



REPUBLIC OF KENYA



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**Energy Dealers' Association & 3 others v Energy and Petroleum Regulatory Authority & 2 others
(Constitutional Petition E699 of 2024) [2025] KEHC 7962 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7962 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL PETITION E699 OF 2024

AB MWAMUYE, J

MAY 22, 2025

**IN THE MATTER OF THE CONTRAVENTION
OF FUNDAMENTAL RIGHTS AND FREEDOMS**

UNDER ARTICLE 10,27, 29,31,32, 43(1)(A), 46,48, 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 9, 11(E) ,36, 85, 117(6) OF THE ENERGY ACT NO. 1 OF 2019

AND

IN THE MATTER OF LEGAL NOTICE 100

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT

AND

IN THE MATTER OF COMPETITION ACT,2012

AND

IN THE DATA PROTECTION ACT, 2019

BETWEEN

ENERGY DEALERS' ASSOCIATION 1ST PETITIONER

INDEPENDENT GAS ENERGY DEALERS ASSOCIATION 2ND PETITIONER

KEPHER ODONGO 3RD PETITIONER

YUSUF ADAN HUSSEIN 4TH PETITIONER

AND

ENERGY AND PETROLEUM REGULATORY AUTHORITY 1ST RESPONDENT



JUDGMENT

Introduction

1. This Petition challenges the lawfulness and constitutionality of regulatory measures requiring LPG (liquefied petroleum gas) dealers to install CCTV cameras at filling areas with live remote access to the regulator. The impugned measures are contained in the Petroleum (LPG) Regulations, 2019 – specifically First Schedule Part IX clause 23 and Second Schedule Part VIII clause 16 of [Legal Notice No. 100 of 2019](#) and an EPRA directive dated 20th February 2024. These provisions mandate all licensed LPG storage and cylinder-filling facilities to have “intrinsically safe, non-obscured” CCTV cameras monitoring the filling area, accessible to the Authority via a web portal.
2. The February 2024 directive instructed compliance by all licensees, ostensibly after phased implementation, with interim enforcement timelines. This followed heightened public safety concerns after a tragic gas plant explosion in Embakasi in early 2024 that claimed multiple lives and caused hundreds of injuries. The Petitioners, an association of LPG distributors moved this Court challenging the legality of the CCTV requirements and obtained interim conservatory orders suspending the directive.
3. The Petitioners contend that neither the [Energy Act, 2019](#) nor the [Petroleum Act, 2019](#) expressly authorizes the requirement of CCTV installation with live access for regulators. They argue that the CCTV mandate is ultra vires the parent statutes and violates the [Statutory Instruments Act, 2013](#), as an excessive regulatory imposition lacking clear legislative basis and adequate public participation. They further allege that the [Fair Administrative Action Act, 2015](#) (FAAA) was breached insofar as the EPRA directive was issued without proper notice, reasons, or stakeholder consultation – amounting to an unfair administrative action. The Petitioners also invoke the [Data Protection Act, 2019](#), asserting that compulsory live-feed access to their CCTV infringes data privacy principles, with no clarity on who at EPRA can view the footage, how long data will be stored, or how it will be secured. In their view, the measures grossly infringe several constitutional rights: the right to privacy under Article 31 by exposing their premises to constant surveillance, the right to property under Article 40 by compelling costly installations and allegedly risking disclosure of trade secrets, socio-economic rights under Article 43 by imposing burdens that could raise costs of cooking gas for consumers or drive small dealers out of business, and the right to fair administrative action under Article 47 by issuing a directive in an arbitrary and procedurally unfair manner. They characterize the requirements as arbitrary, disproportionate and not grounded in law, citing authority that onerous regulations lacking fairness or clear basis are unconstitutional.
4. EPRA and the Attorney-General oppose the Petition. They maintain that the CCTV provisions are squarely founded on statute and were lawfully promulgated. In particular, Section 11(e) of the [Energy Act 2019](#) empowers EPRA “to develop and enforce guidelines that ensure compliance with the Act and the licensing conditions stipulated in the Act”. The [Petroleum Act 2019](#) and the 2019 LPG Regulations made by the Cabinet Secretary require LPG business operators to comply with all license conditions set by the Authority. The Respondents state that the impugned clauses being part of the licensing requirements are thus firmly rooted in law and within the mandate granted by



Parliament. It is noted that the 2019 Regulations ([Legal Notice No.100 of 2019](#)) were gazetted and laid before Parliament without annulment; hence they carry the force of law. EPRA avers that extensive stakeholder consultations were in fact undertaken during the formulation of the Regulations in 2019, and that the CCTV requirement was among the safety measures discussed, given rising cases of illegal refilling and accidents.

5. Substantively, the Respondents defend the CCTV mandate as a reasonable and vitally important measure to protect public safety and ensure compliance with safety standards. They cite recent deadly accidents involving LPG, asserting that real-time remote monitoring is needed to deter and detect illicit practices (such as refilling cylinders without authorization or unsafe handling of gas) that could cause explosions. EPRA explains that the directive of 20th February 2024 was an enforcement notice to implement already-existing legal requirements, done “in phases” with all licensees “formally notified” well in advance. The directive was not intended to victimize dealers but to operationalize safety duties in the public interest. According to EPRA, any interference with privacy or property is minimal and outweighed by the compelling need to prevent loss of life, injuries, and property damage resulting from LPG accidents. They contend that business premises open to the public have a diminished expectation of privacy, especially in a heavily regulated sector dealing with hazardous materials. All footage would be used solely for regulatory oversight and emergency response, not for any ulterior purpose. EPRA emphasizes that it remains bound by the Data Protection Act and confidentiality obligations to safeguard any data obtained. Finally, the Respondents raise a procedural point: that disputes over licensing conditions and regulatory directives should fall under the Energy and Petroleum Tribunal established under the [Energy Act](#), and that the Petitioners ought to have first sought redress in that forum per [Energy Act](#) Section 36 before invoking the High Court’s constitutional jurisdiction
6. The Court granted interim conservatory orders suspending the impugned directive pending the hearing and determination of the Petition. Those orders have remained in force. The effect was to temporarily halt mandatory enforcement of the CCTV installation and live-link requirements.

“Consequently, it is hereby further ordered and directed:

THAT pending the inter partes hearing and determination of the Application dated 19/12/2024 on 31/01/2025 at 10:30AM virtually as directed by this Court vide the Directions dated and issued on 20/12/2024, a conservatory order be and is hereby issued against the 1st Respondent staying its directive requiring the Petitioners’ Members to issue the 1st Respondent with a web based portal access to the CCTV cameras in their installations as a prerequisite for continuing operations, renewal of licenses or issuance of new licenses as per the first Schedule Regulation IX clause 23 and Second schedule Regulation VIII clause 16 of Legal Notice 100 the Regulation VIII of the Petroleum (Liquefied Petroleum Gas) Regulation, 2019; provided that at all times the Petitioners and their Members shall ensure that all other security and safety measures applicable to their operations are fully complied with.”

7. Having considered the pleadings, affidavits, and submissions of the parties, the Court frames the following key issues for determination:
 - a. Whether the CCTV installation and remote access requirements imposed by the 2019 Regulations and EPRA’s 20th February 2024 directive are grounded in law – specifically, whether they comply with the [Energy Act](#) 2019 (or [Petroleum Act](#) 2019) and the [Statutory Instruments Act](#), or are ultra vires and invalid. This issue encompasses examining the legal mandate of EPRA to impose such conditions and the procedure followed in formulating and enforcing them.



- b. Whether the manner in which the Respondent issued and intends to enforce the CCTV requirements (via the directive) violates Article 31, 40, 47 of *the Constitution* and the *Fair Administrative Action Act* – in particular, whether the directive was issued in a procedurally unfair or unreasonable manner (e.g. without adequate notice, reasons, or stakeholder engagement) and thus unlawful.

Analysis

Statutory and Procedural Validity of the CCTV Requirements

8. The Petitioners argue that the parent statutes do not specifically provide for CCTV surveillance, implying the Regulation and directive lack foundation. It is true that neither the *Energy Act*, 2019 nor the *Petroleum Act*, 2019 explicitly mentions “CCTV cameras.” However, the absence of an express term does not mean the requirement is ultra vires if it falls within the general scope of powers conferred. Section 11(e) of the *Energy Act*, 2019, which establishes EPRA’s functions, empowers the Authority “to develop and enforce guidelines that ensure compliance with the Act and the licensing conditions stipulated in the Act.”
9. Notably, Regulation 4 of the 2019 LPG Regulations makes it an offence to contravene any provision of the Regulations or any license condition stipulated thereunder. Regulation 5 and the First Schedule prescribe requirements for obtaining an LPG business licence, while Regulation 7 and the Second Schedule prescribe requirements for renewal. Among these is the contested condition that a licensee must provide proof of installation of compliant CCTV cameras at the cylinder filling area with remote access for the regulator. In substance, this is a licensing condition aimed at compliance monitoring. The *Petroleum Act* and Regulations also stipulate that all LPG business must be conducted in accordance with the terms of a valid licence issued by EPRA. Therefore, a dealer who chooses to engage in the LPG trade does so on the terms set by the licence – including safety and monitoring conditions that the regulator deems necessary under the law.
10. The Court finds that the impugned requirement is within the ambit of the enabling statutes. The legislature empowered the regulator to impose license conditions for safety and compliance, which logically encompasses modern monitoring tools like CCTV if reasonably required to curb unlawful practices and enhance safety. The broad legislative framework does not forbid such a condition; on the contrary, it envisages that EPRA will specify technical and safety measures. It is neither practical nor desirable for Parliament to enumerate every specific safety device or technology in the Act – that is precisely why it delegates to regulators the task of filling in technical details via subsidiary legislation and guidelines. As was observed by the Court of Appeal in *British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health (Petition 5 of 2017)*, Parliament may enact general provisions and leave the particulars of implementation to regulations, so long as those particulars remain consistent with the parent Act and *the Constitution*. In this case, the CCTV requirement is consistent with, and indeed advances, the Acts’ purpose of ensuring safe and lawful conduct of the petroleum business. The Petitioners’ contention that the parent Acts needed to specifically mention “CCTV” is misplaced; what matters is that the regulations reasonably relate to the statutory mandate (safety compliance), which they do.
11. The 2019 Regulations were published in the Kenya Gazette on 5th July 2019 and took effect the same day. There is no evidence before this Court that they were annulled or nullified under the procedure set by the *Statutory Instruments Act*, 2013. Under that Act, a regulation laid before Parliament is scrutinized by the relevant committee for consistency with *the Constitution* and parent Act, and may be annulled wholly or in part if found to breach certain criteria (including lack of public participation or



imposing excessive costs without justification). No Gazette notice or resolution annulling the CCTV-related clauses has been presented. The Petitioners did not demonstrate (by evidence such as Hansard or committee reports) that there was any objection in 2019 to these specific provisions on the floor of the House.

12. The Petitioners also avers that the regulation imposes an “excessive burden” without a Regulatory Impact Statement. The Court notes that at the time of promulgation in 2019, the Cabinet Secretary was required by section 6 of the *Statutory Instruments Act* to prepare a Regulatory Impact Statement (RIS) for any proposed regulation likely to impose significant costs on the public or a section thereof. It is not clear if an RIS was prepared or not, but even assuming it was not, that omission alone would not automatically invalidate the regulation at this late stage unless it rose to the level of a constitutional violation (since Parliament evidently allowed the instrument to stand). Moreover, any challenge to the process of enactment of the 2019 Regulations needed to be brought within a reasonable time. Here, the Petitioners only challenged the CCTV provisions in 2024 after EPRA moved to enforce them; by then, the regulations had been in force for about five years. Be that as it may, the Court is satisfied that the legal instrument imposing the CCTV requirement was brought into being through the lawful exercise of delegated legislative power. No ultra vires action by the regulator or Cabinet Secretary has been proven. The content of the regulation is rationally connected to the objectives of the Energy/Petroleum Acts, and thus passes the test of consistency with the parent law.
13. The Petitioners’ grievance under Article 47 and the *Fair Administrative Action Act* is that the 1st Respondent’s directive of 20th February 2024 was abrupt, unilateral, and issued without consultation or adequate notice. They argue that it amounted to an unfair administrative action, catching dealers off-guard and failing to explain crucial details about how the live CCTV access would be used. The Respondents counter that the directive was a general enforcement notice and not an individualized administrative decision, and that in any event licensees had been given phased notices over time to comply.
14. The Court has considered the nature of the impugned directive. It was a circular addressed to all LPG licensees reminding them of an existing obligation under the law (the 2019 Regulations) and setting a deadline for compliance. It is, in essence, administrative in character but of general application (akin to a regulatory notice). Section 4 of the *Fair Administrative Action Act*, 2015 demands that where an administrative action is likely to adversely affect the rights of any person, the administrator should give prior notice, an opportunity to be heard, reasons for the decision, and information on appeal mechanisms. In the present case, the substantive duty to install CCTV was already law since 2019 – the Petitioners as industry players either knew or ought to have known of it. Indeed, renewal of their licenses under the Second Schedule required demonstrating CCTV installation, though it appears enforcement had been lax.
15. The February 2024 directive did not introduce a new rule; it was a call to comply with an existing one. EPRA asserts and the Petitioners do not seriously refute that there were engagements with stakeholders on implementation timelines. Correspondence annexed to the Respondents’ affidavits (such as circulars from late 2022 and 2023) shows that licensees were informed that CCTV link integration would become mandatory and were urged to set up the necessary systems. Moreover, after the Embakasi accident in January 2024, the public outcry intensified pressure on regulators to enforce safety measures. EPRA’s directive can thus be seen as a response to an urgent public safety concern, issued with sufficient general notice. The Petitioners had the opportunity to seek clarification or extensions from the regulator – and in fact, by coming to court, they ventilated their concerns.
16. That said, the Court acknowledges the Petitioners’ point that the directive lacked detail on how EPRA would utilize and protect the CCTV data. While not strictly a matter of procedural fairness but rather



substantive policy, transparency about data use is important for fostering trust. The Petitioners claim EPRA did not inform them of the purpose, authorized viewers, storage, and security of the CCTV feeds. In response, EPRA in its submissions has outlined that the purpose is to monitor compliance and respond to incidents, access would be restricted to designated enforcement officers, footage would not be stored by EPRA unless needed for evidence, and any retained data would be subject to data protection safeguards. These assurances, though coming ex post facto in litigation, indicate that EPRA has considered those modalities.

17. Nonetheless, the omission to detail those in the notice does not render the directive procedurally unfair to the point of illegality. Article 47 does not mandate that every enforcement circular include an exhaustive data management protocol; it requires that administrative action be lawful, reasonable, and procedurally fair. Here, the action (enforcing a regulation after notice) was lawful and reasonable given the safety rationale. The process – issuing a written notice to all licensees – was an appropriate method to reach all affected parties simultaneously. The Petitioners do not allege that any requested meeting or input on timing was denied; rather, their complaint is general. On the whole, the Court finds no violation of the *Fair Administrative Action Act* in the manner the directive was issued. The Petitioners were adequately informed of what was required installation of cameras and a live feed link, and they had avenues to seek further clarification or exemption for instance, through the EPRA complaints/engagement framework or the Energy Tribunal. Indeed, their resort to this court is evidence that they were heard on their grievances.
18. In conclusion on this point, the impugned regulatory provisions and the EPRA directive have a firm legal basis and were adopted and applied through proper procedure. The Court therefore rejects the Petitioners’ claims that the measures are ultra vires or procedurally infirm.

Impact on Constitutional Rights and Freedoms

a. Right to Privacy (Article 31)

19. Article 31 of *the Constitution* guarantees the right of every person to privacy, which includes the right not to have “their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed; or the privacy of their communications infringed.” The Petitioners argue that 24/7 video surveillance of their premises, with a live link to the regulator, intrudes upon their “private affairs” and amounts to a continuous search of their property without individualized suspicion or warrant. They fear those confidential aspects of their business operations (customer traffic, proprietary processes, etc.) will be exposed to state scrutiny, chilling the privacy and autonomy of their enterprise.
20. It is important to delineate the scope of privacy in this context. The premises in question are commercial LPG filling stations and storage sites – places of business dealing with the public and regulated hazardous substances. They are not homes or purely private spaces; by their nature they invite some level of public access (customers, employees, inspectors) and are subject to safety oversight. Privacy expectations in a business setting are considerably different from those in a personal home. As the South African Constitutional Court famously observed, the right to privacy is much more attenuated in the context of commercial or public activities. In *Bernstein & Others v Bester NO & Others* [1996] ZACC 2, Ackermann J drew a distinction between the “truly personal realm” protected by privacy and the public realm of business: the right to privacy “relates to the most intimate core of a person’s life”, whereas “business activities are public affairs. They need public scrutiny and therefore do not fall within the scope of privacy.” In other words, engaging in commerce, especially a regulated industry, inherently subjects one to observation and oversight that would be unacceptable in one’s inner sanctum of life.



21. In this case, the CCTV monitoring is essentially a form of regulatory inspection and oversight, accomplished through technology rather than physical visits. EPRA officers could, under the [Energy Act](#), physically enter an LPG facility to inspect for compliance and do so periodically. What the impugned measure does is to enable remote, real-time checks in addition to periodic physical inspections. This arguably enhances efficiency and coverage given the limited number of inspectors vs widespread facilities. It also creates a continuous deterrent effect – operators know that egregious safety violations or illegal activities could be noticed in real time. The intrusion on privacy here is that the business is under potential observation during all operational hours.
22. However, several points mitigate the privacy impact: (i) The cameras are restricted to the filling areas, which are generally open workspaces, not private offices or personal spaces (Regulation requires “non-obscured CCTV at the filling area”. Thus, they capture what any member of the public present at the filling bay could see. They are not eavesdropping on private conversations or peering into break rooms. (ii) Only authorized regulator personnel will access the live feed, and their mandate is solely to check compliance (not to spy for other purposes). (iii) No audio interception is indicated – it’s visual monitoring, further narrowing the privacy concern to observation of a public-facing activity. (iv) The CCTV requirement itself is a common safety measure – many such facilities already install cameras for their own security; the added element is the remote access for EPRA.
23. Considering the above, the Court finds that the CCTV-with-remote-access requirement does limit the Petitioners’ privacy to a degree, but not in an egregious or total manner. It is a regulatory limitation confined to the business context and aimed at what is essentially a public safety supervision of a public-facing activity. The core of personal privacy – sanctuary from state intrusion into one’s intimate life – is not at issue here. What is at issue is a conditional reduction of privacy in a commercial operation, which is generally permissible if justified.

b. [Data Protection Act, 2019](#) Compliance

24. The Petitioners voiced concern that EPRA’s access to CCTV feeds could flout the DPA – for example, if personal images of customers or employees are collected without consent, or if data is misused or insecure. The DPA (No. 24 of 2019) indeed regulates processing of personal data by both private and public entities. EPRA, by receiving and viewing CCTV footage, would be processing personal data (faces, behaviors etc. of individuals at the site) and thus qualifies as a “data controller” or “data processor” under the Act. The Act requires, inter alia, that data processing have a lawful basis, that it be done in a transparent and secure manner, and that only data necessary for the purpose is collected.
25. In the Court’s view, the lawful basis for EPRA’s processing here is clearly established: compliance with a legal obligation and public interest (safety regulation) are recognized bases under data protection principles. Section 30 of the DPA allows data processing by statutory authorities when authorized by law. Here, the CCTV requirement is anchored in law (the Regulations), and EPRA’s mandate to monitor compliance is a public duty. Thus, obtaining live footage to detect regulatory breaches is within a “purpose authorised by law.” Consent of the data subjects e.g. the LPG dealer or any customer appearing on camera is not the only basis for processing; regulatory oversight is an independent basis. That said, EPRA must still adhere to the data protection principles: for example, it should minimize access to only what is necessary. It should ensure the feed is secure (encrypted, accessible only to designated officers). It should not retain or share personal data beyond what is needed for enforcement (e.g. if footage reveals a crime, it may be retained as evidence; otherwise live viewing need not be recorded indefinitely). The Petitioners’ submissions highlighted a lack of information on how EPRA will handle the data.



26. EPRA is well-advised to develop and publish clear guidelines or a data handling policy for the CCTV program to address these reasonable concerns. However, the absence of a published protocol at the time of the directive does not render the underlying requirement unlawful. This is because compliance with the DPA is an ongoing obligation – EPRA cannot circumvent it and will be expected to comply fully. If EPRA were to abuse the data (for instance, broadcast it publicly or use it to snoop on unrelated private matters), that specific conduct could be challenged as a DPA breach. But the mere establishment of a surveillance mechanism by law, aimed at regulatory compliance, is not prohibited by the DPA. On the contrary, Section 50 of the DPA allows processing of data by law enforcement or regulatory agencies for the performance of their duties, subject to appropriate safeguards.
27. The Court is satisfied that a harmonious reading of the CCTV requirement with the Data Protection Act is possible and achievable. EPRA’s undertaking (recorded in their affidavit) that they will ensure confidentiality and use the footage strictly for compliance and safety purposes is noted. I conclude that, in principle, the impugned measure can operate in compliance with the Data Protection Act. There is thus no fatal conflict with statute or the constitutional right to privacy, provided that EPRA implements the requisite safeguards. We do not find that the DPA was violated at the point of requiring CCTV – the issue is one of implementation, which as stated can be managed.

c. Right to Property (Article 40)

28. Article 40 protects the right to acquire and own property and against arbitrary deprivation of property. The Petitioners allege that the CCTV installation requirement infringes this right by effectively forcing them to invest significant capital in surveillance equipment and possibly by giving EPRA access to what they term “confidential business information”. They also allude to the threat of license revocation if they don’t comply, which in their view endangers their business – essentially their property in the form of goodwill and capital in the enterprise.
29. At the outset, it must be recognized that not every regulatory compliance cost or burden amounts to an unconstitutional deprivation of property. Modern business is subject to numerous regulations – e.g. requirements to install fire safety equipment, pollution control devices, secure storage facilities, etc. – which entail expenditure. Such requirements are generally considered a legitimate incident of the state’s “police power” to regulate for public health and safety, and do not trigger compensation or constitute a taking, so long as they are not patently unreasonable or confiscatory. Article 40(3) prohibits the State from depriving a person of property without following due process and without prompt compensation, if that deprivation is for a public purpose. In this case, however, there is no appropriation of the Petitioners’ property by the State. The cameras remain the property of the dealers who install them. The data (footage) remains in their possession as well, subject only to EPRA viewing it remotely (and EPRA presumably can request copies if needed for enforcement). This is not a scenario of expropriation, but of regulation of use of property.
30. The Petitioners have not demonstrated that the cost of compliance is so exorbitant as to effectively dispossess them of their business. No concrete evidence such as financial statements or quotations was tabled to show that installing CCTV is beyond their reach or would drive them to insolvency. In any event, safety compliance costs like installing weighing scales, fire suppression systems, ventilations, etc., all of which are also required by the LPG Regulations are part of the cost of doing this particular business. The CCTV requirement was known since 2019, so any new entrant should factor it in; for existing operators, EPRA afforded a multi-year grace period before strict enforcement. The Petitioners’ members have thus had time to plan for this investment.



31. On the evidence, the Court is not convinced that the CCTV requirement amounts to an “arbitrary expropriation” or an unreasonable restriction on the Petitioners’ use of their property. Rather, it is a condition that improves the safety and integrity of their operations – which ultimately protects their property and lives from catastrophic accidents. It is worth noting that should a devastating accident occur due to non-compliance; the dealers stand to lose far more in terms of property and potential legal liability than the cost of a preventative measure like CCTV surveillance.
32. As for the argument of “confidential business information/trade secrets” being accessed: the Petitioners did not identify what secret might be discerned from watching a filling station camera. The filling process and customer flow at an LPG depot are standard - there is little proprietary know-how being filmed. If the concern is that a competitor might hack or that EPRA staff might leak footage, that is speculative and again ties into data security which EPRA must guard. In sum, the Court finds no violation of Article 40. The requirement is general, applies equally to all in the trade so not targeting an individual’s property arbitrarily, pursues a public interest, and does not strip owners of the core incidents of ownership.

d. Socio-Economic Rights (Article 43)

33. The Petitioners pleaded that the CCTV mandate implicates socio-economic rights, although this connection was not rigorously explained. Article 43 guarantees every person the right to the highest attainable standard of health, reasonable standards of sanitation, freedom from hunger, adequate housing, clean water, social security, and education. Of these, the most plausible relevant one here is the right to health (Article 43(1)(a)). The Petitioners may be suggesting that by burdening LPG enterprises, the regulation could impair the public’s access to affordable LPG which has health implications, as LPG is a cleaner cooking fuel compared to wood or charcoal. Conversely, one could argue that the CCTV rule promotes health and safety, by reducing the risk of explosions, fires, and injuries, and by ensuring only authorized, standard-compliant gas cylinders are filled and sold thus protecting consumers from accidents or substandard gas.
34. On evaluation, the Court is inclined to find that the public interest in health and safety is actually furthered – not hindered – by the impugned measures. Safe handling of LPG directly correlates with the right to health and even life. The Embakasi incident tragically underscored how unsafe practices can suddenly devastate lives and strain the healthcare system (with hundreds injured). By instituting surveillance, EPRA aims to proactively prevent such disasters or respond faster if they occur. This is in alignment with the State’s duty under Article 43 to take appropriate measures to protect health. If there is any indirect effect on the cost of LPG (say, dealers marginally raise prices to recoup CCTV costs), that must be weighed against the benefit of safer LPG in the market.
35. No evidence was offered that prices have spiked or that LPG is becoming inaccessible due to regulatory compliance costs. In fact, regulatory compliance can enhance consumer confidence and possibly market growth, benefiting both consumers and ethical businesses. The Court thus does not find a proven violation of any Article 43 socio-economic right. If anything, the measures are justified by the need to secure those very rights for the broader public (health and safety being prerequisites for exercise of socio-economic rights).
36. In summary, the Court finds that the CCTV requirements do implicate the right to privacy (Article 31) to a limited extent, but do not amount to an outright breach of privacy considering the context and safeguards. The rights to property (Article 40), to socio-economic interests (Article 43), and to fair administrative action (Article 47) are not violated by the impugned measures in any sense that is



unconstitutional. Even where a right (privacy) is limited, such limitation may be permissible under Article 24 if it meets the criteria, which we now examine.

37. In light of the foregoing analysis, the Court finds that the Petitioners have not established any violation of their rights or any illegality in the impugned regulations and directive. On the contrary, the Court is satisfied that the requirements for LPG dealers to install CCTV cameras at filling areas and provide live remote access to EPR A: (i) have a sound legal basis in the *Energy Act* and *Petroleum Act* as implemented through the 2019 Regulations; (ii) were adopted through lawful procedure and fairly implemented via general directives with adequate notice; (iii) only minimally infringe certain rights, chiefly privacy, in a manner that is contextually justified; and (iv) pass the test in Article 24 of *the Constitution* as reasonable and justifiable limitations aimed at protecting the greater public interest of safety and life.
38. Having found the impugned regulatory provisions lawful and constitutional, the inevitable outcome is that the Petition must fail. The interim conservatory orders that were suspending the directive have no further basis to remain in place and will be discharged. Each party shall bear its own costs, given the public interest nature of the litigation – the Petitioners brought the case ostensibly to clarify important constitutional questions, and the Respondents are public bodies; in the circumstances, an order for costs against the Petitioners might chill future legitimate public interest litigation, whereas an order against the Respondents could unduly burden the taxpayer for a case properly defended. We deem it just that each side bears its own costs.

Disposition

For the reasons given, the Petition is hereby dismissed. Accordingly, it is ordered and declared as follows:

- i. A Declaratory Order be and is hereby issued that the impugned requirements in the Petroleum (Liquefied Petroleum Gas) Regulations, 2019 – specifically First Schedule Part IX clause 23 and Second Schedule Part VIII clause 16 – mandating LPG dealers to install CCTV cameras at filling areas and provide live remote access to the 1st Respondent, meet the constitutional safety test and are lawful and enforceable; and the Court finds that these requirements, and the related directive issued by the 1st Respondent on 20th February 2024, are proportionate, justified, and in compliance with *the Constitution*.
- ii. The interim orders previously granted herein suspending the enforcement of the said CCTV requirements are hereby vacated with immediate effect; and the 1st Respondent is at liberty to continue implementation and enforcement of the impugned requirements in accordance with the law.
- iii. The Petition is dismissed in its entirety and each party shall bear its own costs of the proceedings.

Orders Accordingly; File Closed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF MAY 2025

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BAHATI MWAMUYE

JUDGE

