Dominic & 3 others v County Government of Narok & 4 others (Environment and Land Constitutional Petition E004 of 2023) [2024] KEELC 5677 (KLR) (1 August 2024) (Judgment)

Neutral citation: [2024] KEELC 5677 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION E004 OF 2023

CG MBOGO, J

AUGUST 1, 2024

FORMERLY NAROK HIGH COURT PETITION NO. E002 OF 2023

IN THE MATTER OF ARTICLES 22 & 23 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ARTICLES 1(1),2(2),3(1),10,33,35,184,185,196,232(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA AND ALL OTHER ENABLING POWERS AND PROVISIONS OF THE LAW

AND

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS) HIGH COYRT PRACTICE AND PROCEDURE RULES 2013

AND

IN THE MATTER OF THE WILDLIFE CONSERVATION AND MANAGEMENT ACT, 2013

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012

BETWEEN

BETWEEN

KASOE KAYIOK DOMINIC ..... 1ST PETITIONER

LEMANYATTA OLE LIARAM ..... 2ND PETITIONER

ANTONY OLE ROTIKEN ..... 3RD PETITIONER

MAITAI PARIKEN DANIEL ..... 4TH PETITIONER

AND

COUNTY GOVERNMENT OF NAROK ..... 1ST RESPONDENT

COUNTY ASSEMBLY OF NAROK ..... 2ND RESPONDENT

KENYA WILDLIFE SERVICE ..... 3RD RESPONDENT

PENINAH MALONZA, CABINET SECRETARY FOR THE MINISTRY OF TOURISM, WILDLIFE AND HERITAGE ..... 4TH RESPONDENT

ATTORNEY GENERAL ..... 5TH RESPONDENT

JUDGMENT

1. The petitioners filed the amended petition dated 6th July, 2023 seeking the following prayers: -

   a. A declaration that the respondents violated the provisions of Articles 10, 174 (c) and 196 (1)(b) of *the Constitution* of Kenya and the provisions of Sections 87 and 115 of the *County Governments Act* by formulating, adopting and approving for implementation the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-20333 without facilitating and/or conducting a meaningful, effective, qualitative public participation that meets the constitutional threshold.

   b. A declaration that the respondents violated the provisions of Article 35 of *the Constitution* and the provisions of Sections 87 (a) and 115 (1)(b) of the *County Governments Act*, 2012, for failing and/or neglecting to disclose to the members of the public where they could obtain and/or access copies of the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033 to enable them have meaningful and effective participation in the proposed public participation.

   c. A declaration that the 2nd respondent violated the provisions of Articles 196 (1)(a) and (2) of *the Constitution* by locking out its public gallery to the members of the public and/or denying access to the members of the public to the public gallery to follow its proceedings on the adoption and approval of the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033.

   d. A declaration that the 3rd respondent violated the provisions of Section 41 (2) of the *Wildlife Conservation and Management Act*, 2013, for failing to consult the Narok County Wildlife Conservation Committee in preparing and adopting the Maasai Mara National Reserve Management Plan 2023-2033 and the Greater Mara Eco-System Management Plan.

e. A declaration that the formulation, adoption and/ or approval of the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033 by the respondents without conducting a meaningful, effective and qualitative public participation is unconstitutional, null and void.

f. A declaration that the 4th respondent violated the provisions of Section 31 (1) of the *Wildlife Conservation and Management Act*, 2013 by gazetting the Maasai Mara National Reserve Management Plan in the Gazette Notice No. 2645 dated 2nd March, 2023 without a meaningful, effective and qualitative public participation having been conducted on the said management plans and while this suit was pending in court.

g. An order of certiorari removing to this honourable court for purposes of being quashed, the gazette notice No. 2645 dated 2nd March, 2023.

h. An order of Mandamus compelling the 1st,2nd,3rd and 4th respondent to facilitate and conduct a meaningful, effective and qualitative public participation on the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033 that meets the constitutional threshold before their adoption and/or approval for implementation.

i. Costs of this petition.

j. Any other relief that this honourable court deems fit and just in the circumstances.

2. The facts relied on in the petition are that the 1st and 3rd respondents developed three crucial plans namely, the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033 which all have a direct impact on the livelihood, and affairs of the residents of Narok County. The petitioners contended that the respondents did not conduct effective and qualitative public participation in the formulation, development, adoption and approval of the three plans, and in fact the petitioners have never had sight of the Narok County Physical and Land Use Development Plan 2023-2033.

3. The petitioners stated that during the formulation of the three plans, the 1st and 3rd respondents never invited the members of the public to give their views on the said plans, and the 4th respondent did not initiate public consultation for purposes of formulating the two management plans. Further, that the respondents did not publish a notice in relation to the proposals for public participation in at least three national newspapers to ensure there is effective public participation.

4. The petitioners further contended that the respondents did not involve the participation of the local communities living within the Maasai Mara National Park, and the 3rd respondent did not consult the Wildlife Conservation Committee in the preparation and adoption of the Maasai Mara National Reserve Management Plan and the Greater Mara Eco-System Management Plan which both plans do not provide a comprehensive report detailing the participation of neighbouring communities.

5. Further, it was contended that the two plans do not provide details of the anticipated benefits from the Maasai Mara National Reserve, and that the beneficiaries as well as the local communities are likely to be prejudiced as they are unaware of any benefits that will accrue from the said plans. In addition, it was contented that on 21st February, 2023, the 2nd respondent hastily debated, adopted, and approved the implementation of the three plans without conducting a meaningful, effective and/ or qualitative public participation on the three plans locking out members of the public and the media.

6. The petitioners contended that the 2nd respondent purported to place an advertisement in one of the newspapers calling for public participation which notice was short for the members to submit their views, and or written memorandum on the three plans. The petitioners further contend that owing to the short notice, there was no urgency whatsoever on the part of the respondents that could justify the short period of time given to the members to submit their views, and that a one-day newspaper advertisement was not sufficient for the purpose of seeking public views, and public participation from the residents of Narok County. That other than the purported advertisement placed in one of the dailies, the respondents did not utilize the other various forms of communication such as the local radio stations or social media to reach the residents of Narok.

7. The petitioners contended that the notice did not contain the nature and effect of the three plans being subjected to public participation, and that it did not disclose to the public where they could obtain or access the three plans and the costs, if any. That whereas the advertisement invited the members to the meeting organized per constituency, the respondents did not inform the members of the public on how to access the three plans in advance, and before the dates of the scheduled meetings to enable them have knowledge and give their views or comments.

8. The petitioners stated that the 1st and 2nd respondents ambushed members of the public by furnishing them with selective copies of the plans on the material dates of the purported public participation meetings. Further, the petitioners stated that it was impossible for all the residents of Narok to attend the fora, and further that the notice required members to submit their views through email which the majority of the population are disadvantaged in terms of knowledge and ICT skills. They went on to state that even those who are privileged in terms of knowledge were locked out of participation since the email provided was dysfunctional, and their views could not be received by the 2nd respondent. They decried that by the said notice, the residents were required to submit their written memorandum to the office located in Narok North Constituency without providing an alternative to the constituents who live far.

9. They also stated that the said publication was in the English language, and the respondents did not avail any version of the three plans in Kiswahili, or the local dialect to cater for the majority of the residents in Narok County. Further, they stated that there was no county legislation put in place by the 2nd respondent that would have guaranteed effective public participation in the formulation, and adoption of the three plans which were published in gazette notice no. 2645 dated 2nd March, 2023.

10. The petitioners contended that to that extent, the 1st, 2nd and 3rd respondents violated the provisions of Articles 10, 174 (c) and 196 (1) (b) of *the Constitution* of Kenya, Sections 87 and 115 of the *County Governments Act*, Cap 265 and Sections 4 (b), 44 (2) and (5) and the Fourth Schedule of the *Wildlife Conservation and Management Act*, Cap 376 (hereinafter referred to as the (WCMA). They contended that the respondents failed to disclose to the members of the public where they could obtain or access copies of the three plans which was in violation of Article 35 of *the Constitution* and the provisions of Sections 87 (a) and 115 (1)(b) of the *County Governments Act*, Cap 265. It was also their contention that the public gallery of the 2nd respondent was locked out to the members of the public to enable them follow the proceedings of the 2nd respondent in violation of Article 196 (1) (a) and (2) of *the Constitution*.

11. The petitioners further contended that the formulation, adoption and approval of the three plans by the 1st to 3rd respondents without any county legislation and/or regulation violated the provisions of Section 115 (2) of the *County Governments Act*, Cap 265. They stated that the 3rd respondent did not consult the Narok County Wildlife Conservation Committee in the preparation, and adoption of the two management plans which violated the provisions of Section 41 (2) of the WCMA, Cap 376. It was

also their contention that the gazettement of the plans vide gazette notice no. 2645 while the suit was pending in court violated the provisions of Section 31 (1) of the WCMA.

12. The petition was supported by the affidavit of the 1st petitioner sworn on even date. The depositions contained in the affidavit of the 1st petitioner are similar to the facts as contained in the amended petition, and there would be no need of rehashing the same.

13. In response to the amended petition, the 4th and 5th respondents filed their replying affidavit sworn on 7th August, 2023 by Peninah Malonza. The 4th and 5th respondent deposed that under Article 196 (2) of *the Constitution*, the 2nd respondent may exclude the public or any media from any sitting unless in exceptional circumstances the speaker has determined there are justifiable reasons to do so. It was further deposed that there was compliance with *the Constitution*, and subsequent relevant laws in the public participation exercise. She deposed that the contents of paragraph 7 to 44 of the amended petition are restatements of the law, and do not present requisite grounds of a petition.

14. According to the 4th and 5th respondents, the petitioners' assertions are founded on misunderstanding, and misrepresentation of the fundamental objectives since the Maasai Mara National Management Plan 2023-2033 is crafted for the purpose of addressing conservation, tourism management community outreach and partnership and operational issues in the Maasai Mara National Reserve. They went on to depose that the Greater Maasai Mara Eco-System Management Plan is developed to define the goals, objectives and actions that stakeholders aim to achieve in the eco-system within the next ten years through major management intervention measures.

15. The 4th and 5th respondents deposed that the petitioners have not established the respondents' role in the not having sight of the Narok County Physical and Land Use Development Plan 2023-2033, nor the efforts made to access the plan that has been unfruitful. Further, it was deposed that the allegations are vague, and couched in generalities, and lack particulars as required by law. It was also deposed that the petitioners acknowledge the existence of a notice thereby acknowledging that due process of public participation was indeed initiated. They deposed that the two management plans provide comprehensive reports detailing the participation of neighbouring communities under the community outreach and partnership programs and the community livelihoods programme.

16. The 4th and 5th respondents deposed that the plans diligently highlight key benefits that are poised to be derived from the proposed actions and as such, the petitioners claim are devoid of any substantiated evidence, logical foundation or justifiable grounds. Further, they deposed that the responsibility to acquaint oneself comprehensively with the contents of the management plans rest with the individuals concerned, and it is not within the purview of the respondents to ensure universal comprehension by every member of the public. Further, it was deposed that the publication of the notice in a widely circulated newspaper was in full compliance with established constitutional and statutory provisions, ensuring reasonable dissemination of information, and thereby upholding the principles of natural justice as to prior notice, and right to be heard.

17. The 4th and 5th respondents deposed that the notice was sufficient to invite members to the public participation exercise, and the petitioners can only blame themselves for their laxity and indolence in failing to obtain the impugned management plans. They deposed that there would be no ambush by giving the public copies of the documents in an exercise they brought themselves to, and whose agenda related to the same documents, a fact they were aware of. They went on to depose that public participation need not incorporate the views of every member of the public and failure to have a copy of the document would not stop one from submitting in the exercise. They also deposed that both virtual and physical avenues were available to enable full and equal participation in the process ensuring that no individual or group was unjustly excluded.

18. It was deposed that the decision to use English as the primary language for the publication of the plans was not without sound rationale as it ensures consistency, uniformity, and clarity in legal and administrative matters. They deposed that the choice of language does not negate the obligation to facilitate public participation, and mechanisms were put in place to ensure that all residents, regardless of their language proficiency, actively engage in the public participation process.

19. The 4th and 5th respondents deposed that the absence of specific facilitative legislation, guidelines or a legislative framework on public participation in public participation processes does not in any way impede the upholding of national values, and principles enshrined in Article 10 of *the Constitution*. They deposed that the gazettement of the Maasai Mara National Reserve Management Plan 2023-2033 and the Greater Mara Eco-System Management Plan by the 4th respondent while the suit was pending in court, was within the law since there did not exist any law or court order prohibiting the publication of the plans in the Kenya Gazette.

20. Further, it was deposed that the public participation process adhered to the parameters prescribed under *the Constitution*, the *County Governments Act* and the WCMA negating the petitioners claim. They deposed that the exercise was conducted by the 2nd respondent who was vested with the authority to provide access to the management plans in question, and any failure to obtain copies should not be attributed to the respondents. Further, they deposed that there are no existing reports or documentation to support the claims of denial of access to the proceedings leaving the claims frivolous, and without merit. They went on to depose that there is no evidence to show that the Narok County Wildlife Conservation Committee was not consulted that would be against the canon principles of law on the right to respond since the committee are strangers to the proceedings herein.

21. The 2nd respondent filed its response to the amended petition vide the replying affidavit of Davis Solian Dikirr, the speaker of the County Assembly sworn on 25th October, 2023. The 2nd respondent deposed that no evidence has been adduced that the Maasai Mara National Management Plan 2023-2033 has not adhered to the provisions of the 5th Schedule of the WCMA. He deposed that the plans herein relate to national game reserves and not national parks hence the plans are not under the scope of Section 44 (2) of the *Wildlife Conservation and Management Act*, Cap 376. It was further deposed that no evidence has been adduced by the petitioners of the efforts made to obtain the copies of the Narok County Physical and Land Use Development Plan 2023-2033 which is available, and that contrary to the assertions by the petitioners, the respondents conducted effective public participation in the formulation, development, adoption and approval of all the plans which is a continuous process. Further, he deposed that the 1st and 2nd respondents called for public participation via various media platforms including newspapers, radio stations, facebook pages and via the 1st respondent's official website.

22. The 2nd respondent deposed that appendix 2 and 3 of the management plans indicate the Maasai Mara National Reserve (MMNR) management plan consultation, and plan developments meeting, and also the stakeholder participation in plan development, were enacted by the duly elected representatives of the public in the Narok County Assembly. He deposed that the benefits of both the two plans have been clearly stated in each plan. He went on to depose that the notice period was sufficient, and the plans were considered strictly in adherence with the standing orders of the Narok County Assembly Plan which were tabled, committed to the relevant committee, subjected to public participation, debated and voted on by a majority of the members of the 2nd respondent. He also deposed that the petitioners' inability to peruse the voluminous management plans is unfounded, and that the plans are comprehensive and well detailed and the information can easily be read and understood.

23. The 2nd respondent further deposed that what amounts to a reasonable opportunity will depend on the circumstances of each case and that in this case, the petitioners were among the members of the public who were invited to submit their views. Further, he deposed that radio advertisement were released and during the public participation, locals, experts and elites were given an opportunity to give comments on the plans. Also, that the publication was in full compliance of the law and laid down principles in public participation, and the members of the public were given copies of the plans, a clear indication that public participation took place.

24. The 2nd respondent deposed that emails were provided for submission of memorandums (sic) and views in compliance with Article 35 of *the Constitution* and the *Access to Information Act*, 2016. He deposed that every resident that requested for the plans was issued with a copy, and no evidence to the contrary has been tabled by the petitioners. He deposed that there could have been normal technology downtime but the petitioners having realized the same, ought to have utilized the alternative methods of submission of memorandums (sic) conveyed in the advertisement. He deposed that for ease of coordination, a central location was provided as is the norm for receipt of memorandum which location provided accountability and uniformity.

25. The 2nd respondent deposed that the burden of proving lack of public participation lies with the petitioners who allege the same, and that the petitioners have failed to discharge the burden. Further, he deposed that English, Kiswahili and local languages were used during the public participation forums, and it would be unreasonable to translate the three plans into every other dialect noting that there are other communities living in Narok County. It was deposed that the 2nd respondent has tabled a Public Participation Bill but the same has not been considered because the Senate initiated a similar legislation.

26. The 2nd respondent deposed that members of the public and stakeholders were invited to give their views on the plans, and due process was adhered in passing of the plans by the 2nd respondent. He went on to depose that no member of the public was denied access to the public gallery during the proceedings.

27. The 1st respondent filed its response to the amended petition vide the replying affidavit of John Mayani Tuya, the County Secretary, sworn on 31st October, 2023. The 1st respondent deposed that the 1st and 2nd respondents formulated the three plans in broad consultation and participation of the stakeholders including the local communities, the national and county legislators, the tourism industry, ecologists, scientists and reserve managers. The 1st respondent deposed that the 3rd respondent did not develop any of the three plans as a singular initiative but performed an advisory role, since it was called to offer advise as is required by law which was done during the consultative fora.

28. The 1st respondent further deposed that the Maasai Mara National Reserve Management Plan was formulated for the purpose of addressing conservation, tourism management and community outreach and partnerships. Further, it was deposed that the petitioners omitted to substantiate the 1st respondent's role in them not having a sight of the Narok County Physical and Land Use Development Plan, that there is no proof that the petitioners requested for the documents and the same were denied, and they cannot blame the respondents for their indolence.

29. The 1st respondent deposed that the formulation, development, adoption and approval were done in accordance with the law, and that there is no existent law as regards qualitative public participation, yet the petitioners expect this court to score against the respondents based on their own criteria. Further, the 1st respondent deposed that the law only requires that there be adequate and meaningful public participation, and the same was achieved by the 1st respondent. Further, he deposed that the 3rd respondent had no obligation to conduct public participation over plans it did not formulate. It

was also deposed that there was civic education, public participation and debate, consultations, and public discourse in developing the three plans. Further, it was deposed that the 1st respondent invited members of the public and their ward representatives on 6th and 7th July, 2021 in Keenkonyokie Ward, Olposimoru Ward, Suswa Ward, Sagamian Ward, Kapsasian Ward, Mogondo Ward, Shankoe Ward, Ololulunga Ward, Kimintet Ward, Lemek Ward and Olokurto Ward.

30. The 1st respondent further deposed that together with other partners, they had a 3-day meeting to validate the County Physical and Land Use Development Plan as well as the Eco-System Management Plan, and on 15th April, 2022, the 1st respondent notified members of the public through Taifa Leo and the Daily Nation. He deposed that the 1st respondent published a gazette notice dated 28th April, 2022 notifying members of the public of the completion of the plan.

31. The 1st respondent deposed that the period given to the members of the public to submit their memorandum and views was one year and three months which was sufficient, and it was impractical for the plans to be availed to all households. The 1st respondent went on to depose that there was publication in Taifa Leo and the Daily Nation on 10th March, 2023, and a stakeholder meeting held on 16th to 17th February, 2023 which means that there was public participation, and on 23rd March, 2023 the three plans were launched.

32. It was further deposed that had the petitioners bothered to familiarize with the two management plans, they would have seen the benefits that will accrue to the local community living within the reserve. It was also deposed that no evidence has been placed before the court that the public gallery was locked out, and the petitioners elected representatives who were present on the floor of the 2nd respondent had the mandate to raise any issues. It was further deposed that on 18th February, 2023, the residents of Narok North sub-county, Kilgoris Sub-County, Emurua Dikirr Sub-County, Narok East sub-County and Narok West Sub County held their public participation forum at various centres.

33. The 1st respondent deposed that the report of the Joint Committee on Tourism, Wildlife, Culture and Physical Planning Land Trade and Cooperative Development adopted on 21st February, 2023 by the 2nd respondent accommodated all the feedback obtained after public participation. The 1st respondent went on to depose that in all public participation fora, translators were present in cognizance of the issue of illiteracy. It was also deposed that newspapers were not the only medium used to invite members of the public, since there were chiefs, sub-chiefs, member of the county assembly, ward administrators and elders of the community amongst others.

34. The 1st respondent deposed that all the modes of communication outlined where the three plans could be obtained free of charge, and the petitioners can only blame themselves for failing to obtain the copies of the three plans. He deposed that the petitioners have displayed a misunderstanding of the threshold required for public participation and the views of every member of the public need not to be incorporated but only those who were cognizant of their civic duty. The 1st respondent deposed that the primary use of English was done to ensure conformity and uniformity with other County and National legislation and management plans. That in the absence of any codified law on public participation, the petitioners cannot introduce a standard process of public participation. The 1st respondent further deposed that there is no qualitative test for public participation that the respondents are required to meet, and the lack of participation should be attributed to the petitioners' laxity and lack of a sense of civic duty.

35. Lillian Ajuoga, the Assistant Director, Management Planning filed her replying affidavit sworn on 1st March, 2024 on behalf of the 3rd respondent. She deposed that the management plans were formulated, developed, adopted and approved in accordance with Section 44 of the WCMA which clearly details

the participation of the neighbouring communities in preparation of the plans as required by the Fifth Schedule of the Act. She deposed that the public participation is only required under Section 5 (5) on formulation of wildlife conservation and management strategy, Section 34, 37 and 44 of the WCMA. She also deposed that the 2nd respondent is responsible for land use and thus led the process of formulation of management plans, and effective public participation. It was deposed that sufficient time was given to members of the public to submit their views which was more than 10 days and 7 days' notice for physical meetings at the ward level.

36. The 3rd respondent deposed that the allegations of no effective public participation, are an afterthought and made in bad faith since the 4th petitioner was present himself in the stakeholder planning workshop for the Greater Maasai Mara Eco-System Management Plan. Further, she deposed that preparation and adoption of the management plans was done in compliance with *the Constitution* and the WCMA, Cap 376.

37. The 1st petitioner filed a further affidavit sworn on 14th March, 2024 in response to the replying affidavits by the 1st, 2nd, 4th and 5th respondents. The 1st petitioner reiterated that the respondents did not involve the participation of the local communities living within Maasai Mara National Park, and that the management plans do not provide a comprehensive report detailing the participation of the neighbouring communities.

38. The amended petition was canvassed by way of written submissions. The petitioners filed their written submissions dated 14th March, 2024 where they raised two issues for determination as listed below: -

    a. Whether there was effective and meaningful public participation during the preparation/ development and subsequent adoption of the two plans and the spatial plan.

    b. Whether the two management plans violate the provisions of the *Wildlife Conservation and Management Act* No, 47 of 2013.

39. On the first issue, the petitioners submitted that the requirements for public participation as set out in the Fourth Schedule of the WCMA, Cap 376 are to ensure that public participation or consultation undertaken on matters management and conservation of wildlife is effective and meaningful. They submitted that there was lack of public participation during the development and/or preparation of the two management plans which is mandatory under Section 44 (2) of the WCMA. They went on to submit that the 1st, 2nd and 4th respondents did not conduct public participation in blatant violation of Sections 4 (c), 44 (2) and 44 (5) of the WCMA. They submitted that there was no notice published by the respondents calling for the public participation of the neighbouring communities, the members of the public including the neighbouring communities were never invited to give their view on the two management plans, and there were no meetings held with the members of the public including the neighbouring communities to collect their views.

40. The petitioners further submitted that from a close scrutiny of the attendance registers, there is no single attendance register produced by the 1st respondent to demonstrate that there was a public participation meeting organized during the preparation and/or formulation of the two management plans. They submitted that based on the attendance register marked CGN 12, the meeting was convened for purposes of conducting public participation which was attended by the officials mainly from the 1st respondent and the Ministry of Tourism, and no member of the public was invited to attend. Further, they submitted that the mere production of attendance registers is not sufficient proof that public participation was adequate, effective and meaningful. To buttress on this submission, the petitioners relied on the cases of *Mugo & 14 Others versus Matiang'i & Another; Independent Electoral and Boundary Commission of Kenya & 19 Others (Interested Party) (Constitutional Petition 4 of 2019*)

[2022] KEHC 158 (KLR) (12 January 2022) (Judgment) and Okiya Omtata versus Kenya Revenue Authority [2018] eKLR.

41. With regard to the notices, the petitioners submitted that the advertisements published in Taifa Leo and the Daily Nation on 15th April, 2022 related to the Narok County Physical and Land Use Development Plan. They submitted that the purported public participation violates the provisions of the Fourth Schedule of the WCMA. Further, they submitted that since there is no Narok County legislation enacted by the 2nd respondent under Section 115 (2) of the *County Governments Act*, Cap 265 the requirements under the Fourth Schedule of the WCMA, Cap 376 are the only safeguards for effective public participation.

42. The petitioners further submitted that Section 1 of the Fourth Schedule of the WCMA mandatorily requires notices to be published in the gazette, in at least three newspapers, at least one newspaper circulating in the location and in at least one Kenyan radio station broadcasting in the locality. On this issue, they submitted that the respondents blatantly contravened the said provision of the law. While relying on the case of Simeon Kioko Kitheka & 2 Others versus County Government of Machakos & 3 Others [2016] eKLR, the petitioners submitted that a one-day notice calling for public participation was not sufficient. Further, they submitted that the said notice does not disclose to the public where they could obtain or access the three plans and the costs.

43. The petitioners submitted that public participation cannot be meaningful and effective where there was no disclosure of how the public could timely access the three plans. They submitted that the respondents violated Article 35 of *the Constitution* for failing to disclose to the members of the public where they could obtain the two management plans, and the spatial plan for purposes of public participation. To support their argument, the petitioners relied on the cases of Doctors for Life International versus Speaker of the National Assembly & Others (CCT12/05) [2006] ZACC 11;*2006 (12) BCLR 1399 (CC)*; *2006 (6) SA 416 (CC)*, Republic versus The Attorney General & Another Ex parte Hon. Francis Chachu Ganya (JR Misc. Appl. No. 374 of 2012), Katiba Institute versus Presidents Delivery Unit & 3 Others [2017] eKLR, and Kiambu County Government & 3 Others versus Robert N. Gakuru & Others [2017] eKLR.

44. The petitioners submitted that the respondents have not produced a single memorandum that they received following the notice published calling for the members to submit their views and written memorandum, which means they did not conduct an effective public participation.

45. The 1st respondent filed its written submissions dated 29th April, 2024 where it raised four issues for determination as listed below: -

    a. Whether the Maasai Mara National Reserve Management Plan 2023-2033 and the Greater Eco-System Management Plan falls under the ambit section 7, 18, 19, 44 and the fifth schedule of the *Wildlife Conservation and Management Act* No. 3 of 2013.

    b. Whether the formulation, adoption and approval of the two management plans and spatial plan violated *the Constitution* of Kenya, 2010 and the *County Governments Act*, No. 17 of 2012.

    c. Whether the two management plans violated the provisions of the *Wildlife Conservation and Management Act* No. 7 of 2013.

    d. Who should bear the costs of this petition.

46. On the first issue, the 1st respondent submitted that the Maasai Mara National Reserve was declared and gazetted as a national reserve whose management vests with the County Government of Narok. Further, the 1st respondent submitted that the functions and management including preparation of the

management plans of national reserves is not one of the functions of the 3rd respondent, and that the 3rd respondent did not have an obligation to conduct public participation over plans it did not formulate.

47. The 1st respondent submitted that in order to obtain expert knowledge on topical issues, the 1st respondent called upon the 3rd respondent to participate in its deliberations and offer counsel during the consultative fora. Further, it was submitted that the mandate of the County Wildlife Conservation and Compensation Committee is mandated under Section 18 of the WCMA is restricted to plans for community and private land as provided in Section 19 (a) of the Act. It was their submission that the Maasai Mara National Reserve's plans do not fall under the requirements of Section 44 and the 5th Schedule. That as such, it is clear that the petitioners were not able to distinguish between national parks, national reserves, conservancies and sanctuaries.

48. Further, it was submitted that for national parks, conservancies and sanctuaries, the county governments did not have control over localized structures and the County Wildlife Conservation and Compensation Committee had to be put in place to offer localized solutions but within the national government space. For this reason, the 1st respondent submitted that the management plans are not a violation of the WCMA, Cap 376.

49. On the second issue, the 1st respondent submitted that by dint of Article 185 of *the Constitution*, the 2nd respondent has the legislative authority to make any laws that are necessary for the effective performance of the functions and exercise of the powers of the County Government under Part 2 of the 4th schedule of *the Constitution*. While relying on the cases of Were Samwel & 14 Others versus Attorney General & 2 Others [2017] eKLR and Olum & Another versus Attorney General of Uganda [2002] 2 EA 508, the 1st respondent urged this court to look at the statute vis a vis the constitutional provision alleged to be offended and decide whether the purpose of the plans offends any of the petitioner's rights as pleaded.

50. The 1st respondent submitted that it derives its mandate to develop the three plans from Section 5 of the *County Governments Act* as read together with Articles 183, 185 and 189 of *the Constitution*. Further, it was submitted that while developing the three plans, the same was done on the basis of consultation and cooperation as envisaged in Article 6 (2) of *the Constitution* which was premised on Articles 10, 196 and 232 of *the Constitution*. The 1st respondent went on to submit that while the petitioners contended that the formulation, adoption and approval of the management plans was done without public participation, the issue is now whether the same met the constitutional threshold. To answer in the affirmative, the 1st respondent relied on the cases of Doctor's for Life International versus The Speaker of National Assembly and Others (CCT12/05) [2006] ZACC II and Khelef Khalifa & 2 Others versus Independent Electoral and Boundaries Commission and Another [2017] eKLR, and submitted that there is evidence of inclusivity as contained in appendix 3 of the of Maasai Mara National Reserve Management Plan and appendix 1 and 2 of the Greater Maasai Mara Eco-System Management Plan.

51. It was submitted that the planning process involved a wide range of stakeholders, and there was public participation at the ward level across all sub-counties ensuring a quantitative public participation. It was also submitted that the 1st respondent used a quantitative and qualitative approach in the manner of stakeholder workshops, core planning team meetings, ecology working group meetings, tourism working group meetings, community working group meetings, mobile camp operator meetings as well as director stakeholder consultations.

52. The 1st respondent further submitted that noting that the two management plans encompassed the Greater Maasai Mara Eco-System as well as the Maasai Mara National Reserve, it employed mechanisms that the level of stakeholder participation undertaken in the plan development to ensure effectiveness

and efficiency cutting across direct stakeholders, ecology groups and tourism groups amongst others. That in all these, the 1st respondent submitted that no bona fide stakeholder was left out and that while it is impractical for all the views captured to have bearing on the final decision, the views were considered since the report of the 2nd respondent indicates that the initial drafts of the plans were amended after public participation was conducted.

53. The 1st respondent submitted that the public, more so the petitioners were granted meaningful opportunities for public participation, and in the present case the 1st to 3rd petitioners omit to substantiate the respondents' role in them not attending the debates, consultations and public discourse. Further it was submitted that if the petitioners did not exercise their powers directly, they had an opportunity to do so through their elected representatives who participated in stakeholder forums as well as debated the same which counted as a form of public participation on the part of the petitioners.

54. It was submitted that the notice given to the members of the public to submit memoranda was sufficient, and whereas the petitioners annexed an email excerpt to show that the email was not received, the same is inadmissible as the author is not a party to these proceedings and the contents cannot be verified. The 1st respondent relied on the case of Diani Business Welfare Association and Others versus County Government of Kwale [2015] eKLR.

55. On the third issue, the 1st respondent submitted that there is misapprehension of the role of the 3rd respondent in the management of National Parks and the management of the Maasai Mara by the petitioners as the Maasai Mara National Reserve's plans do not fall under the requirements of Section 44 of the WCMA. Further, it was submitted that public participation as envisioned in the 4th Schedule of the Act is only provided in Section 5 (5) on formulation of a national wildlife conservation and management strategy, Section 34 on variance of boundaries or revocation of national parks or marine protected areas and Section 37.

56. The 2nd respondent filed its written submissions dated 30th April, 2024 where it raised two issues for determination as below: -

    i. Whether there was effective and meaningful public participation in the formulation of the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Ecosystems Management Plan and the Narok County Physical and Land Use Development Plan.

    ii. Whether the petitioners should be granted the orders sought in the amended petition dated 6th July, 2023.

57. On the first issue, the 2nd respondent submitted that although public participation is a fundamental pillar of our country's democracy, *the Constitution* is silent on what it entails, and national legislation has not expounded enough on the parameters of the principle. While relying on the case of Law Society of Kenya versus Attorney General & 3 Others; Katiba Institute & 6 Others (Interested Parties) (Environment & Land Petition E001 of 2023) [2023] KEELC 20583 (KLR) (12 October 2023) (Interim Judgment), the 2nd respondent submitted that the respondents formulated and adopted the management plans in strict compliance with *the Constitution* and the statutory legislation applicable.

58. The 2nd respondent further submitted that there was public participation, and that there was an advertisement over the same in the Standard Newspaper dated 10th February, 2023 inviting members of the public and other stakeholders to give their views on the three plans. The 2nd respondent went on to submit that members were invited to give their views or submit their memorandum through email and by hand delivery. It was further submitted that the attendance sheets provided demonstrate that the forums took place in the respective sub counties, and views were collected in regards to the management plans.

59. The 2nd respondent further submitted that the county assembly joint committee scrutinized the documents and considered the public participation views which were collected from the sub-counties, and the same were discussed in the report of the committee. To buttress on this submission, the 2nd respondent relied on the case of Doctors for Life International (supra). Further, it was submitted that what matters at the end of the day is that reasonable opportunity is afforded to the members of the public, and any interested party to know about the issue and to have an adequate say. The 2nd respondent relied on the case of Nubian Rights Forum & 2 Others versus Attorney General & 6 Others; Child Welfare Society & 9 Others (Interested Parties) [2020] eKLR.

60. On inclusion of the mandatory participation of the neighbouring communities during the formulation and preparation of the management plans, the 2nd respondent submitted that all the communities in Narok County were effectively included in the formulation. They relied on the case of *Mugo & 14 Others versus Matiang'i & Another; Independent Electoral and Boundary Commission of Kenya & 19 Others (Interested Party) (Constitutional Petition 4 of 2019*) (2022) KEHC 158 (KLR).

61. On the second issue, the 2nd respondent submitted that it has the legal authority to make laws that are necessary for the effective performance of the functions and exercise of the powers of the County Government. That as such, the formulation and adoption of the management plans was done through wide consultation and a comprehensive report detailing the participation of the neighbouring communities provided. It was submitted that public participation threshold was met to the latter by the respondents.

62. The 4th and 5th respondents filed their written submissions dated 25th April, 2024 where they raised two issues for determination: -

    i. Whether there was meaningful public participation prior to preparation, development and subsequent adoption of the management plans.

    ii. Whether the management plans violate the provisions of the *Wildlife Conservation and Management Act*, no. 47 of 2013.

63. On the first issue, the 4th and 5th respondents submitted that they were in collaboration with the 1st, 2nd and 3rd respondents in the whole process and based on the interdependency of the different levels of government where they are expected to conduct their mutual relations based on consultation and cooperation. They submitted that public participation did not mean that everyone had to give their views, but that there ought to be evidence of intentional inclusivity in the participation program and which on the face of it, took into account the principle that those most affected by a policy, legislation or action had to have a bigger say, and their views more deliberately sought and taken into account. Reliance was placed in the cases of Mui Coal Basin Local Community & 15 Others versus Permanent Secretary Ministry of Energy & 17 Others [2015] eKLR, Meru Bar Wines & Spirits Owners Self Help Group versus County Government of Meru [2014] eKLR and Nairobi Metropolitan Psv Saccos Union Limited & 25 Others versus County of Nairobi Government & 3 Others [2013] eKLR.

64. On the second issue, the 4th and 5th respondents submitted that the gazettement of the management plans while the suit was pending in court is not in contravention of any law, and thus the 4th respondent acted within the law.

65. On 22nd May, 2024 the parties highlighted their submissions. Mr. Barasa, the learned counsel for the petitioners submitted that the management plans i.e. Maasai Mara Management Plan and the Greater Mara Ecosystem Management, were conducted in 2 stages, which included the preparation of the plans which was largely done by the 1st respondent and adoption of the management plans which was

done by the 2nd respondent. That at both two levels, there was a requirement of public participation as required under Section 44(2) of the WCMA, Cap 376 and Schedule 5 of the same Act, which provides basic information that should be contained in a management plan as contained under part II. The learned counsel submitted that more importantly, was a report detailing participation of the neighbouring communities in the preparation of the plan, and the two provisions leaves no doubt that public participation was necessary.

66. The learned counsel for the petitioners submitted that there was no public participation during the preparation of the two plans. He referred the court to the 1st respondent's replying affidavit sworn by John Mayani Tuya on 31st October, 2023, where the 1st respondent attempted to demonstrate that there was public participation during the preparation, and development of the two plans. The learned counsel invited the court to look at the attached attendance register marked CGN – 1 to CGN – II, and submitted that none of them relate to the two management plans, and instead they relate to the spatial plan i.e. The County Physical and Land Use Development Plan. Further, and with regard to the copies of new papers advertisement calling for public participation, marked as CGN 13 and 14, the learned counsel submitted that all those notices relate to the spatial plan.

67. The learned counsel further submitted that in respect of the two management plans, there is no evidence anywhere that the 1st respondent ever published a notice calling for public participation, and that none has been produced. Further, the learned counsel submitted that there is no attendance register to show that public participation meetings were held in respect of the two plans. With regard to the 3rd respondent's replying affidavit sworn by Lilian Ajuoga on 1st March, 2024, the learned counsel for the petitioners submitted that annextures; NA – 1(a) and NA- 1(B) contain the stakeholder participation in the planned development, and most of the attendees are government officials, managers and directors of big hotels. The learned counsel questioned the involvement of the neighbouring communities involved in that stakeholders meeting, how the meetings were convened, and the notices for those particular meetings.

68. The learned counsel further submitted that the WCMA under the 4th Schedule provides for the standard, scope and degree of public participation that the respondents were supposed to take in the preparation of the two plans. He submitted that those requirements were not put there for a cosmetic purpose but to ensure that public participation was meaningful and effective. In response to the written submissions by the 1st respondent where they stated that the 4th schedule of the Act does not apply to the circumstances of this case, the learned counsel invited the court to look at clause 1 of the 4th schedule which envisages the whole Act and not a particular provision thereof. He submitted that the public participation conducted by the respondents did not meet the requirements of the 4th schedule of the Act and *the Constitution*. The learned counsel further submitted that there was a notice during the adoption of the management plans that was published by the 2nd respondent, marked as DSD-3, and attached to the 3rd Respondent's replying affidavit as annexure NA – 2, and the 1st Respondent's replying affidavit as CGN – 2S. He submitted that the notices call for public participation but it does not tell the members of public where they would obtain copies of the management plans subject of the public participation. He relied on the case of Simeon Kioko Kitheka (supra) where Odunga, J (as he then was) held that "...At the bare minimum, the County Government of Machakos ought to have informed the members of public where the documents to be subjected to public participation can be obtained."

69. The learned counsel referred to clause 2 of the 4th schedule on the contents of a notice calling for public participation and submitted that the public participation during the adoption of the management plans were not effective and meaningful if the members of the public were not informed where they should get copies of the two management plans.

70. In conclusion, the learned counsel for the petitioners submitted that merely attaching the attendance register does not mean that the public participation that was done was effective and meaningful. He relied on the cases of *Mugo and 14 Others versus Matiang'i and Another in Petition No. 4 of 2019* (supra) and Okiya Omtata versus KRA [2018] eKLR (supra). He submitted that where the Act has specified the mode, the degree and the standard of public participation, and if public participation is held in contradiction of the standard it cannot be effective, meaningful and adequate. The learned counsel invited the court to look at Section 2 of the Act of what constitutes a National Park and the meaning of National Reserve, and submitted that Maasai Mara is a National park first before it is gazetted to become a National Reserve, and that the purpose of declaring Maasai Mara a National Reserve is for purposes of management to give the County Government a management role. Therefore, it cannot be said that Section 44 of the Act which is the very section that deals with the management plan does not apply to the 1st respondent during the preparation of the two plans.

71. Mr. Tuya, the learned counsel for the 1st respondent relied on the replying affidavit dated sworn on 31st October, 2023 and filed on 1st November,2023. The learned counsel submitted that no submissions have been made by Mr. Barasa on the spatial plans despite it being one of the prayers. The learned counsel further submitted that The Maasai Mara Reserve Management Plan (MMRP) has been in development since the year 2000 as can be seen in appendix one of the said plan, whose conversation emanated with the declaration of Maasai Mara as the 7th wonder of the world. Further, it was his submission that the conversation brought the need to have a coordinated management of Maasai Mara National Reserve and Serengeti National Park in Tanzania because they share the same ecosystem. Further, the learned counsel submitted that the development of the Plans has been an intentional activity with national and international interests, and as such, every other step was scrutinized and implemented with a global eye.

72. The learned counsel submitted that the petitioners are not stating any part of the plan that they are aggrieved with, except that there was no public participation. Further, he submitted that the petitioners have also not stated that they have filed the petition in any representative capacity, and that they have not produced any evidence whatsoever that they are representing any group of people. The learned counsel went on to submit that the petitioners have also not exploited a route provided by law i.e. by petitioning the 1st and 2nd respondents as required under the *County Governments Act*.

73. The learned counsel submitted that there is a great difference between a plan and a legislation, and that different thresholds apply when either of them is being considered. He submitted that a plan binds the public officer whereas legislation binds the public including the public officer. Further, he submitted that legislations have penalty sections whereas a plan does not have. On the first issue, the learned counsel for the 1st respondent submitted that there is the management plan for Maasai Mara National Reserve, which is not a National Park. He went on to submit that the moment it was declared a National Reserve it became as such, and Schedule 4 and 5 of the WCMA does not apply. He submitted that the management of National Parks are under the National Government whereas the management of reserves and conservancies are under the County Governments.

74. It was the learned counsel's submission that there are more than 17 conservancies and sanctuaries in Narok County, and that the latter have no relationship at all with the 1st respondent as those who have tourism business within the said sanctuaries pay a single business permit. The learned counsel invited the court to look at Section 7(1) of the WCMA on the functions of the 3rd respondent which is to advise in the preparation of management plans for conservancies and sanctuaries, and that flowing from the above, the 3rd respondent has no role to participate in the public participation activities because it did not formulate it.

75. The learned counsel submitted that in order to obtain expert advice, the 1st respondent contacted the 3rd respondent whose role was only limited to giving their advice. With regard to the County Wildlife Conservation and Compensation Committees under Section 19(b) (e) and (g) of the WCMA, the learned counsel submitted that the court will note that the committee oversees, and they also review and make recommendations on plans produced by the 3rd respondent, and that they have no role with the National Reserve. According to the learned counsel, the 1st respondent did not have an obligation to involve the committee. However, in the spirit of consultation as espoused in *the Constitution*, the said committee constituted one of the stakeholders. The learned counsel submitted that the 1st respondent despite there being no legal obligation, went out of its way to involve the national structures provided under Section 44 which the court will note that it refers to national parks only. The learned counsel submitted that the petitioners have a serious misapprehension of the law since they lumped the National Reserve together with the others i.e. National Parks and applied the standards to the National reserve.

76. The learned counsel further submitted that Mr. Barasa wants to give autonomy to the County Governments in the management of the National Reserves away from the National Government, and that if the position by Mr. Barasa is anything to go by, they will be committing a serious act of unconstitutionality, as it would be an adventure of oversight of a devolved system by an authorized national entity. He submitted that the County Governments are oversighted by the Senate and the County Assemblies.

77. With regard to the 4th Schedule, the learned counsel submitted that the enabling law is Section 34 of the Act which is on variation of the boundaries or revocation of a national park or a marine protected area. The learned counsel submitted that there is every reason why the law gave a specific provision in the 4th schedule on the issue of public participation owing to the sensitivity of the boundaries in the national parks. He submitted that the 4th Schedule is inapplicable to the management plans in so far as the management of MMRP and the other two plans. The learned counsel raised the question, which is the yard stick for public participation should the 1st Respondent use?

78. On this issue, the learned counsel submitted that there is no statute on public participation in Kenya today, but that there is a bill at the Senate. He submitted that a national public participation policy was marked, and the 2nd respondent was invited. That in so far as public participation is concerned, the 1st and 2nd respondents have not attempted to legislate on public participation, and that the Council of Governors came up with public participation guidelines which the court should take notice of. The learned counsel submitted that the *Statutory Instruments Act*, Cap 2A forms one of the delegated instruments, and that over and above the guidelines, the 1st respondent has adhered to the jurisprudence on public participation. He relied on the cases of Doctor's for life International versus Speaker of the National Assembly and Others (supra) and Khelef Khalif and 2 others versus IEBC and another [2017] eKLR (supra).

79. The learned counsel invited the court to note the two steps of public participation, and that noting that this is a public participation for a plan and not legislation, the court should also offer guidance. That having demonstrated that they have complied with the parameters, the annexures that were provided were in addition to the annexures acknowledged by the petitioners and attached to the plan as appendixes. He submitted that the members of the pubic were consulted in public participation from the years 2007 to 2023 when the plans were eventually adopted. The learned counsel further submitted that there are two types of public participation i.e. qualitative and quantitative. That when it comes to qualitative public participation, the issue of notice does not arise since specific people are being invited, and with quantitative public participation, the same applies to the wide members of public.

80. The learned counsel invited the court to come up with a finding so that the issue of mixing quantitative and qualitative public participation does not arise. He submitted that the managers and hoteliers were invited to ensure qualitative public participation, and that the 4th petitioner appended his signature after he attended one of the meetings. The learned counsel further submitted that Narok County is vast and whenever public participation is called, it is incumbent upon whoever who chooses to attend. He submitted that the petitioners would have attended those meetings and give their views on the 3 plans as it is enshrined under Article 1(2) of *the Constitution* which provides for exercise of power by the people either directly or indirectly. Further, the learned counsel submitted that the fact that the petitioners chose not to attend, the members of the County Assembly in a representative assembly represented their interest.

81. It was also his submission that the matter was a hot potato such that the consideration of the plans was deferred 3 times to accommodate the interests and views of the members of public. The learned counsel submitted that from the Hansard of the 2nd respondent, there was a robust debate on the consideration of the plans, and they were approved with amendments showing good faith. With regard to the prevention of entry to the 1st respondent's gallery by one Jackson Yenko, the learned counsel for the 1st respondent submitted that there is no evidence provided in support of the allegation. He submitted that the proceedings were covered live because of the sensitivity of the matter, and that the totality of the evidence is that the burden of proof lies on the petitioners wholly.

82. Finally, the learned counsel submitted that the Governor of the 1st respondent noting the importance of this matter, he participated in the exercise and chaired the public participation meeting that was conducted at Keekork Lodge and during the meeting members of parliaments, scientists, including lawyers and representatives of very holders were in attendance. He further submitted that the court will be limited in granting the prayers for the reason that Section 115 of the *County Governments Act*, Cap 265 relates to public participation in county planning of national significant projects in the county as read with Section 114 of the same Act, and that the prayer was misplaced. Further, the counsel submitted that prayer (b) cannot be granted since there is a national law i.e. *Access to Information Act* Cap 7M. Secondly, that on the same prayer, it is alleged that there was a violation of Section 87(a) of the *County Governments Act*, Cap 265. On this, the learned counsel submitted that during the public participation meetings, the bulk of the documents were given to the member of public frees of charge. The learned counsel submitted that the 4th prayer on violation of Section 41(2) of the WCMA is non-existent.

83. On the issue of costs, the learned counsel submitted that they are not on pro bono basis, as they charged sufficient fees which is a burden on the exchequer. That as such, the members of public should bear the costs.

84. Mr. Osongo, the learned counsel holding brief for Mr. Maina Ngaruiya for the 2nd respondent relied on the replying affidavit dated 25th October, 2023, and the written submissions dated 30th April, 2024. The learned counsel submitted that the proposed plans were forwarded to the 2nd respondent by the County Secretary, and the same was approved and forward to a joint committee of the 2nd respondent. He submitted that the clerk of the 2nd respondent duly gave a notice calling for public participation which was published in the standard newspaper. Further, he submitted that a look at the notice, indicates that it called for public participation in 6 sub counties which shows how broad the public participation was supposed to be conducted. He went on to submit that there was a meeting that was held at Keekorok for the key stakeholders with a view of broadening the consultation, and it did not end there as members of public were limited to send their views through email and delivery of memoranda physically to the County Assembly.

85. The learned counsel submitted that attendance sheets were provided to show that the meetings were held, which were signed by the members of public who appeared. He submitted that the 2nd respondent undertook public participation.

86. The learned counsel further submitted that the joint committee had a report which indicates the views collected from different sub-counties, and that subsequently, the report was tabled before the full house and adopted. He pointed out that one key point to note is that the petitioners submit that public participation should have been conducted in line with the 4th Schedule of the WCMA, Cap 376. On this, the learned counsel submitted that public participation was conducted in compliance with Article 196 (1) (b) of *the Constitution* and the standing orders of the 2nd respondent and not as per the 4th Schedule of the WCMA. He further submitted that the public gallery was open to the public as well as the media who covered the proceedings live.

87. Mr. Tuya, the learned counsel for the 1st respondent submitted that the 4th and 5th Respondents associate themselves with the submissions of the 1st and 2nd respondents, and they also rely on their written submissions dated 25th April, 2024.

88. In rejoinder, Mr. Barasa, the learned counsel for the petitioners submitted that Section 44 of the WCMA is applicable in this case, and that it provides the legal framework that requires public participation during the preparation of management plans. He submitted that from the annexures contained in the 1st petitioner's further, affidavit, the gazette notice indicates that the plans were published pursuant to Section 44 (3) of the Act, and it cannot be said that Section 44 does not apply. With regard to the two cases relied upon by the 1st respondent on public participation, the learned counsel submitted that there is an important parameter which requires that the affected people must be given sufficient notice of the native of the document. The learned counsel urged the court to look at Section 44 (2) of the Act together with the 5th Schedule.

89. It is necessary that I begin with and deal with the issue of locus standi of the petitioners to bring forth this amended petition as submitted by Mr. Tuya, the learned counsel for the 1st respondent. The learned counsel submitted that the petitioners have not stated that they have filed the petition in any representative capacity, and that they have not produced any evidence whatsoever that they are representing any group of people. While I disagree with this position, I note that in paragraph 1 of the amended petition, it states as follows: -

> " The petitioners are male adults residing and working for gain in Narok County within the Republic of Kenya. The petitioners have instituted this petition and on behalf of the people of Narok County."

90. In the case of Otolo Margaret Kanini & 16 Others versus Attorney General & 4 Others [2022] eKLR, the court observed as follows: -

> " 44. The Court of Appeal in Nairobi Civil Appeal No. 290 of 2012 Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others (2013) eKLR discussed the matter as follows: -
>
> 27. ...this court cannot fashion nor sanction an invitation to a judicial standard for locus standi that places hurdles on access to the courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process.

..... We hold that in the absence of a showing of bad faith as claimed by the appellant, without more, the first respondent had the locus standi to file the petition. Apart from this, we argue with the superior court below that the standard guide for locus standi must remain the command in Article 258 of *the Constitution*....

28. It still remains to reiterate that the landscape of locus standi has been fundamentally transformed by the enactment of *the Constitution* in 2010 by the people themselves. In our view, the hitherto stringent locus standi requirements of consent of the Attorney General or demonstration of some specific interest by a private citizen seeking to enforce a public right have been buried in the annals of history. Today, by dint of Articles 22 and 258 of *the Constitution*, any person can institute proceedings under the Bill of Rights, on behalf of another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest. Pursuant to Article 22(3) aforesaid, the Chief Justice has made rules contained in Legal Notice No. 117 of 28th June 2013.... "the Mutunga Rules" to inter alia, facilitate the application of the right of standing..... The rules reiterate that any person other than a person whose right or fundamental freedom under *the Constitution* is allegedly denied, violated in infringed or threatened has a right of standing and can institute proceedings as envisaged under Article 22(2) and 258 of *the Constitution*.

29. It may therefore now be taken as well established that where a legal wrong or injury is caused or threatened to a person or to a determinate class of persons by reason of violation of any constitutional or legal right, or any burden is imposed in contravention of any constitutional or legal provision, or without authority of law, and such person or determinate class of persons is, by reasons of poverty, helplessness, disability or socio-economic disadvantage, unable to approach the court for relief, any member of the public can maintain an application for appropriate direction, order or writ in the high court under Articles 22 and 258 of *the Constitution*.

41. This court has carefully assessed the requirement of locus-standi through the lenses of Articles 22 and 258 of *the Constitution* and *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereinafter referred to as 'the Mutunga Rules').

42. Unlike before the advent of the prevailing and new constitutional order, the bar on locus standi is not set that high.

43. Speaking to the enforcement of the Bill of Rights and *the Constitution*, Articles 22 and 258 of *the Constitution* provides that every person has the right to institute such court proceedings claiming that a right or fundamental freedom

in the Bill of Rights has been denied, violated or infringed, or is threatened or that *the Constitution* is violated or infringed or is threatened with violation or infringement.

44. In addition to persons acting in their own interest, *the Constitution* provides other ways in which competent proceedings may be instituted on behalf of others. It provides that court proceedings may also be instituted by a person acting on behalf of another person who cannot act in their own name, or by a person acting as a member of, or in the interest of, a group or class of persons. Persons acting in the public interest may also institute competent proceedings. There is also the category of associations where a person may act in the interest of one or more of the associations' members.

45. It is on such clear provisions of *the Constitution* that courts have severally held that under the new constitutional dispensation, the strict rules on locus standi have been greatly relaxed and courts have allowed suits to be instituted by persons on their behalf."

91. While I place reliance on the above cited authority, the petitioners' position as residents of Narok as stated in paragraph *89* above has not been challenged and further, their bringing forth of the amended petition has also not been shown to have been made in bad faith. I thus find the petitioners instituting this amended petition as residents of Narok and on behalf of the people Narok County in order as per Article 22 of *the Constitution* which provides that every person has the right to institute such proceedings.

92. Having said that, I have considered the petition, the replies thereof, the documents relied upon, the written submissions as well as the oral submissions made by the learned counsel for the parties. In my view, issues for determination are thus as follows: -

i. Whether there was effective public participation formulating, developing and adopting the two management plans i.e. the Maasai Mara National Reserve Management Plan 2023-2033 and the Greater Mara Eco-System Management Plan.

ii. Whether there was violation of the provisions cited under the *Wildlife Conservation and Management Act* and *the Constitution*.

iii. Who is to bear the costs of this petition.

93. The petitioners contended that the 1st and 3rd respondents developed three crucial plans namely, the Maasai Mara National Reserve Management Plan 2023-2033, the Greater Mara Eco-System Management Plan and the Narok County Physical and Land Use Development Plan 2023-2033 which all have a direct impact on the livelihood, and affairs of the residents of Narok County. The petitioners argued that the respondents did not conduct effective and qualitative public participation in the formulation, development, adoption and approval of the three plans, and in fact the petitioners have never had sight of the Narok County Physical and Land Use Development Plan 2023-2033.

94. The petitioners averred that during the formulation of the three plans, the 1st and 3rd respondents never invited the members of the public to give their views on the said plans, and the 4th respondent did not initiate public consultation for purposes of formulating the two management plans. Further, that the respondents did not publish a notice in relation to the proposals for public participation in at least three national newspapers to ensure there is effective public participation.

95. They argued that the two plans do not provide details of the anticipated benefits from the Maasai Mara National Reserve, and the beneficiaries as well as the local communities are likely to be prejudiced as they are unaware of any benefits that will accrue from the said plans. The petitioners also decried the advertisement in one of the newspapers calling for public participation which notice was short for the members to submit their views, and or written memorandum on the three plans. They argued that the notice did not contain the nature and effect of the three plans being subjected to public participation, and it did not disclose to the public where they could obtain or access the three plans and the costs if any.

96. The petitioners further averred that the respondents failed to disclose to the members of the public where they could obtain or access copies of the three plans which was in violation of Article 35 of *the Constitution* and the provisions of Sections 87 (a) and 115 (1)(b) of the *County Governments Act*, Cap 265. Further, that the public gallery of the 2nd respondent was locked out to the members of the public to enable them follow the proceedings of the 2nd respondent in violation of Article 196 (1) (a) and (2) of *the Constitution*.

97. In sum, the petitioners contended that the 1st, 2nd and 3rd respondents violated the provisions of Articles 10, 174 (c) and 196 (1) (b) of *the Constitution* of Kenya, Sections 87 and 115 of the *County Governments Act*, Cap 265 and Sections 4 (b), 44 (2) and (5) and the Fourth Schedule of the WCMA, Cap 376.

98. In response, the 4th and 5th respondent contended that under Article 196 (2) of *the Constitution*, the 2nd respondent may exclude the public or any media from any sitting unless in exceptional circumstances the speaker has determined there are justifiable reasons to do so. Further, they contended that the petitioners' assertions are founded on misunderstanding, and misrepresentation of the fundamental objectives since the Maasai Mara National Management Plan 2023-2033 is crafted for the purpose of addressing conservation, tourism management community outreach and partnership and operational issues in the Maasai Mara National Reserve. They also contended that the Greater Maasai Mara Eco-System Management Plan is developed to define the goals, objectives and actions that stakeholders aim to achieve in the eco-system within the next ten years through major management intervention measures.

99. The 4th and 5th respondents further averred that the plans diligently highlight key benefits that are poised to be derived from the proposed actions and as such, the petitioners claim are devoid of any substantiated evidence, logical foundation or justifiable grounds. Further, they averred that public participation need not incorporate the views of every member of the public and failure to have a copy of the document would not stop one from submitting in the exercise.

100. Noting the absence of a definitive framework to guide such process, the 4th and 5th respondents argued that the absence of specific facilitative legislation, guidelines or a legislative framework on public participation in public participation processes does not in any way impede the upholding of national values, and principles enshrined in Article 10 of *the Constitution*. Further, they argued that the gazettement of the Maasai Mara National Reserve Management Plan 2023-2033 and the Greater Mara Eco-System Management Plan by the 4th respondent while the suit was pending in court, was within the law since there did not exist any law or court order prohibiting the publication of the plans in the Kenya Gazette.

101. In further opposition, the 2nd respondent maintained that the plans herein relate to national game reserves and not national parks hence the plans are not under the scope of Section 44 (2) of the WCMA, Cap 376. The 2nd respondent further maintained that the respondents conducted effective public participation in the formulation, development, adoption and approval of all the plans which is a continuous process. In addition, that the 1st and 2nd respondents called for public participation

via various media platforms including newspapers, radio stations, facebook pages and via the 1st respondent's official website. To support their averments, the 2nd respondent invited this court to look at appendix 2 and 3 of the management plans which indicate management plan consultation, and plan developments meeting, and also the stakeholder participation in plan development, which were enacted by the duly elected representatives of the public in the Narok County Assembly. Further, it was argued that the benefits of the two plans have been clearly stated in each plan. With regard to the notice, the 2nd respondent submitted that the notice period was sufficient, and the plans were considered strictly in adherence with the standing orders of the Narok County Assembly Plan.

102. The 2nd respondent contended that emails were provided for submission of memorandums (sic) and views in compliance with Article 35 of *the Constitution* and the *Access to Information Act*, Cap 7M. Further, the 2nd respondent argued that every resident that requested for the plans were issued with a copy, and no evidence to the contrary has been tabled by the petitioners. The 2nd respondent seem to have acknowledged that there could have been normal technology downtime but they argued the petitioners having realized the same, ought to have utilized the alternative methods of submission of memorandums conveyed in the advertisement.

103. In further response, the 1st respondent averred that the 1st and 2nd respondents formulated the three plans in broad consultation and participation of the stakeholders including the local communities, the national and county legislators, the tourism industry, ecologists, scientists and reserve managers. Further, the 1st respondent averred that the 3rd respondent did not develop any of the three plans as a singular initiative but performed an advisory role, since it was called to offer advise as is required by law which was done during the consultative fora. The 1st respondent maintained that Maasai Mara National Reserve Management Plan was formulated for the purpose of addressing conservation, tourism management and community outreach and partnerships. The 1st respondent urged that the formulation, development, adoption and approval were done in accordance with the law, and that there is no existent law as regards qualitative public participation, yet the petitioners expect this court to score against the respondents based on their own criteria. An important aspect that was raised was that the 3rd respondent had no obligation to conduct public participation over plans it did not formulate.

104. In compliance with the law, the 1st respondent argued that there were consultative meetings held and advertisements placed in the local dailies as well. According to the 1st respondent, the period given to the members of the public to submit their memorandum and views was one year and three months which was sufficient, and it was impractical for the plans to be availed to all households. Further, it was averred that the report of the Joint Committee on Tourism, Wildlife, Culture and Physical Planning Land Trade and Cooperative Development adopted on 21st February, 2023 by the 2nd respondent accommodated all the feedback obtained after public participation. Further, it was averred that in all public participation fora, translators were present in cognizance of the issue of illiteracy. It was also stated that newspapers were not the only medium used to invite members of the public, since there were chiefs, sub-chiefs, member of the county assembly, ward administrators and elders of the community amongst others.

105. Similar to the averments raised by the 2nd respondent, the 1st respondent argued that all the modes of communication outlined where the three plans could be obtained free of charge, and that the petitioners can only blame themselves for failing to obtain the copies of the three plans. Further, the 1st respondent argued that the petitioners have displayed a misunderstanding of the threshold required for public participation and the views of every member of the public need not to be incorporated but only those who were cognizant of their civic duty. That in the absence of any codified law on public participation, the petitioners cannot introduce a standard process of public participation. Further, they argued that there is no qualitative test for public participation that the respondents are required

to meet, and the lack of participation should be attributed to the petitioners' laxity and lack of a sense of civic duty.

106. In further response to the amended petition, the 3rd respondent deposed that the management plans were formulated, developed, adopted and approved in accordance with Section 44 of the WCMA, Cap 376 which clearly details the participation of the neighbouring communities in preparation of the plans as required by the Fifth Schedule of the Act. Further, that the public participation is only required under Section 5 (5) on formulation of wildlife conservation and management strategy, Section 34, 37 and 44 of the WCMA. The 3rd respondent argued that the 2nd respondent is responsible for land use, and thus led the process of formulation of management plans, and effective public participation. They also maintained that sufficient time was given to members of the public to submit their views which was more than 10 days and 7 days' notice for physical meetings at the ward level.

107. My analysis of the above positions taken by the parties is that the petitioners are not disputing the contents of the management plans, except to challenge the process undertaken in planning, formulating, adoption and approval of the same. It is also clear that the petitioners seem to have abandoned their pursuit of the Narok County Physical and Land Use Development Plan 2023-2033 save to state that they have never laid their eyes on it. This court will thus limit itself to the issues raised concerning the two management plans.

108. On 2nd March, 2023, and vide gazette notice nos. 2645 and 2646, the 4th respondent gazetted the Greater Maasai Mara Eco-System Management Plan 2023-2032, and the Maasai Mara National Reserve Management Plan 2023-32. The petitioners argued that there was no effective and meaningful public participation in the planning, formulating, adoption and approval of the notices owing to failure by the respondents to include the neighbouring communities, failing to provide details as to access of the said plans through various media platforms and further failure to grant access to members of the public to the 2nd respondent's public gallery.

109. To better understand the issues before this court, it is important to look at the laws governing the said plans. The preamble of the *Wildlife Conservation and Management Act* (WCMA), Cap, 376 provides: -

> " An Act of Parliament to provide for the protection, conservation, sustainable use and management of wildlife in Kenya and for connected purposes."

110. Under the said Act, a "national park" means an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means.

111. Further, a "national reserve" means an area of community land declared to be a national reserve under this Act or under any other applicable written law;

112. Under the Eleventh Schedule of the WCMA, Maasai Mara is listed in no. 15 as a national reserve. It therefore follows that the being a national reserve, the management thereof vests with the 2nd respondent pursuant to Section 35 (2) of WCMA which provides: -

> " The national reserve declared under subsection (1) shall be managed by the relevant county government in accordance with the provisions of this Act."

113. Section 4 (b) and (d) of the WCMA provides that: -

> " Conservation and management of wildlife shall entail effective public participation;

(d) Wildlife conservation and management shall be encouraged and recognized as a form of land use on public, community and private land"

114. The petitioners contended that there was violation of Section 34 of the Act as well as the 4th Schedule. I have looked at the said provision of the law, and I note that the same deals with variation of boundaries or revocation of a national park or a marine protected area, which is not applicable to this case. Equally, the fourth schedule deals with provisions as to public consultation pursuant to Section 34 and the same is not applicable herein.

115. The gazette notices were made pursuant to Section 44 (3) of the WCMA which does not refer to publishing of approved management plans with regard to a national reserve. It provides: -

> " The Cabinet Secretary shall, by notice in the Gazette, publish the approved management plans in respect of national parks, marine protected areas, wildlife conservancies and sanctuaries."

116. As rightly conceded by the 1st and 2nd respondents, and there being no legislative framework to guide the respondents in the process of public participation, with regard to a national reserve, the 1st and 2nd respondents sought refuge under Section 44 (3). At the very least, the respondents ought to have as well submitted and complied with the provisions of the Fifth Schedule.

117. Part I of the fifth schedule describes a management plan as follows: -

> "(1) A management plan is the instrument in which all the ingredients for active management are described, in particular which organizations will undertake what responsibilities and what actions are intended to achieve what ends. However, despite being a primary tool, management plans often go unused because of a failure to see management plans as a dynamic working document requiring annual updates and because of a tendency to be over elaborate.
>
> (2) The level of planning should be tailored to the capacities of the agencies and communities involved. Management planning should be a practical tool - one that can be created in simple form and built upon over time, using progress reports.
>
> (3) A management plan process includes the production of an annual compliance report and a 5 year third-party management report."

118. Part 2 of the said schedule provides-

> "(1) The following are information that should be included as a minimum—
>
> • a legal description of the area covered (whether national, provincial, local or some other designation). A legal description may include or officially recognize customary land boundaries and/or natural boundaries (e.g. rivers, river basins, mountain ranges, etc.);
>
> • a brief statement of the wildlife management goals and objectives;
>
> • the time period for which the plan is valid;
>
> • the species covered by the plan;

• a description of habitat types, amounts, and plant composition (where possible);

• A description of the activities being undertaken;

• A report detailing the participation of neighbouring communities in the preparation of the plan;

• A description of the anticipated benefits and beneficiaries.

(2)As the complexity of the protected area increases in terms of size, habitats, species, proposed activities, then the following incremental information should be included for non-consumptive utilization—

• the provision of zones and the management objectives for each zone;

• the identification of tourist carrying capacities;

• the quality targets to be met in terms of price and volume;

• the provision of tourist management regulations;

• the provisions for the management of habitats and species (particularly important in 'closed' ecosystems;

• the management of migratory species;

• the identification of key breeding areas;

• the management of potential conflict with neighbouring communities;

• the scale and location of any infrastructural development;

• the monitoring to be undertaken and its frequency;

• any relevant historical information.

(3)And for consumptive utilization, the following information should be additionally included:

• data on historical wildlife culling, cropping, hunting, where such information is available;

• an approved method for determining sustainable off take levels; and

• proof of compliance with the Eleventh Schedule and any other legal requirement set out in this Act."

119. I have taken time to read the management plans and I note that in appendix 1 in page 109 of the Maasai Mara National Reserve Management Plan 2023-2032, it contains consultation and preparation meetings held for the MMNR management plans. From this, it can be discerned that the process can be traced to as far as the year 2006 when there was a core planning committee. This plan is in my view detailed and I would urge the petitioners to take their time and acquaint themselves with the same. Equally, I have read the revised draft of the Greater Maasai Mara Ecosystem Management Plan, 2023-2032. The same is detailed and commencement of this management plan appears to have been sometime in the year 2020.

120. Equally important, is the first report of the Joint Committee on Tourism, Wildlife and Culture and Physical Planning, Lands, Trade and Cooperatives Development dated 21st February, 2023. The report contains public participation views, the joint committee findings and the recommendations.

Appendix 2 of the said report contains the planning meeting, as well as stakeholder participation in plan development under appendix 3. From this, it is easy to tell that there was representation from various stakeholders including the community working group committees.

121. In Mui Coal Basin Local Community & 15 *others versus Permanent Secretary Ministry of Energy & 17 others Constitutional Petition no 305 of 2012*: a three judge bench set out the minimum basis for adequate public participation as follows:-

> " 97. From our analysis of the case law, international law and comparative law, we find that public participation in the area of environmental governance as implicated in this case, at a minimum, entails the following elements or principles:
>
> a. First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or public official who is to craft the modalities of public participation but in so doing the government agency or public official must take into account both the quantity and quality of the governed to participate in their own governance. Yet the government agency enjoys some considerable measure of discretion in fashioning those modalities.
>
> b. Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the courts will not use any litmus test to determine if public participation has been achieved or not. The only test the courts use is one of effectiveness. A variety of mechanisms may be used to achieve public participation. Sachs J. of the South African Constitutional Court stated this principle quite concisely thus: "The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case. (Minister of Health and another v New Clicks South Africa (Pty) Ltd and Others *2006 (2) SA 311 (CC)*)"
>
> c. Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information.See Republic v The *Attorney General & another ex parte hon Francis Chachu Ganya (JR Misc. App. no 374 of 2012*). In relevant portion, the court stated: "Participation of the people necessarily requires that the information be availed to the members of the public whenever public policy decisions are

intended and the public be afforded a forum in which they can adequately ventilate them."In the instant case, environmental information sharing depends on availability of information. Hence, public participation is on-going obligation on the state through the processes of Environmental Impact Assessment – as we will point out below.

d. Fourth, public participation does not dictate that everyone must give their views on an issue of environmental governance. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or public official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.

e. Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or public official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or public official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional box.

f. Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand."

122. The petitioners also contended violation of Sections 87 and 115 of the *County Governments Act*, Cap 265 which provides as follows: -

Section 87 of the *County Governments Act*, Cap 265 provides as follows: -

"Citizen participation in county governments shall be based upon the following principles—

(a) timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;

(b) reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;

(c) protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;

(d) legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;

(e) reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight

(f) promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and

(g) recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight."

Section 115 of the Act provides: -

(1) Public participation in the county planning processes shall be mandatory and be facilitated through—

(a) mechanisms provided for in Part VIII of this Act; and

(b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including—

(i) clear strategic environmental assessments;

(ii) clear environmental impact assessment reports;

(iii) expected development outcomes; and

(iv) development options and their cost implications.

(2) Each county assembly shall develop laws and regulations giving effect to the requirement for effective citizen participation in development planning and performance management within the

county and such laws and guidelines shall adhere to minimum national requirements."

123. Having perused the documents relied upon by the parties, it is clear that the planning, formulation, adoption and approval of the management plans was a process which began as far back as the year 2006 and 2020 respectively. The notice inviting the members of the public to submit their views and memoranda on 18th February, 2023 indicated that the process was at its tail end. The report dated 21st February, 2023 is not disputed which indicates that indeed there was public participation. The allegations of the email provided by the 1st respondent not working have not been substantiated and neither are the allegations of the members of the public denial of access to the 2nd respondent's public gallery substantiated.

124. I will not say much on the access of the management plans by the petitioners. As I have said, the planning and formulation of the management plans has been a continuous process, and no evidence has been shown that they requested and tried to obtain the same and were denied.

125. From the above, I find no reason to grant the prayers sought by the petitioners. The amended petition dated 6th July, 2023 is thus dismissed. Each party to bear to its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL this 1ST day of AUGUST 2024.

HON. MBOGO C.G.

JUDGE

01/08/2024.

In the presence of: -

Mr. Meyoki Pere – C. A