



**Law Society of Kenya v Attorney General & 4 others (Petition E083 of 2024)
[2026] KEHC 1481 (KLR) (Constitutional and Human Rights) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E083 OF 2024

EC MWITA, J

FEBRUARY 12, 2026

BETWEEN

THE LAW SOCIETY OF KENYA PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

**THE CABINET SECRETARY, NATIONAL TREASURY & ECONOMIC
PLANNING 2ND RESPONDENT**

**THE PRINCIPAL SECRETARY, MINISTRY OF ICT, INNOVATIONS
& YOUTH AFFAIRS STATE DEPARTMENT OF BROADCASTING &
COMMUNICATIONS 3RD RESPONDENT**

CONVERGENCE AFRICA MEDIA LIMITED 4TH RESPONDENT

THE STAR PUBLICATIONS LIMITED 5TH RESPONDENT

JUDGMENT

Background

1. In July 2015, the National Treasury issued Circular No. 09/2015 establishing the Government Advertising Agency as a Directorate to manage public sector advertising and dissemination of government information.
2. On 8th February 2017, Head of the Public Service issued a memorandum to Principal Secretaries of Ministries communicating a Cabinet decision approving the establishment of the My. Gov Publication Newspaper. The memorandum directed all accounting officers in national government ministries, departments and semi-autonomous government agencies to advertise through My. Gov Publication.



3. My. Gov Publication was henceforth regularly printed and circulated as a pull-out by four daily newspaper, The Star, The Standard, The Daily Nation and The People Daily under contractual arrangements between the media houses and the 2nd respondent. The contracts expired in December 2023.
4. Prior to expiry of the contracts, the 3rd respondent floated a tender for public sector advertisement. Convergence Africa Media Ltd, the 4th respondent and owners of The Star Publications Ltd, the 5th respondent was declared successful bidders and became the sole printers and distributors of My. Gov Publication in the country for two years.
5. On 23rd January 2024, the 3rd respondent issued a memorandum directing Principal Secretaries, Chief Executive Officers of State Corporations, Semi- Autonomous and Autonomous Government Agencies, Independent Commissions and Vice Chancellors of Public Universities to restrict their advertising to the 4th and 5th respondents for the next 2 years.

The petition

6. The petitioner filed this petition to challenge the directive. The petitioner named the Attorney General, the Cabinet Secretary, National Treasury and economic Planning, the Principal Secretary, Ministry of ICT, Innovations and Communications, Convergence Africa Media Limited and the Star Publications Limited as the respondents. The petition was supported by affidavit of even date and further affidavit.

The petitioner's case

7. The petitioner argued that the Government Advertising Agency and the My. Gov Publication were neither established under Constitution or the law, but through arbitrary decisions by the 2nd and 3rd respondents. The petitioner asserted that whereas My. Gov Publication runs advertisements for public procurement of goods and services by State Corporations, Semi-Autonomous and Autonomous Government Agencies, Independent Commissions and Public Universities which ought to be circulated widely and throughout the country, the 4th and 5th respondents publish and distribute My. Gov Publication through The Star Newspaper only which is not a newspaper of nationwide circulation.
8. The petitioner argued that as a result of the restricted circulation of the publication, many Kenyans, including journalists, media stakeholders and consumers of Government information outside Nairobi, risk of losing out on crucial information published in My. Gov Publication Pull-out.
9. The petitioner asserted that the 2nd and 3rd respondents' decisions which are being implemented by the 4th and 5th respondents, are in violation of *the Constitution*. The Attorney General (1st respondent) failed to properly advise the 2nd and 3rd respondents on the implication of their decisions.
10. The petitioner argued that there was no public participation when the 2nd and 3rd respondents made the impugned decisions. According to the petitioner, the 2nd and 3rd respondents' actions resulting in the impugned memorandum and its implementation are contrary to *the Constitution* and violate fundamental rights and freedoms including those of journalists, media stakeholders, consumers of Government information and the people of Kenya generally.
11. The petitioner contended that establishment of Government Advertising Agency, the subsequent establishment and launch of the My. Gov Newspaper and the 3rd respondent's decision to exclusively



- award the tender to print and distribute the My. Gov publication to the 4th and 5th respondents are unconstitutional and illegal.
12. The petitioner argued that the impugned actions by the 2nd and 3rd respondents violated articles 10(2), 21, 27, 34, 35, 47, 201, 227 and 249 of *the Constitution*; section 5 of the *Fair Administrative Action Act*, 2015; section 21 of the *Competition Act*; and section 96 *Public Procurement and Asset Disposal Act* 2015(PPDA).
 13. The petitioner argued that the government did not involve the public or engage relevant stakeholders when issuing the Circular as required under articles 10 and 201 of *the Constitution*. Implementation of article 35 (3) cannot justify violation of articles 10(1) and 34 (2) (a) of *the Constitution*. The respondents did not also avail any documents to show that Government Advertising Agency was registered with the Public Procurement Regulatory Authority as a procuring agency.
 14. According to the petitioner, whereas section 92(1)(j) of the PPADA provides for framework agreements, it has to be within the confines of section 114 of the Act. The petitioner argued that the petition concerns the tendering process for printing and circulation of the My. Gov Publication; the constitutional violation in the tendering process and the contract entered into thereafter. This court has jurisdiction to hear and determine the petition by virtue of article 165 (3) (b) of *the Constitution*.
 15. The petitioner maintained that Government Advertising Agency was created by the Cabinet Secretary in 2015 without adherence to article 10(2) (a) of *the Constitution* and in violation of articles 34, 35 and 201 of *the Constitution*. Dissemination of government information is not a preserve of government. It is an issue that goes to the root of article 35(3) of *the Constitution* and choosing a monopolistic approach violates article 34 (2) (a) of *the Constitution*. The petitioner argued that the move from 4 daily newspapers of national circulation to one daily newspaper violated various constitutional guarantees.
 16. The petitioner asserted it invoked article 35 of *the Constitution* and requested for audited circulation numbers of the 5th respondent's newspapers but the information was not disclosed. The figures quoted in the replying affidavit filed by the 4th and 5th respondents are self-generated. Further, a list of delivery points does not necessarily translate into actual readership and consumption by the target audience. The petitioner maintained that the tendering process notwithstanding, the establishment of Government Advertising Agency and My. Gov Publication lacked constitutional legitimacy.
 17. The petitioner relied on the decisions in re the Matter of the National Land Commission [2015] eKLR; Robert N. Gakuru & others v Governor Kiambu County & 3 others [2014] eKLR and William Odhiambo Ramogi & 3 others v Attorney General & 4 Others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR to support its case.
 18. The petitioner maintained that the respondents' actions also violated article 27(1) and (2) of *the Constitution* since they deprived Kenyans the opportunity to have a say on how government information should be published and publicized in realisation of the right of access to information. The government is failing in its duty to publicize information by making the 4th and 5th respondents the only avenue for citizens to access government information since the 4th and 5th respondents can only circulate 100,000 copies of the My. Gov publication once a week.
 19. The petitioner went on to argue that the decision to publish government advertisements only through the 4th and 5th respondents, a newspaper published only in English Language, cannot be an optimal means for achieving the obligation of the State to publicize information to the public considering the context of articles 7 and 35 of *the Constitution*. The petitioner relied on the decisions in Katiba Institute v Presidents Delivery Unit & 3 others [2017] eKLR on the right of access to information.



20. The petitioner took the view, that requiring Independent Constitutional Commissions and Offices to limit or restrict advertising to the 4th and 5th respondents on the basis of a Circular from the 2nd respondent violated article 249(2) of *the Constitution*. Reliance was placed on the decision in re the Matter of Interim Independent Electoral Commission [2011] eKLR.
21. Based on the above arguments, the petitioner sought the following reliefs:
1. A declaration be and is hereby issued that the establishment of the Government Advertising Agency pursuant to Treasury Circular No.09/2015 dated 10 July 2015 issued by the Cabinet Secretary to the National Treasury and Economic planning contravened the provisions of articles 10, 27, 47 and 201 of *the Constitution* and is therefore unconstitutional and void.
 2. A declaration be and is hereby issued that the establishment of the My. Gov Newspaper through the Memorandum issued on 8 February 2017 by the Principal Secretary Ministry of ICT, innovations & Youth Affairs (State Department of Broadcasting & Communications) contravened the provisions of articles 10, 27, 47 and 201 of *the Constitution* and is therefore unconstitutional and void.
 3. A declaration be and is hereby issued that the decision contained in the Memorandum dated 23 January 2024 issued by the Principal Secretary Ministry of ICT, Innovations & Youth Affairs (State Department of Broadcasting & Communications) to exclusively award Convergence Africa Media Limited and The Star Publications Limited the contract for print advertising services in The Star Newspaper, thus making them the sole printers and distributors of the My.Gov Publication contravened the provisions of articles 10, 27,47 and 201 of *the Constitution*, section 96 of the *Public Procurement and Asset Disposal Act*, 2015 and requirement in national legislation for advertisement of general public importance to be made in at least two(2)newspapers of nationwide circulation, and is therefore illegal and void.
 4. An order of certiorari be and is hereby issued to bring into this Honourable Court for purposes of quashing Treasury Circular No. 09/2015 dated 10 July 2015.
 5. An order of certiorari be and is hereby issued to bring into this Honourable Court for purposes of quashing the Memorandum issued on 8 February 2017 by the Principal Secretary Ministry of ICT, Innovations & Youth Affairs (State Department of Broadcasting and Communications) establishing the My. Gov Publication.
 6. An order of certiorari be and is hereby issued to bring into this Honourable Court for purposes of quashing the Principal Secretary Ministry of ICT, Innovations & Youth Affairs (State Department of Broadcasting& Communications) decision contained in the Memorandum dated 23 January 2024 to exclusively award Convergence Africa Media Limited and The Star Publications Limited the contract for print advertising services in The Star Newspaper.
 7. An order of prohibition be and is hereby issued restraining Convergence Africa Media and The Star Publications Limited from printing and publishing the My.Gov Publication as a pull-out in the Star Newspaper.
 8. An order awarding costs of the Petition to the petitioner.
 9. Any other or further orders, writs and directions this court considers appropriate and just to grant.



1st, 2nd and 3rd respondents' case

22. The 1st, 2nd and 3rd respondents opposed the petition through replying affidavits sworn by Njuguna Ndung'u and Edward Waswa Kisiang'ani. They stated that the Government Advertising Agency was established to enhance centralized public sector advertising and avoid unnecessary government expenditure. It was a realization of the spirit and purpose of *the Constitution*.
23. The 1st, 2nd and 3rd respondents asserted that My. Gov Publication was established as not only the official government media for public sector print advertisement but also as a means of propagating government development agenda through in depth editorial content in the public sector. It was aimed at actualizing article 35 (3) of *the Constitution*.
24. The 1st, 2nd and 3rd respondents admitted that My. Gov Publication had previously been printed and circulated by four daily newspapers under a contract which expired in December 2023. Prior to expiry of the contracts, a new tender for public sector advertisement was floated in accordance with the *Public Procurement and Asset Disposal Act*, 2015 (PPADA) and other relevant laws.
25. They contended that the 4th respondent won a two-year tender through a competitive tender process as the sole printer and distributor of My. Gov Publication as a pull-out. The publication was to be circulated nationwide on Tuesdays at no cost to readers. They denied the allegations that the 4th respondent is not a newspaper of nationwide circulation and maintained that the Cabinet Secretary acted within the law in setting up the Government Advertising Agency.
26. According to the 1st, 2nd and 3rd respondents' establishment of Government Advertising Agency was not a change in Government Policy but an administrative intervention to ensure government services are consolidated to ensure efficiency and effectiveness in dissemination of government information and improve service delivery to the people.
27. They contended that Government Advertising Agency and My. Gov Publication are established pursuant to article 132 (3) of *the Constitution*, section 4 of the *State Corporations Act* and Executive Order No.1 of 2023. The establishment of Government Advertising Agency did not have to be subjected to public participation. Key stakeholders, including media houses participated in the tender process for My. Gov project during inception and no grievances were raised against Government Advertising Agency.
28. The 1st, 2nd and 3rd respondents maintained that the Government Advertising Agency is not an independent commission and does not interfere with freedom of media. Whereas My. Gov Publication was previously circulated by various daily newspapers, a standard single rate for government advertising was necessary to ensure maximization of value for money in government advertising, among other principles provided for under section 3 of the PPADA.
29. On 26th September 2023 a tender was advertised for provision of publishing/printing and distribution services for My. Gov Publication being Tender No. MISCDE/SDBT/12/2023-2024. Six bids were submitted by Nation Media Group; Mediamax Network; Convergence Africa Media Limited; Standard Group Limited; Savme and Postal Corporation of Kenya.
30. The Nation Media Group; Mediamax Network and Convergence Africa Media Limited (The Star Newspaper) went through to the financial negotiation stage. At the negotiation stage, the 4th respondent emerged the winner and the tender was awarded to the 4th respondent being lowest bidder which was in line with section 86(1) (a) of the PPADA as only one bidder can be awarded a contract in an open tender process. The procurement process was conducted in compliance with the PPADA.



31. They maintained that the directive that procuring entities in government advertise through the 4th and 5th respondents was lawful following the concluded public procurement process. The allegation that the Star Newspaper is not a newspaper of nationwide circulation is also not backed by evidence.
32. The 1st, 2nd and 3rd respondents argued, therefore, that establishment of Government Advertising Agency was lawful. They relied on the decisions in *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* [2015] eKLR; *Mark Ndungu Ndumia & 2 others v The Law Society of Kenya & 1*; *Tom Ojienda & 4 others (Interested parties)* [2019] eKLR.
33. Further reliance was placed on the decisions in *Pastoli v Kabale District Local Government Council and Others* [2008] 2 EA 300; *Republic v Public Procurement Administrative Review Board Exparte Giant Forex Bureau De' Change Limited & 2 others* [2017] eKLR; *Republic v Public Procurement Administrative Review Board & 2 others Exparte Rongo University* [2018] eKLR, for the argument that the petition does not satisfy the threshold of a constitutional petition; the reliefs sought have been rendered moot since the substratum of the petition had ceased to exist. Granting the reliefs sought would be contrary to the principles in article 227 of *the Constitution* read with the PPADA

4th and 5th respondent's case

34. The 4th and 5th respondents filed a preliminary objection that the petition offends the doctrines of constitutional avoidance and exhaustion. They also filed a replying affidavit in opposition to the petition.
35. The 4th and 5th respondents asserted that the Star Newspaper has nationwide circulation; the 4th and 5th respondents were awarded a contract on 18th December 2023 after a rigorous procurement process and the petitioner ought to have invoked the dispute resolution mechanism provided for under the PPADA before instituting this petition.
36. The 4th and 5th respondents maintained that award of the tender was lawful and complied with section 86 (1)(a) of the PPADA and Clause 43.1 of the Tender No. MISCDE/SDBT/12?2023-2-24 Document. Bidders were notified of the standstill period during which they could request a debriefing in relation to the valuation of their bids and/or submit a procurement related complaint over the decision to award the contract, which was not done. The 4th respondent then entered into a contract with the 3rd respondent for provisions of publishing/printing and distribution services for My. Gov publication.
37. The 5th respondent first circulated My. Gov publication on 9th January 2024 (118,142 copies) and has since been circulating 100,000 copies of the publication every Tuesday for free across all 47 counties. Circulation of free My. Gov publication by The Star Newspaper has a higher and wider reach as opposed to the previous method of circulation when people were required to buy the newspapers.
38. According to the 4th and 5th respondents, they have engaged complementary services of Hallmark Retail Management and Kenya Postal Corporation to assist in transporting, distributing and merchandizing the newspaper and My. Gov pull-out as a way of enhancing nationwide circulation. The 4th and 5th respondents stated that in December 2023, they embarked on My. Gov publicity campaign through various media platforms such radio to advertise and publicise the distribution of the My. Gov pull-out every Tuesday.
39. They maintained that the circular issued on 23rd January 2024 by the 3rd respondent made it clear that the 4th respondent had been awarded the tender; a contract executed and parties to the contract were already performing their obligations under the contract. In the circumstances, they argued, this court



- lacks jurisdiction to hear and determine the petition because the contract cannot be impugned through a constitutional petition. The substratum of the dispute is time barred as no dispute was lodged with the Public Procurement Administrative Review Board as required by section 167 (1) of the PPADA.
40. Regarding public participation, the 4th and 5th respondents maintained that the 3rd respondent advertised the tender in the My. Gov Publication which was ran in the Nation Newspaper. Six print media houses participated in the tender process and the 4th respondent was successful. The process complied with the law and in particular, the PPADA.
 41. In the view of the 4th and 5th respondents the petition offends the doctrine of exhaustion. They relied on the decisions in Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others (supra) and East Africa Pentecostal Churches Registered Trustees & 1754 others v Samuel Muguna Henry & 4 others [2015] eKLR.
 42. They maintained that the petition raises contractual issues disguised as constitutional questions which is not permissible. Reliance was placed on the decisions in C. N. M v W.M.G [2018] eKLR and Communications Commission of Kenya & 5 others v Royal Media services & 5 others [2014] eKLR, among other decisions.
 43. The 4th and 5th respondents argued that the petitioner lacks locus standi since it was not a party to the tender process and cannot therefore impugn the contract executed between the 3rd and 4th respondents through a constitutional petition without following the correct procedure for challenging a tender award. Reliance was placed on Rose Wangui Mambo & 2 others v Limuru Country Club & 17 others [2014] eKLR.

Determination

44. I have considered the petition, responses, arguments by parties and the decisions relied on. The issues that arise are whether the respondents' decision to establish the Government Advertising Agency; restriction of advertisement of government information through My.gov publication and printing and distribution of the publication were lawful. The petitioner argues that the actions violated *the Constitution* and the law, while the respondents maintained that the actions were lawful.
45. Before determining these core issues, there is an issue of jurisdiction that was raised by the respondents which the court should determine first. According to the respondents, the petitioner did not invoke the available alternative dispute resolution mechanism. namely; the body that should deal with disputes arising from procurement process. The petitioner on its part argued that the petition is properly before this Court as a constitutional petition.
46. The respondents' argument has no basis. What is before this Court is a constitutional petition challenging the constitutionality of the respondents' actions. A constitutional challenge can be mounted over a procurement process on the basis that it did not comply with the constitutional principles. The bottom line is that moved as a constitutional court, this Court has jurisdiction to determine whether any action said to be done under the authority of *the Constitution* or the law, is in contravention of *the Constitution*.
47. Moreover, a careful reading of the petition reveals that the petition is not really about procurement. It raises other concerns including establishment of the Government Advertising Agency and My. Gov Publications which have nothing to do with procurement. I find no merit in the preliminary objection.



Government Advertising Agency

48. The petitioner argued that the establishment of Government Advertising Agency through a circular was an arbitrary decision made without any legal foundation; public participation or stakeholders' engagement thus, was in violation of article 10(2) of *the Constitution*. The petitioner further argued that there was no legal justification for establishing My. Gov Publication as the official government media for public sector print advertisements and propagating government development agenda and therefore was in violation of article 34 (2) (a) of *the Constitution*.
49. The respondents supported the decision, arguing that there was no need for public participation and that the action did not violate *the Constitution* or the law.
50. I have considered respective parties' arguments on this issue. The National Treasury issued Circular No. 09/2015 in July 2015 establishing the Government Advertising Agency under the Ministry of Information, Communication and Technology. This was for purposes of managing public sector advertising and dissemination of government information. Thereafter, in February 2017, the Cabinet approved establishment of My. Gov Publication. The Head of the Public Service then sent communication Principal Secretaries of Ministries regarding the decision to establish My. Gov Publication and directed all accounting officers in national government ministries, departments and semi-autonomous government agencies to advertise through My. Gov Publication.
51. Public participation is one of the founding values and principles of our democratic State. Article 4(2) states that Kenya is a multiparty democratic State founded on the national values and principles of government in article 10. National values and principles of governance bind all State organs, State officers, public officers and all persons in the performance of their duties, including when applying and interpreting *the Constitution*; enacting applying or interpreting the law, or making or implementing public policy decisions. National values and principles of governance must, as a matter of constitutional circumspection, be observed by everyone when exercising and discharging his or her functions and mandate.
52. In *Robert N. Gakuru & others v Kiambu County Government & 3 others* [2014] eKLR, the High Court stated that public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates.
53. On appeal, in *Kiambu County Government & 3 others v Robert N. Gakuru & Others* [2017] KECA 459 (KLR), the Court of Appeal stated:
- [20]...The issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. *The Constitution* in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation.
54. In *Minister for Health v New Chicks South Africa Pty Ltd (CCT 59/004)* [2005] ZACC 14, the Constitutional Court of South Africa observed that the forms of facilitating an appropriate degree of participation in the law-making process are of infinite variation. "What matters is that at the end of the day, a reasonable opportunity is offered to the members of the public and all interested parties to know about the issue and to have an adequate say."



55. In *Doctors for Life International v Speaker of the National Assembly & Others* (CCT 12/005) [2006] ZACC 11, Ngcobo, J. stated that merely allowing public participation in the law-making process is not enough. More is required and measures need to be taken to facilitate public participation in the law-making process.
56. The decisions referred to above were on legislative processes as opposed to administrative actions, while this petition impugns actions that were administrative decisions. Article 10(1) is to the effect that values and principles of good government bind every person whenever they enact, apply or interpret law or make or implement public policy decisions. These values and principles include, public participation, the rule of law and human rights.
57. The establishment of Government Advertising Agency was an administrative decision made in July 2015. The aim was to have centralized public sector advertisement to authorise public sector advertising and implement sectoral standards, procedures, guidelines and manage consolidated government advertising funds.
58. This was followed by the Cabinet decision of 8th February 2017 to establish a Government Daily Circulation Newspaper known as My. Gov, which was to “articulate the Government agenda in a deeper and more accurate way for a better appreciation of Governments effort to improve the livelihood of the citizens.” The publication would contain, among others, information on government tenders, opportunities available to the Youth and other useful news on government development programmes, which was not available through the other media.
59. The requirement for public participation, as a founding principle, is central in governance and legislative processes as these are actions and decisions that affect the people and therefore require people to have a say on how they want to be governed. That notwithstanding, it is not in every administrative action or decision that public officers have to conduct public participation. A party arguing that the action or decision was taken or made without public participation must demonstrate that such action or decision required public participation.
60. In the circumstances of this petition, the petitioner did not justify why public participation would be required before the government could establish Government Advertising Agency and or My. Gov Publication. The petitioner did not demonstrate and, I am not persuaded, that the principle of public participation applied and was violated.
61. The petitioner further argued that the decision violated article 34(2) of *the Constitution*. The article provides that the State shall not-exercise control over or interfere with any person engaged in broadcasting, the production or circulation of any publication or the dissemination of information by any medium, or penalise any person for any opinion or view the content of any broadcast publication or dissemination.
62. My understanding of this provision is that it protects the right to freedom of the media and persons engaged in broadcasting, production or circulation of publication or the dissemination of information. The petitioner did not show how this article applies to this case. The petition is on the decision to establish Government Advertising Agency and My. Gov publication. The decision is not about control over or interference with persons engaged in broadcasting, production or circulation of their publications or dissemination of information through any medium of communication. The decision is also not about penalising persons over their opinions; views or contents of broadcasts, publications or dissemination of information. I do not find any relevance of article 34(2) in so far as this petition is concerned.



Distribution of My. Gov Publication

63. The petitioner again challenged the 3rd respondent's decision to distribute My. Gov Publication through the 5th respondent. The petitioner argued that since My. Gov Publication runs advertisements for public procurement of goods and services by State and government agencies, Independent Commissions and public Universities, the publication ought to be circulated widely and throughout the country. However, the 5th respondent (which distributes My. Gov Publication is not a newspaper of nationwide circulation.
64. The 4th respondent was awarded the tender to distribute My. Gov publication through the 5th respondent beginning January 2024 which, the petitioner argued, restricted circulation of My. Gov publication such that the publication does not reach many Kenyans and consumers of the government information outside Nairobi. The petitioner faulted the decision by the 2nd and 3rd respondents to award the contract to the 4th and 5th respondents arguing that it was in violation of *the Constitution* considering the implication of the decision.
65. Upon establishment, My. Gov publication, it was regularly printed and circulated as a pull-out by four daily newspapers, namely; The Star Newspaper, The Standard, The Daily Nation and The People Daily. This was done under contractual arrangements between those media houses and the 2nd respondent. Those contracts expired in December 2023. On 23rd January 2024, the 3rd respondent directing Principal Secretaries and other public bodies to restrict their advertising to the 3rd and 4th respondents for a period of 2 years, an action that the petitioner argues violated various articles of *the Constitution* and PPADA. The respondents defended the action, arguing that they followed an open and competitive procurement process.
66. Article 227 (1) of *the Constitution* provides:
- When a State organ or any other public entity contracts for goods and services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
67. Sub article (2) required Parliament to enact legislation prescribing a framework within which policies relating to procurement and asset disposal would be implemented. Parliament enacted PPADA to give effect to article 227. Section 3 of the Act sets out values and principles that guide State organs and public entities when procuring goods and services, while section 4 is on the application of the Act. It states that the Act applies to all State and public entities with respect to-procurement planning; procurement processing; inventory and asset management; disposal of assets; and contract management.
68. In *Okiya Omtatah Okoiti v Kenya Poets Authority, & 5 others; Portside Freight Terminals Limited & 8 others* (Interested parties [2023] KEHC 20571(KLR), the Court observed that any procurement must first meet constitutional threshold of fairness, equity, transparency, competitiveness and cost effectiveness. The court emphasised that any other stipulation whether in an enactment, or in the tender document is only be secondary to the constitutional dictates.
69. In *Republic v Public Procurement Administrative Review Board; Principles Styles Limited & another* (Interested parties) *Ex Parte Accounting Officer, Kenya Water Towers Agency & Another* [2020] KEHC 9278(KLR), the Court again observed that a decision to award a tender is an administrative decision. In that regard, an administrative decision is flawed if it is illegal. A decision is illegal if it exceeds power authorising the making of the decision; pursues an objective other than that for which the power is conferred or is not authorised by law or fails to implement a public duty.



70. It is important to state here, that this petition questions the 3rd respondent's decision issued on 23rd January 2024 directing Principal Secretaries and other public bodies affiliated to the national government to restrict their advertising to the 3rd and 4th respondents for a period of 2 years, arguing that it was unconstitutional.
71. I have considered the arguments by parties on this issue. The respondents argued that there was procurement process in which other media houses, including Nation Media Group and the Standard Newspaper participated. The 4th respondent won the tender and executed a 2-year contract to distribute My. Gov Publication. The respondents maintained that they complied with the requirements in article 227 of *the Constitution* and PPADA.
72. Procurement of goods and services by a public entity must comply with *the Constitution* and the law, which the respondents maintained they did. The petitioner did not argue that the claim by the respondents that there was compliance with *the Constitution* and the law on procuring the service from the 4th and 5th respondents was true. The respondents further stated that the tender was awarded and a contract was executed concluding the procurement process, again a fact the petitioner did not dislodge.
73. I have perused the pleadings by parties and, in particular, letter dated 1st January 2024 from Edward Waswa Kisiang'ani (PhD, CBS), Principal Secretary, Ministry of ICT, Innovation and Youth Affairs-State Department of Broadcasting and Telecommunications. The letter was addressed to all Principal Secretaries; CEOs of State Corporations, Independent Commissions and Vice Chancellors of Public Universities drawing their attention to the centralization of Public Sector Advertising/Printing and Circulation of My. Gov Newspapers.
74. The letter stated clearly that the ministry floated a tender for public sector advertising and after presenting the lowest and most sustainable bid, Convergence Media (Publishers of the Star Newspaper) won the tender for the new contract. The Star Newspaper was therefore to be the sole printers and distributors of My. Gov Publication for a period of two years.
75. The Letter stated, just as the respondents argued, that the tender was awarded following a procurement process in compliance with section 86 (1)(a) of the Act. The section provides that the successful tender shall be the one who meets any one of the factors specified in the section and in the tender document including- "the tender with the lowest evaluated price." The 4th respondent argued that its tender had the lowest evaluated price a fact the petitioner did not dispute.
76. The petitioner did not argue that the process leading to awarding the tender to the 4th respondent did not comply with *the Constitution*. It is not enough for one to argue that procurement process violated *the Constitution*, the law or both. A petitioner must demonstrate violation to enable this Court assess the veracity of such a claim.
77. As the Supreme Court stated in *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR; [2014] KESC 53 (KLR), a party invoking articles of *the Constitution* as having been violated or contravened, has to show not only the breach, but also the basis of his or her grievance as manifesting the contravention. The petitioner did not demonstrate how the procurement process violated *the Constitution* and the *Public Procurement and Asset Disposal Act*.
78. This Court's attention was drawn to another decision in *Law Society of Kenya v Attorney General & another: Kenya Broadcasting Corporation* (Interested party (Petition E 182 of 2024) which challenged the decision by the Principal Secretary, Ministry of ICT, Innovations and Youth Affairs to award the interested party a contract to exclusively advertise government services. The court agreed with



the petitioner and quashed that decision for violating the Constitution and provisions of the Public Procurement and Asset Disposal Act.

79. The facts in that petition are distinguishable from the facts of this petition since procurement process was undertaken in the present case unlike in the former case where an arbitrary decision was made to give the contract to the interested party, a government agency. In the present petition, a contract was awarded to a private entity following procurement process in accordance with the Public Procurement and Asset Disposal Act.

Conclusion

80. Having considered the pleadings and arguments by parties, the Court comes to the conclusion that establishment of Government Advertising Agency and My. Gov Publication did not violate the Constitution or the law. Public participation was not required before such establishment.
81. The decision to have My. Gov Publication distributed by the Star Publications Limited was made pursuant the tender won by Convergency Africa Media Limited after procurement process conducted in accordance with Public Procurement and Asset Disposal Act.
82. Consequently, and for the above reasons, this petition fails and is dismissed. This being a public interest litigation and costs being discretionary, the appropriate order to make is that each party shall bear their own costs of the petition.

DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF FEBRUARY 2026

E C MWITA

JUDGE

DELIVERED AND COUNTERSIGNED THIS 13TH DAY OF FEBRUARY 2026

L N MUGAMBI

JUDGE

