

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. E004 OF 2024**

IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLES 22(1), (2), 23, 165(3)(b) AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 10, 19,  
20(1) (2), 21(1), (3), 27, 28, 35, 40, 41, 46 AND 47 OF THE CONSTITUTION OF KENYA

2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO.4 OF 2015

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012

AND

IN THE MATTER OF THE CO-OPERATIVE SOCIETIES ACT (CAP. 490) OF THE  
LAWS OF KENYA

AND

IN THE MATTER OF THE URBAN AREAS AND CITIES ACT 2012

AND

IN THE MATTER OF THE TRAFFIC ACT (CAP. 403) OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE ILLEGAL RELOCATION OF PUBLIC SERVICE  
VEHICLE MATATUS IN ELDORET

BETWEEN

JOSEPH KIPSANG.....1<sup>ST</sup> PETITIONER  
PAUL KANYARI.....2<sup>ND</sup> PETITIONER  
TIMOTHY KIMELI.....3<sup>RD</sup> PETITIONER

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU.....1<sup>ST</sup>  
RESPONDENT  
THE COUNTY COMMANDER OF POLICE UASIN GISHU.....2<sup>ND</sup>  
RESPONDENT  
INSPECTOR GENERAL OF POLICE.....3<sup>RD</sup>  
RESPONDENT  
THE HONOURABLE THE ATTORNEY GENERAL.....4<sup>TH</sup>  
RESPONDENT

AND

<b>TRANSVALLEY TRAVELLERS SACCO.....</b>	<b>1<sup>ST</sup></b>	<b>INTERESTED PARTY</b>
<b>CHERANGANY SACCO.....</b>	<b>2<sup>ND</sup></b>	<b>INTERESTED PARTY</b>
<b>GREAT RIFT SACCO.....</b>	<b>3<sup>RD</sup></b>	<b>INTERESTED PARTY</b>
<b>JEVIC SACCO.....</b>	<b>4<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>ELDORET SACCO.....</b>	<b>5<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>SATIMA SACCO.....</b>	<b>6<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>WARENG TRAVELLERS SACCO.....</b>	<b>7<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>WARENG LUXURY SACCO.....</b>	<b>8<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>2NK SACCO.....</b>	<b>9<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>MONA COMFORT.....</b>	<b>10<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>4NTE SACCO.....</b>	<b>11<sup>TH</sup></b>	<b>INTERESTED PARTY</b>
<b>NORTH EXPRESS.....</b>	<b>12<sup>TH</sup></b>	<b>INTERESTED PARTY</b>

**JUDGMENT**

1. This Constitutional Petition was filed by players in the public transport sector operating within Uasin Gishu County basically to protest the County Government’s notice directing them to relocate their operations to designated stages. The 14 days’ notice was communicated by way of the letter dated 15/02/2024 issued through the 1<sup>st</sup> Respondent’s Department of Co-operatives.
2. Determination of the matter was delayed by the various interlocutory Applications filed in the matter. Such Applications included two by the Petitioners, one seeking conservatory orders, and another seeking a finding of contempt of Court against the 1<sup>st</sup> Defendant’s officers, including the Governor, respectively. There was also an Application by the Governor seeking removal and/or striking out of his name from the contempt of Court proceedings. However, by the consent orders recorded on 19/11/2025, Counsels for the parties, in facilitating efforts geared towards expediting determination of the case, agreed to hold all Applications in abeyance in favour of hearing and determination of the main Petition. At some point, the parties also gave the Court the impression that upon discussions, they were almost arriving at an out of Court settlement, and at some point, there was even indication that the parties may have had “agreed” that the notice be withdrawn pending further consultations. No settlement has however been recorded to date. I may also state that I did, in the early stages of this matter, issue interim orders suspending implementation of the directive pending further directions. Such orders have remained in force since then.

3. Be that as it may, I note that, despite the interlocutory Applications having, by consent, been held in abeyance, the Petitioners, in their written Submissions filed herein, have erroneously alluded that their Submissions is not only in respect to the Petition, but also in relation to all the other Applications referred to above. That view is evidently contrary to the parties' express agreement recorded on 19/11/2025 as aforesaid.
4. This therefore is the background under which I now determine the Petition by way of this Judgment.
5. The Petition is dated 22/02/2024, and is filed through **Messrs Odhiambo& Odhiambo Advocates**. The prayers made are as follows:
  - i) A declaration be made that the decision by the Respondents to relocate the Petitioners without the decision of a City Board is illegal *ab initio*.
  - ii) A declaration be made that the 1<sup>st</sup> Respondent violated the right to fair administrative action for the Petitioners by embarking on the relocating (*sic*) the Petitioners without conducting any public participation.
  - iii) An order be issued compelling the 1<sup>st</sup> Respondent to implement a proper physical plan for the public transport industry within Eldoret after consultations and involvement of the Petitioners.
  - iv) An order be issued directing the 1<sup>st</sup> Respondent to offer support facilities to wit: health, toilets, water points, weather shades for rain and sun, emergency exits, fire services, garbage collection point, offices and a health facility as emergency services before the said relocating is undertaken, the same be supervised by the Court.
  - v) An order directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to strictly observe the law, in discharge of their mandate.
  - vi) Any other order that this Honourable Court deems fit to grant.
  - vii) Costs of the Petition be provided for.
6. The foundation of the Petition is echoed in the Affidavit filed in support of the Petition, sworn by the 3<sup>rd</sup> Petitioner, **Timothy Kimeli**, who introduced himself is a shareholder, motor vehicle owner, Secretary and "one of the directors of the Petitioners". He deponed that the notice issued by way of the letter dated 15/02/2024 directing the Petitioners to relocate to alleged designated stages was devoid of due process and made in the absence of supporting

facilities. He deponed further that the notice, despite being illegal, portends anarchy and grave peril to both public interests and the Petitioners' business interest, more so third-party obligations such as loans to banks which require servicing on a daily basis. He contended further that the directive is likely to impair the Petitioners' operations, brands, planning, and also inconvenience the public and inevitably cause loss of business and even revenue to the 1<sup>st</sup> Respondent, that no public participation has been undertaken, and that the decision is unilateral and intended to maximise harm to the sector players. He deponed further that they are a group of SACCOs with over 2,000 motor vehicles plying different routes into and outside Eldoret across the rest of Kenya, and that their efforts to resolve the stalemate had fallen on deaf ears with the potential use of brute force by agents of the Respondents, owing to absence of adequate space and facilities to absorb the vehicles into the designated stage. He also contended that, in addition to the short notice, the 1<sup>st</sup> Respondent also neglected to carry out survey and/or test drivers to determine the practicability of the directive, and protested that the 1<sup>st</sup> Respondent acted in complete disregard of the **Traffic Act, County Governments Act**, as well as the **Urban Areas and Cities Act** in that it has failed to ensure and maintain proper vehicular movements and lay rules of engagement with the Petitioners before issuing the abrupt notice. He also asserted that the directive will impair the players' activities in other major towns and cause a ripple effect within the town of Eldoret due to the anticipated traffic jams and accidents along adjacent roads. He thus prayed that the directive be shelved until all necessities are put in place, and urged that they are willing to abide by any reasonable agreed position to move to an alternative location other than the Eldoret Central Bus Park, which is unavailable at the moment.

7. Other allegations made in the Petition are that the 1<sup>st</sup> Respondent motioned for meetings with the Petitioners and the Interested Parties to discuss the matter, which meetings however the 1<sup>st</sup> Respondent delegated to junior staff with no capacity to make binding decisions, and that no minutes of the meetings were ever agreed upon in arriving at the 1<sup>st</sup> Respondent's communication of 15/02/2024 conveying the impugned directive. It was thus alleged that the Respondent relied on non-existent minutes of purported meetings to arrive at the directive, an act described as clear fraud and misrepresentation. The several Articles of the **Constitution** listed above granting rights to the Petitioners were then alleged to have been violated by the actions of the Respondents. Some of these rights alleged to have been violated are the right to equal protection of the law and not to be discriminated upon, right to dignity, right to access information, right to property, right to fair labour practices, right to fair administrative action, and the right to a clean and healthy environment.

8. In opposition to the Petition, the 1<sup>st</sup> Respondent's filed the Supporting Affidavit sworn on 1/09/2024 by **Ruth Samoei**, who introduced herself as the Chief Officer in the Department of Co-operatives & Enterprise Development within the 1<sup>st</sup> Respondent, and described the Petition as full of falsehoods. She then deponed that the Petitioners fully participated in the process of relocation of matatu stages within Eldoret City and that the exercise was conducted jointly with the matatu Saccos. She thus denied that the process was unilateral and insisted that several meetings were held. She stated that in a meeting convened on 29/01/2024 attended by matatu Saccos, including the Petitioner's representatives, discussions held were fruitful and a resolution was reached that every matatu should operate from its designated stage, and that a committee comprising of the stakeholders was formed and the Saccos, including the Petitioners, nominated members, and the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners were even elected as representatives of the Eldoret main stage matatu owners in the committee. She asserted that the role of the committee was to consider the process of re-organization and to look into issues arising therefrom and general welfare of the Saccos. She deponed further that upon designation of the stages and/or re-organization, notices were issued to all Saccos on diverse dates in February 2024, and majority complied save for the Petitioners who have now turned around to decline the same. She insisted that there are sufficient facilities for the Saccos and their customers in the designated spaces, and deponed that there is no evidence of fraud as alleged by the Petitioners as they attended the meetings and appended their signatures in the attendance list, and that if any fraud was committed, then the same has not been reported to the relevant authorities. She therefore denied that the Respondent had violated the **Constitution** and contended that no evidence of any violation has been presented, and that the 1<sup>st</sup> Respondent's decision to reorganize the stages is within its mandate to manage County Transport under **Part 2 of the 4<sup>th</sup> Schedule** of the **Constitution**. She then claimed that some of the operators such as **Eldoline Logistics Company Limited**, bus companies such as **Easy Coach**, and Interested Parties such as **4NTE Sacco** and **Jevic Sacco** have already voluntarily moved to the designated spaces, and that **4NTE Sacco** and **Jevic Sacco** have distanced themselves from the Petition. She also deponed that some Saccos such as the 12<sup>th</sup> Interested Party have since denied giving instructions to the Petitioners to file these proceedings. She asserted further that the decision to relocate stages or re-organize the stages was made pursuant to the need to for Eldoret town to be upgraded to a city, and that the decision was therefore made in the public interest.
9. I have not come across any Responses filed by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents although there is a Memorandum of Appearance filed on their behalf by the **Honourable Attorney**

**General.** There are also no Responses on record from the Interested Parties although I have also not come across any Affidavits of Service indicating service upon the Interested Parties.

10. The parties then filed written Submissions. The Petitioners' lengthy 24-page Submissions is dated 20/05/2025, while the 1<sup>st</sup> Respondent's 7-page Submissions is dated 7/02/2025.

### **Petitioner's Submissions**

11. The Petitioner's Submissions, despite the length, apart from citing authorities and provisions of the law, basically reproduces the same facts and statements already recounted in the Petition and the Supporting Affidavit, and is also quite repetitive. Counsel however acknowledged the mandate of the 1<sup>st</sup> Respondent to regulate the flow of traffic into the Central Business District (CBD) as reiterated in Court decisions such as **Nyarangi & 3 Others vs. Attorney General**, but reiterated the criticism of the directive to operators to relocate to the Eldoret Central Terminus, which he described as an already congested space with little or no supporting public amenities, unlike the operators' present arrangements with fuel station owners within the CBD. He also reiterated that the directive was issued without the operators being given a hearing. He asserted that it is in fact the 1<sup>st</sup> Respondent that had authorized the players to operate from petrol stations, that the relocation directive was rushed and disregarded normative procedures, and is discriminative as it favours the Petitioners' competitors, and that no public participation was conducted. He contended further that the 1<sup>st</sup> Respondent's agents who issued the notice take to take cognisance of how delicate public service transport has been disrupted, and how costly the same was to registered rates and levy paying traders. The rest of the matters contained in the Submissions are, as aforesaid, are a reproduction of the Petition and the Supporting Affidavit, and also in respect of the Applications that, as already stated, were, by consent, held in abeyance. I do not therefore deem it necessary to recount those portions of the Submissions.

### **1<sup>st</sup> Respondent's Submissions**

12. Counsel for the 1<sup>st</sup> Respondent, too, basically cited provisions of the law, and reproduced the matters already contained in the Replying Affidavit, including reiterating that public participation was conducted by way of the several meetings convened with stakeholders and attended by the operators. He also reiterated that the Courts have consistently upheld the authority of County Governments in managing and regulating public transport in the interest of order and public convenience. He cited for instance the cases of **Moses Munyendo & 908 Others v Attorney General & Another [2013] eKLR**, and **Modern Coast Express Limited v Conty Government of Mombasa [2019] eKLR**, and urged further that due

process was followed. He also reiterated that the directive and/or decision has already been implemented with some bus companies and matatu Saccos having already relocated, and that, as such, the Petition is therefore overtaken by events. He contended further that interference by the Court with the decision will be a recipe for chaos and disaster as it will mean that some transporters shall operator from the old stages while from the new stages where they have already relocated. Regarding the allegation of lack of facilities and amenities, he submitted that no evidence had been presented to support the claim. Counsel also asserted that public good outweighs private good in that the decision was made in anticipation of the conferment of city status to Eldoret town, and as such, the interest of the public should outweigh that of the Petitioners as long as the decision is not illegal. He submitted that the decision was made to end the chaos previously prevalent in the town, which the operators thrived in and want such *status quo* to prevail. He also cited the case of **Republic v City Council of Nairobi & Another ex parte Wainaina Kigathi Mungai [2014] eKLR**.

#### **Determination**

13. Before I list the issues for determination, I note that prayer (i) of the Petition is for a declaration that the decision by the Respondents to relocate the Petitioners without the decision of a City Board is illegal *ab initio*. I observe that neither in its Supporting Affidavit nor Submissions, has the 1<sup>st</sup> Respondent addressed or pursued this prayer. In the circumstances, I presume that the same been abandoned.
14. In view thereof, the broad issues that call for determination in this matter can, in my view, be summarized to be as follows:
- i) **Whether the 1<sup>st</sup> Respondent, by issuing the directive to the Petitioners to relocate their public service vehicles' operations to designated stages, violated the Petitioners' right to fair administrative action by issuing such directive without conducting public participation.**
  - ii) **Whether the 1<sup>st</sup> Respondent should be ordered to first implement a proper physical plan for the public service transport industry within Eldoret after consultations and involvement of the Petitioners, before relocating the operators to the designated stages as aforesaid.**
  - iii) **Whether the 1<sup>st</sup> Respondent should be ordered to first provide public facilities and/or utilities at the designated stages before relocating public service vehicles.**

15. It is not in dispute that pursuant to the provisions of **Article 186 (1)** of the **Constitution of Kenya, Part 2** of the **Fourth Schedule** of the **Constitution** delineates and assigns to County governments the mandate to provide, manage and regulate localized services within the County, such as those relating to agriculture, County health, sanitation, cultural activities, transport, trade regulation, and local planning, among others. **Paragraph 5** specifically relates to County transport, and includes County roads, street lighting, traffic and parking, public road transport and local ferries and harbours. **Article 185** then permits County Assemblies to create legislation for these functions. There is therefore no doubt that the mandate referred to above extends to clothing County Governments with the power to designate or relocate parking spaces and termini to curb CBD congestion within the Central Business Districts (CBD).
16. The Petitioners' major contention in this matter is basically that the decision to relocate the public service vehicles (PSV) was not only rushed and abrupt, but that no public participation was conducted before the directive was issued. According to the Petitioners therefore, PSV operators were never consulted or involved in the process leading thereto, and that they were therefore not given a hearing despite being the main stakeholders.
17. The letter dated 15/02/2024 by which the County notice was issued reads as follows:

**“Re: Relocation of PSV Matatu**

*Following our consultative meeting held on 29<sup>th</sup> January 2024 at the County Headquarters, all PSV stakeholders agreed to operate from safe designated stages.*

*This is to therefore inform you to make arrangements to relocate to new designated stages within 14 days from the date of this letter.*

*You are advised to consult with County Government Stage Masters for allocation of slots.*

***Ruth Samoei***

***Chief Officer – Co-operatives & Enterprise Development.”***

18. Regarding public participation, it is now settled that in Kenya, the content, process, scope, and manner in which decisions that affect the interest and welfare of members of the public are made and conveyed by all State organs, including County Governments, must at all times conform to the **Constitution**. This is because participation of the people in decision-making is one of the Constitutional tenets in the category of democracy, inclusivity and good
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governance practices recognized and manifested in **Article 10** of the **Constitution** as national values. **Article 10** commands that these tenets of national values are binding on all state organs, state officers, public officers and all other persons when applying or interpreting the **Constitution** or any law, or makes or implements public policy decisions. Public bodies or State organs, including County Governments cannot therefore run away from embracing the Constitutional requirement for public participation in decision-making. It is not a choice but an express command of the supreme law in Kenya, the Constitution.

19. In explaining the foundation behind the public participation principle, the Constitutional Court in the South African case of *Poverty Alleviation Network & others v President of the Republic of South Africa & 19 Others* CCT 86/08 [2010] ZACC 5, stated as follows:

**“Engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision. Public participation has been entrenched in our Constitution as one of the national values and principles of governance that binds all state organs, including the Supreme Court when, inter alia enacting law.”**

20. Similarly, the Kenyan Supreme Court, in the case of *National Land Commission v. Attorney General & 17 others* (2015) eKLR, in describing public participation as an aspect of “*checks and balances*”, observed that:

**“[308] The conditioning medium within which these functions have to be conducted, is constituted by the national values and principles outlined in Article 10 of the Constitution: in particular, the rule of law; participation of the people; equity; inclusiveness; human rights; non-discrimination; good governance; integrity; transparency and accountability. It is to be noted that, the very essence of checks-and-balances touches on the principles of public participation, inclusiveness, integrity, accountability and transparency; and the performance of the constitutional and statutory functions is to be in line with values of integrity, transparency, good governance and accountability...”**

21. The Kenyan Supreme Court in the case of *British American Tobacco Kenya, PLC (Formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance and Another*  
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(Interested Parties); Mastermind Tobacco Kenya Limited (the affected party), SC Petition No. 5 of 2017; [2019] eKLR (BAT Case) went further by laying down the principles guiding public participation as follows:

- “(i) As a constitutional principle under Article 10(2) of the *Constitution*, public participation applies to all aspects of governance.**
- (ii) The public officer and /or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.**
- (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.**
- (iv) Public participation must be real and not illusory. It is not a cosmetic or public relations act. It is not a mere formality to be undertaken as a matter of course just to fulfil a constitutional requirement. There is need for both quantitative and qualitative components in public participation.**
- (v) Public participation is not an abstract notion; it must be purposive and meaningful ...”**

22. **Matavo J** (as he then was), in the case of **Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 others** [2018] eKLR, while following the **BAT case** (*supra*), in affirming the need to treat public participation as “*real*”, not a “*cosmetic exercise or formality*”, stated that:

**“In a recent decision of this court, I observed that “*my analysis of the Constitutional provisions yields a clear finding that public participation plays a central role in legislative, policy as well as executive functions of the Government.*” Both local and foreign jurisprudence are awash with decisions holding that public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfillment of the Constitutional dictates. Any decision to exclude or limit fundamental participatory rights must be proportionate in order to be lawful.**

23. In this case, the 1<sup>st</sup> Respondent’s has explained that the decision to relocate or re-organize PSV stages within the CBD was made as a consequence of, and to meet the national government’s move to upgrade Eldoret town to a city, and that the decision was therefore

made in the public interest, to end the anarchy in PSV operations that had been prevalent within the town, and to thus ensure good order within the town.

24. Reading through the Petition, I note that the Petitioner concedes that the 1<sup>st</sup> Respondent indeed convene meetings with PSV operators conducting their business within the town before issuing the notice directing for the relocation of matatu stages within Eldoret City, which meetings the Petitioners, I note, also admits to have attended. I however discern that the Petitioners contend that the 1<sup>st</sup> Respondent delegated the meetings to junior staff with no capacity to make binding decisions. They also refute the contents of the minutes of the meetings produced by the 1<sup>st</sup> Respondent, denying that were party to any such minutes. They thus protest that in arriving at the decision conveyed through the letter dated 15/02/2024, the 1<sup>st</sup> Respondent relied on non-existent minutes of the purported meetings, an act which they describe as “*clear fraud and misrepresentations*”.
25. The 1<sup>st</sup> Respondent’s **Chief Officer, Department of Co-operatives & Enterprises, Ms. Ruth Samoei**, has, on her part, through her Replying Affidavit, insisted that the Petitioners fully participated in the process of relocation of matatu stages, and that the exercise was conducted jointly with the PSV (matatu) umbrella co-operative societies (Saccos). She reiterated that, for instance, in a meeting convened on 29/01/2024, attended by the Saccos, discussions held were fruitful and a resolution was reached that all matatus would relocate and start operating from the designated stages. She contended that a committee comprising stakeholders was then formed to which the Saccos nominated members, and that the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners were in fact elected as representatives of the Eldoret main stage matatu owners in the committee. The 1<sup>st</sup> Respondent thus asserted that it is only upon designation of the stages that the notices were issued to the Saccos on diverse dates in February 2024. She also deponed that majority of the PSV operators have already complied with the directive save for the Petitioners who have turned around to challenge the directive.
26. **Ms. Ruth Samoei** has, indeed exhibited minutes of two meetings she alleges to have been convened and held between the 1<sup>st</sup> Respondent’s officials and PSV operators, which minutes indicate that the operators embraced and supported the relocation, and promised to co-operate in facilitating the move. The dates of the meetings are indicated to be 29/01/2024 and 14/02/2024, respectively. The minutes are however not signed by the designated Secretary of the meetings, and may therefore be termed as draft minutes. As such, the contents thereof may not be verifiable. I however also observe that the alleged minutes of 29/01/2024 are accompanied with a number of forms bearing lists of about 100 names of persons who are said to have attended the meeting together with their signatures appended

thereon. Although the Petitioners have denied knowledge of the minutes or the contents thereof or participating in authoring the same, they have not denied the authenticity of the lists of attendees, or the names or the signatures appearing thereon as no Further or Supplementary Affidavit was filed to refute the 1<sup>st</sup> Respondent's allegations. They have also not alleged that the 100 or so alleged attendees were impostors or strangers or people unknown to them. I have in fact spotted the names of the 1<sup>st</sup> Petitioner and the 3<sup>rd</sup> Petitioner appearing in the list of the meeting of 29/01/2024, at numbers 103 and 107, respectively, complete with their signatures appended thereon. Although the Petitioners casually referred to the minutes as "**clear fraud and misrepresentations**", that allegation does not seem to have been made with much conviction and certainty as it only appears as a somewhat general comment with no elaboration. The claim sounds half-hearted and the Petitioners appear unwilling to expressly refer to the documents and signatures as outright forgeries. If, as they claim, the minutes are not accurate, the Petitioners do not disclose what then was the accurate version.

27. The Petitioners did not also respond to the question posed by the 1<sup>st</sup> Respondent as to why they (Petitioners) have never made any report to the police about the alleged forgery if it indeed it is a true allegation.

28. Under these circumstances, I am not at all convinced with the Petitioners' denial of participating in the meetings. The denial does not appear genuine at all.

29. It is also not lost on me that **Ms. Samoei** has made the statement that after the meetings were conducted, a committee comprising stakeholders was formed and the operators, through their Saccos, including the Petitioners, nominated members to the committee, and that the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners were even elected as representatives of the Eldoret main stage matatu owners in the committee. She explained that the role of the committee was to generally assist in the process of relocation of the PSVs, to represent the operators in the process, and to thus ensure that the operators' interests are addressed. This statement, too, has not been challenged by the Petitioners. Indeed, the 1<sup>st</sup> Respondent has exhibited a copy of the letter dated 2/02/2024 authored by the entity referred to as "**Eldoret Main Stage Matatu Owners Association**", addressed to her and which, is framed as follows:

**"Re: Officials Elected To Represent Eldoret Main Stage**

***I hereby wish to notify your honourable office that the MAIN STAGE MATATU OWNERS, MATATU SACCO OFFICIALS and the PSC COMPANIES DIRECTORS held the meeting on 01/02/2024 at SKY DINNER RESTAURANT,***

*and the following were elected to participate in the committee to re-organize Bus stage.*

<i>Names</i>	<i>Id. no.</i>	<i>Phone no.</i>	
<i>Joseph Kipsang</i>	.....	.....	<b>CHAIRMAN</b>
<i>Alex Too</i>	.....	.....	<b>V/CHAIRMAN</b>
<i>Paul Kanyari</i>	.....	.....	<b>SECRETARY</b>

*Regards*

*Yours faithfully*

*Joseph Kipsang (Soti)*

*Chairman”*

30. Needless to state, the 1<sup>st</sup> and the 3<sup>rd</sup> Petitioners are the two officials listed therein as the elected Chairman and Secretary, respectively. Attached to the letter are signed minutes and list of attendees, complete with their positions in the various Saccos, and their signatures. As aforesaid, **Ms. Samoei** explained that the committee was formed as the Sacco’s mouthpiece to assist in the process of relocation of the matatu stages with the County. The Petitioners have not made any allegation that they were ignored by the County as the PSV operators’ representatives or snubbed. They have also not disclosed what representations they made to the County, if any, and if so, they have not alleged that such representations were not taken into account.

31. The allegation by the 1<sup>st</sup> Respondent that some of the operators such as **Eldoline Logistics Company Limited**, bus companies such as **Easy Coach**, and also Interested Parties such as **4NTE Sacco (11<sup>th</sup> Interested Party)** and **Jevic Sacco (4<sup>th</sup> Respondent)**, have already voluntarily moved to the designated stages pursuant to the deliberations made in the meetings has also not been controverted. The 1<sup>st</sup> Respondent’s statement that some operators such as **4NTE Sacco** and **Jevic Sacco**, and also the **12<sup>th</sup> Interested Party, North Express**, have since denied giving instructions to the Petitioners to file these proceedings has also not been controverted. The 1<sup>st</sup> Respondent has, indeed, attached copies of letters indicated to have been authored by the mentioned operators communicating their disassociation with the Petition herein, and in fact supporting the relocation, which letters the Petitioners have also not challenged.

32. Granted, disassociation by some operators from the Petition, or the act of some operators having already relocated cannot by themselves be presumed to mean that the 1<sup>st</sup> Respondent complied with the law. This is because there is no requirement for unanimity by all stakeholders in an industry for litigation by a few of them to attract validity. Far from it. Even if 99 % of the PSV operators agree with the Conty's decision, the Court can and will swiftly interfere with the County's decision where only one member feels aggrieved and satisfies the Court that constitutional provisions were violated. This is because application of the law in these kinds of cases is not a contest on "*tyranny in numbers*", but about evidence of violation of recognized and demonstratable acquired Constitutional rights. This, however, is not the case herein.

33. What I am saying is that the picture painted above portrays the unmistakable image that the PSV operators were to an acceptable extent reasonably involved in the process leading to the decision to relocate the vehicles. The public participation conducted by the County may not have been very thorough or elaborate but I am satisfied that the 1<sup>st</sup> Respondent has demonstrated that at least the two meetings were convened and held between County officials and the operators in which the issue of relocation was discussed prior to issuance of the notice. Granted, not all operators may have agreed with or supported the decision but again, there is no requirement that all stakeholders must reach unanimity for a public participation process to pass the set threshold. Public participation is not about unanimity but is about the process. It is about the Court assessing whether the process was real and not illusory, or a cosmetic or public relations act, or a mere formality undertaken as a matter of course just to fulfil a constitutional requirement. The Court therefore looks at whether the process was both quantitative and qualitative, and purposive and meaningful. Unfortunately, the Petitioners, despite submitting a beautiful exposition of the law on the issue public participation and the right to be heard, did so in very general terms, and did very little or none to all, to apply that exposition to the facts of this case, or to demonstrate that the 1<sup>st</sup> Respondents failed to embrace the applicable principles.

34. The contention by the Petitioner that the 1<sup>st</sup> Respondent delegated the meetings to junior staff with no capacity to make binding decisions, apart from being an admission that meetings were indeed held, also does not explain how such delegation, if true, violated the Petitioners' constitutional rights.

35. To be honest, I found the Petitioners' submissions, though very lengthy and verbose, to contain very little or no factual basis that would justify a finding by the Court that their constitutional rights were violated or that they were denied a hearing. Where the Petitioners made some attempts to demonstrate some sort of violation, what came out as the real basis behind the Petition was the Petitioners' fear or apprehension for inconveniences, and reduction of profits from their business. How that reduction in profits would arise was however not clearly well explained or elaborated. In any case, the Petitioners did nothing to satisfy the Court that their possible private economic losses, if any, should outweigh the public interest's need to ensure and maintain law and order and proper organization within the CBD. My impression of the Petition is a clamour to hold on to the *status quo*. It is all basically a reluctance to embrace necessary new ideas adopted to respond to emerging realities of fast-changing urbanization dynamics, and a reluctance to appreciate the increasing demands by the Kenyan public for efficiency by State organs in the provision of services.

36. The Petitioners did not also impress me as being forthright or candid, or eager to disclose material information. It is evident that the Petitioners were deliberately selective in disclosing information. I say so because the Petitioner's "admission" that meetings were conducted is evidently made very reluctantly as it is "hidden" somewhere deep in the body of the Petition. This appears to have been a deliberate tactic applied to weaken that "admission", elusive enough to "hide" it, but sufficient enough to serve as basis for a response to an anticipated allegation of deliberate non-disclosure of material information. Indeed, one can very easily miss the "admission" if one is not thorough. I say so because the "admission" is not even repeated in the Supporting Affidavit at all. I also note that none of the letters exhibited by the 1<sup>st</sup> Respondent, including those exchanged with the Petitioners were attached by the Petitioners in the Petition. Had the 1<sup>st</sup> Respondent not produced the letters, their existence would have remained unknown to the Court. Was this deliberate. I think so.

37. The Petitioners have also, in passing, alluded to there being discrimination in the process of the relocation of matatu stages. There is a casual reference to competitors being favoured. Like the allegation that the minutes produced by the 1<sup>st</sup> Respondent amounted to "**clear fraud or misrepresentations**", that allegation, too, does not seem to have been made with much conviction and certainty as it, too, also appears only as a general comment with no elaboration. It, too, sounds half-hearted, and in any event, the alleged competitors have not

even been disclosed or revealed. The claim of discrimination has therefore also not been discriminated.

38. The Petitioners have also prayed for an order to compel the 1<sup>st</sup> Respondent to first implement a proper physical plan for the public transport industry within Eldoret, and to first provide support facilities such as health services, toilets, water points, weather shades for rain and sun, emergency exits, fire services, garbage collection points, and offices for the operators, before relocating the PSVs. The 1<sup>st</sup> Respondent has, on its part, insisted that there are already sufficient facilities for the PSVs and their operators and their customers in the designated stages. I however note that such alleged existing facilities were not described. The Court is therefore left in a situation where the parties differ on facts. It is now a question of “*she said, he said*”. Considering that it is the Petitioners who bear the burden of proving or demonstrating to, or satisfying the Court that indeed there are no sufficient facilities at the designated stages, I expected them to do more. In cases of this nature, although there may be need for the Court to even conduct a site visit to assess for itself the situation on the ground, for the Court to do so, proper basis must first have been laid by the party alleging. In this case, the Petitioners simply made mere general statements not backed up with any evidence of any kind and left it at that. In cases of this nature, it may even be necessary for the party alleging to commission an expert, in this case, possibly one on city, urban or town transport planning, to visit the designated stage and prepare a Report which would then be presented to the Court for assessment. Such expert may then even be cross-examined, and/or the Court, if still has questions, may then conduct the site visit. Considering its very busy schedule, the Court cannot be expected to every time conduct site visits on the basis of mere allegations. Proper basis must therefore be first laid, even by at least production of photographs or videos depicting the situation in the area in question. In this case, the Petitioners did not bother to lay any such basis, and in any event, they never even applied for a site visit to be conducted.

39. In the circumstances, my finding is that the Petitioner has failed to satisfy this Court that there is need for the Court to issue an order that the 1<sup>st</sup> Respondent do first implement a proper physical plan for the public service transport industry before relocating PSV operators to the designated spots. Similarly, I have no material before me to justify the issuance of an order that the 1<sup>st</sup> Respondent do first provide public facilities and/or utilities at the designated stages before relocating PSV vehicles to such stages.

### **Final Orders**

40. In the circumstances, the Petition herein is dismissed in its entirety. As for costs, considering the public litigation nature of the case, I prefer to order that each party bears its own costs, as I so order.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2026**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**N/A for the Petitioners**

**Ms. Sawe for the 1<sup>st</sup> Respondent**

**N/A for the rest of the Respondents or Interested Parties**

**Court Assistant: Brian Kimathi**