



REPUBLIC OF KENYA



KENYA LAW
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**Ibrahim v Kenya Revenue Authority (Petition E478 of 2022) [2025] KEHC 7280 (KLR)
(Constitutional and Human Rights) (13 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E478 OF 2022

AB MWAMUYE, J

MAY 13, 2025

IN THE MATTER OF THE VIOLATION OF THE CONSTITUTION

AND

**IN THE MATTER OF ARTICLES 10,22,23,47,48,73,165(3) (B) AND 252 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF VIOLATION AND THREATENED VIOLATION OF RIGHTS
AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 10 (1) (C), 25 (C), 31 (B), 40
(3) AND 50 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTION 4 (1) AND 6 OF THE FAIR ADMINISTRATIVE
ACTION ACT 2015 LAWS OF KENYA**

BETWEEN

HASSAN ALI IBRAHIM PETITIONER

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

A. Introduction

1. The Petitioner herein filed a Petition dated 14th October, 2022 seeking the following orders:



- a. A declaration that the seizure and detention of Motor Vehicle make Hyundai Lorry Registration Number KBT 467P amounts to an infringement of the Petitioners right under Article 31 (b) of the Constitution.
 - b. A declaration that seizure and detention of Motor Vehicle make Hyundai Lorry Registration Number KBT 467P amounts to a deprivation of property contrary to Article 40 (3) of the Constitution.
 - c. A declaration that the actions by the Respondent are in gross violation of the Petitioner's right to a fair trial under Article 25 (c) and right to a fair hearing under Article 50 of the Constitution.
 - d. An order be and is hereby issued directing that the Respondent do restore possession and control of Motor Vehicle make Hyundai Lorry Registration Number KBT 467P to the Petitioner.
 - e. An order of prohibition prohibiting the Respondent, its employees, agents, assigns or anyone acting on their behalf from repossessing, seizing and/or detaining Motor Vehicle Make Hyundai Lorry Registration Number KBT 467P without due legal process.
 - f. Damages to the tune of Kes. 8,000,000/- for violation of the Petitioner's fundamental right and freedoms.
 - g. Costs of the suit plus interest.
2. The Petition was supported by the grounds on the face of the said Petition and the Supporting Affidavit of Hassan Ali Ibrahim. The Respondent filed their Replying Affidavit to the Petition and the same was deponed on the 31st January, 2023 by Merceline Oketch, an officer of the Respondent.

B. The Petition

3. The Petitioner is the registered owner of Motor Vehicle Registration Number KBT 467P make Hyundai Lorry.
4. The Petitioner hired the motor vehicle out to one Abdi Salan for the transportation of packaged water branded as "Blue Spa Water" to Likoni Industrial Area within Nairobi County.
5. The Motor Vehicle was ambushed by officers from the Respondent while offloading the cargo on board in Likoni Industrial Area within Nairobi. Upon inquiring as to the reason for the ambush, the driver and the cargo owner were informed that the stamps on the packaged water were fake.
6. The motor vehicle and the goods were thereafter impounded and taken to the Respondent's yard within Nairobi where the same have been detained.
7. The Petitioner states that he readily and willingly volunteered all information within his knowledge upon request by the Respondent that is particulars of the hirer, the driver, the terms of motor vehicles hire and goods under transit. The Respondent however, continued to detain the Petitioner's Motor Vehicle.
8. The Petitioner's main argument is that the Respondent has continued to illegally detain the motor vehicle notwithstanding that the Petitioner was neither the owner or proprietor of the goods being ferried nor was the driver under his employ or direction.



C. The Response

9. The Respondent filed their Replying Affidavit to the Petition and the same was deponed on the 31st January, 2023 by Merceline Oketch, an officer of the Respondent.
10. The Respondent argued that it is mandated under the Exercise Duty Act 2015 and the Excisable Goods Management System Act Regulations 2017 to regulate the importation and manufacture of excisable goods and to ensure that the excise duty is paid on excisable goods.
11. They added that Part I of the 1st Schedule of the Excise Duty Act, bottled or similarly packaged water and other non-alcoholic beverages, not including fruit and vegetable juices are listed as excisable goods.
12. In the year 2022, officers from the Respondent, accompanied by Police officers from Buruburu Police Station, seized a lorry, registration Number KBT 467P carrying Blue Spa drinking water on suspicion of possession of excisable goods with counterfeit excise stamps and conveying excisable goods bearing counterfeit stamps.
13. The Respondent stated that a taxpayer by the name Mohammed Ali Ibrahim visited the Respondent's offices on 7th February, 2022 for compounding and made a request for settlement of the offence with an order of Kes. 1,000,000/- in the name of Bilesa Company Limited.
14. The Respondent argued that since the offence was admitted, and compounding requested for, the fine of Kes. 1,000,000/- ought to be paid before the vehicle could be released to the Petitioner since it is the vehicle that was involved in the offence of conveying excisable goods bearing counterfeit stamps.

D. Submissions

i. Petitioner's Submissions

15. The Petitioner submitted that the persistent detention of his Motor Vehicle was a violation of his right to own property as articulated under Article 40 of the Constitution.
16. He further argued that the burden of paying exercise duty rests with the manufacturer, importer or licensed supplier of the excisable goods as per Section 5 of the Exercise Duty Act.
17. The Petitioner stated that the continued detention of his Motor Vehicle by the Respondent is as a result of the compounding agreement entered into by the Respondent and Bilesa Company Limited. That he, the Petitioner was not party to the said compounding agreement and thus adhering to the doctrine of privity of contract, the Respondent cannot purport to enforce the compounding agreement as against the petitioner. He placed reliance on the cases of Dunlop Pneumatic Tyre Co. Ltd v. Selfridge & Co. Ltd [1915] AC 847, Agricultural Finance Corporation v. Lengetia Ltd, 1982 – 88 I KAR 722 and Savings & Loan (K) Limited V. Kanyenje Karangaita Gakombe & Anor in support of his argument that the Respondent cannot enforce the agreement against the petitioner who is a third party to the compounding agreement.
18. The Petitioner further submitted that the purported exercise of the right to lien as proposed by the Respondent is unjustifiable and that the right of lien can only be exercised as against property owned by the defaulter. A lien cannot be exercised over property belonging to a third party. That the motor vehicle in question is registered to the petitioner and Belisa Company Limited which is the offending party does not own any proprietary rights in the said motor vehicle.
19. The Petitioner also argued that he was entitled to damages since he has been deprived of the use and enjoyment of the said motor vehicle for almost 3 years. He states that damages be awarded in the tune



of Kes. 8,000,000/- as proposed in the petition and to buttress this, he placed reliance on the case of John Mbaabu & Anor Vs. Kenya Revenue Authority [2020] eKLR in which the Court awarded 2 Million where the motor vehicle had been detained for less than a year.

ii. Respondent's Submissions

20. The Respondent had not filed their Submissions at the time of writing this judgment.

E. Analysis and Determination

21. I have extensively considered all the pleadings filed, to wit; the Petition and its Supporting Affidavit, the Response filed in opposition thereto and finally the submissions filed. The issues which arise for determination are;

- a. Whether the seizure of the motor vehicle contravened constitutional rights of the Petitioner;
- b. Whether the Petitioners are entitled to damages and if so how much

i. Whether the seizure of the motor vehicle contravened constitutional rights of the Petitioner

22. The Petitioner has faulted the Respondent's action of seizing his motor vehicle terming the action arbitrary and unconstitutional. The Respondent has justified its action arguing that there was nothing unconstitutional about seizure of motor vehicles found conveying unexcisable or uncustomed goods.
23. I have carefully considered the issue raised by the Petitioner regarding the seizure of the motor vehicles and the issue, in my view, is a fundamental constitutional issue. The Petitioner alleges that he is not a party to the tax issues as raised by the Respondent and does not bear any liability/obligation with reference to the woes raised by the Respondent. His duty was only limited to hiring out the motor vehicle.
24. There is no dispute that the Petitioner's lorry was found ferrying unexcisable or uncustomed goods and the main question is by doing so did they commit any offence under the law? There is no denying that whereas Regulation 30 of Excise Duty (Excisable Goods Management System- EGMS) Regulations creates various offences in relation to uncustomed goods, the Respondent did not and have not provided any link or means (if at all) between the petitioner and the seized unexcisable goods.
25. It is not contested that the seizure of the motor vehicle was done without any notice to the Petitioner who is the registered owner of the seized motor vehicle. The Petitioner's ownership of the seized motor vehicle has been demonstrated by the exhibit of a copy of the logbook which is prima facie proof of ownership. The Respondent has not contested the issue of ownership of the seized motor vehicle or demonstrated any link to the required standard in law between the uncustomed goods and the petitioner other than the fact that the Petitioner's Motor Vehicle was found transporting the same. The Respondent however has not preferred any charges against the Petitioner or anyone for commission of any offence in regard to ferrying or conveying of uncustomed goods.
26. Secondly and more importantly the petitioner has challenged the constitutionality of the Respondent's action of seizing the motor vehicle without giving him a chance to be heard which I find valid and legitimate.
27. One of the fundamental rights and freedoms under Article 25(c) of Constitution of Kenya 2010 is a right to a fair trial and one of the tenets of fair trial under Article 50 is a right to be heard and as the Petitioner has rightly put it this includes a right to be informed of any charge with sufficient detail to answer to it.



28. Secondly; one of the cardinal rules of natural justice is to right to be heard. This means that a person should not be penalized by decisions affecting their rights unless they have been given a prior notice and a fair opportunity to be heard. This tenet is entrenched under Article 47 which deals with fair administrative action and it states;

“Every person has a right to administrative action that is expeditious, efficient lawful, reasonable and procedurally fair.....” .

29. The Petitioner’s motorvehicle was seized and it is clear that he was not given a chance to be heard. Faced with a similar case, the high Court in the case of John Mbaabu & another v Kenya Revenue Authority [2020] KEHC 104 (KLR) stated thus;

“.....The Petitioners motor vehicles were seized and it is clear that they were not given a chance to be heard courtesy of Regulations 32 and 33 of Excisable Goods Management System Regulations 2017 that apparently does not provide for a chance to be heard. This court finds that any provisions of law that allows or gives power to an entity, a State officer or any public officer to take adverse action or steps without according the concerned/affected person a chance/opportunity to be herd is draconian and unconstitutional. Such a provision flies in the face of the tenets naturals justice which are entrenched in the Constitution of Kenya 2010.

30. It further went ahead and issued a declaratory order to the effect that;

“.....A declaration is hereby made that Regulations 32(b) and 33 of Excise Duty (Excisable Goods Management System) Regulations 2017 to the extent that it provides no chance to the affected person to be heard is unconstitutional and a violation of Constitution of Kenya 2010. They are also inconsistent with Fair Administrative Actions Act 2015.”

31. I associate myself with the sentiments of the learned judge and therefore find the Respondent’s actions to be in violation of the Constitution of Kenya 2010 for denying aggrieved petitioner an opportunity to be heard.

iii. Whether the Petitioner is entitled to damages and if so how much

32. I have already found that the constitutional rights of the Petitioner were violated and that he was wronged by the Respondent’s arbitrary action of seizing his motor vehicle instead of just seizing the uncustomed goods.

33. There is obviously no wrong without a remedy and one of the remedies to address the Petitioner’s loss is award of damages. There is no dispute that he has suffered loss because his motor vehicle has now been detained for almost three years thereby depriving him of use and income from the vehicle.

34. However, proof of loss is imperative and a party cannot just pluck a figure from the air and claim it. The Petitioner herein has claimed Kes. 8 million but has not given the basis of the same. That notwithstanding this court shall exercise its inherent discretion and award the Petitioner Kshs. 500,000.00/= as damages

35. In sum of the aforesaid reasons this court enters judgment against the Respondent as follows:-

- i. A declaration is hereby made that the Petitioner's rights under Article 25, 31(b), 40 (3) and 50 were violated by the Respondent by the seizure of the Petitioner’s motor vehicle make Hyundai Lorry Registration No. KBT 467P



- ii. The Petitioner is hereby awarded damages of Kshs.500,000 only for the detention of his motor vehicle Registration KBT 467P; with interest on the same running at court rates from the date of judgment until payment in full
- iii. The detained motor vehicle Registration No. KBT 467P shall be released to the owner (the Petitioner) forthwith unless otherwise lawfully held.
- iv. The costs of this petition are awarded to the Petitioner as against the Respondent.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 13TH DAY OF MAY, 2025.

.....
BAHATI MWAMUYE

JUDGE

In the Presence of:

Counsel for the Petitioner – Ms Kamu h/b Mr Swaka

Counsel for the Respondent – Mr Lemiso h/b Ms Kithinji

Court Assistant – Ms Neema

