



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: WAKI, NAMBUYE & OKWENGU, JJA)**

**CIVIL APPEAL NO. 200 OF 2014**

**BETWEEN**

**KIAMBU COUNTY GOVERNMENT ..... 1<sup>ST</sup> APPELLANT**  
**THE GOVERNOR KIAMBU COUNTY ..... 2<sup>ND</sup> APPELLANT**  
**THE DEPUTY GOVERNOR KIAMBU COUNTY ..... 3<sup>RD</sup> APPELLANT**  
**THE EXECUTIVE COMMITTEE KIAMBU COUNTY ..... 4<sup>TH</sup> APPELLANT**

**AND**

**ROBERT N. GAKURU & OTHERS ..... RESPONDENTS**

*(An appeal from the Judgment and Decree of the High Court of*

*Kenya at Nairobi, (Odunga, J.) dated 17<sup>th</sup> April, 2014*

*in*

***H.C.C.C. No. 532 of 2013***

***Consolidated with***

***Petition Nos. 12, 35, 36, 42 & 72 of 2014***

***and***

***J.R. Misc. Appln. No. 61 of 2013)***

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

1. The main issue in this appeal is to determine the proper construction of that hallowed principle introduced by the *Constitution, 2010* and referred to in *Article 10*, the *County Government Act 2012* and the *Public Finance Management Act 2012* as "**Public Participation.**" The appeal may well be an academic exercise since the subject matter ceased to have any effect between the parties at the end of the

2013/2014 financial year. Nevertheless, we must deal with it, if only to set the law straight on the matter.

2. The High Court (**Odunga J.**) on 17th April 2014 declared the Kiambu *Finance Act 2013* ("**the impugned Act**") as null and void for want of public participation and struck it out. The County Government, and with it the Governor, Deputy Governor and the Executive Committee (hereinafter, "**the appellants**") who were enjoined in the suit are appealing that decision through learned counsel, **Mr. Gitonga Kimani**, instructed by M/S Kimani Kahiro & Company Advocates.

3. Several Petitions were filed by Kiambu businessmen and institutions before the High Court to challenge the impugned Act but they were all consolidated and heard together. Although there were seven different advocates on record for them, and they were all served with notices for the hearing of the appeal, only two of them appeared and responded to the appeal: **Mr. B. Mureithi** instructed by M/S P.K. Mureithi & Company Advocates, and **Ms. Isabella Kithunka**, instructed by M/S Dola Mogani & Company Advocates. The Attorney General who was enjoined in the litigation was represented by State Counsel, **Ms. Wambui** who did not wish to participate in the matter as it concerned a County Government and not the National Government which the Attorney General advises.

4. The major complaints made in the petitions were that the impugned Act was passed without consultations as no invitations were made to the respondents who are the major stakeholders directly affected by its provisions. Kiambu people as a whole also had interest in the legislation. In the end, they contended, the impugned Act turned out to be contradictory to the Constitution, contained unreasonable provisions which were punitive and amounted to double taxation leading to closure of businesses and consequent loss of economic well-being and the right to earn a living. They conceded that there was one meeting called at Windsor Hotel by way of an advert in the English newspaper, *Daily Nation*, to discuss an earlier draft of the impugned Act but the County Assembly rejected it. They subsequently saw a different version of the impugned Act after gazettelement and it had no similarity with what had been displayed at the Windsor Hotel, hence their complaints.

5. The appellants insisted that the Kiambu people were represented by members of the County Assembly who were their elected leaders and, therefore, all 1.6 million people of Kiambu did not have to be consulted individually before legislation is passed. They contended that the draft bill of the impugned Act was published on the County website and public views invited. It was also published in the *Daily Nation* and circulated to Churches in the county for publication in August 2013. Finally a public meeting was called at Windsor Hotel on 20<sup>th</sup> August, 2013 and thereafter it was submitted to the Law Reform Commission for review before submission to the County Assembly for debate and enactment.

6. The Bill was rejected by the County Assembly in November 2013 with recommendations on amendments to be made and it was resubmitted in December 2013 when it was passed. In the appellants' view, there was no need to subject the Amended Bill to public participation or consultations again. It became a valid Act pursuant to the **County Government Act 2012** and the **Public Finance Management Act 2012** and its provisions were enforceable. No Constitutional rights of the respondents were breached and in any event, none were particularized in the pleadings as by law required, they contended. In their view, the impugned Act did not impose any harsh, punitive, offensive or exorbitant permit fees as alleged but on the contrary, followed the Constitution and statute law in an effort to raise funds for the running of county services.

7. After reviewing the record and submissions of counsel, **Odunga J.** examined the relevant Constitutional and statutory provisions on public participation including **Articles 10, 174, 196, 201**, and **Sections 87 and 115** of the **County Government Act, 2012** and stated:-

***"From the foregoing provisions it is clear that public participation plays a central role in both legislative and policy functions of the Government whether at the National or County level. It applies to the processes of legislative enactment, financial management and planning and performance management. Due to its centrality it is important to determine what exactly amounts to public participation."***

8. The learned Judge then went further to examine relevant South African cases that have construed their Constitution on public participation, including

**Glenister v. President of the Republic of South Africa & Others (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 9CC0 ; 2011 (7) BCLR 651 (CC); Merafong Demarcation Forum & Others vs President of the Republic of South Africa & Others (CCT 41/07) [2008] ZACC 10; 2008(5) SA 171 9CC); 2008 (10) and the leading decision of Ngcobo, J. in Doctors for Life**

**International v. Speaker of the National Assembly & Others (CCT 12/05) [2006] ZACC 11, 2006(12) BCLR 1399(CC), 2006 (6) SA 416 (CC) from which he quoted in extenso. The following principles may be discerned from the quotations reproduced from that case, in summary:**

- ***It is generally accepted that modes of public participation may include not only indirect participation through elected representatives but also forms of direct participation.***
- ***The general right to participate in the conduct of public affairs includes engaging in public debate and dialogue with elected representatives at public hearings. There is a duty to facilitate public participation by ensuring citizens have the necessary information and effective opportunity to exercise the right to political participation.***
- ***The democratic government is partly representative and partly participatory, is accountable, responsive and transparent and makes provision for public participation in the law making processes.***
- ***Facilitation of public involvement relates to making it easy or easier, promoting or helping the public to take part with others in the legislative process.***
- ***Parliament and the provincial legislatures have the discretion to determine how best to facilitate public involvement but the courts have the power to determine the reasonableness of that discretion against the degree of involvement envisaged in the Constitution. The nature and importance of the legislation and the intensity of its impact are especially relevant.***
- ***Participation must be facilitated where it is most meaningful and the persons concerned must be manifestly shown the respect due to them as concerned citizens.***
- ***There may be circumstances of emergency that require urgent legislative responses and short timetables but there must be a demonstration of such cases, since the timetable is subordinate to the rights guaranteed in the Constitution and not the rights to the timetable.***
- ***Not everyone should be heard orally. The basic elements of public participation include the dissemination of information, invitation to participate in the process and consultation on the legislation. Accountability, responsiveness and openness are the cornerstones of a democratic legislative process.***
- ***Public participation in lawmaking ensures that legislation is both informed and responsive. This minimizes the danger of arbitrariness and irrationality in the formulation of legislation. Legislation must conform to the Constitution in both the content and in the manner in which it was adopted, otherwise it would be invalid.***
- ***Upon a finding that there was a breach of the constitutional provision for public participation in legislation, the court is obliged to declare the resulting statute invalid.***
- ***Where the impugned statutes have taken effect in regulating the conduct of the public and an immediate declaration of invalidity may be disruptive and cause chaos, the declaration of invalidity may be suspended pending rectification of the law by the legislature.***

9. In this case, the evidence on record was that the impugned Act had been submitted to the County Assembly but was rejected. Thereafter, as admitted by the appellants, it was not subjected to further public participation. The court held:-

***"In my view where a Bill has been rejected by the Assembly and a fresh Bill introduced as opposed to mere amendments, the principle of public participation must equally apply. Unless this is so, the principle may be defeated by the Assembly simply rejecting a Bill in which the public has had an input with its own Bill disregarding the input by the public and not subjecting it to public participation. That in my view would defeat the very principle of public participation."***

10. The learned Judge further stated:-

***"... 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. It is my view that it behooves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough, in my view, to simply "tweet" messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora as possible such as churches, mosques, temples, public barazas national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action. Article 196(1)(b) just like the South African position requires just that."***

11. He held that huddling a few people in a five-star hotel for one day or using a newspaper advert which was beyond the means of the poor, illiterate, ordinary persons, would not suffice as public participation. There was no attempt to exhort the public to participate in the legislation since there was not much mention of the *Finance Bill* in the newspaper advert. Even at the meeting there was no invitation for the participants to comment on the Bill. At all events, in the Judge's finding, some of the provisions of the impugned Act were *ultra vires* the powers of the County Government and were illegal and contrary to **Article 209 (3) (4) and (5) of the Constitution.**

12. Finally the learned Judge rejected the contention by the appellants that the people had elected their representatives in the County Assembly and therefore there was no need of further consultations with them. On this he followed the persuasive authority of the **Matatiele Municipality & Others vs The President of South Africa & Others (2) (CCT 73/05 A [2006] ZACC 12; 2007 (1) BCLR 47 (CC)** stating:-

***"The representative and participative elements of our democracy should not be seen as being in tension with each other.....What our constitutional scheme requires is "the achievement of a balanced relationship between representative and participatory elements in our democracy." The public involvement provisions of the Constitution address this symbolic relationship, and they lie at the heart of the legislative function. The Constitution contemplates that the people will have a voice in the legislative organs of the State not only through elected representatives but also through participation in the law-making process.....To uphold the government's submission would therefore be contrary to the conception of our democracy, which contemplates an additional and more direct role for the people of the provinces in the functioning of their provincial legislatures than simply through the electoral process. The government's argument that the provisions of section 118(1)(a) are met by having a proposed constitutional amendment considered only by elected representatives must therefore be rejected."***

The Judge nullified the impugned Act with immediate effect as no interests had been acquired under the Act and there was nothing to militate against such order.

13. It is against those findings that the appellants filed this appeal challenging them on 18 grounds listed in the memorandum of appeal. In his written submissions, however, learned counsel summarized them as

follows:

- (a) *Public participation in the enactment of the Kiambu County Finance Act 2013 – (grounds 1- 6)*
- (b) *Misjoinder of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> appellant (ground 7)*
- (c) *Whether a breach of Constitutional rights and freedoms must be specifically pleaded (ground 8)*
- (d) *Whether the fees levied by the appellant for quarry was a production tax (ground 9)*
- (e) *Whether J.R Application No. 61 of 2014 was competent in law (ground 10)*
- (f) *Whether this was a contravention of Section 34 of the Advocates Act in Petition No. 72 of 2014 (ground 11)*
- (g) *Whether the judge correctly construed the provisions of Article 185 and 209 and the 4<sup>th</sup> Schedule to the Constitution (ground 12)*
- (h) *Whether there was a breach of the principle of separation of powers (ground 13)*
- (i) *Whether the declaration that the Finance Act was a nullify was itself a deprivation of the Appellants constitutional rights*
- (j) *Whether the Trial Judge exceeded his mandate (ground 15, 16, 17 and 18).*

14. As stated earlier, the mainstay of the appeal is the issue of '**Public Participation**', and if it fails or succeeds on that ground, the other grounds will fall in place. We must therefore examine that ground keenly in the manner of a retrial in order to arrive at our own conclusions since this is a first appeal. We shall, of course, give due deference to the findings of fact made by the trial Judge and only interfere to the limited extent that they were not based on any evidence or on a perverted appreciation of the evidence. We may also interfere if it is demonstrably shown that the trial Judge erred in principle. See *Jabane v Olenja [1986] KLR 661*.

15. Learned counsel, Mr. Kimani, in his written submissions and oral highlights, emphasized that the appellants actively involved the public before the enactment of the impugned Act but the learned Judge made erroneous findings of fact on that. He pointed out that the appellants advertised the Bill in the local newspaper, in its website, and held stakeholder forums in various halls which were attended by a wide cross section of businessmen and professionals from the county. In those forums the appellants explained the budgetary proposals made in the Bill and the reasons for certain increases in taxation. All that was done in accordance with the **Public Finance Management Act** and **Article 196(1)** of the **Constitution** which requires the County Assembly to facilitate public participation and involvement in legislation.

16. Counsel relied on the South African Constitutional Court case of *Minister for Health vs New Chicks South Africa Pty Ltd CCT 59/04* for the proposition that:-

*"The forms of facilitating an appropriate degree of participation in the lawmaking process are indeed capable of infinite variation. What matters is that at the end of the day a reasonable opportunity is offered to the members of the public and all interested parties to know about the issue and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case."*

17. He also submitted, relying on the same authority, that public participation does not mean that the public views must prevail. As per **Sachs J**:

*“It cannot be expected to the law maker that a personal hearing will be given to every individual who claims to be affected by regulations that are being made. What is necessary is that the nature of concerns of different sectors of the public should be communicated to the law maker and taken into account in formulating regulations. In Parliament this is done through the publications of a Bill containing the provisions of the proposed legislation, hearing before parliamentary committees, and debates in parliament where matters of principle raised by sectors of public affected by the law can be contested.*

*Where laws are made through legislative administrative action the procedure of publishing draft regulations for comment serves this purpose. It enables people who will be affected by the proposals to make representation to the law maker, so that those concerns can be taken into account in deciding whether changes need to be made to the draft.*

*This does not mean that the Minister who makes regulations has to study thousands of pages received from the general public and respond to them. The analysis of these responses can be left to officials whose responsibility is to consider the comments received and to report to the Minister to them.”*

18. In response to those submissions, Prof. Wangai for the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that there was no consultation or public participation before the impugned Act was passed. He cited **Sections 87 and 115** of the **County Government Act 2012** and **Article 35** of the **Constitution and** emphasized that the respondents and Kiambu residents were not given sufficient, timely and reasonable access to information held by the appellants which could have enabled them to make an informed decision. He referred to the affidavit evidence filed by the appellants which showed a feeble attempt at consultation but which fell short of the standards. He also referred to the affidavit evidence showing the attitude of the appellants contending that there was no need of public participation because the County Assembly was representative of the people. Counsel agreed with the analysis of Odunga, J.

19. For his part, Mr. Mureithi for the 3<sup>rd</sup> respondents, supported Mr. Wangai but added in written and oral submissions, that the appeal which he dubbed *'frivolous, of no purpose and a waste of the court's time'* was of no use since the impugned Act was assented to on 9<sup>th</sup> December 2013 and ceased operation in September 2014. There has since been other Finance Acts enacted in accordance with the law for the financial years 2015/2016 and 2016/2017. He called for dismissal of the appeal and payment of all costs by the appellants for pursuing a worthless appeal. Ms. Kithunka agreed with the submissions of Mr. Wangai and Mr. Mureithi.

20. We have given the appeal due consideration even as we appreciate that it has been overtaken by events. The issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. The Constitution in **Article 10** which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation, but does not define or say how it should be implemented. In **Article 196**, it commands County Assemblies to, *inter alia*, facilitate public participation and involvement in the legislative and other business of the Assembly and its committees, but again does not say how.

21. Other relevant statutes like the **County Government Act, 2012** in **Sections 87** provides for the principles upon which citizen participation shall be based, among them: timely access to information, reasonable access to the process of policy and law formulation, protection of the rights of minorities among others. It goes further in **Section 115** to provide for mandatory participation and facilitation of the public in planning processes through specified mechanisms, and providing clear, unambiguous information on any planning process as well as developing laws and regulations to give effect to public participation. Again those provisions do not go far enough to provide the legal parameters for gauging the nature, extent and amount of acceptable public participation. Perhaps a specific legislation is desirable to guide state actors and the public on those aspects.

22. In the meantime, the courts must step in, and have done so, to provide guidance. We commend the trial Judge in this matter for his extensive and erudite analysis of the issue of public participation. His extensive reliance on the South African experience was not misplaced because the concept was mainly borrowed from that country. We have also perused other decisions emanating from the High Court which have found persuasive force in the South African authorities. We have summarized above the principles that emerge from the leading decision of **Ngcobo, J.** in the ***Doctors for Life International case (supra)*** and we are in agreement with the decision. The bottom line is that public participation must include and be seen to include the dissemination of information, invitation to participate in the process and consultation on the legislation.

23. Some illustrations on the nature, extent and amount of public participation that may pass muster are given in that case and are worth setting out, thus:-

*“Merely to allow public participation in the law-making process is, in the prevailing circumstances, not enough. More is required. Measures need to be taken to facilitate public participation in the law-making process. Thus, Parliament and the provincial legislatures must provide notice of and information about the legislation under consideration and the opportunities for participation that are available. To achieve this, it may be desirable to provide public education that builds capacity for such participation. Public involvement in the legislative process requires access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens....[the Assembly] should create conditions that are conducive to the effective exercise of the right to participate in the law-making process. This can be realised in various ways, including through road shows, regional workshops, radio programs and publications aimed at educating and informing the public about ways to influence Parliament, to mention a few.... It is implicit, if not explicit, from the duty to facilitate public participation in the law-making process that the Constitution values public participation in the lawmaking process. The duty to facilitate public participation in the law-making process would be meaningless unless it sought to ensure that the public participates in that process. The very purpose in facilitating public participation in legislative and other processes is to ensure that the public participates in the law-making process consistent with our democracy. Indeed, it is apparent from the powers and duties of the legislative organs of state that the Constitution contemplates that the public will participate in the law-making process.... In determining whether Parliament has complied with its duty to facilitate public participation in any particular case, the Court will consider what Parliament has done in that case. The question will be whether what Parliament has done is reasonable in all the circumstances. And factors relevant to determining reasonableness would include rules, if any, adopted by Parliament to facilitate public participation, the nature of the legislation under consideration, and whether the legislation needed to be enacted urgently. Ultimately, what Parliament must determine in each case is what methods of facilitating public participation would be appropriate. In determining whether what Parliament has done is reasonable, this Court will pay respect to what Parliament has assessed as being the appropriate method. In determining the appropriate level of scrutiny of Parliament’s duty to facilitate public involvement, the Court must balance, on the one hand, the need to respect parliamentary institutional autonomy, and on the other, the right of the public to participate in public affairs. In my view, this balance is best struck by this Court considering whether what Parliament does in each case is reasonable.” [Emphasis added].*

24. There is more from the case of ***Matatiele Municipality and Others v. President of the Republic of South Africa and Others (2) (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC):***

*“This may include providing transportation to and from hearings or hosting radio programs in multiple languages on an important bill, and may well go beyond any formulaic requirement of notice or hearing. In addition, the nature of the legislation and its effect on the provinces undoubtedly plays a role in determining the degree of facilitation that is reasonable and the mechanisms that are most appropriate to achieve public involvement. Thus, contrary to the submission by the government, it is not enough to point to standing rules of the legislature that provide generally for public involvement as evidence that public involvement took place; what*

**matters is that the legislature acted reasonably in the manner that it facilitated public involvement in the particular circumstances of a given case. The nature and the degree of public participation that is reasonable in a given case will depend on a number of factors. These include the nature and the importance of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say.** [Emphasis added].

25. In the case before us, the process put in place by the appellants pursuant to the legal requirement for public participation may be extracted from the Replying Affidavit of the County Secretary sworn on 19<sup>th</sup> February, 2014, thus:

***(a) The Bill was submitted to the Kiambu County Assembly for debate and consideration on 2<sup>nd</sup> October 2013 by the Country Executive Committee member for finance and planning in line with the budget proposal for the 2013-2014 financial year. Exhibited herewith and marked as WMM1.***

***(b) Prior thereto the draft of the bill was first published in the official website of the County on 17<sup>th</sup> August 2013 and an invitation for the public participation on the contents thereof made. Exhibited herewith and marked as WMM2 is a true copy of a print out of the notice from the website in that regard.***

***(c) A notice was also published in the Daily Nation on 17<sup>th</sup> August 2013 and an invitation for public participation on the contents of the bill made. Exhibited herewith and marked WMM3 is a true copy of the notice in that regard.***

***(d) The notice was further, circulated in churches in the county for publicisation (sic) to the public on 18<sup>th</sup> August 2013.***

***(e) The public was consulted on and participated in deliberations of the contents of the draft bill on 20<sup>th</sup> and 21<sup>st</sup> August 2013, before its submission to the Assembly. Exhibited herewith and collectively marked as WMM4 are true copies of the attendance registers of participants in the twelve sub-counties in that regard.***

***(f) The submission of the Bill to the Assembly was preceded with(sic) a request to the Law Reform commission for its review and confirmation by the latter that the draft was in order Exhibited herewith and marked WMM5 and WMM6 respectively are true copies of a print out of the email from county and response thereto from the Commission in that regard.***

26. It is clear, therefore, that there was an attempt to comply with the requirements of the law. The question is whether the objective test of reasonableness was met in the circumstances of this case? Judging from the annexures from the six volumes of the record before us running into thousands of pages, the intended legislation was voluminous. The public from 12 sub counties appears to have been given barely four days (from 17<sup>th</sup> to 21<sup>st</sup> August) to internalize the Bill and make meaningful contributions on it. There is no assertion that any of the respondents before us were present at the alleged town hall meetings despite assertions made in their affidavits that the Bill directly affected them. The nature and the importance of the legislation and the intensity of its impact on the respondents and the public cannot be underestimated. At all events, the Bill was rejected by the County Assembly when it was submitted to it for debate on 2nd October 2013. So far, we are satisfied, as the trial court was, that there was no meaningful public participation in respect of the impugned Act.

27. Was the public, including the respondents entitled to a fresh input in the Bill before it was resubmitted for fresh debate in December 2013? The appellants argue that the entire population of Kiambu, including the respondents, is represented in the County Assembly by elected leaders and so there

was no need of consulting the public or the respondents again. Indeed they concede they did not subject the Bill to further public participation. The respondents say the Bill that was resubmitted to the County Assembly and passed into law was totally different from what had been circulated before. Considering the number of petitions filed to challenge the impugned Act, the contention may well have been true. All the more reason why the Bill should have been subjected again to public participation before enactment. We shall say with **Sachs J.** in the *Merafong case (supra)* that:-

*“Once structured processes of consultation were put in place, with tangible consequences for the legislative process and of central importance to the community, the principle of participatory democracy required the establishment of appropriately formal lines of communication, at least to clarify, if not to justify, the negation of those consequences. In my view, then, it was constitutionally incumbent on the Legislature to communicate and explain to the community the fact of and the reasons for the complete deviation from what the community had been led to believe was to be the fruit of the earlier consultation, and to pay serious attention to the community's response. Arms-length democracy is not participatory democracy, and the consequent and predictable rupture in the relationship between the community and the Legislature tore at the heart of what participatory democracy aims to achieve.... I would hold that, after making a good start to fulfill its obligation to facilitate public involvement, the Legislature stumbled badly at the last hurdle. It ended up failing to exercise its responsibilities in a reasonable manner, with the result that it seriously violated the integrity of the process of participatory democracy. In choosing not to face the music (which, incidentally, it had itself composed) it breached the constitutional compact requiring mutuality of open and good-faith dealing between citizenry and government, and thereby rendered the legislative process invalid.”*  
[Emphasis added].

28. Our finding is that the appellants did not comply with the law on the second occasion too. With those findings, we agree with the trial court that the impugned Finance Act was for invalidation and was properly quashed. There would be little, if any utility in examining the remaining grounds of appeal.

29. In the result we order that this appeal be and is hereby dismissed. The costs will follow the event but will be paid to the three respondents who filed written submissions and took part in the hearing of the appeal.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of June, 2017.**

**P. N. WAKI**

.....

**JUDGE OF APPEAL**

**R. N. NAMBUYE**

.....

**JUDGE OF APPEAL**

**H. M. OKWENGU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**