



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CONSTITUTIONAL AND HUMAN RIGHTS PETITION NO. E021 OF 2025**

IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 26, 46, 75, 159, 165 AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF INFRINGEMENT AND VIOLATION OF ARTICLES 10, 21(1), 26 AND 46 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTIONS 2, 3, 4 AND 5 OF THE CONSUMER PROTECTION ACT

AND

IN THE MATTER OF ROAD SAFETY IN KENYA IN THE MATTER OF THE INSPECTION AND LICENCING OF MOTOR VEHICLE KCD 955B

BETWEEN

ROAD SAFETY ASSOCIATION OF KENYA THROUGH  
CHAIRMAN DAVID KIARIE .....PETITIONER/APPLICANT

VERSUS

NATIONAL TRANSPORT AND SAFETY AUTHORITY.....1ST RESPONDENT  
OPERE AKOMO .....2ND RESPONDENT  
HARRISON ONUNGA OKUMU.....3RD RESPONDENT

**RULING**

[1] By a Notice of Motion under certificate of urgency dated 26/11/2025 the petitioner sought the following reliefs:

*“1. THAT this Application be certified as urgent and service be dispensed with in the first instance.*

*2. [Spent.]*

**3. THAT a mandatory order be and is hereby issued directing the 1st and 2nd Respondents to exercise their constitutional and statutory mandates by inspecting all public service vehicles to ensure their conformity with the set standards.**

**4. THAT an order in the form of a structural interdict be and is hereby issued compelling the 1st and 2nd Respondents to produce before court an affidavit and/or report within such time as the Court may direct stating the steps they have taken to comply with orders 2 and 3 above.**

5. THAT this Honorable Court be pleased to issue any other orders it deems just and fit in the circumstances.

[2] The application was based on grounds set out in the application as follows:

*“1. There has in the recent past been a surge in road accidents where there are almost no survivors.*

**2. The above situation is as a result of there being public service vehicles which do not conform to the set standards, notably, conformity to the NTSA circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023, which requires matatu vans to be fitted with anti-roll bars, to have their seats mounted on continuous flat/angle iron bars welded on the floor and to have exposed seats fitted with three-point seat belts.**

3. By dint of Article 21(1) of the Constitution, the 1st Respondent has a fundamental duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights, most relevant in this case, the consumer right of road users to goods and services of reasonable quality.

**4. In light of the coming festive and back to school seasons which are usually marked by increased travel activities, it is in public interest that the 1st and 2nd Respondents are compelled to exercise their constitutional and statutory mandates to ensure road users are not exposed to public service vehicles that are not fit for purpose.**

5. Unless this Honorable Court urgently considers the prayers sought herein, the injury to the public during the festive and back to school seasons will be grave, far-reaching and irreversible.

6. It is in the interest of justice and public interest that the orders sought herein are allowed.”

[3] The application was made in a Petition dated 26/11/2025 and supported by an affidavit of Petitioner’s Chairman DAVID NJOROGE KIARIE setting out the relevant facts as follows:

**“AFFIDAVIT IN SUPPORT OF PETITION AND APPLICATION**

2. THAT at all times material to the present petition, **the Petitioner has always considered breach of consumer rights by the concerned regulatory entities, which breach is systemic and institutionalized, to be a leading contributor to road carnage in Kenya.**

3. THAT following the grisly road accident that happened on 28th September,2025 near Kikopey along the Nairobi-Nakuru highway involving a 14-seater matatu of registration number KCD 955B from which fourteen passengers perished on the spot while two more succumbed in hospital, the Petitioner/Applicant commissioned an investigation into the conformity of the aforementioned matatu. (Annexed hereto and marked "DK-1" are media excerpts on the accident.)

4. THAT the conformity assessment was carried out on 21st October, 2025 by Mr. J.K Kiboi of Al Sahel Services Limited, which is a Type A KENAS accredited and Type A NTSA designated Conformity Assessment Body. (Annexed hereto and marked "DK-2" and “DK-3” are copies of Al Sahel Services Limited’s accreditation & designation certificates and the instruction correspondences respectively.)

5. THAT the findings of the conformity assessment were as follows: a. b. Seats- the front middle seat, the front row seats behind the driver (three in number) and the rear row middle seat were not fitted with three-point seat belts. These are exposed seats and should be fitted with three-point seat belts; Seat mountings- the seats were not

*mounted on continuous flat/angle iron bars welded on the floor; c. Anti-roll bars- the vehicle was not fitted with anti-roll bars; and d. Body vin plate- the vehicle did not bear a conformity plate fixed on permanent interior side wall as per NTSA regulations. a (Annexed hereto and marked “DK-4” is a copy of the conformity assessment report dated 24th October, 2025.)*

*6. THAT by dint of NTSA's circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023 matatu vans are required to be fitted with anti-roll bars, to have their seats mounted on continuous flat/angle iron bars welded on the floor, to have exposed seats fitted with three-point seat belts and to bear a conformity plate fixed on a permanent interior side wall. (Annexed hereto and marked “DK-5” is a copy of NTSA's circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023.)*

*7. THAT in light of the above circular, it follows that the matatu registration number KCD 955B was unfit for carrying passengers and ought not have been issued with a Road Service License.*

*8. THAT despite the above non-conformities, the matatu registration number KCD 955B "passed" inspection and was issued with a Road Service License. (Annexed hereto and marked “DK-6” is a copy of the matatu’s search results with the inspection details highlighted for ease of reference.)*

*9. THAT the above point to a systemic and institutionalized exposure goods and services of substandard quality. Put differently, the above is indicative that NTSA has been exposing road users to unroadworthy vehicles, thereby violating their right to goods and services of reasonable quality.*

*10. THAT I am advised by the Petitioner's advocates on record that the violation of the public's consumer rights by NTSA and its officials is both through its/their actions of licensing vehicles which do not meet the set standards and by omission in light of its/their failure to ensure only compliant vehicles are in public service transport.*

11. THAT the registered owner of the matatu, Harrison Onunga Shikuku, also violated the right of road users to goods of reasonable quality by exposing them to his vehicle which did not meet the set standards. (Annexed hereto and marked “DK-7” is a copy of the matatu's search results with the owner details highlighted for ease of reference.)

12. THAT I am advised by the Petitioner's advocates on record that award of damages in cases of rights violations serves to inter alia vindicate and affirm the importance of the violated rights and influence government behavior in order to secure state compliance with the rights in the future thereby promoting good governance.

13. THAT in order to affirm and vindicate the right of road users to quality goods and services and to secure state compliance, it is necessary that this Honorable Court orders the Respondents, jointly and severally, to compensate the families of the victims of the accident.

**14. THAT in light of the coming festive and back to school seasons which are usually marked by increased travel activities, it is in public interest that the 1st and 2nd Respondents are compelled to exercise their constitutional and statutory mandates to ensure road users are not exposed to public service vehicles that are not fit for purpose pending the determination of the Petition.”**

[4] The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a replying Affidavit sworn by the 2<sup>nd</sup> respondent ENG. JOEL AKOMO OPERE setting out their response as follows:

**“1ST AND 2ND RESPONDENTS’ REPLYING AFFIDAVIT**

1. THAT I am the Deputy Director Motor Vehicle Inspection at the 1st Respondent herein, the National Transport and Safety Authority (the Authority), duly authorized by the Authority to swear this Affidavit, hence competent to do so.

2. THAT I have read and had explained to me by the Authority’s Advocate on record the contents and purport of the Constitutional Petition and the Notice of Motion brought under Certificate of

*Urgency all dated 26th November 2025 together with Supporting Affidavit sworn on even date and all the annexures therein.*

*3. THAT I swear this Affidavit in response to the Petitioners/Applicants' Constitutional Petition and the Notice of Motion brought under Certificate of Urgency all dated 26th November 2025 together with Supporting Affidavit sworn on even date and all the annexures therein.*

*4. THAT the National Transport and Safety Authority is a State Corporation established under the National Transport and Safety Authority Act No. 33 of 2012 with the key mandates of, inter alia, planning, managing and regulating the road transport system and implementing policies relating to road transport and safety.*

*5. THAT the Authority also registers motor vehicles, conducts motor vehicle inspections and certifications, regulates public service vehicles, develops and implements road safety strategies, conducts research and audits of road safety amongst others.*

*6. THAT the National Standards Council pursuant to its mandate as spelt out in Section 9 of the Standards Act Cap 496 Laws of Kenya gazettes standards specifying requirements for passenger vehicles body construction.*

*7. THAT on 8th January 2019, the National Standards Council approved revised KS372:2019, Kenya Standard, Road Vehicles-Passenger Vehicle Body Construction-Specification (hereinafter referred to as the Standard). (Annexed herewith and marked as JAO-1 is the copy of the Standard).*

***8. THAT the implementation of the said Standard came into effect on 14th July 2023. It applied all pre-registered passenger vehicles and any new conversions from commercial vehicles to public service vehicles. (Annexed herewith and marked as JAO-2 is the copy of the 1st Respondent's notice dated 14th July 2023).***

***9. THAT the suit motor vehicle registration number KCD 955B was first issued with a Road Service License (RSL) on 31st May 2016.***

*(Annexed herewith and marked as JAO-3 is the copy of the 1st Respondent's system extract evidencing issuance of RSL on 31st May 2016). 10. THAT the Standard did not apply to the suit motor vehicle registration number KCD 955B as it came into effect on 14th July 2023 after the motor vehicle was already converted and in operation as a public service vehicle. 11. THAT the suit motor vehicle registration number KCD 955B was duly inspected on 23rd October 2024 where it passed the test, having been fitted with a properly functional speed governor and not having any preaccident defects. (Annexed herewith and marked as JAO-4 is the copy of the 1st Respondent's system extract showing the inspection results of the suit motor vehicle).*

*12. THAT at the said time of inspection of the suit motor vehicle on 23rd October 2024 at the 1st Respondent's Nyeri Inspection Centre, it operated under 2NK Sacco Society Limited. (Annexed herewith and marked as JAO-5 is the copy of the picture of the suit motor vehicle as presented for inspection at the 1st Respondent's Nyeri Inspection Centre on 23rd October 2024).*

*13. THAT the suit motor vehicle operated under 2NK Sacco Society Limited from 31st May 2016 when it was first issued with a Road Service License (RSL) until its release from 2NK Sacco Society Limited on 20th March 2025 and subsequently joined Alsops Travellers Services Limited on 28th April 2025. (Annexed herewith and marked as JAO-6 is the copy of the 1st Respondent's system extract showing that the suit motor vehicle joined Alsops Travellers Services Limited on 28th April 2025).*

*14. THAT at the time of the accident on 28th September 2025, the suit motor vehicle had not applied for a short-term Road Service License (RSL) authorizing it to ply the Nairobi-Naivasha route as Alsops Travellers Services Limited was licensed to operate as a commuter transport operator. (Annexed herewith and marked as JAO-7a and JAO-7a are the copies of the 1st Respondent's system*

*extracts showing that 2NK Sacco Society Limited is a long-distance operator whereas Alsops Travellers Services Limited is licensed as a commuter transport operator).*

*15. THAT it therefore follows that the suit motor vehicle, owned by the 3rd Respondent, passed the inspection test by craft and mischief by presenting itself as a compliant long-distance operator under 2NK Sacco Society Limited then subsequently joining Alsops Travellers Services Limited, a licensed commuter transport operator, whereof it illegally plied the NairobiNaivasha route on the fateful day of the accident, 28th September 2025. (Annexed herewith and marked as JAO-8a and JAO-8b are the copies of the suit motor vehicle during the accident whereof it operated under Alsops Travellers Services Limited).*

*16. THAT I wish to state that the suit motor vehicle contravened its route allocation by operating outside its authorized route, thereby violating the terms of its Road Service License (RSL). This action undermined the orderly management of public transport and compromised commuter safety as the driver was not familiar with the route.*

*17. THAT I wish to further state that the driver of the suit motor vehicle registration number KCD 955B was blamed for the accident and the same was not out of any fault of the 1st and 2nd Respondents. The driver was engaged in reckless driving, specifically improper overtaking, and this driver's misconduct endangered the lives of the passengers and demonstrated gross disregard for traffic regulations and safe driving practices. (Annexed herewith and marked as JAO-9 is the copy of the accident report.)*

*18. THAT I wish to state that the accident report clearly indicates that thirteen (13) passengers lost their lives and three (3) were seriously injured whereas the carrying capacity of the suit motor vehicle is fourteen (14) passengers. This further attributes the fatal*

*accident to driver misconduct and failure of company (Alsops Travellers Services Limited) oversight.*

**19. THAT I wish to state that Alsops Travellers Services Limited, as the company responsible for the suit motor vehicle, failed in its statutory and regulatory role of monitoring, supervising and enforcing compliance among its members. This negligence allowed unsafe practices to persist, contributing to the circumstances that led to the fatal road crash.**

**20. THAT the 1st and 2nd Respondents did not pass the suit motor vehicle registration number KCD 955B despite it not conforming to the Standard.**

**21. THAT consequently, the 1st and 2nd Respondents lawfully carried out their mandate in inspection of the suit motor vehicle and the order for compensation sought should not be granted. The Petitioners/Applicants' prayer for a Declaration that constitutional rights were violated and threatened is untenable.**

22. THAT I am aware that Section 16 of the Traffic Act (Cap 403) requires annual inspection of motor vehicles. Vehicles are inspected as and when they are due for inspection and I humbly pray that this Honorable Court dismisses the Petitioners/Applicants prayer of a mandamus order of inspecting all public service vehicles.

23. THAT it is therefore clearly untrue to even remotely suggest as the Petitioners/Applicants have purported to do that the 1st and 2nd Respondents passed the suit motor vehicle registration number KCD 955B despite it not conforming to the Standard.

24. THAT I am advised by the Authority's advocate on record, which advise I verily believe to be true, that the 1st and 2nd Respondents having acted in exercise of its statutory powers and within the confines of the law cannot be said to have infringed the Petitioners/Applicants' and/or consumers' constitutional rights.

25. *THAT I am advised by the Authority's advocate on record, which advise I verily believe to be true, that the Declaration, Order of Compensation and Mandamus Order sought lack merit.*

26. *THAT ensuring compliance with vehicle safety standards for roadworthiness and vehicle modification is a critical step towards improving road safety in Kenya and having defective vehicles on the roads increases road crashes which constitutes a major hindrance to socio economic growth and consequently is inimical to public interest.*

27. *THAT the Petitioners/Applicants are seeking through falsehood and misapprehension of the law to unduly restrict the exercise of the 1st and 2nd Respondents' statutory mandate and I urge this Honorable Court not to be hoodwinked by the Petitioners/Applicants into stifling the mandate of the 1st and 2nd Respondents.*

**28. *THAT as I have indicated above, the inspection of the suit motor vehicle was based on a legal procedure and consequently there was no illegality or unconstitutionality to warrant the grant of Order of Compensation and Mandamus Order sought.***

**29. *THAT the Order of Mandamus to inspect all public service vehicles is speculative and cannot be granted by this Honorable Court in the face of the clear mandate of the 1st Respondent and the powers and duties vested in its Inspectors under Sections 106-108 of the Traffic Act (Cap 403).***

**30. *THAT I am advised by the Authority's Advocate on record, which advise I verily believe to be true that, the Petitioners/Applicants have not met the standards set out in law for the grant of a Conservatory Order/Order of Mandamus or Order of Compensation.***

**31. *THAT I am further advised and informed by the Authority's Advocate on record which advise and information I verily believe to be true that no basis or foundation has been laid by the Petitioners/Applicants for the grant of the Orders sought and the same should be dismissed with costs.***

**32. It is in the public interest and the rule of law that statutory compliance should not be fettered by the Courts and that the orders sought by the Petitioners/Applicants should be dismissed to the extent that they seek to fetter and interfere with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents requirement for statutory compliance by the Petitioners/Applicants.”**

[5] In a Supplementary Affidavit the Applicants reply as follows:

*“3. THAT save for what is hereinafter expressly admitted, I deny each and every allegation in the replying affidavit as though the same were set out verbatim and traversed seriatim.*

*4. THAT the averments in paragraph 10, 20 and 23 of the replying affidavit that the 1st Respondent’s notice dated 14th July, 2023 did not apply to the suit motor vehicle registration number KCD 955B as it came into effect after the motor vehicle had already been converted and was in operation as a public service vehicle is misleading, to put it mildly.*

*5. THAT we understand the 1st and 2nd Respondent to be saying in the said paragraphs that per their understanding of their own notice, passenger carrying matatus vans which predate the notice can continue being unsafe and cause loss of lives whenever they are involved in accidents.*

*6. THAT the averment in the said paragraphs contradicts the deponent’s averment in paragraph 8 that the implementation of the KS372:2019 came into effect on 14th July, 2023 and applied to all pre-registered passenger vehicles and any new conversions from commercial vehicles to public service vehicles.*

*7. THAT verbatim, the 1<sup>st</sup> Respondent’s notice dated 14th July, 2023 which is marked as annexure “DK-5” in the Petitioner/Applicant’s supporting affidavit and as annexure “JAO-2” in the 1st and 2nd Respondent’s replying affidavit states: “Some of the recent accidents have shown that some class 1 (matatu vans) and those converting from commercial vans to PSVs don't conform to KS372:2019 especially on*

*anti-roll bars, seats and seat mountings. This has led to loss of lives and continued to endanger & compromise safety of passengers. It is therefore directed that all pre-registered passenger vehicles as defined in clause 4 of KS372:2019 and commercial vans converted to PSVs being presented for inspections, must have a vin-plate fixed on the vehicle and a certificate of conformity from approved conformity assessor” (emphasis ours)*

*8. THAT in its plain and ordinary meaning, the above notice does not create exceptions in respect of passenger carrying matatu vans as alleged by the 1st and 2nd Respondents.*

*9. THAT in addition and without prejudice to the foregoing, even if the notice were also capable of being accorded such an interpretation, the same does not favour road safety, which was the objective the drafter had sought to advance, hence ought be abandoned for one that favors road safety.*

*10. THAT the interpretation that favors road safety is that the notice applies to all matatu vans.*

*11. THAT in light of the above, it therefore follows that the suit motor vehicle registration number KCD 955B “passed” inspection and was issued with a Road Service License despite its non- conformity.*

*12. THAT the foregoing reveals that the 1st and 2nd Respondents have misinterpreted their own notice, deliberately and/or conveniently, as a result of which, they have exposed road users in Kenya to public service vehicles that have not conformed to the set standards in violation of the right of road users to goods and services of reasonable quality.*

*13. THAT the above reveals that the prayer for orders of mandamus compelling the 1st and 2nd Respondents to inspect all public service vehicles is not speculative as alleged by the 1st and 2nd Respondents in paragraph 29 of their replying affidavit.*

*14. THAT contrary to the deponent’s averment in paragraph 22 of the 1st and 2nd Respondent’s replying affidavit that section 16 of the*

*Traffic Act provides for annual inspection of motor vehicles, the relevant section is section 16(2) which provides that every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected to inspection at intervals to be determined by the Authority.*

*15. THAT in light thereof, an order of this Court compelling the 1st Respondent to exercise its constitutional and statutory mandates by inspecting all public service vehicles to ensure their conformity with the set standards is legally sound, necessary in public interest and does not fetter and interfere with the 1st and 2nd Respondent's mandates as alleged in paragraph 32 of their replying affidavit.*

*16. THAT the above, the increased road carnage cases and the coming festive and back to school seasons which are usually marked by increased travel activities, establish a compelling case for the intervention of this Honorable Court to compel the 1st and 2nd Respondents to undertake their constitutional and statutory mandates to protect, promote and fulfil the consumer rights of road users as set out under Article 46 of the Constitution.*

*17. THAT I beseech this Honorable Court to come to the rescue of road users in Kenya by allowing the prayers sought in the petition and application herein.”*

[6] The Counsel for the parties, Mr. Murunga and Ms. Kihamba respectively, then made oral submissions on 11/12/2025 on their respective cases. The verbatim record of the submissions is as follows:

**“Mr. Murunga**

***Public duty***

*NTSA and its director of Inspection have a public duty under section 4(1) (2) of the NTSA Act. Under Article 21 of the Constitution there is a public duty on the 1<sup>st</sup> and 2<sup>nd</sup> Respondent uphold the human rights and fundamental freedoms*

*[21. (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.]*

***Refusal to perform duty***

*I rely on the Replying Affidavit.*

*The assessment on suit motor vehicle indicated that Roll bars had not been implemented. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent have not shown commitment to perform duty. I refer to the Circular. Nonperformance is detrimental to the Public. Issuance of Certificates without compliance exposes the consumer and breaches consumer rights.*

*The enjoyment of consumer rights is related to the performance of duty. It is in the public interest that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent comply with the Constitution.*

*Compliance with the Notice does not require extra resources. It is just a notice to perform the directive. We pray of structural interdict so that the court can supervise implementation.*

***Ms. Kihamba***

*We rely on the Replying Affidavit of 8/12/2025.*

***Performance of statutory duty***

*The Petition is only based on a traffic accident on a particular motor vehicle on 20/9/2025.*

*Annexure to the Replying affidavit is the Standard.*

***The Directive by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents***

*The Standard came into force in 2014 by the National Standard and was revised in 2019.*

*The Directive of July 2023 – Standard apply to Public Service Vehicles (PSV) Matatu – Class 1. The suit motor vehicle was registered in 2016. The Standard was revised in 2019. Implementation of the Standard started in 2023 on all pre-2023 Matatu vehicles.*

*The suit motor vehicle is not a Class A vehicle. By the time the Standard was implemented the old vehicles which worked as matatus were not affected. The Standard was implemented in 2023 and it did not apply to vehicles converted pre-2023*

*When the accident happened see paragraphs 11-17 of the Replying Affidavit. The 2<sup>nd</sup> respondent did not pass a vehicle was not compliant.*

*There is no evidence that the respondents have failed to execute their mandate.*

*Section 16 of the Traffic Act – the interval set by the 2<sup>nd</sup> respondent is that motor vehicles are inspected one annually. The accident occurred on 23/9/2025. The vehicle passed inspection out of mischief by the 3<sup>rd</sup> respondent. On 23/10/2024, a different vehicle was presented. The suit vehicle was presented as under 2NK SACCO.*

**Mr. Murunga in reply**

*The Notice applies to all converted vehicles. I refer to Notice dated 14/7/2023 – Annexure 5. I refer to DK 4 which is the Inspection Report of the suit motor vehicle. Section 16 (2) of the Traffic Act – interest from inspection. Section 4 (2) of the NTSA Act is specific, while section 16(2) of the Traffic Act is broad. The NTSA is the **lex specialis [lex specialis derogat legi generali (a specific law derogates from a general one)]** and it is more recent legislation from the Traffic Act.*

*Interpretation to adopt the interpretation that most favors the enforcement of a right or fundamental freedom [Article 20 (3) (b) of the Constitution]. The Authority has power to inspect motor vehicles.”*

[7] Ruling was reserved for **18/12/2025**.

***Issue for Determination***

[8] The issues for determination in the application are

- 1. Whether a conservatory order may issue in the circumstance of this case***
- 2. Costs***

*Whether a conservatory order may issue in the circumstance of this case*

[9] The applicant seeks an interlocutory mandatory order as set out in prayer no. 3 of the Notice of Motion:

*“3. THAT **a mandatory order** be and is hereby issued directing the 1st and 2nd Respondents to exercise their constitutional and statutory mandates by inspecting all public service vehicles to ensure their conformity with the set standards.”*

What is before the court, therefore, is in the nature of an application for a mandatory injunction pending hearing of the Petition for specific reliefs.

[10] The Petition dated 26/11/2025 sets out the facts relied and the reliefs sought as follows:

*“E. FACTS OF THE CASE*

*22. On Sunday 28th September, 2025, a 14-seater matatu of registration number KCD 955B was involved in a grisly road accident near Kikopey along the Nairobi-Nakuru highway. Fourteen passengers perished on the spot while two more succumbed in hospital. All the passengers were reported to have been members of the same family.*

*23. Interested in establishing why the fatalities from the matatu had been that high, the Petitioner commissioned a conformity assessment of the said matatu.*

*24. The conformity assessment was carried out on 21st October, 2025 by Mr. JK Kiboi of Al Sahel Services Limited, which is a KENAS Type A accredited and NTSA Type A designated Conformity Assessment Body, and the findings were as follows:*

*a. Seats- the front middle seat, the front row seats behind the driver (three in number) and the rear row middle seat were not fitted with three-point seat belts. These are exposed seats and should be fitted with three-point seat belts;*

*b. Seat mountings- the seats were not mounted on continuous flat/angle iron bars welded on the floor;*

*c. Anti-roll bars- the vehicle was not fitted with anti-roll bars;*

*d. Body vin plate- the vehicle did not bear a conformity plate fixed on a permanent interior side wall as per NTSA regulations.*

*25. By dint of the 1st Respondent's circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023, matatu vans are required to be fitted with anti-roll bars, to have their seats mounted on continuous flat/angle iron bars welded on the floor, to have exposed seats fitted with three-point seat belts and to bear a conformity plate fixed on a permanent interior side wall.*

*26. Despite its non-conformities stated above, the matatu registration number KCD 955B had "passed" inspection and had been issued with a Road Service License.*

#### **F. CONTRAVENTION AND VIOLATIONS OF THE CONSTITUTION AND THE LAW FORMING THE BASIS OF THIS PETITION**

##### **a. Violation of consumer rights**

*27. By issuing a Road Service License to the motor vehicle KCD 955B despite it having not conformed to the required standard, the 1st and 2nd Respondents not only violated their obligations to offer quality services to the public but also failed to discharge their constitutional and statutory duty to protect, promote and fulfil the consumer rights as set out under Article 46.*

*28. Put differently, the 1st and 2nd Respondent's "passing" of a motor vehicle that did not conform to the set standard not only constitutes offering of substandard services to road users in Kenya but also has a resultant effect of exposing road users to vehicles that are unfit for purpose.*

*29. On his part, by exposing the public to his substandard vehicle, the 3rd Respondent directly violated the public's right to goods and services of reasonable quality.*

*REASONS WHEREFORE, the PETITIONER prays for:*

**a. A DECLARATION that the 1st Respondent as the regulator of the transport sector in Kenya has a duty to offer quality services to the public as well as to protect, promote and fulfill the consumer rights of the public in respect of matters transport;**

*b. A DECLARATION that the 1st and 2nd Respondents' actions to pass and issue a Road Service License to the motor vehicle of registration number KCD 955B despite it not conforming to the set standards constitutes a violation of the right of consumers to services of reasonable quality;*

**c. A DECLARATION that the 1st and 2nd Respondent's failure to ensure that the motor vehicle of registration number KCD 955B conformed to the set standards before being allowed to operate as a public service vehicle constitutes a violation of constitutional and statutory duty to protect, promote and fulfil the consumer rights as set out under Article 46;**

**d. A DECLARATION that the 3rd Respondent's exposure of the public to his motor vehicle of registration number KCD 955B which did not conform to the set standards constitutes a violation of the public's right to goods and services of reasonable quality;**

**e. An order for compensation against the respondents jointly and severally for their violation of the public's consumer rights, the same to be paid to the families of the accident victims;**

*f. Such other orders and directions the Honorable Court may deem just and appropriate in the circumstances of this matter."*

[11] The petition only seeks declaratory reliefs and an order for compensation of the particular victims of the accident involving the suit motor vehicle. It is clear that there is no prayer for judicial review orders, yet these may be availed by the Court under appropriate relief provisions of Article 23 (3) of the Constitution.

*The principles for the grant of mandatory injunction*

[12] On the test for **mandatory** injunction as a private law remedy, which is granted in exceptional circumstances, the applicant must demonstrate a **clear case** so that the court feels sure that the relief granted at the interlocutory stage will be justified at the hearing and final determination of the suit, as held by the Court of Appeal in **CIVIL APPEAL NO. 332 OF 2000 KENYA BREWERIES LIMITED & TEMBO CO-OPERATIVE SAVINGS & CREDIT SOCIETY LIMITED V. WASHINGTON O. OKEYO** as follows:

*“The test whether to grant a mandatory injunction or not is correctly stated in Vol. 24 Halsbury’s Laws of England 4th Edn. para 948 which reads:*

*“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff ..... a mandatory injunction will be granted on an interlocutory application”.*

*Also in Locabail International Finance Ltd. V. Agroexport and others [1986] 1 ALL ER 901 at pg. 901 it was stated:-*

*“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”*

*The principles of law enunciated by these decisions have received full approval by the courts within our jurisdiction. See the cases of Belle Maison Limited vs. Yaya Towers Limited H.C.C.C. 2225 of 1992, per Bosire, J. (as he then was) and The Ripples Limited vs. Kamau Mucuha H.C.C.C. No. 4522 1992 per Mwera, J.”*

***Conservatory order in the nature of mandatory order***

[13] The application before the Court is couched as a public interest matter which would naturally attract the remedy in the nature of a conservatory order as distinct from a private remedy of injunction. The leading authority of the Supreme Court on conservatory orders, *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, has guided as follows:

*“[85] These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.*

***[86] “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.***

*[87] The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to*

be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

**(i) the appeal or intended appeal is arguable and not frivolous; and that**

**(ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.**

[88] These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:

**(iii) that it is in the public interest that the order of stay be granted.**

**[89] This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through the Constitution.** This Court has already ruled that election petitions are both disputes in personam and disputes in rem. While an election petition manifestly involves the contestants at the poll, the voters always have a stake in the ultimate determination of the dispute, hence the public interest.”

[14] Counsel for the applicant submitted on existence of a public duty and refusal by the respondents to perform their public duty suggesting the plea to be one for an order for Mandamus whose scope as reiterated in the leading judicial review case of **Kenya National Examination Council v Republic; Njoroge & 9 others** (Ex parte) [1997] KECA 58 (KLR) is enforcement of public duty, as follows:

*“The next issue we must deal with is this: What is the scope and efficacy of an **ORDER OF MANDAMUS?***

*Once again we turn to HALSBURY’S LAW OF ENGLAND, 4th Edition Volume 1 at page 111 FROM PARAGRAPH 89. That learned treatise says:-*

*“The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High*

*Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.”*

At paragraph 90 headed “the mandate” it is stated:

*“The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way.”*

*What do these principles mean? They mean that **an order of mandamus will compel the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.**”*

[15] As a public interest matter, the Court must examine on the test in ***Gatirau Munya*** the public interest element in the matter before making the decision whether to grant or withhold the mandatory order in the nature of ***conservatory order*** in constitutional litigation.

[16] There is no conflict between the provisions of section 16 (2) and the section 4 (2) of the NTSA; both set out the mandate and functions of the NTSA, the latter being more

expansive and elaborate and they can be performed contemporaneously. Section 16 (2) of the Traffic Act provides as follows:

*“(2) Every vehicle that has been operated for a period exceeding four years from the recorded date of manufacture shall be subjected **to inspection at intervals to be determined by the Authority.**”*

[17] Section 4 (1) and (2) of THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT No. 33 of 2012 (NTSA Act) provides that:

4.(1) *The functions of the Authority shall be to —*

*(a) advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;*

***(b) implement policies relating to road transport and safety;***

*(c) plan, manage and regulate the road transport system in accordance with the provisions of this Act;*

*(d) ensure the provision of safe, reliable and efficient road transport services; and*

*(e) administer the Act of Parliament set out in the First Schedule and any other written law.*

*(2) In the **performance of its functions under subsection (1)**, the Authority shall-*

*(a) register and license motor vehicles;*

***(b) conduct motor vehicle inspections and certification;***

***(c) regulate public service vehicles;***

*(d) advise the Government on national policy with regard to road transport system;*

*(e) develop and implement road safety strategies;*

*(f) facilitate the education of the members of the public on road safety;*

*(g) conduct research and audits on road safety;*

*(h) compile inspection reports relating to traffic accidents;*

*(i) establish systems and procedures for, and oversee the training, testing and licensing of drivers;*

*(j) formulate and review the curriculum of driving schools;*

*(k) Co-ordinate the activities of persons and organizations dealing in matters relating to road safety; and*  
*(l) perform such other functions as may be conferred on it by the Cabinet Secretary or by any other written law.”*

[18] There is no questions to the existence of the public duty for inspections under sections 16 (2) and 4(2) of the Traffic Act and the NTSA Act. The issue is whether there has been failure to perform a public duty to inspect motor vehicles in compliance with the Statutes.

[19] The order for Mandamus to compel performance of a public duty is a final relief which is available under Article, 23 (3) of the Constitution which enjoins the Court to grant appropriate relief in cases of violation or threatened violation of the Bill of Rights. Just like in the private law remedy of ***interlocutory mandatory injunction***, at the interlocutory stage as in this case, a ***conservatory order*** may be granted upon facts which establish clear duty and breach of such duty as would at the hearing justify the grant of the final order of Mandamus.

[20] In the contest of the application for a mandatory order, the Court must be satisfied that the conditions for the grant of interlocutory mandatory injunction relief exist and then, on account of its public nature, consider whether it is in public interest that the mandatory order be granted.

[21] The private motive that drives the pursuit of a public interest relief is irrelevant if the Court can identify a public benefit from the orders sought in the Petition. There is no denying that the inspection of motor vehicles for compliance with safety standards would accrue benefits in the way of eradicating non-compliant vehicles which are consequently accident-prone and unsafe in the event of an accident for lack of protective facilities, and this would avoid or reduce accidents and increase safety in the event of accident, both outcomes being beneficial to the Public as consumers of the public transport service.

[22] There would appear to be a clear correlation between - and link between cause and effect/consequence - effective enforcement of standards in the public sector transport service by the concerned regulatory entities, leading to increased road accident carnage in Kenya, and resulting in direct breach of consumer rights under Article 46 of the Constitution, under which public transport users are entitled to a service of reasonable

**quality**; to the protection of their health, **safety**, and economic interests; and to **compensation** for loss or injury arising from defects in services.

[23] In addition, the rights of the user are applicable vertically and horizontally against the State agencies and the individual as set out in Article 46 (3) of the Constitution. Article 46 of the Constitution provides as follows:

***“Consumer rights.***

*46. (1) Consumers have the right— (a) to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; (c) to the protection of their health, safety, and economic interests; and (d) to compensation for loss or injury arising from defects in goods or services. (2) Parliament shall enact legislation to provide for consumer protection and for fair, honest and decent advertising.*

***(3) This Article applies to goods and services offered by public entities or private persons.***

**Conclusion**

[24] There is no relief in the substantive Petition for the universal inspection of the public vehicles as sought in interlocutory application. The Petition is largely pointed to the case for ***compensation for the victims of the motor vehicle subject of the Petition.*** Without such relief sought in the Petition, the Court has no basis to grant the interlocutory relief for its own sake.

[25] This does not detract from the position that enforcement of Bill Rights may be sought and be obtained on the basis of informal documentation. See Article 22 (3) (b) of the Constitution, and Rule 10 (3) of LEGAL NOTICE NO. 117 ***THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013*** (the Mutunga Rules).

[26] While *appropriate relief* under Article 23 (3) of the Constitution in the Petition might call for the grant of a mandatory injunction or an order for mandamus depending on the duty bearer, the Petitioner is required to demonstrate violation or threatened violation of a right in the Bill of Rights before remedial orders may be made.

[27] In this case, it is not clear on the evidence that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, who are the principal respondents of the interlocutory application subject of this Ruling, have failed to perform their duties under the Constitution and statute in ensuring a service commensurate to the consumer right under Article 46 to reasonable quality of service with respect to safety of persons who consume the public transport service.

[28] The alleged failure to enforce the safety Standard herein with respect to the suit vehicle is a matter for determination in the full hearing of the Petition with participation with the 3<sup>rd</sup> respondent owner of the said motor vehicle. The Respondents have proffered an explanation as to how certification of the said Motor Vehicle could have happened with alleged mischief of the 3<sup>rd</sup> respondent. A determination of the point shall be made upon hearing.

[29] At paragraphs of 6 - 9 of the Supporting Affidavit, the Petitioner alleges systemic failure to comply with the standards of safety as follows:

*“6. THAT by dint of NTSA's circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023 matatu vans are required to be fitted with anti-roll bars, to have their seats mounted on continuous flat/angle iron bars welded on the floor, to have exposed seats fitted with three-point seat belts and to bear a conformity plate fixed on a permanent interior side wall. (Annexed hereto and marked “DK-5” is a copy of NTSA's circular reference number NTSA/MVI&SA/1/123/97 dated 14th July, 2023.)*

*7. THAT in light of the above circular, it follows that the matatu registration number KCD 955B was unfit for carrying passengers and ought not have been issued with a Road Service License.*

*8. THAT despite the above non-conformities, the matatu registration number KCD 955B "passed" inspection and was issued with a Road Service License. (Annexed hereto and marked “DK-6” is a copy of the matatu’s search results with the inspection details highlighted for ease of reference.)*

***9. THAT the above point to a systemic and institutionalized exposure goods and services of substandard quality. Put differently, the above is indicative that NTSA has been exposing road users to***

**unroadworthy vehicles, thereby violating their right to goods and services of reasonable quality.”**

[30] There is no evidence of **systemic** failure to perform the functions of the NTSA under the provisions of the Traffic Act or the NTSA Act, outside the allegation with respect to the suit motor vehicle. While the correlation between the consumer rights in this regard and the enforcement of the inspection duties of the Respondents is clear, there is no clear evidence of default such as would support at the interlocutory stage a mandatory order as prayed by the Petitioner. The “**systemic and institutionalized exposure [to] goods and services of substandard quality**” or the allegation that “**NTSA has been exposing road users to unroadworthy vehicles**” is not proved as to form a basis for the grant of the interlocutory relief sought.

[31] The Court considers that the applicant has not made a case for the grant of interlocutory mandatory order as a relief in the nature of a conservatory order in constitutional litigation. Had evidence of such default been availed the structural interdict format of court orders would apply to permit the Court to ensure and gauge compliance with the directions of the Court on the application, pending hearing and determination of the Petition.

[32] Happily, while the Court would, **in the circumstances of this case**, not be able to grant the relief for universal inspection of the motor vehicles to confirm compliance with the relevant safety **Standard**, the Court notes that a similar operation is under way under the direction of multi-sectoral **National Council on Administration of Justice (NCAJ)** under the leadership of the Hon. Chief Justice of the Republic of Kenya.

[33] In the circumstances, the Court’s intervention in this matter with respect to the mandatory order sought in the application, even if it had been merited, is now redundant and it might well be disruptive.

***Costs***

[34] The costs of this interlocutory proceedings for ancillary relief shall await the hearing and determination of the Petition.

**ORDERS**

[35] Accordingly, for the reasons set out above, the Court finds that the Petitioner’s application dated 26/11/2025 for a ‘**mandatory order**’ and related reliefs is not merited,

and, in any event, the Court notes that the public safety concern to which the reliefs sought in the application are targeted, is cured by intervening circumstances.

[36] The Court takes judicial notice as a matter of local notoriety that the National Council on Administration of Justice (NCAJ) has recently commissioned a multisectoral programme of activities including establishment of mobile traffic courts, inspection of public motor vehicles especially during this festive season, in similar fashion as sought by the Petitioner herein.

[37] There shall be no order as to costs in this application, and the same shall await the outcome of the Petition.

*Order accordingly.*

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF DECEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Murunga Makau for the Applicant.

Ms. Kihamba for the Respondents.