



**Royal Herbs Exporters [Sez] Limited v County Government of Nyandarua
(Constitutional Petition E001 of 2025) [2025] KEHC 16848 (KLR)
(Constitutional and Human Rights) (19 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E001 OF 2025**

KW KIARIE, J

NOVEMBER 19, 2025

BETWEEN

ROYAL HERBS EXPORTERS [SEZ] LIMITED PETITIONER

AND

COUNTY GOVERNMENT OF NYANDARUA RESPONDENT

JUDGMENT

1. The petitioner filed a petition dated May 23, 2025. They are seeking the following orders:
 - a. A declaration that the jurisdiction of county governments to levy taxes and charges does not extend to levying cess charges/taxes on horticultural export produce and, more specifically, herbs.
 - b. A declaration that section 8 of the Nyandarua County Finance Act [2024], and any other provisions under the said Act which provide for the imposition of cess charges /Taxes of horticultural export produce, are null and void to the extent that they are inconsistent with articles 209 and 210 of *the Constitution* of Kenya.
 - c. A declaration that the respondent has no legal right to levy cess charges/taxes on imported goods and goods for export, including export agricultural produce, as this is a mandate preserved solely for the national government.
 - d. A declaration that the respondent’s imposition of cess tax amounts to a double taxation on the petitioner, and is therefore null and void.



- e. A permanent injunction order restraining the respondent, whether by itself or its offices, servants or agents, from imposing, charging, or enforcing the collection of any form of horticultural cess tax against the petitioner herein.
 - f. A mandatory injunction compelling the respondent to refund to the Petitioner any cess taxes paid to it that were based on any illegal demands and /or laws.
 - g. The respondent bears the costs of this petitioner.
 - h. This honourable court does issue any such other orders that it deems fit.
2. The petition was premised on the following grounds:
- a. The respondents are in blatant breach of the provisions of Article 209 and 210 of the Kenyan Constitution, and in further breach of Sections 6, 17 and 32 of the *Crops Act*. They have enacted unconstitutional legislation and policy, as the Nyandarua County Finance Act [2024] and the Nyandarua County Revenue Administration Policy require the imposition of a cess tax on horticultural produce designated for export.
 - b. The petitioner transports its farm produce[herbs] every day of the week apart from Thursdays. The herbs are transported to Nairobi and thereafter exported to various countries worldwide.
 - c. On 25th April, 2025, the Respondent held the petitioner’s motor vehicle registration KDH 438X, which was transporting perishable herbs for export. Despite the petitioner’s agent’s attempt to explain the illegality of applying the cess tax on it, the respondent’s tax agents adamantly demanded the payment of a colossal Kshs 161,000 before they could release the petitioner’s motor vehicle.
 - d. Because the petitioner’s herbs are perishable, they were forced to pay Kshs. 161,000 before they were allowed to proceed on transit.
 - e. The respondent’s unlawful imposition of cess tax is being exercised in a manner that prejudices the National Economic Policy for SEZ enterprises such as the petitioner, which enterprises are supposed to be allowed a conducive business environment to thrive and contribute to Kenya’s overall economic vibrancy.
 - f. The respondent’s application of cess on export produce grown by the petitioner and its further impounding of the said petitioner’s motor vehicles transporting perishable herbs, interferes fundamentally with the mobility of goods and services, contrary to the provisions of Article 209[5] of the Kenyan Constitution.
 - g. The petitioner’s business operations risk being greatly prejudiced if their goods are impounded by cess tax agents, considering that the herbs exported by the Petitioner have limited shelf lives and are required to be stored and transported in very specific and regulated temperatures and within strict timelines.
 - h. It is in the public interest that this petitioner is determined urgently to enable the definition of the respondent’s mate in revenue collection and avoid loss of capital by the petitioner, who is presently being coerced to pay an illegal cess tax.
3. The petition was opposed by the first respondent, who raised the following grounds:
- a. The respondent has an exclusive mandate over agriculture, including crop and animal husbandry, and therefore has the right to levy a cess.



- b. The cess payable is a fee and not a tax.
 - c. The respondent is performing its constitutional mandate under Article 209 (4) of *the Constitution* of Kenya.
4. The petitioner has argued that they grow herbs for export and are a major stakeholder in Kenya's agricultural sector. They feel aggrieved by the imposition of a payment they refer to as a cess tax. According to them, this constitutes double taxation.
 5. On the other hand, the respondent has countered the claim of double taxation with an argument that it is a fee for services. It was argued that the petitioner is using the roads maintained by the respondent.
 6. Section 8 (1) of the Nyandarua County Finance Act (2024) provides as follows:

A cess or market fee shall be charged on goods specified in the Second Schedule and at the rate specified therein.
 7. Articles 209 and 210 of the Kenyan Constitution address the imposition of different taxes.
 8. Is there a difference between tax and cess?
 9. Black's Law Dictionary, 11th Edition, defines tax as:

“a charge, monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations and includes duties, imposts and excises. Although a tax is often thought of as pecuniary in nature, it is not necessarily payable in money.”

Conversely, a fee is described as

“a charge or payment for labour or services.”
 10. Hugh D. Spitzer, Taxes vs. Fees: A Curious Confusion, 38 GONZ. L. REV. 335 (2002), pg. 338, explains the rationale of imposing fees as follows:

fees are imposed on specific persons, activities, or properties that receive a service or benefit, or that cause negative externalities (public bads) that burden the rest of the population. Second, they come with a distinct set of legal protections to ensure that the level of each charge does not exceed the cost of the service, benefit, or mitigation of the public bad allocated to the person charged and to ensure that the proceeds of the charge are used solely for the provision of services, benefits, or mitigation and not used for general governmental purposes.
 11. It is therefore clear that cess and tax are two separate payments with different purposes. The petitioner seems not to have recognized the differences.
 12. Article 209 (4) of *the Constitution* of Kenya provides as follows:

The national and county governments may impose charges for the services they provide.
 13. The petitioner has failed to prove how payment of the cess amounts to taxation. The same is provided under Article 209 (4) of *the Constitution* of Kenya.



14. The petition is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 19TH DAY OF NOVEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

