**Ndegwa (suing on his own behalf, in the public interest and on behalf of other bar owners' in Nyandarua County) v Nyandarua County Assembly & another (Petition E011 of 2021) [2021] KEHC 299 (KLR) (16 November 2021) (Judgment)**

*Josphat Muriu Ndegwa (suing on his own behalf, in the public interest and on behalf of other bar owners' in Nyandarua County) v Nyandarua County Assembly & another [2021] eKLR*

Neutral citation: [2021] KEHC 299 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NYAHURURU**

**PETITION E011 OF 2021**

**CM KARIUKI, J**

**NOVEMBER 16, 2021**

**IN THE MATTER OF ARTICLES 1,2,3,10,20,21,22,23,27,28,35,48,73,159,160,165,174 (C),196(1) (B), AND OF THE CONSTITUTION OF KENYA,2010**

**-AND-**

**IN THE MATTER OF SECTIONS 2, 3(F) & 115 OF THE COUNTY GOVERNMENTS ACT, 2012**

**-AND-**

**IN THE MATTER OF THE SECTION 4(1) (E) AND 5(A) OF THE NYANDARUA COUNTY ALCOHOLIC DRINKS CONTROL ACT, NO.4 OF 2019**

**-AND-**

**IN THE MATTER OF CONSTITUTION OF THE NYANDARUA COUNTY ALCOHOLIC DRINKS MANAGEMENT & CONTROL COMMITTEE**

**BETWEEN**

**JOSPHAT MURIU NDEGWA (SUING ON HIS OWN BEHALF, IN THE PUBLIC INTEREST AND ON BEHALF OF OTHER BAR OWNERS' IN NYANDARUA COUNTY) ..... PETITIONER**

**AND**

**NYANDARUA COUNTY ASSEMBLY ..... 1ST RESPONDENT**

**COUNTY GOVERNMENT OF NYANDARUA ..... 2ND RESPONDENT**

**Principles that guide the application of the principle of public participation.**

Reported by Ribia John

***Constitutional Law*** *– national governance and principles – public participation - what were the principles that guided the application of the principle of public participation - whether the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 was constitutional for lack of public participation – Constitution of Kenya, 2010, article 27, 33, 35, 119, 118(1)(b) and 196(1)(b).*

**Brief facts**

The petitioner sought a declaration that the amendment of the Nyandarua County Alcoholic Drinks Control Act No. 4 of 2019 without conducting sufficient public participation was illegal. The petitioner averred that the 1st respondent amended the Nyandarua County Alcoholic Drinks Control Act, No. 4 of 2019, (hereinafter referred to as the "Mother Act") without conducting the mandatory public participation and therefore denting the petitioner herein, the people of Nyandarua County and more so stakeholders (being bar owners) from the alcohol and entertainment sector a right to participate in the said exercise that clearly made decisions affecting them, making the said amendment unlawful for offending the provisions of articles 174(c) and 196(1)(b) of the Constitution of Kenya, 2010.

**Issues**

i. Whether the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 was constitutional for lack of public participation.

ii. What were the principles that guided the application of the principle of public participation?

**Held**

1. According to the Public Participation in the Legislative Process, Factsheet No. 27 by the National Assembly, public participation could be defined as the process of interaction between an organization and public with an aim of making an acceptable and better decision. The process involved informing, listening, dialogue, debate and analysis as well as implementation on agreed solutions. Public access and participation in both the national and county legislature was guaranteed specifically under articles 118(1)(b) and 196 (1)(b) of the Constitution which directed the national and county legislatures to respectively facilitate public participation. Furthermore, the legal framework for public participation was guaranteed by articles 10, 27, 33, 35 and 119 of the Constitution of Kenya, 2010.
2. Section 87 of the County Government Act, 2012 provided for citizen participation and dictated the principles which the same was to be based on. Section 115 made public participation in county planning processes mandatory.
3. The right to public participation did not impose a duty to the agency to accept the views given as dispositive. However, caution had to be taken as to contend that public views ought not to count at all in decision making would negate the spirit of the Constitution. Public participation was meant to enrich the views of the office holders with views of those most affected by a policy or decision at hand. It was not meant to usurp the democratic role of the office holders.
4. Public participation did not mean that everyone had to give their views, which was impracticable. Rather that there ought to be evidence of intentional inclusivity in the participation program and which, on the face of it, took into account the principle that those most affected by a policy, legislation or action had to have a bigger say and their views more deliberately sought and taken into account. That notwithstanding, there was no attendant requirement that each individual's views would be included in the final policy or law: the public authority had no duty to accept any and every view, the opposite of which would effectively neutralize and stall the exercise of the authority's mandate.
5. There was no standard on the proper threshold of public participation as a principle of governance in managing the affairs of state and county government affairs.

6. The burden of proof lay with the respondents to demonstrate there was public participation. The court doubted whether the respondents carried out any public participation as they had not adduced any evidence to prove any efforts they took towards carrying out the same. The respondents did not adduce any evidence that they made an effort to collect views from the public in addition to issuance of any notice to that effect. The position in the respondent's letter to the petitioner that the legislative process included involvement of the people did not in any way prove that they put in place mechanisms to conduct public participation during the amendment process. Further, the 1st respondent, the Speaker of the Nyandarua County Assembly, could not ascertain whether any public participation was carried out.
7. The County Assembly had a constitutional obligation to facilitate public participation on policy formulation, legislative process and any other decision affecting residents of the county. However, the respondents did not adduce any evidence to justify that any reasonable efforts were made by the Nyandarua County Government to facilitate public participation in accordance with the principles of public participation as entrenched in sections 3 and 87 and 91 County Governments Act in line with articles 10, 174 and 196 of the Constitution.
8. No reasonable opportunity was given to the public and all interested parties. The residents of Nyandarua and relevant stakeholders were not accorded with timely access to information that was relevant to a process of legislation, which was the amendment to facilitate the appreciation of the issue for consideration and an opportunity to make a response especially by the stakeholders. The petitioner on behalf of other the bar owners and the public at large alleged that none of them were consulted during the amendment process; an allegation the respondents had not disproved. No explanation(s) was advanced to account for the flawed participation processes.
9. Time may be a relevant consideration in determining the reasonableness of a legislature's failure to provide meaningful opportunities for public involvement in a given case. There could be circumstances of emergency that required urgent legislative responses and short timetables. The respondents did not demonstrate that there was any apparent emergency or urgency in setting up the Amendment Act and even so, that would not permit them to not facilitate public involvement.
10. No governmental agency should encumber another to stall the constitutional motions of the other. The court would not hesitate to superintend over the County Assembly and other constitutional bodies when they sit in their quasi-judicial capacities. Article 2(4) of the Constitution in that respect provided that any law, that was inconsistent with the Constitution was void to the extent of the inconsistency, and that any act or omission in contravention of the Constitution was invalid. Article 165(3) (d)(i) of the Constitution provided that the High Court had jurisdiction to determine the question whether any law was inconsistent with or in contravention of the Constitution. Further, article 259(1) of the Constitution stipulated that when interpreting the Constitution, the court should do so in a manner that promoted its values and purposes. One of the values and principles of the Constitution was public participation.
11. There wasn't sufficient public participation carried out in respect of the Amendment Act. The respondent's actions of deleting and amending clauses of the Mother Act without subjecting the same through the constitutional compliance step of public participation were *ultra vires*, illegal and therefore a nullity.
12. The county government failed to disseminate necessary information on the impugned Amendment Act as required and that was in breach of the petitioner's rights to information under article 35 of the Constitution. However, the petitioner never invoked the provisions of Access to Information Act, specifically sections 8,9 and 14 which provided process of application of requisite information under article 35 of the Constitution and enforcement in event of denial of access.
13. *Vide* the Amendment Act, the resultant committee had already began the process of issuing licenses. The Amendment Act portended implications concerning stakeholders in the hospitality and

entertainment sector such as the bar owners and the public at large who were not given adequate opportunities to give their views on the legislation. Furthermore, given the nature of the subject matter and implications of the Amendment Act, the public participation efforts made by the county government were not reasonable and they fell below the standard required on such a matter. The enactment of the Amendment Act was in contravention of articles 10, 174 and 196 of the Constitution as read with sections 87 and 91 of the County Governments Act.

14. In order to give effect to the right to enforce the Constitution, the power of the court to award an appropriate remedy had to be implied. The court had the power to issue any remedy as was necessary to ensure that the Constitution was not threatened or violated. Such relief could include conservatory orders and a declaration of invalidity of any law that was inconsistent with the Constitution.

15. Any law that was inconsistent with the Constitution was null and void. However, the court was empowered to deal with the consequences of such invalidity bearing in mind its duty to interpret and apply the Constitution in a manner that, *inter alia*, promoted good governance. Article 258 of the Constitution did not limit the court's jurisdiction to fashion an appropriate remedy to deal with the invalidity of the law. It was accepted that the court could suspend the declaration of invalidity in order to deal with the consequences of such invalidity.

16. In order to protect the Constitution, the court had to be creative in fashioning appropriate relief that was tailored to the facts of the case and was consistent with the values of the Constitution. Suspension of the declaration of invalidity would be appropriate in these circumstances as it would allow the county legislature time to correct the defective legislation while avoiding chaos and disarray in a system that had been established for over a while. Such a move supported good governance, a core national value under article 10 of the Constitution. The impugned legislation was defective in some respects, from the manner it was enacted, and especially want of public participation in terms of meeting the applicable constitutional standard/threshold.

17. The impugned Act had set a system and institution that had been running over a while including a licensing body and licenses issued for the next 12 months to the alcoholic drinks dealers/business community. The funds arising therefrom had entered into legal obligations that needed to be dealt with. A temporary suspension of the invalidity of the Act was the appropriate relief in the circumstances.

18. The court took judicial notice of the licensing cycle and the fact that a license issued had a life span of 12 months. There was also the need to protecting the lives of alcoholic drink users which would be at risk without the regulation in place pending re-enactment of the impugned legislation. In order to allow for transitional and corrective mechanisms, suspension of the invalidity of the impugned legislation for a period of twelve months from the date of the instant judgment was a reasonable period. The county government and legislature were entitled to remedy the defects in the period either in form of new legislation or other meant within the Constitution taking into account the findings of the court. The Act could have been repealed earlier by an Act of County assembly or await the expiry of the suspension, whichever came first.

*Petition allowed.*

***Orders***

i. *A declaration was issued that the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 was unconstitutional and invalid.*

ii. *A declaration that the Nyandarua County Alcoholic Drinks Management and Control Committee was unlawfully constituted for including members that were appointed as a result the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 which was unlawful.*

iii. *The order of invalidity above (i) and (ii) were suspended for a period of twelve (12) months from the date of the instant judgment.*

iv. *The county government and assembly could remedy the defect within that period and the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 would stand invalidated at the expiry of the twelve (12) months or could be earlier repealed whichever came first.*

v. *Each party was to bear its own costs.*

**Citations**

**Cases**

1. James Wahome Ndegwa v Zachary Mwangi Njeru & 5 others; Nyandarua County Assembly (Interested Party) ([2021] eKLR) — Explained
2. Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another ([2017] eKLR) — Cited
3. Kenya Country Bus Owners' Association (Through Paul G. Muthumbi – Chairman, Samuel Njuguna – Secretary, Joseph Kimiri – Treasurer) & 8 others v Cabinet Secretary For Transport & Infrastructure & 5 others ([2014] eKLR) — Explained
4. Kenya Human Rights Commission v Attorney General & another ([2018] eKLR) — Explained
5. Legal Advice Centre & 2 others v County Government of Mombasa & 4 others ([2018] eKLR) — Explained
6. Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others ([2015] eKLR) — Explained
7. Nairobi Metropolitan Psv SaccosUnion Limited&25; others v County Of Nairobi Government & 3 others ([2013] eKLR) — Explained
8. Republic v Independent Electoral and Boundaries Commission (I.E.B.C.) Ex parte National Super Alliance (NASA) Kenya & 6 others [2017] eKLR ([2017] eKLR) — Explained
9. Robert N. Gakuru & Others v Governor Kiambu County & 3 others ([2014] eKLR) — Mentioned
10. Suleiman Shahbal v Independent Electoral and Boundaries Commission and 3 Others ([2014] eKLR) — Explained
11. Doctors for Life International– vs- Speaker of the National Assembly and Others ((CCT12/05(2006) ZACC 11(2006) (12) BCLR 1399(CC); 2006 (6) SA 416(CC)) — Explained
12. Premier: Limpopo Province v Speaker of the Limpopo Provincial Legislature and Others (supra)

**Statutes**

1. Access to Information Act (No. 31 of 2016) — section 8, 9, 14 — Interpreted
2. Constitution of Kenya, 2010 — article 174(c), 196(1)(b), 73 (1)(b), 35(1), 27 (6)(8), 10, 201 (a), 118 (1)(b), 33, 119, 2(4) — Interpreted
3. County Governments Act (No. 17 of 2012) — section 2, 3(f), 115, 87, 91 — Interpreted
4. Elections Act (No. 24 of 2011) — Interpreted

**Advocates**

None mentioned

## JUDGMENT

1. The petitioner through the Amended Petition dated October 7, 2019 sought the following orders:

    i. A declaration that the amendment of the Nyandarua County Alcoholic Drinks Control Act No 4 of 2019 without conducting any and/or sufficient public participation was illegal and therefore null and avoid.

    ii. An order of *certiorari* do issue quashing the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020.

iii. A declaration that the current Nyandarua County Alcoholic Drinks Management and Control Committee is unlawfully constituted for including members that were appointed as a result the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 which is unlawful.

iv. An order of *certiorari* do issue quashing all actions and/or decisions already undertaken by the current Nyandarua County Alcoholic Drinks Management and Control Committee for the said committee being unlawfully constituted.

v. An order of prohibition do issue prohibiting the respondents either by themselves, or any other person acting on their behalf from excluding the public from participation and involvement in the legislative and other business of the assembly and its committee.

vi. This honorable court be pleased to peruse and/or scrutinize the academic qualifications and/or credentials of members of the impugned Nyandarua County Alcoholic Drinks Management and Control Committee filed and especially members appointed pursuant to sections 4 (a) and (d) of the Nyandarua County Alcoholic Drinks Control Act, No 4 of 2019 in order to satisfy itself as to the propriety of their qualifications thereto or otherwise.

vii. That costs of this petition be provided for together with interest thereon at court's rate.

**Petitioner's Case**

2. The petition is premised on grounds found in the body of the Amended Petition and an affidavit sworn by Josphat Muiru Ndegwa.

3. The petitioner averred that the 1st respondent either on its own volition or at the request and/or influence of the 2nd respondent amended the Nyandarua County Alcoholic Drinks Control Act, No 4 of 2019, (hereinafter referred to as the "Mother Act") without conducting the mandatory public participation and therefore denting the petitioner herein, the people of Nyandarua County and more so stakeholders (being bar owners) from the alcohol and/or entertainment sector a right to participate in the said exercise that clearly made decisions affecting them, making the said amendment unlawful for offending the provisions of articles 174 (c ) and 196 (1) (b) of the *Constitution of Kenya, 2010*.

4. The petitioner contended that worse of it all is that the 2nd respondent does not deny the above captioned allegation in its letter dated August 10, 2021 and actually attempts to justify the failure by the respondents to conduct the mandatorily required public participation by suggesting that the authority assigned to members of the Nyandarua County Assembly by the people of Nyandarua County vests in the said members of county assembly to rule the people of Nyandarua County rather than to serve them against the provisions of article 73 (1) (b) of the *Constitution of Kenya,2010*.

5. The petitioner averred that the intention of the said unlawful amendment by the respondent is too clandestinely take away the authority to appoint the Chairperson of the County Alcoholic Drinks Management And Control Committee, (hereinafter referred to as the "Committee") from the County Public Service Board and allocate the same to the Governor of the 2nd respondent without public participation and/or even knowledge of the people of Nyandarua County against the provisions of article 174 (c ) of the *Constitution of Kenya, 2010*.

6. Further, he asserted that out of the said unlawful amendment, a new committee has been constituted and gazetted. That the said unlawful amendment is also intended to introduce an administrative based composition of the impugned committee doing away with the constitutional gender rule as opposed to the previous composition which strive to comply with the constitutional two thirds gender rule

against the provisions of article 27 (6) and (8) of the *Constitution of Kenya, 2010* and section 4 (1) (e) of the Nyandarua County Alcoholic Drinks Control Act, No 4 of 2019.

7. The petitioner stated that the legitimacy of the said amendment is further put to question when the Speaker of the 1st respondent denies out rightly ever signing any vellum sanctioning the completion of the law making process (that is the amendment in this case) and which signing of a vellum is mandatory and only a preserve of the substantive speaker of a county assembly as well as being skeptical as to whether any public participation was conducted thereof.

8. Additionally, he asserted that the said committee having been constituted vide such an unlawful amendment of the act is therefore void ab initio and to allow the impugned committee to continue its ongoing licensing process would be to rubber stamp illegality against the letter and the spirit of the *Constitution of Kenya, 2010*. That further the 2nd respondent forwarded for vetting to the 1st respondent persons intended to be members of the impugned committee and some of whom did not possess the mandatory minimum academic requirements as at the time of their appointment being a diploma from an institution recognized in Kenya this again in total disregard of section 4 (5) (a) of the Nyandarua County Alcoholic Drinks Control Act, No 4 of 2019.

9. Moreover, it was averred that the 2nd respondent despite a formal request and/or demand by the petitioner through his then advocates to be supplied with all of the said committee's members' academic qualifications in order to satisfy himself of the said members' appointments compliance with the law has failed and/or refused to supply him with any against the provisions of article 35 (1) (a) of the *Constitution of Kenya, 2010.*

10. In conclusion, the petitioner asserted that the actions complained about by the petitioner pose a gross indictment to principles of constitutionalism and the rule of law and if allowed to stand the said actions will definitely occasion great injustice and/or lawlessness.

11. The petitioner also filed a supplementary affidavit dated September 7, 2021.

**1st Respondent's Response**

12. The 1st respondent filed a replying affidavit dated September 21, 2021 sworn by James Wahome Ndegwa, MBS who described himself as the Speaker of the 1st Respondent. He deponed that the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 (hereinafter referred to as the "Amendment Act") and the Committee are null ab initio and of no legal effect. It was his assertion that he supports the Petition primarily because the County Government of Nyandarua is running outside the constitution, the County Government Act, the standing orders, court orders and generally as a criminal entity without any regard to the rule of law.

13. He deponed that since February 23, 2021, the 1st Respondent has not been properly constituted and any business conducted therein had been illegal, null and void and of no effect nor consequence in the eyes of the law. Further, that one Ms. Elizabeth Wanjiku Muthui who has purportedly been acting as the Clerk to the Assembly was so appointed against a court order in Nairobi PPDT Complaint No. E005 of 2021. That the illegal and criminal appointment was nullified by the Nakuru High Court ELRC in Claim No. E007 of 2021 but she has defied the same and continued to perform the duties of the Clerk with the protection of the Governor Francis Kimemia Thuita and the police.

14. He averred that during the purported process of the purported amendment to the Act and the purported approval of the Committee, the assembly was not validly constituted and he had not convened nor authorized the same and an imposter clerk purported to carry out both constitutional and statutory duties that she did not possess. Moreover, the Clerk to the County Assembly, Mr. Gideon

Mukiri Muchiri and himself did not sign the vellums for the purported amendment Act and the same therefore lack legitimacy nor the force of the law and are a nullity ab initio.

15. He emphasized that he was not aware of any public participation that was ever carried out on the purported amendment bill and that the Clerk, Mr. Gideon Mukiri Muchiri never oversaw such a process or at all.

16. It was deponed that the purported and hurried amendment of the Mother Act and appointment and approval of the Committee were being done to cover up for the 2nd respondent's complacency in that it has deliberately never controlled the alcohol sector since 2017 and the same has been a cash cow for corrupt officers of the 2nd respondent who have been collecting money from bar owners without receipting them nor issuing licenses thereof.

17. Lastly, he asserted that Mr. Kevin Ikua Ndegwa is not the County Secretary and Head of Public Service in Nyandarua as there has not been a recruitment to the position and any such appointment must be approved by the County Assembly and he cannot therefore legitimately act in the Office of the County Secretary and that by swearing a replying affidavit as such was in demonstration of the 2nd respondent's disregard and impunity for the law, the constitution and very legitimate expectation of the people of Nyandarua.

**2nd Respondent's Response:**

18. The 2nd respondent filed a replying affidavit dated 31st August, 2021 sworn by Mr. Kevin Ikua Ndegwa who described himself as the County Secretary and Head of Public Service in Nyandarua County.

19. He deponed that in a letter dated July 13, 2021 to the Nyandarua County Alcoholic Drinks Management Committee, the firm of Wanjiru Gladys & Company Advocates relied on Section 4 of the Mother Act to allege that the composition of the committee is illegal established but the letter overlooked the Amendment Act that provides for an administrative composition of the Committee.

20. He asserted that the allegations by the petitioner that the and respondent attempts to justify its failure to conduct the mandatory public participation and that the authority assigned to the public is vested to the 1st respondent is misleading and misguiding as the petitioners "Exhibit JMN1" clearly outlines the legislative process which includes, "involvement of the people" which should at no time be construed to mean that there was no public participation as the same was done and due process followed in accordance with the law.

21. Further, he averred that the appointment of the Chairperson of the Committee by the County Governor and vetting by the 1st respondent was done within the law and a resolution was passed by the 1st respondent.

22. It was his assertion that the 2nd respondent has not in any way denied supplying any information to the public as alleged by the petitioner as clearly indicated in the reply letter relied on by the petitioner.

23. Moreover, he deponed that the petitioner's Advocate has been forum shopping in various courts by filing Petitions and appeals to interfere with and sabotage the 2nd Respondent's constitutional and statutory functions and that the Petition is meant to hamper and incapacitate the county government's constitutional function of collecting revenue as provided for in Chapter 1 of the Constitution of Kenya and managing, controlling and regulating the production and consumption of illicit brew and other alcoholic drinks within the county as provided for in the Fourth Schedule of the Constitution.

24. In conclusion, he asserted that the Petition is incompetent, misconceived and intended to mislead the court into granting the orders prayed to the detriment of the interest of the public and that it is in the interest of the justice that he urged the court to dismiss the Petition with costs to the 2nd respondent.

25. Additionally, the 2nd respondent filed a further affidavit dated October 13, 2021. It was deponed that the petitioner's assertion that the impugned acts are unconstitutional is an afterthought for purpose of court abuse and political illegality.

26. That the county assembly through a sitting on Tuesday April 13, 2021 at 2.30pm approve the appointment of the committee members as per annexure KIN-3B of the replying affidavit dated August 31, 2021 and that contrary to the Petitioners allegations, they are willing to furnish the academic qualifications of the committee members to the extent of its legality and through a legal and legitimate process.

**Submissions:**

27. The Petition was canvassed by way of written submissions but only petitioner's submission was on record thus court proceeded in preparation of the judgement without the respondents' submissions.

**Petitioner's Written Submissions:**

28. The petitioner submitted that the issues arising for determination are:

· Whether there was any and/or sufficient public participation preceding the amendment of the Mother Act?

· Whether the Amendment Act is legitimate and/or constitutional?

· Whether the resultant Committee is legitimate and/or constitutional?

· Whether the actions already taken and/or being taken by the Committee are constitutional?

· Whether the petitioner is entitled to the orders sought

29. On issue I and II, the petitioner relied on article 10, 73, 196 (1) (b), 201 (a) of the *Constitution of Kenya*. The petitioner's case is that never had he, any bar owner and/or members of the public at large been informed of any intention to amend thee said law which affects him, other bar owners and/or members of the publicly directly and/or indirectly and neither were they invited to give their respective inputs towards the intended amendment because there were no newspaper notice printed, no radio advertisement for the said invitation was ever done, no notices were circulated to bars directly or through their association and/or placed in public places on the intention to amend the said law.

30. The petitioner contended that the 2nd respondent did not demonstrate that it met the requirements stipulated for public participation as contained in the guidelines of public participation in the legislative process Fact Sheet No. 27 prepared by the National Assembly. The petitioner further relied on section 115 of the County Government Act, 2012 and the case of *Robert N. Gakuru & Others V. Governor Kiambu County & 3 others* (2014) eKLR. The petitioner asserted that for failure to conduct mandatory public participation before making of the Amendment Act, the said act is therefore unconstitutional, null and void.

31. On issue III and IV, the petitioner submitted that the 2nd respondent in its letter dated 10th August 2021 admitted that the said amendment is against the mandatory gender balance rule therefore completely unconstitutional. The petitioner emphasized that the composition of the committee offended Section 4 of the Mother Act on the question of gender balance. The petitioner also relied on article 27 (6) and (8) of the Constitution of Kenya.

32. On the issue of academic credentials of the members of the impugned committee, the petitioner submitted that the respondents have failed to supply the same to this honorable court for scrutiny and the only inference that can be drawn from such failure is that the respondents are either aware or in doubt that some of the impugned committee are duly qualified in compliance with the law.

33. Moreover, the petitioner asserted that the Speaker of the 1st Respondent stated that he was unable to confirm that the appointment of members of the Committee was in compliance with the law and that public participation was conducted making the issues the raised weightier. Further, the 1st respondent in its replying affidavit distances itself with the impugned law.

34. It was the petitioner's submission that no vellum was supplied to demonstrate that the legislation process was properly sanctioned by the 1st respondent and matters are even made worse by the fact that the Speaker of the 1st respondent has out rightly denied ever signing any vellum in respect of the impugned amendment.

**Analysis and Determination:**

35. The court has considered the material canvassed including the affidavits n annexures thereto in respect of the Petition, the key issues arising from the pleadings and arguments raised include:

· Whether there was any and/or sufficient public participation preceding the amendment of Nyandarua County Alcoholic Drinks Control Act No 4 of 2019?

· Whether the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 is legitimate and/or constitutional?

· Whether the resultant Nyandarua County Alcoholic Drinks Management and Control Committee is unlawfully constituted?

· Whether the actions already taken and/or being taken by the Committee are constitutional?

a) Whether there was any and/or sufficient public participation preceding the amendment of Nyandarua County Alcoholic Drinks Control Act No. 4 of 2019?

36. The Petitioner contended that the 1st Respondent either on its own volition or at the request and/or influence of the 2nd Respondent amended the Mother Act without conducting the mandatory public participation and therefore denting the Petitioner herein, the people of Nyandarua County and more so stakeholders (being bar owners) from the alcohol and/or entertainment sector a right to participate in the said exercise that clearly made decisions affecting them, making the said amendment unlawful for offending the provisions of articles 174 (c ) and 196 (1) (b) of the Constitution of Kenya, 2010.

37. The impugned amendment is an amendment of section 4 of the Mother Act which previously provided thus;

i. There is established the County Alcoholic Drinks Management Control Committee comprising of-

· A chairperson appointed by the County Public Service Board with approval of the County Assembly

· The Executive Committee Member responsible for matters of social services or their representative

· The executive committee member responsible for matters of finance or their representative

· Four persons appointed by the executive committee member responsible for matters of social service, with approval of the county assembly as follows-

· a person representing the marginalized groups in the county

· two persons, one whom shall be of opposite gender, nominated by a Registered Alcoholic Drinks Association within the county

· an Advocate of the High Court of Kenya with five years standing

· the Director responsible for matters of social services who shall be the secretary and an ex-officio member

· the Executive Committee Member responsible or matters of social services shall ensure the constitutional gender rule is adhered to

38. From the 2nd respondents reply letter to the petitioner dated August 10, 2021 (exhibit marked "JMN2"), the above section was amended by:

I. deleting the words county public service board appearing in subsection 1(a) and replacing thereof with the words county governor and inserting the following under subsection 1

· the county commissioner or their designate

· the chief officer responsible for social services

· the county police commander or their designate

39. The petitioner submitted that never had he, any bar owner and/or members of the public at large been informed of any intention to amend thee said law which affects him, other bar owners and/or members of the publicly directly and/or indirectly and neither were they invited to give their respective inputs towards the intended amendment because there were no newspaper notice printed, no radio advertisement for the said invitation was ever done, no notices were circulated to bars directly or through their association and/or placed in public places on the intention to amend the said law. Further, the 2nd respondent did not demonstrate that it met the requirements stipulated for public participation as contained in the guidelines of public participation in the legislative process Fact Sheet No. 27 prepared by the National Assembly

40. On the other hand, the 1st respondent emphasized that he was not aware of any public participation that was ever carried out on the purported amendment bill and that the Clerk, Mr. Gideon Mukiri Muchiri never oversaw such a process or at all. Further, the 1st respondent in its replying affidavit and letter to the petitioner distances itself completely with the impugned law.

41. In the arguments made by the 2nd respondent to prove the fact that public participation did indeed take place, the 2nd respondent deponed that the allegations by the petitioner that the respondent attempts to justify its failure to conduct the mandatory public participation and that the authority assigned to the public is vested to the 1st respondent is misleading and misguiding as the Petitioners "Exhibit JMN1" clearly outlines the legislative process which includes, "involvement of the people" which should at no time be construed to mean that there was no public participation as the same was done and due process followed in accordance with the law.

42. Furthermore, the 2nd respondent asserted that the county legislative function is bestowed upon the 1st Respondents as provided for in article 185 and that it is within the said legislative function that the Mother Act and Amendment Act are legislated upon. It was stated that it is after the aforesaid legislative function by the 1st respondent that the 2nd respondent comes in, in accordance with article 183 of the *Constitution of Kenya* to implement legislations.

43. The requirement for public participation in decision making in Kenya has been expanded by progressive legislation on public participation and by the courts through case law. According to the Public Participation in the Legislative Process, Factsheet No. 27 by the National Assembly, public participation can be defined as the process of interaction between an organization and public with an aim of making an acceptable and better decision. The process involves informing, listening, dialogue, debate and analysis as well as implementation on agreed solutions. Furthermore, the High Court in *Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others* (2014) eKLR while referring to the South African decision in *Doctors for Life International vs. Speaker of the National Assembly & Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (cc); 2006(6) SA 416 (CC) adopted the following definition of public participation: -

> " According to their plain and ordinary meaning, the words public involvement or public participation refers 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".

44. Public access and participation in both the national and county legislature is guaranteed specifically under article 118 (1) (b) and 196 (1) (b) of the Constitution which directs the national and county legislatures to respectively facilitate public participation. Furthermore, the legal framework for public participation is guaranteed by article 10, 27, 33, 35 and 119 of the Constitution of Kenya, 2010.

45. Section 87 of the *County Government Act, 2012* provides for citizen participation and dictates the principles of which the same shall be based upon. Section 115 of the same Act provides that:

> " (a) Public participation in the county planning processes shall be mandatory and be facilitated through mechanisms provided form part VIII of this Act.
>
> (b) Such county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management and within the county and such laws and guidelines shall adhere to minimum national requirements."

46. The issue of public participation was exhaustively discussed in the case of *Republic v Independent Electoral and Boundaries Commission (IEBC) ex parte National Super Alliance (NASA) Kenya & 6 Others* (*Al Ghurair* case) where the court pronounced itself on the importance of public participation as follows:

> " The people of Kenya did not intend that these provisions be merely suggestions, superfluous or ornamental: they did not intend to include these provisions as lofty aspirations. Kenyans intended that the said provisions should have substantive bite and that they will be enforced and implemented"

47. The court of appeal in *Legal Advice Centre & 2 Others v County Government of Mombasa & 4 Others* (2018) eKLR, highlighted the importance of public participation in the law making process as follows:

> " The purpose of permitting public participation in the law-making process is to afford the public the opportunity to influence the decision of the law-makers. This requires the law-makers to consider the representations made and thereafter make an informed decision. Law-makers must provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping their

decisions and policies. Were it to be otherwise, the duty to facilitate public participation would have no meaning."

48. Additionally, in *Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others* (2015) eKLR, the court prescribed the principles employed to determine whether public participation has been met in a particular case as follows: -

· An agency should furnish a program of public participation which should take into account the quantity and quality of the governed to participate in their own governance;

· There is no single regime of public participation that can be prescribed because a variety of mechanisms can be used to achieve public participation. The only test the courts can use is the test of effectiveness;

· A public participation programme must include access to and dissemination of relevant information;

· It must be inclusive and diverse.

49. The right to public participation does not impose a duty to the agency to accept the views given as dispositive. However, caution must be taken as to contend that public views ought not to count at all in decision making would negate the spirit of the Constitution as was held in the Robert Gakuru Case (supra).

50. Public participation is meant to enrich the view of the office holders with views of those most affected by a policy or decision at hand. It is not meant to usurp the democratic role of the office holders.

51. Additionally, the court in the Mui Coal Basin Local Community case observed that public participation did not mean that everyone must give their views, which is impracticable. Rather that there ought to be evidence of "intentional inclusivity" in the participation program and which, on the face of it, took into account the principle that "those most affected by a policy, legislation or action must have a bigger say: and their views more deliberately sought and put into account." That notwithstanding, there is no attendant requirement that each individual's views will be included in the final policy or law: the public authority has no duty to accept any and every view, the opposite of which would effectively neutralize and stall the exercise of the authority's mandate.

52. Moreover, the Court addressed the concept of consultation in the following manner:

> " ....A public participation programme, must...show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or public official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account".

53. Discernibly, there is no standard on proper threshold of public participation as a principle of governance in managing the affairs of state and county government affairs nevertheless the aforementioned case laws among others have contributed largely in contributing to the tools and principles that guide both state and county governments on public participation.

54. In the case of *Kenya Human Rights Commission v Attorney General & Another* [2018] eKLR, it was stated that:

> " Once a Petitioner attacks the legislative process on grounds that the law making process did not meet the constitutional standard of public participation, the Respondent is under a legal obligation to demonstrate that the legislative process did meet the constitutional standards of public participation".

55. Accordingly, the burden of proof lies with the Respondents to demonstrate there was public participation. I am in doubt as to whether the Respondents carried out any public participation as they have not adduced any evidence to prove any efforts they took towards carrying out the same. The Respondents did not adduce any evidence that they made an effort to collect views from the public in addition to issuance of any notice to that effect. The 2nd Respondent quoted their reply letter to Petitioner "Exhibit JMN2" dated 10th August 2021 which outlined the legislative process which includes, "involvement of the people." This does not in any way prove that they put in place mechanisms to conduct public participation during the amendment process. Further, the 1st Respondent who describes himself as the Speaker of the Nyandarua County Assembly stated that he could not ascertain whether any public participation was carried out.

56. The County Assembly therefore have a constitutional obligation to facilitate public participation on policy formulation, legislative process and any other decision affecting residents of the county. However, the respondents did not adduce any evidence to justify that any reasonable efforts were made by the Nyandarua County Government to facilitate public participation in accordance with the principles of public participation as entrenched in section 3 and 87 and 91 *County Governments Act* in line with articles 10, 174 and 196 of the Constitution.

57. I find that no reasonable opportunity was given to the public and all interested parties. The residents of Nyandarua and relevant stakeholders were not accorded with timely access to information that was relevant to a process of legislation i.e. the amendment to facilitate the appreciation of the issue for consideration, and an opportunity to make a response especially by the stakeholders. The Petitioner on behalf of other the bar owners and the public at large alleged that none of them were consulted during the amendment process; an allegation the Respondents have not disproved. No explanation(s) was advanced to account for the flawed participation processes.

58. In *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] eKLR, it was held that the nature and the extent of public participation may depend on the nature of what is at hand is not in doubt. However, that does not permit the complete blackout of the public from participation and this was similarly recognized by the judge in *Doctors for Life International vs. Speaker of the National Assembly and Others* (*supra*), holding as follows:

> " It is true, as discussed previously, that time may be a relevant consideration in determining the reasonableness of a legislature's failure to provide meaningful opportunities for public involvement in a given case. There may well be circumstances of emergency that require urgent legislative responses and short timetables. However, the Respondents have not demonstrated that such circumstances were present in this case. When it comes to establishing legislative timetables, the temptation to cut down on public involvement must be resisted. Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public

involvement are reasonable. The timetable must be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable."

59. Consequently, the respondents did not demonstrate that there was any apparent emergency or urgency in setting up the Amendment Act and even so, this would not permit them to not facilitate public involvement.

60. The 2nd respondent has clung onto the notion that the county legislative function is bestowed upon the 1st Respondent but the same shall be exercised within the precincts of the Constitution. In the case of *James Wahome Ndegwa v Zachary Mwangi Njeru & 5 others; Nyandarua County Assembly (Interested Party)* [2021] eKLR quoting the Supreme Court statements in *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* [2017] eKLR that, "No governmental agency should encumber another to stall the constitutional motions of the other."

61. The court went on to state that: -

> " This is to say while this court will not hesitate to superintend over the County Assembly and other constitutional bodies when they sit in their quasi-judicial capacities, it is also true, as the Court stated in the ruling of 23/12/2020, that "the court is ordinarily reluctant to scrutinize ex ante the internal operations of another arm of government where such an arm is acting with powers textually granted to it by the Constitution or written law except where it can be shown by clear and undisputed evidence that the organ is conducting itself illegally or beyond its powers." This Court will, therefore, not issue any orders which, in context, would curtail the lawful exercise of constitutional powers granted to the County Assembly."

62. Notwithstanding, article 2 (4) of the Constitution in this respect provides that any law, that is inconsistent with the Constitution is void to the extent of the inconsistency, and that any act or omission in contravention of the Constitution is invalid. Article 165 (3) (d) (i) of the Constitution provides that the High Court has jurisdiction to determine the question whether any law is inconsistent with or in contravention of the Constitution. Further, article 259(1) of the Constitution stipulates that when interpreting the constitution, the court should do so in a manner that promotes its values and purposes. One of the values and principles of our constitution is public participation.

63. In *Nairobi Metropolitan PSV Saccos Union Limited & 25 Others vs. County of Nairobi Government & 3 Others* [2013] eKLR, Lenaola J (as he then was) observed that:

> " The petitioners have attacked the impugned legislation on grounds that it failed to comply with the process of public participation as required by the Constitution. Where legislation fails to comply with the Constitution, courts have powers to make necessary orders in that regard as was held in the Constitutional Court of South Africa in the case of *Doctor's for Life International v The Speaker National Assembly and Others* (CCT 12/05) 2006 ZACC II where it was stated as follows;
>
> "It is trite that legislation must conform to the Constitution in terms of both content and the manner in which it is adopted. Failure to comply with the manner and form requirements in enacting legislation renders the legislation invalid. And courts have the powers to declare such legislation invalid"

64. In light of all the foregoing, I am persuaded that there wasn't any and/or sufficient public participation carried out in respect of the Amendment Act. In my view, the Respondent's actions of deleting

and amending clauses of the Mother Act without subjecting the same through the constitutional compliance step of public participation; the said actions were ultra vires, illegal and therefore a nullity.

65. The petitioner contended that the county government failed to disseminate necessary information on the impugned amendment act as required, thereby also breaching the Petitioners rights to information under Article 35. However, the petitioner never invoked the provisions of *Access to information Act* no 31 of 2016 specifically sections 8,9 and 14 which provided process of application of requisite information under article 35 of the Constitution and enforcement in event of denial of access thereof.

66. From the material before the court, it apparent that vide the Amendment Act the resultant committee has already began the process of issuing licenses. The Amendment Act portended implications concerning stakeholders in the hospitality and entertainment sector such as the bar owners and the public at large who were not given adequate opportunities to give their views on the legislation. Furthermore, given the nature of the subject matter and implications of the Amendment Act, it is my view that the public participation efforts made by the county government were not reasonable fell below the standard required on such a matter. On that basis the court resolves that the enactment of the Amendment Act was in contravention of articles 10, 174 and 196 of the Constitution as read with section 87 and 91 of the *County Governments Act*.

· Whether the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 is legitimate and/or constitutional?

· Whether the resultant Nyandarua County Alcoholic Drinks Management and Control Committee is unlawfully constituted?

· Whether the actions already taken and/or being taken by the Committee are constitutional?

67. Having determined that the amendment act the court issues a declaration that the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 is unconstitutional for lack of public participation under articles 10 (2) a), 174(c) and (d) and 196 of the Constitution as read with Section 87 and 91 of the *County Governments Act*. Further, I find that the resultant committee constituted as a result of the aforementioned Amendment Act and their actions unconstitutional.

**Remedies:**

68. 144. Having reached the above findings, the next crucial action is what is the appropriate relief to grant.

69. Article 258 of the Constitution which entitles "any person to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention does not provide for specific relief to be granted to the applicant or give the court any guidance on how its jurisdiction should be exercised unlike a similar provision in article 23 of the Constitution respecting the enforcement of fundamental rights and freedoms which empowers the court to frame or grant, "appropriate relief."

70. It is my view that in order to give effect to the right to enforce the Constitution, the power of the court to award an appropriate remedy must be implied. I hold that the Court has the power to issue any remedy as is necessary to ensure that the Constitution is not threatened or violated. Such relief may include conservatory orders and a declaration of invalidity of any law that is inconsistent with the Constitution.

71. I am also cognizant of my obligation under article 2 of the Constitution to declare any law that is inconsistent with the Constitution null and void. However, the court is empowered to deal with the consequences of such invalidity bearing in mind its duty to interpret and apply the Constitution in a manner that, inter alia, promotes good governance. Article 258 of the Constitution does not limit

the court's jurisdiction to fashion an appropriate remedy to deal with the invalidity of the law. It is accepted that the court may suspend the declaration of invalidity in order to deal with the consequences of such invalidity. In *Suleiman Shahbal v Independent Electoral and Boundaries Commission and 3 Others* Petition No. 3 of 2014 [2014] eKLR, the Supreme Court expressed the following position;

> "The lesson of comparative jurisprudence is that, while a declaration of nullity for inconsistency with the Constitution annuls statute law, it does not necessarily entail that all acts previously done are invalidated. In general, laws have a prospective outlook; and prior to annulling-declarations, situations otherwise entirely legitimate may have come to pass, and differing rights may have accrued that have acquired entrenched foundations. This gives justification for a case-by-case approach to time-span effect, in relation to nullification of statute law. In this regard, the Court has a scope for discretion, including: the suspension of invalidity; and the application of "prospective annulment". Such recourses, however, are for sparing, and most judicious application – in view of the overriding principle of the supremacy of the Constitution, as it stands."

72. While in that case, the court declined to hold that the annulment of a specific provision of the *Elections Act*, 2011 prospective, the court noted that; In the case of Kenya, the High Court bears the primary responsibility for determining whether any law is inconsistent with or in contravention of the Constitution. This discretion also vests in the Court of Appeal as well as the Supreme Court. In the Joho and Mary Wambui cases, this Court considered the impugned statutory provision in light of the entire scheme of the Constitution, before making the declaration of invalidity and, further in the Mary Wambui case, before deciding upon the retrospective application of that declaration. This is the appropriate approach, in my view, as regards the instant case.

73. Am are convinced that in order to protect the Constitution, the court must be creative in fashioning appropriate relief that is tailored to the facts of the case and is consistent with the values of the Constitution. Suspension of the declaration of invalidity would be appropriate in these circumstances as it would allow the county Legislature time to correct the defective legislation while avoiding chaos and disarray in a system that has been established for over a while. Such a move supports good governance, a core national value under article 10 of the Constitution.

74. I have found the impugned legislation is defective in some respects, from the manner it was enacted, and especially want of public participation in terms of meeting constitutional standard/threshold.

75. The next question is what are the consequences of the declaration of invalidity" Ordinarily, orders of invalidity take immediate effect but the court in framing appropriate relief must be mindful of the circumstances of the case and in particular the need to avoid undue hardship. As the Supreme Court stated, such a consideration must be judicious and dependent on the case. In discussing the issue of suspension orders under South Africa law, Sachs J in Coetzee as cited in *Premier: Limpopo Province v Speaker of the Limpopo Provincial Legislature and Others* (*supra*) had this to say;

> "The words 'in the interests of justice and good government' are widely phrased and, in my view, it would not be appropriate, particularly at this early stage, to attempt a precise definition of their ambit. They clearly indicate the existence of something substantially more than the mere inconvenience which will almost invariably accompany any declaration of invalidity, but do not go so far as to require the threat of total breakdown of government. Within these wide parameters the Court will have to make an assessment on a case-by-case basis as to whether more injustice would flow from the legal vacuum created by rendering

the statute invalid with immediate effect than would be the case if the measure were kept functional pending rectification. No hard-and-fast rules can be applied"

76. The impugned Act has set a system and institution that has been running over a while and at the moment, including licensing body and licenses issued for the next 12 months to the alcoholic drinks dealers/business community.

77. Obviously the Fund arising therefrom have entered into legal obligations that need to be dealt with. I must accord leverage to public interest and good order while conscious of our country's political realities. Am of the view that a temporary suspension of the invalidity of the Act is the appropriate relief in the circumstances.

78. How long should the order of invalidity be suspended" It has been held that, "[v]arious factors must be taken into account in determining the period of suspension, including: the government's previous conduct; whether there is any legislation in the pipeline; and the nature and severity of the continuing infringement" ought to be taken into account (See *Premier: Limpopo Province v Speaker of the Limpopo Provincial Legislature and Others* (*supra*) at para 46).

79. In reflecting on this issue, the court has to consider the fact and the circumstances of the case. In *Kenya Country Bus Owners' Association (Through Paul G. Muthumbi – Chairman, Samuel Njuguna – Secretary, Joseph Kimiri Treasurer) & 8 others v Cabinet Secretary For Transport & Infrastructure & 5 others* NRB JR No. 2 of 2014 [2014] eKLR, the court made an order suspending invalidity of traffic regulations on the ground that the breaches were minor and could be remedied while protecting the lives of road users which would be at risk without the regulation in place pending re-enactment of the impugned regulations.

80. In this case, I take judicial notice of the licensing cycle and the fact that a license issued has a life span of 12 months. I am also alive that there is also the need to protecting the lives of alcoholic drink users which would be at risk without the regulation in place pending re-enactment of the impugned legislation.

81. In order to allow for transitional and corrective mechanisms, am of the view that suspension of the invalidity of the impugned legislation for a period of twelve months from the date of this judgment is a reasonable period. The county government and legislature are entitled to remedy the defects in the period either in form of new legislation or other means within the Constitution taking into account the findings I have made. For avoidance of doubt, the Act may be repealed earlier by an Act of County assembly or await the expiry of the suspension, whichever comes first.

**Costs:**

82. As this matter involves matters of public interest and concerns the manner in which the county alcoholic drinks are management and licensing, thus I shall order that each party bears its own costs.

**Disposition:**

83. I find that that the impugned legislation is unconstitutional for reasons stated above and as a result, I make the following;

    i. A declaration is hereby issued that the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020. Is unconstitutional and therefore invalid.

    ii. A declaration that the current Nyandarua County Alcoholic Drinks Management and Control Committee is unlawfully constituted for including members that were appointed as a result the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 which is unlawful.

iii. The order of invalidity above (a) and (b) are suspended for a period of twelve (12) months from the date of this judgment.

iv. The county government and assembly may remedy the defect within that period and the Nyandarua County Alcoholic Drinks Control (Amendment) Act, 2020 shall stand invalidated at the expiry of the twelve (12) months or may be earlier repealed whichever comes first.

v. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 16TH DAY OF NOVEMBER, 2021.**

**CHARLES KARIUKI**

**JUDGE**