



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E&L PET 18 OF 2013**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010 AND IN THE ALLEGED  
CONTRAVENTION OF THE CONSTITUTION AND FUNDAMENTAL RIGHTS AND  
FREEDOMS THERE UNDER AND ARTICLES 10 (2), 27, 46 (3), 184, 191, 196, 209, 221(5) AND  
232 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF TRANSITION TO DEVOLVED GOVERNMENT ACT NO. 1 OF 2012  
AND THE UASIN GISHU COUNTY AND THE FINANCE BILL NO. 6/2013**

**AND**

**IN THE MATTER OF INCREMENT OF RENT FOR COUNTY RESIDENTIAL HOUSES  
FOR THE RESIDENTS OF MAYABI, UHURU, KAMANDA, KURIA, TOM MBOYA  
ST. MARY'S KODHEK, KILIMANI AND MACHARIA ESTATES OF UASIN GISHU COUNTY**

**BETWEEN**

**SAMWEL K. MAIYO & 5 OTHERS .....APPLICANTS**

**VS**

**COUNTY OF UASIN GISHU GOVERNMENT & 2 OTHERS.....DEFENDANTS**

***(Petition seeking to declare the Finance Act, 2013 of Uasin Gishu as unconstitutional in so far as it sought to increase rents of various tenants of county houses; the said Act having already been declared unconstitutional in earlier proceedings; previous decision stands and Act already nullified; parties to be put back to the positions that they were in prior to the said Finance Act)***

**JUDGMENT**

This is a constitutional petition in which the petitioners want three principal orders :-

(a) A declaration that the process undertaken by the Respondents in increasing the rent for the residential houses to wit : Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary's Kodhetk, Kilimani and Macharia was not democratic and transparent and therefore null and void.

(b) A declaration that public participation and/or involvement in a matter of this magnitude in the county is paramount and the exercise undertaken by the respondents without observing the supreme law of the

land is null and void.

(c) A declaration that the Uasin Gishu County Finance Bill No. 6 of 2013 is illegal.

Through the Finance Bill of 2013, the County Government of Uasin Gishu proposed various charges for various activities and/or services. Among the subject matter in the Bill was a proposal to increase rents for various housing estates owned by the County Government of Uasin Gishu. The petitioners are tenants in those houses, and it is their case that the proposed rent increases are unconstitutional, inter alia because there was no public participation as required by Article 10 (2) of the Constitution, among other provisions in the Constitution of Kenya, 2010.

The Bill was passed as the Finance Act, 2013 of Uasin Gishu County on 20 November 2013.

I directed that the petition be argued through written submissions and by 21 October 2014, when the matter was for hearing, the parties had filed their written submissions and entirely relied on the same. I scheduled judgment for 27 November 2014.

When I retired to write the judgment, I came to learn that there had been another matter, being **Eldoret High Court, Constitutional Petition No. 3 of 2014, The North Rift Motor Bike Taxi Association (NRMBTA) v The Uasin Gishu County Government**, where the petitioners had contended that the Finance Act, 2013 of Uasin Gishu County was unconstitutional. That matter was decided by my sister Honorable Lady Justice Grace Ngenye-Macharia on 2 October 2014. In her judgment, the learned judge held that the Finance Act, 2013 of Uasin Gishu County was unconstitutional and she declared it null and void. This is what she had to say :-

*"I find that the Uasin Gishu Finance Act, 2013 was irregular and it contravened Articles 1(1), 10(2) (a) and 196 (1)(b) of the Constitution, 2010 as well as Section 87 of the County Government Act, 2012. In the end pursuant to Article 2(4) of the Constitution, I declare the said Act as null and void."*

The Finance Act, 2013 of Uasin Gishu County has already been declared as unconstitutional, null and void. I am therefore of the opinion that the matter before me has already been decided by the above judgment. If I proceed to re-evaluate the matters, then I will basically be sitting on appeal to the above decision.

The only issue I need to pronounce myself is on the interim orders that I had issued on 16 September 2014. I held that the petitioners could continue residing in the houses so long as they paid the new rent. This of course, with the nullification of the Finance Act, needs to revert back to the position that was prevailing prior to the passing of the Finance Act. The rent payable shall therefore remain that which was payable prior to the Finance Act, 2013.

For the above reasons, I make the following orders :-

(1) The issue whether or not the Finance Act, 2013 of Uasin Gishu County is unconstitutional, has already been decided in **Eldoret High Court, Constitutional Petition No. 3 of 2014, The North Rift Motor Bike Taxi Association (NRMBTA) v The Uasin Gishu County Government**.

(2) In the said decision, the said Finance Act, 2013, of Uasin Gishu County has already been held to be unconstitutional, null and void.

(3) It follows therefore that the parties herein need to be placed in the position that they were in prior to the enactment of the Finance Act, 2013 and any monies paid in accordance with the new rent needs to be credited to the tenants. The status quo pending before the Finance Act, 2013, of Uasin Gishu County, in so far as the petitioners are concerned, be maintained.

(4) I make no orders as to costs.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF NOVEMBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET.**

*Delivered in the presence of:*