondent relied on the case of Adrian Kamotho Njenga vs Selection Panel for the Appointment of Commissioners of the Independent Electoral and Boundaries Commission [2021] & 2 Others; Independent Electoral and Commission [2021] eKLR where Korir J stated that it was not in order in suspending the operation of legislation.
34. Additionally, it was argued that the petition has been overtaken by events as the Wajir County Programme Based Budget Estimates FY 2024 – 2025, a budget making process was finalized upon passing of the Wajir County Appropriations Act into law. Reliance was placed on the case of Okiya Omtata Okoiti & 2 Others vs Attorney General & 4 Others [2020] where Mativo J. (as he was then) stated that a matter is moot if further legal proceedings with regard to it can have no effect or events have placed it beyond the reach of the law.
35. In the end, it was contended that in light of the above, no order can be issued by this court to stop Wajir County Programme Based Budget Estimates FY 2024 – 2025.

### **Analysis and Determination**

36. I have considered the petition together with the response and the submissions by both parties. In my view that the court has been called upon to determine the following:
  - i. Whether the petition herein has met the threshold of a constitutional petition.
  - ii. Whether there was public participation in regards to the enactment of Wajir County Appropriations Act 2024.
  - iii. Whether the petitioners' rights were breached by the change of venue from the County Assembly of Wajir to Chambers at Makoror Wajir County Programme Based Budget Estimates FY 2024 – 2025 Bill?
  - iv. Whether this court has jurisdiction to determine issues on lack of payment of the petitioners' payment of allowances and other emoluments.
  - v. Whether the Wajir Finance Appropriation Bill is spent.



vi. Costs.

37. The question whether a petition meets the threshold of a constitutional petition cannot be overemphasized. It is the cornerstone of litigation in cases of constitutional breach. This minimum requirement is in not any way meant to exclude any litigant from litigation circles but rather to sieve frivolous suits from serious cases. In that regard, the court in *Anarita Karimi Njeru case*(supra) laid parameters for consideration before filing a constitutional petition. The court in that case held that a constitutional petition must with a reasonable degree of precision state the nature of constitutional right violated or a bout to be violated and how. The standard is that of a *prima facie* case.
38. The respondents have raised an issue that the petitioners have failed to disclose any constitutional violation to be determined by the court.
39. Under Rule 10 of the Mutunga Rules, 2013 it is clearly provided what a competent Petition should include. (See Rule 21(3) of the said Rules). The same makes provision that the Court may frame the issues for determination at the hearing and give such directions as are necessary for the expeditious hearing of the case and lastly, Rule 22(2)(b) provides that submissions shall contain a brief statement of facts with reference to exhibits, if any, attached to the petition, issues arising for determination ; and a concise statement of argument on each issue incorporating the relevant authorities referred to, together with the full citation of each authority.
40. The Supreme Court confirmed the importance of complying with the stated principle in the *Anarita Karimi case* by stating in *Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 others* [2014] eKLR as follows:
- “(349) ...Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v. Republic* (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”
41. As guided by the above case law, the first question therefore is whether the petitioners have disclosed a violation of *the Constitution*, the constitutional provisions violated and the manner in which the provisions were violated. In their pleadings, the petitioners allege violation of the rights and principles enunciated and protected by inter alia Articles 1,2,3,6,10,48 and 232 of *the Constitution*.
42. They claim that the respondents’ decision to lock them out of the special sitting at Makoror violated their rights. Their case is that the actions of the respondents have affected not only their rights but also of those whom they represent. They also averred that the said Wajir County Programme Based Budget for the Financial Year 2024 – 2025 was not exposed to public participation as provided for under article 10 of *the constitution*.
43. From the foregoing, the petitioners cannot be said to have failed the drafting test. Whether their pleadings disclose a constitutional dispute is another issue altogether for the court to determine. I am satisfied that *prima facie*, the petition has made the requisite threshold. It does not need to be successful at the end of the day. At least, it is not frivolous.



44. This court notes that the petitioners main contention is that there was no public participation as contemplated under article 10 of *the Constitution* despite the same being so sacrosanct that no state agency, organ or government official can escape from it. On the other hand, the respondents' (specifically the 1<sup>st</sup> respondent) averred that there was sufficient public participation and therefore, the Bill met all the considerations as required by the law. Additionally, that this court by allowing the orders sought herein would offend the doctrine of separation of powers and the same would result to judicial overreach.
45. As a reminder, in the case of Margaret Lorna Kariuki & Another vs County Assembly of Embu & Another; National Forum for County Assemblies (Interested Party) [2019] eKLR, the court stated that;
- “ 20. The Supreme Court in Speaker of the Senate & Another v Attorney General & 4 Others, Reference No. 2 of 2013; [2013] eKLR signalled that it would be reluctant to question parliamentary procedures, as long as they did not breach *the Constitution*. In reference to Article 109 of *the Constitution*, which recognizes that Parliament is guided by both *the Constitution* and the Standing Orders in its legislative process, ...
46. Similarly, the court in the case of The *Council of Governors and Others vs The Senate Petition No. 413 of 2014* held as follows;
- “ this Court [is] vested with the power to interpret *the Constitution* and to safeguard, protect and promote its provisions as provided for under Article 165(3) of *the Constitution*, has the duty and obligation to intervene in actions of other arms of Government and State Organs where it is alleged or demonstrated that *the Constitution* has either been violated or threatened with violation. In that regard, the Petition before us alleges a violation of *the Constitution* by the Respondent and in the circumstances, it is our finding that the doctrine of separation of power does not inhibit this Court's jurisdiction to address the Petitioner's grievances so long as they stem out of alleged violations of *the Constitution*. In fact, the invitation to do so is most welcome as that is one of the core mandates of this Court”.
47. Therefore, in my view, a court can in isolated cases and with utter restraint, interfere with other organs of the state where it is obvious that *the constitution* is being raped or defiled with impunity. That does not amount to disrespect to the doctrine of separation of powers.
48. On the issue of public participation, this court reiterates that it has been emphasized by various determinations from our courts that public participation remains a crucial pillar of the 2010 Constitution. It is the process of engagement in governance, in which ‘people participate together for deliberation and collective action within an array of interests, institutions and networks, developing civic identity, and involving people in governance processes.’
49. In the case of Kenya Human Rights Commission vs Attorney General & Another [2018] eKLR the court noted that public participation is an essential national value and principle that must be observed by all persons; state organs and public officers in the exercise of their responsibilities. In this regard, the Court stated that:
- “ Article 10 (1) of *the constitution* states that the national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets *the Constitution*; (b) enacts, applies or interprets any



law; or makes or implements public policy decisions. And according to Article 10 (2), the national values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and “participation of the people.”

50. Of importance to note is the fact that the Supreme Court in Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024 of the Supreme Court of Kenya, while relying on a decision by the Constitutional Court of South Africa in *Mogale and Others vs Speaker of the National Assembly and Others* (CCT 73/22) [2023] ZACC 14 at paragraph 37, stated that there are three factors that ought to be considered in determining whether the process adopted by a duty bearer in facilitating public participation was reasonable. The Court held thus:

“In determining whether conduct has been reasonable in the context of public participation the following factors are of particular importance:

- a) What Parliament itself has determined is reasonable, and how it has decided it will facilitate public involvement;
- b) The importance of the legislation and its impact on the public; and
- c) Time constraints on the passage of a particular bill, and the potential expense.” [Emphasis added]

[ Also see Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024 of the Supreme Court of Kenya].

51. Guided by the factors as listed by the Supreme Court, this court will endeavour to determine whether the actions by the respondents fit the issued guidelines. The respondents submitted that there was a notice to the members of the County Assembly of Wajir County and the general public on special sitting of the County Assembly which was to be held on 30<sup>th</sup> and 31<sup>st</sup> of July 2024 as required by Standing Order 30(3) of the Wajir County Assembly standing Orders.
52. On 30.07.2024, the speaker received another request from the Office of the Leader of the Majority Party for a special sitting of the House on 31<sup>st</sup> July and 01<sup>st</sup> of August, 2024. That the purpose of the sitting was to table before the House the report of the Budget, Finance and Appropriation Committee on Wajir County Budget Estimates for Financial Year 2024/2025. He thus made a second request to the Government Printer vide a letter dated 30.07.2024 for publication of the same.
53. In their replying affidavit sworn on 12-08-2024, the 2<sup>nd</sup> respondent averred that between 22<sup>nd</sup> and 24<sup>th</sup> June, 2024, they held public hearings in every sub-county after sending hearing notices to the public. The hearing notices were attached at para.24 to serve as proof that the public was engaged. This fact was not controverted.
54. In as much as the petitioners argued that the electorates from the petitioners’ wards were not represented together with the fact that the residents of Wajir South, Tarbaj constituencies were not represented, the petitioners did not deny that indeed the said notices were sent out. Their only contention is that over 70% of the residents of Wajir are largely semi illiterate and therefore the level of public participation should be deeper and not merely giving notice and collecting views.
55. From the above and guided by the findings by the Supreme Court as enumerated above, the actions by the speaker in notifying the petitioners of change of venue was reasonable. Equally, by holding public hearing after issuing notices which is not denied was reasonable. Practically, public participation does not mean that everybody in Wajir was to participate. If people are given an opportunity and they fail to participate, that is their problem.



56. Therefore, from the uncontroverted evidence, I find the petitioner’s claim that there was no public participation or that the public participation carried out was inadequate to be without basis and dismiss it.
57. The next question is whether the petitioners’ rights were breached by the change of venue from the County Assembly of Wajir to Chambers at Makoror Wajir County Programme Based Budget Estimates FY 2024 – 2025 Bill?
58. Section 7 B of the County Governments Act stipulates that:
- Location of sitting of a county assembly
- (1.) Whenever a new county assembly is elected, the Governor, by notice in the Gazette shall appoint —
- (a) the place of sitting within the county as set out in the Third Schedule; and
- (b) the date of the first sitting of the new county assembly, which shall not be more than thirty days from the date on which the county assembly shall be fully constituted as provided for under section 7A.
- (2). Except for a sitting of a new county assembly under subsection (1), a sitting of a county assembly may be held at any place within the county and may commence at any time as the county assembly may appoint.
59. My understanding of the above section is that only the first sitting of the County Assembly is to be held in a place as stipulated under sub section 1 but any other subsequent sittings could be held anywhere within the county. As such, there was nothing illegal by the fact that the special sitting herein was held at Makoror as the same was not the first sitting of the House. That provision does not provide for the minimum period such notice should take in order to become effective.
60. Having the above in my mind together with the fact that I had already found that there was proper public participation, it remains unfounded that the petitioners’ rights were breached. It remained unknown as to why the petitioners chose not to attend the special sitting held at Makaror.
61. The foregoing notwithstanding, this court was served with a narrative that there was security apparatus placed at the site with instructions not to let them in. In as much as the petitioners annexed photos of security personnel to their petition, the said photos remained unhelpful to their case. I say so for the reason that there was no nexus legally associated with the petitioners ‘case and the photos. [ See section 109 of Evidence Act].
62. It is normal that where there is reasonable apprehension that security at a given venue may be in danger, security agencies have an obligation to deploy security at such venue to maintain law and order. It is not in dispute that on the material day there was tension as the petitioners had sent signals that they were opposed to the debate on the proposed budget at the appointed venue. It is not clear from the photos how the 9 petitioners alone were restrained from entering yet 36 MCAs out of 45 were allowed. It was also necessary to deploy security for peace and tranquility.
63. On the question whether the Finance appropriation bill is spent, the same is clear from the assent of the bill into law(Act). Ultimately, the bill is no longer in existence hence spent. One can only challenge



the constitutionality of the Act or part of it which is not the case here. To that extent, this court can not make orders in vain in so far as the constitutionality of the bill is concerned.

64. Prima facie, there was no proof that the petitioners were specifically targeted. Mere presence of heavy security which happens everywhere including the national assembly during budget debate is not good reason to conclude that they were there to stop the petitioners from entering the assembly.
65. On the prayer for an order to be paid their allowances and other emoluments, this court has no jurisdiction. That is for another court specially created to hear such claims.
66. Taking into account the totality of the evidence on record and the applicable law, I am persuaded to conclude that the petitioners herein have not proved their claim to the required degree. In other words, I do not find any constitutional breach capable of awarding the reliefs sought. To that extent, the petition herein is dismissed. This being a public interest litigation, I will order that each party bears own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3<sup>RD</sup> DECEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

