



**Kakuzi PLC v County Government of Muranga (Petition  
3 of 2022) [2024] KEELC 248 (KLR) (30 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 248 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
PETITION 3 OF 2022  
LN GACHERU, J  
JANUARY 30, 2024  
PETITION NO. 3 OF 2022(FORMELY HCP 8 OF 2019)  
IN THE MATTER OF: ARTICLES 22, 23, 40(1), (3), 47(1), 190(2),  
AND 210(1) OF THE CONSTITUTION OF KENYA, SECTIONS 4(1),  
4(2) AND 4(3) (A), (B), AND (4) OF THE FAIR AND ADMINISTRATIVE**

**ACT**

**BETWEEN**

**BETWEEN**

**KAKUZI PLC ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MURANGA ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner is a Limited Liability Company incorporated in Kenya under the [Companies Act](#) Chapter 486(now repealed). The Petitioner inter alia is involved in the cultivation, marketing and packing of avocados and macadamia nuts. The Petitioner also cultivates blueberries, forests and processes timber products. Additionally, it carries out livestock and tea farming.
2. The Respondent is the County Government of Murang'a established under Article 176, of [the Constitution](#) of Kenya, 2010.
3. The Petitioner vide a Further Amended Petition dated 21<sup>st</sup> October 2022, sought the following prayers;
  - i. That this Honourable Court be pleased to declare that the Respondent's action of withholding the Applicant's trade licenses despite the Petitioner's payment of the trade licences is in contravention of Article 47(1) of [the Constitution](#), Article 40 (1) of [the Constitution](#). Sections



4(1), 4(2) and 4(3)(a), (b) and (4) of the Fair Administrative Action Act and Sections 4(1) and 14 (3) of the Murang'a County Finance Act 2018.

- ii. That this Honourable Court be pleased to issue a declaratory order that the Respondent cannot withhold the issuance of duly paid for trade licenses on the basis of unrelated levies.
- iii. That this Honourable Court be pleased to declare that the Respondent's action of varying the land rate payable pursuant to the 6th Schedule of the Murang'a County Finance Act 2018, without following due process, is null and void as it is in contravention of Articles 40(1), 210(1) and Article 190(2), of the Constitution, the Rating Act and Part II of the Valuation of Rating Act.
- iv. That this Honourable Court be pleased to grant a permanent injunction restraining the Respondent from withholding duly paid for trade licenses on the basis of other disputed and unrelated levies.
- v. That this Honourable Court be pleased to grant a permanent injunction restraining the Respondent from levying the varied land rates for the years 2019, 2020, 2021 and 2022 in contravention of Articles 190(2), and 210 (1) of the Constitution, the Rating Act and the Valuation for Rating Act.
- vi. That this Honourable Court be pleased to order the refund to the Petitioner of the amounts currently held in the bank joint account in the names Kaplan & Stratton Advocates and Kimwere Josphat and Company Advocates less the sum of KES 2,510,800 payable to the Respondent for the years 2019-2022.
- vii. Such other orders as this Honourable Court shall deem just.

#### **Petitioner's Case**

4. By way of Further Amended Petition dated 21<sup>st</sup> October 2022, the Petitioner claimed that the Respondent had failed to acknowledge payments for, and had withheld issuance of the various trade licenses until the Petitioner paid Land Rates. This was illustrated vide a letter dated 18<sup>th</sup> April 2019, from the Respondent indicating to the Petitioner that it would not release the Petitioner's Trade licenses unless the Petitioner paid for the Land Rate, which the Petitioner had disputed.
5. The Petitioner argued that up to 2018, it had always paid its land rates at the rate of KES. 627,700/= per year. On 14<sup>th</sup> February 2019, the Respondent via an invoice No.7181 demanded payment of KES 177,831,600.00/= from the Petitioner as land rates for the year 2019. This demand was later revised downwards to KES 8,788,600/= and even later to KES 6,574,400/= after the Petitioner demanded an explanation. In addition, the Petitioner averred that the Respondent has subsequently issued invoice No. 8590 for KES. 8,784,881.04 in the year 2020, invoice No. 10552 for KES 8,784,881.04 in the year 2021, and invoice No. 15338 for KES 8,878,488.00 in the year 2022.
6. The Petitioner subsequently contested the exaggerated invoice vide a letter dated 19<sup>th</sup> February 2019, wherein the Petitioner argued that the rates demanded by the Respondent were unlawful owing to the fact that inter alia that the County Rating Bill had never been passed and thus the amount demanded was disputed.
7. The Petitioner averred that it had always paid its land rates and it was only the rates for the years 2019, 2020, 2021 & 2022, wherein the land rates amounts are disputed citing significant and unprocedural increase by the Respondent.



8. Consequently, the Petitioner pointed out to this Court that since 2019-2022, it has deposited the disputed amounts in a joint interest earning account held in the names of the parties' Advocates. Amounts deposited in respect of the alleged land rates were tabulated as follows:
  - a. KES 6,574,400.00 in 2019
  - b. KES 4,392, 441.00 in 2020
  - c. KES 4,392,440.55 in 2021
  - d. KES 8,878,488.00 in 2022
9. The Petitioner contended that the Respondent has continued to tie the release of the Petitioner's trade licenses to the payment of land rates for the years 2019, 2020, 2021 and 2022 contrary to Sections 4(1), 4(2) and 4(3) (a), (b), and (4) of the Fair and Administrative Act and Articles 40(1) and 47(1) of the Constitution of Kenya, 2010.
10. The Petitioner sets the stage for its argument that no tax or licensing fee may be imposed, waived or varied except as provided by legislation citing Article 210(1) of the Constitution of Kenya, 2010, to buttress that argument.
11. It is the Petitioner's averments that the Respondent's attempt to vary the rates payable under the Murang'a County Finance Act 2018, in the 6<sup>th</sup> Schedule is unprocedural and in contravention of Articles 190(2) & 210(1) of the Constitution of Kenya, 2010, the Rating Act and the Valuation for Rating Act respectively.
12. The Petitioner averred that the Respondent's failure to issue the trade licences is direct contravention of the Respondent's own 2018 Finance Act. The Petitioner referenced the Murang'a County Finance Act 2018, herein referred as ['2018 Finance Act'] and specifically cited Sections 4(3) and 14(3) that provides that a person who applies for a licence shall be issued with a licence upon payment of the fees specified in the schedules.
13. The Petitioner contended that the Respondent's action amounted to unlawful self-help attempt to enforce, blackmail and/or extort the Petitioner to pay the disputed land rates.
14. The Petitioner also contended that the Respondent's actions cause/ and or expose the Petitioner to the following prejudice and risk:
  - a. The Respondent's act of withholding the licences is in bad faith and is maliciously calculated to harm the Petitioner's business and is contrary to the express provisions of Articles 40 (1) and 47 (1) of the Constitution of Kenya, 2010, thereby contravening the Petitioner's Constitutional Right to an Administrative Action that is expeditious, reasonable and procedurally fair. Consequently, the Petitioner will suffer irreparable loss and damage.
  - b. The Respondent's actions are in contravention of Article 40(3) of the Constitution of Kenya, 2010, which protects the Petitioner's right to own property free from interference by any public officers.
  - c. The Petitioner is listed on the Nairobi Securities Exchange with over 1,200 shareholders and contributes significantly to the Kenyan economy through its international exports of agricultural products. It is the largest producer of avocados in the Country and has a workforce of approximately 2,500. It exports fresh avocados mainly to Europe and macadamia nuts mainly to the Far East and United States of America.



- d. The Petitioner also purchases Avocados from the small-scale Avocado farmers in Murang'a and surrounding counties. Currently, it has over 2,000 registered farmers who supply the Company with avocados for export, over and above its own. The Petitioner also provides agricultural extension services to these farmers.
  - e. The Petitioner therefore provides a source of income for thousands of Kenyans whose livelihoods are at risk due to the failure by the Respondent to release its trade licences for the 2019.
  - f. The said deliberate omissions to release the trade licences will paralyze the business operations of the Petitioner, thereby affecting the smooth operations of the Petitioner. In addition, the deliberate omission of failing to release the trade licences amounts to a break down in the rule of law which in turn would prevent the Company from conducting its business in respect of growing, harvesting and exporting its products leading to substantial losses. This will also affect the Petitioner's contractual obligations with third parties and could expose the Petitioner to claims for non-delivery and loss of goodwill from the said third parties.
  - g. The Petitioner is thus seeking the intervention of this Honourable Court to compel the Respondent to forthwith cease retaining the licences and to release its trade licences.
15. The Petition was canvassed by way of written submissions. The Petitioner through Kaplan & Stratton, Advocates, filed its submissions on 3<sup>rd</sup> March 2023, and further rejoinder submissions on 26<sup>th</sup> July 2023. On its party, the Respondent filed its submissions on 27<sup>th</sup> March 2023, through Kimwere Josphat & Co Advocates.

### **Petitioner's Submissions**

16. Counsel for the Petitioner summarised the contents of the Further Amended Petition, and submitted the following issues for the Court's determination:
- a. Whether the Respondent's action of varying the land rates payable pursuant to the 6th Schedule of the Murang'a County Finance Act 2018, without following due process is constitutional, lawful, procedural, and/or fair and in breach of Articles 40 (1), 47(1), Article 190 (2) and 210 (1) of *the Constitution*, Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act*, the *Rating Act* and Part II of the Valuation of *Rating Act*;
  - b. Whether the Respondent's action of withholding the Applicant's trade licenses despite the Petitioner's payment of the trade licenses is lawful, procedural, and/or fair and in breach of Article 47(1) of *the Constitution*, Article 40 (1) of *the Constitution*, Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act* and Sections 4(1) and 14 (3) of the Murang'a County Finance Act 2018?
  - c. Whether the Petitioner is entitled to the reliefs sought.
  - d. Whether the Respondent's action of varying the land rate payable pursuant to the 6<sup>th</sup> Schedule of the Murang'a County Finance Act 2018, without following due process is constitutional, lawful, procedural, and/or fair and in breach of Articles 40 (1), 47(1), Article 190 (2) and 210 (1) of *the Constitution*, sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act*, the *Rating Act* and Part II of the Valuation of *Rating Act*.
17. The Petitioner restated its position in the Petition that it has been paying to the Respondent land rates at the rate of KES 627,700/= up to, the year 2018, wherein the Respondent demanded through Invoice Number 7181, the payment of KES 177,831,600.00/= as land rates for the year 2019. The demand



was later revised to KES 8,788,600/=, and later adjusted to KES 6,574,400/=, after parties appeared in Court in 2019.

18. Invoices issued by the Respondent were produced and marked as DG1, as part of Petitioner's Supplementary Affidavit dated 2nd March 2023.
19. The Petitioner further submitted that the 6<sup>th</sup> Schedule of the Murang'a County Finance Act 2018, inter alia clearly outlined the land rates to be levied at KES 200/= per acre for Agricultural Land.
20. Counsel for the Petitioner further submitted on the procedure for variation of land rates which was further expounded by the Honourable Justice Dr. M. A. Odeny in ELC Petition 5 of 2020- Eastern Produce Kenya Ltd, Siret Tea Company and Others vs County Government of Nandi [2021] eKLR: as follows;

“On the issue as to whether the Respondent is entitled to impose land rates of the petitioners' properties without an enabling County legislation on rating, it is not in dispute that the Respondent has the mandate to levy land rates under Article 209 (3) of *the Constitution*, which concession is made at paragraph 11 of the Petition. The issue of whether or not the Respondent is entitled to impose land rates on the Petitioners' properties and/or whether the Respondent is permitted to apply the provisions of the *Rating Act* and the *Valuation for Rating Act* is therefore not in dispute. Article 209(3) of *the Constitution* provides that; A county may impose—

- a. property rates;
- b. entertainment taxes; and
- c. any other tax that is authorised to impose by an Act of Parliament.

21. The Petitioner also submitted that the Respondent's mandate under Article 209 (3), of *the Constitution* of Kenya, 2010, can only be exercised subject to the provisions of Article 210(1), of *the Constitution* of Kenya, 2010. The Petitioner submitted that such mandate cannot be exercised arbitrarily.
22. The Petitioner affirmed that the Respondent is mandated to use the provisions of the *Rating Act* (Cap 267) and the *Valuation for Rating Act* (Cap 266), pending the enactment of the Respondent's own legislation on rating.
23. The Petitioner argued that the issue at hand is whether the Respondent, in implementing provisions of the *Rating Act* and the *Valuation for Rating Act*, is bound under Article 210 (1) of *the Constitution*, to strictly apply all the procedures as set out in the said statutes, and whether the Respondent has complied with the provisions of Section 4 (3) of the *Rating Act* and Part II of the *Valuation for Rating Act*.
24. The Petitioner affirmed provisions of Article 191(2) of *the Constitution* empowered the County Government to impose property rates in line with Article 209 of *the Constitution*. It further cited Article 190(2) of *the Constitution* of Kenya, 2010 that mandates-County Governments to operate financial management systems that comply with any requirements prescribed by National Legislation.
25. That said, the Petitioner submitted that the taxation and other revenue-raising powers of a County shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.



26. Further, the Petitioner contended that County Governments have powers to raise rates, but the procedure for the exercise of that power is provided in national legislation, namely, the Valuation of *Rating Act* (Cap 266), and the *Rating Act* (Cap 267).
27. The Petitioner emphasized that the Valuation of *Rating Act* (Cap 266), particularly empowers a County to levy rates. The Act sets out elaborate procedure for levying of rates as follows:
- “Valuation Rolls to be prepared at least once every 5 years; values to be entered in the Roll; Power to amend valuation roll and to cause supplementary valuation roll to be prepared; Valuers to have power of entry and inspection and to obtain information; Contents of draft valuation roll; Basis of valuation: Deposit of draft Valuation and Supplementary Valuation Roll, which is open for public inspection, taking of copies or extracts, publication by notice to call for objections, sending to every rate payer within 21 days after the laying before a meeting of local authority (County Government); Objections to draft valuation and supplementary valuation rolls; Valuation Court to hear objections; and Appeals to Higher Courts.”
28. The Petitioner argued that the Respondent has not demonstrated that it enacted or relied on County Rating legislation to vary the land rates payable by the Petitioner and issued demands for the new land rates. This was proved vide a letter dated 29th April 2019, from the Respondent that stated inter alia as follows:
- “...The rate of Kshs 200 is contained in the County Finance Act. that was approved by the County Assembly and gazetted appropriately as per the law and in line with article 209 (3) (a) of the Kenya Constitution 2010, and hence does not contradict any letter...”
29. The Petitioner contended that it is clear from the Respondent's letter dated 29th April 2019, that the County did not adopt the process set out under *Rating Act* and the *Valuation for Rating Act*.
30. The Petitioner cited Sections 4-6 of the *Rating Act*, which provides for the various forms of imposing rates. Section 4(1) of the *Rating Act* inter-alia provides that a rating authority may for the purposes of levying rates, adopt the following forms of rating:
- a. An area rate in accordance with Section 5:
    - aa. An Agricultural rental value rate: and
  - b. Site value rate or site value rate in combination with an improvement rate in accordance with Section 6...”
31. The Petitioner further cited Section 7 of the *Rating Act*, which mandates local government units to prepare draft Valuation Roll or draft Supplementary Valuation Roll, under in accordance with the *Valuation for Rating Act*.
32. Subsequently, the Petitioner submitted that Section 3 of the *Valuation for Rating Act*, provides that the local authority shall prepare a Valuation Roll every 10 years. Further, Section 10 of the *Valuation for Rating Act* also provides for a process for objections to the values of rateable properties indicated in the Valuation Roll.
33. The Petitioner affirmed that following the provisions discussed above, the Respondent herein did not follow the procedures stipulated under the *Rating Act* and the *Valuation for Rating Act* for purposes of imposing new land rates.



34. The Petitioner further argued that the Respondent's actions of setting new rates was abrupt and was arbitrarily done. This resulted in the Respondent's breach of Articles 190(2) & 210(1) of the Constitution, that mandates County Governments to operate financial management systems that comply with any requirements prescribed by National Legislation and prohibits the imposition, waiver, or variation of fees except as provided by legislation respectively.
35. The Petitioner backed its argument with precedent from the Court of Appeal in the case of County Government of Kwale vs Kenya Airports Authority [2017] eKLR, wherein it was stated as follows:
- “The power to impose property rates by County Governments is enforced through the provisions of the Rating Act and Valuation for Rating Act, both of which according to paragraph 7 of the Sixth Schedule of the Constitution are to be construed with necessary alterations, adaptations, qualifications and exceptions in order to bring them into conformity with the Constitution. In addition, the County Governments enact their respective Finance Acts which regulate the issues of taxation in the Counties.”
36. The Petitioner emphasised the same position by quoting the decision of the Court in ELC Petition 12 of 2020: Mombasa Law Society and others vs County Government of Mombasa, that also found:
- “That in respect of the increment of rates and any opposition to valuations in a valuation roll, that the County Government of Mombasa had a duty to comply with the Rating Act and Valuation for Rating Act. The court found the Respondent to be in breach of Article 210 of the Constitution.”
37. The Petitioner averred that the Respondent did not provide any evidence to demonstrate the due process it followed in varying the rate payable by the Petitioner pursuant to the 6th Schedule of the Murang'a County Finance Act 2018. Rather, the Petitioner argued that the evidence on record shows that the variation was arbitrarily done and that the Respondent sought to enforce it illegally by withholding the Petitioner's trading licences.
38. The Petitioner reiterated that the Respondent's arbitrary variation of the land rate payable pursuant to the 6<sup>th</sup> Schedule of the Murang'a County Finance Act 2018, without following due process is unlawful and un-procedural citing it as a contravention of Articles 40 (1), 47(1), 210 (1) and Article 190 (2) of the Constitution, 2010 and Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the Fair Administrative Action Act, provisions of the Rating Act and Part II of the Valuation of Rating Act.
39. The Petitioner clarified its position noting that is not seeking for the Court to set rates, rather that the Respondent be compelled to follow the rightfully set procedures under the Rating Act and the Valuation for Rating Act.
40. The Petitioner recounted that in April 2019, the Respondent refused to release the Petitioner's trade licenses to allow the Petitioner conduct its business unless the Petitioner paid the increased land rates. The Petitioner duly paid for the trade licences on 29th March 2019, via a cheque for KES 351, 950/= after which the Respondent declined to release the trade licences. This has been elucidated in the Petitioner's Supporting Affidavit filed on 26<sup>th</sup> April 2019. It was only at the intervention of the Court that the trade licences were released.
41. Additionally, the Petitioner averred that on 3rd February 2020, the Respondent declined to issue the licences unless the rates for the year 2020, were cleared. This has been indicated by a note of the Respondent's licensing officer dated 3rd February 2020, at page 25 of the Petitioner's Supplementary Affidavit sworn on 2nd March 2023.



42. The Petitioner argued that the Respondent's action of withholding the Applicant's trade licenses despite the Petitioner paying for the licenses is illegal and unconstitutional as it contravenes Articles 40(1) and 47(1) of *the Constitution* of Kenya, Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act*, and Sections 4(1) and 14 (3) of the Murang'a County Finance Act 2018.
43. The Petitioner submitted that as indicated in its Supporting Affidavit filed on 22nd May 2020, it requires the County licenses/permits as a pre-requisite to obtain its export licences from the Agricultural Food Authority in order to be able to export its products.
44. The Petitioner cited Section 17 of the *Rating Act* that outlines the mechanism of enforcing any rate arrears to be instituting of proceedings in a Court of law. Hence, refusal by the Respondent to issue the Petitioner with duly paid-for trade licenses unless disputed rates are paid is an act of illegality pursuant to Section 17 of the *Rating Act*, that outlines the requisite mechanism. Further, the Petitioner cited this as contravention of Articles 190(2) and 210(1) of *the Constitution*, 2010 which introduces a remedy not contemplated under Section 17 of the *Rating Act*.
45. Further, the Petitioner submitted that Section 14(3) of the Murang'a County Finance Act 2018, entitles a person who applies for a licence to be issued with such licence upon payment of the fee specified in the Tenth Schedule. Therefore, Section 14(3) of the Murang'a County Finance Act 2018, does not grant the Respondent the power to tie the release of the trade licences to the payment of increased land rates.
46. The Petitioner cited the case of Republic vs Betting Control and Licensing Board and Another Ex Parte Outdoor Advertising Association of Kenya [2019] eKLR, to buttress its position that the Respondent's action of withholding the Petitioner's trade licenses despite receiving payment for the trade licenses is illegal, unlawful, unfair, against the rule of law, unreasonable and un-procedural.
47. In the stated case, Hon. Justice Mativo stated in the above mentioned case that:
- "A decision is illegal if it: contravenes or exceeds the terms of the power which authorizes the making of the decision; (b) pursues an objective other than that for which the power to make the decision was conferred; (c) is not authorized by any power; (d) contravenes or fails to implement a public duty. 33. The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The instrument will normally be a statute or Regulations. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies and tribunals to act within the "four corners" of their powers or duties".
48. The Petitioner argued that the fact that the Respondent did not give the Petitioner a right to be heard before making the decision to peg the release of the licences to the payment of Land rates was illegal and against the Fair Administrative Actions Act. This was buttressed by the above case of Republic vs Betting Control and Licensing Board and Another E Parte Outdoor Advertising Association of Kenya [2019] eklr, where the Court further held that:
- "Procedural fairness contemplated by Article 47 and the *Fair Administrative Action Act* demands a right to be heard before a decision affecting ones right is made. The minimum requirement is that the person gets the chance to present his case. "
49. Finally, the Petitioner cited the consent letters indicating the payment of rates into the joint account in the names of both parties' advocates for the years 2019-2022. It further noted that the Petitioner



has also deposited the rates for 2023, amounting to KES 8,788,453/= in a joint interest account and thus humbly prays that the amount of KES 627,700/= is also forwarded to the Law Firm of Kimwere Josphat & Co Ltd, being the 2023 land rates, and the amount of KES 8,160,753/= be forwarded to the Law Firm of Kaplan & Stratton, Advocates.

50. In concluding its submissions, the Petitioner contended that it is entitled to the prayers sought in the Further Amended Petition dated 21st October 2022, as it has met the threshold of proof of Constitutional violations as set out in the case of Anarita Karimi Njeru v Republic [1979] eKLR, by pleading its case concisely with clear specifications of the constitutional rights that the Petitioner avers were violated.

### **Respondent's Case & Submission**

51. The Respondent's written submission and response to the Amended Further Petition were filed on 27<sup>th</sup> March 2023, wherein the Respondent submitted that the Petition is based on a fallacy that the Respondent varied Land Rates pursuant to the 6th schedule of Murang'a County Finance Act 2018.
52. The Respondent refuted the Petitioner's claims that the land rates were varied illegally. Instead, it submitted that the Petitioner admitted to owning 32,872 acres of land in which according to Land rates stipulated in the 2018 Finance Act to be Kshs 200 per acre for agricultural use and upon calculation, the land rates amounted to KES 6,474,600/-.
53. The Respondent averred that any variation of the land rates from the amounts given might be an indication of the Petitioner's concealment of the true acreage of land it occupied.
54. The Respondent justified withholding Petitioner's licenses and argued that it was procedurally done. The Respondent further submitted that it is constitutionally and statutorily empowered to operate financial management systems which certainly are supported by collection of such revenue. To this end, it cited Articles 40(3) (a) and (b) and Article 190 of *the Constitution* of Kenya, 2010.
55. The Respondent noted that there was no tabulation or indication of the basis of the rates and amounts claimed on the demand notice owing to the fact that there was a mutual agreement between the Petitioner and the Respondent.
56. The Respondent argued that the confusion in the Petitioner's claims is curable through calculating the rate as provided by the 2018 Finance Act, which is Kshs 200/= per acre, multiplied by acreage provided by the Petitioner, being 32,872 acres, and the total amounting to KES 6,474,600/=.
57. The Respondent submitted that the other amounts added were in reference to other trading activities conducted by the Petitioner which among others included a slaughter house, a Petrol station, a butchery, pole and filters alluded in the Petitioners Supplementary Affidavit.
58. The Respondent averred that both the *Rating Act*, Cap 267 and *Valuation for Rating Act*, Cap 266 provided the imposition of rates on land in its preamble as described in (section 2) as:
- "Agricultural rental value rate" means a rate levied on the annual value of agricultural land."
59. The Respondent cited Section 5 of the *Rating Act*, to address the contentious issue of rating and stated noting that the rating authority may with the approval of the minister adopt one or more of the following methods of rating:



#### **a. A flat rate upon the area of land.**

60. The Respondent once more affirmed that the actions it took against the Petitioner were well within the law. That should the Rating Act be stringently applied in the rating, the Respondent is convinced that the Petitioner had committed an offence punishable under Section 17 of the Rating Act.
61. Citing the Valuation for Rating Act, Cap 266 Laws of Kenya, the Respondent argued that the law was established to empower local governments to value their rates. Noting that the Rating Act was grounded on Section 134 (1) & 132 of the County Government Act No 17 of 2012, the Respondent submitted that it operated within its powers and mandate.
62. Counsel submitted that the Rating Act prescribed a valuation roll in reference to a local authority citing Section 3(d) of the Act read together with the Local Authority Act Cap 265 laws of Kenya.
63. The Respondent further submitted that the applicable rating laws were founded on provisions of the Constitution of Kenya, 2010, in particular Article 209(3), which mandates the Respondent to impose tax. Additionally, Article 209(2), which allows the Respondent to impose tax using the 2018 Finance Act. Thus, Respondent submitted that its rating and taxes were not prejudicial to national economic policies of economic activities.
64. The Respondent concluded its submissions by pointing out that the Petition is marred with ambiguity. It urged the Court to take note of the Petitioner's unwillingness to pay rates as per the previous assessment. Further, the Respondent added that the Petitioner's prayers to be refunded monies deposited in the joint account as rates is a clear indication of Petitioner's unwillingness to pay the said rates. Finally, the Respondent argued that seeing as the land rate was a flat rate, the Petitioner has not produced a good reason to overturn the law in its favour.

#### **Petitioner's further Rejoinder Submissions**

65. The Petitioner reiterated its position that it has been paying land rates to the Respondent up to the year 2018.
66. The Petitioner noted that the Respondent starting the year 2019, has adopted a practice of refusing to accept cheques for land rates from the Petitioner. In particular, the Respondent's representatives at the licensing office indicated that they had firm instructions from the County Chief Officer Revenue and Financial Operations not to accept any cheques from the Petitioner for land rates.
67. The Petitioner submitted that it has never failed to disclose its actual land holding. The Petitioner cited a letter dated 29th April 2019, wherein the Respondent indicated that its records reflect the Petitioner owns 17,783 Hectares (approximately 43,942 acres).
68. The Petitioner reiterated its position that the Respondent has not followed the legal procedure for variations of rates as was held in ELC Petition 5 of 2020 - Eastern Produce Kenya Ltd, Siret Tea Company and Others vs County Government of Nandi [2021] eklr.
69. The Petitioner argued that the Respondent has not demonstrated that it has been charging a rate of KShs. 200 per acre all along, but had based the total amount on an erroneous acreage.

#### **Issues for Determination**

70. Having carefully considered the Petition and the subsequent submissions of the parties and the authorities cited in support thereof, the Court has identified the following issues for its determination:



- a. Whether the Respondent's action of varying the land rate payable pursuant to the 6th Schedule of the Murang'a County Finance Act 2018 without following due process is constitutional, lawful, procedural, and/or fair and in breach of Articles 40 (1), 47(1), Article 190 (2) and 210 (1) of *the Constitution*, sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act*, the *Rating Act* and Part II of the Valuation of *Rating Act*;
  - b. Whether the Respondent's action of withholding the Applicant's trade licenses despite the Petitioner's payment of the trade licenses is lawful, procedural, and/or fair and in breach of Article 47(1) of *the Constitution*, Article 40 (1) of *the Constitution*, Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act* and Sections 4(1) and 14 (3) of the Murang'a County Finance Act 2018?
  - c. Whether the Petitioner is entitled to the reliefs sought?
71. Before the Court delves into the above issues for determination, it will point out the issues that are not in dispute. There is no doubt that the Petitioner herein is a rateable entity within Murang'a County. It is also not in doubt that the Petitioner is a large scale land holder within the said Murang'a County. Further, it is evident that the Petitioner is involved in various farming activities among them, growing of avocados in large scale, macadamia nuts blueberries and forests.
  72. Further, the Petitioner is involved in other commercial activities such as exports of the farm produce like avocados, purchase of farm produce from small scale farmers and exporting the same to foreign countries like Far East, United States and Europe.
  73. The Petitioner is also an employer of a big workforce, which work on its farm, businesses such as butchery, Petrol Station and slaughter house. Therefore, the Petitioner provides a source of livelihood to many households through its agricultural and economic activities.
  74. On the other hand, the Respondent is a County Government established under Article 176 of *the Constitution* of Kenya 2010. Article 190(2) of *the Constitution*, provides that the County government shall operate financial management systems that comply with any requirements prescribed by the national legislation.
  75. It is not in doubt that in ensuring that it is carrying the above mandate, the Respondent herein, just like the other County governments enacted The Murang'a County Finance Act, 2018, which provided for the imposition or variation of various taxes, fees, charges, licences, rent or rates for services and connected services.
  76. It is evident that this Finance Act, 2018, provides charges or amount of money to be charged on entities carrying out various activities within the County. Among the charges levied to the entities, was the Land rates, which was charged to all rateable entities. In reference to the Petitioner herein, the land rate was over a large-scale agricultural land situate at Makuyu area. This is the parcel of land wherein the Petitioner carries on its farming activities and run various businesses.
  77. It is also not in doubt that Article 209(3) of *the Constitution* mandates, the County Governments, like the Respondent herein to impose;
    - a. Property taxes
    - b. Entertainment taxes; and
    - c. Any other tax that it is authorised to impose by an Act of Parliament



78. However, Article 209(5) requires the County to carry out the taxation and other revenue raising power in a way that- shall not prejudice national economic policies, economic activities across County boundaries, national mobility of goods, services, capital or labour.
79. Further, *the Constitution* is clear in Article 210(1), that no tax or waiver or licencing fees may be imposed, waived or varied by the County Governments except as provided by the legislation. It was argued by the Petitioner that a County Rating Bill, has never been enacted, but it is evident that in the absence of such County Rating legislation, the existing national legislations would come into effect.
80. This was the holding in by the Court of Appeal in the case of County Government of Kwale vs Kenya Airports Authority (2017) eKLR, where it held;

“the power to impose property rates by County Governments is enforced through the provisions of the *Rating Act* and *Valuation for Rating Act*, both of which according to para7 of the sixth the Sixth Schedule of *the constitution* are to be construed with necessary alterations, qualifications and exceptions in order to bring them into conformity with *the Constitution*. In addition, the County Governments enact their respective Finance Acts which regulates the issues of taxation in the counties.”

81. With the above background, it is evident that prior to this Petition, the Petitioner herein has been a rate payer to the Respondent for several years. It is also evident that prior to 2019, the Petitioner herein used to pay an annual land rates of ksh 627,700/= as is evident from the various invoices attached to the Petitioners Supplementary Affidavit dated 2<sup>nd</sup> March 2023.
82. There is also evidence that in the year 2019, the Respondent demanded for land rates of Ksh 8,788,600/= from 627,700/= which was allegedly based on the rates contained in The Murang’a County Finance Act, 2018, as was stated in the letter dated 29<sup>th</sup> April 2019, written by Thomas Gakahu, the County Director of Revenue.
83. The Court has considered the said Murang’a County Finance Act, 2018, which was Gazetted on 4<sup>th</sup> Feb 2019, vide a Special Issue; Kenya Gazette Supplement No.12(Murang’a County Acts No. 5), and had noted in the 6<sup>th</sup> Schedule, item no. 9 is Agricultural land, and the new charges was given at Ksh 200/= per acre. The previous rate was given as Ksh 200/= and that meant there was no change in the charges.
84. Even if the charges had not changed from ksh 200/= it is obvious that the amount charged on the Petitioner changed exponentially from Ksh 627,700/= to ksh. 8,788,600/=. The Petitioner alleged that this was unfair variation of land rates which was not based on any valuation. However, the Respondent alleged in its letter of 29<sup>th</sup> April 2019, that the said amount of ksh 8,788,600/= was based on the acreage of land held by the Petitioner which was 17,783.16/= hectares translating to 43,924.405 acres @ ksh 200/= per acre.
85. The above calculation was indeed the bone of contention herein and this Court will now proceed to determines the disputes issues or the issues that were framed for determination by this Court.

**i. Whether the Respondent's action of varying the land rate payable pursuant to the 6th Schedule of the Murang’a County Finance Act 2018, without following due process is constitutional, lawful, procedural, and/or fair and in breach of Articles 40 (1), 47(1), Article 190 (2) and 210**



**(1) of *the Constitution*, sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act*, the *Rating Act* and Part II of the Valuation of *Rating Act*;**

86. According to the 6<sup>th</sup> Schedule of The Murang'a County Finance Act, 2018, Item No. 9 which is agricultural land, the land rates charged per acre is Ksh 200/=. That was allegedly the same charges that were imposed by the previous Finance Act, which was The Murang'a Finance Act, 2013. This court did not have the benefit of perusing the pervious Finance Act, because none of the parties herein attached it as part of its evidence. However, since the said schedule indicates the current charges was ksh 200/= and the new charges was ksh 200/= and the said Finance Act was actually gazetted, this court would have no reasons to doubt that the previous charges for land rates before the enactment of The Murang'a Finance Act, 2018, was ksh 200/=. The coming into force of the said Act therefore did not change what was being charged per acre as land rates. There was therefore no variation on the rate charged per acre by Finance Act 2018.
87. However, what changed was the amount of money levied against the Petitioner as land rates. It is not science rocket that the difference between ksh 627,700/= to ksh. 8,788,600/= was huge or was exponential. The Respondent explained that the increase occurred when the Petitioner declared the true acreage of land. It was submitted that the previous invoicing was based on wrong acreage. This explanation was done in the letter dated 29<sup>th</sup> April 2019.
88. What did not come out clearly is how this communication on the acreage held by the Petitioner was communicated to the Respondent. Was it by written communication or word of mouth? The Petitioner on its part did not inform this court how much land it held as at 2019 or is still holding today.
89. Though the Petitioner is challenging how The Murang'a Finance Act, 2018, was enacted, the Petitioner is only seeking for a declaration that the action of varying the land rate payable pursuant to the 6<sup>th</sup> schedule of the 2018 Act without following the due process was null and void. It was alleged that the County Government of Muranga failed to follow the due process provided for in the *Rating Act* and Valuation of *Rating Act*, Cap 266 and 267. Therefore. The Petitioner is only aggrieved by the 6<sup>th</sup> Schedule specifically Item No. 9. This court has found that the chargeable amount of ksh 200/= per acre did not change. Therefore, as per the formula of imposing land rates, there was no variation.
90. If there was no variation in the rate charged per acre, could this court find and hold that the mode of imposing the payable land rates changed? This court finds this in the negative. The Petitioner had alleged that the Muranga County Finance Act, 2018, had not been gazetted, but the attached Finance Act, 2018, was gazetted on 4<sup>th</sup> February 2019. It is therefore a Legislation that can stand. The Petitioner did not dispute that there was public participation in the making of this Murang'a Finance Act, 2018. All that the Petitioner is alleging is that 6<sup>th</sup> schedule varied the rate of payment of land rates. This court has found that the charges per acre remains as before, unless there is contrary evidence, which evidence was not availed. It was incumbent upon the Petitioner to prove that indeed the rate that was proposed to be charged on land rates significantly changed from the previous one to the new one, which is the 2018, Murang'a County Finance Act.
91. It is trite law that he who alleges must prove. Section 107 of the *Evidence Act* provides;
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”



92. The Petitioner herein would want this Court to believe that the Respondent have varied the rate charged on land rates as contained in the Murang'a Finance Act, 2018. It was there allegations that this rate was different from the previous year. However, the Petitioner who had alleged, was not able to show how much was charged per acre in the previous Finance Act. The Respondent averred that the amount demanded from the Petitioner changed in the year 2019, because they got the right acreage held by the Petitioner. The Petitioner did not controvert this evidence or even provide the correct acreage held by them. If the new charges demanded from the Petitioner was pegged on Ksh 200/= per acre, which was also the charges levied previously as per the Previous Finance Act of maybe 2013, then the Respondent cannot be said to have varied the rate payable.
93. In the case of Godfrey Paul Okutoyi (suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of banking institutions in Kenya) vs. Habil Olaka – Executive Director (Secretary) of the Kenya Bankers Association Being sued on behalf of the Kenya Bankers Association) & another [2018] eKLR; the court stated at paragraph 55 as follows;
- “It is a principle of law that he who asserts must prove, and in this regard, Section 107(1) of the *Evidence Act* (Cap 80) provides that “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.” It is therefore the duty of the person who asserts that there is a breach of section 44 of the *Banking Act* to prove by evidence that that indeed is the case. That is why section 109 of the *Evidence Act* again provides that “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”
94. Similarly, in the case of Christian Juma Wabwire vs. Attorney General [2019] eKLR, wherein the court relied on the decision in Lt. Col Peter Ngari Kagume and 7 others vs. AG, Constitutional Application No. 128 of 2006 where it was held that: -
- ... It is incumbent upon the Petitioners to avail tangible evidence of violation of their rights and freedoms. The allegations of violations could be true, but the court is enjoined by law to go by the evidence on record. The Petitioners' allegations ought to have been supported by further tangible evidence such as medical records, witnesses...the court is dead to speculation and imaginations and must be guided by evidence of probative value. When the court is faced by a scenario where one side alleges and the rival side disputes and denies, the one alleging assumes the burden to prove the allegation...”
95. In order to discharge their burden of proof, the Petitioner ought to have produced the previous Murang'a County Finance Act 2013, to show that indeed, the charges per acre was not Ksh 200/= as has been shown in Item 9 of the 6<sup>th</sup> Schedule of The Murang'a County Finance Act, 2018. With that evidence, showing the variance, then this court would indeed find and that the Respondent did vary the rate payable per acre, without following the laid down procedure provided for in the existing national legislation being the Rate Act and Valuation of *Rating Act*, which are applicable. The Respondent had averred that in the previous years, it under charged the Petitioner as it did not have the correct acreage held by the Petitioner. This shifted the burden of proof to the Petitioner, who did not dispute this allegation or provide different acreage held by it in its further responses.
96. Having analysed the evidence as above, this court finds and holds that the Respondent did not vary the rate payable per acre in the Muranga County Finance Act 2018, from what was previously charged and so did not contravenes any law.



**(ii) Whether the Respondent's action of withholding the Applicant's trade licenses despite the Petitioner's payment of the trade licenses is lawful, procedural, and/or fair and in breach of Article 47(1) of *the Constitution*, Article 40 (1) of *the Constitution*, Sections 4(1), 4(2) and 4(3)(a), (b) and (4) of the *Fair Administrative Action Act* and Sections 4(1) and 14 (3) of the Murang'a County Finance Act 2018.**

97. The bone of contention is the failure of the Respondent to release the trade licences for the Petitioner on allegations that the Petitioner had not paid for the land rates. As earlier stated by the court, it is clear that *the Constitution* 2010, in Article 209(3), empowers the County governments to impose taxes and particularly Article 209(3)(c) stipulates that the County governments may impose any other taxes that are authorized to impose by an ACT of Parliament. Taxes are imposed as a source of revenue for the County governments. These taxes may be imposed in form of paying for licences for the services offered by the entities.
98. In conformity with the above provision of *the constitution*, the Respondent is mandated to enact the Finance Act, once after every five or 50 years.
99. Consequently, the Respondent passed the The Murang'a County Finance Act, 2018, which Act provides for imposition, or variation of various taxes, fees, licences etc. (See the preamble to the Act). Among the taxes to be imposed was the land rates as provided by Item no. 9 of the 6<sup>th</sup> schedule. It is also evident that the imposition of the land rates is subject to the existing Legislations among them *Rating Act* and Valuation of *Rating Act*, Caps 266 & 267 Laws of Kenya.
100. It is also very clear that the above Legislations provide mechanism of dealing with non-conformity with the laid down provisions of law on payment of land rates. Certainly detention of trade licence is not one of such mechanism.
101. Section 17 of the *Rating Act* provides for the mechanism of enforcement of rates arrears, by instituting a civil suit in a court of law to demand for the rates arrears. The Petitioner has alleged that the Respondent herein has been refusing to release their various trade licences for the years 2019, 2020, 2021, 2022 and 2023, prompting courts interventions through various court orders. The petitioner has alleged that this act of refusal to release the duly paid up trade licences unless disputed for is an act of illegality and in contravention with the clear provisions of *the Constitution*. This court will concur with the submissions by the Petitioner that indeed, failure to pay land rates does not empower the Respondent to hold on the trade licences for the rateable entity.
102. It is clear that the Murang'a County Finance Act 2018, provides that a person or an entity shall not carry out any business or provide services without a valid licence or permit. It is not in doubt that licence or permit is issued upon payment of fees. The Finance Act 2018, has provided for various fees charged on different categories of businesses and services. It is also evident that the Petitioner runs various businesses, and it had paid for the trade licences as is evident from the Supplementary Affidavit of Denis Gitaka, sworn on 2<sup>nd</sup> March 2023. The Petitioner has dutifully paid for the various trade licences, and it was its expectation that it would be issued with the trade licences. However, it was alleged that the Respondent has pegged the release of these trade licences to payment of land rates. The Respondent has not controverted this evidence.
103. Section 14(3) of the said Finance Act, 2018, provides that a person who applies for a licence be issued with a licence upon payment of the specified fee in the schedules. Therefore, once the Petitioner paid for the trade licences, he expected the same to be released to him. Failure to release the trade licences to the Petitioner, meant that it would not visibly display them as provided by Section 14(4) of the Finance Act, 2018. This would in turn affect the Petitioner right to trade or carry on business and



the said act is contrary to the provision of *the Constitution* on the right to carry out commercial or economic activities. Further, article 209(5) of *the Constitution* provides that the taxation and other revenue raising powers of the County shall not be exercised to prejudice economic activities, mobility of goods, services and labour.

104. Failure to release the trade licences to the Petitioner would indeed prejudice its economic activities, trade and provision of service thus curtailing the Petitioner's rights as provided in *the Constitution*. The court will concur with the findings of the court in the case of Republic vs Betting Control & Licencing Board and Another Exparte Outdoor Advertising Association of Kenya (2019) eKLR; where the court held:

“First, public bodies, no matter how well intentioned, can only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation, which is enshrined in our constitution. It follows that for the impugned decisions to stand, it must be grounded on the law.

As such, the Respondents actions must conform to the doctrine of legality. Put differently, a failure to exercise that power where the exigencies of a particular case require it, would amount to undermining the legality principle, which, is inextricably linked to the rule of law. Guidance can be obtained from AAA Investments (Pty) Ltd vs Micro Finance Regulatory Council and another [13] where the court held as follows; “(t)he doctrine of legality which requires that power should have a source in law, is applicable whenever public power is exercised . . . Public power . . . can be validly exercised only if it is clearly sourced in law”

105. Since the *Rating Act* which guides entities on issue to do with imposition of rates, land rates being one of them, and given that detention of trade licences is not of the mechanism of dealing with failure to pay land rates, this court finds that the act of the Respondent to peg release of trade licences to payment of land rates is an illegality which has infringed on the Petitioners right to engage in economic activities.
106. The Petitioner is an exporter of farm produce to foreign countries and without the necessary trade licences, its standing among the trading partners and even Nairobi Stock Exchanges, will be greatly affected. Thus, the Respondent action of withholding the lawful paid for trade licences is against the Petitioners constitutional right to fair treatment and right to freely engage in its economic activities without interference from the Respondent.

### **(iii) Whether the Petitioner is entitled to the reliefs sought?**

107. The Petitioner herein through this Constitution Petition as contained in the Further Amended Petition has sought for various reliefs. The question now for determination is whether the Petitioner is merited of the reliefs sought.
108. This being a Constitution Petition, the Court must be satisfied that the same meets the threshold as set out in the case of Anarita Karimi Njeru vs Republic (1976-1980) KLR, where the court held;

“if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he/she should set out with a reasonable degree of precision;

- i. that of which he complains
- ii. the provisions said to be infringed, and



iii. the manner in which they are alleged to be infringed.

109. The Petition herein needs to meet the above criteria, as the Petitioner needed to state the provisions of *the constitution* that have been violated and in which manner the same was violated. The Petitioner herein has quoted various articles of *the constitution* that were allegedly violated being Articles 22,23,40(1) 47(1) 190(2) and 210(1) of *the Constitution* as having been violated. The said Articles were stated out in the pleadings.

110. In the case of John Mining Temoi & another v Governor of Bungoma County & 17 others [2014] eKLR, the court held as follows;

“As a basic minimum, the Petitioners are required to not only cite the provisions of *the Constitution* which have been violated but also the manner in which they have been violated with regard to them. See the case of Anarita Karimi Njeru (1976-80) 1 KLR 1272 and Trusted Society of Human Rights Alliance -v- Attorney General & Others High Court Petition No. 229 of 2012. In demonstrating the manner in which there has been a violation of their rights or of *the Constitution*, the Petitioners should present before the court evidence or a factual basis on which the court can make a determination whether or not there has been a violation”.

111. The Petitioner herein has clearly stated the constitutional issues in its pleadings and thus the court finds that the Petition herein has met the threshold set out in the Anarita Karimi case. If the Petition has met the threshold, is the petitioner deserving of the prayers sought.

112. Firstly, the Petitioner urged the court to declare that the Respondent’s action of holding the Petitioners trade licences despite payment of the trade licences fees contravened Article 47(1) of *the Constitution*. The said Article of *the Constitution* provides that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

113. The action of withholding the Petitioners trade licence was an administrative action, but the same was not lawful or reasonable. It was therefore in contravention of this Article 47(1) of *the Constitution* and the Petitioner was condemned unheard. The Petitioner also alleged that its right to property under Article 40(1) was infringed. There was evidence that the Petitioner was denied trade licences for a number of its businesses, which were situate on its parcels of land. That meant the businesses would not run and or operate and therefore, the Petitioner would not freely enjoy the benefits from its land and thus infringing on its right to property.

114. Relief no 1 is tied to prayer no 2, wherein the court is urged to make a declaration that Respondent cannot withhold the issuance of duly paid for trade licenses on the basis of unrelated levies.

As the Court held earlier section 17 of the *Rating Act* is clear on the mechanisms to be employed once a ratable entity is in default of payment of rates. Withholding trade licenses is not one of them. By holding the said trade licences, the Respondent is involved in an illegality. Further, the Murang’a Finance Act 2018, is very clear that once the licences are paid for, then the Respondent has no any option, but to issue the licences.

115. Therefore, this court declares that the action of the Respondent of withholding the trade licences for the Petitioner due to the dispute over land rates is an illegality and is unfair, arbitrary and



discriminatory. See the case of Republic vs Municipal Council of Nyeri, Exparte Ring Road Residents Association (2016) eKLR, where the Court held;

“In this case there is an apparent disregard of statutory provisions by the respondent, which are of a fundamental nature. The Parliament has conferred powers on public authorities in Kenya and clearly laid a framework is clear, there is an obligation on the public authority to strictly comply with it to render its decision valid...”

116. In prayer No. 3, the Petitioner has urged the court to declare that the Respondents action of varying the land rate payable pursuant to the 6<sup>th</sup> schedule without following due process was null and void. However, this Court found that the rate of charged ksh. 200/= per acres as stated in Item 9 of the 6<sup>th</sup> schedule was the same as provided in the previous Finance Act. There was no variation. What changed was the total amount of land rates due from the Petitioner.

117. The Respondent explained that this was due to the fact previously that they were basing their calculations based on wrong acreage. That after using the correct acreage as provided by the Petitioner, then the difference in the amount due as land rates was noted. The Petitioner did not dispute that it holds the land acreage as stated by the Respondent.

Therefore, this court finds that the Petitioner is not deserving of relief No. 3.

118. In prayer No 4, the Petitioner has urged the Court to issue a permanent injunction to restrain the Respondent from withholding the duly paid for trade licenses on the basis of the disputed land rates. This court has found that the action of the Respondent to peg the release of trade licenses to payment of disputed land rates is an illegality. Under Section 4(4) of the Finance Act, 2018, the Petitioner upon receipt of the trade licenses id supposed to visibly display them. Failure to do so attract a fine.

119. Without the release of the trade licenses, the Petitioner will definitely be hand capped in carrying out trade and / or economic activities and its export of avocados, macadamia nuts and another farm produce will be affected. This would indeed spiral to the 2000 small scale farmers who sell their avocados to the Petitioner. The workers who are also employed by the Petitioner might lose their jobs. This would cause irreparable damages or loss which cannot be compensated.

120. This action of the Respondent affects economic and property rights of the Petitioner. This action also goes against the provisions of *the Constitution* in Article 209(5) as the Petitioner has been prejudiced economically. There is justification for grant of permanent injunction as sought. A permanent injunction fully determines the right of the parties before the Court and is normally meant to perpetually restrain the commission of an act by the aggressor in order for the right of the aggrieved party to be protected.

121. Reliance is made to the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR, where the Court observed as follows in regard to a permanent injunction.

“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.

9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time



or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.”

The Petitioner herein is the aggrieved party and its rights can only be protected by issuance of permanent injunction against the Respondent as prayed in the Petition.

122. In prayer No. 5, the Petitioner has prayed for permanent injunction to issue to restrain the Respondent from levying varied land rates for the years 2019 to 2022. This is related to prayer no 3, which the court found is not tenable as there is no evidence of variation. It is only that the Petitioner’s correct acreage has now been captured. Under Article 209(3) of *the Constitution*, County governments are empowered to impose taxes for the purposes of their financial management. The Respondent is one of such County Governments and it is mandated to impose taxes and other levies to meet its financial obligations.
123. Having found that the rate of ksh. 200/= per acres as the charges for land rates was not varied by The Murang’a County Finance Act, 2018, this court finds that it cannot issue any permanent injunction to restrain the Respondent from levying varied land rates for the years 2019 to 2022. The rates were not varied and the difference arose when the correct acreage as held by the Petitioner was used to calculate the land rates due.
124. The Petitioner has further sought for refund of the amount of money held in the joint account of the parties Advocates. Indeed, it is not in doubt that several deposits have been made in the joint account of the Advocates herein. These deposits are the expected land rates payments for the years 2019 to 2023. The said deposits were held therein through a court order as the amount payable as land rates was disputed. This Court had held that the rate of ksh. 200/= per acre was not varied, but the huge increase was due to the correct calculation using the actual acreage held by the Petitioner.
125. The Petitioner did not deny that it holds the acreage of land as tabulated by the Respondent. It is clear that ksh 200/= is the rate charged per acre. The Petitioner should accordingly provide the correct acreage to the Respondent and the land rates be calculated according to the acres held by the Petitioner. If the said acres will be less, than the acreage used by the Respondent to tabulate the amount due, then that is the only time a refund can be made. For now, the court relies on the acreages as provided by the Respondent and finds that the order for refund is not tenable.
126. On any other relief that the court shall deem fit to grant, this court makes a follow up to prayer No 6, and directs that if the Petitioner is disputing the acreages applied by the Respondent to calculate the land rates due, then it is at liberty to supply the correct acreages to the Respondent and then the Respondent is obligated to calculate the land rates as per the Murang’a County Finance Act, 2018.
127. On who should pay costs of the Petition, the court finds that Section 27 of the *Civil Procedure Act*, provides that costs are ordinarily granted at the discretion of the court. However, costs normally follow the events and are granted to the successful litigant. The Petitioner has succeeded in some prayers and it is thus the successful litigant. The action of the Respondent to withhold the trade licences caused the Petitioner to file this Petition. Thus the Respondent is condemned to pay costs.
128. Having now carefully considered this Petition, the Reply to the same, the written submissions and the relevant provisions of law, the Court finds the Petitioner is deserving of the following reliefs, which reliefs are accordingly allowed/and/or granted; -Reliefs No. 1,2,4 and 7, are granted plus costs of the Further Amended Petition dated 21<sup>st</sup> October 2022. Reliefs No.3,5 and 6 are not granted.

It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30<sup>TH</sup> DAY OF  
JANUARY, 2024.**

**L. GACHERU.**

**JUDGE**

**Delivered online in the presence of;**

**Mrs Opiyo for Petitioner**

**Absent for Respondent**

**Joel Njonjo - Court Assistant**

**L.Gacheru**

**JUDGE**

**30/1/2024**

