



**Kapsowar Shuttle Savings and Credit Co-operative Society Limited v  
County Government of Uasin Gishu & another (Constitutional Petition  
E025 of 2022) [2025] KEHC 11970 (KLR) (11 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CONSTITUTIONAL PETITION E025 OF 2022**

**RN NYAKUNDI, J**

**AUGUST 11, 2025**

**IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF SECTION 30 (3) OF THE NATIONAL  
TRANSPORT AND SAFETY AUTHORITY ACT NO. 33 OF 2012**

**AND IN THE MATTER OF ALLEGED VIOLATION AND INFRINGEMENT OF  
THE RIGHTS AND FREEDOMS IN ARTICLES 2(1) & {4), 10, 19, 20, 21, 22, 23,  
25(A), 27, 28, 40, 43, 47, 48 AND 259 (1) & (B) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF REGULATION  
NO. 9 OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY  
(OPERATIONS OF PUBLIC SERVICE VEHICLES) REGULATIONS, 2014**

**BETWEEN**

**KAPSOWAR SHUTTLE SAVINGS AND CREDIT CO-OPERATIVE SOCIETY  
LIMITED ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF UASIN GISHU ..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF OFFICER-CO-OPERATIVES & ENTERPRISE DEVELOPMENT,  
UASIN GISHU COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By way of Petition dated 30<sup>th</sup> September 2024 the Petitioner seeks the following orders;



- a. That a declaration do issue that the Respondents violated the rights of the Petitioner and in particular Articles 2 (1) & (4), 10, 19,20,21,22, 23, 25 (a), 27, 28, 40, 43, 47, 48 and 259(1) & (b) of the Constitution of Kenya, 2010.
  - b. A declaration be issued that the unilateral decision taken by the Respondents to evict the Petitioners from their designated parking area located in Eldoret town stage known as behind White Castle Hotel without giving the petitioner an opportunity to be heard and the failure by the Respondents to justly relocate the petitioner to another operational base prior to closing their designated parking area located on Eldoret town stage known as behind White Castle Hotel is unconstitutional, null and void ab initio:
  - c. That an order directing that the Petitioner and its members to operate from their traditional bay at the Eldoret town stage known as behind White Castle Hotel pending any possible relocation to a designated bus/vehicle park by the Respondents.
  - d. That an order directing the Respondents in coming up with the decision to possibly relocate the Petitioner and its members adhere to the constitution of Kenya and any other attendant law.
  - e. An order do issue for adequate compensation for damages jointly and severally against the Respondents on account of their gross violation of the Petitioner's fundamental rights and freedoms as enumerated by the Petitioner.
  - f. The Respondents be and are hereby directed to bear the costs of this Petition jointly and severally.
  - g. Any other relief that this Honourable court shall deem fit by dint of Article 23(3) of The Constitution of Kenya, 2010 and are just to grant in the circumstances
2. The brief description of the parties is that the Petitioner is a duly registered co-operative society under the Cooperative Societies Act, Chapter 490 of the Laws of Kenya. The Petitioner was formally registered by the Commissioner for Co-operative Development on 23<sup>rd</sup> September 2010 and was issued with Certificate of Registration No. CS/12759. The 1<sup>st</sup> Respondent, is the County Government of Uasin Gishu.
  3. The brief background underlying the Petition is that the Petitioner, as one of the very many players in the larger transport sector operates public service vehicles from Eldoret town to various destinations. As at 27<sup>th</sup> November 2023 the Petitioner had a fleet of around 94 such vehicles and further, although the petitioner was formally registered as a co-operative society, its members had been operating the public service vehicles long before the birth of the County Government of Uasin Gishu. The petitioner used to operate from a popular destination within Eldoret town stage known as behind White Castle Hotel. The Petitioner was allocated parking, picking and dropping space behind White Castle Hotel within Eldoret town where it has been operating from and which space was renewed by the 2<sup>nd</sup> Respondent vide a letter dated 19<sup>th</sup> January 2023. According to the Petitioner, the 2<sup>nd</sup> Respondent has since verbally revoked the letter dated 19<sup>th</sup> January 2023, and has informed the petitioners that they will not be allowed to access the designated parking area from 30<sup>th</sup> September 2024, whereas other operators are still allowed to act from the same area/space.
  4. According to the Petitioners, the decision by the Respondents to move the petitioner from along opposite white castle hotel and close it down was made without consulting the public or facilitating public participation and the action was not made for the general good of public. This prompted the Petitioner to file the present Petition.



5. The Petition is founded on Articles 2, 10, 19, 20, 21, 22, 23, 27, 28, 40, 43, 47, 48, 48 and 259 of *the Constitution*. The particulars of the derogation of Constitutional Rights and Freedoms was also set out in the Petition. On denial of economic and property rights, the Petitioner contends that the decision by the 2<sup>nd</sup> Respondent to verbally revoke its license to operate at the designated bus stop as mentioned above is a violation of its economic and property rights and that the same will occasion it great loss and prejudice. Further, that the Petitioner had a legitimate expectation that the Respondent would follow due process in the revocation of its license to operate at the designated bus stop.
6. The Petitioners urged that the decision to close down the Petitioner's parking space; without giving an opportunity of hearing the Petitioner who had been operating therefrom for many years has contravened the petitioner's right to fair administrative action. Further the Petitioner was curtailed from engaging in its lawful endeavours as to earn a decent living by the unilateral closure and the failure to relocate the Petitioner. The Petitioners further stated that the rights of the Petitioner's members to life and human dignity were infringed contrary to Articles 26, 28 and 43 of *the Constitution*. Some of its members have been forced to join other compliant Saccos as to continue being in business and to avoid the immeasurable intimidation. The members' freedom of association under Article 36 of *the Constitution* was curtailed.
7. The Petitioners averred that the right of the petitioners' members not to be discriminated were infringed when it was wrongly targeted by the respondent without any justification whatsoever. Its rivals parking bays were not targeted for closure.
8. There was no response on record by the Respondents.
9. The petitioners filed an application seeking conservatory orders on the same date and the same were granted. The petitioner was directed to serve the respondents with the petition and the parties were directed to file submissions on the Petition thereafter.
10. Learned Counsel for the Petitioner filed submissions dated 7<sup>th</sup> November 2024 whereas the Respondents did not enter appearance or file submissions.

### **Petitioners' submissions**

11. On whether the Petition has met the threshold for a constitutional petition, counsel urged that it is necessary to consider whether the petition satisfied the threshold set out in the cases of Anarita Karimi Njeru v The Republic [1979] eKLR Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR. He urged that the Petition has met the minimum requirements of a constitutional petition.
12. The deponent averred that the 1<sup>st</sup> Respondent was under constitutional/statutory duty and obligation to regulate public transport such as parking and where to drop off and pick up passengers within Eldoret town. That the requirement that passengers be picked up and dropped off at a designated area was provided for in section 30 of the *National Transport and Safety Authority Act* 2012. That the provision was also replicated in the regulations of the national Transport and Safety Authority (Operation of Public Service Vehicles) Regulations. He urged that under regulation 9, it was provided that every conductor or any other staff member employed to work in the vehicle at all times will ensure that they do so at a designated place. He reiterated that the decision by the Respondents to evict the Petitioner from their designated parking area was made without consulting the public or facilitating public participation. To that extent, the petitioner's complaints and or allegations were justified. The action was not made for the general good of the public.



13. The Petitioner's case is that it is now widely accepted that the objective in involving the public in the decision-making process is that the concerns of the public are taken into account whenever decisions are being made by those in positions of authority. This promotes the legitimacy and hence the greater acceptance of the decision that is arrived at. He placed reliance on the case of *Doctors for Life International v Speaker of the National Assembly & Others* (CCT12/05(2006) ZACC 11(2006) (12) BCLR 1399 (CC); 2006(6) SA 416(CC) in this regard. Further, he submitted that the importance of public participation has been quoted in the case of *George Ndemo Sagini v Attorney General & 3 others* [2017] eKLR; *Okiya Omtatah Okoiti v Commissioner General Kenya Revenue Authority & 2 others* [2018] eKLR among others. That the cited decisions will show that the Respondents herein failed the public participation test and the impugned decision to evict the Petitioners is therefore null and void for not adhering to the constitutional process for decision making.
14. Counsel submitted that from the record, there was no public participation in the decision to evict the petitioners from their designated parking areas and lack of such public participation that ought to have been initiated by the Respondents was a breach of the Petitioner's constitutional rights. Counsel urged that the petitioner's assertions have been proved to the required standard.
15. Counsel urged that the Petitioners have confirmed that their Rights to equality under article 27, of *the Constitution* were violated, and that they were being treated differently from similar Saccos operating same business. That Article 27 of *the Constitution* embodies the principle of equality and non-discrimination. He cited the case of *Federation of Women Lawyers Fida Kenya & 5 others vs Attorney General & anor* [2011] eKLR in this regard. Counsel urged that the respondents owed the petitioners a legal duty of providing it with a certificate indicating where it had been allowed to pick up and drop passengers. Counsel reiterated that the Respondents evicted the Petitioners from their designated parking area yet it had facilitated the rival Sacco with the documentation and allowed them to continue operating from the same spot which act was in itself discriminatory.
16. Counsel posited that the Respondents are liable to pay the Petitioners adequate compensatory damages for the inconveniences caused by the Respondents actions. The Petitioners had been operating from the designated parking area with the full knowledge and authority of the Respondents for a long time prior. The Respondents never ever suggested that the petitioner's occupation was illegal. He submitted that the High Court had, power to grant any appropriate relief in proceedings under articles 22 and 258 of *the Constitution*. He submitted that an award of compensation would go some distance toward vindicating the infringed constitutional right. How far it went would depend on the circumstances, but in principle, it could well not suffice.
17. Counsel urged the court to allow the Petition with costs.

### **Analysis & Determination**

18. The following issues arise for determination;
  - a. Whether the Petition meets the threshold for a Constitutional petition and if so,
  - b. Whether the Petitioner's Constitutional Rights were violated

### **Whether the Petition meets the threshold for a Constitutional Petition**

19. The Petitioner approached this court under a plethora of provisions of *the constitution*, alleging infringements of articles 2(1) & {4), 10, 19, 20, 21, 22, 23, 25(a), 27, 28, 40, 43, 47, 48 and 259 (1) & (b) of *the Constitution*. Before delving into the provisions of the aforementioned provisions, the court must first address the issue of the threshold of a Constitutional Petition.



20. The threshold for constitutional petitions was set in the case of Anarita Karimi Njeru –vs The Republic (1979) eKLR where it was held that constitutional petitions should set out with a reasonable degree of precision the petitioner’s complaint, the provisions of *the constitution* alleged to have been infringed and the manner in which those provisions of *the constitution* have been infringed. Similarly, in the case of Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others (2013) eKLR the Court of Appeal stated that:-

“It is our finding that the petition before the High court was not pleaded with precision as required in Constitutional petitions. Having reviewed the petition and Supporting Affidavit we have concluded that they did not provide adequate particulars of the claims relating to the alleged violation of *the Constitution* of Kenya and the Ethics and Anti- Corruption Commission Act, 2011, accordingly the Petition did not meet the standard enunciated in the Anarita Karimi Njeru Case”

21. From the pleadings, the petitioner contends that the 1<sup>st</sup> Respondent issued a letter allocating it a parking spot in Eldoret town opposite White Castle Hotel on 19<sup>th</sup> January 2023. There was a copy of the letter annexed to the supporting affidavit to the Petition, sworn by one Philip Cheptoo, the chairman of the Petitioner. They further contended that the letter was revoked, verbally, by the 1<sup>st</sup> Respondent. However, the Petitioner never mentioned which officer of the 1<sup>st</sup> respondent made this verbal revocation to begin with. Further, there is no evidence of the verbal revocation that was presented to the court and the petitioner did not even provide a date when this said revocation occurred.

22. A cardinal requirement of the law is that whoever alleges must prove. The *Evidence Act* Cap 80 at Section 107 (1) aptly captures this requirement by providing thus:

“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”

23. This obligation was reaffirmed by the Supreme Court in Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others (2020) KLR where it held as follows:

“

“(49) Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

[50] This Court in Raila Odinga & Others v. Independent Electoral & Boundaries Commission & Others, Petition No. 5 of 2013, restated the basic rule on the shifting of the evidential burden, in these terms:

“...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”

24. As the alleged violations emanate from the revocation of the allocation of parking space in the central business district, it was upon the petitioner to provide cogent evidence that there was an actual revocation. I have considered the evidence on record and the averments of the Petitioner and I find



that the Petitioner has failed to satisfy the burden of proof. There is no evidence that the alleged action occurred and therefore the Petition is dead on arrival.

25. As the Petition does not meet the basic threshold for a constitutional petition, the same is dismissed. The Respondents have never participated in the matter and therefore, on the issue of costs, each party shall bear its own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11<sup>TH</sup> DAY OF AUGUST 2025**

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**R. NYAKUNDI**

**JUDGE**

