



Burn Manufacturing USA LLC v Kenya Revenue Authority (Petition E042 of 2024) [2024] KEHC 14537 (KLR) (15 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E042 OF 2024
DO CHEPKWONY, J
NOVEMBER 15, 2024**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
THE RIGHT TO PROPERTY UNDE THE CONSTITUTION OF KENYA, 2010.**

AND

**IN THE MATTER OF: RULES 4, 10, 11, 13 AND 20 OF THE CONSTITUTION
OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)
HIGH COURT PRACTICE AND PROCEDURE RULES 2013.**

AND

IN THE MATTER OF: SECTION 4 OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015.

AND

**IN THE MATTER OF: THE INTERPRETATION OF EAST AFRICA
COMMUNITY CUSTOMS MANAGEMENT ACT (EACCMA) 2004**

BETWEEN

BURN MANUFACTURING USA LLC PETITIONER

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. The Petitioner moved the court through the Notice of Motion application dated 24th October, 2024 seeking the following orders:-
 - a. Spent.



- b. That pending the hearing and determination of this application, this Honourable Court be and is hereby pleased to issue a conservatory order temporarily staying the Respondents, either by themselves, agents, officers or employees from continued detention of containers referenced as DSFU1833181 and PCIU2840941 containing SS304 WIRE Entry No 24MKIM400770589 as a raw material.
 - c. That pending the hearing and determination of this application interparties, this Court be pleased to order the release of the containers described as DSFU1833181 and PCIU2840941 containing SS304 WIRE Entry No 24MKIM400770589 as a raw material on the condition that the Applicant provides a bank guarantee or such undertaking of an equitable amount as the court may deem appropriate, in order to prevent further loss and to safeguard the Applicant Company from potential collapse due to diminished operational capacity.
 - d. That pending the hearing and determination of this Petition, this Honourable Court be pleased to issue a conservatory order temporarily directing the Respondents including their agents, officers or employees from further harassing the Applicant regarding the importation of raw materials in the classification of SS304 WIRE as a raw material.
 - e. Any other relief that this Court will be pleased to issue in the circumstances.
2. The Respondent filed a response to the said application through Notice of Preliminary Objection dated 4th November, 2024 and Replying Affidavit of Tabitha Shikanda sworn on 5th November, 2024. The Respondent also filed a Notice of Motion application dated 5th November, 2024 seeking to discharge the exparte orders issued by this court on 25th October, 2024 in respect of the application of 24th October, 2024.
 3. When the matter came before court on 13th November, 2024, Mr. Oriwa Counsel for Aviation Enterprises Ltd stated that his client has been wrongly enjoined in the matter and the same should be regularized. The Petitioner's Counsel confirmed that it could be an issue with the system as the proper parties are those in the matter being *Burn Manufacturing LLC v Kenya Revenue Authority*. The court intervened and confirmed t Respondent's Counsel confirmed to Mr. Oriwa that the error could be a systems one which the Deputy Registrar will be directed to engage with the IT personnel to rectify the error.
 4. The Respondent's counsel confirmed service of the application and indicated they had filed their responses as well as an application. He also indicated that he was served with the Notice of Change of Advocates It was submitted by Mr. Edgar Isutsa counsel present for the Respondent that they had been served with a Notice of Change of Advocates by M/S N. M. Muriuki & Co Advocates informing them that they had taken over the conduct of the matter from the firm of Mungai Kivuti & Co Advocates to which the Petitioner's Counsel responded that he had not been served with the Respondent's application or with any notice of change of advocates.
 5. Having carefully listened to all counsel, this Court has read through the record and proceeded to issue directions on the disposal of the applications and Notice of Preliminary Objection as follows:-
 - a. The Petitioner to regularise the issues of his representation forthwith.
 - b. The Respondent to serve the Petitioner with the Notice of Motion application dated 5th November, 2024 by close of business today.
 - c. The Petitioner is hereby granted leave of 14 days upon service of the Respondent's application to file a further affidavit alongside written submissions.



- d. The Petitioner's Notice of Motion application dated 24th October 2024, Notice of Preliminary dated 4th November 2024 and the Notice of Motion application dated 5th November, 2024 to be canvassed simultaneously by way of written submissions.
- e. The Respondent is equally granted leave to file and serve its written submissions within fourteen (14) days of being served with the Petitioner's submissions.
- f. The matter shall be mentioned on 16th December, 2024 for parties to confirm compliance and take a date for Ruling.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 15th DAY OF NOVEMBER, 2024.
(UPLOADED VIA ELECTRONIC MAIL)**

D. O. CHEPKWONY

JUDGE

