



Langat & another v County Government of Bomet & 3 others (Environment and Land Constitutional Petition 6 of 2019) [2023] KEELC 126 (KLR) (19 January 2023) (Judgment)

Neutral citation: [2023] KEELC 126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 6 OF 2019
MC OUNDO, J
JANUARY 19, 2023
IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 28,
42, 69, 70, 159, AND 165 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE DOCTRINE OF LEGITIMATE EXPECTATION
AND
IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT
OF THE CONSTITUTION PRACTICE AND PROCEDURE RULES) 2013**

BETWEEN

**NELSON KIPKOECH LANGAT 1ST PETITIONER
WILSON SOI 2ND PETITIONER**

AND

**COUNTY GOVERNMENT OF BOMET 1ST RESPONDENT
COUNTY SECRETARY- COUNTY GOVERNMENT OF BOMET 2ND
RESPONDENT
BOMET COUNTY EXECUTIVE MEMBER FOR FINANCE .. 3RD RESPONDENT
BOMET COUNTY EXECUTIVE MEMBER FOR LANDS 4TH RESPONDENT**

An executive body or authority must operate within its limits and ought not to expand its jurisdiction through administrative craft or innovation

Reported by Kakai Toili

Constitutional Law – fundamental rights and freedoms – enforcement of fundamental rights and freedoms – right to a clean and healthy environment – whether the collection of revenue by a county government from traders



operating along road reserves lacking basic sanitation facilities such as running water and toilets violated the right to a clean and healthy environment – Constitution of Kenya, article 42.

Jurisdiction – *jurisdiction of the Environment and Land Court vis-à-vis the National Environment Tribunal – jurisdiction to determine disputes under article 70 of the Constitution on the enforcement of environmental rights – whether the Environment and Land Court or the National Environment Tribunal had jurisdiction to hear and determine a dispute alleging violation of environmental rights under article 70 – Constitution of Kenya, articles 22, 23, 42, 70, 162(2)(b) and 258; Environment and Land Court Act (cap 8D), section 13(1).*

Civil Practice and Procedure – *submissions – failure to file submissions – effect of failure by a respondent to file submissions as directed by the court.*

Brief facts

The petition arose from allegations that, despite the existence of a gazetted market centre at *Kapsimotwo*, the respondents had frustrated the relocation of traders from *Kapkwen* to *Kapsimotwo* and had instead continued to collect revenue from traders operating along private lands and road reserves in *Kapkwen*. The petitioners contended that these trading areas lacked basic sanitation facilities, such as running water and toilets, thereby creating serious public health hazards and contravening the gazette notice requiring the market’s relocation.

The petitioners sought, among other reliefs, a declaration that the respondents had violated their right to a clean and healthy environment and an order compelling the respondents to facilitate the relocation of the market from *Kapkwen* to *Kapsimotwo*.

In response, the 1st respondent (the County Government of Bomet) asserted that the petition was premature and fatally defective, arguing that the Physical and Land Use Planning Act (cap 303) required aggrieved parties to first lodge complaints on land use with the county authorities. The respondents further maintained that the designation of *Kapsimotwo* as the market centre was lawful and that the site had been properly demarcated and equipped with appropriate social amenities to facilitate efficient business operations.

Issues

- i. Whether the collection of revenue by a county government from traders operating along road reserves lacking basic sanitation facilities, including running water and toilets, violated the right to a clean and healthy environment.
- ii. Whether the Environment and Land Court or the National Environment Tribunal had jurisdiction to determine a dispute under article 70 of the Constitution on the enforcement of environmental rights.
- iii. What was the effect of failure by a respondent to file submissions as directed by the court?

Held

1. The respondents’ failure to file submissions as directed by the court rendered the petition effectively unopposed; however, the court was nonetheless bound to determine the matter on its merits.
2. The petition was anchored in the rights and fundamental freedoms enshrined in the Bill of Rights under article 19 of the Constitution, which provided the framework for social, economic, and cultural policies, preserved human dignity, promoted social justice, and facilitated the realization of every person’s potential. The Bill of Rights bound all State organs and persons, ensuring that rights and freedoms were enjoyed to the greatest extent consistent with the nature of the right or freedom.
3. It was the fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfill the rights and freedoms guaranteed under the Bill of Rights. Under article 22, any person may institute proceedings claiming a denial, violation, infringement, or threat to such rights; and article 23 vested the court with jurisdiction to grant appropriate relief under articles 22 and 258 of the Constitution.
4. The petitioners acted both in their own interest and on behalf of all traders in *Kapsimotwo* Market and the residents of *Bomet*. They pleaded, with reasonable precision, the particulars of the alleged violation of their constitutional right to a clean and healthy environment under article 42.



5. The petition, being a constitutional claim alleging a violation of article 42, properly fell within the jurisdiction of the Environment and Land Court. Under article 162(2)(b) of the Constitution and section 13(1) of the Environment and Land Court Act, the court, not the National Environment Tribunal, has jurisdiction to hear and determine disputes brought under article 70 on the enforcement of environmental rights.
6. Part 2 of the Fourth Schedule to the Constitution assigned counties responsibility for, *inter alia*, health services (including refuse removal and solid waste disposal), development and regulation of trade (including markets), county roads and public transport, and public works and services such as water and sanitation. The respondents were thus mandated to address those matters to ensure a clean and healthy environment. No evidence was tendered to show that the *Bomet–Sotik* Highway or other *Kapkwon* road reserves had undergone a “major land use change” within the meaning of paragraph 1 of the Second Schedule to the Environmental Management and Co-ordination Act.
7. Where the law prescribed the jurisdiction of an executive body, that body must act strictly within its statutory limits and may not enlarge its mandate through administrative craft or innovation. The evidence showed ongoing trading activities along the *Bomet–Sotik* Highway and other *Kapkwon* road reserves, none of which were designated or gazetted as market areas, and conducted without the requisite permits from the relevant roads authorities.
8. The respondents’ collection of revenue from traders in such undesignated areas, without provision of basic facilities such as running water and toilets, constituted administrative overreach and disregarded the traders’ and residents’ rights to a clean and healthy environment. The trading activities also posed safety risks to vendors, motorists, and pedestrians.
9. Under the Kenya Roads Act, conducting business on a road or road reserve required a permit from the Kenya National Highways Authority, the Kenya Urban Roads Authority, or the Kenya Rural Roads Authority, as applicable. Those authorities may levy charges for such permits under section 49, provided the conditions in section 22(2)(d) and (f) were met. Concurrently, under section 7 of the Fourth Schedule to the Constitution, the respondents bore the responsibility for developing and regulating trade, including the designation of markets and the issuance of trade licences.

Petition allowed.

Orders

- i. *The respondents violated the petitioners' right to a clean environment.*
- ii. *The respondents were directed to immediately converge a meeting with the petitioners and interested parties so as to implement the smooth transition of market from Kapkwon to Kapsimotwo, within 30 days.*
- iii. *There shall be no collection of revenue from traders and trading activities alongside Bomet-Sotik Highway and other road reserves within Kapkwon after the 30 days.*
- iv. *Each party to bear their own costs.*

Citations

Cases

Kenya

1. *Majimbo, Albert & 2 others v Kiminini Cottage Hospital & another* Land Case 133 of 2016; [2018] KEELC 774 (KLR) - (Mentioned)
2. *Njeru v Republic* Criminal Appeal 4 of 1979; [1979] KECA 12 (KLR); [1979] KLR 1272 - (Explained)
3. *Republic v Chief Magistrates Court, Nairobi & another ex parte Chudasama* Civil Case 473 of 2006; [2007] KEHC 2940 (KLR); [2007] 1 KLR 400; [2008] 2 EA 311 - (Explained)

South Africa

Fose v Minister of Safety & Security (CCT14/96) [1997] ZACC 6; 1997 (7) BCLR 851; 1997 (3) SA 78 - (Explained)

Texts



Statutes

Kenya

1. Constitution of Kenya articles 19, 22, 23, 28, 42, 43, 69, 70, 162(2)(b); 176(1); 258; fourth schedule part 2 (5)(7) - (Interpreted)
2. County Governments Act (cap 265) section 44 - (Interpreted)
3. Environment and Land Court Act (cap 8E) section 13 - (Interpreted)
4. Environmental Management and Co-ordination Act (cap 387) section 58; paragraph 1, second schedule - (Interpreted)
5. Kenya Roads Act (cap 408) sections 22(2); 49 - (Interpreted)
6. Physical and Land Use Planning Act (cap 303) In general - (Interpreted)

Advocates

None mentioned

JUDGMENT

1. The petitioners herein, via their petition of October 14, 2019, sought for the following orders;
 - i. A declaration that the respondents violated their rights to a clean environment and the right to human dignity.
 - ii. An order of prohibition preventing the respondents from collecting revenue from traders trading alongside the road reserves and instead direct all market trading activities every Tuesday to Kapsimotwo market.
 - iii. An order of prohibition preventing any trading activities alongside Bomet-Sotik Highway and other road reserves within Kapkwen.
 - iv. An order compelling the respondents herein to allow the smooth transition of the market from Kapkwen to Kapsimotwo.
 - v. costs.
2. The petition was supported by an affidavit sworn by the 1st petitioner- Nelson Kipkoech Langat, on behalf of the 2nd petitioner, on the October 14, 2019.
3. The respondents, in their replying affidavit dated December 10, 2019 deponed that the petitioners' petition was premature and fatally defective. That the *Physical and Land Use Act* No 3 of 2019 provided for an avenue for an aggrieved party to first lodge a complaint relating to land use at the County. That the allegations made by the Petitioners that the respondents had moved the market to Kapwen was false as no such action had been taken.
4. That the 4th schedule of part 7 of the *Constitution* mandated trade development and regulations including markets and trade licenses as a function of the county and therefore the 1st respondent acted within its mandate when on the October 8, 2019, it had announced to the public that Kapsimotwo was the designated market place. That the said Kapsimotwo had been demarcated as a market place wherein stalls, cattle sheds, toilets and proper social facilities had been erected in line with article 43(B) as read with article 42 of the *Constitution*, so as to facilitate the efficient and effectual transaction of business.



5. That the County Government had designated and deployed funds towards the livestock market within Kapsimotwo center and they had not impeded any activities within Kapsimotwo either by themselves, their servants, employees, or agents.
6. That the petition lacked merit and the same ought to be dismissed with costs although the 1st respondent was desirous of resolving the dispute out of court.
7. Despite directions having been taken that the petition be disposed of by way of written submissions, only the petitioners complied and filed their written submissions on the July 25, 2022 which submissions I shall summarize as herein under.

Petitioners' Submissions

8. The petitioners submitted that they were business persons based in Kapsimotwo Market within Bomet County and that the petition was brought on their own behalf and on behalf of all the businessmen in Kapsimotwo Market and the entire residents of Bomet.
9. That despite there having been a gazetted market center at Kapsimotwo, the Respondents had frustrated efforts to ensure a smooth transmission of the market from Kapkwen to Kapsimotwo but had resulted to collecting revenue illegally from people trading along the private lands and road reserves in Kapkwen, where there are no sanitation facilities, and in blatant contravention of the gazette notice to move the market to Kapsimotwo. This in turn posed a health hazard to the citizens of Kapkwen.
10. That having gazetted Kapsimotwo as the market center, it behooved the respondents to direct all market activities every Tuesday to Kapsimotwo Market, and therefore it was prohibitive of them to collect revenue along the road reserves at Kapkwen as the occupation of the road reserves was illegal and could only happen with the express authority of the statutory body commanded by its keeper. Reference was made to the decided case in Kitale ELC No 133 of 2016 *[Albert Majimbo & 2 others v Kiminini Cottage Hospital & another](#)*.
11. That due to inability of the respondents to stop the illegal activities along the road reserves at Kapkwen, they had denied the petitioners as well as other members of the public, their right to a clean environment and human dignity in terms of article 19 and 28 of the *[Constitution](#)*. That the non- provision of toilets and other social amenities by the respondents, including clean water to the members of the public trading at Kapkwen was an outright contravention of the provisions of article 42 of the *[Constitution](#)*.
12. The petitioners submitted that the declarations sought in the petition were merited and the same should be upheld with costs.
13. No submissions had been tendered by the respondents to rebut the petitioners' claim.

Determination.

14. I have considered the contents of the petitioners' petition, their affidavit in support, as well as their unchallenged arguments and the authorities cited. the petitioners bring this petition alleging violation to their right, as well as the rights of the members of the public, to a clean environment and human dignity in terms of article 19, 28 and 42 of the *[Constitution](#)*.
15. The respondents having not filed their submissions as directed by the court would mean in effect that the petition was unopposed, however this notwithstanding, I shall have to determine the same on its merit.



16. The Petition has been brought pursuant to the Rights and fundamental freedoms in the Bill of Rights under article 19 of the Constitution which is the framework for social, economic and cultural policies and aims at preserving the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. The Bill of Rights binds all state organs and all persons whereby every person shall enjoy the said rights and freedoms to the greatest extent consistent with the nature of the right or fundamental freedom.
17. That it is therefore a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. Every person therefore has the right to institute court proceedings under article 22 of the Constitution claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, wherein the court has jurisdiction to hear and determine applications for redress of a denial, violation or infringement of, or threat to that right, pursuant to the provisions of article 23 of the Constitution. The court is thereafter clothed with the power to grant any appropriate relief in proceedings brought under articles 22 and 258 of the Constitution.
18. In filing this petition, the petitioners were acting not only on their behalf but on behalf of all the businessmen in Kapsimotwo Market and the entire residents of Bomet. The petitioner's claim stems from an allegation that despite there having been a gazetted market center at Kapsimotwo, the respondents have frustrated efforts to ensure a smooth transmission of the market from Kapkwen to Kapsimotwo but have instead resulted to collecting revenue illegally from people trading along the private lands and road reserves in Kapkwen, where there are no sanitation facilities and in blatant contravention of the gazette notice to move the market to Kapsimotwo. This in turn has posed a health hazard to the citizens of Kapkwen.
19. That having gazetted Kapsimotwo as the market center, it behooved the Respondents to direct all market activities every Tuesday to Kapsimotwo Market, and therefore it was prohibitive of them to collect revenue along the road reserves at Kapkwen as the occupation of the road reserves was illegal and could only happen with the express authority of a statutory body commanded by its keeper. The petitioners' contention is that the respondents' action had violated their right to a clean and healthy environment pursuant to the provisions of article 42 of the Constitution.
20. In response to the petition, the respondents, in their replying affidavit dated December 10, 2019 deponed that the petitioners' petition was premature and fatally defective. That the Physical and land use Act No 3 of 2019 has a provision that an aggrieved party must lodge a complaint relating to land use at the county. That the allegations made by the petitioner that the respondents had moved the market to Kapwen(sic) was false as no such action had been taken. That instead it had been Kapsimotwo that had been demarcated as a market place wherein stalls, cattle sheds, toilets and proper social facilities had been erected in line with article 43(b) as read with article 42 of the Constitution, so as to facilitate the efficient and effectual transaction of business. That they had not impeded any activities within Kapsimotwo either by themselves, their servants, employees, or agents. That the petition lacked merit and the same ought to be dismissed with costs although the 1st respondent was desirous of resolving the dispute out of court.
21. It was thus trite for the petitioners to prove, on a balance of probabilities that their fundamental rights and freedoms as protected by or under the Constitution had been violated, by not only clearly identifying the relevant and specific articles of the Constitution that had been contravened, but by availing evidence, through affidavit or otherwise of such violation as per the required standard set out in



respect of the constitutional petitions. Reference is made to the holding in the case of Anarita Katimi Njeru v The Republic [1979] eKLR where the court held that:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

22. The petitioners have set out with a reasonable degree of precision that their constitutional rights envisaged under article 42 of the Constitution had been violated by the respondents.
23. The 1st respondent is established under article 176(1) of the Constitution which, pursuant to the provisions of article 186(1) of the Constitution, is required to perform the functions set out in the fourth schedule in the Constitution. Of particular importance in relation to this matter, is part 2(5) and (7) of the fourth schedule to the Constitution which lists the functions and powers of the County as being: transport, including county roads, public road transport; trade development and regulation, including markets; trade licences (excluding regulation of professions) fair trading practices.
24. The 2nd respondent, is an office created under section 44 of the County Governments Act and is the head of the County Public Service and thus the heartbeat of all operations by the Executive wherein s(he) is responsible for the coordination and smooth operation of all County departments and is the person to be put to task in the event of any lapses in operations at the County level.
25. The 3rd and 4th respondents are the County Executive Committee members in their respective departments within the County and are responsible for the preparation of county policies, plans and budgets for approval from the County Assembly, implementation of all laws passed by the County Assembly and National Assembly, and provide regular non-financial and financial reports to the County Assembly and to external regulatory and oversight offices of the Controller of Budget and the Office of the Auditor General.
26. It is based on this line of evidence and submissions that I need to consider whether the petition discloses a legal interest capable of protection under the law and whether the said legal interest was infringed.
27. The petition before the court is a constitutional petition alleging violation of the right to a clean and healthy environment provided for in article 42 of the Constitution. Article 162(2) (b) of the Constitution and section 13(1) of the Environment and Land Court Act provides that this court can hear and determine any matter related to the Environment and Land.
28. Section 13(3) of the Environment and Land Court Act further provides as follows:

“ 13

- (3) Nothing in this Act shall preclude the court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to the environment and land under articles 42, 69 and 70 of the Constitution.”



29. It is therefore this court, and not the National Environment Tribunal, that has the jurisdiction to hear and determine any dispute under article 70 of the Constitution which provides as follows:

- “70(1) If a person alleges that a right to a clean and healthy environment recognized and protected under article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate--
- a) to prevent, stop or discontinue any act or omission that is harmful to the environment;
 - b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or
 - c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.
- (3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.”

30. Article 42 of the Constitution provides as follows;

Every person has the right to a clean and healthy environment, which includes the right—

- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in article 69; and
- (b) to have obligations relating to the environment fulfilled under article 70.

31. Part 2 of the fourth schedule to the Constitution, provides that one of the functions of the county is health services including and in particular removal of refuse dumps and solid waste disposal as well as the development and regulation of trade including markets; County transport including county roads and public road transport, as well as county public works and services including water and sanitation services and therefore the respondents herein are mandated to deal with the said issues so as to ensure a clean and healthy environment to the petitioners herein.

32. Indeed the respondents in their response to the petition had confirmed that Kapsimotwo had been demarcated and gazetted as a market place wherein stalls, cattle sheds, toilets and proper social facilities had been erected. The Petitioners argument is that despite this being the position, the respondents have failed to ensure a smooth transmission of the market from Kapkwen to Kapsimotwo but have resulted to collecting revenue illegally from people trading along the private lands and road reserves in Kapkwen which has no basic amenities like running water and toilets. They therefore seek orders prohibiting the respondents from collecting the revenue from traders trading alongside the road reserves, the prohibition of trading activities alongside Bomet-Sotik Highway and other road reserves within Kapkwen and for the respondents herein to allow the smooth transition of market from Kapkwen to Kapsimotwo so that all market trading activities can be carried out every Tuesday in Kapsimotwo market.



33. Section 58(1)(2) and (3) of the [Environmental Management and Co-ordination Act](#) state as follows:

(1) Notwithstanding any approval, permit or license granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall before for an financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the second schedule to this Act, submit a project report to the Authority, in the prescribed form, giving the prescribed information and which shall be accompanied by the prescribed fee.

(2) The proponent of any project specified in the second schedule shall undertake a full environmental impact assessment study and submit an environmental impact assessment study report to the Authority prior to being issued with any licence by the Authority:

Provided that the Authority may direct that the proponent forego the submission of the environmental impact assessment study report in certain cases.

(3) The environmental impact assessment study report prepare under this subsection shall be submitted to the Authority in the prescribed form, giving the prescribed information and shall be accompanied by the prescribed fee.

34. There was nothing placed on record to confirm that indeed the Bomet-Sotik Highway and other road reserves within Kapkwen had changed from a road reserve to a public market within the meaning of “major land use change” contained in paragraph 1 of the 2nd schedule to the [Environmental Management and Co-ordination Act](#) (EMCA).

35. In [Republic Ex Parte Chudasama v The Chief Magistrate’s Court, Nairobi and another](#) Nairobi HCCC No 473 of 2006, [2008] 2 EA 311, Rawal, J(as she then was) stated that:

“While protecting fundamental rights, the court has power to fashion new remedies as there is no limitation on what the court can do. Any limitation of its powers can only derive from the [Constitution](#) itself. Not only can the court enlarge old remedies, it can invent new ones as well if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the court itself, instead of being the protector, defender, and guarantor of the constitutional rights would be guilty of the most serious betrayal. See *Gaily v Attorney-General* [2001] 2 RC 671; *Ramanoop v Attorney General* [2004] Law Reports of Commonwealth (From High Court of Trinidad and Tobago); *Wanjuguna v Republic* [2004] KLR 520...The court is always faced with variety of facts and circumstances and to place it into a strait jacket of a procedure, especially in the field of very important, sensitive and special jurisdiction touching on liberties and rights of subjects shall be a blot on independence and many faceted jurisdiction and discretionary powers of the High Court. See The [Judicial Review Handbook](#) (3rd Edn) by Michael Fordham at 361.



36. The Constitutional Court of South Africa in *Fose v Minister of Safety & Security* [1977] ZACC 6 emphasized the foregoing as follows: -

‘Appropriate relief will in essence be relief that is required to protect and enforce the Constitution. Depending on the circumstances of each particular case the relief may be a declaration of rights, an interdict, a *mandamus* or such other relief as may be required to ensure that the rights enshrined in the Constitution are protected and enforced. If it is necessary to do so, the courts may even have to fashion new remedies to secure the protection and enforcement of these all important rights.’

37. A summation of the petition herein is that where the law exhaustively provides for the jurisdiction of an executive body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation. It is trite from the pleadings herein which were not controverted by the respondents, that there had been trading activities alongside Bomet-Sotik Highway and other road reserves within Kapkwen which were not designated and/ or gazetted market areas and without a permit from the Kenya National Highways Authority, the Kenya Urban Roads Authority or the Kenya Rural Roads Authority, as the case may be.

38. It is also clear that despite this being the position, the respondents herein have been collecting revenue from the traders through administrative craft or innovation and without considering the rights of the concerned residents and traders, to a clean and healthy environment since the said area of operation does not contain basic facilities like running water and toilets, and further there had been safety hazards posed to the residents of Kapkwen as well as the vendors selling their wares on the road reserves, the motorists and pedestrians.

39. Under the Kenya Roads Act, a person who intends to erect and conduct business on a road or a road reserve in Kenya must seek and obtain a permit from the Kenya National Highways Authority, the Kenya Urban Roads Authority or the Kenya Rural Roads Authority, as the case may be and these authorities have powers to levy charges or fees for the issuance of a permit under section 49 of the Kenya Roads Act, as long as all the conditions in section 22(2)(d) and (f) of the Kenya Roads Act are fulfilled. The respondents herein also have a responsibility under the provisions in 4th schedule of part 7 of the Constitution to develop and regulate trade including designated markets and trade licenses.

40. The Bomet-Sotik Highway and other road reserves within Kapkwen not having been gazetted as a market place, and there having been no license obtained from the relevant authorities herein above mentioned, I find in favour of the Petitioner and proceed to direct as follows:

- i. That the respondents violated the petitioners right to a clean environment.
- ii. The respondents are herein directed to immediately convene a meeting with the petitioners and interested parties herein, so as to implement the smooth transition of market from Kapkwen to Kapsimotwo, within 30 days.
- iii. There shall be no collection of revenue from traders and trading activities alongside Bomet-Sotik Highway and other road reserves within Kapkwen after the said 30 days.
- iv. This being a suit brought in public interest, each party shall bear their own costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 19TH DAY OF JANUARY 2023.

M.C. OUNDO



JUDGE

