



**United Millers Company Ltd v County Government of Kisii;  
County Government of Kisumu (Interested Party) (Civil Appeal  
72B of 2020) [2025] KECA 1068 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1068 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL 72B OF 2020  
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA  
JUNE 13, 2025**

**BETWEEN**

**UNITED MILLERS COMPANY LTD ..... APPELLANT**

**AND**

**THE COUNTY GOVERNMENT OF KISII & 91 OTHERS ..... RESPONDENT**

**AND**

**THE COUNTY GOVERNMENT OF KISUMU & 3  
OTHERS ..... INTERESTED PARTY**

*(Being an appeal from the High Court of Kenya at Kisumu (F.A.  
Ochieng, J.) dated 15th April 2020 in Petition No. 7 of 2018)*

**JUDGMENT**

1. This appeal arises from a judgment delivered by the High Court at Kisumu (F. Ochieng, J) on 15<sup>th</sup> April, 2020 in Kisumu Constitutional Petition No. 7 of 2018. United Millers Company Limited, the appellants herein, had filed the Petition in the High Court against all the County Governments of all the 47 Counties in Kenya, as well as all the 47 County Assemblies in Kenya, and later cited the County Government of Kisumu, The Council of Governors, The Honourable Attorney General and the Kenya Association of Manufacturers as interested parties.
2. The appellant challenged the move by the respondents compelling the appellant to take out various Trade Licences, for the delivery of products within their respective jurisdictions and averred that the act of impounding the appellant's vehicles whenever traversing the jurisdiction of any of the respondents' demanding payment of licences to enable the appellant's vehicles distribute its products within each respective county amounted to double taxation.



3. The reliefs sought in the petition included:
  - a. A declaration that the levying of distribution/single business permit fee by the Respondents against the appellant was illegal and in breach of its Constitutional Rights under Articles 40, 47, 191, 209 and 210 and the *Public Finance Management Act*, 2012 and detrimental to the national economic interest and constitutes double and/or multiple taxation.
  - b. A declaration that any and all attempts and intents of the respondents in interfering with the appellant's delivery of its products to its clients across County Boundaries or depriving its access and utilisation of its tools of trade was illegal and contrary to Sections 40, 47, 191, 209 and 210 of *the Constitution* as it was an infringement on national mobility of goods, services and/or labour.
  - c. An order of Prohibition, by way of conserving the appellant's rights under Articles 40, 191, 209 and 210 of *the Constitution*, directed against the respondents and their authorised agents prohibiting them from further impounding any Motor Vehicle belonging to the appellant whatsoever and levying of distribution and/or single business permit fees contrary to *the Constitution* pending the hearing and determination of the Petition.
4. The appellant sought an order of release of the impounded motor vehicles, prohibition against impounding its motor vehicles and levying of distribution/single business permit fees pending the hearing and determination of the petition.
5. In their response, the respondents majored on the fact that pursuant to Article 209 of *the Constitution*, the county governments are empowered to impose taxes as provided for under an act of parliament; that as much as the appellant's business is largely based and carried out within Kisii, the same is also carried out within the local areas as well as other County Governments; that pursuant to schedule 4 Part 2 of *the Constitution*, the County Governments have powers over markets, trade licences, fair trading practices, local tourism and cooperative societies as such levying taxes on account of the appellant's goods does not amount to double taxation.
6. Upon consideration of the petition, the learned judge by a judgment dated 15<sup>th</sup> April, 2020 noted that the appellant was not able to demonstrate that either the taxation or other revenue- raising powers of the County Governments were being exercised in a way that prejudiced the economic activities across the County boundaries, or prejudiced the national mobility of goods, services, capital or labour. That had it established so, the court would have declared the exercise of such powers as unconstitutional.
7. The learned judge further found that in its petition, the appellant was not challenging the effect of the implementation of the legislation passed by the respective County Assemblies but had a problem with the legislation which enabled each county to charge a Distribution Fee, whenever any vehicle belonging to the appellant entered the jurisdiction of such county, for purposes of delivery of goods which the appellant had sold to its customers within the said county.
8. The learned judge further held that each respective Distribution Fee is charged by a different County, in respect to distribution of goods within its territory therefore, such fees do not constitute Double Taxation. He further observed that despite the appellant complaining about the cumulative implementation of the various Finance Acts across the county boundaries, not each separate piece of legislation passed by the respective County Assemblies was unconstitutional.
9. The judge concluded that even though the appellant could have a legitimate complaint about multiplicity of Distribution Fees as it made the cost of products more expensive to the ultimate



- consumers, the petition as drawn could not meet the desired goal. The petition was subsequently dismissed.
10. Aggrieved and dissatisfied with the entire decision of the trial court, the appellant appealed to this Court. Its Memorandum of Appeal dated 15<sup>th</sup> June, 2020 contains 15 grounds of appeal which fault the learned judge for, inter alia, failing to find that the petition had a legitimate complaint about multiplicity of fees charged, ignoring that none of the respondents denied levying fees complained of, misinterpreting the petition and what constitutes double taxation, finding that the appellant was not paying for licences, finding that the appellant complained about the cumulative implementation of various County's Finance Acts but never challenged the implementation of the laws, finding that the petition as drawn could not attract the orders sought and failing to evaluate the evidence and exhibits tendered thereby dismissing the petition.
  11. At the hearing of this appeal, Mr Wasuna, learned counsel was present for the appellant, while Mr Ashitiva, learned counsel appeared on behalf of the 23<sup>rd</sup> respondents. There was no appearance for the other respondents though properly served.
  12. Highlighting the appellant's written submissions Mr Wasuna submitted that the petition was anchored on the provisions of Article 209(5) of *the Constitution* which provides that taxation and revenue raising powers of a County shall not be exercised in a way that prejudices National Economic Policies, economic activities that cross out the boundaries, or the national mobility of both taxes, capital or labour. He submitted that by acknowledging that the appellant was able to demonstrate that the revenue raising powers of the County Government were being exercised in a way that prejudiced the economic activities, the court ought to have declared the exercise of such powers as unconstitutional.
  13. That despite finding the exercise unconstitutional, the learned judge went ahead and concluded that the petition as presented was unmerited. The appellant complains that the court identified the violation but declined to redress it for reasons not clear to the appellant.
  14. In response, the County Government of Kakamega, being the 23<sup>rd</sup> respondent contended that in the impugned petition, the appellant failed to differentiate between multiplicity of tax and duplicity of tax on several aspects.
  15. It was submitted that under Article 209(4) of *the Constitution*, the County Governments are empowered to impose charges for the services offered in infrastructure, in terms of roads, County roads and Government Roads which are maintained by each County and therefore, they are entitled to charge levies for maintaining those roads amongst other infrastructural components.
  16. The 23<sup>rd</sup> respondent submitted further that the appellant's petition was not specific on the prayers sought and did not ask for specific remedies with the required particulars against each of the Counties that they brought to court. That it is a well-established principle that a person seeking redress in a matter involving a reference to a Constitution should clearly set out with a reasonable degree of precision that of which it is complained of and the provisions said to be infringed and the manner in which they are alleged to be infringed; and that the appellant failed to discharge this duty, as such the court was right in dismissing the petition.
  17. This being a first appeal, the Court's primary role is to re-evaluate, re-assess and re-analyze the evidence before the trial court and then determine whether the conclusions reached by the learned trial Judge are valid or not and give reasons either way. See *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2EA 212.



18. It is trite that parties are bound by their pleadings and the issues for determination in a suit generally flow from the pleadings. A court can only pronounce judgment on the issues arising from the pleadings or such issues as the parties have framed for the court's determination. See *Gandy v Caspair* [1956] EACA 139 and *Galaxy Paints Co. Ltd v Falcon Guards Ltd* [2000] 2 EA 385.
19. In the instant case, the appellants' petition was dismissed for reasons that the appellant appeared to be complaining about the cumulative implementation of the various Finance Acts, across the county boundaries. The appellant never provided the gazetted taxation measures by the 47 Counties that it thought were unconstitutional but included all the County Governments with no specific legislation from each of those County Assemblies that he complained of and thus it was not possible for the learned judge to make the specific orders that the appellant was looking for.
20. The appellant ought to have indicated which provisions of *the Constitution* had been infringed or violated in his Petition, and to give instances and particulars of how the rights had been infringed or violated by each respective County. This did not come out in his Petition.
21. We draw from the case of *Trusted Society of Human Rights Alliance v Attorney General and 2 Others* [2012] eKLR which reaffirmed the holding in the *Anarita Karimi Njeru Case* and stated that:

“We do not purport to overrule *Anarita Karimi Njeru* as we think it lays down an important rule of constitutional adjudication a person claiming constitutional infringement must give sufficient notice of the violations to allow her adversary to adequately prepare her case and to save the court from embarrassment on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new constitution is whether a petition as started raises issues which are too insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions, neither identifying the specific constitutional provisions which have alleged to have been violated. The test is a substantive one and inquires whether the complaints are against the respondents in a constitutional petition are fashioned in a way that gives proper notice to the respondents about the nature of the of claims being made so that they can adequately prepare their case.”

22. Clearly, from provisions under Article 209(3) of *the Constitution* as read together with section 132 of the *Public Finance Management Act*, the respondents are authorized to raise revenue by imposing taxes and they can make laws as necessary for that purpose.
23. The appellant's grievance in this regard is that it is being compelled to take out various Trade Licences, for the delivery of products within the respondent's respective jurisdictions and within each respective county which it terms it as double taxation. Unfortunately, the appellant did not specify each respective county's violation.
24. As for the violation of *the Constitution*, it is common ground that a party who alleges violation or threatened violation of *the Constitution* is required to set out the particular provisions violated and also demonstrate the manner in which the offending party violated or threatens to violate the provisions in issue. This position is fortified by this Court's sentiments in *Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others* [2017] eKLR thus:

“The appellant also failed to not only cite the articles of *the Constitution* he felt the respondents offended, but also failed to show the manner in which the respondents violated



them. It is not enough to mention perceived violations of *the Constitution* in generalities as the appellant has done in his petition. Even the provisions of Section 1A and 1B of the *Civil Procedure Act* and Section 3A and 3B of the *Appellate Jurisdiction Act* cannot be invoked in his aid.”

25. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) provides that:

“Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”

26. Rule 10 of the Mutunga rules governs the form that a constitutional petition should take. Rule 10(2) of the same rules specifically provide as follows:

The petition shall disclose the following:

- i. the petitioner’s name and address;
- ii. the facts relied upon;
- iii. the constitutional provision violated;
- iv. the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- v. details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- vi. the petition shall be signed by the petitioner or the advocate of the petitioner; and
- vii. the relief sought by the petitioner.

27. In the instant appeal, the appellant cited various provisions that the respondents had allegedly violated but fell short of demonstrating the manner in which each respondent violated the same. It was not sufficient for the appellant to rely on the payments made to substantiate its claim. More cogent evidence was required to demonstrate that the licences had violated Article 209(3)(4) of *the Constitution* in that, it hindered the movement of the appellant’s goods and/or was prejudicial to national economic policies or it was simply illegal as it was not provided for under *the Constitution* and the respective County’s Finance Act. Ultimately our finding is that this appeal lacks merit and is dismissed in its entirety. We award costs of the appeal to the 23<sup>rd</sup> respondent.

**DATED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF JUNE, 2025.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

