



REPUBLIC OF KENYA



Okoti & 6 others v Cabinet Secretary for the National Treasury and Planning & 3 others; Commissioner-General, Kenya Revenue Authority & 3 others (Interested Parties) (Constitutional Petition E181, E211, E217, E219, E221, E227, E228, E232, E234, E237 & E254 of 2023 (Consolidated)) [2023] KEHC 25873 (KLR) (Constitutional and Human Rights) (28 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25873 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E181, E211, E217, E219, E221,
E227, E228, E232, E234, E237 & E254 OF 2023 (CONSOLIDATED)
DAS MAJANJA, CW MEOLI & LN MUGAMBI, JJ
NOVEMBER 28, 2023**

BETWEEN

**OKIYA OMTATAH OKOITI 1ST PETITIONER
ELIUD KARANJA MATINDI 2ND PETITIONER
MICHAEL KOJO OTIENO 3RD PETITIONER
BENSON ODIWOUR OTIENO 4TH PETITIONER
BLAIR ANGIMA OIGORO 5TH PETITIONER
VICTOR OKUNA 6TH PETITIONER
FLORENCE KANYUA LICHORO 7TH PETITIONER**

AND

**THE CABINET SECRETARY FOR THE NATIONAL TREASURY AND
PLANNING 1ST RESPONDENT
THE HON. ATTORNEY GENERAL 2ND RESPONDENT
THE NATIONAL ASSEMBLY 3RD RESPONDENT
THE SPEAKER NATIONAL ASSEMBLY 4TH RESPONDENT**

AND

**COMMISSIONER-GENERAL, KENYA REVENUE AUTHORITY INTERESTED
PARTY**



THE SENATE INTERESTED PARTY
CONSUMERS FEDERATION OF KENYA INTERESTED PARTY
KENYA EXPORT FLORICULTURE, HORTICULTURE AND ALLIED WORKES
UNION INTERESTED PARTY

RULING

1. The court has issued a Judgment today, November 28, 2023 declaring certain sections of the *Finance Act, 2013* unconstitutional. These include Sections 76 and 78 of the *Finance Act, 2023* amending Section 7 of the *Kenya Roads Act, 1999*; Section 87 of the *Finance Act, 2023* amending Section 28 of the *Unclaimed Assets Act, 2011* and sections 88 and 89 of the *Finance Act, 2023* which repeals section 21 of the *Statutory Instruments Act*, Section 84 of *Finance Act, 2023* which amends the *Employment Act*.
2. Upon reading of the Judgment, counsel for the 3rd and 4th Respondents made an oral application for stay and or conservatory orders to stay the effect of the Judgment. This position was supported by the other respondents. The petitioners opposed the applications.
3. We have considered the parties' arguments and take the following view of the matter. We have no doubt that this court had jurisdictions to grant orders of stay or conservatory orders pending appeal even when it has declared provisions of the law unconstitutional. This is part of the court's power to frame relief taking into account the circumstances of the case.
4. We are cognisant of the fact that an order of unconstitutionality has far reaching effects not only on individuals but also the public and the operations of the State. As this was an informal application, the court could not interrogate the facts upon which the arguments were made.
5. We are also of the view that we do not have the last word on the matter at hand. The Respondents are entitled to exercise their undoubted right of appeal to the Court of Appeal and thence to the Supreme Court. In order to enable the Respondents' review their position in light of the judgment we have rendered, we are inclined to grant an order of stay for a limited period.
6. We now grant the following orders:
 1. An order of stay be and is hereby issued staying the effects of the Judgment issued today, November 28, 2023 pending the filing of a formal application for stay/ conservatory orders in the Court of Appeal.
 2. The orders of stay shall remain in force until January 10, 2024.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER, 2023.

DAS MAJANJA

JUDGE

C MEOLI

JUDGE

LN MUGAMBI

JUDGE

