



**Okoiti v National Assembly & another (Petition E278 of 2021) [2022] KEHC 13185 (KLR)
(Constitutional and Human Rights) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E278 OF 2021
HI ONG'UDI, J
SEPTEMBER 30, 2022**

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

AND

NATIONAL ASSEMBLY 1ST RESPONDENT

KENYA REVENUE AUTHORITY 2ND RESPONDENT

JUDGMENT

1. The petition dated July 14, 2021 was filed under Articles 3(1), 22(1) & (2)(c), 23, 48, 50(1), 159 and 258(1) & (2)(c) of the Constitution for alleged contravention and violation of Articles 1(1), 2(1), (2) & (3), 3(1), 10, 19, 20, 21, 24, 73, 93(2), 94(4), 95, 109(1), 114(2), 118, 124, 201, 209 and 259(1) & (3) of the Constitution and the alleged violation of rights and fundamental freedoms under Articles 27, 40, 43, 46, and 47(1) of the Constitution.
2. Accordingly the petition seeks the following orders: -
 - i. A declaration that:
 - a. The National Assembly sneaked the 20% excise duty on imported pasta into the Finance Bill, 2021, and the same was enacted without public participation.
 - b. The National Assembly had no capacity in law, at the Committee of the Whole House when the Bill was read a Third and final time, to effect the new substantive amendment to the Finance Bill 2021, imposing the 20% excise duty on pasta.
 - c. By sneaking the 20% excise duty on imported pasta into the Finance Bill, 2021, the National Assembly violated Articles 1(1), 2(1) (2) & (3), 3(1), 10, 24, 27, 40, 43, 46, 47, 73, 93, 94,



109(1), 114, 118, 124, 201, 209 and 259(1) & (3) of the Constitution of Kenya 2010; Sections 3, 4 and 5 of the Fair Administrative Action Act, 2015; and Sections 4, 5, 6, 7, and 8 of the Statutory Instruments Act, 2013.

- d. The imposition through the Finance Act, 2021 of the 20% excise duty on imported pasta is unlawful and unconstitutional and, therefore, invalid, null and void ab initio.
- e. The respondent should pay the petitioner's costs of this suit.
- ii. An Order:
 - a. Quashing the imposition of the 20% excise duty on imported pasta through the Finance Act, 2021.
 - b. Permanently prohibiting the imposition of the 20% excise duty on imported pasta through the Finance Act, 2021.
 - c. Compelling the respondent to pay the petitioner's costs of this suit.
- iii. Any other relief the Court may deem just to grant.

The Petitioner's case

3. The petition was supported by the petitioner's affidavit sworn on July 14, 2021, and a further affidavit dated September 26, 2021 in response to the respondents' answer to the petition.
4. The crux of the petition is that the Finance Act, 2021 was amended imposing a 20% excise duty on imported pasta under tariff number 1902. It is claimed that this amendment was not subjected to public participation. Additionally it is stated that the amendment will increase the cost of imported pasta affecting its accessibility to Kenyans who depend on it. Essentially the petitioner contends that the impugned amendment is unconstitutional.
5. The petitioner averred that the Finance Bill, 2021 published in the Kenya Gazette Supplement No 86 on May 5, 2021 sought to amend several tax laws. It was accordingly read a first time on May 11, 2021. He deposes that, Sections 23, 24, 25 and 26 in the published Bill which made proposals to amend the Excise Duty Act, 2015 did not propose to impose any duty on imported pasta. Further, that the advertisement by the Clerk of National Assembly calling for public participation on the Finance Bill did not state that the impugned amendment would be considered.
6. He deposes that the Bill's memorandum of objects and reasons did not mention that the Excise Duty Act was among the statutes to be amended. That despite this, the Finance Act, No 8 of 2021 was assented to on June 29, 2021 and published in the Kenya Gazette on June 30, 2021 including the impugned amendment. It's his disposition that the impugned excise duty was imposed when Clause 25 of the Finance Bill was amended on the floor of the National Assembly by the committee of the whole house when the Bill was read for a 3rd and final time. This he asserts was done after the Bill had already been subjected to public participation which contravenes standing order 133 (5).
7. He avers that in the National Assembly's departmental committee on Finance and National Planning's report on the consideration of the Finance Bill, 2021, no reference was made on the imposition of excise duty on imported pasta in the comments and memoranda it received from the public and stakeholders on the amendments to the Excise Duty Act, 2015. These were some of the new amendments proposed under paragraph 420(e)(ii) in the report.
8. Further, he avers that the report did not show any evidence that the amendments were approved by the Cabinet Secretary in compliance with Article 114(2) of the Constitution. He adds that the traders and



consumers of imported pasta were not given an opportunity to be heard as required by the Constitution and various statutes. He further depones that the amendment was discriminatory as others had been given an opportunity to be heard on their amendments, and yet this one was not.

9. Furthermore, the petitioner depones that the tax is unreasonable to the extent that the consumer will buy the imported pasta at more than double its cost on the international market making the tax regime unreasonable, unjustifiable, and punitive. He avers that charging excise duty on pasta is a deliberate violation of Article 43(1) (a), (c), & (d) of the Constitution, hence unconstitutional.

The Respondents' case

The 1st respondent's case

10. The 1st respondent in opposition to the application and petition filed its undated grounds of opposition stating that:
 - i. It is not in the public interest to grant conservatory orders.
 - ii. Under Articles 94 (1), 109 and 210 (1) of the Constitution, Parliament, in every year, enacts the Finance Act to sanction measures and impose taxes to raise national revenue making it a crucial piece of legislation that impacts on the whole budget of a particular year.
 - iii. The Finance Bill (National Assembly Bill No 18 of 2021) was read a first time on May 11, 2021 and thereafter committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127 of the National Assembly Standing Orders and proposed amendments to various laws, including the Excise Duty Act, 2015.
 - iv. On May 20, 2021 the National Assembly facilitated public participation of the Finance Bill, 2021 by placing an advertisement in both the Standard and Daily Nation newspapers asking for memoranda from stakeholders.
 - v. On 2nd and June 4, 2021 the Committee on Finance and National Planning held public hearings on the Finance Bill, 2021 at Trademark Hotel, Village Market, wherein the Committee heard further views from stakeholders and the public. As such the petitioner has not discharged his burden to demonstrate that there was no public participation on the Finance Act, 2021.
 - vi. Under Article 209 of the Constitution, the legislature retains wide authority to define the scope of taxation through a statute. In view of this relying on the case of Mark Obuya, Tom Gitogo & Thomas Maara Gichuhi Acting for or on Behalf of Association of Kenya Insurers & 5 others v Commissioner of Domestic Taxes & 2 others [2014] eKLR the manner in which the tax is defined, administered and collected is a matter for Parliament to define and so not for the Court to interfere with merely because the petitioner opposes to the imposition of the impugned tax.
 - vii. Since the government's main source of revenue is taxes declaring the impugned amendment unconstitutional is a serious issue with grave ramifications because it will impact on the entire budget for the year 2021/2022 and affect operations of the government.
 - viii. Taxes are a form of raising revenue sanctioned by the Constitution and so mere imposition of taxes cannot be unconstitutional. In light of this the petitioner has not demonstrated how his rights were violated.



- ix. The rate of taxation is a policy decision solely within the mandate of the Executive and enacted by Parliament and so this Court ought to decline to make policy decisions which are solely within the realm of the other arms of Government.
 - x. Statutes enacted by the Parliament pursuant to its mandate under Article 94 of the Constitution, are presumed constitutional and fair and so the burden to prove otherwise falls on the person who alleges contrary.
 - xi. The petitioner has misled this Court by alleging that the impugned amendment was introduced at the floor of the House. That the petitioner fails to differentiate between Committee amendments and floor amendments.
 - xii. In passing the Finance Act, 2021, the National Assembly adhered to its own internal procedures when considering the amendments and no reasons have been given for the court to interfere with the manner in which the House conducts its business as was affirmed by the Supreme Court in Advisory Opinion Reference 2 of 2013; Speaker of the Senate & another v Attorney-General & 4 others [2013] eKLR.
 - xiii. The petitioner has not demonstrated that he will suffer any prejudice if the interim orders sought are not granted since the dispute revolves around a quantifiable issue that can be refunded by the relevant Authority in the instance that Judgment is issued in their favour as the Tax Procedures Act provides for refund mechanisms under Section 36 to which the petitioner may seek to be refunded.
 - xiv. It is evident that the petitioners' application and petition focus on narrow and economic interests as opposed to the general public interest.
 - xv. In enacting the Finance Act, 2021, the National Assembly was carrying out its legislative functions as opposed to administrative functions and so enacting of a law does not fall within the purview of Article 47 of the Constitution and the Fair Administrative Actions Act.
 - xvi. The petition has not disclosed how the Constitution has been violated by the State raising revenue through enactment of taxation measures neither has the petitioner adduced any evidence to demonstrate that his rights were infringed by the enactment of the Finance Act, 2021. Hence the petition lacks merit and ought to be dismissed.
11. The 1st respondent further filed its replying affidavit dated August 31, 2021 sworn by Michael Sialai, CBS, the Clerk of the National Assembly who simply reiterated and expounded on the contents of it's grounds of opposition.

The 2nd respondent's case

- 12. The 2nd respondent filed a replying affidavit sworn by its officer, Maurice Oray on August 18, 2021. He avers that under Section 5(1) of the Kenya Revenue Authority Act, the 2nd respondent is an agency of the government for the collection and receipt of all revenue. As such it is mandated to enforce the provisions of the Income Tax Act Cap 470, Value Added Tax Act, 2013, East African Community Customs Management Act and the Excise Duty Act, 2015.
- 13. He deposes that the impugned amendment on imported pasta was first introduced at a public participation discussion forum. As such the impugned amendment was based on the recommendation from the public discussion forum which was thereafter picked and presented to the floor of the House for debate. This to him was sufficient public participation.



14. He deposes that on October 20, 2020, the National Treasury embarked on the budget process and invited members of the public via an advertisement in all local dailies to submit taxation proposals which the Cabinet Secretary for the National Treasury and Planning would consider while preparing the National Budget for the Financial Year 2021/2022. He avers that these taxation proposals are usually processed in the Finance Bill every financial year.
15. It followed that on May 5, 2021, the National Assembly published the Finance Bill, 2021 which had been prepared in line with the recommendation of the public participation forums undertaken by the National Treasury. The Bill was thereafter referred to the departmental committee on Finance and National Planning which proceeded to consider it and undertake public participation as outlined in the 1st respondent's replying affidavit and reiterated in this affidavit.
16. He avers that the aim of taxation is to encourage local consumption and local produce, which is the purpose of the excise duty. Moreover, he states that the impugned amendment is not substantive as excise duty was already in existence save for the excise rate on imported pasta. He avers that the excise duty was outlined as one of the agendas of the public participation forum. Additionally he deposes that Standing Order 132 allows for introduction of new clauses to a Finance Bill at the committee stage and it has not been demonstrated that the National Assembly acted outside its mandate.
17. In light of this, he deposes that the impugned amendment was in compliance with Article 210 of the Constitution. That grant of the orders sought would occasion prejudice to the public. Moreso it will put pressure on local industries which the law sought to protect.

The Petitioner's submissions

18. The petitioner filed written submissions dated July 30, 2021. On the first issue, on whether he had locus standi, he submitted that the Constitution allows public interest litigation pursuant to Article 22(1) & 2(c) and 258(1) & 2(c) of the Constitution. In support he cited the case of *Albert Ruturi, JK Wanywela & Kenya Bankers' Association v The Minister of Finance & Attorney General and Central Bank of Kenya Civil Application No 908 of 2001* where it was held that in constitutional questions, human rights cases, public interest litigation and class actions any person or social action groups, acting in good faith, can approach the court seeking judicial redress for a legal injury case or threatened to be caused to a defined class of persons represented or for a contravention of the Constitution, or injury to the nation. Additional reliance was placed on the case of *John Harun Mwau and 3 Others vs Attorney General and 2 others [2012] eKLR* and *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others Civil Appeal No 290 of 2012*. He submits that this matter is public interest litigation.
19. On whether this Court has jurisdiction to entertain this matter, he submitted that under Article 165 (6) of the Constitution, the High Court has supervisory jurisdiction over other bodies. Further that the jurisdiction of this Court to hear and determine issues concerning the violation of fundamental rights is anchored in Article 165(3)(d) of the Constitution. To buttress this point, the case of *Judicial Service Commission v Gladys Shollei and Another [2014] eKLR* was cited where it was held that Article 23(1) & Article 165(3) (b) of the Constitution grants the High Court powers to hear and determine questions involving redress of violations or infringement or threatened violations of fundamental rights and freedoms in the Bill of Rights. As such he submits that this Court has jurisdiction to entertain this matter.
20. Turning to the next issue, the petitioner argued that the respondents did not produce any evidence to demonstrate that the 1st respondent complied with Article 114(2) of the Constitution which requires that the Assembly proceed only in accordance with the recommendation of the relevant committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.



In the premise, he argued that the impugned tax is invalid since it was imposed in violation of Article 114(2) of the Constitution.

21. On the issue of public participation, the petitioner submitted that there was absolutely no public participation on the introduction and implementation of the impugned excise duty on imported pasta. He argued that Article 10(1) and (2) of the Constitution were violated to the extent that the 1st respondent sneaked in at the last minute substantive amendments to the Finance Bill 2021 on the floor of the House after the Bill had already been subjected to public participation.
22. He further submits that Article 118(1) of the Constitution states in plain language that Parliament should conduct its business in an open manner. That its sittings and those of its committees should be open to the public and facilitate public participation and involvement as held in the case of Kenya Human Rights Commission v Attorney General & another [2018] eKLR.
23. To support the point on public participation similar reliance was placed on the case of Nairobi Civil Appeal No 224 of 2017 – Independent Electoral and Boundaries Commission & Others vs The National Super Alliance & Others, among others.

The petitioner as such argued that the respondents had not adduced any evidence in this Court to prove, that the recommendations to impose the impugned tax were subjected to any form of public participation.

24. On the next issue he submitted that the impugned tax violates Articles 24, 43(1)(c) and 47(1) of the Constitution. The reason being that imposition of the excise tax on pasta will dramatically increase its cost and put access to it out of reach for many of Kenyans violating Article 43(1)(c) of the Constitution which declares that every person has the right to be free from hunger, and to have adequate food of acceptable quality. In essence he argued that to the extent that the impugned tax violates Articles 24 and 43 of the Constitution, then its implementation violates Article 47(1) of the Constitution which requires that administrative action should be expeditious, efficient, lawful, reasonable and procedurally fair.
25. In the same way, he submitted that the impugned amendment to the Finance Bill, 2021 was enacted in contravention of the Statutory Instruments Act, 2013, by failing to subject the statutory instrument to requisite public participation, and failing to prepare a regulatory impact statement. Further, that amending the Finance Bill, 2021 to impose the impugned taxes without giving prior and adequate notice to the consumers and traders of pasta not only contravened Article 47(2) of the Constitution but also Sections 4 and 5 of the Fair Administrative Actions Act 2015 and the very notion of fairness and natural justice.
26. With reference to the 1st respondent's Standing Order 117(1), the petitioner argued that the same was violated, since the Memorandum of Objects and Reasons to the Finance Bill, 2021 did not contain any references to amendments to the Excise Duty Act, 2015.
27. He contends that pasta was not an excisable good. This is because 'excisable goods' means goods manufactured in Kenya or imported into Kenya on which an excise duty is imposed under Customs and Excise Act. He added that excisable goods are identified under the Fifth Schedule of the Act and do not include pasta. By imposing 20% excise duty on pasta, the respondents violated the express provisions of Article 210 of the Constitution, which states that no tax or licensing fee may be imposed, waived or varied except as provided by statute.
28. In view of the submitted assertions the petitioner argued that the respondents had violated the doctrine of legitimate expectation. To this end he submitted that the respondent ought to pay the costs of the suit. He referred to the case of Erick Okeyo v County Government of Kisumu & 2 Others [2014] eKLR



to support this point. He however submitted that in the event he lost the suit for the Court not to order him to pay costs. He relied on *Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 others* [2014] eKLR which noted public interest litigation ought not to be discouraged by costs.

The 1st Respondent's submissions

29. The 1st respondent through its Counsel Kuyioni N Josphat filed written submissions dated June 9, 2022. Counsel identifies the issues for determination as:
- i. Whether the impugned tax violated Article 114(2) of the *Constitution*
 - ii. Whether the impugned tax was not subjected to public participation.
 - iii. Whether the impugned tax violates Article 24, 43(1)(c), and 47 (1) of the *Constitution*.
 - iv. Whether the 1st respondent violated the *Fair Administrative Action Act*, 2015 and *Statutory Instruments Act*, 2013.
 - v. Whether the 1st respondent violated National Assembly Standing Orders 117(1) and 114(1).
 - vi. Whether the respondents violated the doctrine of legitimate expectations.
 - vii. Whether imported pasta is an excisable good
 - viii. Whether the Court should issue the Orders sought in the Petition.
 - ix. Whether the Respondents should pay the Costs of this proceedings.
 - x. Whether the Court should issue any other relief it deems just to grant.
30. On the first issue Counsel submitted that the departmental committee on Finance and National Planning held a meeting with the National Treasury and the Kenya Revenue Authority in line with the requirements of Article 114 of the *Constitution*. This was confirmed by the committee in the report and also confirmed by the Speaker of the National Assembly in his communication given on June 24, 2021 on the guidelines on some of the proposed amendments to the Finance Bill, 2021. As such the impugned amendment contained the various bodies input. Nevertheless there is no dispute between the 1st respondent and the Cabinet Secretary, National Treasury regarding approval of the impugned amendments.
31. Counsel on the second issue submitted that, the 1st respondent conducted extensive public participation as expansively detailed in its replying affidavit and comprised of:
- i. Publication of the Bill in the Kenya Gazette;
 - ii. Calling the public's attention to the Bill through newspaper advertisements as well as through the website www.parliament.go.ke;
 - iii. Meetings of the Departmental Committee on Finance and National Planning with various stakeholders on the Bill;
 - iv. Receipt of memoranda from the public on the Bill;
 - v. Consideration by the Committee of the views received from the public and stakeholders on the Bill and determination of whether to take the views or reject them with reasons for the same given; and



- vi. Tabling of this report to the National Assembly and adoption of the same with the requisite amendments.
32. It is submitted that a committee, being an extension of the House, is informed by views collected and deliberated on during public participation and so reserves the right to recommend amendments to a Bill under its consideration. In view of this it cannot abandon its duty to recommend such amendments. Further, it was submitted that the Constitution recognizes that a House of Parliament can amend bills and hence Article 124 of the Constitution allows Parliament to make Standing Orders to provide for its procedures for conducting House business. To do so Standing Order 133 of the National Assembly's Standing Orders, provides that during the legislative process, amendments to the Bill can be moved during the committee stage.
33. To support this point reliance was placed on the case of Kenya Bankers Association V Attorney General & Another; Central Bank Of Kenya (Interested Party) [2019] eKLR where it was held that Article 94 of the Constitution vests legislative authority in Parliament and therefore the National Assembly House is allowed to amend a legislative proposal as Bill goes through the various stages of enactment of legislation.
34. Additional reliance was placed on the case of Basco Products (K) Limited & 4 others v National Assembly & 3 others; Kenya Association of Manufacturers (Interested party) (Petition E 286 of 2021) [2022] KEHC 168 (KLR) (Constitutional and Human Rights) (24 February 2022) (Judgment) and Constitutional Petition No. E010 of 2021 Isaiah Onyango Okello & another vs The National Assembly in which both held that the respondents in the enactment of the Finance Act, 2021 met the threshold of public participation as required under the Constitution. It is counsel's submission that there was full public participation before the amendment.
35. On the third issue, Counsel submitted that the taxation by a state is necessary for the life of a nation because it sustains the public welfare and public good. Relying on the Basco Products (K) Limited & 4 others case (supra) counsel submitted that the Court has to balance the interest of the society with those of individuals and groups. In view of this it is in public interest that taxes must be paid and as such the impugned legislation does not infringe on the petitioner's rights to property as it is aimed at serving a legitimate public interest. Also see Gibb Africa Limited v Kenya Revenue Authority [2017] eKLR and Isaiah Onyango Okello case (supra).
36. Taking this into consideration, Counsel argued that imposition of excise duty on imported pasta is a government strategy and policy to ensure local manufacture of pasta will in turn support the manufacturing sector, create jobs and protect the local market. Hence the provision in question advances a compelling public interest which will have a positive ripple effect on the nation's economic development.
37. Turning to the fourth issue, Counsel submitted that the Fair Administrative Action Act, 2015 defines an administrative action, as a decision by authorities or quasi-judicial tribunals which actions decisions or omissions adversely affect the rights or interests of any person to whom the actions, decisions or omissions relate. He argued that in enacting the impugned section of the Finance Act, 2021, the National Assembly was carrying out its legislative function as opposed to administrative functions and so enacting a law does not fall within the purview of Article 47 of the Constitution and the Fair Administrative Actions Act.
38. To buttress this point reliance was placed on the case of Kenya Bankers Association (supra) where it was held that the National Assembly when enacting legislation is not carrying out an administrative action in the strict sense, but exercising its constitutional duty. Additionally Counsel noted that as



per the definition under Section 2 of the [Statutory Instruments Act](#), the Finance Bill is not a statutory instrument and so the Act cannot be invoked in this context.

39. On the fifth issue, Counsel answered in the negative submitting that the memorandum of objects and reasons is contained at page 575 of the Finance Bill, 2021. Taking this into consideration he argued that the mere fact that the [Excise Duty Act](#) was omitted would not be a ground to invalidate the amendment.
40. Speaking on the contention of legitimate expectation, Counsel submitted that an expectation whose fulfillment requires that a decision-maker makes an unlawful decision, cannot be a legitimate expectation as explained by HWR Wade & CF Forsyth/86) in their book at pages 449 to 450. Further, relying on the opinion in the case of [Pevans East Africa Limited & another v Chairman Betting Control and Licensing Board & 7 others \[2017\] eKLR](#) Counsel observed that statutory words override an expectation howsoever founded. Thus, a decision maker cannot be required to act against clear provisions of a statute just to meet one's expectations as his decision would be outrightly illegal and a violation of the principle of legality, a key principle in the rule of Law.
41. Answering the question whether pasta is an excisable good Counsel submitted that it is Parliament's duty to determine whether to impose taxes on certain goods as held in the case of [Law Society of Kenya vs the Hon Attorney General & Others; Petition No 334 of 2018](#). Moreover Counsel noted that Section 5(1)(c) of the [Excise Duty Act](#) provides that this tax can be imposed on goods imported into Kenya. He argued that while the first schedule of the Act provides for a list of excisable goods, Part II of the same schedule as amended by the Finance Act, 2021 introduced excise duty on imported pasta at the rate of 20% thus bringing imported pasta in tax bracket.
42. On the issue of costs Counsel noted that such a decision was at the Court's discretion since public-interest litigation tends to be exempted from award of costs as seen in the case of [Amoni Thomas Amfry and Another v The Minister for Lands and Another, Nairobi High Court Petition No 6 of 2013](#) which cited the case of [Harun Mwau and Others v Attorney-General and Others \[2012\] eKLR](#) with approval. In light of this Counsel argued that the petition lacked merit and so the petitioner was not entitled to the reliefs sought.

The 2nd respondent's submissions

43. Counsel for the 2nd respondent Mr Gaya Ochieng filed written submissions dated June 10, 2022. He identified the issues for determination as:
 - i. Whether there was violation of the principles of public participation in enacting the law;
 - ii. Whether the amendment was not subject to approval of the National Treasury as envisaged under Article 114 (2) of the [Constitution](#);
 - iii. Whether the imposition of the excise duty amounts to breach of Article 24 and 43(1)(c) of the [Constitution](#);
 - iv. Whether the imposition of taxes under the impugned provisions is a breach of Article 47 of the [Constitution](#).
 - v. Whether pasta is not an excisable good and the issue of legitimate expectation;
44. On the first issue, counsel submitted that since public participation was conducted the contentious issue was whether a new clause can be introduced at the committee stage of the National Assembly when it did not feature in the Bill submitted for public participation. He indicated that the impugned amendment was discussed at the public participation forum before being introduced at the committee



- stage. Moreover, counsel stated that the impugned amendment had also been contemplated in the memorandum of objects of the Finance Bill, 2021.
45. Counsel as well noted that the issue of public participation in relation to the impugned Section 32 of the Finance Act, 2021 was discussed by this Court in Nairobi Pet No E286 of 2021: Basco Products (K) Limited & 4 others v National Assembly & 3 others; Kenya Association of Manufacturers (Interested party) which held that the public participation threshold had been met. He submitted that the requirement for public participation as envisaged under the Constitution should not be given a rigged or artificial interpretation to avoid distorting the spirit ideals and aspirations of the people as held in the cases of (i) S v Mblungu and Others (CCT25/94) [1995] ZACC 4.
- (ii) Simon Mbugua & another v Central Bank of Kenya & 2 others [2019] eKLR,
- (iii) Kenya Bankers Association v Attorney General & another; Central Bank of Kenya (Interested Party) [2019] eKLR among others.
46. From the foregoing it is counsel's submission that the National Assembly rightly considered the amendments before placing them before the House for approval. In view of this therefore the impugned provision was proper in law and did not breach Article 118 or 201 of the Constitution.
47. Turning to the second issue, he submitted that the amendment had been approved as can be seen at page 376 and 377 of the petition under 'the Communication from the Chair' as contained in the final report of the departmental committee. Further the participation of the National Treasury and the 2nd respondent is evidenced by the presence of senior officials of the two organizations in the committee meetings as shown in the minutes of June 11, 2021 at page 288 of the petition. Counsel therefore argued that the burden to prove otherwise lay on the petitioner as held in the cases of Dr Rev Timothy Njoya vs The Hon Attorney General and Kenya Review Authority HC Constitutional and Human Rights Division Petition No 479 of 2013 and Leonard Otieno Vs Airtel Kenya Limited [2018] eKLR.
48. On the third issue, counsel referred to the report on the discussions in the House, which showed the justification for the taxation on imported pasta. The same is acceptable under Article 24 of the Constitution. Correspondingly he noted that Articles 10, 201, 209 and 210 of the Constitution provide for imposition of tax as a mandatory obligation and it is itself a display of sovereignty as affirmed by the Court in the case of Timothy Njoya & 17 Others V Attorney General & 4 others [2013] eKLR.
49. Similar reliance was placed on the cases of Basco Products (K) Limited (supra) Bidco Oil Refineries Limited vs. Attorney General & 3 others [2013] eKLR to support this point. Ideally counsel stressed that taxation is the vessel used by the government to respect, promote and fulfil the fundamental rights envisioned under the Bill of rights under the Constitution and so taxation itself cannot be said to be a breach of the same rights.
50. On the fifth issue, counsel submitted that since it had been demonstrated that the impugned provision was properly enacted and sufficient public participation conducted. It was incumbent on the petitioner to prove his claim further as observed in the case of Leonard Otieno v Airtel Kenya Limited [2018] eKLR. Additional reliance was placed on the case of Peter Ngari Kagume & 7 others V Attorney General (2009) eKLR and Timothy Njoya & 17 others V Attorney General & 4 others [2013] eKLR. As such Counsel argued that the petitioner had failed to provide any evidence to support any of the alleged violations. It followed therefore that the enforcement of a tax provision cannot be said to be in breach of Article 47 of the Constitution as taxation is a legal obligation.
51. On the final point, Counsel submitted that the impugned provision amended the First Schedule to introduce 'imported pasta' on the list of the excisable goods. Contrary to the petitioner's assertion Counsel noted that a perusal of the list of excisable goods under the first schedule showed that some



of the excisable items include kerosine, diesel, packaged water, vegetable and fruit juices, cosmetic products, jewellery, imported gas cylinders which cannot be labelled as being harmful.

52. Nonetheless Counsel submitted that the decision to levy excise duty on a particular good is purely a policy issue which falls outside the mandate of the Court as held in the case of *Kenya Association of Stock Brokers and Investment Banks v Attorney General & another High Court [2015] eKLR* hence invoking the political question doctrine as observed by the Court of Appeal in the cases of *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others [2016] eKLR*, and *Ndora Stephen -v- Minister for Education & 2 others, Nairobi High Court Petition No 464 of 2012*. He urged the Court to dismiss the petition.

Analysis and Determination

53. Having carefully considered the pleadings, submissions of the parties, cited authorities and the law I find the issues for determination to be as follows:

- a. Whether the principle of public participation was upheld in enactment of the impugned amendment in relation to imported pasta of tariff 1902 under the Finance Act, 2021;
- b. Whether the imposition of the 20% excise duty on imported pasta is unconstitutional; and
- c. Whether the petitioner is entitled to the reliefs sought.

Issue No (a). Whether the principle of public participation was upheld in enactment of the impugned amendment in relation to imported pasta of tariff 1902 under the Finance Act, 2021

54. The petitioner has stated that prior to the enactment of the Finance Act, 2021 the respondents introduced new amendments to the Finance Bill one of which was an introduction of 20% excise duty on imported pasta of tariff 1902 in the *Excise Duty Act* under the First Schedule Paragraph 1, Part 1(iv). It is the petitioner's contention that given the far reaching consequences of the impugned amendment on the relevant stakeholders and the general public, the respondents had a constitutional obligation to procure the public's views on the impugned amendment as required by the public participation principle before passing the Finance Act, 2021.

55. The respondents asserted that the public participation that had been conducted involved the amendment of the *Excise Duty Act* including a discussion of Clause 25 which contained the impugned amendment. Further, that the impugned amendment was introduced as a result of the public discussions held during the public participation forums.

56. Parliament is obligated under Article 118 of the *Constitution* to facilitate public participation and involvement in the legislative and other business of the assembly and its committees. This principle is unmistakably a key element in the legislative function of the Government at all levels.

57. It is well noted that the parties cited numerous renowned authorities on the essence of public participation which this Court is in agreement with and guided by. Likewise the Supreme Court in the case of *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] eKLR* speaking to the principle of public participation and giving guidance on its determination held as follows:

(85) Public participation has been entrenched in our Constitution as a national value and a principle of governance under Article 10 of the *Constitution* and is binding on all State organs, State officers, public officers and all persons whenever any of them: (a) applies or interprets the *Constitution*; (b) enacts, applies or interprets any law; or (c) makes



or implements public policy decisions. As aptly stated by the Appellate Court, public participation is anchored on the principle of the Sovereignty of the People 'that permeates the Constitution and in accordance with Article 1(4) of the Constitution is exercised at both national and county levels'.

58. The Court went on to issue the following guidelines on adherence of this principle as follows:

' (96) From the foregoing analysis, we would like to underscore that public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments. Consequently, while Courts have pronounced themselves on this issue, in line with this Court's mandate under Section 3 of the Supreme Court Act, we would like to delimit the following framework for public participation:

Guiding Principles for public participation

- (i) As a constitutional principle under Article 10(2) of the Constitution, public participation applies to all aspects of governance.
- (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
- (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
- (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation.
- (v) Public participation is not an abstract notion; it must be purposive and meaningful.
- (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
- (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
- (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
- (ix) Components of meaningful public participation include the following:
 - a. Clarity of the subject matter for the public to understand;
 - b. Structures and processes (medium of engagement) of participation that are clear and simple;



- c. Opportunity for balanced influence from the public in general;
- d. Commitment to the process;
- e. Inclusive and effective representation;
- f. Integrity and transparency of the process;
- g. Capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

59. It is clear that public participation as requirement was fulfilled by the respondents in this matter. The 1st respondent's committee invited the public and the relevant stakeholders to submit memoranda and views for the purposes of public participation through an advertisement in both the Daily Nation and the Standard Newspapers on May 21, 2021 as seen at paragraph 11 of the 1st respondent's replying affidavit. Further it is noted that evidence of the public participation exercise was contained in the report of the National Assembly departmental committee on Finance and Planning dated June 22, 2021 as noted at paragraph 15 of the 1st respondent's replying affidavit. For all intents and purposes it is clear that public participation was conducted for the Finance Bill, 2021.
60. The question that begs an answer however is whether the additional amendments that were introduced after the submissions of the stakeholders and the public violated the principle of public participation. This follows the fact that the public and relevant stakeholders did not get an opportunity to submit their views and comments on the additional amendments.
61. One of the roles of the Parliament in exercise of its legislative authority under Article 94 of the Constitution is making of laws. This is actualized through the Bills passed by the House and assented to by the President as envisaged under Article 109 (1) of the Constitution. With reference to this matter, a Bill of this nature is introduced in Parliament in the manner encapsulated under Article 114 of the Constitution.
62. This Article deals with money bills such as taxes. In this regard, the Article informs that if, in the opinion of the Speaker of the National Assembly, a motion makes provision for a matter listed in the definition of 'a money Bill', the Assembly may proceed only in accordance with the recommendation of the relevant Committee of the Assembly after taking into account the views of the Cabinet Secretary responsible for finance.
63. This in essence is the beginning of the legislative process. The Bill at this juncture is submitted to the legislative process which comprises of the first reading; committal of the Bill to departmental committee; the second reading; committee stage; the report stage; the third reading of a Bill and finally the Bill is passed and presented to the President for assent.
64. In carrying out this legislative role, Parliament is guided by its own Standing Orders as required under Article 124(1) of the Constitution. Part XIX of the National Assembly Standing Orders which deals with Public Bills details the stages of the legislative process. This Part informs under Standing Order 127 that after the first reading of the Bill under Standing Order 126 that:
- (1) A Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question put.
 - (2) Notwithstanding paragraph (1), the Assembly may resolve to commit a Bill to a select committee established for that purpose.



- (3) The Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account the views and recommendations of the public when the committee makes its report to the House.
 - (4) Subject to Standing Order 129 (Second Reading of a bill to amend the Constitution) the Chairperson of the Departmental Committee to which a Bill is committed or a Member designated for that purpose by the Committee shall present the Committee's report to the House within twenty calendar days of such committal and upon such presentation, or if the Committee's report is not presented when it becomes due, the Bill shall be ordered to be read a Second Time on such day as the House Business Committee shall, in consultation with the Member or the Committee in charge of the Bill, appoint.
 - (5) If for any reason, at the commencement of the Second Reading the report of the Committee has not been presented, the Committee concerned shall report progress to the House and the failure to present the report shall be noted by the Liaison Committee for necessary action.
 - (6) Despite paragraph (1) –
 - (a) The Speaker may direct that a particular Bill be committed to such committee as the Speaker may determine.
 - (b) A Consolidated Fund Bill, an Appropriation Bill, a Supplementary Appropriation Bill or a Finance Bill shall be committed to the Budget and Appropriations Committee.
65. Standing Order 128 which provides for the second reading of the Bill provides that no amendment is moved at this stage but rather the Bill is committed to the Committee of the whole House where the proposals and amendments are discoursed at length under Standing Order 130. In considering a Bill in the Committee stage, Standing Order 132 divulges that the various parts of the Bill shall be considered in the following sequence –
- (a) Clauses as printed, excluding the clauses providing for the citation of the Bill, the commencement, if any, and the interpretation;
 - (b) New clauses;
 - (c) Schedules;
 - (d) New schedules;
 - (e) Interpretation;
 - (f) Preamble, if any;
 - (g) Long title;
 - (h) The clauses providing for the citation of the Bill and the commencement.
66. Furthermore Standing Order 132 provides the procedure of the Committee of the whole House on a Bill to be as follows:
- (1) The Clerk shall call severally each part of the Bill in the sequence specified in Standing Order 132 (sequence to be observed on a Bill in committee) and if no amendment is proposed or when all proposed amendments have been disposed of, the Chairperson shall propose the question 'That, (as amended) stand part of the Bill' and, when Members who wish to speak have spoken, the Chairperson shall put that question to the Committee for decision.



- (2) No amendment shall be moved to any part of a Bill by any Member, other than the Member in charge of the Bill, unless written notification of the amendment shall have been given to the Clerk twenty-four hours before the commencement of the sitting at which that part of the Bill is considered in Committee.
- (3) Despite paragraph (2), where an amendment has been moved to any part of a Bill in accordance with this paragraph, any Member may move an amendment to that amendment on delivering to the Chairperson the terms of his or her amendment in writing.
- (4) A member moving an amendment or a further amendment to any part of the Bill under paragraphs (2) and (3) shall explain the meaning, purpose and effect of the proposed amendment or further amendment.
- (5) No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the bill
- (6) No amendment shall be moved which is inconsistent with any part of the Bill already agreed to or any decision already made by the Committee, and the Chairperson may at any time during the debate of a proposed amendment, withdraw it from the consideration of the Committee if in the opinion of the Chairperson, the debate has shown that the amendment contravenes this paragraph.
- (7) In the case of a Consolidated Fund Bill, an Equalization Bill or an Appropriation Bill, no amendment shall be moved whose effect would be to impose a charge or increase expenditure above that already resolved by the House or in the Committee of Supply unless the House first resolves to allow such a motion.
- (8) The Chairperson may refuse to propose the question upon any amendment which in the opinion of the Chairperson is frivolous or would make the clause or schedule which it proposes to amend unintelligible or ungrammatical.
- (9) Paragraph (4) of Standing Order 53 (Manner of debating Motions) shall apply, with necessary modifications, to the proceedings for amendment of a Bill in Committee.
- (10) The consideration of any part or a clause of a Bill may be postponed until such later stage of the proceedings in Committee on such Bill as the Committee may determine.
- (11) On any Motion being made for the addition of a new clause, the clause shall be deemed to have been read a First Time and the question shall then be proposed 'That, the new clause be read a Second Time' and if this is agreed, amendments may then be proposed to the new clause and the final question to be proposed shall be 'That, the clause (as amended) be added to the Bill'.
- (12) New schedules shall be disposed of in the same way as new clauses.
- (13) The question to be put on the preamble (if any) shall be 'That, the preamble (as amended) be the preamble of the Bill.'
- (14) The question to be put on the long title of the Bill shall be 'That, the long title (as amended) be the title of the Bill'.
- (15) No question shall be put on the enacting formula.



- (16) At the conclusion of the proceedings in Committee on a Bill, or, if more than one, on all such Bills the Member in charge shall move 'That, the Bill(s) (as amended) be reported to the House', and the question thereon shall be decided without amendment or debate.
67. I have deliberately set out the law and the procedure of the legislative process so as to be able to marry the procedure and the facts presented in this case. It is not disputed that the Finance Bill, 2021 was submitted to public participation by the departmental committee on Finance and National Planning after the first reading of the Bill. The advertisement for invitation for public participation informed the public that the Finance Bill, 2021 was intent on amending various tax laws including the [Excise Duty Act](#), 2015. Moreover as per the committee's minute meetings it is shown that various parties were consulted including the Cabinet Secretary of the National Treasury.
68. Upon conclusion of these deliberations, the committee prepared its report containing the public participation views and its own recommendations on the Finance Bill, 2021. This would go on to inform the House's committee stage deliberations on the Bill. The petitioner's main contention is that the new recommendations by the committee ought to have been subjected to public participation.
69. According to the Supreme Court's guideline 8 in the British American Tobacco Kenya, PLC case (supra) an allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis. The facts of this case show that the impugned amendment was inserted as part of the committee's recommendation in its report that was presented to the House. The question therefore is whether this recommendation was an error.
70. To answer this I am guided by Standing Order provisions that I have set out above. In the legislative process the making of a Bill is an ongoing process right from when the Bill is introduced at the first reading until the third reading. One of the components of this process is the House committee's, role in facilitating public participation and preparing a comprehensive report that informs the House's deliberations and final decision on the Bill.
71. Standing Order 132(b) reveals that the sequence of the Bill presented in the second reading may include new Clauses. Standing Order 133 (5) and (b) however distinguishes these new amendments from those that would change the subject matter of the Bill by introducing a different topic expanding its subject or that is inconsistent with any part of the Bill already agreed to. Unquestionably, new amendments can be introduced to a Bill under consideration after the first reading so long as the amendment is in line with the original intent of the purposes and objects of the Bill.
72. The impugned provision amended the [Excise Duty Act](#) to include an excise duty rate of 20% on imported pasta. In my considered opinion this was not a new subject matter in respect of the envisioned amendments by the Finance Act. The advertisement made known that the amendments to the Finance Bill dealt with tax laws including the [Excise Duty Act](#). This element of the impugned amendment did not deal with a different subject that unduly expanded the subject and neither was the amendment inconsistent with any part of the Bill already agreed to. I hold so because the core intent of the Finance Bill was to amend taxation laws which the impugned amendment was part of.



73. I am alive to the caution given by the 3 Judge Bench in the case of *Institute of Social Accountability & another v National Assembly & 4 others [2015] eKLR* where while dealing with the question of public participation the Bench opined as follows:

' 76. How public participation is given effect will vary from case to case but it must be clear, upon examination of the legislative process, that a reasonable level of participation has been afforded to the public.'

74. The Court in its conclusion held that:

' 79. We are aware that during the legislative process, amendments to the Bill may be moved during the Committee Stage and to hold that every amendment moved must undergo the process of public participation would negate and undermine the legislative process.'

75. I do not find any distinguishing circumstances in the public participation in the case before this Court. It is my considered view that the amendment moved by the committee in its report was in line with the set parameters of what had been presented to the public and the National Treasury for consideration during the public participation forums held by the House's committee. Moreover, the amendment adhered to the legislative process as outlined in the House's Standing Orders and did not fall in the restricted amendments cited under Standing Order 132(5) and (6). In the circumstances I am inclined to find that the impugned amendment did not violate the principle of public participation.

Issue No (b). Whether the imposition of the 20% excise duty on imported pasta is unconstitutional

76. It is the petitioner's argument that the impugned amendment to the *Excise Duty Act* violates the fundamental rights and freedoms envisaged under Articles 27, 40, 43, 46, and 47(1) of the *Constitution*. This is for the reason that the implication of the excise tax is an increase in the cost of pasta and will put its accessibility out of the reach of many of Kenyans making the tax regime unreasonable, unjustifiable, and punitive.

77. In rebuttal, the respondents argued that imposition of taxes was a constitutional mandate of the Parliament hence could not be deemed as an unconstitutional when its object was in public interest. It was similarly argued that the legislative process was not an administrative process under Article 47 of the *Constitution*. The respondents cited well known cases that have affirmed this position. See *Kenya Bankers Association V Attorney General & Another; Central Bank Of Kenya (Interested Party) [2019] eKLR*.

78. In answering this question this Court is guided by the well-known principles set out in the case of *Anthony Njenga Mbuti & 5 others v Attorney General & 3 others [2015] eKLR*

107. The first principle to bear in mind is set out in the *Constitution* itself which, at Article 259, provides for the manner in which it should be interpreted. It requires that the *Constitution* should be interpreted in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights, and that contributes to good governance. Further, under Article 159(2)(e), the Court, in exercising its judicial authority, is obliged to protect and promote the purpose and principles of the *Constitution*.

108. The second principle to bear in mind is the principle of the supremacy of the *Constitution*. At Article 2, the *Constitution* provides that:



- (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.
- (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.
109. The Constitution further requires that all acts are done in accordance with the national values and principles enunciated in the Constitution. These principles, set out in Article 10(2), and in particular (2)(b), include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.'
79. It is not in dispute that one of the constitutional functions of the National government is its power to impose taxes and charges as envisaged under Article 209 of the Constitution which reads as follows:
- (1) Only the national government may impose --
- (a) Income tax;
- (b) Value-added tax;
- (c) Customs duties and other duties on import and export goods; and
- (d) Excise tax.
- 2) An Act of Parliament may authorise the national government to impose any other tax or duty, except a tax specified in clause (3) (a) or (b).
80. My interpretation of the above provision is that while the Constitution empowers the National government to impose taxes, it does not disclose or define how high or low the listed taxes should be. It is discernable however that this mandate at sub-Article (2) is left to the Legislature to decide based on various factors not within the knowledge and mandate of this Court.
81. The Court in 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 serves as an appropriate guide on this subject. The 2 Judge Bench pronounced itself as follows:
- ' 32. The legislature is the law making organ and it enacts the laws to serve a particular object and need. In the absence of a specific violation of the Constitution, the court cannot question the wisdom of legislation or its policy object. The fact that the particular provision of the statute merely may be difficult to implement or inconvenient does not give the court license to declare it unconstitutional.'
82. In the case of Kenya Union of Domestic, Hotels, Education, Institutions and Hospital Allied Workers (KUDHEIHA) Union v Kenya Revenue Authority and Others Nairobi Petition No 544 of 2013/2014 [2014] eKLR the Court at Paragraph 33 took note that:
- ' (24) Before I deal with the constitutionality of the impugned provisions, I think it is important to establish the legislative authority of the legislature to impose taxes. Article 209 of the Constitution empowers the national government to impose taxes and charges. Such taxes include income tax, value-added tax, customs duties and other duties on import and export goods and excise tax. The manner in which the tax is defined, administered and collected is a matter for Parliament to define and it is not for the court to interfere merely



because the legislature would have adopted a better or different definition of the tax or provided an alternative method of administration or collection. Under Article 209 of the Constitution, the legislature retains wide authority to define the scope of the tax. (See *Bidco Oil Refineries v Attorney General and Others Nairobi Petition No 177 of 2012*, paras 53 – 56.)

83. The Court then proceeded to hold as follows:

' 34. The decision whether to impose a tax and to who is within legislative authority. This Court cannot therefore intervene and I therefore find nothing unconstitutional in regard to that aspect of the petition.'

84. I associate myself with the reasoning in the cited authorities and Article 259 of the Constitution which enjoins this Court to interpret the Constitution in a manner that promotes its purposes and principles that advances the rule of law and human rights and fundamental freedoms in the Bill of rights, permits the development of the law and contributes to good governance. In my view, allowing the petitioner's argument that the 20% excise duty increase on imported pasta is unconstitutional when imposition of taxes in and of itself is Parliament's constitutional mandate would be an error and untenable in light of the purposes of the Constitution.

85. Although the petitioner put up a spirited argument on the illegality of the impugned amendment he failed to show how the increase of the excise duty was contrary to the well-defined constitutional mandate of the Parliament in the enactment of laws or that the enactment violated the laid down principles of the legislative process. What becomes apparent from the material placed before this Court is that the right procedure was followed in the amendment of the Excise Duty Act in respect of the impugned amendment. The amendment is within the province of Article 209 and an increment 'per se' does not make the amendment unconstitutional.

86. In light of the above I find that the petitioner has failed to discharge his burden of proof to the effect that the impugned amendment violated Articles 27, 40, 43, 46 & 47 (1) of the Constitution. I find that the impugned amendment is in tandem with the Constitution.

87. The upshot is that the petition lacks merit and is dismissed. On the issue of costs I find this to be a petition filed in public interest. Each party will bear their own costs.

Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF SEPTEMBER, 2022 IN OPEN COURT AT MILIMANI NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT

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