



**Kimondo v County Government of Kirinyaga (Constitutional Petition
E002 of 2024) [2024] KEHC 6019 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6019 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CONSTITUTIONAL PETITION E002 OF 2024
RM MWONGO, J
MAY 23, 2024**

BETWEEN

ISAAC WAIHAKA KIMONDO PETITIONER

AND

COUNTY GOVERNMENT OF KIRINYAGA RESPONDENT

RULING

1. The Petitioner, a matatu business owner, filed a notice of motion dated 15th February, 2024 seeking the following orders:
 1. Spent
 2. That pending inter-parties hearing of the application, the honourable court be pleased to issue an order for the unconditional release of motor vehicle registration No. KCL 130H Matatu Toyota “(the vehicle)” make under the custody of the respondent.
 3. That upon grant of prayer No.2 the honourable court be pleased to issue an order restraining the respondent herein, its agents, servants, employees from re-arresting, detaining motor vehicle KCL 130H Matatu Toyota make pending the hearing and determination of this application.
 4. That the costs of the application be provided for.
2. The applicant asserts that he is the registered owner and driver of the Vehicle under Kirinyaga Shuttle within Kirinyaga County and elsewhere within the Republic of Kenya; that on 1st February, 2024 while at Kerugoya main stage, he was approached by agents/staffs of the respondent who informed him that his motor vehicle was being required at the respondent's revenue offices within Kirinyaga County; and that he immediately proceeded to the offices, where upon arrival his motor vehicle was clamped and detained by the respondent's agents/staff.



3. Further he asserted that the Respondent's officers declined to disclose any offence he had committed, and the Respondent continued to detain the vehicle in violation of Article 31 (b) and 40 of the Constitution.
4. The respondent opposed the application through its replying affidavit which contains the following major averments;
 - a. That it is the Respondent's position that the Petitioner's claims are without merit as the Respondent, has the exclusive constitutional mandate under Article 185(1) and (2) of the Constitution read together with the Fourth Schedule to the Constitution to regulate transport within the County and the same includes the regulation of traffic, parking and public road transport.
 - b. That the Petitioner has been operating the matatu business illegally, without a valid license issued by the National Transport and Safety Authority as required under the National Transport and Safety Authority Act CAP 404 Laws of Kenya.
 - c. That besides operating illegally, the Petitioner acts with impunity, repeatedly picking and dropping passengers outside the omnibus station located within Kerugoya town contrary to the provisions of the Kirinyaga County Omnibus Stations and Parking Act, 2016.
 - d. That the Respondent has a statutory obligation to ensure law and order is maintained in the matatu business within the County, and its enforcement officers are mandated under Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant national and County legislations.
 - e. That the Petitioner was also informed that officers of the Respondent were aware that he was operating illegally without a license, and he was therefore requested to present evidence that he was indeed operating under a licensed Sacco as required under Regulation 5(1)(a) of the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014.
 - f. That the Petitioner was adamant that he would not pay the surcharge prescribed under the law and as requested by the revenue officers, and he demanded the immediate and unconditional release of his motor vehicle.
 - g. That it is pertinent to note that the Defendant's /Respondent's actions are in line with its constitutional and statutory obligations and are not intended to unduly interfere with the operations of the Petitioner or any other public transport operator.
 - h. That granting an Order for the unconditional release of the subject motor vehicle would amount to a restriction on the Respondent to carry out its constitutional and statutory mandate of regulating public transport in the County and ensuring compliance through enforcement.
5. In response the Petitioner filed a supplementary affidavit with the following major averments:
 - a. That whilst it is true that the respondent is mandated under Article 185(1) and (2) of the constitution of Kenya read together with the Fourth Schedule of the constitution to make regulations of transport within the county, such regulations under the 4th schedule of the constitution should not be in contravention with fundamental Rights and freedoms under Article 31(B)and 40(3) of the constitution of Kenya 2010.



- b. That he is a licensed driver qualified to drive vehicles in classes A1, A2, A3, A, B, C, C1, D1 hence competent to drive any public service vehicles, and has been operating with a valid service badge which has an expiry date of 4th December, 2024.
 - c. That proof to its detention, his vehicle KCL 130H has been operating with an active road service license which will expire on 15th November 2024 under Kirinyaga Shuttle Limited Sacco; and that it has a valid insurance to Carry 14 Fare No. Paying Passengers Under Policy AM20851025939202401(TPO) before it was detained by the respondent.
 - d. That despite the detention of his motor vehicle without any valid reason, he continued to pay the monthly revenue payment of Kshs. 2,500/= to the respondent account.
 - e. That the respondent has violated section 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023 (KCIESA).
6. The parties filed written submission as directed.
 7. The Petitioner submitted that he was requested by the respondent's enforcement agents to drive his motor vehicle to the Kerugoya Revenue offices where his vehicle was eventually clamped and detained. He challenges the averments made by the respondent over his qualification and compliance with the [National transport and safety Authority Act](#) CAP 404 Laws of Kenya by proving he is fully qualified.
 8. He submitted that he is entitled to enjoy fundamental rights and freedoms under article 31(B) and 40(3) of [the Constitution](#) and any other enabling provisions of the law. Thus, the continued detention of his motor vehicle has caused him to undergo serious financial challenges since the motor vehicle is his only source of income.
 9. He pointed out that the only offence he is purported to have committed has not been proved. Courts are guided by facts and evidence but not hearsay evidence; and that the respondent's enforcement officers have not supported the respondent's case.
 10. He submitted that the respondent's replying affidavit was sworn by the Kirinyaga Central County Ward Administrator who is not qualified as a director, inspector or an enforcement officer within the meaning of Kirinyaga County Inspection and Enforcement Services Act 2023. Consequently, the respondent failed to adduce any evidence of an invoice that the applicant was allegedly requested to pay but had not paid.
 11. The applicant has sought general damages of Kshs. 2,000,000/= and cited the case of John Mbaabu & another [v Kenya Revenue Authority Petition No. 6 of 2019](#) where Limo, J awarded damages of Ksh.2,000,000/= and 800,000/= for detention of motor vehicles belonging to two applicants.
 12. The Petitioner seeks that the court do note that the applicant was never notified of any offence he had committed despite issuing a demand letter. He seeks an award of damages and costs of the suit.
 13. The Respondent's submissions were premised on two issues: First, whether the Respondent acted lawfully by impounding the subject motor vehicle belonging to the Applicant; and second whether the applicant is entitled to the orders sought.
 14. On whether the Respondents acted lawfully in impounding the applicant's vehicle the respondent submits that contrary to the assertions of the applicant, the Respondent's enforcement officers are mandated under Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant County legislations and National Laws, including the [National Transport and Safety Authority Act](#) CAP 404. It is therefore within their mandate to ensure that matatu



operators carrying out business within Kirinyaga County are compliant with among other laws. The National Transport Authority Act, Cap 404.

15. The applicant attached to his supplementary affidavit copies of documents purporting to prove that he is a member of the Kirinyaga Shuttle Limited. However, the said Sacco by the letter marked as annexure “MG1” disowned him and confirmed that as at the date of the letter and for a while before that, he was no longer their member, and thus not duly authorized to operate under the Sacco.
16. The Respondent submits that the allegation that the Respondent is in violation of Section 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023 is unsupported, as the Applicant drove himself to the Respondent’s inspectorate station within Kerugoya town where the motor vehicle is still being held, as required by the law.
17. The respondent further submits that by impounding the subject motor vehicle on account of the Applicant’s violation of statutory provisions, the Respondent acted lawfully and is holding the subject motor vehicle lawfully, contrary to the allegations of the Applicant that the same has been done in violation of his rights.
18. On the issue as to whether the applicant is entitled to the orders sought: The Respondent submits that their actions are lawful, and therefore the orders sought ought to be denied. This was the holding in similar circumstances in the case of *Dickson Osiago Kombo v Kisii County Government*, Kisii H.C Petition No.5 of 2014, [2015] eKLR in where the Court held that:

“In my humble view therefore, the fact that the petitioner’s suit motor vehicle was impounded by the respondent was for a justifiable cause. I say so because from the evidence adduced vide affidavit which was never controverted by the petitioner, he had packed his vehicle without paying the parking ticket for the day and tried to cover up his actions by paying for the same parking ticket hours later after the suit motor vehicle had been clamped. The petitioner clearly controverted a law which he knew existed and tried to cover up his actions. For the foregoing reasons, the above application dated 28th February, 2014 cannot succeed. It is dismissed forthwith and the petitioner is condemned to pay costs to the respondents.”

19. The Respondents submit that they are willing to release the applicant’s motor vehicle, subject to payment of the statutory charges for the violations committed and clamping fees incurred so far. The Applicant will not suffer any prejudice by complying with the law and the Respondent seeks this Court’s intervention to ensure that he complies with the law.

Issue for Determination

20. The Court identified the respondent’s issues as the issues for determination. They are:
 1. Whether the Respondent acted lawfully by impounding the subject motor vehicle belonging to the Applicant.
 2. Whether the applicant is entitled to the orders sought.

Analysis and Determination

Whether the Respondent acted lawfully by impounding the subject motor vehicle belonging to the Applicant
21. The applicant’s case is simply that his motor vehicle registration No. KCL130H Toyota Matatu was impounded by the respondent’s enforcement agents without any reason for the same. This occurred



when the applicant was requested by the respondent's enforcement agents to drive his motor vehicle to the Kerugoya Revenue offices where his vehicle was eventually clamped, and has since been detained.

22. The applicant deposed that his motor vehicle KCL 130H has been operating with an active road service license which will expire on 15th November 2024 under Kirinyaga Shuttle Limited Sacco. He exhibited the license as "IWK3" in his Supplementary Affidavit, and a PSV Driver badge under Kirinyaga Shuttle Limited which expires on 4th December 2024 exhibit "IWK 2".
23. Further, the applicant deposed that the claim by the respondents that he was no longer a member of Kirinyaga Shuttle arose only after his vehicle was impounded by the county. The court notes that Exhibit IWK 2 and 3 show that he operates validly under Kirinyaga Shuttle until the expiry date. There is no evidence that Kirinyaga Shuttle notified the Petitioner that his membership had expired or ceased.
24. The applicant submits that the respondent only pleaded offences that the applicant is purported to have committed without any proof of the same, and that despite the detention of his motor vehicle without any valid reason. He continued to pay the monthly revenue payment of Kshs. 2,500/= to the respondent's account. This was not contradicted by the respondent.
25. On its part, the respondent's case is essentially that the Petitioner has been operating his matatu business illegally, without a valid license issued by the National Transport and Safety Authority as required under the [National Transport and Safety Authority Act](#) CAP 404 Laws of Kenya.
26. Further besides operating illegally, the Petitioner acts with impunity, repeatedly picking and dropping passengers outside the omnibus station located within Kerugoya town contrary to the provisions of the Kirinyaga County Omnibus Stations and Parking Act, 2016.
27. The respondent asserts that contrary to the claims of the applicant, the Respondent's enforcement officers are mandated under Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant County legislations and National Laws, including the [National Transport and Safety Authority Act](#) CAP 404.

It is therefore within their mandate to ensure that matatu operators carrying out business within Kirinyaga County are compliant with among other laws, CAP 404.

28. Section 12 of the Kirinyaga County Inspection and Enforcement Service Act (KCIESA) 2023 provides as follows:

“ 12 (1) An enforcement officer shall obey and execute all lawful orders in respect of the execution of the duties of office which she or he may from time to time receive from his or her supervisors and may –

- a. At any reasonable time, enter any place in which the enforcement officer believes on reasonable grounds that any person is in any way contravening the provisions of a County or applicable National Legislation;
- b. Arrest any person who is in breach of any County or applicable national legislation standards which is within the area of jurisdiction of the County;
- c. Seize anything which may be necessary to effectively enforce the laws; or
- d. Destroy or in any such other way, dispose of any item of good whose continued existence would constitute a breach of the provisions of the County of



applicable National Laws, subject only to the Executive Committee Member's Guidance. [Emphasis added].

29. Sections 13 - 15 KCIESA provide for an Enforcement officer on duty with wide powers of stoppage of any person, power to arrest and powers of detention. The section reads as follows:

“ 13 (1) An enforcement officer on duty may stop any person whom the officer witnesses doing unlawful thing, or suspects of doing any unlawful act or thing or being in possession of anything for which a permit, licence or certificate or pass is required under any written law and has no such permit, licence, certificate or pass.

(2) A person who fails to produce a licence, permit, certificate or pass without forty-eight (48) hours when called upon to do so, may be arrested without a warrant unless he gives his name and address and otherwise satisfies the officer that he will dully answer any summons or any other proceedings which may issue of taken against him or her.

(3) An enforcement officer who abuses the powers under this section commits an offence under this Act and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year of both.”

Power to Arrest

“ 14 Subject to Article 49 of *the Constitution*, an Enforcement Officer may without a warrant, arrest a person who-

- (a) Is accused of breaching any law within the enforcement officer's area of jurisdiction and that enforcement officer believes upon reasonable ground that such breach has been committed;
- (b) Obstructs an enforcement officer while in the execution of duty;
- (c) Commits a breach of the peace in the presence of the enforcement officer.;
- (d) Is in possession of an item or thing which is reasonably suspected to have been used to commit offence;
- (e) The enforcement officer suspects upon reasonable grounds of having committed or being about to commit a breach of a County law or national law enforceable by the enforcement officer or;
- (f) The enforcement officer has a reasonable cause to believe a warrant of arrest has been issued”.

Arrest and Detention by an Enforcement Officer

“ 15 (1) An arrest by an Enforcement Officer, whether with or without a warrant, shall be subject to the rules contained in this section with respect to arrest and detention.”

(2) Where a County Enforcement officer has reasonable grounds to believe that an offence has been committed under any County law, the officer may arrest –

- (a) The person committing or who is about to commit the offence;



- (b) Where the offence relates to a regulated activity –
 - (i) The proprietor of the activity;
 - (ii) An employee of the proprietor;
 - (iii) Any other person whom the officer reasonably believes that is involved in the execution of the activity. (Emphasis Added)

30. An enforcement officer is defined in Section 2 KCIESA as follows:

“‘Enforcement officer’ means an officer appointed to serve as an enforcement officer in the Directorate.”

‘Directorate’ is defined in Section 2 as follows:

“‘Directorate’ means the Directorate of Enforcement established under Section 5” [Emphasis added].

31. Under Section 5, there is provision for appointment of a Director. Under Section 7(i) County Enforcement Officers are appointed by the County Public Service Board; and under Section 7(3) they are required to undergo mandatory training established through curricula developed by the Directorate.
32. The deponent of the Respondent’s replying affidavit was one Martin Gacheru, described as the Kirinyaga Central County Ward Administrator. It was submitted by the applicant that he the deponent had no authority as a director, inspector or enforcement officer under the KCIESA.
33. The court agrees that the Respondents deponent does not disclose that he is an enforcement officer under the KCIESA. On the contrary Ward Administrators exist under the County Government Act. Accordingly, such officer is not an “enforcement officer” under the KCIESA and there is therefore no evidence by the respondent in this case, availed by an enforcement officer duly appointed.
34. Consequently, I find and hold that the respondent did not act lawfully by impounding the subject motor vehicle belonging to the Applicant, and that the applicant is entitled to enjoy fundamental rights and freedoms under Article 31(B) and 40(3) of the constitution and any other enabling provisions of the law.
- Whether the applicant is entitled to the orders sought for release of motor vehicle
35. The applicant prays that pending inter-parties hearing of the application, the honourable court be pleased to issue an order for the unconditional release of motor vehicle registration No. KCL 130H Matatu Toyota under the custody of the respondent.
36. The applicant deposed that the respondent’s averments on any breach of its bylaws is not substantiated. The applicant has deposed in his supplementary affidavit that he was operating motor vehicle registration No. KCL 130H with a valid licence, a valid service badge, valid insurance, and was a member of the Kirinyaga Shuttle. Further, he paid the parking fees within the county and the monthly revenue payment to the county of Kshs 2,500/=.



37. Further, that the respondent has violated section 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023 which provides:

“Where a County Enforcement or Inspection officer reasonably believes that a vessel is parked or controlled in any manner contrary to any County Laws or without payment of prescribed parking fees, the officer may impound the vessel by clamping or towing it to the nearest police station or designated inspectorate stations.”

38. The respondents on their part deposed that the Petitioner was adamant that he would not pay the surcharge prescribed under the law and as requested by the revenue officers, and he demanded the immediate and unconditional release of his motor vehicle.

39. As already found by this court above there is no evidence that the Petitioner’s vehicle was stopped or detained by an enforcement officer in terms of the KCIESA.

40. In paragraph 9, 13, 15, 16 of the respondent’s Replying Affidavit is clear that the respondent appreciates that the persons who are required to enforce the law are enforcement officer’s under KICIESA, but no such enforcement officer has deposed an affidavit confirming the averments in the Replying Affidavit.

41. Accordingly, I find that the Petitioner’s vehicle is at present improperly detained by the Respondent, and I hereby order its unconditional release.

42. Orders Accordingly.

CONCLUSIO

Dated at Kerugoya this 23rd day of May 2024

R. MWONGO

JUDGE

Delivered in the presence of:

1. Muthoni for Respondent
2. Nyaga for Applicant
3. Court Assistant, Murage

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