



**Sheria Mtaani Na Shadrack Wambui & 6 others v Kajiado County  
Assembly & 3 others (Environment and Land Petition 2 of 2024)  
[2025] KEELC 6954 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 6954 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ENVIRONMENT AND LAND PETITION 2 OF 2024**

**LC KOMINGOI, J**

**OCTOBER 9, 2025**

**IN THE MATTER OF DEFENCE OF THE CONSTITUTION  
UNDER ARTICLE 3 AND 22 OF THE CONSTITUTION**

**AND IN THE MATTER OF CONTRAVENTION OF ARTICLES 2, 10, 19, 20,  
21, 23, 27, 40, 57, 60, 64, 162(2B), 174, 184, 186, 196, 201 AND PARAGRAPH  
8 OF PART 2 OF THE FOURTH SCHEDULE OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 13 OF THE ENVIRONMENT AND LAND COURT ACT**

**AND**

**IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF THE CONSTITUTIONAL AND LEGAL VALIDITY OF PART  
2 OF THE EIGHTH SCHEDULE OF THE KAJIADO COUNTY FINANCE ACT 2023**

**AND**

**IN THE MATTER OF SECTION 2 AND 5 OF THE LAND ACT**

**AND**

**IN THE MATTER OF THE DOCTRINES OF PUBLIC PARTICIPATION AND  
UNFAIR DISCRIMINATION OF SMALL SCALE FREEHOLD LAND OWNERS**

**BETWEEN**

**SHERIA MTAANI NA SHADRACK WAMBUI ..... 1<sup>ST</sup> PETITIONER**

**OLKERI RESIDENTS ASSOCIATION ..... 2<sup>ND</sup> PETITIONER**

**ACACIA ESTATE RESIDENTS ASSOCIATION ..... 3<sup>RD</sup> PETITIONER**



OLOOSURUTIA RESIDENTS ASSOCIATION ..... 4<sup>TH</sup> PETITIONER  
RAPASI MEMUSI SAINA RESIDENTS ASSOCIATION ..... 5<sup>TH</sup> PETITIONER  
ALICE NAMALWA SITUMA ..... 6<sup>TH</sup> PETITIONER  
JOSEPH NJUGUNA MUMIRA ..... 7<sup>TH</sup> PETITIONER

AND

KAJIADO COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF KAJIADO ..... 2<sup>ND</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
HON NGATHO KINUTHIA ..... 4<sup>TH</sup> RESPONDENT

JUDGMENT

1. The Petition dated 9<sup>th</sup> September 2024 and Amended on 4<sup>th</sup> November 2024 supported by the Affidavit of Shadrack Wambui, the 1<sup>st</sup> petitioner’s Chairperson is brought on the grounds that the Petitioners have a right to protection of their rights and fundamental freedoms as entrenched under Article 3, 10, 19, 22, 23, 27,40, 57 and 258 of *the Constitution*. It challenges the enactment and implementation of Kajiado County Finance Act, 2023.
2. The enactment by the 1<sup>st</sup> Respondent, seeks to impose and vary fees, charges, levies, rents and rates for revenue-raising purposes. The contention within the act introduces land rates for freehold properties equal to or exceeding 0.05 ha within urban, peri-urban, and rural trading centres.
3. The Petitioners aver that the stipulated rates disproportionately burden small-scale landowners while exempting larger landowners without justification. They contend that the legislative process lacked meaningful public participation, contrary to Article 196 of *the Constitution*, thereby denying affected landowners, including the Petitioners, the opportunity to voice their objections.
4. They claim that on 5<sup>th</sup> September 2024, the County Government of Kajiado held a consultative public sensitization meeting at Matasia Social Hall, to sensitise land and plot owners of Olkeri ward, Kajiado North Constituency on key provisions of the Kajiado County Finance Act 2023 regarding rent and land rates. In attendance were the Petitioner’s in their personal capacities and as lobby groups representing their members.
5. During this meeting, the participants were informed of Part 2 of the Eighth Schedule of the Kajiado Finance Act, 2023 which sought to introduce land and property rates for any freehold land equal or exceeding 0.05 ha in size within categorized urban trading centres, peri-urban trading centres and rural trading centres. The schedule categorizes land within urban trading centres in Kajiado county which shall attract annual land rate of Kes.5,000 for commercial lands, Kshs. 2,500 for residential single dwelling units and Kshs. 4,000 for residential multi-dwelling properties respectively for any land equal or exceeding 0.05 ha in size. For peri-urban trading centres, residents shall be required to pay annual land rates of Kshs. 3,000 for commercial lands; Kshs. 1,000 for residential single dwelling units and Kshs. 3,000 for residential multi-dwelling properties in Category I; Kshs. 2,500 for commercial lands, Kes.1,000 for residential single dwelling units and Kshs. 2,500 for residential multi-dwelling properties in Category II for any land equal or greater than 0.05 ha in size.



6. In Rural Trading Centres residents shall be subjected to annual land rates of Kshs.2,000 for commercial lands, Kshs.1,000 for residential single dwelling units and Kshs. 2,000 for residential multi-dwelling properties in Category I and Kshs. 1,750 for commercial lands, Kes.1,000 for residential single dwelling units and Kshs. 1,750 for residential multi-dwelling properties in Category II for any land equal or exceeding 0.05 ha in size.
7. The Petitioners claimed that the enactment of the Kajiado County Finance Act, 2023 which would limit freehold tenure for land owners in Kajiado County was done without consultation or public participation by the Petitioners or other land owners who would be impacted by these provisions. These provisions were passed without participation or knowledge of the Petitioners and other land owners. They also contested the introduction of the impugned land rates as being unconstitutional and discriminative against small scale land owners while large scale land owners are exempted from the oppressive payments contrary to Article 27 of *the Constitution* which forbids discrimination and unequal treatment of people. They added that the introduction of annual rates on freehold titles was an illegal attempt at converting freehold titles to leasehold titles for residents of Kajiado County. Further that the introduction of payment of land rates of freehold land owners without public participation was unconstitutional, unreasonable, unfair and discriminative to some people as well as the elderly such as the 6<sup>th</sup> and 7<sup>th</sup> Defendants who were retirees who rely on Government social protection programmes like “Inua Jamii of Kshs.2000/=”. This would also render the petitioner’s among others, homeless or susceptible to imprisonment for non-payment.
8. It is also their case that, the enactment of this legislation violates Article 196 of *the Constitution* which mandates County Assemblies to facilitate public participation in legislative process. The views of the Petitioners and other land owners were not sought during the legislative and enactment process of the Kajiado County Finance Act, 2023 as they only got to know about this during this sensitization meeting.
9. The Petitioners went on to state that these provisions are unreasonable and unfair and had the likelihood of rendering them homeless; they were at risk of being charged and imprisoned. They also faced the risk of not enjoying their right to property as enshrined under Article 40 of *the Constitution*. This is because those provisions exert upon freehold land owners steep annual rates. These provisions are in contravention of Article 24 of *the Constitution* which provides that fundamental freedoms in the Bill of Rights should only be curtailed if the limitation is reasonable and justifiable and not prejudicial; and there are no other less restrictive means to achieve the purpose.
10. The Petitioners also claimed that while the 2<sup>nd</sup> Respondent has been raising and collecting revenue it has failed to provide essential services such as passable roads, clean drinking water, sewerage systems and adequate security. This has made the residents to dig bio digesters in their homes and buy water from private water vendors.
11. It is their case that, the Kajiado Finance Act, 2023 fails the test of proportionality and reasonability which requires that any legislation should balance between the importance of achieving its purpose and the importance of preventing the limitation of the people’s Constitutional Rights as enshrined in Article 24 of *the Constitution*. The Act also imposes double taxation on commercial property owners, who are already subject to change of user fees and annual business licencing charges in violation of Article 201 of *the Constitution*. It is their prayer that, implementation of these provisions ought to be stopped because it was a risk to the safety, security and dignity of land owners through an illegal change of land tenure system.
12. They therefore sought the following reliefs;



- a. A declaration does issue declaring Section 14(8) as read together with Part 2 of the eighth Schedule of the Kajiado County Finance Act 2023 on Land and Property rates imposing the payment of land rates on freehold properties within the zoned regions including urban, peri-urban and rural trading centres commercial freehold land, residential freehold land and residential multi dwelling or mixed dwelling freehold properties less than or equal to 0.05 Hectares as unconstitutional for inter alia being discriminatory and violating articles 10, 27, 40 and 57 of the Constitution as read together with Section 2 and 5 of the Land Act 2012.
  - b. A declaration be an is hereby issued that the Respondents breached the provisions of Articles 10, 196(1)(b) and 201(b) by failing to afford the public adequate opportunity to participate in the legislative process leading to the enactment of the Kajiado County Finance Act, 2023.
  - c. A declaration does issue that the imposition of land rates on freehold residential lands violates provisions of Article 24, 40, 57, 60 and 64 as read with and Sections 2 and 5 of the Land Act.
  - d. Costs of the Petition.
  - e. Interests on (d) above at Court's rate from the date of filing of the petition until payment in full.
  - f. Any other orders that this Honourable court deems fit and just to grant in the circumstances.
  - g. Any other order that this court deems fit and just in the circumstances.
13. The 1<sup>st</sup> Respondent through the Replying Affidavit sworn by Josiah Leboo Saisa Yiaro, the Clerk of the Kajiado County Assembly, contested the Petition on the grounds that the alleged discrimination claimed by the Petitioners was false and meant to mislead this Court. He averred that the said Act does not discriminate against any land owners as it also provides for payment of land rates for those holding more than 0.05 Ha as per Part 2 of the Eighth Schedule of the Kajiado County Finance Act, 2023. He averred that there was sufficient involvement and participation of all residents of the Kajiado County on formulating, deliberation, debating and passing of the Kajiado County Finance Act, 2023, as espoused by Article 196(1) of the Constitution and Standing Order No. 121 (3) of the County Assembly Standing Orders as follows: The 1<sup>st</sup> Respondent through its Sectoral Committee on Finance, Economic Planning & ICT through the Daily Nation and the Standard Newspapers published on 21<sup>st</sup> August 2023 and advertised for Public Participation fora in all sub Counties in Kajiado County inviting views and written memoranda from members of the public. In the said adverts, residents of Kajiado were invited to participate in the making of this law by attending the fora to give oral submissions or written memoranda. The 1<sup>st</sup> Respondent traversed all Sub Counties and conducted the said public participation in the various stations in accordance with the Schedule and there was evidence of the attendance of members of the public as captured in the attendance list and some of the attendees were the Petitioners herein. During the Second Reading Stage and the Committee Stage of the Bill, the Bill was debated upon and several amendments were introduced in accordance with the views given during the Public Participation fora. And this was evidenced by the Schedule of amendments. During the Third Reading Stage of the Bill, there was quorum in the House and the Bill was unanimously passed.
14. He further stated that the contested provisions of the Finance Act 2023 were carried forward from previous Finance Acts and the rates were actually reduced compared to the preceding Kajiado County Finance Act, of 2020 which provided higher rates of Kshs. 3500 for a similar category of land size as per Part II of the Eighth Schedule of the Kajiado County Finance Act, 2020.



15. He added that County Governments had the mandate to impose rates as provided by Article 209 (3) (a) of *the Constitution* pointing out that age was not a factor to be used to evade payment of taxes as urged by the Petitioners. He also averred that if the 4<sup>th</sup> Respondent made any of the remarks depend in the Petition, those were not the views of the 1<sup>st</sup> Respondent adding that the 4<sup>th</sup> Respondent was protected by Section 11(2) County Assemblies (Powers and Privileges) Act from civil actions from acts done or ordered during the discharge of his functions, and so was the 1<sup>st</sup> Respondent.

He prayed that the Amended Petition be dismissed with costs.

16. The 2<sup>nd</sup> Respondent relied on the Replying Affidavit sworn by Alais Kisota, the County Executive Committee Member in charge of Finance. He deponed that the impugned rates were not introduced in 2023 as alleged by the Petitioners but were in the previous Finance Acts specifically Part II of the Eighth Schedule of the Kajiado Finance Act, 2020. He also stated that the said rates were applicable to all rateable properties within the County as defined in the Kajiado County *Rating Act*, 2016. He also contested the allegation that public participation was not conducted, affirming what was deponed by the 1<sup>st</sup> Respondent and adding that there were public participation reports that show that the said sections were subjected to public participation. And thereafter, the Kajiado Finance Act 2023 became law on 1<sup>st</sup> November 2023.
17. On the claim that the Act was discriminatory on small scale land owners and older members of the society, he stated that rates payable were determined by factors such as size of the land, its location as well as the value and this was espoused by Section 4 *Rating Act* and Section 4, 5 and 6 of the Kajiado *Rating Act*, 2016. He further deponed that the contention that rates are being levied on small scale farmers with parcels of land less than or equal to 0.05 ha was incorrect and misleading. This is because the Petitioners only pointed out the first part of Part 2 of the Eighth Schedule of the Kajiado County Finance Act, 2023. A look at the complete schedule would show the rates have been applied differently for various areas, sizes and use of the land within the county. On the issue of discrimination of the elderly persons, he stated that there was no law prohibiting elderly members of the society from paying taxes. Therefore, no laws had been infringed and Article 57 of *the Constitution* did not exempt older members of the society from payment of rates.
18. He went on to indicate that payment of rates in Kenya is governed and regulated by the *Rating Act*, (Cap 267 Laws of Kenya) and that the *Rating Act* empowers a rating authority, which includes a County Government, to come up with different forms of rating for purposes of levying rates. It is on the strength of the Constitutional provisions and the *Rating Act*, Cap 267 that the 1<sup>st</sup> Respondent enacted the Kajiado County *Rating Act*, 2016 to provide for the imposition of rates on land and buildings within Kajiado County, and for connected purposes and the Kajiado County *Rating Act* further provides that the amount of rate payable shall be determined each year by the county assembly through the County Finance Bill. Therefore, the claim that the 2<sup>nd</sup> Respondent does not have a roll to levy rates was incorrect.
19. On the allegation that the Act sought to convert freehold titles to leasehold, he deponed that this was incorrect because Section 14 (8) of the Kajiado County Finance Act, 2023 provides for payment of rates on rateable property and rateable property had been defined in the *Valuation for Rating Act*. Section 2 of the *Valuation for Rating Act*, (Cap 266 Laws of Kenya) excludes properties that cannot be subjected to rates and freehold properties are not among the excluded properties. Moreover, there was no constitutional or statutory provisions that provided that payment of rates was only applicable to lease-hold properties. Therefore, land rates are payable regardless of whether the land is freehold or leasehold and levying rates was not a limitation of the right to property.



20. He stated that Courts should be slow in suspending a legislation unless the Petitioners demonstrate a real risk of infringement of their rights or real danger to life and this had not been done. As such, the Petition ought to be dismissed with costs to the 2<sup>nd</sup> Respondent.
21. The Petition was canvassed by way of written submissions.

### **The Petitioners Submissions**

22. The Petitioners outlined the following as the issues for determination: Whether the rates imposed were procedurally enacted; Whether the rates are discriminatory; Whether the impugned laws impose a limitation and if so, does the limitation imposed meet the standards set under Article 24 of *the Constitution*; Whether the impugned laws fails to take into account and cushion the elderly thus violating Article 57; and Whether sufficient and meaningful public participation was undertaken.
23. On whether the rates imposed were procedurally enacted, the Petitioner submits that while County Governments have constitutional authority to impose property rates, this authority is not absolute. It must be exercised within the confines of the law, and more specifically, in accordance with the provisions of the *Rating Act* and the *Valuation for Rating Act*.
24. The *Rating Act* requires that any rating method adopted must be approved by the Cabinet Secretary, must be publicly notified, and must adhere to rules set out under the *Valuation for Rating Act*, particularly when employing site value or improvement rates. Furthermore, the *Valuation for Rating Act* obliges rating authorities to prepare valuation rolls at least once every ten years, notify the public of their contents, and allow for inspection, objection, and appeal through prescribed channels. In the instant case, however, the Respondents have not produced a valuation roll, nor have they demonstrated any compliance with the procedural prerequisites laid out in either the *Rating Act* or the *Valuation for Rating Act*. No notices were issued under Section 30 of the *Valuation for Rating Act*. No approval from the Cabinet Secretary has been exhibited. No opportunity for objections or appeals was ever afforded to the ratepayers. Reference was made to *Eastern Produce Kenya Limited, Siret Tea Company Limited, Kakuzi PLC (Kaboswa Estate), Kibwari PLC, Toyoi Investments Limited, Kipkeibon Estates Limited & Kenya Tea Growers Association v County Government of Nandi* [2021] KEELC 4173 (KLR) where the High Court emphasized that County Governments must follow the strict procedural steps prescribed by national legislation before imposing rates. Any failure to do so renders the rates arbitrary, illegal, and contrary to Article 210(1) of *the Constitution*, which prohibits the imposition of any tax or licensing fee except as provided by law.
25. As such, the Respondents failed to follow any of the required legal steps before purporting to impose rates upon the residents of Kajiado County.
26. On whether the rates are discriminatory, the Petitioners submitted that the Act imposes land rates on owners of freehold properties measuring 0.05 hectares or less, while exempting larger landowners which is discriminatory and contrary to Article 27 of *the Constitution*, which guarantees the right to equality and freedom from discrimination. Counsel made reference to the following cases on standards for determining discrimination: *Willis vs The United Kingdom*, No. 36042/97, ECHR 2002 – IV, *Harksen v Lane NO and Others* {1997} ZACC 12; 1998 (1) SA 300 (CC); 1997 (11) BCLR 1489 (CC) (*Harksen*) and *Nelson Andayi Havi v Law Society of Kenya & 3 others* [2018] eKLR where Mativo J. (as he then was) held: “In determining discrimination, the guiding principles are clear. The first step is to establish whether the law differentiates between different persons. [57] The second step entails establishing whether that differentiation amounts to discrimination. [58] The third step involves determining whether the discrimination is unfair.”



27. Counsel submitted that the inequitable differentiation by subjecting only small landowners, owning properties of 0.05 hectares or less, to taxation, while exempting larger property owners without justification amounted to unfair discrimination and should be prevented.
28. On whether the impugned laws impose a limitation and if so, does the limitation imposed meet the standards set under Article 24 of *the Constitution*, it was submitted that the impugned law imposes compulsory charges on freehold landowners, enforced through mechanisms that could ultimately lead to the deprivation of land. This constitutes a restriction on the right to property under Article 40 of *the Constitution*, among other rights, and is disproportionate and unjust, particularly when considered against the socio-economic profile of the affected individuals. The Petitioners urged the Court to take judicial notice of the fact that many elderly persons in Kenya own freehold property, and that they are often beneficiaries of modest government support such as the Inua Jamii programme. Subjecting them to arbitrary levies backed by punitive enforcement not only threatens their property rights but also their dignity and well-being—thereby failing to meet the threshold of a justifiable limitation under Article 24 of *the Constitution*. To support this, reference was made to *Kandie v Alassane BA & another* [2017] KESC 13 (KLR), where the Supreme Court emphasized that the “reasonable and justifiable” test must be applied contextually and not mechanically, requiring a careful balancing of the interests at stake. Reference was also made to the Court of Appeal in *Attorney General & another v Randu Nzai Ruwa & 2 others* [2016] eKLR where it held that both the law itself and the manner of its enforcement must comply with the standards of Article 24.
29. These provisions should therefore be declared invalid because they are neither reasonable nor justifiable.
30. On whether the impugned laws fails to take into account and cushion the elderly thus violating Article 57, counsel argued that the impugned legislation fails to safeguard the rights of elderly persons, contrary to Article 57 of *the Constitution*. This is because, the impugned law imposes punitive financial burden including rates and levies enforceable by distress on elderly freehold landowners. This, they contend, is disproportionately oppressive, especially when those affected are economically vulnerable individuals with no significant sources of income beyond government stipends. This would therefore, not only erode the dignity of elderly landowners but also place them at risk of dispossession. On the issue of elderly’s rights, reference was made to *Josephat Musila Mutua & 9 others v Attorney General* [2018] KEHC 8438 (KLR) where Mwita J. stated that age cannot be used as a basis for exclusion or economic discrimination, and that government policy and legislation must be shaped by the national values of equality, social justice, and non-discrimination.
31. As such, the Respondents not only neglected their duty under Article 57 but also legislated in a manner that violates the dignity and rights of older persons.
32. On whether sufficient and meaningful public participation was undertaken, it was submitted that the impugned provisions were enacted without adequate public participation in violation of Articles 10 and 196 of *the Constitution*. They argued that the enactment process excluded the public from laws directly affecting their livelihoods, thereby rendering the impugned rates unconstitutional and illegitimate. Counsel highlighted that there were statements from legislators, confirming that the disputed rates were neither tabled nor debated in Parliament. Although the Respondents produced public participation reports, the Petitioners submitted that these failed to meet the constitutional standards of reasonableness, adequacy, effectiveness, and meaningfulness with reference to the following case laws: *Kiambu County Government & 3 Others v. Robert N. Gakuru & Others* [2017] eKLR, *Kaps Parking Limited & another v County Government of Nairobi & another* [2021] eKLR and *British American Tobacco Kenya, PLC formerly British American Tobacco Kenya Limited v*



Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party) [2019] KESC 15 (KLR).

33. They emphasized that public participation must be real and not cosmetic, inclusive and transparent, and must allow citizens to have a genuine influence on decision-making. They submitted that all public participation meetings were held on a single day- 6<sup>th</sup> June 2023- without proper prior notice, with an undated notice of unclear distribution. Questions were also raised on the attendance lists which counsel argued they were illegible, photos showed unidentified individuals, and the subject of the impugned rates was never discussed in the meetings across Kajiado North, Central, and South. Discussions focused solely on adjudication sections, excluding the very issue under challenge. Attendance was also dismally low (e.g., only 92 people in Kajiado Central). These deficiencies demonstrate that the process was a mere formality, falling far short of constitutional expectations. The Petitioners argue that the Respondents failed to discharge their duty to ensure public awareness, engagement, and input on the affected legislation.
34. On who should bear costs of the Petition, counsel submitted that it was the Respondents' unjustifiable and unreasonable actions that precipitated these proceedings. As such, they should bear the costs of the suit.

### **The 1<sup>st</sup> Respondent's submissions**

35. On whether there was sufficient and meaningful public participation, counsel submitted that it was undertaken satisfactorily as per the laid out threshold in several cases including *David Ngige Tharau & 128 others v Principal Secretary Ministry of Lands, Housing and Urban Development & 2 others* (2016) KEHC 7274 (KLR), *Moses Munyendo & 908 others vs AG, British American Tobacco Kenya Ltd v Cabinet Secretary for the Ministry of Health & 4 others* (2016) eKLR and *Nairobi Metropolitan PV Sacco Union Ltd & 25 others vs County of Nairobi Government & 3 others* (2013) eKLR.
36. On whether the rates were procedurally enacted, it was submitted that Article 185 authorises a County Assembly to make and amend Bills and Article 209(3) mandates County Governments to impose property rates. Therefore, the 1<sup>st</sup> Respondent adhered to the laid out Constitutional tenets in passing the Act.
37. On whether the rates were discriminatory, it was submitted that this issue was a creation of the Petitioners' imagination meant to magnify the suit and mislead the court because Article 57 had neither been violated nor did it exempt elderly persons from paying rates on account of their age.
38. It is submitted this Petition was therefore frivolous and should be dismissed with costs.

### **The 2<sup>nd</sup> Respondent's submissions**

39. Counsel outlined the following as the issues for determination: Whether the Amended Petition meets the threshold of a constitutional petition; Whether the 2<sup>nd</sup> Respondent has a role and/or mandate to levy rates; Whether the Kajiado County Finance Act, 2023 was subjected to public participation before it became law; Whether Part 2 of the Eighth Schedule of the Kajiado Finance Act, 2023 is discriminatory to older members of the society and small-scale land owners; Whether 2<sup>nd</sup> Respondent seeks to convert freehold property to leasehold property by levying rates on freehold land; Whether levying of rates amounts to limitation of the right to property; and Whether the court should grant the orders sought.
40. On Whether the Petition meets the threshold of a constitutional petition, it was submitted that the Amended Petition does not meet the threshold of a constitutional petition as set out in the case of



Anarita Karimi Njeru v Republic (1976-1980) KLR 1272 with approval by Mumo Matemo v Trusted Society of Human Rights Alliance [2013] eKLR. This is because the Petitioners alleged contravention of fundamental rights and freedoms under Articles 10, 27, 40 and 57 of *the Constitution*, but did not demonstrate with a reasonable degree of precision, the manner in which their rights under the provisions of *the Constitution* had been threatened or violated by the 2<sup>nd</sup> Respondent. From the Amended Petition, the Petitioners were dissatisfied with issues of rateability of properties as per Section 14 of the Kajiado County Finance Act and Part 2 of the Eighth Schedule of the impugned Act which responsibility belonged to the Valuation Court established under the *Valuation for Rating Act*. Reference was made to Benard Murage v Fine serve Africa Limited & 3 others [2015] eKLR where the Court held: “Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first.”

41. On whether the 2<sup>nd</sup> Respondent has a role and/or mandate to levy rates, it was submitted that the 2<sup>nd</sup> Respondent was empowered under Article 209(3) of *the Constitution* to impose property rates without requiring authorization from Parliament. Additionally, the payment of rates is governed and regulated by the *Rating Act* and the *Valuation for Rating Act*. The *Rating Act* empowers a rating authority, which includes a County Government, to come up with different forms of rating for purposes of levying rates. It is on the strength of these Constitutional provisions and the *Rating Act* that the 1<sup>st</sup> Respondent enacted the Kajiado County *Rating Act*, 2016 to provide for the imposition of rates on land and buildings within Kajiado County, and for connected purposes. Sections 4, 5 and 6 of the Kajiado County *Rating Act* provides for the forms of rating, the imposition of rates and the amount of rate payable respectively. The Kajiado County *Rating Act* further provides that the amount of rate payable shall be determined each year by the county assembly through the County Finance Bill. The Finance Act was therefore enacted within the legal framework that allows counties to impose and collect rates as was held in County Government of Kwale v Kenya Airports Authority [2017] eKLR and Base Titanium Limited vs. The County Government of Mombasa & another [2017] eKLR.
42. On whether the Kajiado County Finance Act, 2023 was subjected to public participation, it was submitted that the Finance Act was passed following adequate public participation process as per Article 10(2) and 174 of *the Constitution* and as held by Courts on what constitutes satisfactory public participation with reference to Mui Coal Basin Local Community & 15 Others vs Permanent Secretary Ministry of Energy and 17 Others [2015] eKLR and Nairobi Metropolitan PSV Saccos Union Limited & 25 others vs. County of Nairobi Government & 3 others [2014] eKLR. In the present case on or about 6<sup>th</sup> June 2023, the 2<sup>nd</sup> Respondent conducted public participation across the county in relation to the preparation of the Kajiado County Finance Bill 2023/2024. Therefore, Kajiado Finance Act 2023 was passed after going through a rigorous public participation process. Counsel noted that the Petitioners acknowledged that some members including some Petitioners were involved in the public participation which meant that a reasonable opportunity had been availed to the public as held in Legal Advice Centre & 2 others v County Government of Mombasa & 4 others [2018] KECA 381 (KLR), Independent Electoral and Boundaries Commission (IEBC) V National Super Alliance (NASA) Kenya & 6 others [2017] eKLR, Sang & 5 others v Board of Management Kenana Secondary School & 2 others [2024] KEELC 4285 (KLR) and Cabinet Secretary for the National Treasury and Planning & 4 others v Okoiti & 52 others; Bhatia (Amicus Curiae) [2024] KESC 63 (KLR). As such, Public participation involved was sufficient and proper according to the laid out principles.
43. On whether part 2 of the Eighth Schedule of the Kajiado Finance Act is discriminatory to older members of the society and small-scale land owners, it was submitted that the impugned part, the court will note that the rates have been applied differently for various areas, sizes and use of the land within the county, taking into consideration views received during public participation. It was also submitted



that the law does not prohibit the payment of rates by the older members of the society and to allege that the rates are being imposed on older members of the society, the Petitioners imply that only older members of the society own land within Kajiado County, which was not the case.

44. On whether 2<sup>nd</sup> Respondent seeks to convert freehold property to leasehold property by levying rates on freehold land, Counsel submitted that all provisions relied on by the Petitioners did not oust payment of rates by freehold land property owners. And this did not mean that land held in freehold tenure was being converted to leasehold.
45. On whether levying of rates amounts to limitation of the right to property, counsel submitted that levying of rates does not amount to limitation of the right to property, but rather is intended to fund public services and infrastructure, which benefits property owners and the community. Courts have upheld that the imposition of property rates is a necessary and proportionate limitation on the right to property. Therefore, the Petitioners had failed to establish any constitutional violations and the Amended Petition was without merit and should be dismissed with costs.

### **Analysis and Determination**

46. I have taken full consideration of the issues raised in the Amended Petition and the responses thereto. I have fully considered the detailed written and oral submissions and the authorities cited by Learned Counsel appearing for all the parties herein. I find that the issues which arise for determination are;
- i. Whether the Amended Petition meets the threshold of a constitutional petition.
  - ii. Whether there was sufficient public participation before the enactment of the Kajiado Finance Act 2023.
  - iii. Whether the imposition of land rates on freehold, residential lands violates the provisions of Article 24, 40, 57, 60, 64 of *the Constitution* as read with Section 5 of the *Land Act*.
  - iv. Whether the provisions of Section 14(8) as read together with Part 2 of the eighth Schedule of the Kajiado County Finance Act 2023 are discriminative and should be declared unconstitutional.
  - v. What orders should be granted.
  - vi. Who should bear costs of the Petition?
47. I therefore proceeded to consider and examine each of the issues arising and observed as here under;

### **Whether the Amended Petition meets the threshold of a Constitutional Petition.**

48. I have gone through the submissions of the 2<sup>nd</sup> Respondent whose position is that these Amended Petition does not meet the threshold of a Constitutional Petition as set out in the case of Anarita Karimi Njeru Vs. Republic (1976-1980) KLR 1272 cited with approval in Mumo Matemu Vs. Trusted Society of Human Rights (2013) eKLR. It is submitted that the Petitioners have failed to demonstrate with a reasonable degree of precision on the manner in which their rights have been threatened or violated by the 2<sup>nd</sup> Respondent.

My view is that this Petition has met the threshold of a Constitutional Petition. The Petitioners' claim is that the said legislation was enacted without public participation.

49. It is also my view that the Petitioners have a duty to discharge the burden of proof of the allegations raised.



In the case of *Matendechere Vs. Sunstar Hotel Nairobi* (2021) KEHC 192 (KLR) the court held as follows:

“32. Reinforcing that the legal burden of proof in Constitutional Petition is on the Petitioners, the Supreme Court of Kenya in *Communications Commission of Kenya & 5 Others Vs. Royal Media Services Ltd & 5 Others* eKLR (2014) stated as follows:-

“Although Article 22 (1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru Vs Republic* (1979) KLR 154; the necessity of a link between the aggrieved party the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role as a foundation of conviction and good faith, in engaging *the Constitution* at process of dispute settlement.”

50. I am satisfied that the Petitioners herein have pointed out the manner in which their rights are likely to be infringed by the impugned legislation.

#### **Whether there was sufficient public participation before the enactment of the Kajiado County Finance Act, 2023.**

51. One of the Petitioner’s ground for challenging Section 14(8) as read with Part II of the Eighth schedule of the Kajiado County Finance Act 2023 is that the enactment thereof failed to meet the constitutional requirement of public participation. Public participation is premised on the principle that those who are affected by a decision have a right to be involved in the decision making process. Central to this is the acknowledgement that institutions with decision making powers must involve those who are likely to be affected by such decision.

52. The significance of public participation is amplified under Article 10 of *the constitution* which provides as follows;

“The national values and Principles of Governance that bind all state organs, state officers, public officers and all persons whenever any of them:

- a) applies or interprets *the Constitution*;
- b) enacts, applies or interprets any law; or c) makes or implements public policy decisions. *The Constitution* of Kenya under Article 10(2), highlights the following National Values and Principles of Governance as follows: a. Patriotism, National Unity, Sharing and Devolution of power, The rule of law, Democracy, Participation of the people; b. Human dignity, Equity, Social justice, Inclusiveness, Equality, Human rights, Non-discrimination, Protection of the marginalized;
- c. Good governance, Integrity, Transparency, Accountability; and
- d. Sustainable development.”

53. It is the 1<sup>st</sup> Respondent’s position that as per Article 196 (1) of *the Constitution* and Standing Order No.12 (3) of the County Assembly Orders, the 1<sup>st</sup> Respondent through its sectoral committee on



Finance, Economic Planning & ICT vide The Daily Nation and the Standard Newspapers both published on 21<sup>st</sup> August 2023 advertised for public participation in all sub-counties in Kajiado inviting views and written memoranda from members of the public.

54. The Petitioners on the other hand contend that the impugned legislation was enacted without public participation hence unconstitutional, unreasonable, unfair and discrimmative.

The Respondent do not dispute that there was a constitutional obligation on the part of the 1<sup>st</sup> Respondent to facilitate public participation in the process of enactment of the legislation.

55. In the case of *Malindi Law Society & 12 Others Vs. AG & 2 Others (2021) KEELC 474 (KLR)* the three judge bench observed thus;

“The question of public participation and the circumstances in which it will be deemed sufficient has been the subject of various judicial determinations. In the case of *Doctors for Life International Assembly and Others (CCT 12/05) (2006) ZACC 11:2006 (12) BCLR 1399 CC*, the Constitutional Court of South Africa in examining what amounts to reasonable public participation stated as follows:

“The nature and the degree of public participation that is reasonable in a given case will depend on a number of factors. These include the nature and the importance of the legislation and the intensity of its impact on the public. The more discreet and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say. In addition, in evaluating the reasonableness of the conduct of the provincial legislatures, the court will have regard to what the legislatures themselves considered to be appropriate in fulfilling the obligation to facilitate public participation in the light of the content, importance and urgency of the legislation.”

56. Similarly, in *Robert N Gakuru & Others Vs. Governor of Kiambu County & 3 Others (2014) eKLR Odunga J* observed thus;

“In my view, public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply “tweet” messages as it were and leave it to those who are to scavenge for it.”

57. Speaking to the same issue, in *Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others Vs. County of Nairobi Government & 3 Others*, Petition NO. 486 of 2013, the Court observed as follows:

“.....It does not matter how the public participation was effected. What is needed, in my view, is that the public was accorded some reasonable level of participation and I must therefore agree with the sentiments of Sachs J in *Minister of Health Vs. New Clicks South Africa (PTY) Ltd (supra)* where he expressed himself as follows:

“The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite evaluation. What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know



about the issue and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.”

58. The Court of Appeal in *National Assembly & Another Vs. Okioti & 55 Others* (2024)KECA 876 (KLR) observed thus;

“As was held by this court in *Independent Electoral and Boundaries Commission Vs. National Super Alliance (NASA) Kenya & 6 Others* (2017) eKLR; the values espoused in article 10(2) are neither aspirational nor progressive; they are immediate, enforceable and justiciable. It is not by accident that transparency and accountability are among the core values listed in article 10. It is well-established that exercise of public power, including legislative power, must comply with the principle of legality as an incident of the rule of law. Public bodies including parliament have a constitutional duty to infuse public participation with transparency and accountability not as a matter of choice but as a constitutional command every time they subject a Bill to public participation.”

Accountability, one of the principles in article 10(2) means that officials must explain the way in which they have used their power. Transparency, also a requirement in the exercise of public power means openness, which is the opposite of secrecy. Therefore, the constitutional requirement for transparency and accountability imposes an obligation upon State organs to inform the general public and stakeholders why their views were not taken into account and why the views of some of the stakeholders were preferred over theirs. Such an approach will not only enhance accountability in the decision making processes by State organs but also it will enhance public confidence in the processes and in our participatory democracy. To suggest otherwise would be a serious affront to article 10(2)”.

59. I agree with the Petitioners’ submission that the Respondents have failed to demonstrate that they conducted sufficient public participation.

The Petitioners also relied on the recording of a clip which quoted the 4<sup>th</sup> Respondent who is a member of the 1<sup>st</sup> Respondent, stating that the offensive provision was sneaked into the Finance Bill by the County Executive Committee Finance, of the 2<sup>nd</sup> Respondent. This assertion has not been rebutted. It further confirms that the impugned provisions were not subjected to sufficient public participation. The comments by the 4<sup>th</sup> Respondent who is a member of County Assembly for Okeri Ward, cannot be wished away as political statements meant to cool down temperatures. The same were made voluntarily and without any coercion.

60. I have also gone through the report on public participation dated 6<sup>th</sup> June 2023. The same is not signed. The 2<sup>nd</sup> Respondent has attached images of the attendees. It is not clear who the attendees are. There is a screenshot of a WhatsApp group inviting residents to public participation on the 13<sup>th</sup> September 2023. The same is unverifiable.

61. Having stated so, I find that the rates imposed on free hold properties was unprocedurally done. I also agree with the Petitioners’ submission that the said rates as proposed did not conform to the *Valuation for Rating Act*, (Cap 266 Laws of Kenya) and the *Rating Act* Cap (Cap 267 Laws of Kenya) (both repealed) which set out an elaborate mechanism to inform any proposed rates. It is not clear how the rates as they are proposed were arrived at. Section 6 of the Kajiado County *Rating Act*, 2016 provides that the rates payable are determined by the County Finance Bill of each year. Notices ought to have been sent to the rateable owners to get involved in the valuation process.

62. As stated earlier the rates as imposed were arrived at without public participation.



In *Eastern Produce Kenya Ltd & 16 Others Vs. County Government of Nandi* (2021) KEELC 4173 (KLR) the court stated thus;

“County Governments have powers to raise rates but the procedure for the exercise of that power is provided in national legislation that is to say, the valuation of *Rating Act* (Cap 266) and the *Rating Act* (Cap 261) both of which are national laws.

The valuation of *Rating Act* (Cap 266) specifically gives the County power to levy rates and sets out elaborate procedure for levying of rates as follows; valuation Rolls to be prepared at least every 5 years; values to be entered in the Roll; Power to amend valuation Roll and to cause supplementary valuation Roll to be prepared; valuers to have power of entry and inspection and to obtain information contents by draft valuation roll; Basis of Valuation; Deposit of draft Valuation and supplementary Valuation Roll, which is open for public inspection; taking copies or extracts, publication by notice to call for objections, sending every rate payer within 21 days after the laying before a meeting of local authority (County Government); objections to draft valuation and supplementary valuation rolls; valuation court to hear objections; and Appeals to higher courts.....”

63. It is clear that the 2<sup>nd</sup> Respondent failed to demonstrate that the above steps had been taken before arriving at the said figures.

Whether the Imposition of land rates on free hold, residential lands violates the provisions of Article 24, 40, 57,60 ,64 as read with Section 2 of the *Land Act*.

This issue is tied to the previous issue.

64. It is the Petitioners’ case that he impugned provision imposes obligatory changes on proprietors of free hold land, granting the Respondents sweeping authority to recover these sums through mechanisms that may ultimately strip individuals of their land. That such measures impose an undeniable restriction on the rights of freehold land owners. That the restriction is both disproportionate and unjust.

The Respondents on the other hand state that free hold properties are not among those exempted from rateable properties.

In the case of *Kandie Vs. Alassare BA & Another* (2017) KESC 13 (KLR) the Supreme Court of Kenya stated thus;

“77. After carefully considering article 24 of *the Constitution* and the above case, we find that the test to be applied in order to determine whether a right can be limited under article 24 of *the Constitution*, is the ‘reasonable and justifiable test’, that must not be conducted mechanically. Instead the Court must, on a case-by case basis, the limitation of the right is reasonable and justifiable in an open and democratic society. The insertion of the word ‘including’ in article 24 also indicates that the factors to consider while conducting the balancing act are not exhaustive but a guide as to the main factors to be taken into account in that consideration.

78. Before applying the ‘reasonable and justifiable’ test, therefore, a court must first determine whether a right has been limited under a particular law and in this this case,”



65. I agree with the Petitioners' submission that their rights have been limited as a direct consequence of the enactment of the impugned law. I find that the imposition of said land rates violates the Constitution to the extent that the Petitioners' were not involved in the process on how the figures were arrived at.

66. It is the Petitioners' case that the said provision requires payment of certain rates of people owning equal or exceeding 0.05ha in Kajiado County. That they discriminate against small scale land owners. That the same goes contrary to Section 27 (1) of the Constitution. That the same is not reasonable and justifiable in an open and democratic society. The Respondents on the other hand contend that all land owners of various categories are covered. They further contend that not tax regime exempts people on account of age.

67. In the case of *RM Vs. Attorney General* (2008) 1KLR 574 the court stated thus;

“.....the principle of equality and non-discrimination does not mean that all distinctions between people are illegal. Distinctions are legitimate and hence lawful if they satisfy the following (1) pursue a legitimate aim such as affirmative action to deal with irregularities and (2) are reasonable in light of their legitimate aim.....”

Similarly, in the case of *Kenya Bankers Association Vs. Kenya Revenue Authority* (2018) eKLR reference was made to *R Vs. Inland Revenue Commissioners* *ex parte National Federation of Self Employed and Small Business Ltd* (1981) UKHL 2 at page 22 where the court was;

“.....persuaded that the modern case law recognises a legal duty owed by the Revenue to the general body of tax payers to treat tax payers fairly; to use their discretion powers so that subject to the requirements of good management; discrimination between one group of tax payers and another does not arise; to ensure that there are no favourites and no sacrificial victims. The duty has to consider as one of several arising within complex. Comprised in the management of tax, every part of which it is their duty, if they can to collect.”

Guided by the authorities, I do not agree that the said provision discriminate against the 6<sup>th</sup>, 7<sup>th</sup>, petitioners as everyone is liable to pay tax, irrespective of age.

68. Arising from evaluation of the pleadings and the respective parties' submissions, the law and authorities cited, the determination of the issues and the conclusion arrived in respect of each issue, I hereby issue the following orders;

- a. That a declaration is hereby issued that the Respondents' breached the Provisions of Article 10,196 (1) (b) and 201 (b) of the Constitution for failing to afford the public adequate opportunity to participate in the legislative process leading to the enactment of Section 14(8) as read with Part 2 of the Eighth Schedule of Kajiado County Finance Act 2023, hence unconstitutional, null and void.
- b. That a declaration is hereby issued that the imposition of land rates on freehold residential lands violates the provisions of Article 24, 40,57,60 and 64 of the Constitution as read with Section 2 and 5 of the Land Act, hence unconstitutional, null and void.
- c. As the issues raised were issues of great public interest, I make no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**L. KOMINGOI**



**JUDGE.**

In The Presence Of:

Ms. S. Wambui for the Petitioners.

N/A for the 1<sup>st</sup> Respondent.

Ms. Yala for Mr. Nyaosi for the 2<sup>nd</sup> Respondent.

N/A for the 3<sup>rd</sup> Respondent.

N/A for the 4<sup>th</sup> Respondent.

Peter – Court Assistant.

