



**Menjo & another v Eldoret Water & Sanitation Limited & another; Sixty-Four Residents Association, Eldoret (Interested Party) (Environment and Land Petition E009 of 2024) [2025] KEELC 6229 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6229 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND PETITION E009 OF 2024**

**EM WASHE, J**

**SEPTEMBER 16, 2025**

**IN THE MATTER OF ARTICLE 1,6,10,19,20,22,23,43(D),46,47,232 & 258 AND SECTION 63 OF THE CONSTITUTION OF KENYA,2010**

**AND**

**IN THE MATTER OF SECTION 139 OF THE WATER ACT, NO. 43 OF 2016**

**AND**

**IN THE MATTER OF THE WATER RESOURCES REGULATIONS ACT, 2021**

**AND**

**IN THE MATTER OF THE WATER RESOURCES MANAGEMENT RULES,2007 (L.N.NO.171 OF 2007)**

**AND**

**IN THE MATTER OF THE CONSUMER PROTECTION ACT NO.46 OF 2012, SECTION 3,4 & 5**

**AND**

**IN THE MATTER OF SECTION 3,4,5,6,7 & 12 OF THE FAIR ADMINISTRATIVE ACTION ACT**

**BETWEEN**

**KIPKORR ARAP MENJO ..... 1<sup>ST</sup> PETITIONER**

**DAVID KIPKULET CHEBET ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ELDORET WATER & SANITATION LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**WATER SERVICES REGULATORY BOARD ..... 2<sup>ND</sup> RESPONDENT**



AND

**SIXTY-FOUR RESIDENTS ASSOCIATION, ELDORET ... INTERESTED PARTY**

**JUDGMENT**

1. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners [hereinafter referred to as “the Petitioners”] filed an Amended Petition dated 25.02.2025 [hereinafter referred to as “the present Petition”] against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents seeking the following Orders; -
  - a. A declaration declaring that the Respondents violated the principle of good governance under Article 10 of the Constitution of Kenya 2010 to the extent that the increment of the water and sewerage services tariff lacked public participation, inclusivity, transparency and accountability.
  - b. A declaration declaring that the Respondents violated and breached Petitioners’ consumer rights in that the decision to review and increase water and sewerage service tariff violated Article 46[1] of the Constitution of Kenya, 2010.
  - c. A declaration declaring the decision of the Respondents to review and increase water and sewerage without involving and giving the Petitioners reasons for doing so violated their right to fair administration action provided for under Article 47 of the Constitution of Kenya, 2010.
  - d. An Order of Certiorari to remove and quash Gazette Notice No. 2825 dated 04.10.2024 reviewing of water services tariffs upwards for the period 2023/2024 to 2028/2029 Gazetted by the 1<sup>st</sup> Respondent.
  - e. An Order of prohibition prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from enforcing Gazette Notice No. 2825 dated 04.10.2024 reviewing water services tariffs upward for the period 2023/2024 to 2028/2029 gazetted by the 1<sup>st</sup> Respondent.
  - f. An Order of mandamus compelling the Respondents to adhere to the provisions of the Water Act No. 43 of 2016 Section 139 [1][2][a][b][3][a][b][c][d][ e][4][5][a][b][5][6] by carrying out proper consultation with stakeholders and granting the Petitioners a fair hearing in the matter on raising the tariffs.
  - g. Costs of the Petition from the Respondents.
  - h. Any other Order the Court may deem fit and just to grant.
2. The prayers sought in the present Petition are premised on various grounds contained therein which include the following amongst others; -
  - i. The Petitioners herein as residents of Uasin Gishu County have a right to clean and safe in adequate quantities and therefore the Respondents have an obligation to ensure that the same is available as provided under Article 43 of the Constitution of Kenya, 2010 as read with Section 63 of the Water Act, No. 43 of 2016.
  - ii. On the 06.05.2024, a notice in the Website of the 2<sup>nd</sup> Respondent was published informing the general public of the intentions by the 1<sup>st</sup> Respondent to review its tariffs for provision of water and sewerage within Eldoret town and its environs.



- iii. The Petitioners plead that the review of the water and sewerage tariffs by the 1<sup>st</sup> Respondent were to be guided by the water sector regulations, changes in consumer price index in the County as well as the need to ensure the 1<sup>st</sup> Respondents meets its full costs and good conditions to supply safe and clean water.
- iv. The Petitioners confirmed that the Notice by the 2<sup>nd</sup> Respondent invited the general public for a meeting on the 15.05.2024 at the Eldoret Town Hall or one would join through a link to be provided.
- v. The Petitioners stated that the 2<sup>nd</sup> Respondent did not indicate the areas that would be affected by the review in order to enable the general public to attend.
- vi. Be as it may, the Petitioners further pleaded that the 2<sup>nd</sup> Respondent in its Notice dated 03.05.2024 had invited the general public to present their written views by latest 23.05.2024.
- vii. On the other hand, the Petitioners stated that the 1<sup>st</sup> Respondent through its website published a Notice dated 23.04.2024 to the general public stating that a consultative meeting being undertaken by the 2<sup>nd</sup> Respondent would be held on the 15.05.2024 at the Eldoret Town Hall.
- viii. According to the Petitioners, the consultative meeting scheduled for the 15.05.2024 was indeed held but in a different venue namely Uasin Gishu Social Hall which was in a different locality from Eldoret Town Hall which is in the Central Business District.
- ix. In addition to the above omission, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed to comply with the provisions of Section 139 [1] [2][a][b] and [3] of the *Water Act*, No. 43 of 2016 in terms of advertisement of the public participation meeting.
- x. The Petitioners were of the considered view that Section 139 [5] of the *Water Act*, 2016 places a duty of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to provide documents to the general public at reasonable costs relating to the application or proposed action which in this case is the exercise of reviewing the water and sewerage tariffs.
- xi. The Petitioner further relied on Section 139 [5] of the *Water Act*, 2016 which requires the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to publish the outcome of the consultative meeting in terms of the decision made and the reasons in support of the said decision for the general public to be well informed and/or challenge the same.
- xii. The Petitioners pleaded that the 1<sup>st</sup> Respondent who has a duty under Article 43 [1] [d] of the Kenyan Constitution, 2010 to provide safe and clean water in adequate quantities but has failed to do so through its water rationing schedule and therefore not entitled to review the water tariffs.
- xiii. The Petitioners challenged the actions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of publishing the consultative notice of the Uasin Gishu County on “My Gov” website rather than a National Newspaper with wide coverage as provided under Section 139 [2] [a] of the *Water Act*, 2016.
- xiv. In addition to the above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents placed an advertisement in one of the local radio stations namely Changei FM which was not a national radio channel as intended contrary to the provisions of Section 139[2][b] of the *Water Act*, No. 43 of 2016.
- xv. The Petitioners state that based on the Notice published on the 03.05.2024, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents failed to provide a 30 days period within which the general public was to give



their views and comments before the consultative meeting by closing the said period on the 23.05.2024 which was only 20 days.

- xvi. The Petitioners averred that even after the 1<sup>st</sup> and 2<sup>nd</sup> Respondents undertaking the unlawful consultative meeting, the decision arrived at including the reasons and/or grounds thereof were never published in accordance to Section 139 [2] and 3 [b] of the Water Act, No. 43 of 2016.
  - xvii. The Petitioners were of the considered view as consumers of water within Uasin Gishu County, the failure by the Respondents to comply with the provisions of Section 139 of the Water Act, No. 43 of 2016 violated their rights provided under Article 46 of the Constitution of Kenya, 2010 in the following manner; -
    - a. The Petitioners further claimed that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents being public entities adversely and without effective public participation decided to review the water and sewerage tariffs upwards to the detriment of the consumers and without giving reasons for making such a determination.
    - b. The Petitioners challenged the decision to review the water and sewerage tariffs by 300% which they deemed to be exorbitant and not practical especially during this extreme harsh financial time that our economy is undergoing.
3. In conclusion, the Petitioners sought this Court to grant the prayers sought herein together with costs.
  4. The present Petition was duly served on the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  5. The 1<sup>st</sup> Respondent opposed the present Petition by filing a Replying Affidavit dated 10.03.2025 [hereinafter referred to as “the 1<sup>st</sup> Respondent’s Response”] and stated as follows; -
    - i. The 1<sup>st</sup> Respondent recognised the various provisions of the Constitution Namely Article 2, 6,10,27 and 232 as read with Section 3,77,78 and 92 of the Water Act, 2016.
    - ii. To begin with, the 1<sup>st</sup> Respondent pleaded that it’s a public company created under the provisions of Cap 486 with its core mandate being provision of water and sewerage services to members of the public residing within Eldoret Municipality, Kesses, O’lessos, Cherba and Moiben as provided under Section 78 of the Water Act, 2016.
    - iii. The 1<sup>st</sup> Respondent acknowledged that as a public entity, the Constitution dictates that it upholds the national values of good governance and rules of natural justice including fair administration actions in its decision-making processes.
    - iv. The 1<sup>st</sup> Respondent proceeded to stated that the present Petition is pre-mature and an abuse of the Court process and should be dismissed with costs.
    - v. According to the 1<sup>st</sup> Respondent, Part VI of the Water Act, 2016 provides for the establishment of a Water Tribunal which is mandated to hear and determine disputes relating to decisions of the Water Regulatory Board, the Cabinet Secretary or any other person acting under the authority of the Board or the Cabinet Secretary.
    - vi. As such, the 1<sup>st</sup> Respondent was of the considered view that the present Petition had been filed before this Court without exhausting the dispute resolution mechanisms provided under Section 119 and 121 of the Water Act, 2016.
    - vii. The 1<sup>st</sup> Respondent proceeded to pleaded that compliance of all the approval processes were undertaken in consultation with the 2<sup>nd</sup> Respondent and the decision to review the water and sewerage tariffs was lawful and constitutional.



- viii. The 1<sup>st</sup> Respondent disclosed that based on Section 139 [1] and [2] of the *Water Act*, 2016, the invitation of the public to the consultative meetings is done through two avenues.
- ix. The first avenue is the publication of the notice in at least one national newspaper of daily circulation and the second avenue is broadcasting the notice through at least one Kenyan radio station in that locality.
- x. As regards the first avenue which is the publication of the Notice in at least one national newspaper of daily circulation, the 1<sup>st</sup> Respondent averred that the same was done on 26.03.2024 and 23.04.2024 through “My Gov” newspaper.
- xi. The reason why the Notice was published through “My Gov” newspaper is based on the directions issued by the Principal Secretary dated 23.01.2024 directing all Government entities to publish or advertise through the “My Gov” portal and published through the Star Newspaper.
- xii. In essence, the 1<sup>st</sup> Respondent confirmed that the Notice to the public was published in the Star Newspaper as directed by the Memo dated 23.01.2024.
- xiii. As regards the second avenue of broadcasting the Notice, the same was done through two radio channels namely Radio Alpha and Changei FM which are station channels within the locality of Uasin Gishu County.
- xiv. It is important to mention that the 1<sup>st</sup> Respondent averred that the period for the general public to submit their comments and/or objections was for a period of 30 days and not less.
- xv. The 1<sup>st</sup> Respondent confirmed that indeed a Consultative meeting was done on the 15.05.2024 through a physical meeting held at Uasin Gishu Town Hall as well as through Zoom and/or live broadcast which was attended by various stake holders including government agencies, universities, public schools, domestic consumers and industrial players.
- xvi. To enhance public participation, the 1<sup>st</sup> Respondent had also sent out invitations to various stakeholders within the County for purposes of transparency and accountability.
- xvii. During the public participation on 15.05.2024, the 1<sup>st</sup> Respondent confirmed that there was fruitful engagement with the stakeholders and members of the public by taking them through the proposal documents including the reasons for the view, the services to be provided and customer complaints handling processes.
- xviii. Each question and/or clarification about the proposed tariffs to be reviewed was captured and recorded in the Minutes of the material day.
- xix. At the end of the consultative meeting on the 15.05.2024, a vote was taken by a show of hands and the proposed review tariffs were approved by all in the venue save for three persons who opposed the same.
- xx. After this approval on the 15.05.2024, the decision was duly communicated to the general membership with a view to improving the water and sewerage services within the County of Uasin Gishu and its environs.
- xxi. In essence, the 1<sup>st</sup> Respondent reiterated that all the relevant steps and procedures were duly following by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent in arriving at the determination that the new water and sewerage tariffs hence the present Petition should be dismissed with costs.



6. The 2<sup>nd</sup> Respondent also opposed the present Petition by filing a Replying Affidavit dated 28.11.2024 [hereinafter referred to as “the 2<sup>nd</sup> Respondent’s Response”] on the following grounds; -
- i. The 2<sup>nd</sup> Respondent stated that it is a public entity established under Section 70 and 72 of the [Water Act](#), 2016 with the principle objective of protecting the interests and rights of consumers in the provision of water services.
  - ii. As such, the 2<sup>nd</sup> Respondent is mandated through the provisions of Section 72 [1] [b] of the [Water Act](#), 2016 to evaluate and recommend water and sewerage tariffs applied by County Water Service providers and approve the imposition of such tariffs in line with consumer protection standards.
  - iii. In exercise of its mandate under Section 72 [1][b] of the [Water Act](#), 2016, the 2<sup>nd</sup> Respondent is further guided by the Tariff Guidelines whose objective is to establish tariffs that balance commercial, social and ecological interests by ensuring access to all while allowing water services providers to recover justified costs.
  - iv. As to the issue of water rationing within Uasin Gishu County, the 2<sup>nd</sup> Respondent stated that under Section 105 [1] of the [Water Act](#), 2016, a licensee [herein referring to the 1<sup>st</sup> Respondent] who is of the opinion that there is a serious deficiency or threat of a deficiency of water available for distribution, may with approval of the regulatory board, for such period as the licensee considers necessary, prohibit or restrict with respect of the whole or such licensee’s limit of supply, the use for any specific purpose of water.
  - v. The 2<sup>nd</sup> Respondent therefore confirmed that it had granted approval to the 1<sup>st</sup> Respondent to undertake the water rationing exercise due to the serious deficiency or threat of deficiency of the available water.
  - vi. As regards the review of the water and sewerage tariffs, the 2<sup>nd</sup> Respondent disclosed that the applicable provision is Section 139 of the [Water Act](#), 2016 as read with Articles 10 [2] and 232 of [the Constitution](#).
  - vii. The 2<sup>nd</sup> Respondent pleaded that the Notice for Review of the water and sewerage tariffs was duly done through “My Gov” and the Star Newspaper which is National Newspaper of wide coverage.
  - viii. In addition to the above, the 2<sup>nd</sup> Respondent confirmed that the Notice was again broadcasted in two radio stations within the locality of Uasin Gishu County being Alpha Radio and Chamegi FM.
  - ix. According to the 2<sup>nd</sup> Respondent, the Notice of the Consultative Meeting was first published on 23.04.2024 and the second Notice dated 03.05.2025 by the 1<sup>st</sup> Respondent was simply a reminder hence a 30 days period was duly granted to the public to submit their views and comments.
  - x. The 2<sup>nd</sup> Respondent confirmed that a hybrid consultative meeting was held with a majority of the stakeholders and members of public wherein all the proposed tariffs and categories of use explained and discussed.
  - xi. Upon completion of the consultative meeting, a technical evaluation was undertaken and a decision that there would be an increment of Kenya Shillings 130 which translates to KShs.2.60 per a 20 litre jerry can was fair and adequate.



- xii. It was therefore the 2<sup>nd</sup> Respondents testimony that the review of the water and sewerage tariffs applicable by the 1<sup>st</sup> Respondent were done lawful, legally and in line with the provisions of *the Constitution*.
7. The Interested Party also filed a Replying Affidavit dated 12.05.2025 [hereinafter referred to as “the Interested Party’s Affidavit”] wherein they stated as follows; -
- i. The Interested Party informed the Court that it was an association of over 300 people residing within Uasin Gishu County and duly registered in law.
  - ii. The members of the Interested Party stated that they are aggrieved by the reviewed water and sewerage tariffs being applied by the 1<sup>st</sup> Respondent upon approval by the 2<sup>nd</sup> Respondent through the Gazette Notice no. 12825 published on the 04.10.2024.
  - iii. According to the Interested Party, the increment of water and sewerage charges as published through the Gazette Notice No. 12825 on the 04.10.2024 were unconstitutional for lack of both qualitative and quantitative public participation.
  - iv. The Interested Party insisted that the process and/or consultative meeting to consider the proposed review of the water and sewerage tariffs was never communicated to its members hereby denying them the right to be heard.
  - v. The Interested Party averred that based on the 1<sup>st</sup> Respondent’s response, the persons who had attended the consultative meeting had been ferried from other areas outside the jurisdiction of the 1<sup>st</sup> Respondent including the outskirts like Ziwa.
  - vi. Similarly, the Interested Party alleged that the persons who attended the consultative meeting were employees of the 1<sup>st</sup> Respondent and therefore had a conflict of interest hence the public participation was not objective.
  - vii. The Interested Party further stated that the persons who attended the consultative meeting did not provide their water meter numbers to verify whether or not they are consumers of water and sewerage services within the Uasin Gishu County.
  - viii. As such, the Interested Party was of the considered view that the public participation envisaged under *the Constitution* and the *Water Act*, 2016 was never done.
  - ix. Based on the absence of an effective public participation, the Interested Party sought this Court to deem the review water and sewerage tariffs null and void.
  - x. In fact, the Interested Party informed the Court that it had done a comparison study of the new tariffs on water and sewerage with other major towns and noted that the one approved for the County of Uasin Gishu was inordinately high.
  - xi. Consequently, the Interested Party supported the present Petition and sought this Court to quash the Legal Gazette No. 2825 dated 04.10.2025 reviewing the water and sewerage charges upwards within the jurisdiction of the 1<sup>st</sup> Respondent.
8. After the filing of the Interested Party’s response, parties are directed to file their submissions in support and in opposition of the present Petition.
9. The Petitioners duly filed their final submissions dated 09.06.2025 and the 1<sup>st</sup> Respondent filed their submissions on 25.06.2025 while the Interested Party filed their submissions 18.08.2025.



10. The Court has indeed perused the present Petition in details, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents responses as well together with the Affidavit of the Interested Party herein.
11. The issues for determination in the present petition can then be summarised as follows; -
  - Issue No. 1- Is The Present Petition Pre-mature Before The Court?
  - Issue No. 2- Did The 2<sup>Nd</sup> Respondent Infringe Any Constitutional Rights Of The Petitioners During The Review Process Of The Water And Sewerage Tarriffs Contained In The Gazette Notice No. 2825 Dated 04.10.2024?
  - Issue No. 3- Are The Petitioners Entitled To The Orders Sought In The Present Petition?
  - Issue No. 4- Who Bears The Costs Of The Present Petition?
12. The Court having duly identified the above-mentioned issues, the same will now be discussed and determined as provided for herein below.

### **ISSUE NO. 1- IS THE PRESENT PETITION PRE-MATURE BEFORE THE COURT?**

13. The first issue for deliberation is whether the present Petition before the Court is pre-mature of not.
14. According to the responses by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the decision that the Petitioners are seeking to challenge is contained in the Gazette Notice No.12825 dated 04.10.2024.
15. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents pleaded that the venue of any disputes over the contents of the Gazette Notice No. 12825 dated 04.10.2024 is before the Water Tribunal stabled under Section 119 of the [Water Act](#), 2016.
16. Consequently, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were of the considered view that the present Petition ought to be struck out as the Petitioners had not invoked the prescribed dispute resolution mechanism under the [Water Act](#), 2016 and/or exhausted the same.
17. Upon service of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents Response on the Petitioners, the Petitioners did not make any response on the issue of whether or not the present Petition is pre-maturely before the Court.
18. However, in the Petitioners submissions dated 09.06.2025, the issue of whether the present Petition was premature or not was exhaustively submitted.
19. The issue at hand is whether this Court has the jurisdiction to hear and determine the dispute before it keeping in mind the provisions of Section 119 of the [Water Act](#), 2016 as read with Section 121 of the [Water Act](#).
20. In an effort to answer this question, there are two aspects that come into the mind of the Court.
21. The first aspect is whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents infringed the Petitioners right to safe and clean water in adequate quantities as provided under Article 43 [1] [d] as read with Article 46 and Article 47 of [the Constitution](#) by publishing the Gazette Notice No. 12825 dated 04.10.2024.
22. The second aspect is whether or not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents infringed the Petitioners rights during the process of review of the water and sewerage tariffs that resulted to the Gazettement of the Notice No. 12825 dated 04.10.2024.
23. The importance of outlining these two aspects is to assist the Court in evaluating whether or not the present Petition is pre-maturely before the Court and should not be entertained or is mature for hearing and determination.



24. To begin with the first aspect, it is not in doubt that the present Petition seeks to challenge the Gazette Notice No.12825 dated 04.10.2024 by the 2<sup>nd</sup> Respondent.
25. The contents of the Gazette Notice No. 12825 dated 04.10.2024 is to revoke the previous water and sewerage tariffs applied by the 1<sup>st</sup> Respondent and replace them with the ones contained in the said Gazette Notice No. 12825 dated 04.10.2024.
26. The question that requires to be answered is whether the alteration of the water and sewerage tariffs in accordance with the Gazette Notice No. 12825 dated 04.10.2024 can result to an infringement of the Petitioners Rights provided under Article 43 [1] [d], 46 and Article 47 of *the Constitution*.
27. The Court in its considered view is that the amendments, review and alteration of the water and sewerage tariffs based on the Gazette Notice No. 12825 dated 04.10.2024 cannot be an automatic infringement of the Petitioners rights as provided under Article 43 [1] [d], Article 46 and Article 47 of *the Constitution*.
28. The reason is that the 2<sup>nd</sup> Respondent based on Section 72 [1] [b] of the *Water Act*, 2016 has the power and mandate to evaluate and recommend water and sewerage tariffs to the 1<sup>st</sup> Respondent.
29. Similarly, the mere amendment, review and/or alteration of the water and sewerage tariffs cannot be deemed to have automatically terminated the flow and/or access of this crucial services to the Petitioners.
30. The result that will automatically accrue based on the amendment, review and/or alteration of the water and sewerage tariffs will be the cost to accessing and/or using the same.
31. The Petitioners had a duty to demonstrate to the Court how the reviewed costs would infringe on their right to a safe and clean water provided in adequate quantities.
32. Fortunately, the Petitioners never pleaded and or proved any difficulties in settling the new water and sewerage tariffs.
33. The Court takes judicial notice that Eldoret within Uasin Gishu County was recently elevated to a City Status which means that there will be enormous growth in terms or population and industrialisation which requires improvement of water provision and infrastructure.
34. As such, a review of the water and sewerage tariffs from time to time as happened in the process being challenged is inevitable and would be counter-productive to quash the same without any valid reason.
35. As regards the second aspect, the question to be asked is whether the 1<sup>st</sup> and 2<sup>nd</sup> Respondents infringed the Petitioner's rights under Article 43 [1] [d], Article 46 and 47 during the review process of the water and sewerage tariffs that resulted to the Gazette Notice No. 12825 dated 04.10.2024.
36. In this second aspect, the focus by the Petitioners is more on the procedure and compliance with both Constitutional provisions and Statutory provisions.
37. According to the Petitioners pleadings and supported by the Interested Party, the dispute is really about failure of complying with the provisions of Section 139 of the *Water Act*, 2016.
38. Section 139 requires the 2<sup>nd</sup> Respondent in particular to undertake various steps including public participation before Gazetting any Notice for amendment, review and/or alteration of water and sewerage tariffs.



39. In the event the 2<sup>nd</sup> Respondent publishes a Gazette Notice reviewing, amending or altering any water and sewerage tariffs without following the prescribed provisions of the law, Section 119 [1] as read with Section 121 of the Water Act, 2016 comes into force.
40. Section 119 of the Water Act, 2024 provides as follows; -
- “ [1] There is established a Water Tribunal.”
41. Section 121 of the Water Act, 2024 further provides as follows; -
- “ [1] The Tribunal shall exercise the powers and functions set out in this Act and in particular shall hear and determine appeals at the first instance of any person or institution directly affected by the decision or order of the cabinet secretary, the authority and regulatory board or any person acting under the authority of the cabinet secretary, the authority and regulatory board.
- [2] In addition to the powers set out in sub-section [1], the Tribunal shall have the powers to hear and determine any dispute concerning water resources or water services where there is a business contract, unless the parties have otherwise agreed to an alternative resolution mechanism.”
42. In Part I of the Water Act, 2016, the Regulatory Board is described as follows; -
- “Regulatory Board means the Water Services Regulatory Board established under Section 70”
43. Looking at the Gazette Notice No. 12825 dated 04.10.2024, the entity that published the same was the 2<sup>nd</sup> Respondent as the Regulatory Board.
44. If this is the position, dispute regarding the manner and/or procedure which was used leading to the publication of the Gazette Notice No. 12825 dated 04.10.2024 should first be heard and determined by the Water Tribunal established under Section 119.
45. It is critical to point out that Section 121 [1] of the Water Act, 2016 is couched with the word Shall which makes it mandatory that any person or institution directly affected by the decision of the Regulatory Board must first present its grievances to the Water Tribunal.
46. In other words, this Court is barred by the statutory provisions of Section 121 [1] of the Water Act, 2016 from adjudicating the process, merit and/or demerits of any decisions emanating from the Regulatory Board which the 2<sup>nd</sup> Respondent in the first instance.
47. The only time this Court is couched with Jurisdiction is on Appeals premised on Section 124 of the Water Act, 2016.
48. This Court therefore does not have the original jurisdiction to verify, evaluate the merits and demerits of the review process undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents leading to the Gazettement of the Notice No. 12825 dated 04.10.2024.
49. The Petitioners should first present their grievances to the Water Tribunal and if they are not satisfied with the outcome therein can now proceed to file a Petition as they have done or a substantive appeal to this Court.
50. As such, this Court hereby makes a finding that the present Petition pre-mature and the prayers sought therein cannot be entertained in this forum in the first instance.



**ISSUE NO. 2- ARE THE PETITIONERS ENTITLED TO THE ORDERS SOUGHT IN THE PRESENT PETITION?**

51. Based on the determination in Issue No. 1 hereinabove, the Orders sought in the present Petition are declined.

**ISSUE NO. 3- HOW BEARS THE COSTS OF THE PRESENT PETITION?**

52. Costs usually follow the event and in the present Petition, the Petitioners are not successful and are condemned to pay costs.

**CONCLUSION**

53. In conclusion, this Court hereby issues the following Orders in determination of the present Appeal; -
- A. The Amended Petition Dated 25.02.2025 Is Pre-mature & In Contravention Of Section 119 & 121 Of The Water Act, 2016 And Therefore Struck Out.
  - B. The Interim Orders Issued On The 25.03.2025 Staying The Gazette Notice No. 12825 Dated 04.10.2024 Be And Are Hereby Discharged.
  - C. The Petitioners Will Bear The Costs Of The Present Petition As Well As The Application Dated 14.11.2024.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 16<sup>TH</sup> SEPTEMBER 2025.**

**EMMANUEL.M. WASHE**

**JUDGE**

In The Presence Of:

Court Assistant: Brian

Advocates For The Petitioner: Mr. Warigi & Mr. Mathai

Advocates For The Respondents: Ms.Chelimo holding brief Mr.Onyango For 1<sup>st</sup> Respondent, Mr.Kibet For 2<sup>nd</sup> Respondent

Advocate For Interested Party: Mr. Nabasenge

