



REPUBLIC OF KENYA



**Indasi t/a Glassmart Hardware v Cabinet Secretary Ministry of Finance & National Treasury
& 2 others (Civil Case E017 of 2025) [2025] KEHC 8481 (KLR) (13 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL CASE E017 OF 2025
A MABEYA, J
JUNE 13, 2025**

BETWEEN

PETER IMBASI INDASI T/A GLASSMART HARDWARE PETITIONER

AND

**CABINET SECRETARY MINISTRY OF FINANCE & NATIONAL
TREASURY 1ST RESPONDENT
KENYA REVENUE AUTHORITY 2ND RESPONDENT
THE HON ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. This ruling determines an oral application made by Mr. Ochieng, Learned Counsel for the 2nd respondent in which he applied for the discharge of the interim orders made on the 16/5/2025.
2. The petitioner had moved court under Certificate of Urgency vide his application dated 12/5/2025 in which he sought the following orders;
 - a. Spent
 - b. That a conservatory order stopping the respondents from implementing the specific rate of Kshs. 200 per kilogram imposed under section 27 (a) (G) of the Tax Laws (Amendment) Act, 2024 on imported float glass, pending the hearing and determination of this Application inter partes.
 - c. That a conservatory order stopping the respondents from implementing the specific rate of Kshs. 200 per kilogram imposed under section 27 (a) (G) of the Tax Laws (Amendment) Act, 2024 on imported float glass, pending the hearing and determination of this Petition.



- d. That for clarity, the 35% ad valorem excise duty under the same provision may remain in force during the pendency of these proceedings to safeguard government revenue.
- e. That this Honourable Court do issue such other and further orders as it may deem just and fit in the circumstances.
3. The Court being certified that the application was urgent certified the same as such and for reason of the alleged possible infractions of *the Constitution* granted the conservatory orders ex-parte. To be specific, the Court granted prayer nos. b) & d) set out above.
4. When the matter came up for hearing on the 3/6/2025, Mr. Ochieng informed the Court that there was a specific reason why the complained of provision gave two options of taxation, Kshs.200/- per Kg or 35% ad voleram on tax collectable. He prayed the interim orders be set aside.
5. Prayer b) was is in the nature of an injunction to halt the alleged contravention of *the Constitution* while prayer d) clarified that the 2nd respondent could continue to charge tax in the alternative given by the law. The latter order was to ensure that, pending the hearing of the application there would be no losses of revenue for the government.
6. The prayers were granted in the exercise of the Court's discretion. The Court was satisfied that a case had been made to interfere with the status quo before the parties could be heard inter-partes.
7. In *St Patricks Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR, it was held: -
- “Similarly, this court has unfettered discretion to discharge or vary or even set aside an injunction order if the ends of justice so demand, or if the injunction does not serve the ends of justice it was intended to serve when it was issued. Questions such as whether it is unjust to maintain the injunction in force or it is otherwise unjust and inequitable to let the order remain will be asked when considering an application to discharge an injunction.”
8. The court has unfettered discretion to discharge or vary an injunction if the ends of justice demand so. Interim orders are not meant to be punitive to any of the parties to a proceeding. They are meant to preserve the state of things pending the Court investigating the dispute.
9. Interim orders do not suspend obligations of the parties. They are rather meant to afford the parties an opportunity of being heard on their grievances. Indeed, in this case, in granting prayer d) above, the Court obligated the petitioner and others in the industry to continue meeting their tax obligations in accordance with the law pending the determination of the application.
10. I reiterate that interim orders are meant to preserve the status quo pending the determination of a party's claim. No evidence has been placed before this Court by the 2nd respondent to show that in exercising its discretion in granting the interim orders, the Court did so whimsically, capriciously and/or was misled.
11. Mr. Ochieng urged that in the event the orders are not discharged, there be an order that the importers be made to give bank guarantees for the difference between the Kshs.200/- and the 35% ad voleram. I do not think that that would be fair as there is an allegation of constitutional infraction. The latter cannot be remedied if found to be true.
12. In the circumstances, I find the application to set aside the interim orders to be without merit and dismiss the same.

It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE

