



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MURANG'A

CONSTITUTIONAL PETITION NO. 42 OF 2018

FRANCIS MANYEKI.....1ST PETITIONER

FRANCIS MIANO.....2ND PETITIONER

DAVID MUGO.....3RD PETITIONER

VERSUS

THE COUNTY GOVERNMENT OF MURANG'A.....RESPONDENT

JUDGMENT

1. The three petitioners have sued on their *own* behalf; and, on behalf of the self-help group styled *Murang'a Matatu Owners Welfare Association*.

2. The petitioners aver that on 11th June 2018 the respondent "*abruptly and without notice*" increased the monthly parking fees for 14-seater buses from Kshs 1,500 to Kshs 2,500. The petitioners had operated on the old stickers since June 2017.

3. The petitioners' case is that the respondent's action was arbitrary and capricious. It also ran counter to the principles of good governance and fair administrative action. In a nutshell, the conduct is impugned for violating **Article 47** of the **Constitution**; and, sections 4 and 5 of the **Fair Administrative Action Act**.

4. The facts are pleaded at length in the petition dated 11th July 2018. There is a deposition of even date sworn by the 1st petitioner.

5. The petitioners crave *three* main reliefs: Firstly, for a *declaration* that that the conduct by the respondent is *unconstitutional*; secondly, for an *injunction* to restrain the respondent from increasing the levy to Kshs 2,500; and, thirdly, for *costs*.

6. The petition is contested. There is a replying affidavit sworn on 11th October 2018 by *Jeremiah Mwirigi*, the town administrator. He has annexed the **Murang'a Finance Act 2013**. The Act sets the parking fees at Kshs 2,500. He avers that the constitutionality of the legislation was upheld in an earlier suit, **Quarry Owners Association & others v County Government of Murang'a**, High Court, Murang'a, Pet. 24 of 2014 [2015] eKLR.

7. The respondent's case is that the petition is founded on a poor understanding of the statute and should be dismissed with costs.

8. On 25th March 2019, I heard brief arguments from the parties. The petitioners relied on their submissions filed the same day. The respondent relied on older submissions filed on 1st October 2018.

9. **Article 47 (1) and (2)** of the **Constitution** provides-

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

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

10. The National Assembly enacted the **Fair Administrative Action Act** to give effect to the constitutional edict.

11. Although a tome of materials have been placed before the court, the petition turns on a very narrow point: the *constitutionality* of the new levy. Paraphrased, does the **Murang'a Finance Act 2013** provide a *valid* foundation for the impugned levy?

12. For starters, learned counsel for the petitioners, *Mr. Kamande*, freely conceded that he was *not* challenging the *constitutionality* of the local statute. The Act was published way back on 12th May 2014. An earlier challenge to its constitutionality was *dismissed* on 22nd May 2015 by Waweru J in **Quarry Owners Association & others v County Government of Murang'a**, High Court, Murang'a Pet. 24 of 2014 [2015] eKLR.

13. I have studied page 30 of the Act relating to *traffic and parking fees*. The rate for a *14-seater bus* is expressly set at Kshs 2,500 per month. The Act was gazetted in the special issue of the *Gazette* of 12th May 2014. It would thus be a misnomer to say that the public was *unaware* of the Act. The claim that the increase of the levy was abrupt and without notice lacks a factual or legal basis.

14. True, the County continued to charge the petitioners the *lower* rate of Kshs 1,500 per month since June 2017. The petitioners read some politics in that decision. But I find that *conduct estoppel* would not override the clear rate provided by the statute. By not challenging the constitutionality of the statute, the petitioners cannot be heard to say that they were denied a fair hearing. The new rate was in the books since the coming into force of the Act on 12th May 2014.

15. He who alleges must prove. The petitioners have failed to prove that the conduct of the respondent violated the **Constitution**; or, the **Fair Administrative Action Act**. It must follow as a corollary that the petition fails.

16. The upshot is that the entire petition dated 11th July 2018 is *dismissed*. In the interests of justice; and, considering the plight of the petitioners, I order that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 14th day of May 2019.

KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of-

Ms. Musyoka holding brief for Mr. Kamande for the petitioners instructed by Murigi Kamande & Associates Advocates.

Ms. Githinji holding brief for Mr. Kimwere for the respondents instructed by Kimwere Josphat & Company Advocates.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.