



**Osho Chemicals Industries Limited v Attorney General & 2 others; Mitchell
Cotts (K) Limited & 3 others (Interested Parties) (Petition E202 of 2022)
[2025] KEHC 16532 (KLR) (Constitutional and Human Rights) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E202 OF 2022
LN MUGAMBI, J
NOVEMBER 13, 2025**

BETWEEN

OSHO CHEMICALS INDUSTRIES LIMITED PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

KENYA BUREAU OF STANDARDS 3RD RESPONDENT

AND

MITCHELL COTT'S (K) LIMITED INTERESTED PARTY

KENYA PORTS AUTHORITY INTERESTED PARTY

KENYA REVENUE AUTHORITY INTERESTED PARTY

KENYA ASSOCIATION OF MANUFACTURERS INTERESTED PARTY

RULING

1. By a Notice of Motion Application dated 18th February 2025, the Petitioner herein seeks Orders that:
 - i. Spent.
 - ii. The Court be pleased to clarify whether it manifestly intended to award the following prayers:
 - a. Exemplary and punitive damages and the quantum that may have been awarded or declined.



- b. Interest at court rates from the date of filing the petition until payment in full.
- c. Loss of profits of Kshs. 57, 090, 637.00.
- d. Whether the sums awarded are payable by the 2nd and 3rd Respondents jointly and severally.
 - iii. The Judgment be corrected to set out the manifest intention of the Court.
 - iv. Costs of this Application.

Petitioner's Case

2. The Application is supported by the Petitioner's Director, Manoj K. Shah's affidavit of even date and the grounds on the face of the Application.
3. According to the Petitioner, this Court in its Judgment dated 22nd January 2025, allowed the Petition by granting the reliefs sought apart from: interest on the special damages awarded, exemplary and punitive damages, Kshs. 57,090,637.00 for loss of profits and interest on the costs of suit at Court rates of 14% per annum from the date of filing the Petition.
4. He avers that the Court in its finding did not however elucidate why it did not or failed to grant exemplary and punitive charges and loss of profits. Furthermore, he states that the Judgment was silent on special damages awarded and interest on the costs of suit at Court rates of 14% per annum from the date of filing the Petition. For this reason, the Petitioner argues that the Judgment is incomplete.
5. The Petitioner asserts that the Supreme Court in *Bia Tosha Distributors Limited v Kenya Breweries Limited & 6 others* [2023]KESC 14 (KLR) guided that it is trite that every litigant before the Court is entitled to a decision on issues presented by it to the Court. In this matter, the Petitioner contended that the Court did not do so, as failed to pronounce itself on some of the prayers sought.
6. The Petitioner also relied in *Kamau v Coast Bus (Mombasa) Limited* [2024] KEHC 3232 (KLR), *Lei Masaku v Kalpama Builders Ltd* [2014]eKLR, *Gabriel Owe Okello v Ujenzi Quarries Ltd*[2017]eKLR and *William Mbugua Ng'ang'a v Mohammed Salim and another* [2020]eKLR.
7. Additionally, the Petitioner averred that Section 26 of the *akn ke act 1924 3 Civil Procedure Act* empowers the Court to award interest on the principal sum adjudged in a decree, both before and after the date of the decree, to be paid at such rate as the Court deems reasonable.
8. In view of the foregoing, the Petitioner avers that this Application is necessary so that the intention of this Court can be clarified and the gaps in the Judgment be remedied. The Petitioner notes that this Court has inherent power to amend, rectify and to correct its judgment. The Petitioner relies in Section 99 of the *akn ke act 1924 3 Civil Procedure Act* which grants the High Court power to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein.
9. The Petitioner avers that the Respondent will not be prejudiced if this Application is allowed as it is in the interest of both parties to know the precise intentions of the Court. Equally, it will also save on time as the parties will not need to appeal on grounds that the Court shall clarify.

The Other Parties case and Submissions

10. The other parties' responses are not in the Court file or Court Online Platform and neither are all the parties' submissions.



Ms. Chibole for the 1st and 2nd Respondent appeared in Court on 29 9 2023 and said that the Respondents did not bother to file any response on the application because it was only seeking clarification and did not see the need to oppose it.

Clarification

11. To put the matter before the Court into proper perspective, it is necessary to go back to the Petition dated 10th May 2022 and the prayers thereof sought thereunder:
 - a. Declarations be issued that:
 - i. The decisions and actions of KEBS and the DCI in refusing to authorize the timely clearance and release of Osho's products were unlawful, capricious and in breach of Article 47 of *akn ke act 2010 constitution the Constitution* and Section 4, 5 and 6 of the *akn ke act 2015 4 Fair Administrative Action Act* and occasioned economic loss to the Petitioner.
 - ii. The respondents as members of the multiagency task force are liable to pay all outstanding customs warehouse rent and any related tax payable to the 1st and 2nd Interested Party and Kenya Revenue Authority on account of the unlawful detention of the petitioners goods.
 - iii. The officers of the Respondents are in breach of Articles 10(2) and 73(a) and (b) of *akn ke act 2010 constitution the Constitution* and Section 7 of the *akn ke act 2012 19 Leadership and Integrity Act* by failing to serve the people in an equitable, inclusive, accountable and transparent manner and failing to uphold the rule of law which amounts to abuse of power and disregard for property rights and the right to a fair administrative action.
 - iv. It is unreasonable to detain an importer's goods for period exceeding 21 days from the date of storage in bonded warehouse and expose the importers to warehouse rent and unnecessary taxes on account of delays in carrying out testing of the products.
 - b. An order of prohibition directed at the Respondents and 1st to 3rd Interested Parties from in future detaining any of the Petitioner's goods beyond 21 days from the date of importation, clearance of outstanding taxes and any testing to be conducted on the goods.
 - c) An order of prohibition against the Interested Parties from demanding any outstanding storage charges, ware house rent or taxes from the Petitioner.
 - d) An order of mandamus compelling the Respondents to pay all outstanding warehouse rent and taxes due to the 1st to 3rd Interested Parties on account of the Petitioner's unlawfully detained goods.
 - e) An order of mandamus compelling the 1st Respondent to come up with rules, regulations or directives governing the multiagency task force and ensuring full compliance with Article 47 of *akn ke act 2010 constitution the Constitution* and the Fair Administration Actions Act to avoid unreasonable delays, inaction in clearing goods imported by manufacturers and ordinary citizens and expedited resolution of any disputes within 14 days of being raised.
 - f) Pending the hearing and determination of the testing the Respondents and 1st to 3rd Interested Parties, their agents or servants be restrained from selling the Petitioner's following goods:



- i. NPK-12:2:44 Water soluble fertilizer-100 metric tons;
- ii. Green Miracle- Foliar Fertiliser-20x250kg drums; and
- iii. Karisma Organic fertilizer- 44 metric tons.

in any manner whatsoever pending further orders of the court.

- g) A mandatory injunction directing the 3rd Respondent to re-test the NPK fertiliser, Green Miracle- Foliar Fertiliser and Karisma Organic Fertilizer at its own cost to confirm if all or any of the products are fit for use and file and serve under oath a report of the laboratory tests within 14 days of the court order.
- h) The Respondents and 1st to 3rd Interested Parties do unconditionally and without demanding any payment from the Petitioner of costs, warehouse rent or any charges whatsoever do forthwith release the following:
 - iv. NPK-12:2:44 Water soluble fertilizer-100 metric tons
 - v. Green Miracle- Foliar Fertiliser-20x250kg drums
 - (vi) Karisma Organic fertilizer- 44 metric tons to the Petitioner within 7 days of adoption of the laboratory tests by the 3rd Respondent in the event that all or any of the products are fit for use and in the event that the products have expired the 3rd Respondent be ordered to forthwith destroy the affected products at its own costs and release all the containers to the custody of the Petitioner.

- i) Special Damages for:

TABLE

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COSTS INCURRED & PAID

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Kshs

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USD

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1.

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NPK Fertilizer

Import costs, customs, shipping line, demurrage container sale, customer warehouse rent.

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Green Miracle – Foliar Fertilizer

Import costs, customs, shipping line, demurrage container sale, customer warehouse rents, shipping costs.

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Karisma Organic fertilizer

Import costs, customs, shipping line, demurrage container sale, customer warehouse rents, shipping costs.

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LOSS OF PROFITS

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NPK Fertilizer

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Green Miracle –Foliar Fertilizer

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Karisma organic fertilizer

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341,440

- j) Exemplary and punitive damages for unfair, unlawful and wrongful detention of the Petitioner's goods with interest at court rates of 14% per annum from the date of judgment until payment in full.
- k) Interest at court rates of 14% per annum from the date of filing the Petition until payment in full.
- l) Costs of the suit on a full indemnity basis with interest at court rates of 14% per annum from the date of filing the Petition until payment in full.
- m) Any other relief that the Court shall deem just.

12. This Court in its Judgment dated 22nd January 2025 awarded in the Petitioner's favour, the following reliefs:

“192. Having regard to the foregoing, the Court considers the following reliefs as commending themselves for award in this Petition are as follows:

1. A declaration is hereby issued that decisions and actions of the 2nd Respondent (the Directorate of Criminal Investigations) and the 3rd Respondent (Kenya Bureau of Standards) failure to authorize the timely clearance and release of petitioner's products namely NPK Water Soluble Fertilizer, and Karisma Organic Fertilizer were unlawful, capricious and in breach of Article 47 (1) and 40 (3) of *akn ke act 2010 constitution the Constitution*.
2. A declaration is hereby issued that it is unreasonable and therefore unlawful to detain, (without any fault on the part of an importer of goods), an importer's goods for period exceeding 21 days from the date of storage in bonded warehouse thereby unjustly exposing the importer to warehouse rent, taxes and



other attendant costs and losses on account of delays in carrying out testing of the products or pending other processes by government agencies.

3. An order of prohibition is hereby issued stopping the Interested Parties from demanding any outstanding storage charges, warehouse rent or taxes from the Petitioner in respect of the two products namely NPK Water Soluble Fertilizer and Karisma Organic Fertilizer.
4. Instead, an order of mandamus is issued directing the 2nd and 3rd Respondents to pay all outstanding warehouse rent and taxes due to the 1st to 3rd Interested Parties on account of the two products namely, NPK Water Soluble Fertilizer and Karisma Organic Fertilizer.
5. In view of the fact that retesting was done on 8 7 22 pursuant to the order of the Court of 30 6 2022 which confirmed the under listed products had expired namely:
 - i. NPK-12:2:44 Water Soluble Fertilizer-100 metric tons
 - ii. Green Miracle- Foliar Fertiliser-20x250kg drums
 - (iii) Karisma Organic fertilizer- 44 metric tons;The 3rd Interested party shall destroy NPK Water Soluble Fertilizer and Karisma Organic Fertilizer at the cost of the 2nd and 3rd Respondent and release all the containers to the custody of the Petitioner.As for the Green Miracle Fertilizer the cost of destruction shall be borne by the petitioner.
6. Compensation for the amount incurred on the two products as particularized in paragraph 31 and 54 of the Petitioner's affidavit in respect of NPK Water Soluble Fertilizer and Karisma Organic Fertilizer as follows:



No.	Costs Incurred & Paid	Kshs.	USD
1.	NPK Fertilizer Import costs, customs, shipping line, demurrage container sale, customer warehouse rent.	593,639	119,036.20
2.	Karisma Organic fertilizer Import costs, customs, shipping line, demurrage container sale, customer warehouse rents, shipping costs.	402,865.36	33,548.20

7. Costs of this Petition.

13. In this application the states that the Judgment did not address all the issues raised by the Petitioner in the Petition. Particularly the issues on: interest on the special damages awarded, exemplary and punitive damages, Kshs. 57,090,637.00 for loss of profits and interest on the costs of suit at Court rates of 14% per annum from the date of filing the Petition. On this basis, the Petitioner urges this Court to seal the gaps and clarify that it intended to issue the said orders.
14. This Court made findings on three main issues singled out and particularized at page 42 of the Judgment namely:
- a) Whether the Petition offends the doctrine of exhaustion



- b) Whether the Petitioner's rights under Articles 40 (3), 46 (1) (c), 10, and 47 of *akn ke act 2010 constitution the Constitution* were violated by the Respondents; and
- c) Whether the Petitioner is entitled to the relief sought.
15. In a nutshell this Court found that the 2nd and 3rd Respondents acted unlawfully and in violation of the Petitioner's constitutional rights and issued declaration that the this was a violation of Petitioners rights under Articles 40(3) and 47(1) owing to failure to authorize the timely clearance and release of the Petitioner's imported fertilizers. As a consequence, the Court further granted an order of prohibition prohibiting the Interested parties from demanding outstanding storage charges, warehouse rent or taxes from the Petitioner in respect of two products, namely NPK water soluble fertilizer and Karisma Organic Fertilizer and instead, directed through an order of mandamus that the 2nd and 3rd Respondents pay all outstanding warehouse rent and taxes due to 1st to 3rd Interested Parties in respect of those two products. Additionally, the Petitioner was awarded compensation for amounts incurred on two products as particularized in paragraph 31 and 84 of petitioner's affidavit.
16. The fault for the unlawful delay was squarely placed on the 2nd and 3rd Respondents jointly and the Court granted the remedies as clearly spelt out in the foregoing.
17. It is discernible that the Petitioner is dissatisfied with this Court that the other damages sought such as loss of profits and interests of the costs of the suit at Court rates of 14% per annum were not granted.
18. In a way, what the Petitioner seeks from this is a Court review of it's Judgment disguised as an order for clarification in the hope that the court will reconsider and grant those orders as well. The Court would like to state categorically there is no clerical error which the Petitioner has pointed deserving the attention of the Court and all what the Petitioner seeks is a substantive change in the nature of the orders that this Court granted.
19. This was a constitutional Petition and not a commercial case. The award of damages can never be the primary goal in a Constitutional Petition and given this understanding, this Court cannot accept to be driven towards a path that would lead it to mathematical calculation of profits and interest. The Court had the liberty to decide what was the most appropriate combination of constitutional reliefs that would vindicate the rights of the Petitioner, as opposed to mere financial reparation.
20. In undertaking of that role, the Court in the circumstances went for a combination of four constitutional reliefs that included a declaration, prohibition, mandamus which are non-monetary and the compensation which the Court ordered as auxiliary recovery. The declarations were far more reaching as they not only vindicated the Petitioner publicly for the injustice caused on petition but also to prevent future breaches for instance, declaration No. 2 which reads:
- “A declaration is hereby issued that it is unreasonable and therefore unlawful to detain (without any fault on the part of importer of goods) an importer's goods for a period exceeding 21 days from the date of storage in bonded warehouse thereby unjustly exposing the importer to warehouse rent, taxes and other attendant costs and losses on account of delays in carrying out testing of the products or pending other processes by government agencies.”
21. The Court therefore looks at what best restores the rule of law and constitutionalism in Petition not just the transactional event. I am fortified by Court of Appeal decision in *Gitobu Imanyara & 2 others*



v Attorney General [2016] KECA 557 (KLR) which explaining the nature of a Constitutional relief stated:

“...the South African Case of *Dendy v University of Witwatersrand, Johannesburg & Others* - [2006] 1 LRC 291 where the Constitutional Court of South Africa held that:

“...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

“...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”

22. Further, the Court of Appeal in *Peter Ndegwa Kiai t a Pema Wines & Spirits v Attorney General & 2 others* [2021] KECA 328 (KLR) (17 noted as follows with reference to an award of compensation:

“15. The relevant principles applicable to award of damages for constitutional violations under *akn ke act 2010 constitution the Constitution* were also explained by the Privy Council in the case of *Siewchand Ramanoop vs The AG of T&T*, PC Appeal No 13 of 2004. It was held by Lord Nicholls at Paragraphs 18 & 19 that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:.

“When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

16. The guiding principle to be gleaned from these decisions is that an award of general damages in constitutional petitions is discretionary and will depend on



the circumstances of each case, and can indeed be granted as compensation for proven loss.”

23. From the foregoing, I gather that award of damages and compensation is constitution petitions is not mandatory or automatic particularly the elements of profits, interests and aggravated or punitive damages. The fact that a party has made that particular prayer does not compel the Court to consider it, the Court has a discretion to grant or decline to consider the same. This Court was satisfied that what was granted was sufficient to vindicate the rights of the Petitioner in the circumstances of this case.
24. This Court believes it properly exercised its discretion in not involving itself with consideration of claims for profits, interest and or aggravated damages in the light of principles governing remedies in constitutional claims.
25. This Court thus has nothing to either add to or subtract from its judgment. However, in regard to the payment of the compensation amount awarded in the judgment, that amount shall be apportioned equally as between the 2nd and the 3rd Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

.....

L N MUGAMBI

JUDGE

