

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELCL PETITION NO. E003 OF 2025

IN THE MATTER OF: DEFENCE OF THE CONSTITUTION UNDER
ARTICLES 3 AND 22 OF THE CONSTITUTION

AND

IN THE MATTER OF: CONTRAVENTION OF ARTICLES 2, 10, 19, 29,
21, 23, 27, 40, 60, 64, 66, 162, (2b), 174, 184, 185, 186, 190,
196, 201, 210 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 FUNDAMENTLA FREEDOMS) PRACTICE AND
PROCEDURE RULES, 2013

AND

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

AND

IN THE MATTER OF: SECTIONS 3, 6, 9, 10, 11, 12, 16, 19 AND 30
OF THE VALUATION FOR RATING ACT, CAP 266 LAWS OF KENYA
(REPEALED)

AND

IN THE MATTER OF: SECTIONS 3, 4, 5, 7, 11, 15, 17 AND 19 OF
THE RATING ACT, CAP 267 LAWS OF KENYA (REPEALED)

AND

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

AND

IN THE MATTER OF: THE KAJIADO COUNTY RATING ACT, 2016

BETWEEN

SHERIA MTAANI NA SHADRACK WAMBUI.....1ST

PETITIONER_

LUCY WAMBUI GITHINJI.....2ND

PETITIONER

AND

KAJIADO COUNTY ASSEMBLY.....1ST

RESPONDENT

COUNTY GOVERNMENT OF KAJIADO.....2ND

RESPONDENT

JUDGMENT

Introduction.

1. The Petitioners' complaint in this case as aptly summarized in their written submissions, is against what they term as patently unconstitutional, arbitrary and flawed imposition of escalated land rent and newly introduced land rent and newly introduced land rates on allotted properties within Kajiado County by the Respondents, the Kajiado County Assembly and the County Government of Kajiado. The Petitioners assert that by a notice

stamped 1st January 2025, the Respondents through the Director Revenue, Land Rent and Rates unit, published revised schedules of rents and rates applicable across multiple constituencies in Kajiado County. Subsequently, and by a further notice dated 28th February 2025, the Respondents declared that all plots with arrears of three (3) consecutive years would be earmarked for repossession pursuant to the provisions of **Section 14(7) of the Kajiado County Finance Act of 2023**.

2. The Petitioners' case is that the above cited actions by the Respondents are unconstitutional, invalid and substantively unfair for the reason that they lack lawful valuation basis contrary to the mandatory requirements under the repealed Rating Act (cap 267) and the Valuation for Rating Act (cap 266) and even under the new **National Rating Act, 2024**. It is further argued that the Respondents exceeded their statutory authority by purporting to extend repossession powers beyond rent arrears to all forms of arrears. The Petitioners contend that the entire process was in any event undertaken without meaningful public participation contrary to the provisions of **Articles 10 and 196 of the Constitution of Kenya, 2010**.

3. The Petitioners assert that the measures undertaken by the Respondents disproportionately affect vulnerable groups including elderly allottees in breach of **Articles 27, 40, 47 and 57 of the Constitution**. The application of **Section 14(7) of the Finance Act** retrospectively, according to the Petitioners, offends basic principles of legality and fairness.

4. The Petitioners vide their petition dated 10th March 2025, pray for various orders as follows;

(a) A declaration be and is hereby issued that **part 2 of the 8th schedule of the Kajiado County Finance Act, 2023** requiring the payment of land rates on urban trading centers, rural trading centers and adjudication section areas within the Respondents' jurisdiction is unconstitutional null and void as it is in contravention of **Articles 10, 40(1), 190(2) and 210(1) of the Constitution, the Rating Act (repealed) and part IV of the valuation for Rating Act (repealed)** as read with the **National Rating Act, No. 15 of 2024**.

(b) A declaration be and is hereby issued that the variation of the land rent payable from the one prescribed in the letter

of allotment is unconstitutional, null and void for being in contravention of Articles 10, 40(1), 190(2), and 210 (1) of the Constitution, the Rating Act (repealed) and part II of the Valuation for Rating Act (repealed) read with the National Rating Act, Number 15 of 2024.

(c) That this Honourable Court be pleased to grant a permanent injunction restraining the Respondents from levying the varied land rates for the financial year 2023/2024.

(d) A judicial review order of certiorari be and is hereby issued to bring before this court for quashing the imposition of rates/decision as communicated through the letter from the director revenue, land rent and rates unit stamped, 1st January 2025, or any prior or subsequent correspondence listing and imposing the rent and rates payable by each township/trading Centre.

(e) Costs of this petition to be awarded to the Petitioners.

(f) Any other relief the court deems fit and just to grant.

Responses by the Respondents

(i) **1st Respondent's Replying Affidavit.**

5. The 1st Respondent's response to the petition was by way of a replying affidavit sworn by one Josiah Leboo Saisa Yiaruo, who describes himself as a duly authorized officer. He or she does not explain his position with the 1st Respondent or the basis of his authority. He deposes the affidavit on behalf of the 1st Respondent.
6. The deponent avers that the Petitioners have fundamentally mischaracterized the nature, scope and legality of the Kajiado County Finance Act, 2023 as well as the Rating Process undertaken by the Respondents which he insists were undertaken in accordance with the law. He asserts that the Kajiado County Finance Act was subjected to step by step legislative process as provided under the County Governments Act, the Constitution of Kenya and the Standing Orders of the County Assembly of Kajiado.
7. The deponent affirms that public participation was indeed undertaken in accordance with the provisions of Article 96 of the Constitution. Key stakeholder and experts were invited to give their views on the bill and the same were duly considered and

necessary amendments thereto effected before the enactment of the Finance Act. 2023.

8. The deponent further insists that the imposition of rates and rent on land within the jurisdiction of the County Government of Kajiado is a lawful exercise of devolved authority as envisioned under Articles 185 and 209 of the Constitution of Kenya. The County Government is constitutionally and statutorily mandated to impose property rates, land rent and other charges as a means of raising revenue to enable it provide services to residents within its jurisdiction.

9. The 1st Respondent denies that the Finance Act, 2023 is being applied retrospectively. The assertion that the repossession is threatened for arrears predating the Act is therefore misplaced. In any event, repossession according to the deponent of the replying affidavit is purely administrative and applies only upon due process in strict compliance with **Section 14(7) of the Kajiado County Finance Act, 2023.**

10. The 1st Respondent through the deponent further points out that the Petitioners are relying on repealed law; the Rating Act and the Valuation for Rating Act both laws having been repealed

by the National Rating Act No. 15 of 2024. The 1st Respondent insists that the Petitioners undertook appropriate preparatory steps including stakeholders' engagement fora and placing public notices in various local media as well as holding community barazas prior to the enactment and operationalization of the impugned provisions.

11. It is further alleged that preliminary valuation assessments were carried out using publicly available data and geographical information system mapping tools to determine rateable values with a phased approach to full implementation of the National Rating Act underway. Though the valuation roll is yet to be developed, the 1st Respondent avers that Section 36 of the National Rating Act provides transitional provisions that permit counties to impose rates based on interim valuation mechanisms pending full gazettelement.

12. In response to the claim of lack of public participation, the 1st Respondent states that the same is not supported by any evidence. The legislative process included adequate notices, publication of the Bill and budget hearings conducted under the

provisions of the Public Finance Management Act and the County Governments Act.

13. The deponent further states that the notice issued on 28th February 2025 extended a specific invitation to all plot owners for a general meeting with the express purpose of discussing issues pertaining to the newly imposed land rates and rent.
14. Finally, the deponent avers that the adjustment of the previous rates from Kshs. 2000/- to Kshs. 2,500/- generally represents a slight increase which is measured, reasonable and necessary to sustain and improve the quality of essential services that directly benefit the property owners in Kajiado County. The variation according to the 1st Respondent is not arbitrary and is a calculated measure to ensure that the financial burden of supporting local infrastructure, security, sanitation and other vital services provided by the County Government is fairly distributed amongst those who directly benefit from them, thus upholding the principle of equitable contribution.
15. The 1st Respondent opines that the prayers sought by the Petitioners are grossly disproportionate and are likely to cripple the county's financial sustainability. It urges the court not to

interfere with legislative functions of the devolved unit unless there is clear and manifest unconstitutionality, outright procedural and administrative impropriety, which have not been established in this case. It asserts that the petition lacks merit, is based on misapprehensions of law and facts and amounts to an abuse of the court process.

(ii) The 2nd Respondent's response to the petition.

16. The 2nd Respondent's response to the petition was in the form of a replying affidavit sworn by one ALAIS KISOTA, the County Executive Committee Member in charge of Finance of the County Government of Kajiado, sworn on 25th July 2025. The deponent asserts that the petition is devoid of merits and ought to be dismissed with costs.

17. The deponent further avers that the 2nd Respondent enacted the Kajiado County Rating Act, 2016 on the strengths of the provisions of the Rating Act to provide for the imposition of rates on land and buildings within Kajiado County and for connected purposes. The said county statute provides for various forms of rating, imposition of rates on all rateable properties in the county and the amount of rates payable respectively.

18. The deponent particularly notes that the County Act under Section 6(1) thereof provides that the amount of rates payable shall be determined each year by the County Assembly through the County Finance Bill, whereas Section 8(1) provides that the rates becomes due on the first day of January or such other prescribed date of each year. The deponent affirms that that it is on the strength of Section 6(1) of the County Rating Act and the mandate vested by the Rating Act (now repealed) that the Kajiado County Finance Act, 2023 and its schedules were enacted, passed and gazetted into law from with effect from the 14th November 2023, to provide for the revenue raising measures of the 2nd Respondent.

19. In view of the foregoing, the 2nd Respondent states that the allegation by the Petitioners that it arbitrarily and unprocedurally escalated land rent on allotted land and imposed additional land rates without justification, public participation or adherence to statutory valuation mechanisms is false.

20. Just like the 1st Respondent, the 2nd Respondent insists that the increment of Kshs. 500/- on the land rent payable is not sharp or arbitrary as alleged by the Petitioners; rather, it is calculated

based on the market value of the land which keeps appreciating and is an essential element of the County's land management system. The preliminary valuation assessment was done using publicly available data and GIS mapping tools to determine rateable values with a phased approach to full implementation of the National Rating Act underway.

21. The deponents opines that while the valuation roll under the new Act is in the process of development, Section 59 of the National Rating Act provides transitional provisions that permit counties to impose rates on land based on interim valuation mechanisms pending gazettelement. He asserts that the 1st Respondent has the mandate of legislating on the calculation of rent and rates payable with regard to the revenue it ought to raise and whatever fee is reasonable, convenient or proper to be levied and the court therefore cannot be called upon to direct the Respondents on how to exercise its duty of levying rent and rates.

22. The 2nd Respondent denies the allegations of retrospective application of the Finance Act as regards repossession of plots with arrears. It further asserts that there is no imminent danger or threat of any repossession as it is only in the process of

earmarking the plots whose owners have been in default. In any case, it is argued that repossession is an individual exercise between the 2nd Respondent and the individual owner, which would be precipitated by individual notices to be issued to the defaulters pursuant to Section 14 of the Kajiado Rating Act. The impugned Public Notice issued was a general precautionary tool to all affected land owners and a general reminder to ensure payment of all accrued rent to avert any adverse action.

23. Responding to allegations of lack of public participation, the deponent attest that the Kajiado County Finance Act, 2023 was passed after a rigorous public participation exercise which had been preceded by notices in the local dailies and involvement of residents in meetings to seek their views. County residents were also invited to present memoranda and views at scheduled consultative meetings. The views were duly considered before the enactment of the Act.

24. The 2nd Respondent reiterates the argument by the 1st Respondent that the quashing of the Part 2 of the 8th Schedule of the Kajiado County Finance Act, 2023 will have an adverse impact on the revenue to be raised and will prejudice service delivery to

the residents of Kajiado County. The adjustments of rent and rates have already been factored into the budget policy and as such, the consequences of interfering with the same will be far-reaching and detrimental. It could lead to the cessation and or disruption of public services with no remedy and at the worst-case scenario it could lead to a total shutdown of the county government since rates collected form a significant part of the County's 'own source revenue'.

25. The 2nd Respondent asserts that the petition lacks merit and is based on misapprehension of law and fact and ought to be dismissed with costs to the Respondents.

Directions.

26. The court's directions were that the petition be canvassed by way of written submissions. The parties complied by filing their respective submissions. They too had occasion to highlight the submissions orally before the court.

Issues for determination.

27. Having considered the petition, the responses thereto, the comprehensive submissions filed by the parties and the oral

highlights of the submissions by the parties, five (5) issues arise for determination, as follows:-

- (i) Whether the Respondents complied with the constitutional and statutory frameworks in the imposition of revised rent and rates;***
- (ii) Whether the enactment of the impugned provisions of the Kajiado County Finance Act, 2023 was preceded by adequate public participation;***
- (iii) Whether there is retrospective application of Section 14(7) of the Kajiado County Finance Act 2023;***
- (iv) Whether the Petitioners are entitled to the reliefs sought in their petition; and***
- (v) What orders should issue in respect to the costs of the petition.***

28. Since all the parties have addressed the above issues in their respective submissions, I will consider their respective submissions alongside the analysis of each of the identified issues.

Analysis for determination.

A. Whether the Respondents complied with the constitutional and statutory frameworks in the imposition of revised rent and rates

29. It is common ground that under **Article 209(3) of the Constitution**, County Governments are empowered to impose property rates, entertainment taxes and any other taxes that they are authorized to impose by an Act of Parliament. Additionally, County Governments are authorized to impose charges for the services they provide.
30. The Constitution at paragraph 5 of article 209 is emphatic that the taxation and other revenue raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.
31. **Article 209 of the Constitution** must be read mutatis mutandis Article 210 of the Constitution which emphasizes that **NO TAX OR LICENSING FEE MAY BE IMPOSED, WAIVED OR VARIED EXCEPT AS PROVIDED BY LEGISLATION.**
32. The Petitioners submit that the Respondents in this case merely came up with figures without the lawful anchor of a valuation roll,

without the requisite notices and without the indispensable involvement of the public. The Petitioners submit that at the material time when the impugned actions were undertaken, the applicable laws were the Valuation for Rating Act (Cap 266) and the Rating Act (cap 267), now repealed. The Petitioners proceed to highlight the relevant provisions of the said statutes to demonstrate the extent of non-compliance by the Respondents. They submit that failure by the Respondents to comply with the statutory provisions vitiates their actions ab initio.

33. The response and the submissions by the 1st Respondent was rather interesting. It submitted that the Petitioners were relying on repealed laws which have since been repealed by the National Rating Act. It then refers to **Section 36 of the National Rating Act** which is a transitional provision to the effect that;

“Any rating authority may pending preparation and approval of a new valuation roll under this Act; continue to levy rates on the basis of the existing roll or such interim valuation mechanism as may be approved”.

34. The 1st Respondent insists that the Respondents acted strictly within the transitional framework utilizing interim mechanisms pending the completion of a comprehensive valuation roll. However, it is as clear as day that the impugned Finance Act was enacted and came into force before the National Rating Act was operationalized.

35. On its part, the 2nd defendant emphasized on the County Government's Constitutional power under **Article 209(3) of the Constitution** to raise revenue through property rates relying on the court of appeal decision in **County Government of Kwale - vs- KAA (2017) eKLR** to support the argument. The Court of Appeal in the said case held that County Governments are empowered to impose property rates with a proviso that the power shall not be exercised in a manner that it prejudicial to the national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.

36. The 2nd Respondent submits that the Petitioners have not demonstrated how it has acted in any manner prejudicial to the national economic policies, economic activities or the national

mobility of goods, services or labour to necessitate the quashing of part 2 the 8th schedule of the ***Kajiado Finance Act.***

37. The 2nd Respondent submits that the Petitioners have not demonstrated how it has acted in any manner prejudicial to the national activities across county boundaries or the national mobility of goods, services or labour to necessitate the quashing of part 2 of the 8th schedule of the Kajiado Finance Act, 2023.

38. The 2nd Respondent further submits that it acted on the strength of the mandate and the power vested by the Rating Act (now repealed) which is a national legislation and with Section 6(1) of the Kajiado County Rating Act which have not been challenged by the Petitioners. The 2nd Respondent points out that sections 4, 5, and 6 of the Kajiado County Rating Act, 2016 provides for the forms of rating, imposition of rates on all ratable property in the county and the amount of rates payable respectively. The County Rating Act further provides that the amount of rates payable shall be determined each year by the County Assembly through the County Finance Bill. Such rates becomes due on the first day of January or such other prescribed date of each year.

39. The 2nd Respondent concludes that the rates demanded are legal and not actuated by any ill will, ulterior motives or malice. It reminds the court that every statute in Kenya generally enjoys the principle of presumption of constitutionality and urges the court to be slow to suspend the legislation unless the Petitioners demonstrate a real risk of infringement of a fundamental right, or real danger to life.

40. From the foregoing, the Petitioners and the 2nd Respondent are in agreement that the Rating Act, Cap 267 (now repealed) was the legislation providing for the imposition and variation of rates at the material time. Off course the Kajiado Finance Act, 2023 was enacted at a time when the **Rating Act, Cap 267** was still in force. The arguments by the 1st Respondent insinuating that the provisions of the **Rating Act** are inapplicable is therefore without any legal grounding.

41. The **Rating Act** and the **Valuation for Rating Act** spelt out the processes for imposition and variation of rates by the County Governments. As correctly held by **Odeny Judge**, in the case cited by the Petitioners, the case of **Eastern Produce Kenya Limited & 6 other s-vs- County Government of Nandi**, the

procedures for the exercise of the power were spelt out in the Acts particularly the Valuation for Rating Act. The learned Judge held that;

“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 for Rating Act (cap 266) and the Rating Act (Cap 267) both of which are national laws. The valuation for Rating Act (Cap 266) specifically gives a county power to levy rates and sets out elaborate procedure for levying of rates as follows. Valuation rolls to be prepared at least once 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 powers of entry and inspection and to obtain information; contents of draft valuation roll; basis of valuation; deposit of draft and supplementary valuation roll, which is open for public inspection, taking of copies or extracts, publication by notice to call for objections, sending to

every rate payer within 21 days after the laying before a meeting of local authority (county government); objections to draft and supplementary valuation rolls; valuation court to hear objections; and appeals to higher courts.”

42. The court in the above cited case went ahead to find and hold the Sections of the Finance Act of the Nandi County Finance (amendment) Act, 2019, which varied and increased the payable land rates without following the procedures set out under the ***Rating Act*** and the ***Valuation for Rating Act*** to be in breach of the provisions of Article 210(1) of the Constitution.
43. The Court of Appeal in the case cited by the 2nd Respondent (***County Government of Kwale -vs- Kenya Airport Authority***) was also emphatic that the power to impose property rates by County Governments is enforced through the provisions of ***Rating Act*** and ***the Valuation for Rating Act***.
44. I have taken note of the 2nd Respondent’s submissions on the presumption of constitutionality of statutes. The presumption however is a rebuttable presumption that only shifts the burden of proof on the party alleging unconstitutionality of the statute.

The presumption does not bar the court from declaring unconstitutional, statutes that offend the provisions of the Constitution.

45. Having carefully considered the petition before me and the submissions by the Petitioners, I am persuaded that the Petitioners have demonstrated obvious non-compliance (by the Respondents) with the **Rating Act** and the **Valuation for Rating Act** in the imposition of the rates and variation payable rates through the **Kajiado County Finance Act 2023**. The submission that the Finance Act, 2023 was in compliance with the National Rating Act holds no water. The national Act came into effect after the passage of the **Finance Act, 2023**. The law which was applicable at the time of enactment of the **Finance Act** is the **Rating Act** and the **Valuation for Rating Act**.

46. It is not disputed that the Kajiado County Government is yet to prepare a valuation roll which is the basis upon which the values of plots and the rates payable are determined. The process of preparing a valuation roll, must involve a qualified valuer who values and assigns values on the properties professionally. The

rate payers are then given an opportunity to inspect the draft valuation and object to the same. Valuation must not be arbitrary.

47. In this case, the Respondents allege that they carried out preliminary valuation assessments using publicly available data and geographical information system mapping tools. That is however a mere allegation. The so called publicly available data was not disclosed to court. It has no basis in law. It indeed amounts to an admission of noncompliance with the provisions of the Valuation for Rating Act.

48. Were the individual rate payers notified about the assessments and given an opportunity to interrogate the so called preliminary assessments of their respective properties? There is no evidence whatsoever of such an exercise.

49. I must be categorical that the attempt by the County Government of Kajiado, to legislate the Kajiado County Rating Act allowing the County Assembly to vary rates without adherence to the provisions of the applicable national law is inconsequential. Though the 2nd Respondent contends that the Petitioners have not challenged the ***Kajiado County Rating Act***, the dictum ***of Lord Denning*** in the case of ***Macfoy -vs- United Africa Company***

Limited (1961) 3 ALL ER, 1169 suffices to answer that contention. Lord Denning in the said case stated that;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”.

50. That said, the court finds and holds that Part 2 of the 8th Schedule of the Kajiado County Finance Act, 2023 requiring payment of Land Rates on urban trading centers pre-urban trading centers, Rural Trading Centers and Adjudication Section Areas, within the Respondents’ jurisdiction is unconstitutional, null and void as it contravenes Articles 10, 50(1), 190 (2), and 210(1) of the Constitution, the Rating Act (repealed) and the Valuation for Rating Act (repealed).

51. Further, the variation of Land Rent from the one prescribed in the letter of allotment is arbitrary and without legal basis. The Respondents have not demonstrated the applicable law at the material time allowing them to vary the same as they purported to.

B. Whether the enactment of the impugned provision of the Kajiado Finance Act was preceded by adequate public participation.

52. This issue must be addressed in its proper context. Whereas the Respondents submit and have indeed provided evidence of public participation in respect to the Finance Act, 2023 as whole, the valuation for Rating Act provided for a specific kind of public participation in respect of imposition or variation of rates.

53. The Act required the preparation of a draft valuation roll by a qualified valuer and its publication inviting objections from the public and property owners. Upon receipt of objections, a valuation court is to be established to determine the objections.

54. The County Government of Kajiado comprising of the 1st and 2nd Respondents, failed to comply with the procedure as provided for and as outlined in the valuation of Rating Act thereby denying the

property owners an opportunity to present their grievances as they were entitled to under the law. To that extent, the court finds and declares that the enactment of the provisions of Part 2 of Schedule 8 of the Kajiado County Finance Act, 2023 on Payment and Variation of Rates, were not preceded by the mandatory public participation.

55. Before proceeding to the next issue, I wish to note that County Governments are under pressure to raise their own revenues to supplement the national allocations. However, the imposition of revenue raising measures must be done in strict compliance with the Constitution and the Law. Law making is an elaborate and complex undertaking.

56. As the counties continue to evolve, they must establish and fund the offices of County Attorneys to allow them attract qualified personnel to help them in drafting appropriate policies and laws that comply with the Constitution and National Laws and Policies taking into account the National Values and Principles of Governance as enumerated under **Article 10 of the Constitution of Kenya.**

C. Whether there was retroactive application of Section 14(7) of the Kajiado County Finance Act.

57. Whereas this issue may seem superfluous in view of the above findings of the court, I need to restate and re-emphasize the holding of the **Supreme Court of Kenya** on retroactive application of laws in the case of **S.K. Macharia & another -vs- Kenya Commercial Bank & 2 others (2012) KESC 8(KLR).**

The Supreme Court of Kenya held that;

“...the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless by express words or necessary implications”.

58. Therefore, the **notices dated 28th February 2025**, declaring that all plots with arrears of three (3) consecutive years would be repossessed pursuant to **Section 14 (7) of the Finance Act, 2023** was improper. The Respondents attempted to give various explanations as to the intendment of the notice. While the intention may have been different, the wording of the notice

implies otherwise. The Petitioners were justified in reading an intention to apply the cited provision retrospectively.

D. Whether the Petitioners are entitled to the orders sought.

59. The Petitioners seek various orders, being declarations on unconstitutionality of the impugned part 2 of schedule 8 of the Kajiado County Finance Act, 2023, and the variation of the Land Rent payable, a permanent injunction and an order of Certiorari.
60. The court having found that the Respondents failed to comply with Article 210 (1) and the Rating Act as well as the Valuation for Rating Act will issue the declarations sought.
61. The judicial review order of Certiorari issues to quash decisions for errors of law in the making of such decisions. The court has so found that the Respondents erred and failed to comply with the applicable national laws and the Constitution. consequently, the court issues the judicial review order of Certiorari to bring into this court for quashing Part 2 of the Schedule 8 of the Kajiado Finance Act, 2023 as well as the letter communicating the imposition of rates payable.

62. Having declared the impugned provision unconstitutional and further having quashed the same, there is no need to issue any further orders as the impugned part of the Finance Act cease to exist forthwith.

63. Finally, is the issue of costs. The law is that the court retains the jurisdiction to award costs subject to the general proviso that costs follow the event. As the Petitioners have succeeded in their petition, the court will grant them the costs of the petition as against the Respondents, jointly and severally.

Final disposition

64. From the foregoing the final disposition is that the court hereby makes the following final orders;

a) A declaration be and is hereby issued that part 2 of the 8th schedule of the Kajiado County Finance Act, 2023 requiring the payment of land rates on urban trading centers, rural trading centers and adjudication section areas within the Respondents' jurisdiction is unconstitutional null and void being in contravention of Articles 10, 40(1), 190(2) and 210(1) of the Constitution, the Rating Act (repealed)

and part IV of the valuation for Rating Act (repealed) as read with the National Rating Act, No. 15 of 2024.

b) A declaration be and is hereby issued that the variation of the land rent payable from the one prescribed in the letter of allotment is unconstitutional, null and void for being in contravention of Articles 10, 40(1), 190(2), and 210 (1) of the Constitution, the Rating Act (repealed) and part II of the Valuation for Rating Act (repealed) read with the National Rating Act, Number 15 of 2024.

c) A judicial review order of certiorari be and is hereby issued to bringing before this court for quashing, which is hereby quashed the imposition of rates/decision as communicated through the letter from the director revenue, land rent and rates unit stamped, 1st January 2025, or any prior or subsequent correspondence listing and imposing

the rent and rates payable by each township/trading Centre in Kajiado County.

d)The Costs of this petition are awarded to the Petitioners against the Respondents, jointly and severally.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of January 2026.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Shadrack Wambui alongside Mr. Jeff Kang'ethe for the Petitioners

Mr. Omenta h/b for Mr. Kabata for the 1st Respondent

Ms. Yala h/b for Mr. Nyaosi for the 2nd Respondent

Court Assistant: Mpoye

**M.D. MWANGI
JUDGE**

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