



**Farah v Kenya National Highway Authority (Constitutional Petition  
E006 of 2025) [2025] KEHC 8148 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8148 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CONSTITUTIONAL PETITION E006 OF 2025**

**REA OUGO, J**

**JUNE 9, 2025**

**IN THE MATTER OF ARTICLES 2 (1),2 (4),3 (1),10 (1)  
&(2),19,20(1) & (3),21,22,23,24,25(C),35,40,43,47,50  
(2),232 &258 OF THE CONSTITUTION 2010.**

**AND**

**IN THE MATTER OF CONTRAVENTION OF ARTICLES 2 (1), 3  
(1) & (2),10(1) &(2),21, 25 (C) ,35,40,43,47 & 50 232 OF  
THE CONSTITUTION**

**BETWEEN**

**ABDIRIZAK MUSE FARAH ..... PETITIONER**

**AND**

**KENYA NATIONAL HIGHWAY AUTHORITY ..... RESPONDENT**

**RULING**

1. The petitioner has filed a petition dated the 6<sup>th</sup> May 2025, which was later amended by an amended petition dated 30<sup>th</sup> of May 2025. He is seeking various declaratory orders, an order for compensatory damages, which include loss of business, an order of permanent injunction barring the respondent from detaining the petitioner's vehicle registration number KBU 924W and Trailer No. ZH0553 on the pretext of non-payment of a further overload fee of Kshs. 311,911/- as regards the overload of 540 Kgs the subject of this petition. He also seeks an order of certiorari to issue against the Respondent herein quashing the demand made for payment of Kshs.311,911/- as a precondition for the release of motor vehicle registration number no. KBU 924W and Trailer No. ZH 0553 in view of the fact that the petitioner was ready to offload the extra load of 540 Kgs after payment of the overload fees. The petitioner simultaneously filed a Motion dated 6<sup>th</sup> May 2025 brought pursuant to Articles 2 (1) & (4),



3(1)& (2),10(1)&(2),19,20(1)&(3),21,23,35,40,43,47,50(2),232&258 of the Constitution, 2010 and all other enabling provisions of the law. The applicant seeks the following orders;

- a. Spent
  - b. Pending the hearing and determination of this Application inter- parties, this honorable court be pleased to order the Respondent herein to allow the Applicant to offload 540Kgs from motor vehicle registration NO. KBU 924W and Trailer No. ZH 0553 so that the vehicle and trailer attain its load control capacity.
  - c. Subject to the compliance with prayer b above, this Honourable court be pleased to order the release of the Petitioner’s vehicle registration No. KBU 924W and Trailer No. ZH0553 with the OCS Webuye Weighbridge being mandated to ensure compliance with the order.
  - d. Pending the hearing and determination of the substantive petition, this honorable court be pleased to issue an order of temporary injunction barring the Respondent from detaining the petitioner’s vehicle registration NO. KBU 924 and Trailer No. ZH0553 on the pretext of non-payment of a further overload fee of kshs.311,911.
  - e. Costs of this application be provided for.
2. The application is premised on the following grounds;
- i. The Petitioner is the registered owner of motor vehicle registration NO. KBU 924 W and Trailer NO. ZH0553
  - ii. The Petitioner’s vehicle and trailer were loaded with Diesel for export to the Democratic Republic of Congo and were impounded at Webuye Weighbridge for an overload of 540Kgs on 30th April 2025.
  - iii. Upon being given a weighing ticket indicating the overload of 540Kgs- which is not disputed and upon the Petitioner paying a fine of Kshs. 62,409, the petitioner opted to offload the extra 540kgs to be in compliance with the load capacity of its vehicle.
  - iv. Despite the petitioner being willing to offload the extra load of 540 Kgs and communicating the same to the Respondent, the Respondent has denied the applicant the opportunity of offloading the extra 540kgs insisting that the Applicant pays kshs. 311,911 before the vehicle is released to continue with its journey to Congo with the overload.
  - v. The Petitioner contends that the extra charge of kshs.311,911 is baseless and unfounded, more so considering the fact that he is willing and ready to offload the extra load of 540kgs, which is the weight of the two spare wheels and reserve tank fitted on the truck together with the applicant’s driver’s luggage which they are ready to offload and it cannot thus be a reason for the Respondent to cling on the Applicant’s vehicle.
  - vi. The Petitioner paying Kshs. 311,911 to continue the journey with the overload which the applicant is willing and ready to offload has borne no fruit as the Respondent has been dodgy on the same and his efforts to have the extra load of 540 kgs offloaded has been met with resistance and threats from the Respondent and as a consequence, the vehicle is lying at the Webuye weighbridge custom yard.
  - vii. The Applicant has thus moved the court to challenge the illegality perpetrated by the Respondent in demanding monies to allow an overload that the Applicant is willing to offload



and which charges have no basis in law, more specifically in view of the fact that sought to challenge the same in the substantive petition.

- viii. The acts of the Respondent are not only inconsistent but also not transparent, unreasonable, unconscionable and aimed to frustrate the Petitioner and violate his rights to property, access to information, fair administrative action and fair hearing and the right to social security and thus the need for the court to intervene.
  - ix. The Petitioner contends that as it stands now, he is incurring massive losses as his vehicle is grounded at the Webuye weighbridge with a load that is set to be delivered in Congo and the vehicle is not only waiting away but also, the Petitioner is losing business.
  - x. Unless the Respondent is ordered to allow the Applicant to offload the extra load of 540kgs as per the weighing ticket issued to the Applicant together with the provisions of Section 17 (2) of the East African Community Vehicle Load Control Act, 2016 and upon compliance with the required weight limit, release the Applicant's vehicle pending the inter parties hearing of the instant application and thereafter substantive petition, the petitioner's right to fair administrative action, social security, right to property and fair hearing stands to be violated further and the Respondent allowed to further the violation by demanding unjustified fees from the Applicant on a process that is unjustifiable, unreliable, capricious and non-transparent which will defeat the objective and purpose of the instant petition rendering it academic and nugatory thus, assisting the Respondent in furthering impunity of continuing to detain the Applicant's vehicle without justifiable cause and after issuing release letter to the Applicant.
  - xi. It thus follows that granting the orders sought will not prejudice the Respondent in any manner as not only has the petitioner paid the requisite fine but also, is willing and ready to offload the extra load of 540kgs but disallowing the Application will further the losses occasioned by the illegal impoundment of the vehicle by the Respondent and will further the violation of the Petitioner's rights.
  - xii. It is in the interest of justice that the orders sought be granted.
3. The application is also supported by the applicant's supporting affidavit. The supporting affidavit reiterates what is stated in the grounds on the face of the application.
  4. Despite having been given time to respond to the application, the respondent failed to file a response. At the inter partes hearing, the applicant adopted his supporting affidavit and sought to have his application granted. The applicant admits that on 29<sup>th</sup> April 2025, his vehicle registration number KBU 924W and trailer No. ZU 05553 were loaded with 28634 litres of diesel. His vehicle was impounded at the Webuye weighbridge, and the driver was issued a weighing ticket indicating an overload of 540 kgs, which is not disputed. He was asked to pay Kshs. 62,409, which he paid. Upon paying the fine, he requested the respondent to offload the extra load of the 540kgs by removing the reserve tank, two spare wheels and the driver's personal luggage. This would make the vehicle compliant with the weight limit. The respondent initially agreed to this but later changed and insisted that he pays Kshs. 311,911/-. According to the applicant, this was not in accordance with the recommendation on the weighing ticket given to him and also in compliance with Section 17(2) of the East African Community Vehicle Load Control Act, which required him to remove the extra load. The respondent has insisted he pays the sum of Kshs. 311911/- before the vehicle is released to continue with its journey to Congo. The applicant claims that the amount of Kshs. 311,911/- is baseless and unfounded, considering that he was ready to offload the extra weight. The respondent failed to explain why he was



to pay the extra sum of Kshs. 311,911/- and thus the respondent's acts are illegal, and he is in court challenging the said illegality.

5. The applicant has attached the bill of lading, which shows the products being carried and the quantity of each product. He has also included the weighbridge ticket indicating that his excess weight is 540 kgs. The fee, as per the ticket, is \$ 482, which translates to Kshs. 62409/-. Additionally, he has provided a receipt confirming that he paid the defendant Kshs. 62,459.00, along with two letters, one offering to offload the 540 kgs and another notifying the defendant that they are proceeding to offload the extra weight.

### **Determination**

6. The applicant seeks interlocutory orders pending the hearing and determination of his petition. The principles guiding the grant of interlocutory injunction are now well settled. The principles were set out in the case of *Giella vs. Cassman Brown & Co. Ltd* [1973] EA 358. the Court restated the law as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;

- (a) establish his has a prima facie case,
  - (b) demonstrate irreparable injury if a temporary injunction is not granted, and
  - (c) any doubts as to (b) by showing that the balance of convenience is in his favour.
7. The applicant admits that his vehicle was overweight but is challenging the additional payment of Kshs. 311911.00. The applicant's vehicle was transporting diesel to Congo. The provisions of the East African Community Vehicle Load Control Act (the Act) apply to his case, specifically Section 17(2) of the said Act. Section 17 (1) (2), (3) and (4) provides as follows;

17.

- (1) When an authorized officer determines that a Procedures vehicle is carrying a load in excess of the legal load limit under this Act, he or she shall issue a weighing report setting out the overloading, overload particulars and the amount of overload fees payable.
- (2) Where an authorized officer, while a journey is being undertaken, determines that a vehicle is carrying a load in excess of the legal load limit, the authorized officer shall in consultation with relevant implementing agencies, not allow the vehicle in question to continue its journey, unless the load is redistributed and the vehicle is, upon being reweighed, found to be within the legal load limit, or the vehicle is offloaded to lower its weight to the legal load limit and—
  - (a) any amounts due-under subsection-(1) have been paid to the national roads authority or its duly appointed agent; or
  - (b) a guarantee in the prescribed format is provided by the transporter that such amounts shall be paid.
- (3) Where the fact of overloading is not disputed by the transporter, the transporter shall sign and acknowledge the weighing report in the prescribed



manner and the transporter shall be liable for the overload fees which may be recovered as a summary debt by the national roads authority.

- (4) Where the fact of overloading is disputed by the transporter, the authorized officer weighing the vehicle shall indicate such dispute in the weighing report, and a copy of the disputed report shall be issued to the transporter who may—
  - (a) pay the requisite overloading fees on a without prejudice basis to secure the release of the vehicle, make such necessary adjustment on
  - (a) pay the requisite overloading fees on a without prejudice basis to secure the release of the vehicle, make such necessary adjustment on the load as may be directed by the authorized officer and lodge an appeal against the fees as provided for by regulations made under this Act; or
  - (b) appeal against the fees, using regulations made under this Act, during which period the vehicle will remain detained at such designated place at the cost of the transporter.

8. His issue with the respondent concerns an additional sum of Kshs. 311911/- being demanded for an overload of 540 kgs. As previously stated, the applicant is transporting diesel to Congo. The respondent has failed to address the applicant's claims that the vehicle and trailer are being held without just cause. The respondent could have clarified their decision, but they have not done so. In my view, the applicant has established a prima facie case. Regarding whether he will suffer substantial or irreparable loss, he asserts that he is incurring losses as his vehicle is grounded at the Webuye weighbridge, preventing him from delivering the diesel product to Congo as scheduled. I am persuaded that the continued detention of the vehicle and its cargo is causing the applicant some loss. Thus, the balance of convenience in this circumstance lies in his favour, given the lack of response from the respondent. Diesel is a petroleum product, and its further detention in the respondent's yard poses a danger to the public and other road users in the area. I will, therefore, allow the applicant's application under the following conditions;

- i. The applicant shall offload the excess weight of 540 Kgs from vehicle registration no. KBU 924W and Trailer No. ZH 0553, under the supervision of the respondent, in compliance with the Act.
- ii. The applicant shall deposit in court, forthwith, the sum of Kshs. 311,911/- as further overload fees to the respondent, pending the hearing and determination of the petition.
- iii. Upon compliance with the conditions set out in (i) and (ii) above, the respondent will release the applicant's Vehicle KBU 924 W and Trailer No. ZH 0553 to the applicant.
- iv. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 9<sup>TH</sup> DAY OF JUNE 2025.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Mr. . Anwar -For the Applicant

Respondent - Absent

Wilkister - C/A

