



**Egg Traders Association of Kenya v Director of Veterinary Services & 6 others
(Petition E007 of 2022) [2023] KEHC 20947 (KLR) (30 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 20947 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E007 OF 2022**

**JN KAMAU, J
MAY 30, 2023**

BETWEEN

EGG TRADERS ASSOCIATION OF KENYA PETITIONER

AND

DIRECTOR OF VETERINARY SERVICES 1ST RESPONDENT

KENYA REVENUE AUTHORITY 2ND RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF TRADE &
INDUSTRIALISATION 3RD RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF IMMIGRATION
SERVICES 4TH RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF EAST AFRICAN COMMUNITY &
REGIONAL DEVELOPMENT 5TH RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK
FISHERIES AND IRRIGATION 6TH RESPONDENT**

THE HON ATTORNEY GENERAL 7TH RESPONDENT

JUDGMENT

Introduction

1. In its Petition dated and filed on March 25, 2022, the Petitioner herein sought the following orders:-
 - a. A declaration that the (sic) imposing taxes on table eggs and poultry products imported from member states of the East African Community was illegal.



- b. An order barring the 2nd Respondent from further collection of 25 percent tax on table eggs imported from member states of the East African Community.
 - c. An order compelling the 2nd Respondent to allow free flow of goods and services across the borders of East African Community member states.
 - d. An order of permanent injunction restraining the respondents from subjecting the Petitioner and its members to any further unfair tax collection regime.
 - e. A declaration that table eggs should be exempted from taxes because they were categorised as food products which were exempted from taxes in East African Community region.
 - f. Any other relief that this court deem just and fit.
 - g. Costs of the suit and interests thereon until payment in full.
2. The prayer that had sought orders seeking to quash the Finance Act, 2021 on the basis that it was illegal, unconstitutional and was against the Customs Union principles of the EAC and COMESA. On April 4, 2022 this court granted an interim order suspending Section 32 (a) (4) of the Finance Act, 2021 pending hearing and determination of this Petition was spent.
 3. The Petitioner's Written submissions were dated and filed on November 10, 2022 while those of the 2nd Respondent were dated January 18, 2023 and filed on January 20, 2023. The 1st, 3rd, 4th, 5th, 6th and 7th Respondents did not file any submissions as they did not actively participate in the proceedings. The Judgment herein is therefore based on the said Petitioner's and 2nd Respondent's Written Submissions.

The Petitioner's Case

4. Julius Masinde, the Chairman of the Petitioner swore an Affidavit in support of the Petition on March 25, 2022.
5. The Petitioner stated that it was a registered association of table eggs importers of poultry products from Uganda which were sold locally in Kenya and that vide a memo dated January 4, 2021, the 1st Respondent issued a directive suspending the importation of all chicken and table eggs.
6. It contended that the said directive was aimed at cushioning the local producers against the negative economic effects of the Covid-19 pandemic that led to a reduction in the consumption of food stuff as a result of closure/scaling down in the hotel industry. It added that since the local producers were unable to meet the local demand for table eggs, the ban was silently lifted sometimes in November, 2021.
7. It pointed out that following the implementation of the Finance Act 2021, a twenty five (25%) percent tax was imposed on all table eggs imported from the East African Community (EAC) member states. However, this was done without its participation or that of the public or that of other players in the importation of table eggs.
8. It stated that being the tax collection agency of Kenya, the 2nd Respondent continued to collect the twenty five (25%) percent tax on eggs imported from Uganda in spite of it having been lifted and that as a result of the imposed levy, it was forced to pass on the additional cost to the consumer. It was its assertion that action forced many of its members out of business as they could not afford or sustain the additional monies deducted as tax on their imported products. It added that the additional tax caused the price of eggs to sky rocket making the sales to dwindle as consumers could no longer afford to pay the inflated price.



9. It further contended that with the easing of the Covid-19 restrictions, normalcy had resumed in the country especially in the hotel industry and as a result the consumption rate of table eggs had increased and the demand was very high. It pointed out that table eggs fell under the category of food stuff which was exempted from tax across the EAC region and that the actions of the Respondents in collusion or omission were in contravention of the Petitioner's right to trade freely within the member states of the EAC.
10. It was its contention that the Respondents' actions were in contravention of the spirit, values and aims of the EAC organisation which aimed at improving the ease of doing trade between member states and that the implementation of the twenty five (25%) percent tax on imported eggs was unfair, discriminatory in nature and against the principles of the EAC that allowed for free movement of goods and services across the borders of its members states.

The 2nd Respondent's Case

11. In opposition to the Petition herein, on April 20, 2022, Josephine Mugure, an officer under Section 13 of the [Kenya Revenue Authority Act](#), Cap 469 (Laws of Kenya) and attached to the 2nd Respondent's Corporate Policy Unit swore a Replying Affidavit on behalf of the 2nd Respondent herein. The same was filed on April 22, 2022.
12. The 2nd Respondent asserted that the importation of chicken meat and eggs by the 1st Respondent had nothing to do with the imposition of excise duty and that the 1st Respondent did not in any way involve tax legislation in trying to enforce its agendas but that it had unique statutes which deal with agriculture to implement the same. It pointed out that its mandate was to enforce tax statutes like [excise duty Act](#) which was an instrument that could be used to influence social behaviour and also promote revenue collection.
13. It averred that the provisions the Petitioner cited were properly enacted and were subjected to public participation and that there was no nexus between collection of excise duty on imported eggs and the suspension and thus it was misleading for the Petitioner to aver that the imposition of excise duty ought to have stopped when the ban on the imports was lifted. It added that the Petitioner had not produced any evidence to prove that the imposition of tax had negatively affected its business and that the excise tax was a consumption tax which was passed over to the final consumer and was not borne by the members of the Petitioner.
14. It was its contention that the aim of the tax was to ensure that imported eggs were competitively priced so that the local farmers did not suffer. It asserted that it was not for the court to appraise the decision to place the tax on an item, as the same remained a policy issue which fell outside the jurisdiction of court. It added that nothing had been placed before the court to show that the prices were not competitive but had skyrocketed.
15. It contended that the Petitioner had not shown which provision of the East Africa Community Customs Management Act (EACMA) had been infringed by the imposition of the excise duty on imported eggs. It pointed out that the Petitioner had also failed to provide the law which prohibited partner states of EAC from levying excise duty on food stuff and that in fact, the First Schedule of the [Excise Duty Act](#) showed that tax was imposed on several items such as imported potatoes, imported onions, imported pasta, imported sugar and confectionary, imported chocolates amongst others.
16. It asserted that restriction was always on outbound goods which were not supported to attract duty at the point of exit but not on inbound goods which attracted duties at different rates in all member states. It further stated that the Petitioner had not shown how the tax was unfair and how the imposition of



duty on imported eggs led to unfair trading condition on its part. It added that discrimination under Article 27 (sic) related to persons and not items and that the excise duty on all imported eggs as such could not be said to be discriminatory as it did not only relate to eggs from Uganda but to all countries.

1st And 6th Respondent's Case

17. In response to the Petition herein, Dr Obadiah Njagi, a Director of the 1st Respondent swore a Replying Affidavit on behalf of the 1st and 6th Respondent on August 24, 2022. The same was filed on August 25, 2022.
18. The 1st Respondent asserted that neither he nor the 6th Respondent had not imposed any tax with respect to table eggs or any other animal matter. The 1st Respondent asserted that the directive he had issued restricting the importation of table eggs and chicken was lifted in January 2021. He was emphatic that the Petition herein had not disclosed any reasonable cause of action against him and the 6th Respondent herein.

Legal Analysis

19. Having considered the Petition and the Petitioner's and 2nd Respondent's Written Submissions, it appeared to this court that the issues that had been placed before it for determination were:-
 - a. Whether or not the Petitioner's constitutional rights had been infringed upon;
 - b. If so, was it entitled to any reliefs;
 - c. If so, what reliefs was it entitled to; and
 - d. Who was to bear the costs of this Petition
20. The court therefore deemed it prudent to address the aforesaid issues under the following distinct and separate heads.

I. Constitutional Rights And Fundamental Freedoms

21. The Petitioner invoked Articles 118, 201 (b) (i), and 232 (1) (d) of *the Constitution* of Kenya, 2010 and submitted that the essential steps in organising public participation included identifying key stakeholders, including those directly affected and who could offer solutions, making contact with key stakeholders and inviting them for meetings or to make submissions and making site visits where necessary.
22. It asserted that the 2nd Respondent (sic) was duly registered under the *Societies Act* Cap 108 (Laws of Kenya) and was a major stakeholder in the table eggs market with members across the country and therefore its views ought to have been considered by inviting the officials for public participation. It added that though the 2nd Respondent stated that Section 32 (a) (4) of the Finance Act, 2021 was subjected to public participation, it did not annex any evidence to prove that its members were invited to any such forum where discussions concerning the taxation on imported eggs were discussed (sic).
23. It contended that it was trite law that he who alleges must prove. In this regard, it invoked Section 107 of the *Evidence Act* Cap 80 (Laws of Kenya) that provides that he who asserts must prove and Section 108 of the *Evidence Act* that provides that the burden of proof in a suit or proceedings lies on the person who would fail if no evidence was given by either side.
24. It also placed reliance on the cases of Ndegwa (Suing on his own behalf, in the public interest and on behalf of other bar owners' in Nyandarua County) vs Nyandarua County Assembly & Another[2021]



- KEHC 299 (KLR) and Nairobi Metropolitan PSV Saccos Union Limited & 25 Others vs County of Nairobi Government & 3 Others [2013]eKLR where the common thread was that any law that was inconsistent with *the Constitution* was void to the extent of the inconsistency and that any act or omission in contravention of *the Constitution* was invalid.
25. It was emphatic that the process that was used during enactment of the said Act Finance Act, 2021 was flawed as per the dictates of *the Constitution* and should be annulled on that basis.
 26. It further invoked Article 2(5) and 10 of *the Constitution* and contended that the effect of the aforesaid provisions made EAC and COMESA Regulations part of the laws in Kenya. It asserted that Kenya was a member of EAC and COMESA and hence the 2nd Respondent ought to have considered the tariffs that were imposed on goods within member states as any taxed that was imposed had to be at the same level as those of other member states. It asserted that the 2nd Respondent acted ultra vires in imposing extra/more taxes on table eggs. It added that the 2nd Respondent could not bypass the constitutional threshold that was set for the enactment of laws and that to the extent that they had done so, the laws enacted were unconstitutional particularly when one considered the provisions of Article 2 (4) of *the Constitution*.
 27. It further cited Article 201 (b) (i) of *the Constitution* and argued that the Finance Act, 2021 was unfair and discriminatory in that it only targeted the importers and not the local producers who operated in the same industry of selling table eggs thus giving the local producers an upper hand in terms of pricing. In this respect, it relied on the cases of Stanley Waweru-Chairman & 3 Others (Suing as Officials of Kitengela Bar Owners Association); The National Assembly & 2 Others (Respondent)[2021] KEHC 455 (KLR) and Samura Engineering Limited & Others vs Kenya Revenue Authority [2012]eKLR where the holdings were that as a state agency, the 2nd Respondent herein had a duty to treat taxpayers fairly subject to the requirements of good management, non-discrimination and ensure that there were no favourites or sacrificial victims.
 28. It also relied on the case of Nelson Andayi Havi vs Law Society of Kenya & 3 Others [2018]eKLR where it was held that *the Constitution* prohibits unfair discrimination. It was emphatic that the Section 32(a) (4) of the Finance Act, 2021 was unfair, discriminating against it and was therefore contrary to Article 27 of *the Constitution*. It thus urged this court to allow its Petition.
 29. On its part, the 2nd Respondent submitted that although the Petitioner pleaded that its rights under Articles 43 and 50 of *the Constitution* and Article 13 of the Customs Union Protocol of the East African Community Treaty had been infringed upon, it failed to show how the Respondents had infringed those rights.
 30. It contended that the rule in matters of allegations of infringement or violation of rights was that the rights and alleged infringements had to be stated with specificity and particulars of the violation must be given.
 31. In this regard, it placed reliance on the cases of David Mathu Kimingi vs SMEC International PTY Limited [2021] eKLR and Mohamed & 2 Others vs Director of Public Prosecutions & 2 Others; Mwapashua (Interested Party) [2022] KEHC 53 (KLR) where the common thread was that a person who alleged breach of fundamental rights had to prove violation.
 32. It asserted that the Petitioner had failed to demonstrate how the rights of an accused person under criminal proceedings in Article 50 and how member rights to education or reproductive health care as provided for under Article 43 of *the Constitution* had been violated. It added that the same argument applied to the rights allegedly provided under the Customs Union Protocol and the Common Market Protocol, 2009.



33. It further submitted that the rule of specificity in part emanated from the rebuttable presumption that a statute was constitutional until proved otherwise as was held in the cases of *Alex Kyalo Mutuku & 7 Others vs Ethics and Anti-Corruption & 2 Others* [2016] eKLR and *Okiya Omtatah Okoiti vs Attorney General & Another* [2018] eKLR. It asserted that the Petitioner had failed in rebutting the said presumption and there was therefore no need for the court to engage in an academic exercise of trying to see whether the provisions were justifiable.
34. It further cited the case of *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR where it was held that failure to specifically demonstrate an alleged violation of rights was detrimental to a petition and was not curable by a court's leniency and disposition to look the other way.
35. It pointed out that it was apparent that the Petitioner and its members were inconvenienced by the provisions but that inconvenience was not a violation of a constitutional right which would entitle this court to interfere with government policy. It added that the court was only entitled to nullify a government tax policy only in instances where a constitutional violation had been satisfactorily established.
36. To buttress its argument, it relied on the case of *Mark Obuya, Tom Gitogo & Thomas Maara Gichuhi Acting for or on Behalf of Association of Kenya Insurers & 5 Others vs Commissioner of Domestic Taxes & 2 Others* [2014] eKLR where it was held that in the absence of a specific violation of *the Constitution*, the court could not question the wisdom of legislation or its policy.
37. It argued that although this court was capable, it should not suffer the burden of having to weigh the merits or demerits of policy taking upon itself the onerous duty of engaging in profound deliberations on the social, political, economic impacts of policy, balancing delicately the different interests of the public and private business spheres and attempting to best the administrative and managerial minutiae that was concomitant to the process of formulating and reviewing government policy.
38. In this respect, it referred this court to the cases of *Kenya Union of Domestic, Hotels, Education Institutions and Hospital Workers (Kudheih Workers Union) vs Kenya Revenue Authority & 3 Others* [2014] eKLR and *Commission for the Implementation of the Constitution vs Parliament of Kenya & 5 Others* [2013] eKLR where the courts held that whether or not the policies pursued by the Acts were proper was not a matter for the court but one for the legislature.
39. It further submitted that on 5th May 2021, the National Assembly published the Finance Bill, 2021 which had been published in line with the recommendation of the public participation forums undertaken by the National Treasury and that after undergoing the first reading, the Finance Bill was referred to the Departmental Committee on Finance and National Planning on its consideration of the Bill.
40. It pointed out that the provisions herein were subjected to deliberations at the Departmental Committee meetings with the general public which included members of the private sector. It averred that the members at the meeting then gave their recommendations through a Memorandum which was considered by the Departmental Committee before the rate of duty was settled on.
41. It asserted that the provisions were also debated on the floors of parliament where democratically elected representatives duly considered and made presentations on the same. It noted that the aforesaid steps were sufficient public participation in enactment of the Finance Act, 2021 as held in the case of *Basco Products (K) Limited & 4 Others vs National Assembly & 3 Others; Kenya Association of Manufacturers (Interested Party)* [2022] KEHC 168 (KLR).



42. It was emphatic that it was evident that there was public participation as the Respondents provided an opportunity for members of the public including the Petitioner to give recommendations on the proposed provisions before they were enacted into law and hence, the provisions of the Finance Act, 2021 were constitutional. It urged the court to dismiss the Petition herein for failing to meet the threshold as required by law.
43. On the one hand, the Petitioner submitted that the provisions of the Finance Act, 2021 were illegal as the same were not subjected to public participation, contrary to the provisions of *the Constitution*. On the other hand, the 2nd Respondent averred that the excise duty on imported eggs was introduced at a public participation, discussion fora and was based on the recommendation from the public discussion forum that the amendment was picked and later subjected to discussions at the floor of the Parliament as such the same could not be said to have not gotten sufficient public discussion.
44. Article 10 (2)(a) of *the Constitution* of Kenya provides that the national values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people (emphasis court).
45. Article 118 of *the Constitution* of Kenya further stipulates that parliament shall conduct its business in an open manner, and its sittings and those of its committees shall be in public and that it shall also facilitate public participation and involvement in the legislative and other business of Parliament and its committees.
46. Further, Article 201 of *the Constitution* of Kenya sets out the principles that guide all operations of public finance in Kenya which include and is not limited to operations, accountability and public participation in financial matters. In particular, Article 201 (b) (i) of *the Constitution* of Kenya provides that the public finance system shall promote an equitable society by ensuring that the burden of taxation is being shared equally.
47. In addition, Article 232 (1) (d) of *the Constitution* of Kenya provides the values and principles of public service which include the involvement of the people in the process of policy making and (f) transparency and provision to the public of timely and accurate information.
48. Notably, under Articles 94(1), 109 and 210 (1) of *the Constitution* of Kenya, in every year Parliament enacts the Finance Act to sanction measures and impose taxes to raise national revenue.
49. The 2nd Respondent furnished this court with the Report on Consideration of the Finance Bill, 2021 by the National Assembly Twelfth Parliament (Fifth Session) dated June 24, 2021 and minutes of 35th, and 37th sittings of the Departmental Committee on Finance and National Planning that were held on 2nd and June 3, 2021. Several members of parliament were in attendance of the meetings where the Finance Bill, 2021 was deliberated upon. The documents showed that over fifty (50) stakeholders participated in the meetings to discuss the Finance Bill, 2021.
50. It was evident that the National Treasury embarked on the budget process on October 20, 2021 when in an advertisement in all local dailies of national circulation, it invited members of the public to submit taxation proposals that the Cabinet Secretary for the National Treasury and Planning to consider while preparing the National Budget for the Financial Year 2021/2022.
51. On 5th May 2021, the National Assembly published the Finance Bill, 2021. It underwent the First Reading whereupon it was referred to the Departmental Committee on Finance and National Planning for consideration. It was subjected to deliberations at the Departmental Committee meetings with the general public, which included members of the private sector.



52. The participants who were present at the meeting gave their recommendations through a Memorandum which was considered by the Departmental Committee before the rate of duty was settled on. The Parliamentary Committee considered all submissions made by the various stakeholders and resolved that so as to promote the local farmers and producers, excise duty on imported eggs would be levied at twenty five (25%) per cent. Thereafter the Bill was presented for Assent to H.E the President on June 29, 2021 in accordance with the provisions of *the Constitution* and the National Assembly Standing Orders. The Petitioner did not rebut these facts and the same therefore remained uncontroverted.
53. It was therefore this court's considered view that the National Assembly did conduct public participation on the provisions and took the views of the public into account as well as those of members of the National Assembly who were the duly democratically elected leaders of the Kenyan people and were tasked the constitutional mandate to enact laws on behalf of the people of Kenya.
54. Turning to the question of violation of fundamental freedoms and rights that have been enshrined in *the Constitution* of Kenya, Article 22(1) of *the Constitution* of Kenya, 2010 provides that every person has a right to institute proceedings claiming that a right or fundamental freedom in the Bill of Rights had been denied, violated or infringed or was threatened.
55. The threshold of a constitutional petition was clearly formulated in the case of Anarita Karimi Njeru vs The Republic (1976-1980) KLR 1272 where it was held that a petitioner was required to set out the constitutional provisions which he or she believed to have been violated or threatened and the manner in which the respondent had violated the same. It was not enough for the petitioner to cite the provisions without demonstrating how they were infringed upon.
56. Although the Petitioner herein pleaded that the Respondents had violated its rights as enshrined in Article 13 of the Customs Union Protocol (Non-tariffs barriers to trade of the EAC Treaty, Common Market Protocol, 2009 of the EAC and Articles 43 and 50 of *the Constitution* of Kenya, it did not demonstrate what the violation was as was envisaged in the case of Anarita Karimi Njeru vs The Republic (Supra). The Articles the Petitioner relied upon were expansive making it difficult for this court to establish which exact was being complained against so as to consider and analyse the same with a view to arriving at a concrete determination.
57. Notably, the Petitioner did not show the nexus between the imposition of the twenty five (25%) excise duty on imported table eggs and the highest attainable standard of health, which includes the right to health care services, including reproductive health care, accessibility and adequacy of housing, reasonableness of standards of sanitation; freedom from hunger, adequacy of food of acceptable quality; cleanliness and safety of water in adequate quantities, social security, education, provision of emergency medical treatment or the responsibility of the State to provide appropriate social security to persons who were unable to support themselves and their dependants which were the economic and social rights that were guaranteed under Article 43 of *the Constitution* of Kenya.
58. Further, it did not demonstrate, show and/or explain the relevance and/or connection between the right to fair trial or rights of accused persons as stipulated under Article 50 of *the Constitution* of Kenya and the imposition of the twenty five (25%) per cent excise duty on imported table eggs. There was no evidence that it was denied an opportunity to have any of its dispute resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body as provided in Article 50 (1) of *the Constitution* of Kenya.
59. If the Petitioner's intention was to show that its members' economic and social rights had been affected by the imposition of the twenty five (25%) per cent tax, then the same was not demonstrated at all



because economic hardships could have been caused by a myriad of factors including the Covid- 19 pandemic and the economics of supply and demand. There was no documentation that was presented before this court that could lead it to conclude that the said excise tax impoverished the Petitioners' members to the extent that their rights under Article 43 or Article 50 of *the Constitution* of Kenya had been infringed upon, violated and/or that the same were threatened.

60. The Finance Act, 2021 and the rate of taxation was a policy decision solely within the mandate of the Executive and enacted by Parliament take precedence over the provisions of the COMESA Treaty alluded to by the Petitioner. The Finance Act was a crucial piece of legislation that impacted on the entire budget of a particular year and if it was interfered with, then the same had the potential of affecting government operations and development programs.
61. Going further, Articles 10, 201, 209, and 210 of *the Constitution* of Kenya provides for imposition of tax as a mandatory obligation. This is a display of sovereignty of the people of Kenya. Reliance on this proposition is placed in the case of Timothy Njoya & 17 others vs Attorney General & 4 others [2013] eKLR where it was held the people of Kenya were sovereign and determined how they wished to be governed held and that Article 210 had no exclusion or exemption in matters of taxation and that deviations which were subject to judicial scrutiny ought not be such as to deprive citizens of fair, transparent and effective tax regimes which are applicable to all in equal measure.
62. Imposition of taxes could not therefore in itself be said to be a breach or violation of one's rights. It is a necessary evil and a vessel though which enables governments all over the world to respect, promote and fulfil the fundamental rights envisioned under the Bill of Rights under *the Constitution* of Kenya and other recognised human rights instruments.
63. The mere fact that the Finance Act caused an increase in the egg prices did not in itself render the legislation unconstitutional. The Petitioner failed to disclose how *the Constitution* of Kenya or its rights and/or fundamental freedoms had been violated and/or breached by the government in a measure that had been taken to cushion local egg sellers from the effects of the Covid pandemic while raising revenue through enactment of taxation measures.
64. It did not also demonstrate how the excise duty of twenty five (25%) per cent was unfair tax burden and/or discriminatory. Indeed, imposition of tax by legislation that has been duly enacted pursuant to public participation as envisaged in *the Constitution* of Kenya and the collection of such tax could not be said to amount to infringement of the constitutional right or freedom.
65. Indeed, it was not dispute that it was within the authority of the National Assembly to enact legislation governing the manner in which a particular form of tax is administered including the manner in which it was imposed, calculated and enforced. Consequently, it did not breach its Parliamentary role in enacting the provision the Petitioner complained of.
66. It is trite law that he who alleges must prove. The Petitioner failed to demonstrate the unconstitutionality of the impugned provisions. This court therefore found that the reliefs sought were unwarranted and a grant of the same would be contrary to the interest of the greater public. To the contrary, this court was persuaded to find and hold that the imposition of taxes in the Finance Act did not in any way amount to deprivation of Petitioner's right or its members' rights as alluded to by the Petitioner.
67. If it had intended to argue the case for lack of public participation by citing the right to fair trial under Article 50 (1) of *the Constitution* of Kenya, it did not assist its case at all as this court found and held that the 2nd Respondent did not violate the provisions relating to public participation because its duty was to collect taxes after the laws were passed by the Legislature.



68. In the premises, this court found that Section 32 (a) (4) of the Finance Act, 2021 was properly enacted and that there was no violation of Articles 43, 50, 118 and 201 of the Constitution or any other provisions of the Constitution.

II. Reliefs

69. The 2nd Respondent did not submit on the issue of costs. This court had due regard to the case of Consumers Federation of Kenya (COFEK) vs Nakumatt Holdings Limited & 4 others [2018] eKLR where the court stated that courts have been reluctant to award costs in constitutional petitions as costs may be a barrier to potential litigants in public interest litigation but that there were instances where courts have held an award of costs would be justified such as where the litigation was frivolous or vexatious or where the conduct of the litigant attracted censure by the court. In this case, the Petitioner had not done anything to warrant such censure by the court as it truly appeared to have been aggrieved by the imposition of the twenty five (25%) per cent tax.

Disposition

70. For the foregoing reasons, the upshot of this court's decision was that the Petitioner's Petition dated and filed on March 25, 2022 was not merited and the same be and is hereby dismissed. In view of the fact that the Respondents were all government entities, each party will bear its own costs of this Petition.

71. It is so ordered.

DATED and SIGNED at KISUMU this 25th day of May 2023

J. KAMAU

JUDGE

DATED, SIGNED and DELIVERED at KISUMU this 30th day of May 2023

M.S SHARIFF

JUDGE

PETITION NO E007 OF 2022	0
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