



**East Africa Tour Guides Association & 2 others v County Government of Narok & another
(Constitutional Petition E008 of 2023) [2025] KEHC 11777 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11777 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CONSTITUTIONAL PETITION E008 OF 2023**

CM KARIUKI, J

JULY 31, 2025

**IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 165(3), 258 AND 259 OF
THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE 199 (1) OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF: ALLEGED THREATS POSED BY SECTION 2 OF THE NAROK
FINANCE ACT 2022**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF NATIONAL VALUES AND
PRINCIPLES OF GOVERNANCE UNDER ARTICLE 10, THE PRINCIPLES OF
LEADERSHIP AND INTEGRITY UNDER ARTICLE 73, AND THE VALUES AND
PRINCIPLES OF PUBLIC SERVICE UNDER ARTICLE 232 OF THE CONSTITUTION
OF KENYA, 2010**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULES, 2013**

BETWEEN

**EAST AFRICA TOUR GUIDES ASSOCIATION 1ST PETITIONER
CONFEDERATION OF KENYA TOUR GUIDES 2ND PETITIONER**



KENNEDY KAUNDA OMUGA 3RD PETITIONER

AND

THE COUNTY GOVERNMENT OF NAROK 1ST RESPONDENT

THE OFFICE OF THE GOVERNOR, NAROK COUNTY 2ND RESPONDENT

JUDGMENT

10/07/2025

1. The Petition arises from a Public Notice issued on 14th June 2023 by the Narok County Government, introducing a 12-hour ticket rule for entry into the Maasai Mara National Reserve, pursuant to the First Schedule of the Narok County Finance Act, 2022. This new rule replaced the existing 24-hour ticket rule, drastically altering access terms for tourists.
2. The Petitioners, comprising tour operators, argue that they had made advance bookings under the previous 24-hour regime. The abrupt change forced them to either incur extra costs or demand additional payments from clients, risking reputational damage and breach of contract.
3. The Petitioners contend that the Finance Act, 2022, was no longer in force. The 12-hour rule was introduced without public participation or stakeholder consultation, violating Articles 10 and 118 of *the Constitution*. The rule breached their legitimate expectations, harmed their business operations, and was unlawful, procedurally unfair, and constitutionally invalid.
4. The Petition herein, dated 3rd July, 2023, seeks the following prayers before this Honourable Court;
 - i. A declaration be and is hereby issued that the "Notice of the 12-hour rule for Maasai Mara National Reserve – First Schedule of the Finance Act, 2022" issued by the 1st Respondent on 14th June, 2023 is unconstitutional, null and void to the extent that it purports to enforce a bill which has not been passed into law, contrary to Article 199 (1) of *the Constitution* of Kenya.
 - ii. A declaration be and is hereby issued that the Narok County Finance Bill 2023 is unconstitutional, null, and void to the extent that its legislative process violates the Constitutional requirements of democracy and public participation.
 - iii. An order of Certiorari be and is hereby issued removing into this court and quashing the Public Notice issued by the 1st Respondent purporting to implement the 12-hour rule for Maasai Mara National Reserve.
 - iv. An order do issue compelling the Respondents to include the Petitioners and other key stakeholders in any decisions or plans regarding the Narok County Finance Bill, 2023, before the same is passed, assented or gazette.
 - v. A permanent order of injunction be and is hereby issued restraining the Respondents by themselves or through their agents from enforcing the First Schedule of the Narok Finance Act, 2022.
 - vi. A permanent order of injunction be and is hereby issued restraining the Respondents by themselves or through their agents from enforcing the Public Notice and/or continuing with the legislative process for Narok County Finance Bill, 2023 without first allowing the public



and relevant stakeholders to participate and give their views on the same. vii. The costs of this Petition be borne by the Respondents.

viii. Such other Orders this Honourable Court shall deem fit.

5. The Petitioners filed the present Petition on 3rd July 2023, accompanied by a supporting affidavit by Kennedy Kaunda Omuga.
6. In reply, the 1st and 2nd Respondents filed a Replying Affidavit by Maiyani Ole Tuya on 10th July 2023, admitting that the 12-hour ticket rule was introduced via the First Schedule of the Narok County Finance Act, 2022, through a Public Notice dated 13th July 2023.
7. The Respondents assert that the Finance Act, 2022 was subjected to public participation, relying on: Photographs of public meetings (Annexure NCFB-3), A Public Notice (NCFB-4) with no specified publication platform, Radio announcements (NCFB-5) conducted exclusively in the Maasai language.
8. The Petitioners challenge the sufficiency and inclusivity of these efforts, noting: The absence of meeting minutes, making it unclear whether the discussions related to the 2022 Finance Bill. The language barrier of radio broadcasts, which excluded non-Maasai speakers. The lack of targeted stakeholder consultation, especially given the tourism sector's significant economic role and direct impact from the changes.
9. In essence, the Petitioners argue that the public participation process was inadequate, non-inclusive, and procedurally flawed.

Directions of the court

10. The Court directed that the appeal be canvassed by way of written submissions, and both parties duly complied by filing their respective submissions.

The Petitioner's Submissions

11. The Petitioner challenged the legality and constitutionality of the Narok County Finance Act, 2022, and the 12-hour rule introduced by the Public Notice of 14th June 2023. They argued that Public participation was inadequate and exclusionary, with alleged consultations being limited to Narok County, poorly publicized, and conducted only in the Maasai language, thus excluding non-Maasai stakeholders, including key tourism players. The Finance Bill was not made available to the public in advance, and there was no evidence that public views were considered before its enactment. The 12-hour rule effectively doubled park fees by reducing validity from 24 hours to 12 hours, imposing economic hardship on tour operators and disrupting pre-booked safaris. The policy shift violated the doctrine of legitimate expectation, lacked notice or consultation, and breached Articles 10, 73, 174, 196, 201, and 209 of *the Constitution* and Sections 87 and 115 of the *County Governments Act*. They emphasized that the Maasai Mara is of national and international economic importance, and stakeholder consultation beyond the county was essential. The Petitioner cited *Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others* [2014] eKLR while referring to the South African decision in *Doctors for Life International vs. Speaker of the National Assembly & Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (cc); 2006(6) SA 416 (CC), *David Wanyeki Kago v Kenya National Examinations Council* [2022] eKLR while quoting the Court of Appeal in *Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* [2018] eKLR, *Court of Appeal in Legal Advice Centre & 2 others v County Government of Mombasa & 4 others* (supra) referred to *Independent Electoral and Boundaries Commission (IEBC) vs. National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR, *Kaps Parking Limited & another v County Government of Nairobi*



& another [2021] eKLR, Robert N. Gakuru & Others vs. Governor Kiambu County & 3 Others (Supra) at paragraph 120-121, the Court of Appeal in Legal Advice Centre & 2 others v County Government of Mombasa & 4 others [2018] eKLR quoted with approval Ngcobo J in Matatiele Municipality and Others vs. President of the Republic of South Africa and Others (2) (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC), Constitutional Petition Nos. 305 of 2012, 34 of 2013 and 12 of 2014 (Formerly Nairobi Constitutional Petition 43 of 2014) Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others [2015] eKLR, Kaps Parking Limited & another v County Government of Nairobi & another [2021] eKLR, and Republic v County Government of Kiambu Ex parte Robert Gakuru & another [2016] eKLR to reinforce the centrality of meaningful public participation and fair administrative action.

12. In conclusion, the Petitioner urged the Court to declare the 12-hour rule unconstitutional, unlawful, and procedurally invalid, and to nullify the impugned provisions for lack of public participation and stakeholder consultation.

The 1st and 2nd respondent submissions.

13. The 1st and 2nd Respondents contended that the Narok County Finance Act, 2022, including the 12-hour ticket rule, was lawfully enacted following adequate public participation and stakeholder engagement: A public notice was published on 26th October 2021 (Daily Nation) inviting submissions and attendance at public forums regarding the Finance Bill 2022/2023. This was supplemented with radio broadcasts on Mayian FM and Emoo FM, and access to the draft bill through the County's website and government offices. Forums were conducted in various wards, with photographs and attendance sheets produced as evidence (Annexures NCFB-3 to NCFB-5). The tourism sector, including the Petitioners, was not excluded and was given the opportunity to participate, but failed to do so. The 12-hour rule was correctly introduced under the 2022 Finance Act, not the 2023 Finance Bill, as the Petitioners mistakenly claimed. The Respondents cited Article 10 of *the Constitution* and Sections 87 and 115 of the *County Governments Act*, along with relevant case law including Law Society of Kenya v 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), Richard Owuor & 2 others (Suing on behalf of Busia Sugarcane Importers Association versus Cabinet Secretary, Ministry of Agriculture Livestock, Fisheries and Cooperatives & 8 others [2020] eKLR, Doctors for Life International v Speaker of the National Assembly & others [2015] eKLR as cited in the case of Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others [2015] eKLR, Nubian Rights Forum & 2 others v Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR, to argue that meaningful participation was achieved.
14. They further argued that the 12-hour rule was a legitimate revenue-raising measure aimed at post-pandemic recovery and better management of the Maasai Mara Reserve. Its implementation was to be progressive, and the Petitioners provided no proof of actual harm or financial loss (e.g., disrupted bookings). The legal threshold for public participation was satisfied, and the Petitioners failed to meet the evidentiary burden under Section 107 of the *Evidence Act*. No constitutional or statutory violations occurred in the enactment or implementation process.
15. In conclusion, the Respondents urged the Court to dismiss the Petition dated 3rd July 2023 with costs, as it was unmeritorious and unfounded.



Analysis and Determination.

16. I have carefully considered the Petition dated 3rd July 2023, the supporting affidavit, the response by the 1st and 2nd Respondents, and the written submissions by both parties. The main issue for determination is whether the Narok County Finance Act, 2022, and the Public Notice dated 14th June 2023 introducing the 12-hour ticket rule were enacted in violation of the constitutional and statutory requirement for public participation and stakeholder consultation.

Legal Framework on Public Participation

17. Public participation is a national value and principle of governance under Article 10(2)(a) of *the Constitution*. It is further reinforced under Article 196(1)(b), which mandates County Assemblies to facilitate public involvement in legislative processes. Sections 87 and 115 of the *County Governments Act*, 2012, specifically require timely access to information and clear communication to enable citizens to effectively engage in county decision-making processes.
18. The jurisprudence of Kenyan courts, including *Robert N. Gakuru & Others v Governor Kiambu County* [2014] eKLR and *Doctors for Life International v Speaker of the National Assembly* (South Africa), affirms that public participation must be meaningful, not cosmetic, and tailored to the subject matter and the affected stakeholders. While there is no fixed format, there must be evidence that the public was reasonably informed and given a genuine opportunity to influence the process.

Whether Public Participation Was Conducted

19. The Petitioners argue that they were not involved in the enactment of the Narok County Finance Act, 2022, which introduced the 12-hour park access rule. They assert that the engagements were limited to vernacular radio announcements and that no effort was made to identify and consult the tourism sector stakeholders who would be directly affected.
20. The Respondents, on the other hand, contend that they complied with the public participation requirement by: Publishing a public notice in the Daily Nation on 26th October 2021 (Annexure NCFB-4); Broadcasting through local radio stations (Annexure NCFB-5); Making the draft Finance Bill available online; Conducting public forums across various wards, evidenced by attendance sheets and photographs (Annexure NCFB-3).
21. However, no minutes or recorded feedback from those forums were placed before this Court to confirm that the Finance Bill was discussed or that input was received and considered. While the public notices and photographs indicate that meetings may have been held, the absence of meeting records or evaluation of comments weakens the claim of meaningful engagement.
22. Furthermore, the use of Maasai-only radio stations, while relevant for local outreach, excluded non-Maasai speaking stakeholders, including national and international tour operators who form a critical part of the Maasai Mara ecosystem. Given the economic and national importance of the Reserve, the Respondents bore a higher duty to reach beyond local forums and actively include affected stakeholders.
23. The Court agrees with the Petitioners that the introduction of the 12-hour rule, which effectively doubled the cost of park access, had significant financial implications. It was not a mere administrative change but a substantive policy shift requiring thorough stakeholder engagement and impact assessment. The failure to consider pre-booked safaris and the resulting economic disruption support the Petitioner's claim of procedural unfairness and a violation of the doctrine of legitimate expectation.



24. The Court also finds merit in the Petitioners’ reliance on Article 209(5) of *the Constitution*, which prohibits county governments from imposing taxes or charges in a manner that prejudices national economic policy or inter-county trade. The timing and implementation of the 12-hour rule, without consideration of ongoing tourism bookings, contradicts these principles.

Conclusion on Public Participation

25. From the totality of the evidence, the Court finds that while the Respondents may be said not to have made sufficient effort toward public participation to measure to the constitutional and statutory thresholds required for meaningful and inclusive engagement, it is also trite that there is no quantification method so far invented which can be objectively utilized to provide the threshold. However, in Kenya, it is commonly held by a plethora of cases that sufficient public participation, as mandated by *the Constitution*, requires a process that is genuine, meaningful, and effective, not merely a symbolic or cosmetic exercise. This means the public must be properly informed. The failure to directly consult the tourism sector, the exclusive use of vernacular language, the absence of meeting records, and the lack of proactive engagement with national stakeholders render the process procedurally deficient.

26. However it is worth taking judicial notice that,, the Narok County Finance Act, 2022, to the extent that it introduced the 12-hour rule, and the Public Notice dated 14th June 2023 enforcing the same, was superseded by the 2023 Act and without impugn subsequent finance bill which matured to Finance Act 2023/2024 renders petition overtaken by event and thus moot.

27. The Kenyan Finance Act, 2022, which was signed into law on, 2022, is the official document that outlines the government’s fiscal policies and revenue-raising measures for the 2022-2023 fiscal year. It’s typically introduced annually alongside the appropriations bill. The Act was published on, 2022, and gazetted in the same, 2022. The Finance Bill, which later becomes the Finance Act, is introduced annually by the government to implement its financial plans. The bill goes through parliamentary review and approval.

28. Once approved by the Assembly, it’s presented to the Governor for assent. The Governor signs the bill into law, officially making it the Finance Act. The Act is published in the official gazette, making it publicly available. The provisions of the Finance Act are then implemented throughout the fiscal year.

29. The Finance Act is superseded by the next Finance Act introduced in the subsequent year.

Disposition

30. In light of the foregoing analysis and having found that the enactment of the Narok County Finance Act, 2022 and the implementation of the 12-hour rule were superseded by Finance Act 2023/2024 which is not impugned in petition, the petition herein is thus overtaken by events and therefore the Court makes the following orders:

- i. The petition herein is dismissed.
- ii. The parties to bear their own costs.

31. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 31ST DAY OF JULY 2025

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CHARLES KARIUKI



JUDGE

