



**Asitiba v Kenya Revenue Authority & 5 others (Constitutional Petition E098 of 2022)
[2023] KEHC 1915 (KLR) (Constitutional and Human Rights) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E098 OF 2022**

AC MRIMA, J

MARCH 10, 2023

BETWEEN

EDWARD ASITIBA PETITIONER

AND

KENYA REVENUE AUTHORITY & 5 OTHERS RESPONDENT

RULING

1. This ruling relates to the Notice of Motion dated April 7, 2022 filed by the 1st and 2nd Respondents/Applicants. The application seeks that the Applicants be struck out from the proceedings.
2. The main reason for the application is that the Applicants are not necessary parties given the nature of the Petition and the role of the Applicants as defined in law.
3. The Petitioner opposed the application by filing a Replying Affidavit he swore on April 13, 2022. The rest of the Respondents opted not to participate in the hearing of the application.
4. The Petitioner and the Applicants filed comprehensive written submissions and Lists of Authorities in support of their rival positions thereby making the work of this Court relatively easy.
5. Given the length and nature of the submissions, I will not reproduce the same verbatim in this ruling. However, I will consider the parties' positions, arguments and decisions referred to in the discussion herein.
6. In determining the application, the starting point is the Petition. In the main, the Petitioner sought the following reliefs: -
 - a. A declaration that the 5th Respondent's decision to enact legislation imposing 16% VAT on LPGs without engaging the public Pubic Participation is



arbitrary, illegal and is a violation of the Petitioner and other citizens' rights under the Constitution.

- b. A declaration that failure to stabilize and reduce high cooking gas process violates Article 43 of the Constitution which guaranteed the Petitioners and other citizens economic and social rights to be free from hunger and to have adequate food of acceptable quality among others.
- c. A declaration that the Respondent's failure to stabilize and reduce high cooking gas process will occasion use of charcoal and dirty kerosene as alternatives, which is a threat to the environment thus violating Article 42 of the Constitution which guarantees the Petitioners and other citizens right to clean, healthy environment.
- d. A declaration that the Respondent's failure to stabilize and reduce high cooking gas prices violates Article 46 of the Constitution which guarantees the Petitioners and citizens consumer rights to goods and services of reasonable quality, to the information necessary for them to gain full benefit from the goods and services and the right to the protection of their health, safety and economic interests among others.
- e. An order compelling the Respondents to take appropriate steps fiscal, administrative, regulatory steps aimed at scrapping off 16% VAT imposed on LPGs to stabilize and reduce high cooking gas process to ensure that the rights and freedoms of the Petitioner and other citizens are not infringed.
- f. Any other remedy that this Honourable Court shall deem fit to grant.
- g. Each party to bear their own costs

7. In the interim, the Petitioner filed a Notice of Motion dated March 10, 2022 seeking the following orders: -

1. Spent
2. This Honourable Court be and is hereby pleased to issue and order directing the 5th Respondent to enact legislation scrapping off the 16% VAT imposed on LPGs.
3. This honourable Court be and is hereby pleased to issue conservatory orders forthwith restraining the Respondent their agents, servants, or assistants from reintroducing VAT on LPG which is a basic commodity.
4. Each party to bear its own costs.
5. Any other orders as this Honourable Court may deem fit and just.

8. One of the orders sought by the Petitioner in the Notice of Motion dated March 10, 2022 is a conservatory order against the re-introduction of the Value Added Tax (VAT) on the Liquefied Petroleum Gas (LPG). In other words, the Petitioner seeks to stay the part of the Tax Laws (Amendment) Act, 2020 which re-introduced the 16% VAT on the LPG.



9. As the Tax Laws (Amendment) Act, 2020 was assented into law, then the 1st and 2nd Respondents/Applicants, have since then, been discharging their statutory mandate in levying the impugned taxes on the LPG.
10. With such a state of affairs, then the question which begs an answer is that in the event the Notice of Motion dated March 10, 2022 succeeds and the Court restrains the continued levying of the impugned taxes, then how will the orders be effected in the absence of the Applicants? Will the Court not be acting in vain?
11. The answer to the above question settles the Applicants' quest to exit these proceedings in the negative.
12. The Applicants are necessary parties in these proceedings for the simple reason that they are the ones executing the impugned legislation.
13. Without much ado, the Applicants application suffers a false start and is for rejection.
14. Consequently, the following orders do hereby issue: -
 - a. The Notice of Motion dated April 7, 2022 is unsuccessful and is hereby dismissed.
 - b. The 1st and 2nd Respondents shall bear the costs of the application.
 - c. The matter shall be placed before the Presiding Judge of the Division for further directions on the way forward.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 10TH DAY OF MARCH, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Ashitiva, Learned Counsel for the Petitioner.

Mr. Mwongera, Learned Counsel for the 1st and 2nd Respondents.

Regina/Chemutai – Court Assistants.

