



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

PETITION NO. 9 OF 2019

CONSOLIDATED WITH PETITION NO. 10 OF 2019 (FORMERLY MOMBASA H.C PETITION NO. 181 OF 2019)

BETWEEN

WANJA KARUKU.....1ST PETITIONER

KENYA TRANSPORTERS ASSOCIATION LTD.....2ND PETITIONER

VERSUS

THE TRAFFIC COMMANDANT DEPARTMENT.....1ST RESPONDENT

THE NATIONAL TRANSPORT

AND SAFETY AUTHORITY.....2ND RESPONDENT

MINISTRY OF INTERIOR.....3RD RESPONDENT

PAYMATIC LIMITED.....4TH RESPONDENT

POWER GOVERNORS.....5TH RESPONDENT

JENDIE GOVERNORS.....6TH RESPONDENT

SIMBA GOVERNORS.....7TH RESPONDENT

BATTON CONTRACTORS LIMITED.....8TH RESPONDENT

CABLE CAR COOPERATION.....9TH RESPONDENT

OSG48 BY ORIENT SCIENTIFIC LIMITED.....10TH RESPONDENT

SMART FAST TRACKERS.....11TH RESPONDENT

ROAD SAFETY AUTHORITY OF KENYA.....12TH RESPONDENT

DALCOM KENYA LIMITED.....13TH RESPONDENT

PINNACLE SYSTEMS LIMITED.....14TH RESPONDENT

SAFERIDER LIMITED.....15TH RESPONDENT

ATTORNEY GENERAL.....16TH RESPONDENT

AND

KENYA TOURS DRIVERS GUIDE ASSOCIATION.....1ST INTERESTED PARTY

SPEED GOVERNORS AND

ROAD SAFETY ASSOCIATION.....2ND INTERESTED PARTY

J U D G M E N T

1. This is a consolidated petition consolidating Constitution Petition No. 9 of 2019 filed in this court and Petition No. 10 of 2019 which had been filed in Mombasa. The consolidation order was issued by this court on 15th January 2020 for purposes of saving on judicial time and because both petitions are seeking similar reliefs against the same parties.

2. Wanja Karuku for the Petitioner in Petition No.9/2019 shall be referred in this judgment as the 1st Petitioner while Kenya Transporters Association Ltd shall be referred to as the 2nd Petitioners for ease of reference.

3. The 1st Petitioner in her petition states that this has brought this petition on her own behalf and on behalf of Enid Gatakaa and Abraham Gichovi described as Chairperson Neno Sacco Embu County. The 1st Petitioner has sued the Traffic Commandant (1st Respondent), the National Transport and Safety Authority (NTSA) 2nd Respondent, Ministry of Interior (3rd Respondent) and thirteen others.

4. The 1st Petitioner seeks the following reliefs:-

a) An interim injunction against the Respondent from implementing the order issued by one Engineer Gerald Wangai at the instance of the 1st, 2nd and 3rd Respondents that ALL MATATU OWNERS in Mount Kenya region, and all parts of the Republic of pending the hearing and determination of the Notice of Motion Application.

b) An interim injunction against the Respondent from implementing the order issued by one Engineer Gerald Wangai at the instance of the 1st, 2nd and 3rd Respondents that ALL MATATU OWNERS in Mount Kenya region and all parts of the Republic pending the hearing and determination of the petition.

c) THAT the 4th to 15th Respondents the court be pleased to issue an interim injunction at the from supplying and speed governors including notice number Ks 2295-2018 the order issued by one Engineer Wangai though vide the order at the instance of NTSA--- pending the hearing and determination of this Application.

d) THAT the court be pleased to advise the Honourable Attorney General to give a legal advice to the 1st Respondent, 2nd Respondent, 12th Respondent over the legality or otherwise of the internal memo by Engineer Wangai in respect of installation of speed governor model KS2295- 2018 and the validity or otherwise of the internal memo given that there was no public participation as required by article 23 section 1,2, 3 and 4 of the Constitution of Kenya.

5. The 2nd Petitioner (Kenya Transporters Association Ltd) on its part describes itself as a limited liability company established under the companies Act 2015,

6. The second Respondent has named one Respondent namely National Transport and Safety Authority (hereinafter to be referred to as N.T.S.A), a statutory body established under the National Transport and Safety Act No.33 of 2012.

7. The 2nd Petitioner seeks the following reliefs from this court namely;

a) A declaration that the Respondents decision/policy and demand to fit in an upgraded speed governor/limiter with a recorder/date transmitter commonly referred to as KS 2295: 1: 2018 is illegal null, unlawful and ultra vires to the law.

b) A declaration that the Respondents violated and acted ultra-vires to the express provisions of Rule 41 (A) (B)of the Traffic Act Cap 403.

c) An order of prohibition restraining the Respondents from implementing the policy requiring the installation of an upgraded governor known s KS 2295: 1: 2018.

d) An order of Mandamus compelling the Respondents to inspect the petitioners motor vehicles with the previously approved governors known as KS 2295:1: 2011 and KS 2295:2:2011 upon present presentation at the vehicle inspection units country wide.

e) A declaration that the previously approved governors referred to as KS 2295:1:2011 and KS 2295: 2: 2011 are still validly approved governors having not been declared invalid or obsolete.

f) An order of certiorari quashing the decision directing installation of an upgraded governor being KS 2295: 1: 2018.

1st Petitioner's case

8. The first petitioner has pleaded that speed governors/limiters for public service vehicles were first introduced in Kenya in 2004 under the late minister of Transport Hon. John Michuki. The 1st Petitioner states that the introduction was done without social economic impact assessment but that at the time there were no much complaints.

9. She further claims that due to rampant increase of road accidents in 2003, the Ministry of Transport introduced new tamper proof speed governors and the old gadgets were discarded despite having costed what she terms as billions of shillings. She claims that there was no public participation but the stakeholders accepted the new gadgets all the same but that the accidents did not reduce because the gadgets were not properly fitted by skilled experts or were tampered with.

10. The 1st Petitioner further claims that whereas the vehicle owners found flouting the regulations were severely punished the suppliers were neither punished for supplying substandard speed governors nor regulated.

11. She adds that the stakeholders tried in vain to request for a single certified supplier and sought for compensation for the defective governors. She asserts that the 2nd Respondent has now decided to introduce new speed governors namely KS 2295- 2018 and that every matatu owner is required to acquire it at a cost of Kshs.35,000/-. It is her contention that the new gadget, other than prohibitive costs, is only accessible through a password held by NTSA operatives. She claims that this fact prejudices matatu owners who cannot access stored data and cannot monitor who has access to the data and is not aware of the safety parameters securing their vehicle data claiming that the same could be vulnerable to a rival Sacco. She insists that the purpose of speed governors is to regulate the movement and speed of the vehicles and to her that alone cannot curb road accidents and has accused the 2nd Respondent for ordering changes of speed governors after short periods without taking into consideration other factors like education and discipline on the roads.

12. She submits that even the new gadgets are not tamper proof and that for practical solutions to be found, all stakeholders must be involved. She further submits that the Respondents' actions are unreasonable unwarranted and violation of Article 40, 43 and 47 of Constitution of Kenya 2010.

2nd Petitioner's case

13. The 2nd Petitioner states that vide gazette Notice No. 217 of 2013, the Petitioners and commercial truck owners were compelled to purchase and install approved speed governors.

14. It claims that the 2nd Petitioner complied and installed approved speed governors known as KS2295: 1: 2011 and KS 2295 :2: 2011.

15. The 2nd Petitioner avers that on 1st October 2019, the NTSA refused to issue the 2nd Petitioner with vehicle inspection certificates citing the need to install an upgraded version of the speed governors now known as KS 2295: 1: 2018.

16. The 2nd Petitioner terms the demand by the Respondent as unfair and illegal for the following reasons namely;

a) That there was no gazette notice issued to compel such an order.

b) That there is no provision in law requiring the Petitioner or any member of the public to relay in real time the locations of their vehicles.

c) That the data being transmitted to the 2nd Respondent's servers include speed alerts every time the vehicle overspeeds which would mean self incrimination and that in their view is contrary to the constitution.

d) That the decision was made without public participation

e) That the 2nd Respondent's action has caused grave loss to the petitioner due to sudden decision to implement the new regulations before one is issued with TLB Licence.

17. In its written submissions through Ms Wandai Mitheka & Co. Advocates, the 2nd petitioner states that as an association it manages over 1500 trucks for over 130 companies and that their business has been hard hit due to directive relating to SGR and the new regulations on speed governors.

18. They insist that whereas all their vehicles have been fitted with speed limiters approved in 2011, the 2nd Respondent has denied them vehicle inspection certificates for lack of new gadgets which are also required in renewing of their road licenses.

19. They contend that the National Standards Councils sets standards and specifications for products as per **Section 41** of the **Standards Act** and that the previous gadget should have first been declared obsolete by the council. In its view the 2nd Respondent did not show any evidence or make recommendations that the former gadgets had problems or shortcoming to justify introduction of the new gadgets.

20. The 2nd Petitioner contends that in the eyes of the public there are two valid gadgets in the markets as the old ones were not declared obsolete.

21. It contends that as stakeholders, they were not involved in public participation and that apart from the Matatu Welfare Association and Owners Association, the rest of parties involved were KEBS technical committee involved in implementing the new regulations rather than users of the gadgets. They have relied on the decision of *Okiya Omtati Okoiti –vs- Communication Authority of Kenya & 8 Others [2018] eKLR* in faulting the 2nd Respondent.

22. The 2nd Petitioner further submits that the difference between the old and the new gadgets, is that the new gadgets in its view takes away their right to innocence and the right not to self incriminate under Article 50. In this regard, it has relied on the decision of *Wilfred Manthi Musyoka –vs- Machakos County Assembly & 4 Others [2018] eKLR*.

The 2nd Respondent's case.

23. The 2nd Respondent has opposed this petition vide a Replying Affidavit sworn on 24th October 2019 and 15th November 2019. It contends that the petitioners sued the wrong persons because the mandate to develop standards is given to KEBS and that its mandate is just to implement what has been passed.

The 2nd Respondent further states that it does not develop standards and that its core function is just implementation. It avers that KEBS should have been called to explain how the new standards were introduced and how the public were involved in setting those standards.

24. It asserts that the requirements for new gadgets were duly gazetted which meant that the old standards were no longer applicable and has annexed evidence of gazettement. It asserts that the new standards have been in place for six months now and all stakeholders have complied and that allowing this petition would bring confusion and disorder in the sector. It avers that the reliefs sought have already been overtaken by events.

25. The 2nd Respondent further contends that the petitioners have not clearly demonstrated that their constitutional rights have been violated contending that the new gadget transmits data directly to the NTSA server in real time and that even if it is offline its information can still be accessed and that the data is available for 72 hours and the owner of a vehicle can access it. It claims that the safety apparatus in the gadget is beneficial to both the owner and the enforcer.

4th to 11th and 13th to 15th Respondents' Case

26. The position of the 4th to 11th and 13th to 15th Respondents are that this petition is unmerited. They state that there was a public participation conducted by KEBS in conjunction with Matatus Owners Association and all stakeholders in their view were represented in the committee that reviewed standards to be used in the new gadget (speed limiters). They point out that as per the affidavit of Engineer Wangai sworn on 24th October 2019 on behalf of the 2nd Respondent, the revisions of the old standards started in 2015 by a technical Committee when it was realized that the old gadgets were ineffective as they could be tampered with. They aver that there was public participation between 7th February and 9th April 2018 before the approval of the gadget on 29th June 2018 and the eventual gazettement on 26th October 2018 vide gazette notice No.1111 of 26th October 2018. They aver that from 1st October 2019 all motor vehicles presented for inspection complied with the new directives in respect of speed governors.

27. The Respondents contend that this petition has failed to meet the standards required in constitutional petitions because in their view they have not demonstrated how their rights under Article 40, 43 and 47 of the Constitution have been violated. They also contend that the petitioners have not stated how their business will collapse due to the new directives and faulted them for not showing any financial statements to prove their claims.

28. The Respondents further aver that the 1st Petitioner prayer for interim relief is incompetent and has been overtaken by events.

The 1st Interested Party's case

29. The 1st Interested Party, Kenya Tours Drivers Guide Association, has thrown its weight behind the Petitioners' case. It relies on the affidavit sworn on 8th November 2019 and 8th February 2019 and written submissions filed. It reiterates the facts presented by the petitioners and contends that the earlier gazetted standards vide Legal Notice No.217 of 2013 by Cabinet Secretary for Transport are valid because there has been no gazette notice invalidating or revoking the Legal Notice No.217 of 2013. In its view the old standards are still valid and it is a legitimate expectation to them that when it presents its vehicles for inspection they should be issued with stickers.

30. It further contends that as per **Section 9 of Standards Act** the council can amend, review or revoke certain standards but it further points out that subsection (2) states that the Cabinet Secretary must be consulted before the same Cabinet Secretary gazettes the new standards. It contends that there were no new standards gazetted.

The 2nd Interested Party's case:

31. The 2nd Interested Party, Speed Governors and Road safety Association, on its part has thrown its weight on the Respondents' case and opposed this petition. They state that their affidavit sworn on 21st January 2020 by Edward Gitonga on behalf on 2nd Interested Party has not been controverted

The 2nd IP states that the government and stakeholders have been trying to curb road accidents since 2010 and it was agreed that a major cause of accidents was defective speed governors and that the new speed governor has many features to increase road safety.

The 2nd Interested Party also submits that the directive has been implemented since September 2019 and the prayers are therefore overtake by events. In addition, it asserts that the particulars of breaches have not specifically proven as required to pursue a constitutional petition. They also submit that there was public participation, and that the rules being enforced were reasonable and proportionate in the circumstances. They submit that orders sought are in vain and are likely to cause an absurdity. They further aver that this court cannot advice the AG as sought in petition 9 of 2010. They also state that the Speed Governor in issue is not a new Speed Governor but is rather an upgrade one as compared to the old speed governor.

They also submit that this court has discretion to gauge what amounts to sufficient public participation and aver that the same was adequate for this matter as per the affidavit of Edward Gitonga. They state that the cost is one-off and the advantages are worth it as there have been fewer accidents since October 2019 when new gadgets were implemented.

Analysis and Determination

This court has considered this petition and the representations made as highlighted above. I have also considered the response made by all the parties in this petition. The following issues in my view have cropped up for determination. They are;

- a) Whether the new regulations were properly gazetted
- b) Whether there was public participation in the introduction of the new standards/regulations.
- c) Whether the petitioners constitutional rights were violated.

(a) Whether the new regulations/introduction of new standards were properly gazetted.

32. It is the petitioners position that whereas the Minister for Transport gazetted the earlier standard required in respect to speed limiters vide Gazette Notice No.217 of 2013, there has been subsequent gazette notice revoking the said notice despite introduction of the new gadgets to check speed of public service vehicles.

33. The Respondents have however countered that assertion by stating that the new regulations were duly gazetted vide gazette No.1111 of 26th October 2018.

34. This court has looked at the said gazette notice dated 26th October 2018 and it declared as follows:

" Pursuant to Section 9(1) of the Standard Act the council declares the specifications or code of practice appearing in the schedule hereto, to be Kenya Standards with effect from the date of publication of this notice."

The notice then goes on to give various specification and of speed governors or limiters and gives the standards as KS2295- 2: 2018.

35. The relevant statute governing or regulating standards of commodities in Kenya is the Standard Act Cap 496 Laws of Kenya. The Act was passed by Parliament to promote the standardization of the specifications of commodities and to provide standardization of commodities and codes of practice and to establish a Kenya Bureau of standards which is to *inter alia* prepare, modify or amend specifications and codes of practice in the area of commerce and industry.

36. Looking at the above position of the law, it is quite apparent that the statutory body mandated to come up with standards specifications or codes of various commodities is Kenya Bureau of Standards established under **Section 4** of the **Standards Act**. The functions of Kenya Bureau of Standards are clearly set out under **Section 44** which partly reads;

" (a) to promote standardization in industry and commerce;

(b) to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of accuracy by comparison with standards approved by the Minister on the recommendation of the Council, and for the issue of certificates in regard thereto;

(c) to make arrangements or provide facilities for the examination and testing of commodities and any material or substance from or with which and the manner in which they may be manufactured, produced, processed or treated."

37. The 2nd Petitioner has correctly captured the work of the standards council. **Section 7** of the Statute state that the council shall *inter alia* be in charge of policy, supervision and coordination between the relevant Ministry and K.B.S (Kenya Bureau of Standards). The big question cropping up is whether the new contested regulations or standards were properly introduced.

38. The answer to the above is partly found in the relevant statute that brought up the issue of speed governor in the first place. **Section 42** of the **Traffic Act** gives restrictions on the maximum speed allowed in various classes of vehicles at various locations and **Rule 41 A** of the **Traffic Rules** under the Act provide as follows:-

41A (1) The engine of-

- a. every public service vehicle except taxi cabs;
- b. every commercial vehicle whose tare weight exceeds 3048 kg shall be fitted with a speed governor which-
 - i. conforms to such specifications as the minister may by notice in the Gazette prescribe;
 - ii. is adjusted so that all times, and in any load condition, the vehicle cannot exceed the speed of 80kph.

(2) Every vehicle to which this rule applies shall have exhibited on it a certificate issued by certifying officer to the effect that it is fitted with the speed governor complying with the prescribed specifications.”

39. The above provisions of the law clearly shows the legal basis upon which the speed governors were introduced and what the intention was to check or control overspeeding of public service vehicles and commercial vehicles in order to address the menace of increased road accidents. Although the 1st Petitioner agrees with that intention, she faults the manner in which the new speed governors were introduced. The 2nd Petitioner and 1st Interested Party state that the standards earlier set vide gazette Notice No.217 of 2013 were good and still valid and that as it is as now there are two standards because the former one has not been revoked or invalidated which raises questions as which standards are legally valid. **Section 2** of the **Standards Act** provides that "**Kenya Standards**" means a specification or code of practice declared under **Section 9(1)**. The Standard Act establishes standards and **Section 9 (1)** provide as follows:-

(1) The Council may by notice in the Gazette—

(a) declare any specification or code of practice framed or prepared by the Bureau to be a Kenya Standard;

(b) notify from time to time any amendment to, replacement of, or abolition of, a Kenya Standard declared under paragraph (a).

(2) Where a Kenya Standard has been declared under subsection (1), the Minister, on the advice of the Council, shall, by order in the Gazette, prescribe a date after which no person shall manufacture or sell any commodity, method or procedure to which the relevant specification or code of practice relates unless it complies with that specification or code of practice.”

40. A look at Gazette Notice No.1111 of 26th October 2018 shows that the National Standards council pursuant to the above section gazetted the new standards and stated clearly that the same shall take effect from the date of publication of the notice (26th October 2018). That in my considered view rendered the former standards pursuant to legal notice No.217 of 2013 obsolete and invalid.

This court is not persuaded by the 2nd Respondents and the 1st Interested Party's argument that there are two valid standards applicable in Kenya at this moment in so far as speed limiters are concern. That position is unfounded in view of the legal position illustrated above and gazette notice No. 1111 of 26th October 2018. The answer to the question therefore as to whether the new regulations were duly gazetted as provided by the law is in the positive.

ii. Whether there was public participation in the introduction of the new regulations/standards

41. There is no dispute that one of the important pillars in the new constitutional dispensation in Kenya is enshrined in the National values and principles of governance in the constitution is, public participation. The State and all State organs/officers are required to embrace participatory approach in any decision made that affects the public. **Article 10 of Constitution of Kenya** is clear on the same and this requirement appears to have become an achilles heel to many state organs and officers if matters being brought to courts are anything to go by.

42. In this petition, the 2nd Petitioner complains that it was not involved in the public participation despite being an important stakeholder. It complains that while other stakeholders like Matatu Owners Association were involved they were not notified of the proposals to bring the new changes.

43. There are two responses to the petitioners' assertion that there was no public participation in the introduction of the new speed limiters. They are;

(i) The 2nd Interested Party vide the affidavit of Edward Gitonga sworn on 28th October 2019 and 21st January 2020 contested the petitioners' claim of lack of public participation stating that major stakeholders he listed in were involved. The Respondents have submitted that the contents of those affidavits were not controverted and therefore a *prima facie* case in that regard has not been established.

(ii) Secondly the 2nd Respondent contends that this petition is bad for misjoinder and has pointed out that the correct entity which introduced the standards and therefore in a better position to explain for account for public participation is Kenya Bureau of Standards.

44. This court has pondered over this issue question of public participation and whether there was sufficient public participation in the introduction of the new gadgets to check overspeeding by both public service vehicles and commercial vehicles. This court is alive to the threshold required to meet the constitutional requirement under **Article 10 of Constitution of Kenya**. I am aware of many past court decisions in this regard. A case in point is the decision ***in Kiambu County Government & 3 others -vs- Robert Gakuru & others [2017] eKLR*** where the court inter alia observed;

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

This court has considered the Replying Affidavit sworn by Engineer Gerald Wangai on 24th October 2019 where he avers that that the revision of Standards (KS 2295- 1: 2011 and KS 2295 - 2: 2011) began in 2015 and that the same subjected to public participation between 7th February 2018 to 9th April 2018 where all stakeholders participated including himself. That averment as I have observed above is supported by Edward Gitonga in his affidavit sworn on 21st January 2020. Although this court has not been told clearly who the participants of those stakeholders meetings held between February 2018 and 9th April 2018 were, the petitioners have somewhat failed to contest those claims through any affidavit.

45. This court is further persuaded by the Respondent's contention that the body duly mandated to develop or review standards by law as observed above is Kenya Bureau of Standards. **Section 4** of the **Standards Act** cited above is clear on that. This court finds that in the face of that provision the petitioners allegation of lack of public participation is rendered incompetent and bad in law for misjoinder. The onus of proof of any claim rest on the one alleging. On this score I find that this petition for the aforesaid reasons has failed to prove that the Respondents named in this petition were at fault for not undertaking public participation in the introduction of the new speed limiters.

46. This court is also persuaded by the 2nd Respondent's expressed intention to address the flaws of the old gadgets by the introduction of the new speed limiters. This is based on the undeniable fact that technology is dynamic and keeps on changing for the better. To stop the utility of latest technology in solving societal problems is an impediment to innovation, creativity and attendant benefits. That in my view is undesirable especially in the face of 1st Petitioner's own admission that the old gadget were unreliable and open to manipulation and cheating. It could be true that the new gadgets may be found wanting either now or in the near future but the 2nd Respondent's action of implementing the new standards cannot be faulted on the ground of reasonableness or proportionality notwithstanding the costs involved in acquiring them.

(c) **Whether the petitioners constitutional rights were violated with the introduction of new speed governors**

The Petitioners have claimed that their constitutional rights were violated and have cited **Articles 47 and 50**. The Respondents have faulted the petitioners for not disclosing clearly how their rights have been violated or infringed. It is now well settled that a party seeking court's intervention for protection of his constitutional rights from infringements or likelihood of infringements must clearly and specifically demonstrate how the infringement or possibility of infringement has occurred. In the case of *Gitahi suing as the chairman of Othaya Residents Foundation -vs- Attorney General [2014] eKLR* Hon. Majanja J held *inter alia*;

"It is well established that a petitioner who seeks redress under the Constitution must state his claim with precision by reference to the provisions of the Constitution violated and how they are violated. This principle has been established since the case of *Annarita Karimi Njeru v Attorney General [1979] KLR 54* and was recently re-stated by the Court of Appeal in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance and Others Nairobi CA Civil Appeal No. 290 of 2013[2013] eKLR*. I would also add what was stated in *Meme v Republic [2004] 1 EA 124* that, "Where a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the applicant's instant application had not fully complied with the basic test of constitutional references, as it was founded on generalised complains without any focus on fact, law or Constitution, hence it had nothing to do with the constitutional rights of the appellants"

47. The 1st petitioner on her part has not highlighted what constitutional infringement has been inflicted on her or the likelihood of any infringement. The 2nd Petitioner on his part has cited the violation of **Article 40** (right to property), **Article 23** (which deals with authority of courts to enforce the Bill of Rights) and **Article 47** (fair administrative action). In its submissions, the 2nd petitioner did not set out how the above cited rights have been infringed.

48. The 2nd petitioner's main thrust in regard to infringement of constitutional rights is hinged on **Article 50**. The 2nd Petitioners learned counsel made a spirited argument that the introduction of the new Speed Governors potentially takes away the right of innocence under **Article 50** of the **Constitution of Kenya** and that the right to refuse to give self-incriminating evidence is being violated ostensibly by a gadget that gives out data without the control of the user/owner. They have relied on the decision of ***Wilfred Manthi Musyoka-vs-Machakos County Assembly & 4 others [2018] eKLR***.

49. This court has considered the issue raised by the 2nd petitioner's counsel and apart from the comical approach taken by the leaned counsel, the argument is rather wanting in substance for the following reasons;

(i) In the first place, the authority cited that the decision in ***Wilfred Manthi Musyoka -vs- Machakos County Assembly & 4 others [2018] eKLR*** is irrelevant because the court in that case was dealing with other constitutional issues other than rights annunciated

under **Article 50**. This court is unable to find the nexus between the cited decision and the right to refuse self incriminating evidence under **Article 50 (2) (k)**.

(ii) Secondly and more importantly while it is trite that the Constitution of Kenya 2010 is progressive and requires to be given purposive interpretation in a manner that promote the values and principles thereunder as provided under **Article 259** thereof, I do not think with due respect to the 2nd Petitioner that the rights elaborated in the Constitution particularly under **Article 50** were meant to be expanded in order to cover or shield some mischief, outright criminal acts, violations of the law or anything that negates the general good and order in the society. To expand it that far as urged by the 2nd Respondent would be going beyond the frontiers of values, principles and the very rule of law that underpins the constitution itself..

50. The petitioners and everyone else are expected to be law abiding citizens and certainly cannot expect this court to find that digital speed governors or CCTV cameras mounted on the highways in Kenya should be removed because of likelihood that it would virtually give incriminating evidence against potential and real traffic offenders. As a matter of fact as conceded by the first petitioner more need to be done to improve the gadget in order to make it more reliable and tamperproof which obviously is a bane to most motorist who often break traffic regulations and cause mayhem in our roads.

51. Having said that, I am not persuaded that the introduction of the new speed limiters just like introduction of CCTV cameras in the streets of major towns and highways can be faulted for infringing constitutional rights contemplated under **Article 50(2) (L)** of the **Constitution of Kenya**.

52. The long and short of this is that for the aforesaid reasons, this court finds no merit in this petition. The same is disallowed but I shall make no order as to costs.

Dated, signed and delivered at Chuka this 13th day of May 2020 via zoom.

R.K. LIMO

JUDGE

13/5/2020

Mitheka for 2nd Petitioner

Wanja in person Absent

Mitheka holding brief for Interested Party

Kungu for 1st, 2nd, and 3rd Respondents

Judgment dated signed and delivered online via zoom.

R.K. LIMO

JUDGE

13/5/2020