

UPDATE ON NaMATA Petition 94 of 2018: Wanjiru Gikonyo v Attorney General & CS Transport & 5 Others

Ms Wanjiru Gikonyo, the National Coordinator for The Institute of Social Accountability (TISA) moved to court on 14th March 2018 challenging the constitutionality of Nairobi Metropolitan Area Transport Authority (NaMATA) that was created by Legal Notice No 18 of 2017. The overall concern that triggered this litigation is that the national government is using NaMATA to clawback on devolution by unconstitutionally and unprocedurally assigning functions assigned to county governments by the constitution to NaMATA which is a State Corporation. NaMATA, as created, has serious deleterious implication on devolution and the functioning of county governments. It is another effort by the national government to illegally and irregularly re-centralize governance contrary to the provisions of the constitution.

2 years after filing the petition and written submissions in support of the petition, the case is yet to be heard due to numerous adjournments.

Through Katiba Institute lawyers, Ms. Wanjiru filed an application dated 12th March, 2019 asking the court to refer the case to the Chief Justice for the appointment of an uneven number of judges to determine the case because it raises substantial questions of law as follows:

- a. Whether the Petition is an Intergovernmental dispute falling for resolution under the Intergovernmental Relations Act, 2011 or if indeed the Petition properly invokes the court's "interpretation" jurisdiction under Article 165(3)(d)(ii) and (iii).
- b. Whether the subject matter of the Petition is justiciable or is a political question which falls under the executive's mandate.
- c. Whether Kenya's constitutional set up is unitary or federal.
- d. And in view of (c) above, if or not the establishment of the NaMATA authority upset Kenya's federal constitutional design.
- e. Whether NaMATA authority upsets the principle of devolution of powers under Article 10 and interferes with the powers, functional integrity and constitutional status of county governments.
- f. Whether the NaMATA authority deflates the revenue-earning powers of county governments from county transport function.

On 3rd April 2020, the High Court delivered its ruling that allowing the application for the appointment of an uneven number of judges to determine the case will only end up in delaying the hearing and determination of the case.

We continue to pursue this matter in Court. We shall keep members of the public updated on the outcome.

The ruling can be accessed on the link below

<http://kenyalaw.org/caselaw/cases/view/192844/>