



**Githanga & another v County Government of Nakuru & 4 others (Environment and Land Petition E013 & E008 of 2024 (Consolidated)) [2026] KEELC 585 (KLR) (9 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 585 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND PETITION E013 & E008 OF 2024 (CONSOLIDATED)**

**MAO ODENY, J**

**FEBRUARY 9, 2026**

**IN THE MATTER OF ARTICLES 20, 21, 22, 23, 40, 42, 47, 48,  
50,62, 69 & 70 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 40, 42, 47, 50 & 62 OF THE CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF THE GRABBING AND/OR ILLEGAL CONVERSION  
OF PUBLIC LAND (CENTRAL PARK-LIONS GARDENS NAKURU)**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION 2015**

**AND**

**IN THE MATTER OF THE LAND ACT, 2012**

**AND**

**IN THE MATTER OF THE PHYSICAL AND LAND USE PLANNING ACT**

**AND**

**IN THE MATTER OF THE ENVIRONMENTAL MAMANGEMENT AND  
CORDINATION ACT**

**AND**

**IN THE MATTER OF THE NATIONAL LAND USE POLICY, 2017**

**AND**

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



**BETWEEN**

**JOHN GITHANGA ..... PETITIONER**

**AND**

**THE COUNTY GOVERNMENT OF NAKURU ..... RESPONDENT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT AND LAND PETITION E008 OF 2024**

**BETWEEN**

**TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE ..... PETITIONER**

**AND**

**COUNTY EXECUTIVE COMMITTEE MEMBER WATER, ENVIRONMENT,  
ENERGY, NATURAL RESOURCES AND CLIMATE CHANGE NAKURU  
COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER ENVIRONMENT, ENERGY, CLIMATE CHANGE &  
NATURAL RESOURCES NAKURU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**NAKURU COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This judgment is in respect of two Petitions filed by the Petitioners dated 30<sup>th</sup> July 2024, and 17<sup>th</sup> September 2024, respectively against the Respondents. The Petitioners in ELC Petition No. E008 of 2024, sought the following orders:
  - a. A declaration that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have contravened Article 10 of *the Constitution* in that the national values and principles of governance set out have not been observed and that the decisions regarding the approval of the construction of stalls, kiosks, and other commercial structures within the confines of the designated Central park Lions Garden.
  - b. A declaration that the decision by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to construct stalls, kiosks, and other commercial structures within the confines of the designated Central Park Lions Garden violates the fundamental rights and freedoms as envisaged under Articles 42, 69 and 70 of the Kenyan Constitution and is therefore null and void.
  - c. An order of certiorari do issue quashing the decision by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to construct stalls, kiosks and other commercial structures within Central Park Lions Garden.
  - d. Alternatively, an order of prohibition or injunction against the Respondents restraining them from constructing stalls, kiosks and other commercial structures within Central Park Lions Garden.



- e. An order of mandamus compelling the Respondents either by themselves, agents and or associates to supply the Petitioner with all information relating to the approval process for the construction of stalls, kiosks and other commercial structures within Central Park Lions Garden including and not limited to the copies of the budgetary allocation, submission of detailed architectural plans, environmental impact assessment, public consultation minutes , reports on compliance with zoning regulations, building codes , and any other relevant documents.
  - f. The Honourable Court do issue such further orders and give such direction as it may deem fit to meet the ends of justice and the protection of the constitutional rights of the Petitioner and the public at large in the context of the declaration made.
  - g. The costs of the Petition be awarded to the Petitioner as against the Government pf the Republic of Kenya and other Respondents.
2. The Petitioner in ELC Petition No. E013 of 2024 sought the following orders against the Respondents:
    - a. A declaration to be made that the respondent’s decision to construct commercial stalls and cut down trees within Central Park-Lions Garden Nakuru is in violation to Article 42 (a), 62 (4) and 69 (1) (a), (d), (g) & (h) of *the Constitution* of Kenya.
    - b. A declaration to be made that the respondent is prohibited and/or restrained from erecting commercial stalls within Central Park-Lions Garden Nakuru.
    - c. A mandatory order be made directing the respondent to demolish and/or remove any stalls that may have already been erected within Central Park-Lions Gardens Nakuru. (sic)
    - d. An order directing the Respondent to strictly rehabilitate the park without giving it any form of commercial user element.
    - e. Costs of this petition be provided for.
  3. The Petition is supported by the annexed affidavit of George Narok, the Secretary General of the Petitioner herein who deponed that Lions Garden Park measuring 1.19 acres was closed on 1<sup>st</sup> September 2023, by the 3<sup>rd</sup> Respondent through forceful eviction of several street families and a large tree was felled. He further deponed that the 2<sup>nd</sup> Respondent took over the rehabilitation of the Park in November 2023, as a climate change mitigation measure and to enhance the aesthetics of the park.
  4. The Petitioner’s Secretary General deponed that the rehabilitation project through partnership with Financing Locally Led Climate Action Program (FLLOCA) was launched on 10<sup>th</sup> June, 2024, where Ksh 10 million was to be used in rehabilitating the 1.19-acre park. It was his deposition that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have embarked on illegal construction of stalls, kiosks and other commercial structures within the confines of the designated Central Park-Lions Garden and their actions are tainted with illegality and an imminent threat to the environment.
  5. Mr. Narok further deponed that the Central Park Lions Garden is part of the few public spaces that were created in 1929, as part of the first Nakuru Town plan Bellenden Plan which followed a grid pattern focused around the railway as the main structuring element. He stated that the location near the Nakuru main bus terminus/bus Park makes it convenient and easily accessible by commuters waiting to board buses to various destinations. That it creates a tranquil environment for travelers and a great business opportunity for hawkers and other small business operations.



6. He urged the court to grant the orders as prayed in the Petition as the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated their rights under Articles 42, 69, and 70 of the Constitution.
7. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a replying affidavit sworn by Kennedy Mungai Barasa dated 11<sup>th</sup> February 2025 in response to the Petition and deponed that Schedule IV of the Constitution mandates the County Government to oversee issues relating to parks and that the rehabilitation of the Park was necessitated by the fact that it had become an eyesore, a den of criminals and open defecation.
8. It was his disposition that the 3<sup>rd</sup> Respondent through the Department of Environment, Energy, Climate Change and Natural Resources partnered with Financing Locally Led Climate Action Program (FLLOCA) for the rehabilitation of the gardens. He stated that before the closure of the park to pave way for the rehabilitation of the park, the 3<sup>rd</sup> Respondent invited various stakeholders for public participation meeting with the main agenda being the rehabilitation of the park, which was disseminated through the Nakuru East Sub-county offices, the office of the Member of County Assembly for Biashara Ward Local media and was affixed around the park.
9. Mr. Barasa deponed that a consultative meeting by all stakeholders which comprised leadership of the street families, Mashambani traders, bus park traders, nail Artists, Photographers, Shoe Shiners and representation from the 3<sup>rd</sup> Respondent, was held on 14<sup>th</sup> August 2023, where the 3<sup>rd</sup> Respondent received divergent views on rehabilitation of the said park.
10. According to deponent, the views received from the consultative meetings were positive and every stakeholder was amenable to the rehabilitation of the park, with a proposal that the small-scale business people would not lose their source of livelihood. That the park was closed on 1<sup>st</sup> September 2023, after issuance of a 14-days closure notice by the 3<sup>rd</sup> Respondent through the Department of Environment, Energy, Climate Change and Natural Resources.
11. He stated that before the commencement of the project the trees were felled down as they had been condemned as not suitable for an urban setup and part of the rehabilitation was to include suitable trees and plants. Similarly, that the plan was to upgrade and modernize the park to fit the Nakuru City status.
12. Mr. Barasa further deponed that the delay in the commencement of the rehabilitation work was caused by the procurement process and while the process was ongoing another stakeholders meeting was held on 11<sup>th</sup> April 2024 where details of the project were discussed at length and were accepted by the stakeholders and that there was adequate participation.
13. It was Mr. Barasa's disposition that the 3<sup>rd</sup> Respondent also received a proposal by members of the community through the ward Climate Change Planning Committee for Biashara ward on 22<sup>nd</sup> April 2024 seeking the rehabilitation of the park to create a more conducive environment for the members of the public, and upon completion of the procurement process the project was handed over to the Contractor on 10<sup>th</sup> June 2024, and the terms and conditions of the entire project were outlined in the tender document.
14. According to Mr. Barasa, the purpose of the park has not changed and that 54 small-scale business operators comprising of 18 photographers, 13 shoe shiners and 23 nail artists who had previously been earning a living within the park area are the ones who occupy the decent stalls. Further that the 1<sup>st</sup> 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents will ensure that the park is more user- friendly and the Petitioners have not placed any material before the court to demonstrate that the Respondents have abdicated their duty to protect the environment.



15. He urged the court to dismiss the Petition with costs to the Respondents.
16. The 4<sup>th</sup> Respondent filed grounds of opposition dated 16<sup>th</sup> August, 2024, where the Attorney General stated that the Petitioner has failed to demonstrate with reasonable precision how the office has violated their alleged legal rights. The 4<sup>th</sup> Respondent stated that the Petitioner has failed to demonstrate that there exists a cause of action against it and urged the court to dismiss the Petition with costs.
17. The 2<sup>nd</sup> Petition, namely ELC PETITION NO. E013 OF 2024 which is similar to the above Petition was filed by one John Githanga, and sought the same reliefs in respect of the same subject matter. The Petition was supported by the annexed affidavit of the Petitioner, who deponed that the manner in which the so-called rehabilitation project of Lions Gardens is being implemented is against the set objectives, which were to restore the natural ecosystem and biodiversity of the garden, to improve the soil quality and promote sustainable landscaping.
18. The Petitioner deponed that he is concerned that the conversion of the public park from a public user regime to a commercial user regime did not follow the provisions of the law and that the same is intended to benefit private individuals.
19. Mr. Githanga, averred that the rehabilitation was meant to adopt a project design which was to provide a well seating areas, improved pathways, enhance the green space and that it never had a commercial stalls component. Mr. Githanga also decried the lack of proper public participation and environmental impact assessment and that the ongoing process would result into loss of public land/property. He deponed that the residents of Nakuru County will be greatly prejudiced in the event this Petition is not allowed.
20. The Petitions were canvassed by way of written submissions

## **PETITIONER'S SUBMISSIONS**

21. Mr. Ogola, counsel for the Petitioner filed submissions dated 19<sup>th</sup> June 2025, and identified the following issues for determination as follows:
  - a. Whether the alleged public participation warrants a change of use of the parcel of land;
  - b. Whether the Respondents have violated the provisions of Articles 69 and 70 of *the Constitution*;
  - c. Whether the petitioner is entitled to the disclosure of documents held by the Respondents and
  - d. Who ought to bear the costs of this Petition?
22. On the 1<sup>st</sup> issue as to whether the alleged public participation warrants a change of use of the parcel of land, counsel relied on Article 10 of *the Constitution*, on the national values which provides for good governance, integrity, transparency and accountability.
23. On the issue of public participation, counsel relied on the cases of Joseph Omollo v Cabinet Secretary, Ministry of Interior and Co-ordination of National Government & 2 others; Independent Electoral and Boundaries Commission & 2 others (Interested Parties) [2022] eKLR, and Legal Advice Centre & 2 others v County Government of Mombasa & 2 others; Mombasa County Public Rental Estates Council & another (Interested Parties) (Civil Appeal 46 of 2017) [2018] KECA 381 (KLR) (5 July 2018) (Judgment), where the court emphasized the importance of public participation during policy formulation.



24. Counsel therefore submitted that the act of public participation does not ratify the Respondents' illegal conversion of the use of the park into a commercial activity, and urged the court to quash the decision and protect the rights of the public under Articles 69 and 70 of *the Constitution*.
25. On the second issue as to whether the Respondents have violated the provisions of Articles 69 and 70 of *the Constitution*, counsel submitted that the Respondents have failed to facilitate the sustainable use of the Lions Park Garden by establishing commercial stalls instead of a recreational facility on the suit land hence a violation of the Petitioner's rights.
26. Mr. Ogola cited the case of Fadhila S. Ali V National Housing Corporation [2012] and urged the court to allow the Petition in order to save the park from extinction
27. On the third issue as to whether the petitioner is entitled to the disclosure of the documents held by the Respondents, counsel relied on Article 35 of *the Constitution* which provides for the right to information, and submitted that the Petitioner seeks the criteria applied in the selection of individual persons from a small cadre who are alleged to have participated in the public participation.
28. On the issue of costs, counsel urged the court to allow the petition with costs.
29. On the second Petition No E013 OF 2024, counsel for the Petitioners filed submissions dated 23<sup>rd</sup> July, 2025 and identified the following issues for determination:
  - a. Whether the construction of commercial stalls within Lions Gardens Park was illegal and contrary to public purpose?
  - b. Whether there was a violation of the right to public participation?
  - c. Whether the Respondent acted in breach of constitutional and statutory environmental and planning obligations?
  - d. Whether the Petitioner is entitled to the reliefs sought?
30. Counsel relied on Article 62 (4) of *the Constitution* of Kenya and submitted that Lions Gardens is a public recreational space, the character and purpose of which are protected under *the Constitution*, national and county statutory frameworks. Counsel submitted that the construction of commercial stalls alters the zoning and user designation of the park without compliance with *the Constitution*, the *Urban Areas and Cities Act* and the *Physical and Land Use Planning Act*, 2019, which amounts to an illegal change of user.
31. Mr. Muchela submitted that the Respondent has attached minutes of an alleged public participation meeting that were held on 14<sup>th</sup> August, 2023 and 11<sup>th</sup> April, 2024, and submitted that this was not a public participation but rather a meeting to inform the participants of the decision already taken by the Respondent.
32. It was counsel's submission that any meaningful public participation must involve sufficient dissemination of information and in the instant case, in the two meetings, there was no discussion or disclosure of the fact that the Respondent was going to erect commercial stalls in the park, and relied on the cases of Doctors for Life International vs Speaker of the National Assembly & Others (CCT 12/05) [2006] ZACC 11 and Mui Coal Basin Local Community & 15 others vs Permanent Secretary Ministry of Energy & 17 others [2015] KEHC 473 (KLR).
33. Counsel submitted that they have adduced evidence that the Respondents' action of felling trees to create commercial stalls inside Lion Gardens Park violated the provisions of *the Constitution* and other relevant laws. Counsel referred to the proposal for the rehabilitation project done to the Chief Officer



Environment, Energy, Climate Change and Natural Resources on 22<sup>nd</sup> April 2024 and submitted that the objectives did not include felling of trees and creation of commercial stalls.

34. Mr. Muchela submitted that the objectives included, tree growing, landscape designs/beautification, installation of green infrastructure (rain garden) and growing of shrubs and ground covers and urged the court to grant the orders sought in the Petition.

### **1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Submissions**

35. Counsel for the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed submissions dated 30<sup>th</sup> May 2025 and identified the following issues for determination:
- a. Whether public participation was conducted
  - b. Whether an order of prohibition or injunction should issue
  - c. Whether and order of mandamus should be issued for the supply of information
  - d. Who should bear the costs of the suit
36. On the issue as to whether there was public participation, counsel submitted that the 3<sup>rd</sup> Respondent conducted adequate public participation where divergent views on the rehabilitation of the park were received. Counsel relied on the cases of Republic Vs County Government of Kiambu Ex – Parte Robert Gakaru & Another [2016]eKLR and Doctors for Life International Vs Speaker of the National Assembly and Others.
37. Counsel referred the court to the replying affidavit of Kennedy Mungai Barasa which gave a detailed chronology of the stakeholder meetings and participation prior to the commencement of the rehabilitation of the Park
38. Ms. Litunda relied on Section 91 of the County Government Act 2012, and submitted that Sections 87 (b) and 91 indicate that the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were only required to facilitate reasonable public participation which they complied with. Counsel further relied on the case of Nyathuna Quarry Self Help Group Vs County Government of Nakuru & Attorney General [2019] eKLR and submitted that it was impracticable that a personal invitation would be given to every individual inviting them to give views on the budget.
39. According to counsel, the invitation notice served the purpose of notifying the members of the public of the budget process and the Petitioner was accordingly expected to act.
40. On the issue whether an order of prohibition, of injunction should issue, counsel submitted that the stalls have already been constructed and are being utilized by the small-scale traders and the court should not issue orders in vain. Counsel relied on the case of Kenya Power & Lighting Co. Limited V Sherrif Molana Habib [2018] eKLR, and submitted that the rehabilitation was to upgrade the park to a city status and the construction of the stalls would not constitute any imminent threat to the park and the surrounding environment.
41. On the issue as to whether an order of mandamus should issue for the supply of information, counsel relied on the case of London Distillers (K) Ltd Vs. Cabinet Secretary of Education & 4 Others [2020], where the court explained rationale for the right to information and made reference to the case of Nelson O. Kadison Vs. The Advocates Complaints & Another Nbi HC Petition No. 549 of 2013, and submitted that the Petitioners are not entitled to the orders sought.



42. According to counsel, in order to give effect to the rights under Article 35 of *the Constitution*, Parliament enacted the *Access to Information Act* (Act No. 31 of 2016) which provides for the modalities of obtaining information held by the state or any other person. Section 6 (5) of the Act states that a public entity is not obliged to supply information to a requester if that information is reasonably accessible by other means and in this case that the information was published online for the public to access and the specific terms and conditions of the project were outlined in the tender document which is a public document,
43. On the issue of access to information, counsel relied on the cases of *Njonjo Mue V Chairperson of Independent Electoral and Boundaries Commission & 3 Others* [2017] eKLR, *Timothy Njoya V Attorney General & Another* [2014]eKLR, *Cape Metropolitan Council V Inspection Services Western Cape and Others* 92001) Zasca 56, and *Hon. Abuya Abuya Vs Independent Electoral And Boundaries Commission & Another* [2014] and submitted that there are procedures provided under Section 8 of the *Access to Information Act* which any person who seeks to access information should follow. Further, section 9 (6) of the Act provides that where an Applicant does not receive a response to an application within 21 days of receipt of the application, the application shall be deemed to have been rejected hence the Petitioners should follow the laid down procedures.
44. Ms. Litunda, submitted on the issue whether the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents violated the Petitioners' environmental rights under Articles 42, 69 and 70 of *the Constitution*, and relied on the case of *Republic Vs County Government of Nairobi; Kilimani Project Foundation & 21 Others* (interested Parties) Ex Parte Cyntonn Investments Partners Sixteen Lip [2020]eKLR, where the court cited the case of *International Trade Administration Commission Vs Scaw South Africa (Pty) Ltd*, that
- “where *the constitution* or valid legislation has entrusted specific powers and functions to a particular branch of the government, courts may not usurp that power or function by making a decision of their preference. That would frustrate the balance of power implied in the principle of separation of powers.”
45. It was counsel's further submission that Schedule IV of *the Constitution* of Kenya and the County Government Act 2012, mandates the County Government to oversee issue relating to county parks, thus the rehabilitation of the park was necessitated by the fact that it had become an eyesore, a den of criminals and open defecation area.
46. Counsel therefore urged the court to dismiss the Petition with no orders as to costs as this is a public interest Petition.

### **Analysis and Determination**

47. These are two Petitions as earlier stated above involving the same issues, and the same subject matter with different Petitioners. The court will therefore analyze the issues raised in both Petitions and come up with one judgment to apply to the two petitions. From the pleadings, the issues that arise for determination in the two Petitions are as follows:
- a. Whether there was adequate, public participation conducted prior to the rehabilitation of the park.
  - b. Whether the Respondents have violated the Petitioners' rights under the provisions of Articles 69 and 70 of *the Constitution* and statutory environmental and planning obligations.
  - c. Whether the Petitioners are entitled to the disclosure of documents held by the Respondents.



- d. Whether the construction of commercial stalls within Lions Gardens Park was illegal and contrary to public purpose?
  - e. Whether the Petitioners are entitled to the reliefs sought in the Petitions.
  - f. Who bears the costs of the Petitions?
48. The first issue for determination is whether there was adequate public participation prior to the rehabilitation of the Lions Garden Park. Article 10 (2) a of *the Constitution* outlines public participation as one of the national values and principles of governance which bind all state organs and public officers. Similarly Article 69(1) (d) of *the Constitution* provides that:
- ...the State shall encourage public participation in the management, protection and conservation of the environment.”
49. The Supreme Court 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)* established the following guiding principles for public participation as follows:
- i. As 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.

50. Similarly, in the case of Mui Coal Basin Local Community & 15 others vs Permanent Secretary Ministry of Energy & 17 others [2015] eKLR, a three-Judge Bench outlined the elements of the principles which public participation in the area of environmental governance should entail at a minimum as follows:

“First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter...

Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness. A variety of mechanisms may be used to achieve public participation...

Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information. See Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya (JR Misc. App. No. 374 of 2012) ...In the instant case, environmental information sharing depends on availability of information. Hence, public participation is on-going obligation on the state through the processes of Environmental Impact Assessment – as we will point out below.

Fourth, public participation does not dictate that everyone must give their views on an issue of environmental governance...A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.

Fifth, the right of public participation does not guarantee that each individual’s views will be taken as controlling; the right is one to represent one’s views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme...

Sixth, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.”

51. With the above guiding principles on public participation, the Petitioners contend that there was no adequate public participation in respect of the rehabilitation and construction of commercial stalls in



- a public park known as Central Park Lions Garden in Nakuru County. It was the Petitioners' case that the construction of stalls, kiosks and other commercial structures within the confines of the designated Central Park-Lions Garden, by the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is tainted with illegality and an imminent threat to the environment.
52. The Petitioners also claimed that the public participation did not warrant the change of user of the parcel of land, hence a violation of the Petitioners' rights.
  53. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents gave a detailed explanation of the process of the rehabilitation of the Park from inception to completion and handing over. The explanation was vide a replying affidavit of Kennedy Mungai Barasa dated 11<sup>th</sup> February 2025, and referred to Schedule IV of *the Constitution* that mandates the County government to oversee issues relating to parks and that the rehabilitation of the Park was necessitated by the fact that it had become an eyesore, a den of criminals and open defecation.
  54. He stated that before the closure of the park to pave way for the rehabilitation, the 3<sup>rd</sup> Respondent invited various stakeholders for public participation meeting with the main agenda being the rehabilitation of the park, which was disseminated through the Nakuru East Sub-county offices, the office of the Member of County Assembly for Biashara Ward Local media and was affixed around the park, of which he annexed a copy of the invitation issued to the stakeholders.
  55. The heading of the letter of invitation was 'Re: Public Participation on Lion Gardens' dated 9<sup>th</sup> August 2023, for a public participation meeting to be held at Dusater Center Building Boardroom on Monday 14<sup>th</sup> August at 2.00pm. This shows that the stakeholders were given notice of the meeting, the venue, the time and the agenda of the meeting. Additionally the Respondent annexed an attendance list, the Minutes which indicated different categories of the stakeholders present during the meeting.
  56. Under Minute 04/8/14/2023 it was noted that one of the traders raised a concern that with the rehabilitation works that will be commencing soon in the Garden, the traders who depend on the Garden to make a living will be affected but the Chief Officer reinterested that was one of the issues to be deliberated on in the next meeting to be held on a date to be communicated.
  57. Subsequently, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Respondents issued a closure Notice dated 21<sup>st</sup> August 2023, to all stakeholders and members of the public that the Lions Garden would be closed from 1<sup>st</sup> September 2023, for the planned rehabilitation with the aim of improving its aesthetic value and utility for the benefit of the residents of Nakuru and visitors. The notice further stated that the rehabilitation is geared towards increasing the urban greenery, which will act as a carbon sink in combating climate change effects in the city and enhance its status.
  58. The Respondent further held another meeting on 11th April 2024 at Governor's Boardroom at 2.00pm which was part of the public participation for the rehabilitation of the Park. The Respondent also stated that the 3<sup>rd</sup> Respondent also received a proposal by members of the community through the Ward Climate Change Planning Committee for Biashara Ward on 22<sup>nd</sup> April 2024 seeking the rehabilitation of the park to create a more conducive environment for the members of the public, and upon completion of the procurement process the project was handed over to the Contractor on 10<sup>th</sup> June 2024, and the terms and conditions of the entire project were outlined in the tender document.
  59. This elaborate, open and transparent process involved the stakeholders in the public participation on the rehabilitation of the Park for the benefit of the Nakuru residents. It is noted that the residents also contributed by forwarding a proposal on how best to rehabilitate the park.
  60. The Petitioners were concerned that the Park would lose its character as a recreational facility, by the introduction of stalls, and kiosks but from the evidence adduced by both parties, it is noted that the



park has always been used by the, photographers, nail artists, traders, and shoe shiners. This does not change the character of the park but improves the aesthetics by planting trees, urban greenery, and regulation and order on the perimeter of the park. There was no evidence of change of user of the parcel of land as it still remains a park for use by the public. The parcel of land has not been converted to private land, and it were so then the court would have found fault in the illegal conversion of public land to private without following due procedures.

61. Instead of the place being an eyesore, and a den of criminals, the Respondents would be failing to fulfil their mandate under Schedule IV of *the Constitution* as a County government to oversee the rehabilitation of the Park. Consequently, I find that there was adequate public participation for the rehabilitation of the Park.
62. Having found that there was adequate public participation, and that the rehabilitation of the park did not change the character of the parcel of land from public to private, it follows that the other issues as to whether there was any violation of the Petitioner's rights under Articles 69 and 70 hang in the balance. The Respondents indicated that the rehabilitation was geared towards improving its aesthetic value and utility for the benefit of the residents of Nakuru and visitors. Further that the rehabilitation was to increase the urban greenery, which will act as a carbon sink in combating climate change effects in the city and enhance its status. The rehabilitation takes into account environmental conservation and management principles, and climate change imperatives.
63. If the Respondents adhered to the requirement of public participation with the involvement of the stakeholders who gave their views and concerns, which were factored into the participation process, then why would the petitioners complain just because they want the status quo to be maintained as it were?
64. Mr. John Githanga reminisce with nostalgia of the Nakuru of 1970's during Jomo Kenyatta's time, through his Facebook online page titled "NAKURU GOLDEN YEARS AND TODAY." It is good to remember the good old days but it is also important to appreciate that the world in moving on to a digital age which may be too fast for some of the citizenry. The world is also facing many unforeseen challenges caused by climate change which we must adopt adaptation measures to combat the triple planetary crisis.
65. On the issue of access to information about the project, the information was public and the Petitioners had an opportunity to access such information, without any hindrance. the case of *Trusted Society of Human Rights Alliance & 3 Others vs Judicial Service Commission* [2016] eKLR, the Court reaffirmed the position that *the Constitution* does not limit the right to access information when it stated:

“(270) Article 35(1) (a) of *the Constitution* does not seem to impose any conditions precedent to the disclosure of information by the state. I therefore agree with the position encapsulated in *The Public's Right to Know: Principles on Freedom of Information Legislation – Article 19* at page 2 that the principle of maximum disclosure establishes a presumption that all information held by public bodies should be subject to disclosure and that this presumption may be overcome only in very limited circumstances and that public bodies have an obligation to disclose information and every member of the public has corresponding right to receive information. Further the exercise of this right should not require individuals to demonstrate a specific interest in the information.”



66. Section 8, of the Act provides that a citizen who wants to access information should do so in writing with sufficient details and particulars to enable the public officer to understand what information is being requested, which information should be given without undue delay and at no fee.
67. Section 9 (6) of the Act provides that where an Applicant does not receive a response to an application within 21 days of receipt of the application, the application shall be deemed to have been rejected, but the public office is under a duty to explain why the application has been rejected.
68. In the case of Famy Care Limited – Versus - Public Procurement Administrative Review Board & another Nairobi Petition No. 43 of 2012-[2012] eKLR, the court held that:
- “The right of access to information is one of the rights that underpin the values of good governance, integrity, transparency and accountability and the other values set out in Article 10 of *the Constitution*. It is based on the understanding that without access to information the achievement of the higher values of democracy, rule-of law, social justice set out in the preamble to the-Constitution and Article 10 cannot be achieved unless the citizen has access to information.”
69. Similarly , in the case of Kenya Society for the Mentally Handicapped (KSMH) v Attorney General & 5 others; United Disabled Persons of Kenya & another (Interested Parties) (Petition 155A of 2011) [2012] KEHC 5406 (KLR), the court held that the enforcement of Article 35 can only arise after a request for information has been made and the request denied. Further that there should be evidence of a proper request as was held in the case of Khalifa & another v Principal Secretary, Ministry of Transport & 4 others; Katiba Institute & another (Interested Parties) (Constitutional Petition E032 of 2019) [2022] KEHC 368 (KLR) (13 May 2022).
70. There was nothing to hide about the rehabilitation project. Additionally, the Petitioners did not state whether they had sought/requested the information, from the respondents, and were denied access. Therefore, a formal request for access to information is a necessary precondition to establishing that access was denied, and failure to prove this renders the claim untenable.
71. On the issue as to whether the Petitioners are entitled to the reliefs sought, the court finds that the Petitioners are not entitled to the reliefs sought, therefore, the Petitions are dismissed with no orders as to costs as these were public interest cases.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 9<sup>TH</sup> DAY OF FEBRUARY 2026.**

**M. A. ODENY**

**JUDGE**

