

**REPUBLIC OF KENYA**

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

**COMMERCIAL AND TAX DIVISION**

**HCOMM PET NO. E007 OF 2025**

**IN THE MATTER OF VIOLATION OF ARTICLE 231(2) & (3) OF  
THE CONSTITUTION OF KENYA**

**BETWEEN**

**KENYA BANKERS ASSOCIATION.....  
PETITIONER**

**AND**

**THE ATTORNEY GENERAL.....1<sup>ST</sup>  
RESPONDENT**

**CABINET SECRETARY FOR THE NATIONAL TREASURY  
& ECONOMIC PLANNING.....2<sup>ND</sup>  
RESPONDENT**

**AND**

**CENTRAL BANK OF KENYA.....INTERESTED  
PARTY**

**JUDGMENT**

**Introduction**

1. The Petitioner filed the petition dated 4<sup>th</sup> April 2025 seeking three substantive reliefs:

- i. A declaration that section 44 of the Banking Act, in so far as it restricts institutions from increasing interest rates without prior approval of the Cabinet Secretary, is inconsistent with Article 231(2) & (3) of the Constitution;*
  - ii. An order restraining the enforcement of section 44 against members of the Petitioner; and*
  - iii. Such further orders as may be just.*
2. The Petitioner describes itself as a trade union registered under the Labour Relations Act with a mandate to promote, protect and strengthen the banking industry in Kenya. Its mission is to promote a reliable, efficient and professional banking sector capable of delivering appropriate financial services to Kenyans.
3. The 1<sup>st</sup> Respondent is the Attorney-General, the principal legal adviser to the Government pursuant to Article 156 of the Constitution. The 2<sup>nd</sup> Respondent is the Cabinet Secretary for the National Treasury. The Interested Party is the Central Bank of Kenya (CBK), established under Article 231 of the Constitution and vested with the authority to formulate and implement monetary policy.
4. The petition is anchored on Articles 2(1), 2(4), 165(3)(d)(i) and 258 of the Constitution. The Petitioner's case is that Section 44 of the Banking Act, by requiring banks to obtain prior approval of the Cabinet Secretary before increasing interest rates, violates Article 231(2) and (3), which vests the formulation of monetary policy in the CBK and insulates it from direction or control of any person or authority.

5. The Petitioner argues that interest-rate adjustment is one of the principal instruments of monetary policy. Therefore, requiring Cabinet-Secretary approval for interest-rate increases, even when the CBK itself directs such adjustments, gives the Cabinet Secretary a supervisory or veto power over CBK's monetary operations. According to the Petitioner, this is contrary to the Supreme Court decision of 11<sup>th</sup> March 2025, which affirmed the constitutional independence of the CBK from executive interference.
6. The petition is supported by the affidavit of Raymond Molenje sworn on 4<sup>th</sup> April 2025.

### **Issues for determination**

7. Having reviewed the pleadings and submissions, the court identifies the following issues for determination:
- i. Whether section 44 of the Banking Act conflicts with Article 231(2) and (3) of the Constitution;*
  - ii. Whether the impugned section unlawfully interferes with the independence of the Central Bank of Kenya; and*
  - iii. Whether the Petitioner is entitled to the reliefs sought*

### **Constitutional and statutory framework**

8. **Article 231(2)** of the **Constitution 2010** provides:

***“The Central Bank of Kenya shall be responsible for formulating monetary policy, promoting price stability, issuing currency, and performing other functions conferred on it by an Act of Parliament.”***

9. While **Article 231(3)** states:

***“The Central Bank of Kenya shall not be under the direction or control of any person or authority in the exercise of its powers or in the performance of its functions.”***

10. And **Article 2(4)** provides:

***“Any law... that is inconsistent with this Constitution is void to the extent of the inconsistency.”***

7. **Section 44** of the **Banking Act** states:

***“No institution shall increase its rate of banking or other charges except with the prior approval of the Minister.”***

### **Analysis and determination**

11. The Petitioner argues that because interest-rate adjustment is an integral tool of monetary policy, requiring Executive Approval for such adjustments infringes upon the CBK’s constitutional autonomy. However, the constitutional independence of the CBK must be understood within the context of the broader regulatory framework governing the financial sector.

12. The High Court in **Okiya Omtatah & Another v Attorney General & Others (Interest Rate Capping Case) [2019] eKLR** examined the relationship between CBK’s monetary-policy mandate and Parliament’s authority to legislate on banking activities. The Court held:

***“While the independence of the CBK is constitutionally guaranteed, Parliament retains legislative authority to regulate the banking sector, including the conduct of financial institutions, provided such regulation does not usurp the core function of monetary policy formulation.”***

13. Section 44 predates the 2010 Constitution and was enacted primarily to promote consumer protection and market stability. Its purpose is not to give the Cabinet Secretary authority over monetary policy but to regulate the commercial behaviour of banking institutions in relation to their customers.

14. In **Kenya Bankers Association v Attorney General & Central Bank of Kenya [2020] eKLR**, the Court affirmed Parliament’s authority to regulate commercial banking practices, including interest rates and bank charges, stating:

***“The regulation of interest rates, bank charges and lending conditions is a policy decision within the competence of Parliament. Such regulation does not invade the exclusive monetary policy mandate of the CBK.”***

15. The Court in the above case drew a distinction between the CBK’s monetary-policy tools, such as the Central Bank Rate (CBR), liquidity regulation, and prudential guidelines and commercial lending practices of banks, which Parliament may regulate for the public good.

16. I am persuaded that section 44 neither prescribes the monetary-policy rate nor restricts the CBK's authority to formulate or implement monetary policy. It instead regulates how licensed institutions adjust their commercial lending terms. The provision does not require the CBK to seek approval from any authority, nor does it bind the CBK in any manner.

17. The Supreme Court in **Communications Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 Others (2014)** set out the guiding principle that:

***“Statutory provisions do not become unconstitutional merely because they impose oversight, licensing or regulatory requirements. A petitioner must demonstrate that the provision substantially derogates from a constitutional function.”***

18. The Petitioner has not shown how section 44 impairs or constrains the CBK's authority to set the CBR, implement liquidity controls, issue directives, or undertake other core monetary-policy functions.

19. The distinction between monetary-policy instruments and commercial decisions of banks was also emphasized by the Court of Appeal in **Republic v Central Bank of Kenya & Another ex parte Joseph Kariuki [2019]**, where it held:

***“The CBK's monetary-policy functions must be distinguished from the commercial decisions of individual banks. The Constitution protects the former, not the latter.”***

20. CBK may influence market interest rates, but the actual pricing of loans by private banks is a commercial decision. Parliament is constitutionally permitted to regulate such commercial conduct to protect consumers and ensure fairness in the credit market.
21. Section 44, therefore, falls squarely within the realm of consumer and market regulation, not monetary policy.
22. As was observed in **Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR**, constitutional independence must be interpreted contextually. No institution is wholly insulated from all statutory frameworks essential for accountability and sectoral regulation.
23. In my view, the Petitioner's argument conflates monetary policy, which is within the exclusive mandate of the CBK with commercial lending behaviour, which Parliament is free to regulate.
24. I therefore find that section 44 neither usurps nor interferes with the CBK's constitutional mandate under Article 231(2) & (3). No inconsistency with the Constitution has been demonstrated.
25. For the foregoing reasons, I find that the Petition dated 4<sup>th</sup> April 2025 lacks merit. Section 44 of the Banking Act is not inconsistent with Article 231(2) or (3) of the Constitution and does not violate the independence of the Central Bank of Kenya. The Petition is accordingly dismissed.

26. Given the public-interest nature of the proceedings and the identity of the parties, I make no order as to costs.

Orders accordingly.

**JUDGMENT** delivered virtually, dated and signed at **NAIROBI**

This **11<sup>th</sup>** day of **December** 2025.

**P.M. MULWA**

**JUDGE**

**In the presence of:**

*Mr. Lawson Ondieki & Mr. Mosobera* for Petitioner

*Mr. Mohamed Garat* for Interested Party

Court Assistant: *Carlos*