



REPUBLIC OF KENYA



**Muchiri v Kenya National Highways Authority (Petition E001 of 2023)  
[2025] KEHC 14704 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14704 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
PETITION E001 OF 2023  
TW OUYA, J  
OCTOBER 16, 2025  
IN THE MATTER OF THE CONSTITUTION OF KENYA 2010  
AND  
IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS  
AND IN THE MATTER OF THE UNDERMINED OR THREATENED  
UNDERMINING OF THE SUPREMACY OF THE CONSTITUTION OF KENYA, 2010  
AND  
IN THE MATTER OF THE PREAMBLE, ARTICLES, 1(1) (2) AND (3), 2,  
3, 10, 19, 22, 23, 40, 46, 47, 48, 50, 73, 93, 94, 165, 258 AND 259 OF THE  
CONSTITUTION OF KENYA, 2010 PRACTICE AND PROCEDURE RULES 2013  
AND  
IN THE MATTER OF ARTICLE 22, 23, 40, 162, 165(5)  
(B), 258 & 259 OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF THE PRINCIPLES OF NATURAL  
JUSTICE, OPENNESS AND FAIR HEARING  
AND  
IN THE MATTER OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER 22,  
23, 27, 40, 47, 48, 50, 159, 165, 258 AND 259 OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF THE CONTRAVENTION AND THREATENED  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER 27, 40, 47, 48, 50 (2) OF THE CONSTITUTION OF KENYA  
AND**



**IN THE MATTER OF SECTIONS 6(9), 7, 15(1)(G) AND (H), 15(4), 17(1) (2), (4), (6) AND (8),  
20 AND 25 OF THE EAST AFRICAN COMMUNITY VEHICLE LOAD CONTROL ACT, 2016**

**AND**

**IN THE MATTER OF REGULATION NUMBERS 11(1) AND 92), 12  
AND 13 OF THE EAST AFRICAN COMMUNITY VEHICLE LOAD  
CONTROL (ENFORCEMENT MEASURES) REGULATIONS, 2018**

**AND**

**IN THE MATTER OF UNLAWFUL DETENTION OF  
MOTOR VEHICLE REGISTRATION NUMBER KCW 058R**

**BETWEEN**

**JOHN KIMANI MUCHIRI ..... PETITIONER**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... RESPONDENT**

**JUDGMENT**

1. Before the Court is the Petitioner's Amended Petition dated 13<sup>th</sup> February 2024 seeking that Judgement be entered as against the Respondent for the following Orders:
  - i. Pending the hearing and determination of this Petition, Conservatory Orders be issued as prayed in terms of the notice of motion application filed herewith.
  - ii. A declaration that the Respondent's actions of impounding and detaining or continuing to impound and detain motor vehicle registration number KCW 058R without preferring criminal charges against the Petitioner, or any other person, as contemplated under Article 50 as read together with Articles 40, 47, 48 of *the Constitution* violate the Petitioner's fundamental freedom from torture and cruel, inhuman or degrading treatment or punishment, rights to a fair trial and to property in violation of Articles 25(1), 40 and 50 of *the constitution*, respectively, and the said actions are therefore unconstitutional.
  - iii. That the Court orders the Respondent to release and reconstitute the Petitioner's property particularly motor vehicle registration number KCW 058R which was unlawfully impounded on the 9<sup>th</sup> of December 2023 and which is being detained by the Respondent with immediate effect.
  - iv. That the Court orders the release and restitution of the Driving License belonging to Simon Ng'ang'a Gatheru which was unlawfully impounded and detained on 9<sup>th</sup> December 2023 with immediate effect.
  - v. A Declaration that the action by the Respondent of levying a fee from contravention of any provisions under The East African Community Vehicle Load Control Act, 2016 and/or the rules thereunder without affording the Petitioner due process violated the rights of the Petitioner under Articles, 40, 47 and 50 of *the Constitution* of Kenya.



- vi. Declaration that Sections 6(9), 15(1)(h) and 17 of The East African Community Vehicle Load Control Act, 2016 contravene Articles 1(3) and 159(1) of *the constitution* to the extent that they confer judicial authority on authorized officers under the said Act and are therefore unconstitutional, null and void.
- vii. Declaration that Section 25 of The East African Community Vehicle Load Control Act, 2016 is unconstitutional to the extent that it claims supremacy over *the Constitution* of Kenya 2010 in contravention of Article 2(1) and (3) of *the Constitution* and is therefore null and void.
- viii. A declaration that Regulation Numbers 11(1) and (2), 12 and 13 of The East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 are unconstitutional to the extent that they provide for immitigable penalties, disguised as fees, imposed without any due process being followed in contravention of Articles 25(c), 47 and 50 of *the Constitution* and are therefore unconstitutional, null and void.
- ix. A declaration that the Respondent's action of calculating the imposed fee by the conversion rate as at the date of the penalty and as at the date of the enactment of the Act and regulations thereto amounts to usurpation of legislative powers in contravention of Article 94(5) of *the Constitution* and is therefore unconstitutional, null and void.
- x. A declaration that the process of enactment of the East African Community Vehicle Load Control Act, 2016 precluded public participation in violation of Article 10 of *the Constitution* hence the said Act of the Community is unconstitutional, null and void.
- xi. A declaration that the enabling provisions of the law empowering the imposition of a fee under the East African Community Vehicle Load Control Act, 2016 for the act of overloading or exceeding the permissible weight limits, without there being any such offence created by the said Act and without an express admission of guilt by the offender and without a formal charge against the offender in a court of la is unconstitutional as such 'fee' is unknown and/or improper in law.
- xii. A declaration that the East African Legislative Assembly has no authority to make provisions with the force of law in Kenya and enforcement in Kenya of all provisions of Acts of the Community made by the East African Legislative Assembly contravene Article 94(5) of *the Constitution* and any such enforcement is therefore null and void.
- xiii. A declaration that enforcement in Kenya of any of the provisions of the East African Community Vehicle Load Control Act, 2016 which Act of the Community is enacted by the East African Legislative Assembly contravenes Article 94(5) of *the Constitution* and any such enforcement is therefore null and void.
- xiv. In the alternative to prayers 12 and 13 above, a declaration be and is hereby made that the East African Community Vehicle Load Control Act, 2016 is subservient to the *Traffic Act* and other Acts of Parliament and that where there is a conflict between the two then the Acts of Parliament shall prevail.
- xv. A declaration that the imposition of penalties, fees or fines of amounts exceeding Kenya Shillings Four Hundred Thousand under the Third Schedule of The East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 is void to the extent that such fines, fees or penalties are inconsistent with the provisions of Section 57(1) of the *Traffic Act*.
- xvi. Any other Orders that this Court shall deem mete and just to grant.



- xvii. The costs of this Petition be awarded to the Petitioner.”
2. The Petition is supported by the Affidavit sworn by the Petitioner on 13<sup>th</sup> February 2024 wherein he asserted ownership over motor vehicle registration number KCW 058R, a lorry/truck, as per the annexed copy of Registration Certificate/Log book dated 6<sup>th</sup> October 2022 and marked “JK-1” wherein the Petitioner is listed as co-owner of the aforementioned lorry alongside NCBA Bank Kenya PLC.
  3. The Petitioner further deposed that the aforesaid lorry is engaged in the transport business and constitutes his only means of livelihood.
  4. The Petitioner’s case is that on 9<sup>th</sup> December 2023 at around 6.20pm, his motor-vehicle registration number KCW 058R was ferrying ballast for a client when same was impounded by the Respondent’s officers at the Weighbridge located in Juja area along the Thika-Nairobi Road on allegations of being overloaded. He refuted claims by the Respondent’s officers to the effect that the aforesaid lorry was overloaded and asserted that the total load carried by the lorry in question on the material day had been weighed and a gross weight of 26200 Kilograms recorded, which is the legal weight for such a vehicle.
  5. That upon impounding his vehicle the Respondent demanded Kshs. 74,035 (seventy-four thousand and thirty-five shillings) being the “overloading fees” as a pre-condition for the release of the impounded lorry. The Petitioner further claimed that the Respondent seized the Driving License of his driver namely, Simon Nganga Gatheru who was driving the aforesaid lorry on the material day being 9<sup>th</sup> December 2023.
  6. Furthermore, the Respondent did not afford the Petitioner any opportunity to be heard during: (a) the impounding of his lorry; (b) the imposition of overloading fees; and, (c) at the seizure of the driving license belonging to the Petitioner’s driver.
  7. That upon inquiring as to the nature of the offence for which his lorry was impounded and “overloading fee” imposed, the Respondent’s agents informed him that no offence had been committed, hence, no charges would be preferred against the Petitioner.
  8. It was the Petitioner’s further averment that the Respondent’s agents threatened to dispose his lorry via an auction in the event he failed to deliver the aforesaid overloading fees within 60 days from the day of impoundment.
  9. The Respondent raised a Notice of Preliminary Objection dated 22<sup>nd</sup> January 2024 against the instant Petition as well as the Replying Affidavit sworn by Willie Shem Waithanje Thuku on 20<sup>th</sup> May 2024 in his capacity as a Weighbridge Manager in the Respondent entity. The gist of the Respondent’s case is that on 9<sup>th</sup> December 2023, the Petitioner’s vehicle on being weighed by the Respondent’s officers revealed 28530 kilograms being the gross vehicle weight, thus, the Petitioner’s lorry was overloaded by 530 kilograms.
  10. The Respondent deposed that following impoundment of his lorry, the Petitioner’s elected to bypass the dispute resolution mechanisms set out under the East African Community Vehicle Load Control Act 2016 opting instead to approach this Court directly, hence, the subject Petition offends the doctrine of exhaustion.
  11. On 21<sup>st</sup> May 2024, counsel for the Petitioner proposed that the Petition and Notice of Preliminary Objection be both canvassed by way of written submissions which proposal was agreeable to the Respondent’s counsel. Accordingly, the Court directed that both be dispensed by way of written submissions.



12. The Petitioner filed written submissions dated 11<sup>th</sup> October 2024 through its counsel, identifying four issues for determination by this Court, as follows:
  - i. Whether this Court has jurisdiction to hear and determine the instant Petition.
  - ii. Whether the Respondent’s action, pursuant to the provisions of the East African Community Vehicle Load Control Act 2016 and the relevant regulations, infringed upon the Petitioner’s constitutional rights.
  - iii. Whether the use of the US Dollar-Kenya Shillings conversation rate as at the date of impoundment of the vehicle and not as at the date of enactment of the East African Community Vehicle Load Control Act 2016 violates *the Constitution*.
  - iv. Whether the East African Community Vehicle Load Control Act 2016 and the regulations thereto are unconstitutional.
13. Relying on the provisions of Section 9(4) of the Fair Administrative Actions Act, the Petitioner argued that it was not bound to invoke the dispute resolution mechanism set out under Regulation 17 of the East African Community Vehicle Load Control Act 2016 as read together with Section 17(4) of the East African Community Vehicle Load Control Act 2016 because it is not in the interests of justice to do so.
14. Reliance was sought in the holding of the Court in Mohamed Ali Baadi and Others V. The Attorney-General and 11 others, (2018) eKLR to anchor the proposition that a party can be exempted by the Court from complying with the doctrine of exhaustion in the interests of justice.
15. That the issues raised in the subject Petition as well as the reliefs sought therein transcend the issue of overloading and can only be resolved by this Court pursuant to the provisions of Article 23(1) and read together with Article 165(3) of *the Constitution*.
16. Reliance was placed in the reasoning of the Supreme Court in Bia Tosha Distributers Limited V Kenya Breweries Limited & 6 Others (Petition 15 of 2020) [2023] KESC 14 (KLR) to buttress the position that the High Court is clothed with the exclusive jurisdiction to determine all claims relating to an alleged violation of any right or fundamental freedom set out under the Bill of Rights in *the Constitution* of Kenya.
17. Further guidance was sought in the holding of the Court in: Margaret Miano vs. Kenya National Highways Authority Mombasa High Court Petition No. 23 of 2015 [2015] eKLR; Republic vs. Kenya National Highways Authority Ex parte John Mwaniki Kiarie [2016] eKLR; and, in Disaranio Limited vs. Kenya National Highways Authority.
18. The Petitioner argued that the Respondent’s act of imposing a fine of Kshs.74035 under the guise of “fees” presumably for the act of overloading, without affording the Petitioner a hearing or access to a Court of law, violated the Petitioner’s right to a fair hearing as guaranteed under Article 50 of *the constitution*.
19. It was further submitted that Regulation 17 of the East African Community Vehicle Load Control Act 2016 as read together with Section 17(4) of the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 ought to be declared unconstitutional by this Court as those provisions empower the Respondent to act simultaneously as the complaint, investigator and umpire. Guidance was sought in the holding of the court in Republic vs. Kenya National Highways Authority Ex parte John Mwaniki Kiarie [2016] eKLR; Premji Patel Company Limited V Director



General Kenya National Highways Authority (KENHA) & 3 Others (Civil Appeal 67 of 2019) [2022] KECA 738 (KLR) and, in *Disaranio Limited vs. Kenya National Highways Authority*.

20. The Petitioner subscribed to the view that “overloading” is not one of the offences listed under Section 20 of the East African Community Vehicle Load Control Act 2016. He further argued that the provisions of Sections 55(2), 56 and 58 of the *Traffic Act* ought to apply in all cases related to overloading as opposed to the East African Community Vehicle Load Control Act 2016, which he described as ambiguous, inconsistent and unconstitutional.
21. On the issue of currency conversion/exchange rate, the Petitioner faulted the provisions of Regulations 11(1) and (2) of the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018 and the Third Schedule thereto for imposing a penalty exceeding that which is set out under Section 58 of the *Traffic Act*.
22. Furthermore, the Respondent breathed uncertainty into the law by applying the conversion rate as at 9<sup>th</sup> December 2023 rather than the rate obtaining on the date of enactment of the East African Community Vehicle Load Control Act 2016.
23. The Petitioner further argued that the East African Community Vehicle Load Control Act 2016 (and attendant Regulations) is not a treaty which Kenya has ratified under the provisions of Article 2(6) of *the Constitution* of Kenya. Furthermore, the aforesaid Act was enacted by the East African Community Legislative Assembly and assented to by the Heads of State of the Community, which law-making procedure is not contemplated under Article 93(1), 94(1) and 94(5) of *the Constitution* of Kenya.
24. It was submitted that no public participation preceded the enactment of the East African Community Vehicle Load Control Act 2016 as required under Article 118(1)(b) of *the Constitution* of Kenya hence the aforementioned law is unconstitutional and this Court ought to declare as such. Guidance was placed in the holding of the Court in *Kenya Human Rights Commission V Attorney-General & Another* [2018] eKLR in support of the foregoing submissions.
25. The Respondent filed written submissions dated 11<sup>th</sup> May 2024 through its Counsel. It was submitted that the Petitioner neglected to pursue either of the two options available to an owner of a vehicle disputing the fees charged for overloading under the provisions of Section 17 (2) and (4) of the East African Community Vehicle Load Control Act 2016. Firstly, such an owner has the option of paying the overloading fees on a without prejudice basis to secure the release of the vehicle in question and lodge an appeal against the fees as set out under the regulations. The second option is to lodge an appeal pursuant to the applicable regulations, during which time the vehicle in question remains in the Respondent’s custody at the cost of the transporter.
26. It was argued that the Respondent failed to exhaust the avenues of appeal provided under the Act and elected to approach this Court, thereby violating the provisions of Section 2 and 9(3) of the Fair Administrative Actions Act.
27. Guidance was sought in the decision of the Court in *Geoffrey Muthinja & Another V Samuel Muguna Henry & 1756 others* [2015] eKLR to buttress the proposition that a party is required to exhaust the dispute resolution mechanisms available under any written law including internal mechanisms for appeal or review before approaching this Court for a remedy. Further reliance was placed in the holding of the Court in *Mui Coal Basin Community & 15 others V Permanent Secretary Ministry of Energy & 17 others* [2015] eKLR.
28. The Court has carefully inspected the pleadings, totality of the evidence tendered by the parties as well as their rival submissions. The following issues for resolution are: Whether the Petition offends the doctrine of exhaustion and Whether Section 17(4) of the East African Community Vehicle Load



- Control Act 2016; Regulations 11(1)(2) and 17 of the East African Community Vehicle Load Control (Enforcement Measures) Regulations, 2018; and, the Third Schedule thereto ought to be declared unconstitutional.
29. On the doctrine of exhaustion, the Petitioner disputed the findings recorded by the Respondent's officers on 9<sup>th</sup> December 2023 to the effect that his lorry was overloaded by 530 kilograms. The Petitioner argued and submitted being the proprietor of the lorry, it was his custom to compute the amount of transport costs to be borne by his customers depending on the tonnage/weight carried by the lorry, and, on 9<sup>th</sup> December 2023 he ascertained that the lorry was not overloaded as claimed by the Respondent, as it carried a total weight of 26200 Kilograms which is the legally approved limit for such vehicle.
30. The Court of Appeal in the case of Geoffrey Muthinja & Another Vs Samuel Muguna Henry & 1756 others (2015) eKLR, held as follows:
- “...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 mechanism in place for resolution outside of courts.”
31. Similarly, in the case of Speaker of National Assembly v. James Njenga Karume (1992) eKLR. In the International Centre for Policy and Conflict & 5 others vs. The Hon. Attorney General & 4 others [2013] eKLR, the Court proclaimed as follows:
- “Where there exist sufficient and adequate mechanisms to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanisms have been exhausted. In this regard, we refer to the decision in Re Francis Gitau Parsimei & others v. National Alliance Party and others Nairobi Petition No. 356 of 2012 (unreported) in which the Court emphasised the principle that: “where the Constitution and or a statute establishes a dispute resolution procedure, then that procedure must be used.”
32. The Court is persuaded that the objection raised by the Petitioner as to the finding of overloading entered by the Respondent's officers on 9<sup>th</sup> December 2023 was capable of resolution under the mechanisms stipulated under the provisions of Section 17(4) of the East African Community Vehicle Load Control Act 2016 as reproduced hereinbelow.
33. The main dispute as between the parties being in relation to the tonnage carried by the Petitioner's lorry on the date of impoundment, it is inexplicable to this Court why the Petitioner would opt not to challenge the Respondent's findings of overloading as stipulated under Section 17(4) of the East African Community Vehicle Load Control Act 2016.
34. The Court subscribes to the view that the Petitioner ought to have presented objections on the question of overloading as provided for in the preceding provision of the law; and, if dissatisfied with the decision of the Respondent in relation to those objections, then, the Petitioner would be entitled to approach this Court for relief. In the upshot, the Court holds and finds that the subject Petition offends the doctrine of exhaustion. Accordingly, the Court finds and holds that the Respondent's Notice of Preliminary Objection is merited.
35. I will now turn to the issue as to whether Section 17(4) of the East African Community Vehicle Load Control Act 2016; Regulations 11(1)(2) and 17 of the East African Community Vehicle Load



Control (Enforcement Measures) Regulations, 2018; and, the Third Schedule thereto ought to be declared unconstitutional. Section 17(4) of the East African Community Vehicle Load Control Act 2016 stipulates as follows:

“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 adjustments 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.”

36. The essence of the Petitioner’s claim is that the preceding provision is unconstitutional as it places the Respondent in the multiple roles of complainant, investigator and adjudicator, contrary to the interests of justice. Furthermore, the enactment of the East African Community Vehicle Load Control Act 2016 did not adhere to the procedure for law-making set out under Article 93(1), 94(1) and 94(5) of *the Constitution* of Kenya, thereby, rendering the aforesaid law unconstitutional.

37. This Court is not persuaded by the Petitioner’s contentions and submissions to the effect that the East African Community Vehicle Load Control Act 2016 is unconstitutional for the reason that it was not brought into being through the processes set out under Articles 93(1), 94(1) and 94(5) of *the Constitution* of Kenya.

38. John Eudes Ruhangisa, a Judge of the High Court of Tanzania, in a book chapter titled “The Scope, Nature and Effect of EAC Law” appearing in a 2017 volume titled East African Community Law edited by Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger and Armin Cuyvers by Brill publishers writes as follows:

“Article 49 (1) of the [East African Community] Treaty vests the lawmaking function in the East African Legislative Assembly (the Assembly) as it provides that “The Assembly shall be the legislative organ of the Community.” The Assembly plays its legislative role in the Community by passing Bills and having them assented to by the Head of States in the Summit. The Bills that have been duly passed and assented to are styled as Acts of the Community and are published in the East African Community Gazette.”

39. The Court is not persuaded that the procedure eventuating in the enactment of East African Community Vehicle Load Control Act 2016 or the Regulations thereto ought to be declared unconstitutional, as claimed by the Petitioner. The Petitioner himself admitted that the foregoing law was passed by the East African Legislative Assembly which body is mandated to pass such enactments. Furthermore, Kenya and other member countries in the East African Community, in exercise of their state sovereignty, established the East African Legislative Assembly to pursue the purposes set out in the East African Community Treaty. The Court holds and finds that the institutional mandate of based East African Legislative Assembly is well-secured in terms of international law and its existence does not threaten the institutional architecture provided for in *the Constitution* of Kenya.

40. Further, by way of analogy, African customary law, which is recognized as one of the sources of the law of Kenya pursuant to Section 3(2) of the *Judicature Act* is not created through the procedure



laid out under Articles 93(1), 94(1) and 94(5) of *the Constitution* of Kenya. From the foregoing, the Court is persuaded that East African Community Vehicle Load Control Act 2016 is not deprived of constitutionality merely because its enactment did not adhere to the law-making procedure set out under Articles 93(1), 94(1) and 94(5) of *the Constitution* of Kenya.

41. Turning to the question of costs, the Court notes that the issues raised in the subject Petition are of immense public interest and constitute exceptional circumstances as contemplated under Section 27 of the *Civil Procedure Act*. In the premises, the Court is minded to direct each party to bear own costs.
42. Final Orders
  - i. The Court finds and holds that the Respondent's Notice of Preliminary Objection is merited and is therefore upheld
  - ii. The Petition herein is found unmerited and dismissed
  - iii. The Court directs that each party to bear their own costs.
43. Thirty (30) days stay of execution to apply.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. T. W. OUYA**

**JUDGE**

