



Kenya Human Rights Commission v National Transport and Safety Authority & 2 others (Petition E430 of 2022) [2025] KEHC 4389 (KLR) (Constitutional and Human Rights) (3 April 2025) (Judgment)

Neutral citation: [2025] KEHC 4389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E430 OF 2022
LN MUGAMBI, J
APRIL 3, 2025**

BETWEEN

KENYA HUMAN RIGHTS COMMISSION PETITIONER

AND

NATIONAL TRANSPORT AND SAFETY AUTHORITY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

NATIONAL ASSEMBLY 3RD RESPONDENT

JUDGMENT

Introduction

1. The petition dated 30th August 2022 is supported by the petitioner’s affidavit of similar date.
2. This petition revolves around the challenge to Section 16(2) and (3) Traffic (Amendment) [Act, No. 23 of 2022](#) and the draft Motor Vehicle Inspection Regulations, 2022 for being in contravention of Articles 10, 46, 94 and 114 of the [Constitution](#).
3. The petitioner in light of this seeks the following relief against the respondents:
 - a. A declaration that Section 16(2) and (3) Traffic (Amendment) [Act, No. 23 of 2022](#) violates consumers rights under Article 46 of the [Constitution](#) and amounts to usurpation of the role of parliament as prescribed under Article 94 of the [Constitution](#).
 - b. A declaration that Section 16(2) and (3) of the Traffic Amendment [Act, 2022 No. 23 of 2022](#) is unconstitutional, null and void.



- c. A declaration that any regulations promulgated and intended to give effect to the provisions of Sections 16(2) and (3) of the Traffic Amendment [Act No. 23 of 2022](#) are unconstitutional, null and void.
- d. An order in the nature prohibition preventing the 1st respondents from implementing the provisions of Section 16(2) and (3) of the Traffic Amendment [Act, No. 23 of 2022](#) and regulations made pursuant to the said amendments.
- e. Any other relief that the Court may deem fit to grant.
- f. Costs of the petition.

Petitioner's Case

4. For context, the [Traffic Act](#) was amended vide the Traffic (Amendment) [Act No. 23 of 2022](#) which took effect on 11th July 2022. In the Act, Section 16(2) and (3) of the Act was amended to provide as follows:
 - (2) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.
 - (3) An inspection under subsection (2) shall be conducted by the Authority or persons authorized in writing by the Authority.
5. The petitioner states that the 1st respondent's power to conduct these inspections is provided for under Section 4 of the [National Transport and Safety Authority Act](#).
6. The petitioner takes issue with the impugned amendments as it purports to delegate the 1st respondent's power and functions yet this can only be initiated by Parliament in accordance with Article 94 of the [Constitution](#). Moreover, it is argued that the 1st respondent's principal mandate cannot be amended and delegated through a subsidiary legislation.
7. The petitioner in addition avers that the inspection fees are charged by the 1st respondent as provided in the NTSA Act. As such, it is asserted that any inspection fees charged by a third party on the 1st respondent's behalf can only be legalized through the procedure set out under Article 114 of the [Constitution](#). This reasoning is anchored on the assertion that the impugned amendments constitute a money bill and so ought to have complied with Article 114 of the [Constitution](#).
8. The petitioner states that following the enactment of the impugned amendments, the 1st respondent developed the draft Motor Vehicle Inspection Regulations, 2022. The petitioner claims that if these Regulations are enacted, they will provide room for licensing of third parties being Privately-Owned Vehicle Inspection Centres. According to the petitioner, this means that an obligation will be placed on them to collect inspection fees as seen under Regulation 16(1). It is contended that this will be unlawful as no law grants private citizens such power.
9. The petitioner also takes issue with Regulation 8(3) which imposes a duty on the private motor vehicles centres to ensure proper issuance of the inspection certificate. This is despite this being the mandate of the 1st respondent. It is alleged further that such delegation opens a door for abuse of power through improper issuance or refusal of granting the certificates by the private entities.
10. The petitioner posits that the Draft Regulations, also confer on the 1st respondent the authority to issue, suspend and revoke licenses issued by the privately-owned vehicle inspection centers. In its opinion, this makes these centres the 1st respondent's agents. The petitioner contends that this is a



threat to consumer protection as the privately-owned vehicle inspection centers will be offering services which do not have any legal and lawful basis.

11. On this premise the petitioner challenges the constitutionality of the impugned amendments for being in direct violation of Article 10 of the Constitution for lack of public participation, Article 46 of the Constitution for contravention of consumer rights, Article 94 of the Constitution for usurping the Parliament's legislative role and Article 114 of the Constitution for failure to enact the impugned amendments in line with this Article.

1st Respondent's Case

12. The 1st respondent through its Director General, George Njao filed a Replying Affidavit sworn on 10th May 2023.
13. He depones that the impugned Act was a private bill that was sponsored by Hon. Kassait Kamket, the Member of Parliament for Tiaty Constituency.
14. He informs that the 1st respondent was invited for public participation as a stakeholder during the enactment of the impugned amendments. Following the conclusion of the legislative procedure, the Traffic (Amendment) Bill was passed into law on 27th June 2022.
15. He depones that there has been a rise in the number of road accidents caused as a result of unroadworthy motor vehicles. He notes that statistics show that majority of these accidents are caused by private vehicles which are ordinarily not inspected.
16. In addition, he avers that most of the private vehicles in Kenya are second hand vehicles imported from Japan. As a consequence of these factors, it was resolved that private vehicles would also be included in the inspection administration.
17. He depones that, to facilitate this process, the 1st respondent has had to outsource inspection services in a joint venture with private bodies. This was informed by the 1st respondent's limited capacity of having only 17 motor vehicle inspection centres. This centres annual inspection capacity is 1,200, 000 vehicles, hence not sufficient. He denies the allegation that by doing so the 1st respondent has delegated its mandate to the private bodies.
18. He avers that the Draft Motor Vehicle Inspection Regulations were also subjected to public participation. He enlightens that the private bodies are to work in conjunction with the 1st respondent and these Regulations in carrying out the inspections. He states that the 1st respondent will primarily regulate, monitor and audit the private inspection centres amongst its other functions.
19. He states that the Draft Regulations are however yet to be enacted into law therefore making this petition premature and in breach of the doctrine of ripeness.

2nd Respondent's Case

20. The 2nd respondent in response filed its grounds of opposition dated 2nd May 2023 on the ground that:
 - i. There is the general presumption that every Act of Parliament is constitutional.
 - ii. The impugned Amendments allowing the 1st respondent to authorize persons in writing to conduct inspection was enacted through an Act of Parliament being the Traffic (Amendment) Act No. 23 of 2022 and not through a subsidiary legislation or a delegated legislation as reasoned in the Petition.



- iii. The role of Parliament, which is derived from the will of the people and their sovereignty, is to enact, amend and repeal Acts of Parliament or provisions of the Acts of Parliament.
- iv. The Impugned Amendments in the Traffic (Amendment) *Act No. 23 of 2022* do not in any way contradict the functions of the 1st Respondent as provided under the *National Transport and Safety Authority Act*, No. 33 of 2012 or any provisions of the *Constitution*.
- v. In addition, Section 4 (2) (1) of the *National Transport and Safety Authority Act*, No. 33 of 2012, provides that the 1st respondent, among other functions, shall perform such other functions as may be conferred on it by the Cabinet Secretary or by any other written law.
- vi. Section 119(g) of the *Traffic Act* confers the Cabinet Secretary the authority to enact Rules in relation to inspection of motor vehicles and conditions to be imposed thereto. Thus and without prejudice, the impugned Draft Inspection Regulations is a clear step to ensure the Petitioner's reservations and consumers rights are addressed.
- vii. Further and without prejudice, the claims against the Draft Inspection Regulations offend the principle of ripeness. It is clear that the Draft Inspection Regulations is still under progress and scrutiny stages and thus the Petitioner's claims are premature and mere speculations to warrant judicial action.
- viii. The petition is based on mere speculations, misconceived apprehensions and a misguided interpretation of the law.

3rd Respondent's Case

- 21. In opposition to the petition, the 3rd respondent filed its replying affidavit by the Clerk of the National Assembly, Samuel Njoroge sworn on 8th September 2023.
- 22. He depones that following, Hon. Kassait Kamket's proposal, the 3rd respondent considered the amendment to Section 16 of the *Traffic Act* under Section 2 of the Traffic (Amendment) Act. He asserts that consideration of the impugned amendments was done in accordance with the law.
- 23. He depones that the proposed amendments were subjected to public participation in line with Article 118(1)(b) of the *Constitution* and Standing Order No.127(2) of the National Assembly Standing Orders.
- 24. The public was invited vide an advertisement dated 23rd February 2022 to submit their views on the proposed amendments. The Departmental Committee on Transport, Public Works and Housing received 7 memoranda in this regard. In addition a stakeholder meeting was held on 30th March 2022.
- 25. He depones that the Committee having considered the public and stakeholder's views, recommended to the House that the Bill be passed with the cited amendments. In light of this, he argues that the 3rd respondent cannot be accused of failing to carry out its mandate as it fully did so in this matter.
- 26. It is contended that the petitioner's claims that inspection fees are being charged is unsubstantiated and goes against the dictates of Section 107 of the *Evidence Act*. This includes the claim of violation of Article 46 and 94 of the *Constitution*. He adds that the petitioner in alluding to Article 114 of the *Constitution* misunderstood the effect of the Act.
- 27. He as well attacks the petition for failing to meet the test of specify and being premised on conjecture. He notes that the 3rd respondent's power to delegate authority is well founded under Section 2(2) of the Traffic (Amendment) Act, 2022.



28. Equally, he avers that the Draft Regulations are yet to be submitted to the 3rd respondent by the 1st respondent hence the petitioner's averments premature and in breach of the doctrine of separation of powers, as the legislative process is yet to be completed. In sum, the petition is deemed to lack merit, frivolous and an abuse of this Court process.

Petitioner's Submissions

29. The petitioner through Okumu Kubai and Company Advocates filed submissions dated 27th July 2023. Counsel discussed the following issues: whether there was adequate public participation over Section 16(2) and (3) of the Traffic Amendment Act and the Draft Motor Vehicle Inspection Regulations; whether Section 16(2) and (3) of the Traffic Amendment Act and the Draft Motor Vehicle Inspection Regulations violate Article 46 of the Constitution of Kenya 2010; and whether process leading to the enactment of Sections 16(2) and 16(3) of the Traffic Amendment Act contravened Articles 94 and 114 of the Constitution.
30. Counsel submitted in the first issue that adequate public participation was not conducted in view of the impugned amendments and the Draft Regulations. Counsel argued that the respondents had not satisfactorily considered the effect of the impugned amendments. Further that the 1st respondent had failed to issue the relevant information so as to allow the public appreciate the full tenor of the impugned amendments.
31. It was asserted that the respondents had not adhered to the threshold set for public participation in *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] eKLR as follows:
- “Merely to allow public participation in the law-making process is, in the prevailing circumstances, not enough. More is required. Measures need to be taken to facilitate public participation in the law-making process. Thus, Parliament and the provincial legislatures must provide notice of and information about the legislation under consideration and the opportunities for participation that are available. To achieve this, it may be desirable to provide public education that builds capacity for such participation. Public involvement in the legislative process requires access to information and the facilitation of learning and understanding in order to achieve meaningful involvement by ordinary citizens.... [the Assembly] should create conditions that are conducive to the effective exercise of the right to participate in the law-making process...It is implicit, if not explicit, from the duty to facilitate public participation in the law-making process that the Constitution values public participation in the lawmaking process. The duty to facilitate public participation in the law-making process would be meaningless unless it sought to ensure that the public participates in that process. The very purpose in facilitating public participation in legislative and other processes is to ensure that the public participates in the law-making process consistent with our democracy. Indeed, it is apparent from the powers and duties of the legislative organs of state that the Constitution contemplates that the public will participate in the law-making process...”
32. Like dependence was placed in *Doctors for Life International vs. Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) and *Abe Semi Bvere v County Assembly of Tana River & another; Speaker of the National Assembly & another (Interested Parties)* [2021] eKLR and *Law Society of Kenya v Attorney General Nairobi* Petition No. 318 of 2012.



33. On the second issue, Counsel submitted that the impugned amendments intend to subject vehicles for inspection by the 1st respondent or other persons who are authorized to do so. Counsel contrasting this with Article 46(1) of the *Constitution* noted that this Article discloses three obligations on public and private entities. First, an obligation to provide goods and services of reasonable quality, second, an obligation to avail any information necessary for the consumer to gain full benefit from any goods or services and third, an obligation to ensure the protection of consumers' health, safety, and economic interests.
34. In this matter, Counsel contended that the impugned amendments violate this Article as impose a responsibility on private motor vehicle centres to ensure proper issuance of inspection certificates while making them agents of the 1st respondent without an express legal basis. This in turn, exposes consumers to risk. Counsel as well submitted that a similar risk is posed by the Draft Regulations.
35. Reliance was placed in Kenya Human Rights Commission v Communications Authority of Kenya & 4 others [2018] eKLR where it was observed that:
- “...deals with consumer rights, which provides consumers have right to goods and services of reasonable quality and information necessary for them to gain full benefit for goods and services, to protection of their health, safety and economic interest. The same Articles impose duly on the Government to take legislative measure for consumer protection and for fair, honest and decent advertising.”
36. Like dependence was placed in Association of Kenya Medical Laboratory Scientific Officers v Ministry of Health & another [2019] eKLR and Coalition for Reforms and Democracy v Attorney General Petition No.630 of 2014.
37. On the third issue, Counsel submitted that Article 94 of the *Constitution* exclusively confers legislative authority in the Parliament. It was argued however that in this matter the impugned amendments purport to confer additional mandate to third parties as agents of the 1st respondent, without the power being expressly delegated by Parliament thus in breach of this Article.
38. Counsel further contended that since the impugned amendments allow the privately-owned inspection centres to charge inspection fees the same ought to be considered as a money bill in Parliament in line with Article 114 of the *Constitution* which was not done in this case. Counsel as such stressed that the impugned amendments ought to have been introduced in Parliament.
39. Reliance was placed in Speaker of the National Assembly & another v Senate & 12 others [2021] KECA 282 (KLR) where it was held that:
- “A second category of bills are those under article 109(5) of the *Constitution*, namely money Bills, which can only be introduced in the National Assembly. Article 114 of the *Constitution* further stipulates that money Bills can only be considered in the National Assembly.”

1st Respondent's Submissions

40. Counsel, Judith Opili Sirai on behalf of the 1st respondent filed submissions dated 26th January 2022 and outlined the issues for discussion as: whether there was adequate public participation over Section 16(2) and (3) of the Traffic (Amendment) *Act No.23 of 2022* and the Draft Motor Vehicle Inspection Regulations; whether Section 16(2) and (3) of the Traffic (Amendment) *Act No.23 of 2022* and the Draft Motor Vehicle Inspection Regulations violate Article 46 of the *Constitution*; whether the process



leading to the enactment of Section 16(2) and (3) of the Traffic (Amendment) [Act No.23 of 2022](#) contravened Articles 94 and 114 of the [Constitution](#); and whether an order in the nature of prohibition should be issued against the 1st respondent from implementing the provisions of Section 16(2) and (3) of the Traffic Amendment [Act No.23 of 2022](#) and regulations made pursuant to the said amendments.

41. Counsel in the first issue, answered in the affirmative. Counsel noted that robust public participation had been conducted in view of the impugned amendments and the Draft Regulations as detailed in the 3rd respondent's affidavit. Reliance was placed in *Okiya Omtatah Okoiti & 4 Others Versus Attorney General & 5 Others; Council of Governors & 4 Others (Interested Parties) (2020) eKLR* where it was held that:

“96. As to how to determine whether the public participation conducted was sufficient, the Court stated that: The issue then arises of how we measure what is sufficient. In our determination we agree with the test applied in the *Merafong Demarcation* case and state that, the method and degree of public participation that is reasonable in a given case depends on a number of factors, including the nature and importance of the issue at hand and the intensity of its impact on the public ... 135. First, it is important to appreciate the fact that the National Assembly has improved the manner in which it deploys the use of omnibus bills in its legislative business. The decisions relied on by the Petitioners were made in different circumstances and they can only be applied with necessary modification, taking into account the prevailing parliamentary practices. It is clear from the 3rd Respondent's averments that although the targeted amendments were conveyed in a single Bill, the individual statutes were clearly flagged out and committed to the relevant Departmental Committee for consideration and collection of public views. This information was relayed to the public when they were invited through the newspaper adverts to present their views on the Bill .. We therefore find it difficult to agree with the Petitioners that the use of an omnibus bill to effect the amendments ipso facto impeded public participation ...

187. Through Standing Order No. 127 of the National Assembly Standing Orders (4th Edition), the National Assembly incorporates the constitutional principle of public participation in its legislative business by providing that:

195. Our view is that the time that was available for public participation must be considered in light of all the processes of the legislative process. In the present Petition, the evidence before us suggests that the public was aware of the Bill from 10th April 2018 when it was published, and could have participated from that date. The purpose of publication of Bill in this regard is to notify the public and invite representations through the elected Members or direct submission of memoranda and petitions. It is therefore not entirely correct to state that the members only had the seven days indicated in the advertisement of 7th May 2018 to present their views on the Bill...

197. Coupled with the fact that there was sufficient time availed to the public to give their views on the amendments, we find that there was sufficient public participation in the circumstances of this Petition."

42. On the second issue, Counsel submitted that the petitioner had not demonstrated how the impugned amendments had violated consumer rights under Article 46 of the [Constitution](#). Counsel accentuated



that the petitioner must demonstrate how the provisions of the Constitution were violated and the manner of the violation as established in *Anarita Karimi Nieru Versus AG (1979)*eKLR.

43. Equal dependence was placed in *Communications Commission of Kenya & 5 Others Versus Royal Media Services Limited & 5 Others (2014)* eKLR, *Mumo Matemu Versus Trusted Society of Human Rights Alliance & 5 others (2013)* eKLR and *Alice Muthoni Wahome Versus AG & 2 Others (2021)* eKLR.
44. Counsel moving on, submitted that the delegation of the 1st respondent's mandate of inspection is justified under Section 2(2) of the Traffic (Amendment) Act, 2022. Counsel underscored therefore that the 1st and 3rd respondents had acted within their legal mandate making their actions constitutional.
45. Dependence was placed in *Advanced Gaming Limited Versus Betting Control and Licensing Board & 2 Others; Safaricom Limited (Interested Party) (2019)* eKLR where it was held that:

“The role of the court in such cases was well sated in *Republic vs National Water Conservation & Pipeline Corporation & 11 Others*¹³³¹where it was held that once a Judicial Review court fails to sniff any illegality, irrationality or procedural impropriety, it should down its tools forthwith. Judicial intervention is posited on the idea that the objective is to ensure that the agency did remain within the area assigned to it by Parliament. If the agency was within its assigned area then it was prima facie performing the tasks entrusted to it by the legislature, hence not contravening the will of Parliament. In such a case, a court will not interfere with the decision. A decision, which falls outside that area, can therefore be described, interchangeably, as: - a decision to which no reasonable decision-maker could have come; or a decision, which was not reasonably open in the circumstances. ”
46. Counsel also argued that the Draft Regulations are yet to be submitted to the 3rd respondent. As such, the petitioner's allegations are deemed premature, vexatious and offensive to the doctrine of ripeness.
47. On the next issue, Counsel submitted that there is general presumption that an Act of Parliament is constitutional. Further, Counsel stated that the petitioner's argument that the impugned amendments violate Article 94 of the Constitution are unfounded as the same were enacted by the Parliament through an Act of Parliament.
48. Likewise, Counsel submitted that the impugned amendments do not qualify as a money bill under Article 114 of the Constitution as do not seek to charge the public funds.
49. On the final issue, Counsel submitted that the prohibition orders sought are not capable of being issued as the Traffic (Amendment) Act was procedurally enacted and passed into law. Considering this, the impugned amendments have already taken effect.
50. To buttress this point reliance was placed in *Kenya National Examinations Council Versus Republic ex-parte Geoffrey Githinii Njoroge & 9 Others [1997]* eKLR where it was held that:

“That is why it is said prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision. What does an ORDER



OF PROHIBITION do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.”

2nd Respondent’s Submissions

51. The 2nd respondent through State Counsel, Betty Mwasao filed submissions dated 9th September 2024 and underscored the pertinent issues as: whether Section 16(2 & 3) of the Traffic (Amendment) Act is unconstitutional; whether the impugned amended provision of Section 16(2 & 3) of the *Traffic Act* conflicts with the functions of the Authority as provided in Section 4(2)(b) of the *National Transport and Safety Authority Act* and whether the claims against the Draft Inspection Regulations offend the principle of ripeness.
52. Counsel on the first issue submitted that the petitioner’s assertion that the impugned amendments violate Article 94 of the *Constitution* are unfounded as it is clear that they stem from the Traffic (Amendment) Act which is an Act of Parliament not subsidiary legislation. The Act was further enacted in line with the dictates of the *Constitution* and the law.
53. Counsel added that in making its claim, the petitioner had failed to discharge its burden of proof. Reliance was placed in Leonard Otieno v Airtel Kenya Limited [2018] eKLR, where it was held that:

“It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Constitution* and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.”
54. Counsel in addition argued that the petitioner’s assertions on Article 46 of the *Constitution* are speculative and unsubstantiated. Nonetheless, it was reasoned that the impugned amendments in no way allow the authorized bodies to act outside the bounds of law. To buttress this argument reliance was placed in National Conservative Forum v Attorney General [2013] eKLR where it was held that:

“It is, I believe, generally accepted in this and other jurisdictions that the court will not engage in determination of a matter for academic reasons. There must be a real controversy or dispute before it in order for it to exercise jurisdiction. In the case of John Harun Mwaui & Others –vs- The Attorney General (supra), it was observed that the jurisdiction vested in the High Court to interpret the *Constitution* is not exercised in a vacuum; that there must be a real controversy or dispute between parties before the court in order for it to exercise its jurisdiction.”
55. Counsel stressed that the petitioner’s claims are speculative and fail to demonstrate any actual violation of constitutional rights. That said, Counsel stated that it has been established that the burden of proof that a statute is unconstitutional rests on the one alleging so as was held in Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR). Like dependence was placed in Isaiah Biwott Kangwony v Independent Electoral & Boundaries Commission & another [2018] eKLR.



56. On Article 114 of the Constitution, Counsel asserted that contrary to the petitioner’s arguments, not all legislation that involve imposition of fees amount to a money Bill as can be appreciated from this Article. This was discussed in *Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae)* [2013] KESC 7 (KLR) cited in support where it was held that:

“Indeed in both the Westminster system as practiced in most of the Commonwealth and in the United States, a Money Bill or, as it is alternatively called a Supply Bill is one concerning taxation, appropriation or government spending as opposed to those bills that make changes in public law... In the United Kingdom a Money Bill is defined under section 1 of the Parliament Act, 1911 as follows: “A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, [the National Loans Fund] or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions “taxation,” “public money,” and “loan” respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.” In the United Kingdom the Speaker of the House of Commons determines whether a Bill is a Money Bill or not and his ruling on that issue is final.

In view of these examples of parliamentary practice it is clear that a Money Bill is one that provides for levying taxes, altering taxes or appropriation of the consolidated funds.”

57. Turning to the second issue, Counsel submitted that, the impugned amendments do not conflict with the function of the 1st respondent. Counsel noted that Traffic Act and NTSA Act operate in tandem, with the Traffic Act complementing the mandate of the 1st respondent as delineated under the NTSA Act. Considering this, any amendments between the two statutes do not violate the legislative process, nor do they circumvent the constitutional role of Parliament under Article 94 of the Constitution.
58. Counsel urged further that it is trite law that statutes be interpreted in a meaningful and purposive manner so as to give effect to the basic objectives of the legislation. Reliance was placed in *Republic v Kenya Maritime Authority & another; Zam Zam Shipping Limited (Interested Party)* ([2021] KEHC 309 (KLR) where it was held that:

“Where discretion is conferred on the decision-maker the courts also have to determine the scope of that discretion and therefore need to construe the statute purposefully. One can confidently assume that Parliament intends its legislation to be interpreted in a meaningful and purposive way giving effect to the basic objectives of the legislation. the Constitution requires a purposive approach to statutory interpretation. The purpose of a statute plays an important role in establishing a context that clarifies the scope and intended effect of a law.”

59. On the final issue, Counsel stated that the petitioner’s challenge to the draft Regulations was premature. This is because the regulations are still in the legislative phase and yet to be finalized and adopted into law. This challenge is argued to be in breach of the doctrine of ripeness. Dependence was



placed in Republic v National Employment Authority & 3 others Ex-Parte Middle East Consultancy Services Limited [2018] eKLR where it was held that:

“The principle of ripeness was aptly captured by Kriegler J in the following words:-“The essential flaw in the applicants' cases is one of timing or, as the Americans and, occasionally the Canadians call it, “ripeness”... Suffice it to say that the doctrine of ripeness serves the useful purpose of highlighting that the business of a court is generally retrospective; it deals with situations or problems that have already ripened or crystallized, and not with prospective or hypothetical ones. Although, as Professor Sharpe points out and our Constitution acknowledges, the criteria for hearing a constitutional case are more generous than for ordinary suits, even cases for relief on constitutional grounds are not decided in the air. ...The time of this Court is too valuable to be frittered away on hypothetical fears of corporate skeletons being discovered.”

3rd Respondent's Submissions

60. On 23rd July 2024, Counsel Michelle Omuom for the 3rd respondent filed submissions where she highlighted the issues for discussion as: whether in formulating Motor Vehicle Inspection Regulations, 2022 the Cabinet Secretary, Ministry of Roads and Transport, usurped the legislation-making powers of Parliament; whether public participation was conducted by the respondents; and whether the impugned Amendment Act is unconstitutional for violating consumer rights under Article 46 of the Constitution.
61. Counsel to begin with stated that the 3rd respondent in its replying affidavit had delineated in detail the manner in which Parliament enacted the impugned amendments in line with the Constitution and the law.
62. Counsel submitted that Article 94(5) and (6) of the Constitution provides that the legislative mandate of the minister is a delegated authority. Moreover, Counsel stated that the Statutory Instruments Act also requires scrutiny of statutory instruments under Section 11 and 19. Consequently, Counsel submitted that the Cabinet Secretary had not usurped the 3rd respondent's mandate in drafting the impugned Regulations.
63. Reliance was placed in Justus Kariuki Mate & Another v. Martin Nyaga Wambora & another (2017)eKLR where it was held that:

“From the facts of this case, it is clear to us that the integrity of Court Orders stands to be evaluated in terms of their inner restraint, where the express terms of the Constitution allocate specific mandates and functions to designated agencies of the State. Such restraint, in the context of express mandate allocation under the Constitution, is essential, as a scheme for circumventing conflict and crisis, in the discharge of government responsibility. No governmental agency should encumber another to stall the constitutional motions of the other. The best practice from the comparative lesson, signals that the judicial organ must practice the greatest care, in determining the merits of each case.”
64. Like dependence was placed in Speaker of Senate & another vs. Attorney General & Others (2013) eKLR, Law Society of Kenya v Attorney General & another; National Commission for Human Rights & another (Interested Parties) [2020] eKLR and Mumo Matemo v. Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR.



65. It was additionally emphasized that in principle, statutes enjoy the presumption of constitutionality as held in *Katiba Institute & another V. Attorney General & another* (2017) eKLR. Additional dependence was placed in *Patrick Ouma Onyango & 12 others v Attorney General & 2 others* [2005] eKLR and *Law Society of Kenya v Attorney General & 2 others* [2013] eKLR.
66. On the second issue, Counsel stated the 3rd respondent in its affidavit, had shown that adequate public participation had been conducted before enactment of the impugned amendments. Reliance was placed in *Kiambu County Government & 3 Others v Robert N. Gakuru & Others* [2017] eKLR where it was held that:
- “... the issue of public participation is of immense significance considering the primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. the Constitution in Article 10 binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation.”
67. Similar dependence was placed in *British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 5 others*[2017] eKLR, *Minister of Health v New Clicks South Africa (PTY)Ltd* (2006) 2 SA, *Republic v County Government of Kiambu, Ex parte Robert Gakuru & Another* [2016] eKLR, *Doctors for Life International(supra)*, *Nairobi Metropolitan PSV Saccos Union Ltd & 25 Others v County of Nairobi Government & 3 Others* Petition No. 486 of 2013,, *Merafong Demarcation Forum & others v President of the Republic of South Africa and others* (CCT 41/07) [2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC) and *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others* (2015) eKLR.
68. In conclusion, Counsel submitted that the petitioner had failed to demonstrate how the 3rd respondent had violated the general public’s consumer rights under Article 46 of the Constitution by enacting the impugned Amendments. Equally, no evidence had been adduced to that effect. Reliance was placed in LT. Col *Peter Ngari Kagume & 7 others v Attorney General, Constitutional Application No. 128 of 2006* where the Court observed that:
- “...It is incumbent upon the Petitioners to avail tangible evidence of violation of their rights and freedoms. The allegations of violations could be true but the court is enjoined by law to go by the evidence on record. The Petitioners’ allegations ought to have been supported by further tangible evidence such as medical records, witnesses...the court is dead to speculation and imaginations and must be guided by evidence of probative value. When the court is faced by a scenario where one side alleges and the rival side disputes and denies, the one alleging assumes the burden to prove the allegation.”

Analysis and Determination

69. Arising from the pleadings and the submissions of the parties; I consider the following to be the issues for determination in this Petition:
- i. Whether the respondents conducted adequate public participation prior to enactment of Section 16(2) and (3) Traffic (Amendment) *Act, No. 23 of 2022* and the draft Motor Vehicle Inspection Regulations, 2022.
 - ii. Whether Section 16(2) and (3) Traffic (Amendment) *Act, No. 23 of 2022* contravenes Article 46, 94 and 114 of the Constitution and is thus unconstitutional.



- iii. Whether the petition offends the doctrine of ripeness in regard to the challenge mounted on the draft Motor Vehicle Inspection Regulations, 2022.
- iv. Whether petitioner is entitled to the relief sought.

Whether the respondents conducted adequate public participation prior to enactment of Section 16(2) and (3) Traffic (Amendment) *Act, No. 23 of 2022* and the draft Motor Vehicle Inspection Regulations, 2022.

70. Public participation refers to the involvement of the public in matters where decisions affecting the public are to be made. the *Constitution* in Article 10 (2) (a) and 118 (1) (b) underpin public participation as an essential feature in our constitutional scheme and practice. Article 10(2)(a) and Article 118 (1) (b) of the *Constitution* provide thus:

Article 10:

(2) The national values and principles of governance include –

- (b) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;

Article 118:

Parliament shall-

- b) Facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.

71. The three-judge bench in *Institute of Social Accountability & another v National Assembly & 4 others* [2015] KEHC 6975 (KLR) discussing this principle observed 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. In *Minister of Health and Another NO v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC) at para. 630, Sachs J., noted that;

“The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.”

72. The Supreme Court in *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) vs Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party)* [2019] KESC 15 (KLR) issued the following guidelines on public participation as follows:

“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.”

73. The contention by the Petitioner was that adequate public participation was not conducted prior to the amendments to the Section 16 (2) & (3) of the Traffic (Amendment) Act as well as the Draft Regulations.

74. This position was however countered by the information contained in the replying affidavit of the 3rd Respondent, Mr. Samuel Njoroge sworn on 8th September, 2023 where he asserted that public participation in relation to the proposed amendment was undertaken in accordance with Section 118 (1) (b) of the *Constitution* and Standing Order 127 (3) of the National Assembly Standing Orders. He indeed annexed a copy of the advertisement in the print media for 23rd February, 2022 in which



views were invited from the public in regard to the proposed amendment and as a consequence, the relevant Committee (Departmental Committee on Transport, Public Works and Housing) was able to receive seven written memoranda on the issue from among others- Mr. Gerald Osiemo, TOMAE Kenya, Kenya Driving Schools Association, The National Authority for Campaign Against Alcohol (NACADA), Kenya Private Sector Alliance (KEPSA) and the National Transport and Safety Authority (NTSA). That in addition, the Committee went ahead and held a public forum on Traffic (Amendment) Bill, 2021 with the stakeholders on 30th March, 2022. That it is after the process of listening to the stakeholders and taking their views and concerns that a recommendation was made to pass the Bill containing the proposed amendments as per the annexed report- SN2.

75. From the evidence presented by the 3rd respondent, there was advertisement calling for public participation in respect to the proposed amendment to Section 16 (2) and (3) of the Traffic (Amendment) Act, further, responses were in fact received. This in itself is a confirmation that the public was notified and indeed participated in that process.
76. The Petitioner claims that the process of public participation was inadequate yet it does not say from what viewpoint; is it in terms of time given to submit the views or the quality of the participation itself? The claim that there was inadequate public participation is made without pin-pointing the specific factors evidencing the inadequacy of the public participation. I am persuaded the allegation is unsubstantiated. Indeed, it was specifically and effectively rebutted by the evidence of the 3rd Respondent.

Whether Section 16(2) and (3) Traffic (Amendment) Act, No. 23 of 2022 contravenes Article 46, 94 and 114 of the Constitution and is thus unconstitutional.

77. It is on this issue that the Petitioner made assertions to the effect the impugned amendments violate various constitutional provisions. In regard to violation of Article 46, the Petitioner stated that the Respondents want to use it to authorize private motor vehicle centres to issue inspection certificates as agents of the 1st Respondent without express legal basis thereby exposing consumers to risk.
78. The Petitioner contended that Article 94 of the Constitution exclusively confers legislative authority to Parliament. It further argued that the mandate as given to the 1st Respondent is incapable of delegation without the authority of the law hence there was breach of Article 94.
79. Additionally, it was pointed out by the Petitioner that by allowing privately-owned inspection centres to charge inspection fees; this was in contravention Article 114 as this would make it a Money Bill which ought to be considered under procedure stipulated in Article 114 of the Constitution and this was not done in this case.
80. These contentions were vehemently opposed by the Respondents.
81. The determination of the above issues must be guided by the Article 259 (1) which gives guidelines to be followed in interpreting the Constitution. This Article provides as follows:
 1. This Constitution shall be interpreted in a manner that--
 - a. promotes its purposes, values and principles;
 - b. advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
 - c. permits the development of the law; and
 - d. contributes to good governance.



82. As a starting point to determining whether or not the Traffic (Amendment Act) Act Section 16 (2) and (3) is inconsistent with the Constitution, it is imperative to examine the impugned amendment vis-à-vis the Constitution for ascertain the existence of why inconsistency or otherwise. As was held in Council of County Governors v Attorney General & another [2017] KEHC 6395 (KLR):

“A law which violates the Constitution is void. In such cases, the Court has to examine as to what factors the court should weigh while determining the constitutionality of a statute. The court should examine the provisions of the statute in light of the provisions of the Constitution. When the constitutionality of a law is challenged on grounds that it infringes the Constitution, what the court has to consider is the “direct and inevitable effect” of such law.

83. Through the Traffic (Amendment) Act No. 23 of 2022; Section 16 of the Traffic Act was amended as hereunder:

Section 2 of the Amendment Act amended Section 16 of the Traffic Act Cap 403 by deleting subsection 2 and substituting therefor the following new sub-section

- 2)) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the authority.
- 3) An inspection under subsection (2) shall be conducted by the authority or persons authorized in writing by the authority.

84. Given that the above amendment was processed through Parliament which is the body constitutionally mandated under Article 94 to legislate, it is difficult to comprehend the Petitioner’s assertion that the 1st Respondent wants to authorize a 3rd Parties to carry out inspections on its behalf without a direct legal basis. The argument in my view is untenable. Parliament is the one that created 1st Respondent by legislation and is still the body that has assigned it the functions and can thus give it power to delegate.

85. The alleged contravention of the consumer rights is based on imaginations of what might occur in the future, hence is not present factual controversy that this Court is able to determine.

86. Finally, is the contention that since the private entities may be allowed to charge inspection fees in case of delegation by the 1st Respondent to perform some of the responsibilities, then this makes the Traffic Amendment Act a ‘money Bill’ of which procedures contemplated for a Money Bill under Article 114 of the Constitution hence procedures thereunder ought to have been followed in enacting the same. This in my view is a gross misconception of what constitutes a Money Bill as specifically defined by Article 114 (3) of the Constitution.

Whether the petition offends the doctrine of ripeness in regard to the challenge mounted on the draft Motor Vehicle Inspection Regulations, 2022

87. The doctrine of ripeness is a component of justiciable principle. It is a jurisdictional principle in which the Court is precluded from entertaining a dispute that has not materialized.

88. The Court in County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya [2021] KEHC 304 (KLR) aptly described the doctrine of ripeness as follows:

“171. The Ripeness doctrine is one facet of the larger principle of non-justiciability. It is a jurisdictional issue that bars a Court from considering a dispute whose



resolution has not crystallized enough as to warrant Court’s intervention. Its operation is informed by the idea that there exist other fora with the capacity to resolve the dispute other than Court process...”

In the same matter, it was later observed that:

“325. Justiciability was the quality or state of being appropriate or suitable for adjudication by a court. For a matter to be justiciable, it had to be ripe for it to be properly before the court. Ripeness was the state that a dispute had reached, but had not passed, when facts had developed sufficiently to permit an intelligent and useful decision to be made.”

89. In the present case, the Petition challenges the ‘Draft Motor Vehicle Inspection Regulations, 2023 which the 1st Respondent came up with pursuant to Section 119 (g) of *Traffic Act* and issued a notice for the public participation. These draft regulations are matters in progress. It has not crystallized into an actionable controversy that would warrant the intervention of this Court. I find that it is barred by the doctrine of ripeness.

90. The upshot of the foregoing findings is that this Petition fails in its entirety. It is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF APRIL, 2025.

.....

L N MUGAMBI

JUDGE

