



**Harshiv Autospares Hardware and Supplies Limited v Kenya
National Highways Authority & 2 others (Constitutional Petition
E001 of 2022) [2025] KEHC 9096 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CONSTITUTIONAL PETITION E001 OF 2022**

RC RUTTO, J

JUNE 19, 2025

BETWEEN

**HARSHIV AUTOSPARES HARDWARE AND SUPPLIES
LIMITED PETITIONER**

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT

OCS, MLOLONGO POLICE STATION 2ND RESPONDENT

BOSCO SHILLINGI 3RD RESPONDENT

JUDGMENT

1. The petition dated 25th January 2022 arose from an incident involving the impoundment and subsequent detention of the Petitioner's commercial vehicles by the Kenya National Highways Authority (KeNHA), the 1st Respondent, on allegations of overloading. The petitioner has cited a breach of the provisions of Articles 10, 19 (2), 20, 21, 22, 23, 24, 25, 27, 35, 40, 47, 48 and 50 of *the Constitution* as well as sections 4, 5 and 6 of the Fair Administrative Actions Act. The petitioner also alleged breach of its right to a fair hearing and the right to fair administrative action.
2. The petition was supported by affidavit of Paul Kimani that was unsigned and uncommissioned. The gist of the petition is that the petitioner is involved in the transportation of limestone along the pathways of private property owned by Simba Cement Limited. It also owns and utilizes motor vehicles registered under numbers KAX 528S and KCH 546K for commercial use.
3. The events leading to the petition unfolded on January 13 and 15, 2022. On these dates, personnel from the 1st Respondent, the Kenya National Highways Authority (KeNHA), stopped the petitioner's vehicles at Lukenya along Mombasa Road. Following the initial stop, the vehicles were directed to the Mlolongo Weighbridge. At the weighbridge, the 3rd Respondent informed the petitioner that



the vehicles were carrying excess load. It complained that the 1st respondent unlawfully detained the vehicles at the 2nd respondent's yard without informing the petitioner of the reasons for detention. This, it contended, was a violation of its right to fair hearing under Article 50 of *the Constitution* and a breach of the principles of natural justice.

4. The petitioner contended that the 1st respondent unlawfully impounded the vehicles despite a valid exemption permit issued to the petitioner to carry excess load. As at the time of filing the petition, no charges had been preferred against the petitioner. In the same vein, the petitioner has not been summoned; yet the vehicles were continually being withheld.
5. The petitioner complained that a notification of the weighbridge report was not a basis for imposing fees. The same merely served as an initiation document in culmination of charges against it. Thus, no penalty ought to be imposed before an offence is proved. Fortifying this argument, it interpreted that the fee levied was premised upon regulation 10 of the Kenya Roads (Kenya National Highways Authority) Regulations 2013 and was therefore criminal in nature. Furthermore, the actions of the 1st respondent amounted to a breach of the doctrine of separation of powers since it levied, interpreted its own laws and issued sanctions.
6. The petitioner continued that the respondent's actions infringed of its right to own property as enshrined in Article 40 and its economic rights guaranteed in Article 43 of *the Constitution*. This is due to the fact that it was arbitrarily denied the right to use its property. The imposition of the fee of Kshs. 85,020.00, it continued, was a breach of its right to a fair hearing as couched in Article 50 of *the Constitution* as it was not afforded a hearing. It continued that the right to fair administrative action under Article 47 of *the Constitution* was not upheld and that amounted to procedural unfairness.
7. It argued that sections 22(2)(d) and 46 of the *Kenya Roads Act* were declared unconstitutional for the reason that impounding and detention of motor vehicles on overloading grounds, created an offence. The financial charges provided therein were a penalty and not a fee. In its view, it was the judiciary organogram, and not the 2nd respondent, that had the jurisdiction to impose a fine.
8. It further stated that regulations 14 and 15 of the Kenya Roads (Kenya National Highways Authority) Regulations 2013 were declared to have contravened Articles 40, 47, 50 and 159 (1) of *the Constitution* as well as section 46 (2) of the *Kenya Roads Act*. The petitioner complained that ten days had lapsed since its vehicles had been impounded causing him financial loss of hundreds of thousands of shillings causing him financial embarrassment.
9. The petitioner was apprehensive that the subject vehicles were materially destroyed through vandalism and/or sold under unclear circumstances. That the respondents abused their administrative powers exceeding their mandate and in so doing, acted contrary to public interest and without due regard. For the above reasons, the petitioner prayed for the following:
 1. A Declaration the directive made by the 1st respondent with regard to the detention of motor vehicles registration number KAX 528S and KCH 546K belonging to the petitioner and the further order that the same will remain in the 2nd respondent's yard until the sum of Kshs.85,020.00 is paid to the 1st respondent is in contravention of the rules of natural justice;
 2. A Declaration be and is hereby made that the petitioner's fundamental rights of protection of its right to property, fair administrative action, under *the Constitution* have been violated, infringed and contravened;



3. A Declaration be and is hereby made that the impounding of motor vehicles registration number KAX 528S and KCH 546K by the respondents' employees, servants or agents is illegal and has infringed on the petitioners' constitutional rights;
 4. An Order Of Certiorari in the High Court to remove and quash the 1st respondent's decision, declaration and directive with regard to the detention of motor vehicles registration number KAX 528S and KCH 546K belonging to the petitioner and the further order that the same will remain in the 2nd respondent's yard until the sum of Kshs.85,020 is paid to the 1st respondent;
 5. An Order Of Mandamus directed at the respondents and anyone acting on their behalf that the motor vehicles registration number KAX 528S and KCH 546K impounded and kept by the respondents, their agents be released forthwith to the petitioner together with the consignment;
 6. General damages for wrongful seizure and/or impound of motor vehicles registration numbers KAX 528S and KCH 546K;
 7. Special damages of Kshs.100,000 for loss of business for every day the motor vehicles remain impounded by the respondents;
 8. An Order for exemplary and punitive damages be and is hereby issued against the respondents jointly and severally, in their individual personal and official capacities, on account of their gross violation of the petitioner's fundamental freedoms and rights as enumerated in the petition;
 9. The respondents be and are hereby directed bear (sic) the costs of this petition;
 10. Such other orders that this Honourable Court may deem expedient to meet the ends of justice.
10. Only the 1st respondent responded to and opposed the petition. It filed a replying affidavit sworn on 16th February 2022 by Eng. Kennedy Ndugire, a senior engineer working for the 1st respondent. He asserted that its actions were carried out in full conformity with the [Kenya Roads Act](#) 2007 and the East African Community Vehicle Load Control Act (EACVLCA) 2016. It emphasized that its mandate included ensuring equality, equity, and fairness in discharging its load control responsibilities.
 11. He posited that in performance of the 1st respondent's mandate set out in sections 4 (2) and (d) of the [Kenya Roads Act](#), on 13th and 15th January 2022, the suit vehicles, while in use along the Nairobi-Mombasa Road A8, were weighed at the Mlolongo weighbridge and found overloaded. He deposed that the dispute concerned the application of the EACVLCA of 2016. He asserted that the statute was declared a statute of specific application with a special and limited scope of application to the Regional Trunk Road Network by Mwongo J., in the case of Office of the Director of Public Prosecutions (ODPP) vs. Juma Chemomenyu Batuli [2020] eKLR.
 12. That in line with that statute, weighbridge ticket numbers ATMBA202201009249 and KNARNBB20220100004373 were issued to the petitioner. That the petitioner's motor vehicle registration number KAX 528S is a 3 axle truck whose legal load limited is 26,000kgs and at the time of detention, it was weighed at 29,080kgs; overloading by 3,080kgs. In the same breadth, motor vehicle registration number KCH 546K is a 3 axle truck whose similar load limit is 26,000kgs on the gross weight value. However, on that material day, it was weighed at 28,620kgs; overloading by 2,620kgs. As a consequence, the petitioner was fined Kshs.54,683.00 and Kshs.85,020.00 being overload fees.
 13. The 1st respondent deposed further that the provisions of section 13 (2) and (3) of the East African Community Vehicle Load Control (Enforcement Measures) Regulations 2018 provided that a vehicle be detained without charge of parking fees for the first three days but accrue a parking fee equivalent



to USD50 per day for every extra day until proof of payment is produced. It therefore contended that the said sum was due and payable until the date of release since the vehicles had been detained for more than three days.

14. The 1st respondent, as a result, maintained that no cause of action arose and the petition did not raise any constitutional violations. The 1st respondent deposed that the case of *Disarianio Limited vs. Kenya National Highways Authority & Attorney General* [2017] eKLR did not declare that certain provisions of the EACVLCA unconstitutional. It added that the provisions contemplated a situation where a person found to have overload did not need to be charged in court but instead pay overload fees and correct the loading levels to permissible load limit before being allowed to proceed with its journey. In light of this, it urged this court to take into account the provisions of section 15 (1) (a), (c) – (h), 17 (1), 17 (4) (a) and (b) of the EACVLCA.
15. The 1st respondent deposed that the petitioner failed to indicate the dispute in the weighting report as provided for in the EACVLCA and to date, failed to pay the overloading fees. In any event, the tickets issued were not disputed; indicative of the extent of overload together with the fees payable. In its view, the petitioner had come to the court with unclean hands and was misleading the court in its interpretation of the law.
16. Furthermore, it deposed that the petitioner failed to exhaust all internal dispute resolution mechanisms under the EACVLCA as was held in *Geoffrey Muthinja & another vs. Samuel Muguna Henry & 1756 others* [2015] eKLR, *Okiya Omtatah Okoiti vs. Commissioner General, Kenya Revenue Authority & 2 others* [2018] eKLR and *Republic vs. National Environment Management Authority* [2011] eKLR. Thus, no legitimate expectation could arise. Citing section 25 of the EACVLCA and Article 2 (6) of *the Constitution*, it stated that its actions were qualified within the precincts of the law. It prayed that the petition be dismissed with costs and that the petitioner be ordered to pay the overload and parking fees.

Parties Submissions

17. The petition was canvassed by way of written submissions. In its written submissions together with a list and bundle of authorities both dated 2nd October 2023 as well as a supplementary list of authorities dated 5th March 2024. The petitioner framed three issues for determination: whether the petition offended the doctrine of exhaustion of remedies; whether the petitioner's rights were violated under Articles 40, 47 and 50 of *the Constitution*; and whether the petitioner was entitled to general and special damages for wrongful seizure and loss of business?
18. On the first framed issue for determination, the petitioner submitted that its petition sought to enforce fundamental rights and freedoms that were infringed. It continued that section 17 of the EACVLCA did not lay out an elaborate procedure to address its concerns since there were no regulations. In its view, no suitable mechanism was available in resolving its dispute other than the High Court as set out in Article 165 (3) (b) of *the Constitution*.
19. Turning to the second issue, the petitioner submitted that the decision to detain its motor vehicles and apportion a cumulative fine of Kshs. 85,020.00 contravened Articles 47 and 50 of *the Constitution* since he was not afforded a fair hearing or at all. Reproducing the provisions of section 17 of the EACVLCA, the petitioner was emphatic that it was carrying the legally accepted weight when the motor vehicles were impounded and detained.
20. It denied receiving any weighing report setting out the particulars as provided in section 17 of the Act. It challenged the authenticity of the document marked KN-1 stating that it was adulterated. It also denied receipt of the weighbridge ticket number that was not produced before this court. It added that it was never given an opportunity to challenge the report since it was never furnished with one



in the first place. As such, the procedure was violated by the respondents. Extrapolating from this, it argued that its vehicles in the circumstances ought not to have been detained without affording him a fair hearing first.

21. Be that as it may, the petitioner submitted that a weighbridge report cannot constitutionally form the basis of imposing fees. It only served the purposes of an initiation document. The action of imposing a penalty was a preserve of the judiciary and the respondents were not agents of that institution. Additionally, it was not a tribunal and simply acted as a kangaroo court. That the action of detaining its vehicle further obliterated its right to own and use of property as provided in Article 40 (2) of *the Constitution*.
22. Lastly, on whether it was entitled to general and special damages for wrongful seizure and loss of business, the petitioner submitted in the affirmative. It complained that not only were the vehicles purchased from a facility agreement with the bank that it was servicing, but also that the continued detainment of the vehicles guaranteed financial loss to the tune of Kshs.100,000.00 per day. It therefore sought Kshs.2,500,000.00 in general damages. It prayed that its petition be allowed.
23. The 1st respondent filed written submissions together with a list and bundle of authorities all dated 17th February 2023. According to the respondent, the following issues fell for determination: whether this court was divested of jurisdiction under the doctrine of exhaustion of remedies; whether the 1st respondent acted ultra vires in impounding and detaining the suit motor vehicles; whether the petitioner's fundamental rights and freedoms were infringed by the 2nd respondent; and whether this court ought to grant the orders sought?
24. Addressing the doctrine of exhaustion, the 1st respondent submitted that the doctrine has its basis in Article 159 of *the Constitution*. A petitioner can only seek the audience of the High Court as a last resort or establish exceptional circumstances. In this case, the 1st respondent opined that the petitioner ought to have invoked section 17 (4) of the EACVLA which lays out a standard procedure where a party is aggrieved. It did not demonstrate that it fell within the exceptions of the doctrine. As a consequence, the petition was improper before the trial court.
25. Turning to the second issue as framed for determination, the 1st respondent submitted that it's conduct was consistent with constitutionality and statutory mechanisms as set out in the *Kenya Roads Act*, the *Traffic Act* and the EACVLCA. In its view, it complied with the provisions of sections 4 (2) and 22 (1) (c) of the *Kenya Roads Act*, sections 3, 8 (1), 15 (1) (h) and 25 of the EACVLCA. It reproduced the facts set out in its response to petition demonstrating that its actions were lawful and mandated.
26. The 1st respondent continued that regarding the alleged violation of the petitioner's rights and fundamental freedoms, the vehicles were impounded and detained on lawful justification since they were carrying overload. It could not therefore be accused of violating Article 40 of *the Constitution*. This was curtailed by the dictates of Article 24 (1) (d) of *the Constitution*. According to the 1st respondent, if the petitioner was pardoned, then it was in essence being allowed to damage the country's infrastructure because of an overloaded vehicle. Furthermore, it was likely to cause road accidents. In other words, those vehicles were unsafe for other road users. The detention of the vehicles served the public good which outweighed his private interests.
27. On Article 47 of *the Constitution*, the respondent submitted that the nature of the decisions made by the 1st respondent involved the enforcement of rules and regulations on vehicle load control with respect to legal load limits and the prohibition against overloading. That any vehicle found to have violated the provisions of the EACVLCA was detained and released upon payment of the overloading fees. An appeal mechanism was also available where a party was aggrieved with the decision of the



authority. In its view, it acted within the powers vested under it under section 15 of the Act. It did not therefore violate the petitioner's right to fair administrative action.

28. The 1st respondent continued that in line with section 17 (1) of the Act, the petitioner was issued with weight ticket numbers that were not disputed. It was further issued with the weighting report in accordance with that provision. No provisions of the Act, it added, were declared unconstitutional as stated by the petitioner who was misleading the court.
29. Lastly, addressing the orders sought, the 1st respondent submitted that looking at the provisions of the Act and the regulations thereunder, the petitioner's prayers sought to circumvent the law. Since there was a procedure for release of the vehicles under the Act, it urged this court to adopt those provisions. Turning to the prayer for loss of business, it prayed that the same be dismissed for not having been specifically pleaded and proved. Finally, on the prayer for loss of business at the rate of Kshs.100,000.00 daily, it submitted that it was not supported by any evidence.
30. In its penultimate address, it submitted that the petition was a desperate attempt to circumvent the law with impunity under the human rights guise. It thus prayed that the petition be dismissed with costs.

Analysis and Determination

31. After reviewing the petition, the supporting and replying affidavits, as well as the parties' comprehensive written submissions backed by judicial precedents, this court notes that there is no dispute regarding the petitioner's business operations. The petitioner is engaged in the transportation of limestone along pathways within a private property owned by Simba Cement Limited and is the registered owner of motor vehicles KAX 528S and KCH 546K, which are used for commercial purposes.
32. On 13th January 2022, motor vehicle KCH 546K was transporting a load when it was intercepted by personnel from the 1st respondent at Lukenya along Mombasa Road and subsequently directed to Mlolongo Weighbridge. A similar incident occurred on 15th January 2022 when motor vehicle KAX 528S was stopped at the same location and by the same respondent. In both cases, the petitioner was informed by the 3rd respondent that the vehicles were carrying excess loads. He was instructed to pay Kshs.85,020.00 or face indefinite detention of the vehicles.
33. Arising from these events, the petitioner alleges violations of its constitutional rights. Specifically, the petitioner argues that the 1st respondent unlawfully detained the vehicles at the 2nd respondent's yard without providing reasons for their detention. This, the petitioner contends, contravenes its rights to fair administrative action and a fair hearing under Articles 47 and 50 of *the Constitution*. Additionally, the petitioner asserts that the prolonged detention of the vehicles constitutes a violation of its rights to ownership and use of property as protected under Article 40 of *the Constitution*.
34. At this stage, the primary concern is not the merits of the case but whether the petition meets the threshold established in the landmark case of Anarita Karimi Njeru v. Republic [1979] KECA 12 (KLR). The petitioner has clearly articulated the nature of the alleged violations and the specific constitutional provisions that were breached; thus, it is evident that the petitioner has raised a constitutional issue with sufficient particularity.
35. With that in mind, the first issue to be addressed is whether the petition contravenes the doctrine of exhaustion. This must be determined at the outset because, if the doctrine applies, the petition cannot proceed, allowing the appropriate dispute resolution mechanisms to take effect. The EACVLCA is the statute of general application governing the dispute at hand. Although the petitioner argued that certain provisions of the Act were declared unconstitutional, no evidence has been presented to



support this claim. The petitioner has not sought to declare any of the provisions as unconstitutional, and it has not only failed to plead the same but only raised it in submissions. Consequently, the Act remains applicable to the circumstances of this case.

36. The 1st respondent maintains that the petitioner failed to utilize the internal dispute resolution mechanisms available under the Act, a position strongly contested by the petitioner. The doctrine of exhaustion is firmly rooted in *the Constitution* and has long been upheld in judicial precedent. Article 159(2)(c) of *the Constitution* promotes alternative dispute resolution mechanisms, including reconciliation, mediation, arbitration, and traditional approaches. The Court of Appeal in *Speaker of the National Assembly v. Karume* [1992] KLR 21 reinforced this principle, stating:

“Where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

37. Thus, before proceeding with the petition, this court must assess whether the petitioner has exhausted the available dispute resolution processes, as required by law. If the doctrine applies, the petition cannot be entertained until the prescribed procedures have been followed.

38. To determine whether the petition falls within the exceptions to the exhaustion doctrine or merely serves as a pretext to bypass alternative dispute resolution mechanisms, reference must be made to Section 17 of the EACVLCA. This section outlines the appropriate procedures and jurisdictional considerations for resolving disputes arising under its framework. Section 17 provides as follows:

- “(1) When an authorized officer determines that a 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 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 off loaded 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 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.”

39. In the Court of Appeal decision in Geoffrey Muthiga Kabiru & 2 others vs. Samuel Munga Henry & 1756 others [2015] KECA 304 (KLR) expressed itself as follows:

“We see this as the crux of the matter in this and similar cases. It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside of courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

40. Discussing the exceptions, this court in a five-judge bench decision in William Odhiambo Ramogi & 3 others vs. Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] KEHC 10266 (KLR) held:

“However, our case law has developed a number of exceptions to the doctrine of exhaustion. In *R. vs Independent Electoral and Boundaries Commission (I.E.B.C.) & Others Ex Parte The National Super Alliance Kenya (NASA)* (supra), after exhaustively reviewing Kenya’s decisional law on the exhaustion doctrine, the High Court described the first exception thus:

‘What emerges from our jurisprudence in these cases are at least two principles: while, exceptions to the exhaustion requirement are not clearly delineated, Courts must undertake an extensive analysis of the facts, regulatory scheme involved, the nature of the interests involved – including level of public interest involved and the polycentricity of the issue (and hence the ability of a statutory forum to balance them) to determine whether an exception applies. As the Court of Appeal acknowledged in the *Shikara Limited Case* (supra), the High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in *the Constitution* or law and permit the suit to proceed before it. This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake. See also *Moffat Kamau and 9 Others vs Aelous (K) Ltd and 9 Others.*’

As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.



The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.

In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”

41. Thus, guided by the above, if the petition raises issues that could be adequately addressed through established statutory mechanisms, then the doctrine of exhaustion applies, requiring the petitioner to pursue those avenues before seeking judicial intervention. However, if the matter involves a fundamental constitutional question that cannot be effectively adjudicated elsewhere, the court may consider it under the recognized exceptions.
42. The key question, therefore, is whether the petitioner has demonstrated that the dispute transcends ordinary administrative or regulatory issues and genuinely concerns the enforcement of constitutional rights. If the petition primarily seeks relief for violations of fundamental rights—rather than merely attempting to circumvent statutory procedures—the court may find it admissible despite the exhaustion doctrine.
43. Ultimately, this court must assess the nature of the petitioner's grievances, the availability of alternative dispute resolution mechanisms, and whether an exception to the doctrine is warranted. The determination will hinge on whether the petition presents a constitutional matter that necessitates adjudication before the High Court or whether it should first be subjected to the prescribed statutory remedies.
44. Based on the foregoing provisions, this court finds that the petitioner failed to align its claim within the statutory limitations. The petitioner did not utilize the available dispute resolution mechanisms under the Act before bringing this matter to court, despite being dissatisfied with the respondents' decision, which forms the basis of this petition. Instead, the petitioner rushed to this court without first exhausting the prescribed procedures.
45. Furthermore, the petitioner has not demonstrated any difficulty in accessing those mechanisms or shown that any circumstances prevented it from pursuing that avenue. While the petitioner challenged the respondent to prove the existence of regulations, it was the petitioner's duty to establish their absence, as the burden of proof lies with the party making such an assertion. The petitioner has not demonstrated that it made any attempt to use the appeal mechanism provided under statute or that it disputed the assessment. This is so despite stating that it had in its possession a special permit, details of which were not elaborated as against the existing statutory framework.
46. Although the petitioner argues that the impoundment of its vehicles was unconstitutional based on the principle of *nemo iudex in causa sua*, the complaint does not challenge the constitutionality of the EACVLC, the *Kenya Roads Act*, or their provisions. Instead, the petitioner contends that the respondents acted beyond their authority by simultaneously assuming the roles of prosecutor,



complainant, and judge. However, these actions fall within the scope of Section 17 of the Act, and the petitioner has failed to demonstrate that they were exercised in excess of the prescribed legal framework.

47. At its core, the petitioner’s complaint is that it was found to have overloaded its vehicles and was required to pay overload fees. The procedure for challenging such a determination is clearly outlined in statute. The petitioner, however, bypassed these established processes without offering any valid justification for doing so. No compelling reasons have been presented to warrant this court’s intervention under an exception to the doctrine of exhaustion. Consequently, this court finds that the petition is premature, as no issues have been sufficiently developed for judicial determination at this stage.
48. Accordingly, I find that the petition herein is incompetent. The petition ought to have exhausted the available remedies. I therefore do not hesitate to strike the same but order that each party bears its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF JUNE 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Petitioner

.....Respondent

Sam, Court Assistant

