REPUBLIC OF KIMETULIK

IN THE HIGH COURT OF KIMETULIK

PETITION NO. E003 OF 2024

IN THE MATTER CONCERNING THE ALLEGED CONTRAVENTION OF THE PRINCIPLES OF PUBLIC FINANCE AND THE VIOLATION OF HUMAN RIGHTS

BETWEEN

KIMETULIK HUMAN RIGHTS COMMISSION.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF TREASURY AND PLANNING..... 2ND RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE.....3RD RESPONDENT

1. Kimetulik is a sovereign and constitutional republic well known for its transformative and progressive constitution. The country takes pride in the protection of fundamental rights and freedoms, as well as the promotion of a democratic and accountable governance system. It is located on the Eastern side of the Mao continent, bordered by Lassie to the North, Luhu to the South and Seveni to the West. Its capital city, Wahala, is renowned for its cosmopolitan vibe and its significance as Kimetulik's economic hub. Kimetulik is a developing state with a Gross Domestic Product (GDP) of approximately 95.5 Billion USD to which the Agricultural Sector contributes 30%.

2. Notably, 1% of agricultural growth is estimated to drive 1.6% overall GDP growth. The sector accounts for 80% of national employment, mainly in the rural areas and contributes more than 60% to the total export earnings that translates to about 45% of government revenue and provides for most of the country's food requirements. The sector is estimated to have a further indirect contribution of nearly 27% of GDP through linkages with manufacturing, distribution and other service-related sectors. As per a 2022 World Bank Report, Kimetulik's population experiences a growth rate of about 2.3% annually, with 71% residing in rural areas and 54.7% dwelling in Informal Settlements. Of the total population, 50% are farmers who specialise in the growth of maize which is the main staple food of the state as well as a major export product.

3. Kimetulik is a member of the **United Nations**, the Mao and East Mao regional trading bloc, maintaining amicable relations with neighbouring countries. It has also affirmed its commitment to various international instruments, including the **International Covenant on Civil and Political Rights** (ICCPR), the **International Covenant on Economic, Social and Cultural Rights** (ICESCR) and the **Mao Charter on Human and People's Rights** (MCHPR)

alongside its subsequent protocols, such as the Protocol to the **Mao Charter on the Establishment of the Mao Court on Human and Peoples' Rights, the East Mao Community (EMC) Treaty and the EMC Monetary Union Protocol.** Further, Kimetulik participates in international forums organised by the **Organisation for Economic Cooperation and Development** (OECD), **Mao Tax Administration Forum** (MTAF) and **East Mao Revenue Authority Technical Committee** (EMRATC).

4. Kimetulik has a 35% internet penetration rate, fostering widespread connectivity and extensive internet usage. This surge in internet adoption has given rise to e-platforms that facilitate various government operations in Kimetulik. Additionally, the increased popularity of internet usage has contributed to the establishment of a significant social media presence in the country. Notably, 90% of the population actively participates in crucial governance discussions via online campaigns on various social media platforms, with a particular emphasis on X, providing a platform for individuals to voice their concerns.

5. According to Kimetulik National Treasury Reports, 96% of its revenue is generated through taxation. The Kimetulik Revenue Authority (KRA) was established in 1995 as a significant step towards optimal realisation of the tax revenue in President Muva's regime. The key mandate was described as ensuring the appropriate and ready collection of taxes for, *inter alia*, the efficient and timely provision of social welfare services for the citizens of Kimetulik. This institution continues to operate up to date, despite a consistent trail of mismanagement and allegations that it is the most corrupt government institution. The country has witnessed gradual changes within its tax administration and policy system. However, the tax system in Kimetulik faces several difficulties, resulting in a shortfall in revenue collection. Notably,

Kimetulik's revenue generation remains lower than the targeted 25 % of GDP set by the East Mao Community for the EMC Monetary Union, despite the significant efforts made by the Government to revamp the tax structure. Specifically, the proportion of ordinary revenue in relation to GDP has exhibited a downward trend over the past decade, dropping from 18.2% in the fiscal year 2013/14 to 13.8 % in the fiscal year 2020/21.

6. The promulgation of the Constitution of Kimetulik, 2010 (The Constitution) ushered in a new era under the leadership of President Kisham. His ten-year tenure has subsequently been hailed by various leaders, within and beyond the country, for the massive economic growth. In fact, Kimetulik's GDP is reported to have grown by 8.1% in 2010. Among its most notable features, the Constitution brought into focus key issues relating to the guarantee of socio-economic rights including the right to housing, food, education and health under Article 43. Chapter 12 of the Constitution was fully devoted to Public Finance wherein it specifies principles of public finance which tax laws, administrative processes and procedures are expected to be adhered to.

7. To achieve the full implementation of this chapter 12, parliament passed into law **the Public Finance Management Act, 2012, the Public Finance Management Regulations, Tax Appeals Tribunal Act, 2013 and Revised the Kimetulik Revenue Authority Act**. To maximise the effectiveness of the reforms brought about by the Constitution, several independent commissions were established including: **the Ethics and Anti-Corruption Commission, the Commission on Revenue Allocation, the Controller of Budget and the Office of the Auditor General.** The Public Debt Management Office was also established within the National Treasury, in light of the need to balance the revenue collected with the expenditure incurred.

8. Under President Kisham's Administration, the economic landscape transformed significantly by 2011. He introduced Kimetulik's inaugural long-term development plan, Maono 2030, which outlined crucial focus areas and mega projects. The plan's pillars were based on various principles including: macroeconomic stability; governance reforms and equitable wealth creation for the less privileged; infrastructure development; energy sustainability; and advancement in science, technology and innovation. These initiatives were expected to not only enhance the economy's productive capacity, but also to generate substantial employment opportunities through increased demand for goods and services. Consequently, the government's budget surged significantly from Ksh 328 billion to a staggering Ksh 1.4 trillion in 2012, a surge that was not commensurate with the observed GDP growth.

9. In order to bridge the resulting budget gap, foreign borrowing doubled and domestic borrowing more than tripled. Concerns were raised by the IMF, warning that Kimetulik was spending beyond its means thereby jeopardising the economic stability. Economists in Kimetulik emphasised in a published report that the account deficit had steadily increased over the decade, reaching Ksh 804 billion, with exports standing at only Ksh 511 billion and imports totalling Ksh 1.3 trillion. This situation was likened to a household earning Ksh 30,000 per month but incurring monthly expenses of Ksh 75,000.

10. By the fiscal year 2021/2022, the government's fiscal deficit had soared to Ksh 930 billion, necessitating substantial borrowing. Within the budget allocation, the agricultural sector received a meagre Ksh 65 billion, whereas a staggering Ksh 183 billion was allocated to energy and infrastructure. Many economists viewed this as irresponsible borrowing and expenditure, particularly in non-priority and non-profitable areas. Given the historical context of infrastructure spending in Kimetulik, concerns were raised about the potential for budgetary

corruption, including the overpricing of tenders and the hiring of ghost workers. Kimetulik citizens expressed apprehension about the budget allocation, highlighting concerns about government accountability.

11. Furthermore, there were reservations regarding the sustainability and viability of the infrastructure projects, given the observed lack of profitable returns. Recommendations were made to allocate more resources to vital economic drivers such as the agricultural sector, with the aim of mitigating the impact of droughts and fostering its stability. As of 2022, during the elections, the public debt had surged to an unprecedented Ksh 8.5 trillion, with certain concessional debts, like the Eurobond, set to mature by 2024. Additionally, the Office of the Auditor General reported that 70 out of every 100 taxes collected were being utilised to service the debt.

12. During the 2022 elections, primary focus was given to enhancing the economy, as the incumbent president pledged to allocate Ksh 50 billion in credit to disadvantaged individuals at the bottom of the economic pyramid. Nonetheless, apprehensions arose regarding the practicality of this promise, given the mounting public debt, which had now reached Ksh 8.66 trillion. In 2023, it was anticipated that the Zaki administration would significantly reduce new borrowing, emphasising the ramping up of tax collections. Other measures also expected included cutting costs in the recurrent expenditure and while foreign travel was halted and fuel costs for the government's fleet of vehicles was reduced, there was an increment in civil servants' salaries by 20%.

13. Despite these efforts, loans amounting to Ksh 452 billion were secured in the first six months of the year, more than the Ksh 434.6 billion that its predecessor borrowed in the same period a year earlier and this was attributed to heightened spending under the Bottom-Up economic plan which prioritised

sectors conducive to job creation and wealth generation. President Zaki's key agenda was to establish the country's foundation on solid financial principles, rooted in raised tax revenues rather than debt reliance. In an interview, he highlighted the need to boost revenue collection and decrease the debt burden, citing the exemplary tax reforms during President Kisham's tenure, which propelled tax revenue from Ksh 200 Billion to Ksh 1 Trillion.

14. On April 28, 2023, aligning with these objectives, the Kimetulik Treasury Cabinet Secretary presented the Finance Bill, 2023 to Parliament, proposing amendments to various tax laws. The Bill aimed to modify several tax laws, including the Income Tax Act, VAT Act, Excise Duty Act, Tax Procedures Act, 2015 and Miscellaneous Fees and Levies Act. Key points of contention include a proposal for a mandatory 3% deduction from employees' monthly salaries, matched by employers, for a National Housing Development Fund, capped at 5,000 shillings. The government's intent was to construct affordable housing, create jobs and support low-income individuals, yet critics argued it would force savings and weaken consumer buying power. Additionally, the Bill suggested doubling the fuel value-added tax to 16%, raising concerns about increased retail costs and elevated prices for goods and services. It also entailed higher excise duty rates, such as a 20% deposit requirement for disputed taxes at the KRA, which was previously met with public protests.

15. Moreover, the proposed bill planned to raise the highest personal income tax rate to 35% from 30% for individuals earning over 500,000 shillings per month. This move drew criticism from the opposition for its perceived discriminatory nature and potential to dampen consumer spending. Conversely, the bill proposed elimination of taxes on helicopters and aircraft and reduced tax rate on rental income from 10% to 7.5%, with proponents arguing these changes could boost tourism and air travel. However, critics

saw this as a move by the government to favour the wealthy. Additionally, the bill sought to amend the Income Tax Act, by introducing a Section that imposed minimum tax at the rate of 1% of a business' gross turnover regardless of whether a business was making profits or losses. Opponents argued that this provision was discriminatory as it tilted the scale in favour of large companies which would be least bothered by the fees to be paid while small and medium enterprises who would most certainly be forced to pay income tax from capital investment.

16. In an effort to address the growing demand for quality public services, the government announced several new tax and levy measures through various press releases. These measures were designed to generate revenue to support the government's efforts to improve service delivery and to mitigate the impact of the rising cost of living on various sectors of the economy. Key among these was the Ministry of Education which introduced revised fee structures for higher education institutions. These revisions included increased bursaries and student loans from the Higher Education Loans Board, specifically targeting low-income students to ensure that financial constraints did not hinder their pursuit of higher education.

17. The revised fee structure resulted in a significant increase, from an average of 30,000 shillings per year to 100,000 shillings per year. This sparked concerns among residents of Kimetulik, who feared that the higher fees would lead to a decline in university enrolment. In response, the government issued circulars announcing the availability of free courses at technical colleges, also known as TVETs. This initiative aimed to expand employment opportunities for students and stimulate job market growth. Despite the opening of universities, reports indicated that over 75% of the student population had not enrolled. Many students were forced to remain at home and discontinue their education.

Parents expressed concerns about the situation, attributing the rise in fees to mismanagement of funds within the education sector.

18. In order to ensure public participation for the Bill, the government released an email for submission of suggestions and opinions for a period of 9 days from Kimetulik Citizens. Moreover, on social media, citizens started a hashtag, **#salvagetheeconomy** where more dissent was registered. A total of 140 submissions from stakeholders objected to the finance bill in its entirety. On specific sections, the housing levy was opposed by 87 participants. A prominent politician emphasised disagreement concerning the Finance Bill 2023 through this post on X:



19. Furthermore, findings from a survey conducted by civil society organisations revealed that over 90% of Kimetulikans were opposed to the Finance Bill, 2023. Notably, the survey also highlighted that more than 38% of the participants expressed approval for the suggested inclusion of small businesses, whose daily earnings average Ksh 1,370, into the Turnover Tax framework. As per the proposal, these businesses would be required to pay 3% of their revenues,

regardless of their profitability, if the Bill were approved. Some organisations wrote a report highlighting alternative revenue-raising strategies such as reducing the wage bill, cutting tax expenditures and broadening the tax base to include informal income earners.

20. There were also calls to widen the tax base by including informal income earners. In an example given, a mason who earns Ksh 1,200 per day would cumulatively earn Ksh 31,000 if he worked for 26 days and should be included in the tax bracket but due to ineffective tax administration, he/she escapes tax payment. Moreover, another issue of concern raised was that the bill had not been subjected to the preliminary examination by the Speaker of the Senate. In a letter addressed to the Speaker of the National Assembly, the speaker of the senate stated in part, '*The Finance Bill is not only a bill that concerns county governments but also fundamentally affecting the operations of the senate and therefore requiring the input of the Senate.*' In response to the dissent registered, the Deputy President, Mr. Rigs was heard stating in a meeting that *'Whether you like it or not, the finance bill shall be passed.'*

21. During this time, a 2023 report by Uzima International estimated that Kimetulik had lost about KShs 30 Billion per year worth of tax to tech multinational companies. The report also highlighted that Gigi, a multinational tech company in Kimetulik was engaging in profit shifting in various countries. KRA had been closely watching Gigi's financial operations and their suspicions were heightened when they discovered that Gigi's Kimetulikan subsidiary, Soso Kimetulik, was paying its employees significantly lower salaries than their counterparts in other countries. This disparity raised concerns that Gigi was artificially reducing its taxable profits in Kimetulik. The KRA through thorough investigation uncovered that Gigi had been routing its Kimetulikan profits

through an intricate network of subsidiaries in low-tax jurisdictions, effectively by-passing its tax obligations in Kimetulik. The KRA filed a lawsuit against Meta, seeking to freeze the company's assets and recover the evaded taxes. The case is currently still ongoing but has been riddled with unnecessary delays.

22. On 15 June, 2023 the budget proposals given had reached a startling Ksh 6 Trillion. Ksh 1.5 trillion has been earmarked for recurrent expenditure, Ksh 718 billion for development while Ksh 986 billion would go into servicing public debt. Notably, the agriculture sector experienced a decrease in allocation by Ksh 10 Billion while the infrastructure sector had received an increase by Ksh 60 Billion. This measure potentially widened the gap in support for the struggling agricultural sector and led to the removal of subsidies on fertilisers that further exacerbated the challenges and a significant increase in the cost of essential food items. Reports by key stakeholders indicated a lack of tangible benefits for citizens despite the high tax contributions and concerns were raised about the inequitable distribution of resources, with funds being directed towards debt servicing and non-beneficial areas, further aggravating the plight of the economically vulnerable.

23. Additionally, a leaked report by the Office of the Auditor General expressed concern on the lack of accountability and transparency in the budget proposals. Relying on the report, Opposition leader, Mr Kuna Kuna took to twitter with the following post;



24. In a bid to ensure effective implementation in the collection of the proposed taxes the CS ICT, introduced digital IDs dubbed Tenje Namba that would serve as a digital identity for all citizens of Kimetulik and also ensure effective tax collection by the KRA. In a speech by the CS ICT, he defended the move stating failure to register would lead to denial of government services. In response many citizens registered out of fear rather than understanding. The Government initiated the implementation of digital IDs across various regions of the country. The registration process commenced with a widespread enrolment campaign at designated registration centres manned by registration officers. During registration, individuals were required to complete a data capture form, gathering details such as their profession, residence, postal address, Global Positioning Systems (GPS) coordinates and biometric data.

25. However, concerns quickly arose among citizens and data experts regarding the substantial data amassed for the Tenje Namba program and how the government planned to safeguard such sensitive information regarding the collection and processing of this data. The Data Commissioner, took a proactive step by conducting a Data Protection Impact Assessment (DPIA) to evaluate

the potential risks. Upon the release of the DPIA report, it was also revealed by unidentified sources in the Office of the Data Commissioner, that there had been no audit conducted by any independent body. Approximately a month later, the e-Citizen platform, which serves as the primary access point for numerous government services, experienced a security breach. Initially downplayed by the government, it was later confirmed that the e-Citizen portal, facilitating over 5,000 government services, had been subjected to a cyber-attack. This incident raised apprehensions among data experts regarding the substantial data amassed for the Tenje Namba program and how the government plans to safeguard such information.

26. The government emphasised that without a Tenje Namba card, citizens would be unable to access government services by December 2024. The President elucidated that the Tenje Namba initiative aimed to streamline and unify citizens' personal data under a single identification number to enhance the efficiency of service delivery and reduce corruption cases. Amidst various challenges, issues of relevant legislation, public participation, data human impact assessment (DPIA), and the adequacy of technological infrastructure (such as WIFI coverage and electricity) were crucial elements that needed careful examination and resolution. As the government pushed forward with the Tenje Namba initiative, citizens were left grappling with uncertainty, demanding answers to these pressing questions and seeking reassurance about the security, transparency, and overall viability of the proposed digital ID system.

27. Despite dissent offered, parliament passed the Finance Bill in July 2023 and the president assented to the bill in August, 2023. This was preceded by a statement by President Zaki that if any parliamentarian failed to vote on the Bill, they would be heavily sanctioned. Following the enactment of the Finance Act of

2023, there was a notable increase in the cost of Living. This made it difficult for many Kimetulikans to afford basic necessities such as food, shelter and healthcare. The Cost of Fuel rose by Ksh 30 to Ksh 220 per litre. The prices of commodities also went up with cooking oil retailing at Ksh 455, an increase by Ksh 50 while sugar retailed at Ksh 155 per Kg from Ksh 139 at the beginning of the year.

28. Moreover, the 2023 Report on Global Food Crisis highlighted that a total population of 14.1 million Kimetulikans experienced insufficient food consumption as of November which was a 4.3 million increase from the previous month. This was attributed to constant drought, inflation of food prices and a decrease in available income to purchase food. These combined factors were directly linked to policy adjustments targeting the offset of Kenya's debt crisis including the Finance Act of 2023 and the misallocation and misprioritisation of budgetary funds.

29. On 23 November, Hundreds of Kimetulikans assembled in Wahala, protesting against the soaring cost of living that burdened households striving to make ends meet. Prior to the demonstration, the opposition, led by Mr. Kuna Kuna, announced a series of protests dubbed '*Maandamano Wednesdays*' where he emphasised that the planned protests would align with the Constitutional right to peaceful assembly. Despite the notice of the protests submitted a week earlier the National Police service wrote to the opposition, 22 hours before the planned protest that the demonstration would be illegal and that it posed a challenge to ensuring security within Wahala. The protests began peacefully but later turned violent with protesters chanting war songs, throwing stones, charging at police officers and vandalising property. The police responded by forcefully dispersing demonstrators, armed with anti-riot gear, truncheons, water cannons and tear gas.

30. Security officers set up roadblocks leading to the central business district in Nairobi and attempted to disperse the demonstrators using teargas, firing bullets and making arrests. Security forces were deployed to disperse any gatherings, as police declared the demonstrations illegal. The protestors who were carrying sufurias, empty packets of sugar and flour, traversed Wahala Central Business District (CBD) and terminated their protests at the office of the CS National Treasury. Notably, the protests resulted in significant infrastructural damage, including railway stations and the Wahala Expressway. Additionally, during the demonstrations, certain individuals, under the pretext of being protesters, engaged in acts of theft within the CBD causing widespread fear and insecurity.

31. According to Human Rights Watch, about 30 people were seriously injured and 2 killed by the police in the demonstrations. Some protesters were also arrested by police and charged with taking part in an illegal assembly in Wahala and later released on bond of 100 USD. However, despite multiple reports by civil society organisations and the media, the National Police Service has not taken responsibility for any injuries by its officers and has further denied the use of excessive force during the demonstrations.

32. Following several complaints brought by the members of the public, Kimetulik Human Rights Commission filed a case before the High Court of Kimetulik on 11th March, 2024 seeking adjudication over the following matters:

a. **Whether the government imposed excessive tax obligations on its citizens and failed to follow due process in the enactment of the Finance Act of 2023 in violation of the principles of Public Finance in the Constitution, International Laws and all other applicable laws;**
b. **Whether the government met its obligation to respect, fulfil and protect the citizens' enjoyment of the socio-economic rights under Article 43 of the Constitution and other relevant International Laws;**
c. **Whether the government adhered to the Constitution and data protection regulations in implementation of the Digital ID in Kimetulik;**
d. **Whether the police used excessive force against protestors in Wahala in violation of their obligations under the Constitution and International law**

TAKE NOTICE;

1. All Laws in the Republic of Kimetulik are analogous to the Laws in Kenya.

2. All Laws in Mao and East Mao Continent are analogous to the Laws of Africa and East Africa.

3. You are required to prepare cogent submissions for both the petitioner and the respondents addressing the issues of jurisdiction and admissibility.