

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**PETITION NO. E022 OF 2024**

IN THE MATTER OF ARTICLES 1,2,4,10,19, 20, 21, 22, 27, 42, 47, 69(1)  
258 AND 259(1) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 20, 21, 24, 27(1) (2) (4) (5),  
28, 29(1), and (b), 42, 43(1), 46 (c), 47 AND 53(2) OF THE CONSTITUTION

BETWEEN

**KAYOLE MTAA SAFI INITIATIVE (suing through**

**its elected official Michael Oyugi).....1<sup>ST</sup> PETITIONER**

**KEVERENGE ATITI ALVIN.....2<sup>ND</sup> PETITIONER**

AND

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**KENYA BUREAU OF STANDARDS.....2<sup>ND</sup> RESPONDENT**

**C.S. MINISTRY OF ENVIRONMENT,**

**CLIMATE CHANGE AND FORESTRY.....3<sup>RD</sup> RESPONDENT**

**NAIROBI COUNTY GOVERNMENT.....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

AND

KENYA FOREST SERVICE.....1<sup>ST</sup> INTERESTED PARTY

KENYA FORESTY RESEARCH INSTITUTE.....2<sup>ND</sup> INTER. PARTY

CONSOLIDATED WITH

EP PETITION NO E026 OF 2024

DAVID KIHU, RICHARD KAINIKA

JUSTUS KURIA (suing as the officials of

Kenya Association of Waste Recyclers) .....

.....PETITIONERS

**-VERSUS-**

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....1<sup>ST</sup> RESPONDENT

CABINET SECRETARY MINISTRY OF ENVIRONMENT,

CLIMATE CHANGE AND FORESTRY.....2<sup>ND</sup> RESPONDENT

THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

THE COUNCIL OF GOVERNORS.....4<sup>TH</sup> RESPONDENT

KENYA BUREAU OF STANDARDS.....5<sup>TH</sup> RESPONDENT

JUDGMENT

1. The two consolidated petitions challenge a **decision** made by the 1<sup>st</sup> Respondent and the petitioners in E022 also challenged another decision dated 12<sup>th</sup> July 2023 and published on the 7<sup>th</sup> November, 2023.
2. The decision jointly challenged is comprised in the **Public Notice of 8<sup>th</sup> April 2024** and shared on social media on **22<sup>nd</sup> April 2024**. The

impugned notice introduced new requirements for handling organic waste. It mandates that all organic waste from households, institutions, events, and businesses must be separated and placed **only in 100% biodegradable garbage bags or bin liners**. The waste must then be transported separately to **designated Material Recovery Facilities**.

3. The use of conventional plastic garbage bags for organic waste was ordered to stop immediately. County governments and licensed private waste service providers are also required to supply only biodegradable bags.
4. The Petitioners argue that this decision was **rushed, premature, and made without stakeholder consultation**. They further claim that implementing the notice in its current form could lead to **serious and irreversible environmental harm**.
5. With regard to the second issue, the directive of **12<sup>th</sup> July 2023** and **published Notice of 7<sup>th</sup> November 2023** relate to the **use of seedling potting bags**. The 1<sup>st</sup> Respondent directed the Kenya Forest Service to stop using conventional plastic potting bags and to immediately shift to **compostable alternatives**. The latter public notice required that seedlings be planted using **100% biodegradable (compostable) plastic materials**, allegedly in line with standards set by the 2<sup>nd</sup> Respondent.
6. The Petitioners pleaded on the provisions of the relevant articles of the Constitution which support their claim. Inter alia, **article 10** which

entrenches the national values and principles of governance that bind all State organs whenever they apply or interpret the law; **article 23(1)** vests jurisdiction on this court to hear and determine applications for redress of a denial, violation or threat to, a right or fundamental freedom in the Bill of rights as sought in the present case.

7. Further, they cited the provisions of **article 42** which guarantees the right to a clean and healthy environment which includes having the environment protected for the benefit of present and future generations through legislative and other measures, **article 43(1) (a)** on the rights to reasonable standards of sanitation; and **article 47** on the right to fair administrative action.
8. Besides the guaranteed rights under the bill of rights in our Constitution, the Petitioners argued that under **Article 2(6) of the Constitution of Kenya**, international treaties ratified by Kenya form part of Kenyan law and help protect rights in the Bill of Rights. To this extent, they cited several international instruments.
9. Inter alia:
  - a) **Universal Declaration of Human Rights (UDHR)** which guarantees the right to **social security** (Article 22) and the right to an **adequate standard of living** (Article 25), including food, housing, healthcare, and social services. These rights are linked to human dignity and overall well-being.

b) **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, under Article 11 thereof, Kenya is obligated to recognize and take steps to realize everyone's right to an **adequate standard of living**, including adequate food, clothing, housing, and continuous improvement of living conditions. The Covenant emphasizes progressive realization of these rights through national action and international cooperation.

c) **United Nations Framework Convention on Climate Change (UNFCCC)** referenced to show Kenya's international obligations related to **environmental protection and sustainable development**, which connect to the broader rights to health, livelihood, and a safe environment.

10. It is the Petitioners' argument that the Respondent's decisions may violate not only constitutional rights but also **Kenya's binding international human rights and environmental law obligations**.

11. The Petition further relies on the **international environmental law obligations** binding on Kenya that ensure environmentally sound waste management practices and low-waste technologies. The International policies referenced include the **United Nations Framework Convention on Climate Change (UNFCCC)**.

12. Under Article 3(3) of **UNFCCC** establishes the **precautionary principle**, requiring states to take measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects. It

emphasizes that **lack of full scientific certainty should not be used as a reason to delay action** where there is a risk of serious or irreversible damage. Climate policies should also be **cost-effective**, consider different socio-economic contexts, and address all relevant sources of greenhouse gases across sectors.

13. The **Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)** which Kenya has ratified, governs the **environmentally sound management of hazardous and other wastes**. In Article 10, it encourages cooperation among states to improve waste management systems. It also promotes **public awareness and participation**, particularly in developing countries, in adopting safe waste management practices and low-waste technologies.
14. The Petition is also backed with the **regional legal obligations under the East African Community (EAC) framework**, which they state bind Kenya as a Partner State. This includes the Treaty establishing the **EAC 1999**. The Principles of Governance and Human Rights under Articles 3(3), and 6(d) require Partner States to follow **universally accepted principles of good governance**, including democracy, the rule of law, accountability, transparency, social justice, and the protection of human rights. **Article 7** emphasize public participation in terms of a **people-centered and participatory approach** in achieving the objectives of the Community.

15. Article 112(1) of the EAC Treaty highlights **public participation in environmental management**. It obligates Partner States to promote public awareness and involve citizens in developing environmental policies aimed at protecting ecosystems and preventing or reversing environmental degradation.
16. Further, the Petitioners cite the provisions of the **EAC Protocol on Environment and Natural Resources Management (2006)**. They state that as an EAC Partner State, Kenya is bound not only by the Treaty but also by its Protocols, including the Environment Protocol, as well as decisions and directives of EAC institutions. These instruments reinforce obligations relating to **sustainable environmental management and cooperative regional standards**.
17. Additionally, the Petitioners cited Statutory law amongst them the **Sustainable Waste Management Act CAP 387C** as the main national legal framework governing waste management in Kenya and protecting the constitutional right to a clean and healthy environment. They restated the Act's objectives set out **under section 3** to include promoting sustainable waste management, improving waste service delivery, supporting green jobs, building environmentally sound waste infrastructure, and advancing a circular economy in which waste is treated as a resource.

18. The Act establishes key **guiding principles**, including the **zero-waste principle**, in section **4(e)** which aims to reduce the volume and toxicity of waste, conserve and recover resources, and avoid burning or burying materials that could be reused or recycled.
19. It also sets out the role of the **3<sup>rd</sup> Respondent** as responsible for developing waste management policy and regulations in consultation with other national and county bodies, and for overseeing implementation of the Act (section 5).
20. The Petitioners also quoted section 7(b)&(d) on the establishment of a **Waste Management Council** whose role is to review progress on national waste management strategies and coordinate infrastructure development. It is the duty of the **3<sup>rd</sup> Respondent** to make Regulations for operationalization of the Council.
21. Further, that the Act empowers the **1<sup>st</sup> Respondent** with the task of developing standards and guidelines on sustainable waste management. The **4<sup>th</sup> Respondent** is mandate under section 9 of the Act to establish recycling collection centres, promote waste segregation at source, and develop and manage disposal sites and landfills.
22. In addition, the Act introduces the **Extended Producer Responsibility** (EPR), requiring producers to take responsibility for the environmental impacts of their products throughout their life cycle, including post-consumer waste. In section 13, the Act requires that producers must meet

these obligations either individually or through collective compliance schemes.

23. The Act in section 14 further requires the establishment of Material Recovery Facilities (MRFs) in every county for sorting, segregation, composting, recycling, and management of residual waste before final disposal.
24. The Petitioners also rely on section 3 of **EMCA** and its **subsidiary legislation** that regulates waste and producer responsibility. Amongst them is the **Waste Management Regulations, 2006** which Regulations define key terms such as **“biodegradable substance”** (a material that can be broken down by microorganisms) and **“recycling of waste”** (processing waste into a new product of similar chemical composition). The Regulations emphasize that **waste management includes administrative and operational activities that support recycling**, underscoring recycling as a central component of the waste management system.
25. In the **Extended Producer Responsibility (EPR) Regulations, 2020**, which establish mandatory **EPR schemes** for products and packaging across their life cycle. In line with circular economy principles, they require every producer to:
  - a) *Take responsibility for reducing pollution and environmental harm from their products.*

- b) *Design products and packaging that minimize waste and support reuse, recycling, and recovery.*
- c) *Establish post-consumer **collection and take-back systems**, including possible deposit-refund schemes.*

## **FACTS**

26. The petition challenges a Public Notice dated 8<sup>th</sup> April 2024, which was published by NEMA on 22<sup>nd</sup> April 2024 through its social media platforms. The notice introduced new requirements mandating the use of 100% biodegradable garbage bags and bin liners in lieu of conventional plastic bags and liners, and directed that waste be transported to designated **Material Recovery Facilities** (MRFs).
27. The petition challenges this notice for violating their rights under Article 42(a)(b) for failure to set up policy, regulatory and institutional framework contemplated under the Act to actualize waste management goals. They pleaded that it also violates of Article 46 (1)(a)(b) (c) for failure to develop any standard on the acceptable quality of biodegradable garbage bags and bin liners to be introduced in the country.
28. It is pleaded by the two sets of Petitioners that the 2<sup>nd</sup> Respondent has violated Article 46(1)(a), (b), and (c) of the Constitution by failing to set standards for the quality of biodegradable waste bags in Kenya, thereby denying consumers the right to quality goods, adequate information, and protection of their health, safety, and economic interests. In the absence

of such standards, there is a high risk of counterfeit and substandard products being introduced into the Kenyan market under the guise of biodegradable bags, resulting in environmental pollution and harm.

29. This failure further violates Article 42(a) of the Constitution by undermining the right to a clean and healthy environment. Notably, the 1<sup>st</sup> Respondent previously banned similar products, such as non-woven polypropylene bags in 2019, specifically because the 2nd Respondent lacked standards, underscoring the necessity of such standards to safeguard both consumer and environmental rights.
30. Additionally, that a rushed implementation of the impugned Public Notice offends all the nine (9) objectives of waste management under section 3 of the Act. First, it contravenes the objective under section 3(a) of promoting sustainable waste management, including a circular economy and waste reduction, because the rushed timelines render it impracticable for Kenya to transition from locally manufactured conventional garbage bags to the proposed alternatives, which are neither locally produced nor readily available. This creates a supply deficit likely to disrupt waste management services, encourage illegal dumping, and increase environmental pollution, thereby threatening the right to a clean and healthy environment.
31. Secondly, the rushed implementation defeats the objective under section 3(b) of improving public health by destabilizing waste management

systems and increasing pollution risks. It also contravenes section 3(d) by rendering the delivery of waste services ineffective, given the prejudice caused to stakeholders who lack sufficient time and infrastructure to comply.

32. Further, the Act's objective of establishing environmentally sound waste management infrastructure has not been realised, as no Material Recovery Facilities have been established. The impugned Public Notice, therefore, seeks to enforce outcomes unsupported by the requisite systems.
33. The Petitioners contend that, contrary to section 3(g) of the Act (Cap 387 C), the impugned Public Notice disregards existing circular economy practices. Conventional garbage bags and bin liners, lawfully exempt from the plastic ban, have demonstrated near-total recyclability, a zero-pollution footprint, and full compliance with Extended Producer Responsibility and take-back schemes.
34. Finally, the rushed implementation runs counter to section 3(i) of the Act, which seeks to inculcate responsible public behaviour on waste management, as it is likely to result in haphazard dumping and environmental degradation rather than compliance and sustainability.
35. The Petitions also states that the impugned notice violates Articles 10,27, 69(1) and 47, 69(1) f through a rushed implementation and which will occasion catastrophic and irreparable harm to the environment and to the great prejudice of the Kenyan public.

36. That it is fundamentally flawed due to the absence of the requisite policy, regulatory, and institutional framework, including the lack of a KEBS standard, as well as the non-existence of supporting infrastructure. Coupled with its rushed nature and short implementation timelines, the Notice makes it practically impossible for Kenya to transition away from conventional garbage bags and bin liners.
37. Until the appropriate infrastructural, policy, and institutional mechanisms are in place, the conventional garbage bags and bin liners currently in use remain efficient, environmentally conscious, and sustainable, with demonstrated effective take-back schemes and near-100% recyclability. Notably, these products fall within the exemptions to the plastic bags ban under Gazette Notices Nos. 2334 and 2356 of 2017. Despite this, the 1st Respondent arbitrarily issued a blanket ban without consultation, public participation, or a feasibility study.
38. The impugned decision was made in violation of Articles 10, 47, and 69(1)(d) and (f) of the Constitution. There was no public participation, contrary to the national values and environmental governance principles; no fair administrative action, as the decision was unreasonable, procedurally unfair, and unsupported by written reasons; and no feasibility study or environmental audit to justify the ban. By contrast, the available evidence demonstrates that conventional garbage bags currently

used in Kenya have a near-zero pollution footprint due to their full recyclability.

39. The impugned Public Notice will disproportionately increase the cost of waste collection in Kenya by over 1000%, making compliance economically untenable and likely to trigger improper waste management practices such as illegal dumping. This outcome directly undermines the principles and objectives of the Sustainable Waste Management Act, 2022, including the promotion of a circular economy, recycling, and responsible public behaviour.
40. Further, the Notice imposes a blanket prohibition requiring county governments and licensed waste service providers to issue only the proposed biodegradable garbage bags and bin liners. This approach is fundamentally flawed as it fails to account for the diverse nature of waste streams, including non-organic and hazardous waste, which may not be suitable for containment in the proposed bags. The resulting disruption poses serious and potentially irreparable environmental and public health risks.
41. Additionally, the 1<sup>st</sup> Respondent violated Article 47 of the Constitution by acting unreasonably and without procedural fairness. The decision was made without public participation, written reasons, or consideration of existing exemptions under Gazette Notices Nos. 2334 and 2356 of 2017, under which conventional garbage bags - having demonstrated 100%

recyclability and a zero-pollution footprint - remain lawful. Conversely, the introduction of biodegradable bags without approved standards from the 2<sup>nd</sup> Respondent heightens the risk of environmental pollution through the entry of substandard products into the market.

42. Finally, the 1<sup>st</sup> Respondent has violated the right to fair administrative action under Article 47 of the Constitution by issuing an unreasonable decision. The ninety-day (90) implementation period provided in the Public Notice dated 8<sup>th</sup> April 2024 is manifestly insufficient to enable the public and the Petitioners to effect a smooth and orderly transition to the use of 100% biodegradable garbage bags and bin liners.
43. The same period is equally inadequate to allow the 2<sup>nd</sup> Respondent to develop, gazette, and operationalise a national standard for 100% biodegradable garbage bags and bin liners. Consequently, the transition process has been rushed without regard to practicality, procedural fairness, or regulatory readiness, rendering the impugned decision unreasonable and disproportionate, and to the detriment of the general public and the Petitioners, in violation of Article 47 of the Constitution.
44. In regard to constitutional violations arising from the impugned directive dated 12<sup>th</sup> July 2023 and the Public Notice dated 7<sup>th</sup> November 2023, its pleaded that the 2<sup>nd</sup> Respondent has violated Article 46(1)(a), (b), and (c) of the Constitution, which guarantees consumers the right to goods and services of reasonable quality, access to adequate information necessary

to derive full benefit from goods and services, and protection of their health, safety, and economic interests.

45. It is urged that to date, there exists no national standard set by the 2<sup>nd</sup> Respondent to regulate the quality of biodegradable and compostable seedling planting (potting) bags introduced into the Kenyan market. In the absence of such standards, there is a high risk of substandard products being introduced into the country and falsely presented as biodegradable, thereby posing significant environmental harm upon disposal.
46. The Petitions implead the failure by the 2<sup>nd</sup> Respondent to establish standards governing biodegradable and compostable seedling planting bags amounts to a violation of Article 42(a) of the Constitution, which guarantees every person the right to a clean and healthy environment. The absence of standards exposes the environment to pollution from fake and substandard compostable seedling bags, whose post-use disposal may cause irreversible environmental degradation.
47. Further, the blanket ban on conventional seedling (potting) bags was imposed arbitrarily, without adherence to due process, public participation, or any consultative process, in direct contravention of Articles 10, 47, and 69(1)(d) and (f) of the Constitution of Kenya, 2010.
48. In particular, the 1<sup>st</sup> Respondent failed to conduct any public participation as required under Article 10 of the Constitution, which obligates public entities to involve the people in decision-making processes affecting their

rights and interests. Additionally, Article 69(1)(d) expressly mandates public participation in the management, protection, and conservation of the environment. Despite these clear constitutional requirements, no stakeholder consultations or public participation forums were undertaken prior to the decision to replace conventional seedling bags.

49. The impugned decision further violates the right to fair administrative action under Article 47 of the Constitution. The decision was neither reasonable nor procedurally fair, and no written reasons were provided to justify the abrupt and unexplained departure from the use of conventional seedling bags in favour of the proposed alternatives, despite the significant impact on affected stakeholders.
50. Finally, they implead the 1<sup>st</sup> Respondent for failure to conduct any feasibility study or environmental audit as required under Article 69(1)(f) of the Constitution. That the impugned decision was not informed by any empirical study or environmental audit assessing whether conventional seedling bags posed any pollution risk or environmental harm, rendering the decision arbitrary, speculative, and constitutionally infirm.
51. In light of the law and the facts stated, the Petitioners (in Petition E022) urged the court to grant the orders sought thus:

**a) A Declaration be and is hereby issued that the 1<sup>st</sup> Respondents' decision through Public Notice dated 8<sup>th</sup> April 2024 and shared on 22<sup>nd</sup> April 2024 purporting to**

**introduce Biodegradable garbage bins/liners without establishing a policy, regulatory and institutional framework is a violation of Article 10, 42(a)(b), 69(1) and 47, 70(1) f of the Constitution of Kenya, 2010.**

- b) A Declaration be and is hereby issued that the 2<sup>nd</sup> Respondents failure to establish standards to determine the 100% biodegradable garbage bags/bin liners amounts to a violation of Article 46(a)(b) (c) of the Constitution of Kenya, 2010.**
- c) A Declaration be and is hereby issued that the 3<sup>rd</sup> Respondents failure to establish the Waste Management Council under Section 6(1) of Sustainable Waste Management Act is amounts to a violation of Article 42(a) (b) of the Constitution of Kenya.**
- d) A Declaration be and is hereby issued that the 3<sup>rd</sup> Respondents failure to establish a Sustainable Waste Management policy and regulatory framework under Section 10 of Sustainable Waste Management Act for the purposes of governing Material Recovery Centre and related infrastructure amounts to a violation of Article 42(a)(b) of the Constitution of Kenya.**

- e) **A Declaration be and is hereby issued that the 4<sup>th</sup> Respondents failure to establish Material Recovery Centre and related infrastructure under Section 14(1) of Sustainable Waste Management Act is a violation of Article 42(a)(b) of the Constitution of Kenya.**
- f) **A Judicial Review order in the form of an order of certiorari quashing the decision of the 1<sup>st</sup> Respondent through Public Notice dated 8<sup>th</sup> April 2024 purporting to introduce biodegradable bags in the absence of set standards of the said bags in the market.**
- g) **An order of mandamus compelling the 2<sup>nd</sup> Respondents to establish a standard for Biodegradable garbage bins/liners as mandated under Section 9 of the Standards Act Revised Edition 2012 [1981].**
- h) **An order of mandamus compelling the 3<sup>rd</sup> Respondents to establish the Waste Management Council under Section 6(1) of Sustainable Waste Management Act.**
- i) **An order of mandamus compelling the 3<sup>rd</sup> Respondents to establish a Sustainable Waste Management policy and regulatory framework under Section 10 of Sustainable Waste Management Act.**

- j) An order of mandamus compelling the 4<sup>th</sup> Respondents to establish Material Recovery Centre and related infrastructure under Section 14(1) of Sustainable Waste Management Act.**
- k) A Judicial Review order in the form of an order of certiorari quashing the decision of the 1<sup>st</sup> Respondent through the directive dated 12<sup>th</sup> July 2024 and the Public Notice of 7<sup>th</sup> November 2024 purporting to introduce biodegradable potting seedling tubes.**
- l) Costs to the Petitioner be paid by the Respondents.**

52. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 29<sup>th</sup> May 2025 by Mamo B. Mamo, its Director General. He deposed that the 1<sup>st</sup> Respondent, the National Environment Management Authority (NEMA), is lawfully established under EMCA as the Government's principal body responsible for supervising and coordinating all environmental matters. NEMA admits issuing the impugned Public Notice on 22<sup>nd</sup> April 2024.

53. That the Public Notice was issued in good faith and not arbitrarily; it was intended to advance sustainable waste management in line with the objectives of the Sustainable Waste Management Act, 2022, particularly waste reduction, resource recovery, and environmentally sound disposal. The Notice forms part of a phased and consultative transition towards

improved waste management practices rather than an abrupt regulatory imposition.

54. NEMA has engaged and continues to engage with relevant State agencies, including the Ministry responsible for the environment, the Kenya Bureau of Standards, and County Governments, to develop a coordinated framework for implementation. The concerns raised by the Petitioner regarding lack of standards, infrastructure, or institutional capacity are already under active consideration through inter-agency consultations.
55. That the Public Notice is a preparatory and guidance measure meant to sensitize and align stakeholders in anticipation of forthcoming regulatory standards and biodegradable alternatives, and was not issued with mala fides.
56. The 4<sup>th</sup> Respondent filed a replying affidavit in both Petitions sworn by Mary Mwiti, its chief Executive Officer. She deposed inter alia that the 4<sup>th</sup> Respondent supports waste segregation and sustainable waste management as aligned with constitutional values, including the right to a clean and healthy environment under Article 42, and the objectives of the Sustainable Waste Management Act, 2022.
57. It acknowledges the benefits of waste segregation, including reduced landfilling, lower greenhouse gas emissions, and improved soil fertility. County Governments are at varying stages of implementing waste

management initiatives, with examples including Kakamega’s organic waste reuse facility, Meru’s public-private partnerships for material recovery, and Kiambu’s collaboration with Producer Responsibility Organizations on take-back schemes and landfill operations.

58. The 4<sup>th</sup> Respondent supports a National Colour Coding System for waste management under Section 12(6) of the Act, noting that counties like Embu, Vihiga, and Uasin Gishu have already implemented such systems. Full implementation across all 47 counties requires adequate budgetary allocations and market readiness to support the transition.
59. The public notice places obligations on counties to provide 100% biodegradable garbage bags or bin liners for organic waste, necessitating standardization and a clear transition framework to ensure quality and readiness. Sections 12(6) and 23 of the Act require public consultation and participation, meaning County Governments should have been consulted before issuance of the public notice.
60. That effective implementation has significant budgetary, technical, and infrastructural implications for counties, requiring additional support.
61. The 5<sup>th</sup> Respondent also filed a replying affidavit sworn on 5<sup>th</sup> June 2025 by Lukorito Zacharia, its Director of Standards Development. He deposes that in carrying out its mandate, the 5<sup>th</sup> Respondent has developed and published several national and adopted international standards governing

home-compostable, industrial-compostable, and biodegradable plastic products, including those applicable to waste bin liners and seedling bags.

62. These standards are generic in nature and apply across sectors, provided the materials meet the specified compostability and biodegradability requirements. Biodegradable and compostable plastics are defined by their ability to break down through microbial action under specified conditions, with biodegradability dependent on manufacturer-defined parameters.
63. The 5<sup>th</sup> Respondent has also adopted relevant ISO standards to support the broader biodegradable and compostable plastics ecosystem. The existing standards are sufficient to support product certification for manufacturers capable of producing compostable bin liners or seedling bags. Where additional or more specific standards may be required, the law allows the 1<sup>st</sup> Respondent and industry stakeholders to engage the 5<sup>th</sup> Respondent to develop further standards.
64. Consequently, he avers that the claims against the 5<sup>th</sup> Respondent are unfounded, as applicable standards already exist, and the petitions disclose no cause of action against it and should therefore be dismissed with costs.
65. The **summary of the case of the Petitioners in E026 of 2024** is; in issuing the notice of 8.4.2024, the 1<sup>st</sup> Respondent acted outside its mandate and scope because there are no laws granting them powers to

make such directions. That section 5 of the Sustainable Waste Management Act and section 86 of EMCA vests such powers on the 2<sup>nd</sup> Respondent. They aver that the 2<sup>nd</sup> Respondent is yet to gazette regulations and standards to support the provisions of the Act and in their absence, there will be potential harm and anarchy.

66. They contend that the 4<sup>th</sup> Respondent is yet to comply with the requirements of Sustainable Waste Management Act as they have not yet set up Material Recovery Facility in the counties. Similarly, the 5<sup>th</sup> Respondent is yet to issue guidelines on what comprises a genuine 100% biodegradable garbage bag for the stakeholders and manufactures to comply with.

67. These Petitioners assert that neither they nor critical sector players were consulted or given an opportunity to air their views before the impugned pronouncement. Yet the said decision constituted an administrative action which must pass the constitutional muster of being effective, efficient lawful and procedurally fair. Since the 5<sup>th</sup> Respondent not provided the standards of what amounts to 100% biodegradable garbage bags, the 1<sup>st</sup> Respondent arrogated power to itself that is not conferred upon it by the Constitution or Statute.

68. It is also their case that the public notice dated 8<sup>th</sup> April 2024 is illegal and unlawful for being issued in the absence of regulations by the 2<sup>nd</sup> Respondent as set out in the Act. They argue further that owing to the

prevailing economic conditions in the country, there will be drastic increase in the waste collection costs and reduce overall waste collection as bin liners make up 25% of waste collection costs today.

69. The highlighted rights pleaded to be violated by the impugned notice include:

- a. **Violation of the right to a clean and healthy environment under article 42.**
- b. **Violation of the right to a fair administrative action and public participation under articles 10 and 47.**
- c. **Violation of Petitioner's members right to human dignity under article 28.**
- d. **Violation of the consumer rights under Article 46 of the Constitution.**

70. Consequently, they urged the Court to grant them the following reliefs:

- i. **A declaration that the public notice issued by the 1<sup>st</sup> Respondent dated 8<sup>th</sup> April 2024 is in contravention of articles 10, 28, 42, 46, 47 and 69 as read with 20(5) and 21(1), (2) and (3) of the Constitution and is therefore null and void.**
- ii. **A declaration be and is hereby issued that the public notices by the 1<sup>st</sup> the Respondent dated 8.4.2024 violates articles 10(2) (a) of the Constitution and sections 2, 4, 5 and 22 of the Statutory**

**Instruments Act for want of public participation and is therefore unconstitutional, null and void.**

- iii. An order of certiorari be and is hereby issued quashing the public notice by the 1<sup>st</sup> Respondent dated 8<sup>th</sup> April, 2004.**
- iv. An order of prohibition be and is hereby granted prohibiting the 1<sup>st</sup> Respondent whether by its agents, proxies and servants, acting for and on their behalf whether jointly or severally from implementing the directives contained in the notice dated 8<sup>th</sup> April, 2024 or in any manner whatsoever further interfering with the waste collection system pending the issuance of the regulations by the 2<sup>nd</sup> Respondent.**
- v. An order of mandamus does issue compelling the 2<sup>nd</sup> Respondent to issue regulations as stipulated in section 5 of the Sustainable Waste Management Act.**
- vi. Costs of the Petition be provided for.**

71. The 2nd and 3rd respondents filed grounds of dated 5<sup>th</sup> July 2024 in opposing the said petition on the following grounds;

- 1. THAT the application as drawn is frivolous, vexatious and an abuse of the court process.**
- 2. THAT the application herein discloses no cause of action as against the respondents herein and that the same is bad in law.**

**3. THAT the directive is geared towards protecting the environment which we urge the court to exercise the precautionary principle in favour of the environment.**

**Submissions:**

72. The Petitioner challenges the 1st Respondent's Public Notice dated 8th April 2024, alleging it was unconstitutional, backdated, and issued without due process. The notice banned conventional garbage bags and required the use of 100% biodegradable bags, while directing that collected waste be transported to designated Material Recovery Facilities (MRFs). The Petitioner argues that the directive risks causing environmental harm due to the lack of adequate MRF infrastructure in Nairobi County and across the country. On 29th July 2024, the Court issued conservatory orders suspending the implementation of the notice. The Petitioners, however, remain concerned that the Respondents' actions could negatively affect the environment and the public because of the absence of established MRFs.

73. The Petitioners submitted on the following issues which they framed as arising for determination;

i. Whether the 1st Respondent's has violated Article 10 (2) and 47 (1) (2) of the Constitution through its impugned decision vide Public Notice of 8th April 2024?

ii. Whether the 4th Respondent has violated Article 42(a)(b), 69(1) and 70(1) f of the Constitution of Kenya by failing to set up a Material Recovery Facility as required under Section 14 and 9(5) of the Sustainable Waste Management Act?

iii. Whether the 3rd Respondent has violated Article 42(a)(b) of the Constitution of Kenya by failing to establish a Waste Management Council as required under Section 6 of the Sustainable Waste Management Act?

iv. Whether the 2nd Respondent breached its statutory obligation by failing to establish appropriate standards to govern the use of compostable biodegradable garbage bags and bin liners in Kenya.

74. The Petitioners argue that Article 10 of the Constitution requires all state organs and public officers to uphold national values, including public participation, when making decisions. They contend that the 1st Respondent failed to demonstrate meaningful stakeholder and public engagement before issuing the decision of 8th April 2024, rendering the decision arbitrary and unlawful. The Petitioners rely on judicial precedents holding that rushed decisions without adequate public participation violate constitutional principles, emphasising that public participation is a mandatory element in decisions affecting the public.

75. The Petitioners argue that the law places a duty on public entities to ensure and facilitate meaningful public participation, and the absence of a

specific legal framework is not a justification for failing to do so. They contend that the 1st Respondent did not meet the required standards, as public participation must be genuine, involve both qualitative and quantitative engagement, and be supported by reasonable notice and opportunity. The Petitioners assert that the 1st Respondent only made general claims of public participation without providing evidence, thereby violating Article 10(2) of the Constitution. They further argue that the impugned decision also violated Article 47 of the Constitution, which guarantees the right to fair, lawful, reasonable, and procedurally fair administrative action, including the right to written reasons where rights are adversely affected.

76. The Petitioners contend that the 1st Respondent's decision communicated through the Public Notice dated 8th April 2024 was not made in a procedurally fair manner, as required by Article 47 of the Constitution. They argue that the decision was issued without any written reasons or adequate explanation to the affected persons, including members of the public and stakeholders involved in the waste management cycle. Further, the 1st Respondent, through its Replying Affidavit sworn on 29th May 2025, failed to provide any documentary evidence demonstrating that a lawful and transparent procedure was followed in arriving at the impugned decision. As a result, the Petitioners maintain that the decision was rushed,

arbitrary, and made without stakeholder consultation, thereby falling short of the constitutional threshold for fair administrative action.

77. In addition, the Petitioners allege that the 4th Respondent violated Articles 42, 69(1), and 70(1) of the Constitution by failing to establish Material Recovery Facilities (MRFs) as mandated under Sections 14 and 9(5) of the Sustainable Waste Management Act. They emphasize that Article 42 guarantees every person the right to a clean and healthy environment, which includes the State's obligation to put in place necessary legislative and administrative measures to protect the environment for both present and future generations. The Petitioners argue that MRFs are a critical component of sustainable waste management, as they facilitate sorting, segregation, composting, recycling, and the proper disposal of residual waste.
78. The Petitioners further submit that the impugned Public Notice required waste to be separately collected and transported to designated MRFs for processing, yet such facilities have not been established by the 4th Respondent in Nairobi County or in most other counties. They argue that the legislative intent of the Sustainable Waste Management Act was that counties should first establish MRFs before any directive could be issued requiring the public to transport waste to such facilities. Consequently, they assert that the 1st Respondent's directive amounts to "putting the cart before the horse," as it compels compliance with a system that is not yet

operational, thereby undermining both the law and the constitutional right to a clean and healthy environment.

79. The Petitioners argue that the 4th Respondent failed to provide evidence of establishing or constructing any Material Recovery Facility (MRF), as required under Sections 14 and 9(5) of the Sustainable Waste Management Act. They contend that the 4th Respondent has not justified its failure to fulfill its statutory duty to develop waste management infrastructure.
80. The Petitioners further rely on Articles 69(1)(d) and 70(1) of the Constitution, which impose a duty on state agencies to ensure public participation in environmental management and grant individuals the right to seek court intervention where the right to a clean and healthy environment is threatened. They cite judicial precedents where courts found violations of environmental rights and granted relief to protect the environment.
81. Additionally, the Petitioners assert that the 4th Respondent has not shown any progress in constructing MRFs, and this failure amounts to a violation of the constitutional right to a clean and healthy environment for both the Petitioners and the general public.
82. The Petitioners argue that Section 7 of the Sustainable Waste Management Act establishes the Waste Management Council, which is responsible for reviewing the implementation of the national waste management strategy

and coordinating the development of waste management infrastructure, while the 3rd Respondent is tasked with creating regulations to operationalize the Council. They contend that the 3rd Respondent failed to respond to the petition and has not explained the delay in establishing the Council or putting in place the necessary policies and regulations to support biodegradable waste management and Material Recovery Facilities. The Petitioners maintain that the absence of the Council has created a gap in the institutional and policy framework for waste management, thereby infringing on the constitutional right to a clean and healthy environment under Article 42.

83. The Petitioners argued that the 2<sup>nd</sup> Respondent admitted that there are no specific standards regulating the use of compostable biodegradable garbage bags and bin liners in Kenya. They contend that the standards relied upon by the 2<sup>nd</sup> Respondent are inadequate and do not sufficiently address the regulation of such waste disposal materials. The Petitioners further maintain that the absence of gazetted standards confirms the lack of an appropriate regulatory framework, thereby rendering the Public Notice legally unenforceable.

84. The Petitioners rely on expert opinion from Dr. Stephan Lole, a specialist in packaging and electronic waste disposal, which concludes that the standards cited by the 2nd Respondent are inapplicable. The expert states that biodegradable bags are incompatible with conventional plastic

recycling systems and notes that Kenya lacks Material Recovery Facilities necessary to support industrial recycling of such materials.

85. Additionally, the Petitioners cite an Independent Expert Report commissioned by the European Commission, which found that plastics can only biodegrade effectively where proper waste management infrastructure, such as MRFs exists. Wherefore, they argue that introducing biodegradable garbage bags without the necessary infrastructure and standards is likely to cause significant and irreversible environmental harm.

86. The 1<sup>st</sup> Respondent filed submissions dated 10<sup>th</sup> July, 2025 denying that they had violated the Petitioners' constitutional rights. It submits that its decision was embedded on on various provisions of the law, including Article 42 of the Constitution which guarantees every person the right to a clean and healthy environment, and places a duty on the State to uphold this right through appropriate legislation and policy measures and Article 70 of the Constitution which embodies the precautionary principle; which is also a National Value and Principle of Governance under Article 10 of the Constitution.

87. It argues that the impugned Public Notice of 8<sup>th</sup> April 2024 does not stand in isolation. On the face of Notice, it is clearly indicated that it stems from an already existing decision by the 1st and 3rd Respondents herein to ban

certain categories of plastic bags in Kenya; whose first phase of implementation started in 2017 vide Gazette Notices No. 2334 and 2356.

88. Further it is submitted that the decision to ban plastic bags in Kenya was reached after massive stakeholder engagement and appreciation of the adverse effects of plastic bags including bin liners, to the environment and human health. That the decision was not only in a gazette notice, but it was affirmed by a 3-judge bench of the Environment and Land Court in the case of **Re: Kenya Association of manufacturers.**
89. According to the 1<sup>st</sup> Respondent, the bin liners that are currently on the Kenyan market can only breakdown into micro-plastics over the years, making them more dangerous and harmful to the environment, yet Kenya can join the rest of the world in adopting more progressive alternatives such as biodegradable bin bags and seedling tubes, which are safe for the environment.
90. They contend that the impugned Notice on the use of biodegradable bin bags stems from and applies ejusdem generis to the provisions of the Gazette Notices of 2017 banning plastic bags, it follows that there was sufficient public participation, fair administrative action and wholesome assessment of the environmental good versus harm of plastic bags. They quoted the decision in **Kenya Association of Manufacturers & 3 Others V C.S., Ministry of Environment and Natural Resources & 3 Others** which stated inter alia that;

**“In our view the fundamental rights under Articles 43 and 46 of the Constitution can be limited under Article 24 of the Constitution. As we have held above, the limitation of rights imposed by the impugned Gazette Notice was reasonable and justifiable and as such accords with Article 24 of the Constitution. It follows therefore that although some ordinary Kenyans may suffer social and economic losses as a result of the ban, the plastic ban is for the common good of the general public and as such lawful. Secondly, the 3rd petitioner did not place any evidence before the court in proof of his allegations about the health risks and the increased cost of packaging associated with the ban on plastic carrier bags. It is therefore our finding that the respondents did not violate Articles 43 and 46 of the Constitution.”**

91. The 1<sup>st</sup> Respondent submitted that instead of quashing the impugned gazette notice, a structural interdict would suffice. In support of this argument, they cited a decision of this court in SAMORA SIKALIEH V KENYA RAILWAYS CORPORATION & 7 OTHERS [2025] (Unreported). In conclusion, it is their prayer that the Honourable Court limits the private rights of the Petitioners and allow the implementation of the 1st Respondent’s impugned Notice, as the Notice seeks to serve the public good.

92. The 2<sup>nd</sup> Respondent in their submissions stated that Section 4 (h) of the Standards Act, Cap 496 allows the 1st Respondent and industry players such as the Petitioners herein to engage the 2nd Respondent with a view to developing other standards as may be necessary should the already developed standards be deemed insufficient for purposes of realizing the objectives sought to be achieved through the impugned public notice.
93. They assert that bypassing the mechanisms under Section 4(h) of the Standards Act, cap 496 and Section 7(3) of the Fair Administrative Action Act, 2015, the Petitioner has denied the 2nd Respondent an opportunity to address the concerns administratively and this Petition ought to be struck out against the 2nd Respondent for being premature and contravening the doctrine of subsidiarity.
94. It is contended by the 2<sup>nd</sup> Respondent that they have not violated the Petitioners' rights under article 46 of the constitution because it has established standards that can be utilized by the industry to produce biodegradable garbage bags, bin liners and seedling planting bags. It urged the court to dismiss the Petition as against it.
95. The 5<sup>th</sup> Respondent (2<sup>nd</sup> Respondent in petition E022) filed submissions dated 23<sup>rd</sup> June 2024 in opposition to the petition (no E026 of 2024). It avers to have adopted several International Standards (ISO) standards to support the whole ecosystem of biodegradable and compostable plastics. She onfirms that the existing standards are generic for home compostable

and industrial compostable plastics and would be applicable to any sector including bin liners so long as the material meets the compostability requirements set out therein. She reiterated her earlier submissions.

**Analysis and Determination:**

96. I have read and considered the facts and the law raised by the pleadings and the submissions. In their submissions, the Petitioners in both suits have accused the Respondents of violating their constitutional rights guaranteed mainly under articles 42, 43, 46 and 47. Consequently, my task is to determine whether they (Petitioners) have proved the alleged violations.
97. In the case of *Anarita Karimi Njeru v Republic (1979) KLR 154*, set the principle that the Petitioners must identify the specific constitutional provisions alleged to have been infringed, set out the factual basis of the infringement, and demonstrate a nexus between the acts or omissions complained of and the alleged constitutional breach.
98. **Section 108** of the Evidence Act Cap 80 provides that the burden of proof in any suit or proceeding lies on the party who would fail if no evidence were adduced on either side. **Section 109** further clarifies that the burden of proving any specific fact rests with the person who wishes the court to accept its existence, save where the law expressly places that burden upon another party.

99. These evidentiary principles were affirmed by the Supreme Court in *Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR*, which emphasized that while **Article 22(1)** of the **Constitution** permits any person to institute proceedings for the enforcement of fundamental rights and freedoms, a litigant invoking that jurisdiction must clearly demonstrate the specific rights alleged to have been violated and the factual basis upon which the grievance is founded.

100. The right to a clean and healthy environment is guaranteed under article 42 which expressly provides **thus**:

**Every person has the right to a clean and healthy environment, which includes the right—**

**(a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and**

**(b) to have obligations relating to the environment fulfilled under Article 70.**

101. The Constitution further places a corresponding responsibility on citizens. **Article 69** obliges every person to cooperate with State organs and others in the conservation and protection of the environment, and in ensuring the

sustainable use of natural resources in a manner that promotes ecological sustainability.

102. The Petitioners further pleaded the provisions of various Statutes and International Conventions that protect their rights, which they allege have been violated. They claim that the 1<sup>st</sup> Respondent published a backdated notice dated 8<sup>th</sup> April, 2024 seeking to introduce *100% biodegradable garbage bags* and bin liners in place of conventional garbage bags. The notice also spoke to transportation of waste to the *designated Material Recovery Facilities*.
103. The starting point is to ascertain whether the notice was published later and if the effect of the late publication violated the Petitioners rights under article 10 and 47 of the Constitution and the attendant provisions of the Fair Administrative Actions Act. In their replying affidavit, NEMA admitted that the notice was **issued to the public on 22<sup>nd</sup> April, 2024**.
104. The publication read that the notice was to take effect within 90 days from the date of the notice and not from the date of its publication. The inference is that the **15 days** between 8.4.2024 and 22.4.2024 were already consumed by the late publication, thereby disadvantaging the Petitioners, who formed part of the public required to comply with the directive contained therein.
105. The notice is state to have been issued pursuant to the provisions of **section12** of the Sustainable Waste Management Act and the ban on use

of plastic bags vide Kenya gazette notices numbers 2334 and 2335 of 2017. The impugned notice now requires that within 90 days from 8.4.2024;

*“all organic waste generated by households.....; shall strictly be segregated and placed in 100% biodegradable garbage bags/liners only.”*

106. The 1<sup>st</sup> Respondent deposed that the notice was not issued arbitrarily but in alignment with section 3 of the Sustainable Waste Management Act, which outlines the objectives of promoting resource recovery, waste reduction and environmentally sound disposal practices. That the public notice was part of a phased and consultative approach to transitioning the country towards environmentally sound waste management practices.

107. Since the 1<sup>st</sup> Respondent stated that the notice was issued pursuant to the provisions of the Act (cap 387C), the Second Schedule (s.23) makes provisions on public consultation. The guidelines given under this Schedule are:

*(1) Where this Act imposes a requirement for public consultation in matters relating to sustainable waste management policies, regulations, plans or actions, the respective national or county government entity or public entity shall publish a notice—*

*(a) in the Gazette;*

*(b) in at least two newspapers with a nationwide circulation;*

*(c)in at least one newspaper with a circulation in the locality in which the policies, regulations, plans or actions relate;*

*(d)in at least one radio station broadcasting in the locality in which the policies, regulations, plans or actions relate; and*

*(e)via the county executive committee member responsible for environmental matters in the county.*

*(2) The notice specified in subparagraph (1) shall—*

*(a)set out a summary of the policy, regulation, plan or action;*

*(b)state the place where the details of the policy, regulation, plan or action may be inspected; and*

*(c)Invite written comments on, or objections to, the policy, regulation, plan or action from any interested person and specify to whom and the date by which the comments are to be submitted.*

114. Thus, the Second Schedule made provisions to ensure that decisions made under the Act were in line with the provisions of Articles 10 and 47 of the Constitution. The 1<sup>st</sup> Respondent does not disclose, by the replying affidavit, compliance with publication under paragraphs 1(c) and (d) or with inviting comments under paragraph 2(c). Its reliance on the gazette notices nos 2334 and 2335 of 2017 is an attempt to apply the public consultation on the impugned notice retrospectively.

115. The 1<sup>st</sup> Respondent does not point to the court that the previous gazette notice referred to spoke to the requirements for the use of 100%

biodegradable garbage bags/bins. In any event, the impugned notice is stated to have been issued inter alia pursuant to the provisions of the Sustainable Waste Management Act passed in the year 2022. Hence, any regulations, policies and/or directives underpinned by it can only take effect from the date of the operationalisation of the Act.

116. Consequently, the failure by the 1<sup>st</sup> Respondent to carry out public consultation on the directive contained in the impugned notice dated 8<sup>th</sup> April, 2024, before its effective date is a violation of the rights of the Petitioners as guaranteed under articles 10 and 47 of the Constitution.

117. On violations under article 42(a) & (b), the Petitioners pleaded inter alia that no single Material Recovery Facility (MRF) as well as other required waste management infrastructure has been set up by the Respondents to facilitate waste management services in Kenya. Yet, the impugned public notice directs transportation of wastes to designated MRFs.

118. In response, the 4<sup>th</sup> Respondent stated that County Governments are making progressive strides in waste management and are at different stages of implementation. They cited examples including Kakamega County which has developed an organic waste reuse facility; Meru County which has embraced public-private partnerships to enhance material recovery; and Kiambu County which is collaborating with Producer Responsibility Organizations to implement take-back schemes and operate their landfill.

119. Additionally, the 4<sup>th</sup> Respondent stated that it supports the creation of a National Colour Coding System for waste management in line with Section 12(6) of the Sustainable Waste Management Act. In that regard, It stated that several Counties such as Embu, Vihiga and Uasin Gishu already have a colour coding system for waste management in place.

120. In light of the depositions made by the 4<sup>th</sup> Respondent, it was incumbent upon the Petitioners to prove that the progress so far achieved and stated by the 4<sup>th</sup> Respondent is not true. They had a duty to contradict the 4<sup>th</sup> Respondent in order to support their sweeping allegation that the Respondents have failed to put in place waste management infrastructure, policy or institutional framework as contemplated under the Act, in particular that no single MRF exists in the country.

121. The Petitioners highlighted that their rights under article 46 (1) (a), (b), (c) have been breached by the failure to develop any standards on the acceptable quality of biodegradable garbage bags and bin liners to be introduced in the country. On the other hand, the 5<sup>th</sup> Respondent admits its mandate under Section 4(1) of the Standards Act, Chapter 496, which includes preparing, framing, modifying or amending specifications and codes of practice.

122. In answering to the complaint about the lack of standards for the production and manufacture of 100% biodegradable garbage bins/liners

to be used as per the impugned notice, the 5<sup>th</sup> Respondent asserted that it has established and published standards which are generic for home and industrial compostable plastics. That these standards are applicable to any sector, including bin liners and seedling bags.

123. They gave a list of the existing standards as follows:

*a. KS 3013:2024, Home compostable plastics — Specification*

*b. KS ISO 17088 :2021 Plastics — Organic recycling — Specifications for compostable plastics.*

*c. KS ISO 5412 :2022 Plastics — Industrial compostable plastic shopping bags.*

*d. KS 3009:2024 Biodegradable polymer materials for plant seedling potting — Specification.*

124. Therefore, this court is not persuaded by the Petitioners' argument that there is a vacuum of standard guidelines for the manufacture of the 100% biodegradable garbage bags, risking the introduction of fake or substandard biodegradable garbage bags or bins that would consequently expose the environment. The question that may arise and which was not raised by the Petitioners is the absence of adequate supervision for compliance, not the absence of applicable standards.

125. Still on the violation of Article 42(a) and (b), the Petitioners argued that the rushed nature of the impugned Public Notice and the short timelines for the decision to take effect make it practically impossible for the country to

transition from the use of conventional garbage bags and bin liners, considering the costs of machinery and investments involved. In addition, the rushed implementation runs contrary to Section 3(i), which is intended to promote responsible public behaviour, resulting in pollution and haphazard dumping.

126. In their affidavits in support of the Petition, the Petitioners did not provide a comparative cost analysis to support the assertion that the manufacture and production of the proposed 100% biodegradable garbage bags/liners will be more expensive than the cost of manufacturing the garbage bags/liners currently in use. The burden was on them to discharge it, but they placed no such evidence before this court to enable me to reach a conclusion that the investment costs will be higher.

127. The impugned notice was also challenged citing section 3(i) of Cap 387C which states one of the objectives of the Act **“inculcate responsible public behaviour on waste and environment.”** However, the Petitioners have not explained how the publication of the notice, per se, is inconsistent with this objective.

128. Lastly, with regard to the alleged violations assigned to the directive of 12th July, 2023, and published on 7th November, 2023, the Petitioners (in petition E022) have not demonstrated by way of evidence that the 2<sup>nd</sup> Respondent’s existing standards are inadequate.

**Disposition:**

128. In light of the foregoing analysis, I hold that the two petitions partially succeed to the extent that the issuance of the impugned public notice dated 8.4.2024 was not done in accordance with articles 10 and 47 of the Constitution and the provisions of the Second Schedule of the Sustainable Waste Management Act Cap 387C. The finding is anchored in the lack of consultation with the affected parties and in the notice period consuming 15 days of the compliance period before publication.

129. However, I am not persuaded that the decision was reached without establishing a policy, regulatory, and institutional framework, since the Petitioners have themselves referred to several International and National frameworks already in place. Importantly, the 2nd (5th) Respondent (KEBS) stated that the applicable standards are also in place.

130. Given that there is evidence of steps already taken by some of the Respondents towards sustainable waste management, and that the complaint regarding the impugned notice of 8th April 2024 was partially merited, I find that the appropriate order on costs is that each party meet their respective costs.

131. Consequently, the orders that I deem just to grant in respect of both petitions are:

- i. A declaration that the public notice issued by the 1<sup>st</sup> Respondent dated 8<sup>th</sup> April 2024 is in contravention of articles**

10 and 47 and as read with article 21(1), (2) and (3) of the Constitution and is therefore declared null and void.

- ii. An order of certiorari be and is hereby issued quashing the public notice by the 1<sup>st</sup> Respondent dated 8<sup>th</sup> April, 2004.
- iii. An order of mandamus compelling the 3<sup>rd</sup> Respondents to establish the Waste Management Council under Section 6(1) of the Sustainable Waste Management Act within a period of six (6) months from the date of this judgment.
- iv. The 4<sup>th</sup> Respondent is directed, within a period of Six (6) months, to establish a Material Recovery Facility and or related infrastructure under section 14(1) of CAP 387 C in the Counties that do not have MRF in place.
- v. Each party to bear their costs of the Petition

Dated, signed and delivered at Kisii virtually this 12<sup>th</sup> of February, 2026.

**A. OMOLLO**  
**JUDGE**