



Mohamed & another v Agriculture & Food Authority (AFA) & 7 others; Mali Safi Commodities Limited & 16 others (Interested Parties) (Constitutional Petition E037 of 2025) [2025] KEHC 13616 (KLR) (1 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTIONAL PETITION E037 OF 2025**

G MUTAI, J

OCTOBER 1, 2025

IN THE MATTER OF ARTICLES 2(1), 3(1), 20(1), 21(1), 22, 23(3), 40(1), 47, 50(1) AND 162(2) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 27, 43, 47, 73, 129, 153, 227, AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015; THE COMPETITION ACT, 2010; THE AGRICULTURE AND FOOD AUTHORITY ACT, 2013; THE CROPS ACT, 2013; THE ACCESS TO INFORMATION ACT, 2016; THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT; THE KENYA REVENUE AUTHORITY ACT; THE KENYA BUREAU OF STANDARDS ACT

AND

ALL ENABLING PROVISIONS OF LAW.

AND

IN THE MATTER OF RULES 4 AND 10 OF THE PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

IBRAHIM MUHUMED MOHAMED 1ST PETITIONER

ABDIAZIZ MOGE NOOR 2ND PETITIONER

AND

AGRICULTURE & FOOD AUTHORITY (AFA) 1ST RESPONDENT

KENYA NATIONAL TRADING CORPORATION (KN'TC) .. 2ND RESPONDENT



CABINET SECRETARY, MINISTRY OF AGRICULTURE & LIVESTOCK DEVELOPMENT 3RD RESPONDENT

CABINET SECRETARY, MINISTRY OF INVESTMENTS, TRADE & INDUSTRY 4TH RESPONDENT

CABINET SECRETARY, NATIONAL TREASURY & ECONOMIC PLANNING 5TH RESPONDENT

KENYA REVENUE AUTHORITY 6TH RESPONDENT

COMMISSIONER CUSTOMS & BORDER CONTROL DEPARTMENT 7TH RESPONDENT

THE HON ATTORNEY GENERAL 8TH RESPONDENT

AND

MALI SAFI COMMODITIES LIMITED INTERESTED PARTY

TRIDAH WHOLESALERS LIMITED INTERESTED PARTY

MASSATECH KENYA LIMITED INTERESTED PARTY

VOONO GRAINS KENYA LIMITED INTERESTED PARTY

ONE COMMODITIES COMPANY LIMITED INTERESTED PARTY

DELI-CONVIE LIMITED INTERESTED PARTY

EXPORT TRADING COMPANY LIMITED INTERESTED PARTY

HOUSE OF PROCUREMENT LIMITED INTERESTED PARTY

KRISH COMMODITIES LIMITED INTERESTED PARTY

ZUCHERO TRADING LIMITED INTERESTED PARTY

CELESTE TRADING LIMITED INTERESTED PARTY

GULF BAKERS LIMITED INTERESTED PARTY

KAMILI PACKERS LIMITED INTERESTED PARTY

GLOBAL MARKETING ENTERPRISE LIMITED INTERESTED PARTY

COMPACT INLAND LOGISTICS SEZ LIMITED INTERESTED PARTY

GO RICE COMPANY LIMITED INTERESTED PARTY

IRICE IMPORTERS ASSOCIATION OF MOMBASA INTERESTED PARTY

RULING

1. This court, per Ngaah, J, considered the petitioners’ application dated 22nd September 2025 and, being satisfied that the said application had merit, the court, on 23rd September 2025, issued conservatory orders pending the hearing of the application interpartes, or until further orders are made by it. The court fixed the matter for directions on 23rd October 2025.



2. On the 25th September 2025, the 11th and 12th interested parties filed an application of even date through which they sought to have the orders issued by the court on 23rd September 2025 lifted. This court, per Ngaah, J, upon considering the said application, ex parte in the first instance, directed that it be served forthwith for directions on 23rd October 2025.
3. On 30th September 2025, the petitioners and the 11th and 12th interested parties entered into a consent vide which they agreed to have the applications dated 22nd September 2025 withdrawn, and for the orders that were issued pursuant to the said application discharged. The petitioners filed a notice of withdrawal of the application pursuant to Order 25, Rule 1 of the [*Civil Procedure Rules, 2010*](#).
4. The 11th and 12th interested parties filed a notice of motion dated 30th September 2025 seeking to have the court lift, discharge, and or withdraw the orders it issued on 23rd and 26th September 2025, and for the matter to be mentioned on 23rd October 2025. The said application was premised on the grounds, inter alia, that the said orders were preventing the clearance of the goods that had already been shipped. It was averred that rice is a highly perishable commodity that would spoil when exposed to the hot, humid air of the port of Mombasa
5. It is that application that is before me today for determination. During its hearing, the parties, except for the 8th interested party, supported the application and indicated that they were not opposed. It is only the 8th interested party that is opposed to the withdrawal and the discharge of the conservatory orders on the grounds that withdrawal would be prejudicial to it. The 8th interested party's counsel averred that no evidence that all the parties had been served with the application and the notice was tendered, and also on the ground that the requirements of Order 25, Rules 2(1), (2), and (3) of the [*Civil Procedure Rules*](#) had not been complied with.
6. I have considered the application and the submissions of the parties. I note that Article 50 of the [*Constitution*](#) grants every person the right to have any dispute that can be resolved by the application of law decided in a fair and public trial before a court of law or an impartial tribunal. My understanding of the said Constitutional provision is that every person has a right to access the court and to commence proceedings. As a corollary to that, and logically following, each person has the right to terminate those proceedings, subject to conditions that the court may impose in the interest of justice.
7. The foregoing is given effect by Order 25 of the [*Civil Procedure Rules*](#), which permit withdrawal, discontinuance, and adjustment of suits. The way the said order is couched, to mind, bespeaks the fact that the decision to withdraw a suit is the prerogative of the party that approached the court for the redressal of his grievance, and that the court may not decline to allow the application for discontinuance or withdrawal of a suit or application. The court will obviously take into consideration the fact that parties sued may have incurred expenses and, in those cases, will award costs as appropriate.
8. In this case, the petitioners have withdrawn their application dated 22nd September 2025. I can see no reason why they must be compelled to pursue claims they have no desire to proceed with, or to benefit from orders they have no use for. To hold otherwise would, in my view, be very oppressive.
9. I am guided by the Supreme Court decision in the case of [*Robert Mutiso Lelli v Kenya Medical Training Centre, the Hon Attorney General and the Commissioner of Lands*](#), where their Lordships and Ladyships held as follows at paragraph 8 (ii):-

“It therefore suffices to say that indeed a party's liberty to withdraw a matter cannot be taken away, and this court has to allow a party who has approached the court to withdraw such a matter, if he deems so fit to do so. In effect, the application to withdraw the appeal stands.”



10. Under the circumstances, I allow the application to withdraw the notice of motion dated 22nd September 2025. The aforementioned application is hereby marked as withdrawn. Since the subsisting orders were issued pursuant to the said application, which has now been withdrawn, it follows that they cannot remain in effect. Court orders cannot exist in vacuo. The orders issued on 26th September 2025, on the other hand, pertained to an application seeking to discharge the orders issued on 23rd September 2025. The said orders are thus moot and of no effect.
11. The upshot of the foregoing is that the application dated 30th September 2025 has merit and is hereby allowed.
12. Regarding costs, I order that costs shall be in the cause.
13. Orders accordingly.

DATED AND SIGNED AT MOMBASA, THE 1ST DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Sadiq for the Petitioners;

Mr Odhiambo for the 11th and 12th Interested Parties;

Mr Theuri and Ms Kiunga, for the 1st Respondent;

Mr Penda, for the 2nd, 3rd, 4th, 5th and 8th Respondents;

Mr Seko, for the 8th Interested Party; and

Arthur - Court Assistant.

