



**Haki Yetu Organization v Cabinet Secretary for Roads and Transport & 3 others
(Constitutional Petition E016 of 2024) [2026] KEHC 423 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CONSTITUTIONAL PETITION E016 OF 2024**

**M THANDE, J
JANUARY 23, 2026**

BETWEEN

HAKI YETU ORGANIZATION PETITIONER

AND

**THE CABINET SECRETARY FOR ROADS AND TRANSPORT 1ST
RESPONDENT**

KENYA ROADS BOARD 2ND RESPONDENT

**ENERGY AND PETROLEUM REGULATORY AUTHORITY 3RD
RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. In a Petition dated 30.7.24, the Petitioner seeks the following reliefs:
 1. A declaration be and is hereby issued that the Respondents violated and breached Article 10 of *the Constitution* of Kenya, 2010 by promulgating, enacting, gazetting and publishing the Road Maintenance Levy Fund (Imposition of Levy) Order, 2024 without adequate, effective, meaningful proper and tangible public participation.
 2. A declaration be and is hereby issued that the Road Maintenance Levy Fund (Imposition of Levy) Order, 2024 promulgated vide Legal Notice No. 109 published in the Kenya Gazette dated 10th July 2024 is unconstitutional, illegal, null and void for lack of adequate, effective, meaningful proper and tangible public participation and therefore of no legal effect.
 3. An order of prohibition and/or permanent injunction be and is hereby issued restraining the Respondents, either jointly and/or severally whether by themselves, their officers, assigns, agents, employees, servants, representatives and/or whomsoever is acting on their behalf,



behest and/or under their authority or instruction from implementing, enforcing, executing and/or acting upon Road Maintenance Levy Fund (Imposition of Levy) Order, 2024.

4. A declaration be and is hereby issued that any action taken by the Respondents and/or any other Government entity pursuant to and in the implementation, enforcement and execution of the Road Maintenance Levy is unconstitutional, illegal null and void and of no legal effect.
 5. An order of mandatory injunction be and is hereby issued compelling the Respondents to refund to motorists and/or members of the public any and all funds collected pursuant to the Road Maintenance Levy Fund (Imposition of Levy) Order, 2024.
 6. The refund be effected by reducing the fuel prices by Kshs. 7.00/= per litre of petroleum fuel for the period of time equivalent to the period that the increase in Road Maintenance Levy Fund (Imposition of Levy) Order, 2024.
 7. Costs of this Petition be borne by the Respondents jointly and severally.
 8. Any further relief or orders that this Honourable Court shall deem just and fit to grant.
2. The Petition is supported by the affidavit sworn on even date by Marius Muthiani Kioko, its Program Coordinator-Governance. He averred that the 1st Respondent (the Cabinet Secretary) published and promulgated the Road Maintenance Levy Fund (Imposition of Levy) Order, 2024 (the Levy Order) vide Legal Notice No. 109 of 20.7.24. Further, that the Levy Order imposed a levy of Kshs. 25,000/= on every 1,000 litres at 20 degrees centigrade of premium and regular petrol as well as gas oil (automotive, light, amber for high speed engines). He added that this translates to an increase to Kshs. 25/= per litre of fuel.
 3. It is the Petitioner's case that the Levy Order is unconstitutional as the same was promulgated and published without adequate, effective, meaningful proper and tangible public participation. The Petitioner avers that the 1st and 2nd Respondents purported to undertake public participation on the Levy Order by publishing a notice in the Daily Nation and Standard newspapers of 25.6.24. In the notice, they invited the public and stakeholders to various public participation for a scheduled for 8.7.24 in Nairobi, Central, North Rift, South Rift, Upper Eastern, Lower Eastern, Nyanza, North Eastern, Coast and Western. The notice indicated that comments and memoranda were to be submitted by 5.7.24. The Petitioner contends that the public participation held on 8.7.24 were a mirage, cosmetic and a mere formality.
 4. The Petitioner asserts that the notice period was short and marred with deliberate confusion; that at 2031 hours on 4.7.24, the eve of the deadline for submitting memoranda, the 2nd Respondent through its "X" handle published an image of the public notice with the words "cancelled", which caused confusion to members of the public; that the said publication deceived members of the public that the public participation meetings scheduled for 8.7.24 were no longer there and there was no need to attend the same and there was no need to submit memoranda. As such, those who intended to submit comments/memoranda and/or participate in the meetings did not do so.
 5. It is the Petitioner's further contention that the 10 regional centres designated for public participation were few and sparsely distributed in a country with 47 counties; that for instance for the coast region with 6 counties, the centre was in Mombasa, Garissa catered for the vast north eastern region, while Transcom House was the centre for Nairobi with its teeming population; that the centres were inaccessible to persons with disability who were unable to give their views. This resulted in non-participation of many members of the public and stakeholders. The Petitioner thus argues that this was evidence that the Respondents had no intention of holding effective public participation.



6. Further, that the Respondents did not sensitize the public on the rate, rationale and impact of the Levy Order and the call for views and memoranda from largely ignorant persons was not useful; that the document titled Proposal to Increase Road Maintenance levy Rate Rationale and Impact 2024 was only posted on the 2nd Respondent's website which most Kenyans did not know about; that a good percentage of the Kenyan populace are illiterate, have no access to internet and cannot afford newspapers yet are equally affected by the Levy Order; that the proponents of the Levy Order were not present to justify the rationale and objectives of the proposed levy increment; that most of the people and stakeholders who attended the public participation fora and submitted their views were opposed to the proposed increment of the levy, but their views were ignored and not taken into account by the Respondents.
7. The Petitioner avers at the conclusion of the public participation, in a statement issued on 8.7.24 and widely publicized in the mainstream and social media the 1st Respondent announced that many Kenyans were worried that an increase in fuel levy would result in a rise in cost of living and gave an undertaking that the Government would come up with a decision that corresponds with the recommendations from the public, which was against the increase in the fuel levy; that he gave an undertaking that the Government would explore alternative ways of getting resources needed to maintain roads, as expressed by many Kenyans, without raising the cost of living through increase in petroleum prices; announced that the Government would only make a decision on the fuel levy once certain that any revenue measures adopted would not result in a rise in the cost of living.
8. The Petitioner contends that the said statement gave Kenyans hope and a false impression that the cost of fuel will not go up; that in utter disregard of the Government's commitment and undertaking not to increase the prices of petroleum and not to increase the cost of living, the 1st Respondent public statement on 10.7.24, made a complete about-turn and published an increase of the fuel levy by Kshs. 7/= from Kshs. 18/= to Kshs. 25/= a whopping 39% increment; that despite the 1st Respondent's undertaking, the views of the public were disregarded and not considered at all. Further that the Respondents did not give any reason for rejecting and dismissing the public views. The Respondents did not give a report on the public participation exercise despite their commitment to doing so. Accordingly, the purported public participation was therefore a mere cosmetic and a public relations act.
9. The Petitioner concluded that the Respondents violated and breached Article 10 of *the Constitution* of Kenya in enacting, applying, enforcing and implementing the Levy Order without adequate, effective, meaningful proper and tangible public participation and failing to take into account the views of Kenyans, the public and stakeholders despite the promise and undertaking by the 1st Respondent that the views would be taken into consideration.
10. The 2nd Respondent opposed the Petition vide a replying affidavit sworn on 12.11.24 by Catherine Kassim, its Deputy Director, Legal and Board Services. She averred that the Road Maintenance Levy Fund is established under Section 7 of the *Road Maintenance Levy Fund Act* (the Act) as a dedicated Fund for road maintenance and related purposes; that in 2016, the Road Maintenance levy Fund (Imposition of Levy) Order was made imposing a levy of Kshs. 18/= from Kshs. 12/= per litre of petrol and diesel; that in July 2024, pursuant to Section 3 of the *Road Maintenance Levy Fund Act*, the 1st Respondent published the Levy Order revoking the 2016 Levy Order; that the new rate effected on 15.7.24 was Kshs. 25/= per litre of petrol and diesel.
11. It was further averred that the review of the Road maintenance Levy Fund was informed by a study undertaken by the 2nd Respondent in July, 2024 which took into account the macroeconomic factors including inflation and high cost of road works, devaluation of the Kenya Shilling and fuel import



prices; the changes in the road network in terms of the growth of the road network, the ageing road network, the backlog maintenance, urbanization and traffic growth and effects of climate change; maintenance needs of the road network; that the last review of the Road Maintenance Levy Fund was done in 2016 and the annual collection proved insufficient; that the Road Sector Investment Program III estimated the annual road maintenance funding requirement at Kshs. 157 billion; that the annual deficit is Kshs. 63 billion which requires an adjustment of the rate of road maintenance levy to Kshs. 34/= per litre; that in recognition of the prevailing economic conditions, the report proposed a phased approach and the rate was first revised to Kshs. 25/= per litre.

12. The 2nd Respondent asserted that there was extensive and adequate public participation prior to promulgation of the Levy Order; in terms of reasonable notice, adequate opportunity for public comments and accountability in consideration of public views; that the draft Levy Order was placed on the Respondents' websites and physical copies availed in their regional offices for consideration by the public; that the public and stakeholders were given 13 days to consider the draft Levy Order and submit views; that public engagements were conducted in 10 regions on 8.7.24; that the 1st and 2nd Respondents collated and analysed the views of the public and these were considered in the review of the Levy Order.
13. It was further averred that the 1st respondent undertook the review of the Levy Order in consultation with the 2nd Respondent as mandated under Section 3(1) of the Act and conducted a regulatory impact assessment of the same as required by the *Statutory Instruments Act*; that the Levy Order, the public participation report explanatory memorandum and regulatory impact assessment were placed before the National Assembly for consideration; that it is not for the Court to determine the amount to be charged since this is the preserve of the executive; that the allegation that the Respondents did not consider its impact is not backed by scientific evidence; that it is not true that the Levy Order is a burden on the public and that being sensitive to the prevailing economic conditions, the 1st Respondent opted for a phased approach to the review.
14. The 2nd Respondent concluded by saying that the Petitioner has no legitimate public interest but seeks to paralyze the operations of the 2nd Respondent and its capacity to maintain the country's road infrastructure.
15. Parties filed their written submissions which the Court has duly considered. The issues distilled for determination are:
 1. Whether there was adequate public participation.
 2. Whether the orders sought should be granted.

Whether there was adequate public participation.

16. It is the Petitioner's case that the 1st Respondent published and promulgated the Levy Order without adequate, effective meaningful, proper and tangible public participation. This is denied by the Respondents who maintain that there was compliance with the constitutional and statutory requirements with regard to public participation.
17. Public participation has been entrenched in our Constitution as one of the national values and principles of governance. Article 10 of *the Constitution* provides as follows:
 - (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them--
 - (a) applies or interprets this Constitution;



- (b) enacts, applies or interprets any law; or
 - (c) makes or implements public policy decisions.
- 2) The national values and principles of governance include--
- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; emphasis
 - (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - (c) good governance, integrity, transparency and accountability; and;
 - (d) sustainable development.
18. The national values and principles of governance stipulated in the above provision are binding on all State organs, State officers, public officers and all persons including the Respondents herein, whenever any of them applies or interprets *the Constitution*, enacts, applies or interprets any law, or makes or implements public policy decisions. Public participation is integral to the legitimacy of any democratic state. As a constitutional imperative, public participation plays a central role in legislative and policy formulation. It informs stakeholders and the public of what is intended and affords them an opportunity to express concerns, fears demands, and have their views taken into account.
19. The Petitioner's complaint is that the Levy Order was promulgated without adequate, effective, meaningful, proper and tangible public participation. Further, that the public notice by the Respondents inviting the public and stakeholders to submit comments/memoranda and to public participation fora in the 10 regions were just a mirage, cosmetic and a mere formality.
20. Whenever a challenge is raised as in the instant case, an agency is required to demonstrate what it has done in compliance with its duty to facilitate public participation in a given case. This was the holding in the South African case of *Doctors for Life International v Speaker of the National Assembly & Others* (CCT12/05) [2006] ZACC 11, where the Court stated:
- In determining whether Parliament has complied with its duty to facilitate public participation in any particular case, the Court will consider what Parliament has done in that case. The question will be whether what Parliament has done is reasonable in all the circumstances.
21. By parity of reasoning, the Court will consider what, in the instant case the Respondents have done, and whether it is reasonable in the circumstances.
22. The Respondents maintain that they facilitated public participation by issuing a notice calling for submission of memoranda/comments as well as physical engagements in regional centres. According to the Petitioner however, what the Respondents did, did not amount to adequate, effective, meaningful proper and tangible public participation.
23. In the case of *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another* (Interested Parties); *Mastermind Tabacco Kenya Limited* (Affected Party) (Petition 5 of 2017) [2019] KESC 15 (KLR) (26 November 2019) (Judgment), the Supreme Court delimited the framework for public participation as follows:

From the foregoing analysis, we would like to underscore that public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the



sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments. Consequently, while Courts have pronounced themselves on this issue, in line with this Court's mandate under section 3 of the *Supreme Court Act*, we would like to delimit the following framework for public participation:

Guiding Principles for public participation

- i. A constitutional principle under article 10(2) of *the Constitution*, public participation applies to all aspects of governance.
- ii. The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
- iii. The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
- iv. Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation.
- v. Public participation is not an abstract notion; it must be purposive and meaningful.
- vi. Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
- vii. Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
- viii. Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
- ix. Components of meaningful public participation include the following:
 - a. clarity of the subject matter for the public to understand;
 - b. structures and processes (medium of engagement) of participation that are clear and simple;
 - c. opportunity for balanced influence from the public in general;
 - d. commitment to the process;
 - e. inclusive and effective representation;
 - f. integrity and transparency of the process;
 - g. capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.



24. What is required of this Court is to determine whether the public participation undertaken in respect of the Levy Order met the threshold for public participation set out by the Supreme Court the British American Tobacco case (supra).
25. The Petitioner contends that the notice period was too short and that there was no sensitization done on the rationale and impact of the proposal to increase road maintenance levy.
26. The impugned public notice was published in both the Daily Nation and Standard newspapers of 25.6.24. The notice clearly indicated that pursuant to Section 3 of the Act, the 1st Respondent in consultation with the Cabinet Secretary, National Treasury intended to review the 2016 Levy Order by increasing the road maintenance levy by Kshs. 7/= from Kshs. 18/= to Kshs. 25/= per litre of petrol and diesel. The subject matter was not technical or complex and was clear enough for the public to understand.
27. It is trite that public participation can be conducted in diverse ways including physical attendance in fora, submission of memoranda physically, electronically or on social media. In the instant case, the public notice invited the public and stakeholders to various public participation fora on 8.7.24 from 9.00am to 5.00pm in 10 regions of the country. Written memoranda/comments were to be submitted via email to an email address provided or hand delivered to the 2nd Respondent's head office in Nairobi and all the regional offices listed in the public notice.
28. In the cited case, the Supreme Court stated that public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis. In the public notice in question, the period for submission of memoranda/comments was 10 days while that for attending the various fora was 12 days. The public and stakeholders were given the option of engaging in public participation by attending the fora physically or by submitting written memoranda/comments. Applying the test in the cited case, my view is that given that the matter was fairly straight forward, namely increasing the road maintenance levy by Kshs. 7/=, the notice period was reasonable. Similarly, reasonable opportunity was accorded to the public and stakeholders who were given the option of submitting written memoranda/comments or physical attendance. In this regard, I am guided by the Supreme Court which stated that public participation is not necessarily a process consisting of oral hearings but that written submissions can also be made.
29. The Petitioner contends that the venues for public participation were few and sparsely distributed, resulting in non-participation of many members of the public. Further that the chosen venues were inaccessible to persons with disability. The Petitioner has however not provided to the Court evidence by way of affidavit, of any person who wished to physically go to the designated venues and give views orally and was unable to do so due to inability to access the venues. Similarly, no evidence was placed before the Court of any person with disability who was unable to access the venues. Additionally, it is not enough for the petitioner to state that members of the public were that the public participation meetings scheduled for 8.7.24 were no longer there and there was no need to attend the same or to submit memoranda or that as a result, those who intended to submit comments/memoranda and/or participate in the meetings did not do so. The Petitioner was obligated to demonstrate by evidence who fell into deception and who failed to participate as alleged. In any event, the fact that someone was not heard is not enough to annul the process. (see British American Tobacco case (supra)).
30. The Petitioner further submitted that most people and stakeholders who attended the public fora and submitted their views were opposed to the increment of the levy and that their views were ignored and not taken into account by the Respondents. Again, the Petitioner has not indicated the affected persons and affected venues. Sworn affidavits of such persons demonstrating that they attended for instance the forum in Mombasa or Garissa and participated in the engagement thereat or that they submitted



memoranda/comments and the same were disregarded would have gone a long way to substantiate the allegations. As matters stand, the Petitioner's allegations are too generalized and lack substantiation.

31. The circumstances herein are that the Petitioner made allegations of violation of *the Constitution* by the Respondents which was disputed and denied. The Petitioner being the one alleging assumed the burden to prove the allegations. For the Petitioner to succeed, it was required to prove that which it alleged, in line with the time-tested principle that he who alleges must prove. Section 107 of the *Evidence Act* stipulates:
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
32. I find and hold that the Petitioner has failed to discharge the burden of proof placed upon it under the *Evidence Act*. I further find that the public participation programme rolled out by the Respondents was reasonable in the circumstances. There was compliance with the requisite legal and procedural requirements for public participation. Accordingly, the material placed before the Court is not sufficient to lead to the categorical finding that the promulgation of the Levy Order was flawed as alleged.

Whether the orders sought should be granted

33. Having found as the Court has that the Petitioner's claim is not proved, it follows that the reliefs sought cannot be granted.
34. In the result and in view of the foregoing, the Court finds that the Petition lacks merit and the same is dismissed. The matter having been filed in the public interest, does not warrant an award of costs. In the premises, each party shall bear own costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 23RD DAY OF JANUARY 2026

M. THANDE

JUDGE

