

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELCLEPPET NO. E001 OF 2025

IN THE MATTER OF: ARTICLES 1, 2, 3, 4(2), 10, 19, 20, 21, 22, 23, 24,
162(2)(B) & 260 OF THE COSNTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ARTICLES 10, 20, 21, 23, 27, 35, 39, 40, 43, 47,
60, 174, 185, 186(1), 189, 190, 191, 196, 201, 209(3) AND (5),210(1),
232 AND 260 OF THE CONSTITUTION OF KENYA 2010 AND THE
6TH SCHEDULE OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE MATTER OF RATING ACT CAP 267 LAWS OF
KENYA (NOW REPEALED)

AND

IN THE MATTER OF: THE VALUATION FOR RATING ACT, CAP 266 LAWS
OF KENYA (NOW REPEALED)

AND

IN THE MATTER OF: THE NATIONAL RATING ACT, NO.15 OF 2024
LAWS
OF KENYA

AND

IN THE MATTER OF: PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF
2012

AND

IN THE MATTER OF: THE COUNTY GOVERNMENTS ACT NO. 17 OF
2012

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF
2015

AND

IN THE MATTER OF: THE ACCESS TO INFORMATION ACT NO. 31 OF
2016

AND

IN THE MATTER OF: THE URBAN AREAS AND CITIES ACT (NO.13 OF
2011)

AND

IN THE MATTER OF: THE KISUMU COUNTY PUBLIC PARTICIPATION
ACT, 2015

AND

IN THE MATTER OF: THE APPLICATION FOR JUDICIAL REVIEW ORDERS
OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF: THE COUNTY GOVERNMENT OF KISUMU

AND

IN THE MATTER OF: THE DRAFT VALUATION ROLL, 2017

AND

IN THE MATTER OF: THE PUBLIC INTEREST

BETWEEN

LAKE REGION TRADERS ASSOCIATION.....PETITIONER

(suing through its officials; -

1. JAYESH T. PATEL
 2. ABDUL RAMZA DHANJI
 3. VINOD RAMJI PATEL and
 4. HARSH I. PATEL
- (On behalf of its members and in the public interest)

VERSUS

COUNTY GOVERNMENT OF KISUMU.....RESPONDENT

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RULING

The substantive relief sought in the Notice of Motion application dated 25th March 2025 is for a temporary conservatory order to issue barring the Respondent, its agents and servants and those obtaining authority under it jointly and severally from implementing the Draft Valuation Roll 2017 and Gazette Notice No. 15453 published by the Respondent on the 10th November 2023 in Gazette Vo. CXXV No. 240 together with all its consequential decisions and notices pending the hearing and determination of the substantive petition. The application also seeks for an order that costs of the application be borne by the Respondent.

The application is based on the grounds that the Respondent has issued to property owners a batch of demand notices with various dates between 1st January 2025 and 15th March 2025 demanding for payment of rates purportedly due on 1st January 2025 based on the disputed Draft Valuation Roll 2017.

That the Draft Valuation Roll 2017 was the subject of previous litigation namely; Republic vs County Government of Kisumu, Exparte

John Michael Obure Obure (2022) eKLR in which orders were given on 28th January 2022 in the form of certiorari quashing the Gazette Notice, an order of prohibition prohibiting the Respondent from implementing the Draft Valuation Roll 2017 and an order of Mandamus compelling the Respondent to undertake the process of preparation of the Draft valuation Roll in strict adherence to the provisions of Article 201 (a) of the Constitution of Kenya, Sections 125 (2) and 207 of the Public Finance Management Act, part VIII and Section 115 of the County Governments Act and Sections 4 and 8 sub-section (1) and (6) and paragraph 6, 7 and 13 of the First Schedule to the Kisumu County Public Participation Act, 2015.

That in utter contempt of the court and disregard of the Constitution and the other laws, the County Government of Kisumu has sneaked back the very Draft Valuation Roll 2017 that the court prohibited. That while it is proper, legal and constitutionally permissible for the County Government of Kisumu to rely on existing national legislation to impose rates, the Constitution envisaged that the use of the existing national legislation would not be infinite but for only a period of time necessary for the County government to pass its own County Legislation on the issue.

That the Environment & Land Court at Kisumu in ELC EPJR/E002/2023 John Obure Obure vs County Government of Kisumu issued an order of suspension of Gazette Notice No. 15453 published on 10th November 2023 in the Kenya Gazette Vo. CXXV. No. 240.

That for equality and fairness in application of the law, it is just and fit that the suspension of the Gazette Notice No. 15453 published on 10th November 2023 applies to the Petitioners herein.

The Respondent's reply as contained in the Replying Affidavit sworn by Fred Misigo on 13th October, 2025 was that the application is misconceived, bad in law and an abuse of the process of the court. That the application seeks to challenge the exercise of statutory and constitutional functions by the County Government of Kisumu.

That the Gazette Notice No. 15453 published on 10th November 2023 was a distinct, fresh and regularized process and not a continuation of the process that was quashed in Republic vs County Government of Kisumu ex parte John Obure Obure (2022) eKLR which concerned a previous Gazette Notice No. 11063 of 24th November 2020 and a valuation process limited to certain specific properties.

That the current process was commenced after public participation had been adequately and meaningfully conducted through multiple fora as required under Section 115 and 87 of the County Government Act and the Kisumu County Public Participation Act 2015.

That the County Government did not act in contempt of court. That the Valuation Roll forms the foundation for equitable property rating ensuring that property owners contribute fairly to the cost of services consistent with Article 209 (3) of the Constitution and the Public Finance Management Act 2012.

That the orders sought would paralyze the Respondent's ability to perform its Constitutional duty to generate revenue, meet its

obligations and provide service to the public contrary to the principle of public interest and devolution.

That it is in the interest of justice that the Respondent be allowed to implement the Valuation Roll and to continue providing essential services while the substantive issues are heard and determined.

The application was heard of by way of written submissions pursuant to directions given on 23/9/2025.

It was submitted on behalf of the Petitioners that courts may grant conservatory relief where an applicant demonstrates a prima facie or arguable case; a real and serious risk of prejudice or irreparable harm and that interim relief is in the public interest and proportionate to the rights in question. Counsel relied on the case of *Peter Munya & 3 others vs County Government of Tharaka Nithi & 2 others (2022) eKLR* among other authorities.

Counsel submitted further that the Petitioner demonstrates a strong prima facie case because public participation in the Draft Valuation Roll 2017 was illusory and that demand notices were issued before objections could be heard.

That the National Rating Act 2024 was not operational in 2023.

That Gazette Notice No. 15453 was quashed in ELCEPJR/E002/2023 (John Obure Obure vs County Government of Kisumu).

That the valuation increases were unexplained and that without relief the property owners face irreversible financial harm. That public interest favours lawful, transparent and challengeable valuations.

Counsel urged the court to allow the application with costs to the Respondent.

I have considered the application, the Replying Affidavit and the submissions made.

It is clear that the issue of Valuation Roll for the Respondent has been a subject of previous litigation. That in case No. Republic vs County Government of Kisumu Exparte John Michael Obure Obure [2022] eKLR the applicant therein challenged the Draft Valuation Roll 2017 contained in Gazette No. 11063 published 24th December 2020. That the court decided the matter in favour of the applicants and made orders of certiorari quashing the Gazette Notice, an order of prohibition prohibiting the Respondent from implementing the Draft Valuation Roll 2017 and an order of Mandamus compelling the Respondent to undertake the process of preparation of the Draft valuation Roll in strict adherence to the provisions of Article 201 (a) of the Constitution of Kenya, Sections 125 (2) and 207 of the Public Finance Management Act, part VIII and Section 115 of the County Governments Act and Sections 4 and 8 sub-section (1) and (6) and paragraph 6, 7 and 13 of the First Schedule to the Kisumu County Public Participation Act, 2015.

In case No. ELCEPJR/E002/2023 (John Obure Obure vs County Government of Kisumu), the County Valuation Roll 2017 as published in Gazette notice No. 15453 on 10/11/2023 in Kenya Gazette vol. CXXV NO. 240 was the subject matter and the court allowed the Judicial Review application granting orders of Certiorari and

Prohibition and directed the Respondent to comply with the court order in the earlier case.

The subject of the present case is the same Gazette Notice No. 15453 published on the 10th November 2023. No evidence has been exhibited of compliance with the earlier court orders.

I find that given the orders given in the previous litigation and and for equality and consistency, it is just that the conservatory order prayed for be granted pending hearing and determination of the petition as the Respondent complies with the court orders.

The application is hereby allowed as follows:

- i. a temporary conservatory order is hereby issued barring the Respondent, its agents and servants and those obtaining authority under it jointly and severally from implementing the Draft Valuation Roll 2017 and Gazette Notice No. 15453 published by the Respondent on the 10th November 2023 in Gazette Vo. CXXV No. 240 pending the hearing and determination of the substantive petition.
- ii. Each party to bear own costs of the application.

Orders accordingly.

Ruling dated and signed at Kisumu, delivered virtually this 20th day of January 2026.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen -Court Assistant.

Mugasa h/b for Nyamori for the Petitioner/applicant.

No appearance for the Respondent.