



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**PETITION NO. 8 OF 2015.**

**MOSES CHETAMBE SIKANGA.....PETITIONER**

**VERSUS.**

**BUNGOMA COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**COUNTY ASSEMBLY OF BUNGOMA.....2<sup>ND</sup> RESPONDENT**

**THE BUDGET & APPROPRIATION COMMITTEE.....3<sup>RD</sup> RESPONDENT**

**SPEAKER OF THE COUNTY.....4<sup>TH</sup> RESPONDENT**

**CLERK, COUNTY ASSEMBLY OF BUNGOMA.....5<sup>TH</sup> RESPONDENT**

**GOVERNOR BUNGOMA – COUNTY GOVERNMENT.....6<sup>TH</sup> RESPONDENT**

**THE FINANCE EXECUTIVE OFFICER.....7<sup>TH</sup> RESPONDENT**

**JUDGMENT.**

The Petitioner MOSES CHETAMBE SIKANGA, filed this Amended Petition against the Respondents seeking the determination of the following issues in respect to the Respondents;

*a) A DECLARATION THAT all Urban Centres namely Bungoma Municipality, Webuye Municipality, Kimilili Township and Sirisia*

*Urban Centre in Bungoma County existing prior to promulgation of the Constitution of Kenya 2010 and which have been disbanded is a contravention of the Constitution.*

*b) A DECLARATION THAT the use of unreliable Contractors by the Respondents who cannot pay salary of workers on time was an abuse of office and a violation of the Constitution.*

*c) A DECLARATION THAT all public funds Kenya shillings 99,925.72 lost through fraud at the hands of 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents was violation of the Constitution.*

*d) A DECLARATION THAT the Budget of the year 2014/2015 and 2015/2016 did not capture the Constitutional requirement for Public participation and was violation of the Constitution.*

The Petition is supported by the Further Affidavit of the Petitioner Sworn on 20<sup>th</sup> June, 2016 in which he depones that he is a resident of Bungoma County, that the Respondents are Governor and members of the County Government charged with the Responsibility of managing Resources of the County for the benefit of the residents of the County. By that position they have a contract with people to provide services. The Petition avers that despite this, the Respondents have breached various article of the Constitution 2010 in particular Article 174 of the Constitution which provides for the objects of devolution in particular the promotion of Social Economic development and provision or proximate easily accessible services throughout Kenya, and to ensure enhance checks and balances and separation of powers. Petitioner further contends that the Respondent have violated Article 196 of the Constitution which provides;

**ARTICLE 196**

(i) A County Assembly shall;

**a) Conduct its business in an open manner, and hold its sittings and those of its committees in public; and**

**b) Facilitate public participation and involvement in the legislative and other business of the Assembly and its Committee.**

The Respondents filed a Preliminary objection on grounds that the Petition has been overtaken by events, that the Petition does not fall within the definition enunciated in *Anarita Karimi Njeru -Vs- Republic* and that the Petition does not disclose the facts and law upon which it is anchored.

By order of this Court made on 5.2.2018, this Petition was to be disposed of by way of written submission. The Petitioner filed submissions but the Respondent did not file submissions as the court directed.

The Petitioner submitted that there was no public participation in the Respondents Budget for 2014/2015 and therefore its executive violated the constitutional provisions enshrined in Article 201 of the Constitution which requires openness, accountability including Public participation. He in Paragraph 12 – 19 of the affidavit deposes of an instance where he was called upon to participate in Public participation budget process for the Year 2015/2016 which he said in paragraph 2- -21 of his affidavit;

*1) THAT after all is said and done, the occasion could not be described as Public Participation in the Budget Formulation or Process, Except a manipulation of statutory process.*

*2) THAT if the meeting of 8<sup>th</sup> June 2015 at Webuye Town Hall was regarded as public participation in the Budget Process, it was a farce in the sense that members who participated needed time about one week to study the contents of the Estimates before making comments, but those who made positive comments were apparently planted in the Meeting.*

This court in Philip Wanyonyi & Others Bungoma Petition No. 3 of 2018 had this to say on issue of Public participation;

*The concept of Public participation is central in the democratic process of a Country, particularly when it relates to matters that affect the citizens. Public participation refers to the process by which the Public participates in governance or actions of governance which is a measure of transparency and accountability. Central in the concept of public participation is the affording the public the opportunity to give their input in decision making.*

The Petitioner in this case was invited to participate and give his input at Webuye. In the budget process on 8<sup>th</sup> June, 2015 where 49 people participated. He indeed admitted he was given an opportunity to participate and was even made a Chairman of a Sector Group. He cannot therefore state that he was not given an opportunity to participate.

Finally Petitioner's petition is broad, non – specific and premised on insufficient information for this court to grant the prayers sought. I therefore find no merit in this Petition which is hereby dismissed.

**Dated and Signed at Bungoma this 5<sup>th</sup> day of February, 2019.**

**S.N. RIECHI**

**JUDGE.**