



**Farmers Party v Cabinet Secretary, National Treasury and Planning & 5 others;
Murango, Senator, Kirinyaga County & another (Interested Parties) (Petition
E009 of 2025) [2025] KEHC 19183 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
PETITION E009 OF 2025
EM MURIITHI, J
DECEMBER 22, 2025**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE
CONSTITUTION UNDER ARTICLES 26, 27, 40, 43(1), 46(1) &47**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE
CONSTITUTION UNDER ARTICLES 10(2), 11(1)(B), 210, 225,
226(1)(2) AND 227(1)(2) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26 SECTION 8 AND 9 AND IN THE
MATTER OF SECTIONS 4,7 AND 9 OF THE FAIR ADMINISTRATIVE ACT, NO. 4 OF 2015**

AND

**IN THE MATTER OF AN ORDER 53 RULE 1 OF THE
CIVIL PROCEDURE AMENDMENT RULES 2020**

AND

**IN THE MATTER OF THE EAST AFRICAN COMMUNITY CUSTOMS
MANAGEMENT ACT, 2004 LAWS OF KENYA (NO. 1 OF 2005)**

AND

**IN THE MATTER OF GAZETTE NOTICE NO. 10353 PUBLISHED ON THE 28TH
JULY 2025 IN A SPECIAL ISSUE OF KENYA GAZETTE VOLUME CXXVII – NO. 161**

BETWEEN

FARMERS PARTY PETITIONER

AND



**THE CABINET SECRETARY, NATIONAL TREASURY AND
PLANNING 1ST RESPONDENT**

**THE CABINET SECRETARY, AGRICULTURE AND LIVESTOCK
DEVELOPMEN 2ND RESPONDENT**

AGRICULTURE AND FOOD AUTHORITY. 3RD RESPONDENT

**THE COMMISSIONER FOR CUSTOMS & BORDER CONTROL 4TH
RESPONDENT**

THE HON. ATTORNEY GENERAL 5TH RESPONDENT

KENYA NATIONAL TRADING CORPORATION 6TH RESPONDENT

AND

**HON JAMES KAMAU MURANGO, SENATOR, KIRINYAGA
COUNTY INTERESTED PARTY**

**HON DAVID MATHENGE, MEMBER OF THE COUNTY ASSEMBLY (MCA),
BARAGWI WARD, KIRINYAGA COUNTY INTERESTED PARTY**

RULING

1. By a Notice of Withdrawal dated 9/12/2025 filed by the Counsel for the Petitioner M/S Musyoki Musango & Co. Advocates, the Petitioner sought to withdraw the Petition herein, as follows:

“Take Notice that the Applicant/Petitioner herein wholly wishes to and discontinue this suit in its entirety, that is with no order as to costs.”
2. The withdrawal was opposed by the Intended Petitioners/Applicants who now seeks to take over the Petition by a Notice of Motion dated 11/12/2025 expressed to be brought under Articles 22, 23, 174, 185, and 258 of *the Constitution* of Kenya, Rules 2, 3, 5, and 7 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and all enabling provisions of the law), with specific orders as follows:
 1. This Application be certified urgent and heard ex-parte in the first instance and thereafter on a priority basis.
 2. This Honourable Court be pleased to substitute the withdrawing Petitioner herein with the Intended Petitioners Hon. James Kamau Murango, Senator, Kirinyaga County, and Hon. David Mathenge, Member of the County Assembly (MCA), Baragwi Ward, Kirinyaga County.
 3. Upon being substituted, the Applicants be granted leave to amend or supplement the Petition as may be necessary, file any other pleadings or affidavits as they may require in furtherance of a just determination of the constitutional issues raised in the Petition, and exercise all other rights of a Petitioner in these proceedings.
 4. That the interim orders issued by this Honourable Court on 19th August 2025 shall remain in full force and effect notwithstanding the Notice of



Withdrawal, pending the determination of this Application and/or the main Petition.

5. That the Respondents, their agents, servants, and/or any persons acting under their authority be restrained from implementing Gazette Notice No. 10353 dated 28th July 2025 or issuing any further duty-free import permits for rice beyond the 250,000 MT already authorized by this Court's interim orders.
6. That the Respondents be directed to maintain the status quo ante and refrain from any actions that would prejudice the rights of local rice farmers or the determination of this Petition.
7. The costs of this Application be in the cause.”

3. The grounds of the application are set out on the application as follows:

“Grounds:

1. The instant Petition dated 7th August 2025 was brought in the public interest, raises substantial constitutional questions, and challenges the constitutionality of the Gazette Notice No. 10353 of 28th July 2025 on for lack of public participation and breach of constitutional rights in the Bill of Rights to wit freedom from discrimination and the right to fair administrative action, and the East African Community Customs Management Act (EACMA). 2. On 9th December 2025, the Petitioner herein, Farmers Party, filed a Notice of Withdrawal dated 9th December 2025 indicating its intention to withdraw and discontinue the petition in its entirety.
3. This Petition, consequent to the notice of withdrawal risks abating without determination and/or remedy.
4. That the Petitioner has provided no explanation or justification for the withdrawal, particularly given that:
 - a. The Petition raises serious constitutional issues affecting thousands of citizens.
 - b. This Court has already issued substantive interim orders on 19th August 2025.
 - c. Evidence has been filed establishing prima facie constitutional violations.
 - d. The matter is at an advanced stage with the Respondents having filed their responses.
5. The Intended Petitioners, the duly elected Senator, Kirinyaga County and elected Member of County Assembly (MCA), Baragwi Ward, Kirinyaga County respectively, file this application and seek to take over the said Petition and prosecute the said Petition to conclusion on their own behalf and on behalf of the constituents of Kirinyaga County and especially the constituents who are rice farmers and traders whose rights and interests they have both sworn to promote and protect, and in the general public interest of rice farmers



and businesses in the country whose interest the withdrawing petitioners sought to protect.

6. The deleterious effects of the gazette notice and importation of duty free rice continue and are at peak with resultant decimation of the business and lives of rice farmers and the rice industry that the residents of the County of Kirinyaga rely on from a socio-economic perspective with disastrous impeding of social welfare including crippling of the residents ability to provide for school fees, medical expenses, and general livelihood.
7. This Application is made in good faith and in the public interest, to ensure that this Petition continues to its logical conclusion and the rights and interests of rice farmers and businesses deeply affected by the decisions and actions flowing from the impugned gazette notice and importation of rice into the Republic are effectively determined and protected.
8. Article 22(1) of *the Constitution* of Kenya provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
12. Article 22(2) explicitly provides that a petition may be brought by:
 - (a) Article 22(2)(a) - "a person acting in their own interest" - The Applicants act in their own interest as elected representatives whose constitutional mandate and political legitimacy depend on protecting their constituents' rights.
 - (b) Article 22(2)(b) - "a person acting on behalf of another person who cannot act in their own name" - The Applicants act on behalf of individual rice farmers who: i. Cannot afford the costs of constitutional litigation. ii. Lack legal expertise and resources iii. Fear victimization if they sue government individually. iv. Have authorized the Applicants as their representatives to pursue this matter.
 - (c) Article 22(2)(c) - "a person acting as a member of, or in the interest of, a group or class of persons" - The Applicants act as members of and in the interest of: i. The class of local rice farmers in Kenya. ii. The class of agricultural producers whose livelihoods are threatened by government importation policies. iii. The residents and economic actors of Mwea/Kirinyaga whose regional economy depends on rice farming.
 - (d) Article 22(2)(d) - "a person acting in the public interest" - The Applicants act in the public interest as this case raises issues of: i. National agricultural policy and food security. ii. Protection of local industries and employment. iii. Fair administrative action and government accountability. iv. Implementation of national development strategies (NRDS-II). v. The balance between short-term price control and long-term food sovereignty.



13. The Applicants' standing is not derivative from or dependent on the Petitioner (Farmers Party). Rather, the Applicants have independent and original standing arising from: (a) Their constitutional mandate as elected representatives; (b) The direct and substantial impact on their constituents; (c) Their qualification under all four categories of Article 22(2);
14. The Applicants are NOT Busybodies. Unlike persons who seek to litigate matters unrelated to them, the Applicants: i. Represent the very persons most directly affected (rice farmers). ii. Have a constitutional duty to protect their constituents. iii. Have demonstrated tangible harm to their constituencies. iv. Are not engaged in vexatious or frivolous litigation.
15. If the withdrawal is allowed to proceed without substitution of petitioners, grave injustice will result: i. Critical constitutional issues will remain unresolved. ii. The interim orders of 19th August 2025 will lapse. iii. Thousands of local rice farmers will be left without legal protection. iv. The Respondents will be free to implement unconstitutional policies without judicial oversight.
16. Unless this Application is heard and determined urgently, the Petition will be discontinued in its entirety.”

4. It was supported by an Affidavit by the 1st Applicant sworn on 11/12/2025 as follows:

“Supporting Affidavit

I, Hon. James Kamau Murango, Senator, Kirinyaga County, a male adult of sound mind resident in Kirinyaga County within the Republic of Kenya do hereby make oath and solemnly state as follows:

1. That I am the 1st Intended Petitioner/Applicant herein well versed with the facts of this case, duly authorised by the 2nd Intended Petitioner to swear this affidavit on his behalf and therefore competent to swear this affidavit on his and my behalf.
2. The instant Petition dated 7th August 2025 was brought in the public interest, raises substantial constitutional questions, and challenges the constitutionality of the Gazette Notice No. 10353 of 28th July 2025 on for lack of public participation and breach of constitutional rights in the Bill of Rights to wit freedom from discrimination and the right to fair administrative action, and the East African Community Customs Management Act (EACMA).
3. On 9th December 2025, the Petitioner herein, Farmers Party, filed a Notice of Withdrawal dated 9th December 2025 indicating its intention to withdraw and discontinue the petition in its entirety. [Annexed herewith and marked as “JKM-1” is the Withdrawal Notice dated 9th December 2025 filed by the Petitioner]
4. This Petition, consequent to the notice of withdrawal risks abating without determination and/or remedy.
5. The Notice of Withdrawal provides no reasons whatsoever for the withdrawal nor reasons for the decision to discontinue the petition in its entirety, and has



not provided any protections provided to the rice farmers and businesses of Kenya and any farmers for that matter.

6. We, the Intended Petitioners, the duly elected Senator, Kirinyaga County and elected Member of County Assembly (MCA), Baragwi Ward, Kirinyaga County respectively, file this application in good faith and seek to take over the said Petition and prosecute the said Petition to logical conclusion on our own behalf and on behalf of the constituents of Kirinyaga County and especially the constituents who are rice farmers and traders whose rights and interests we have both sworn to promote and protect, and in the general public interest of rice farmers and businesses in the country whose interest the withdrawing petitioners sought to protect.
 7. The deleterious effects of the gazette notice and importation of duty free rice continue and are at peak with resultant decimation of the business and lives of rice farmers and the rice industry that the residents of the County of Kirinyaga rely on from a socio-economic perspective with disastrous impeding of social welfare including crippling of the residents ability to provide for school fees, medical expenses, and general livelihood.
 8. Unless this Application is heard and determined urgently, the Petition will be discontinued in its entirety with the consequence that interim protective conservatory orders will have no basis and matters directly affecting the rice farmers and business they represent will terminate without remedy.
 9. The substitution of Petitioners will not prejudice the existing parties.”
5. The Court directed service of the application for hearing on 16/2/2025.

Responses by the Respondents

6. The application is opposed by the Grounds of Opposition dated 15/12/2025 raising among others, prior election to join petition as interested parties; the substantive proceedings on the Petition since filing on 8/8/2025; and want of prejudice on the applicants as follows:

“1st, 2nd, 5th And 6th Respondents’ Grounds Of Opposition (In opposition to the application dated 11th December 2025)

Take Notice That the 1st, 2nd, 5th, and 6th Respondents shall raise the following grounds of opposition during the hearing of the Application dated 11th December 2025:

1. That the application is ill placed and a gross abuse of the court’s process.
2. That the Applicants vide their Application dated 30th October 2025 while aware of the scope of their interest in the pending suit elected and sought to be enjoined as interested parties and not co-petitioners, which election which cannot be abandoned 41 days post making of the Application.
3. That the Applicants have a pending application to be enjoined as Interested Parties which has not been withdrawn or determined by the Honourable Court;
4. That the suit herein was filed on 8th August 2025 and substantive proceedings have taken place and therefore the Applicants who now seek to be enjoined



to the Petition as a Petitioners will not only delay conclusive determination of the Petition and pending applications raised therein but also prejudice the Respondents and the General Public.

5. That the orders sought cannot issue under *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules;
6. That the Applicants have not demonstrated how they stand to be prejudiced if the orders sought are not granted.”
7. The Petitioner did not respond to the application for takeover.
8. The 3rd Respondent, Agriculture and Food Authority, opposed the application by an Affidavit of 15/12/2025 setting out the principles and case-law on takeover of constitutional petition as follows:

“3rd Respondent’s Replying Affidavit

(In response to the Application dated 11th December 2025)

I, DR. Bruno Linyiru, an adult Kenyan citizen of sound mind, residing in Nairobi, do hereby make oath and state as follows:

1. That I am the Managing Director of the Agriculture and Food Authority, duly appointed under the provisions of the *Agriculture and Food Authority Act*, No. 13 of 2013, hence competent and authorized to swear this Affidavit on behalf of the Respondent, and conversant with the matters deponed to herein.
2. That I have read and understood the Notice of Motion dated 11th December 2025 together with the Supporting Affidavit sworn by Hon. James Kamau Murango, and have had the same explained to me by Counsel on record, and I wish to respond as follows;
3. That I understand the Application to be primarily seeking to substitute the withdrawing Petitioner with the Intended Petitioners and to step into the proceedings as of right notwithstanding the filing of a Notice of Withdrawal.
4. That I am advised by Counsel on record, which advice I verily believe to be true, that Rule 27 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 expressly permits a Petitioner to withdraw a constitutional petition at any stage before judgment, and such withdrawal does not require the consent of the other parties. The said Rule provides as follows: — (1) The Petitioner may - (a) on notice to the Court and to the Respondent, apply to withdraw the Petition; or (b) with the leave of the Court, discontinue the proceedings. (2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision. (3) Despite sub rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw or discontinue the proceedings.
5. That am further advised that courts have held that before the court can grant leave for a petitioner to withdraw such litigation under Rule 27, the court must consider the juridical effects of such withdrawal. These juridical effects are:



- a) That the public interest initially presented in the case will not suffer as a result of the petition;
 - b) That there is no abuse of the process of the law; and
 - c) That the case at hand is not an exercise in futility.
6. That am aware that on 9th December 2025, the Petitioner herein, Farmers Party, filed a Notice of Withdrawal dated 9th December 2025 indicating its intention to withdraw and discontinue the Petition in its entirety.
 7. That I am advised by Counsel on record, which advice I verily believe to be true that contrary to Applicants averment, there is no requirement for the filing of a formal application or an explanation/reason for the withdrawal of a Petition under Rule 27. The Court in *Ratemo v Senate (Petition 001 of 2024) [2024] KEHC 3915 (KLR) (22 April 2024) (Ruling)* observed that Rule 27 does not provide for the filing of a formal application or an explanation/reason for the withdrawal. All that a Petitioner is required to do is to notify the court and the respondent of the intention to withdraw the petition and to apply to withdraw the Petition.
 8. That I am further advised by Counsel on record, which advice I verily believe to be true, that until the Court has considered and pronounced itself on the juridical consequences of the said Notice of Withdrawal as required under Rule 27(2), this Honorable Court lacks jurisdiction to entertain any application seeking substitution, amendment, interim relief, or continuation of proceedings.
 9. That I am advised by Counsel on record, which advice I verily believe to be true, that the public interest issues raised in the present Petition will not be lost, compromised, or rendered nugatory by the withdrawal thereof, as the same issues are already the subject of determination in another pending petition before a court of concurrent jurisdiction being HCCHRPET/E009/2025 – *John Nderitu vs Cabinet Secretary Ministry of Agriculture, Livestock and Fisheries and Kamili Packers Limited And 22 Others* that is coming up on the 30th January 2026 for Ruling on Applications (Annexed herewith and marked “DBL-1” is a copy of the said Petition.)
 10. That I am advised by Counsel on record, which advice I verily believe to be true, that the public interest in the present matter lies in the withdrawal of this Petition, in view of the existence of the other pending petition before a court of concurrent jurisdiction raising substantially similar issues, and that permitting parallel proceedings to subsist would occasion needless duplication of judicial effort, risk inconsistent determinations, and result in an inefficient use of scarce judicial time.
 11. That I am also advised by Counsel on record, which advice I verily believe to be true, that if the Petition is successfully withdrawn, there will be no live proceedings for the Intended Petitioners to rely upon. In *Dock Workers Union & Another v Attorney General & Others [2019] eKLR*, it was held that once a Petitioner withdraws a Petition, the Petitioner effectively walks away with all the pleadings, leaving no case to be prosecuted by any other party.



12. That am aware that prior to the filing of the present Application, the Intended Petitioners had filed an application seeking joinder in these proceedings but failed to attend court when the said application came up for hearing. The failure by the Intended Petitioners to prosecute their earlier joinder application demonstrates lack of diligence, seriousness, and bona fides, and disentitles them to the discretionary relief now sought.
 13. That I am advised by Counsel on record, which advice I verily believe to be true, that the interim conservatory orders issued on 19th August 2025 were purely ancillary to the existence of the substantive Petition and cannot, in law, subsist independently once a Notice of Withdrawal has been filed.
 14. That the Intended Petitioners lack locus standi within the meaning ascribed by the courts in *Khelef Khalifa El-Busaidy v Commissioner of Lands and 2 Others* [2002] eKLR, where it was held that for an individual to have locus standi, he must have an interest either vested or contingent in the subject matter before the Court which interest must be a legal one and above that of other members of the public in general.
 15. That the Intended Petitioners have not demonstrated any identifiable, direct, or proximate legal interest in the subject matter of this Petition beyond generalized assertions and political representation.
 16. That I am advised by Counsel on record, which advice I verily believe to be true, that under Rule 3(8) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, this Honorable Court retains inherent jurisdiction to make such orders as may be necessary for the ends of justice and to prevent abuse of its process.
 17. That it is in the interests of justice that the Notice of Motion dated 11th December 2025 be dismissed with cost.”
9. Counsel for the parties then made oral submissions 16/12/2025 on the application for takeover of the Petition as shown on the record of proceedings as follows:

“ 16/12/2025

E. M. Muriithi, J.

C/A Florence/ Muchuki

Mr. Muge with Mr. Kazungu for Intended Petitioners.

Mr. Kuria for Mr. Kaumba for the AG for 1, 2, 5 & 6 Respondents.

Mr. Theuri, SC, for 3rd Respondents.

Mr. Musyoki for the Petitioner.

[Submissions]

Mr. Kazungu of the Applicant

There are Replying Affidavit and Grounds of Opposition by the 1, 2, 5 & 6 Respondents and the 3rd Respondent, respectively.



Prayer No. 2 of the Notice of Motion dated 11/12/2025 for substitution and prayer No. 4 of the Application. The petitioner has filed Notice to abandon the petition. The Petition raises issues of public interest concerning enforcement of Gazette Notice. Petition is not a personal suit. The Proposed petitioners have locus standi. Intended petitioner is a member of the Senate.

The respondent shall suffer no prejudice as the reliefs remain the same and the cause of action is unchanged. They will have full opportunity to be heard on the Petition.

Substitution as presented will prevent abuse of the court process in allowing the withdrawal of the Petition. The substitution will prevent an abuse of court process by abandonment of a public interest case. It is a lesser evil than allowing the complete withdrawal.

Mutunga Rules – Rule 10 (2) [on substitution of parties].

Balance of convenience favours substitution as they will serve the judicial time already expended and avoid multiplicity of suits and at the same time safeguard public interest. Prayer no. 4 for interim order should be extended to avoid wastage.

Mr. Muge continues submissions for the Petitioner

We rely on Rule 27 and 5 (e) of the Mutunga Rules.

In *Harry John Paul Arigi & 2 others v Board, Kenya Ports Authority & 2 others* (2016) eKLR held withdrawal of petition is not automatic.

Petition E016 of 2023 *Luka v Narok Bursaries Management Board & 6 others*; *Narok County Assembly (Interested Party) (Constitutional Petition E016 of 2023)* [2024] KEHC 2523 (KLR) (13 March 2024) (Ruling) held public interest litigation is not a private suit to be withdrawn at whim.

[Petition NO. 3 of 2012 that public interest is the test and the consideration is on what interest is disclosed in the Petition not whether withdrawal would affect....]

In Petition E017 of 2022 *Mike Sonko* withdrawal case where the Petition raised public interest and where there is no petitioner to proceed with the Petition, substitution is the proper procedure.

Mr. Kuria for the 1, 2, 5 & 6 respondents

Intended/ Applicants Petitioners had by application dated 30/10/2025 sought to be enjoined as Interested Parties not Petitioners.

Application dated 30/10/2025 has not been withdrawn. Interested Party is defined under Rule 2 of the Mutunga rules. Despite the Application for joinder as Interested Party dated 30/10/2025, the Intended Petitioner has filed an application dated 11/12/2025 to takeover the petition.

During hearing of the Petition on 8/12/2025 – applicants were absent and matter was set down for ruling. As they would seek to join as petitioners, it would be prejudicial to the respondents and the public. There will be delay in the determination of the suit while they were away on the hearing of the application.

Rule 5 (c) of the Mutunga Rules, grounds for substitution of a party – the grounds do not exist in the present circumstances.



Rule 27 (2) of Mutunga Rules on withdrawal, the Court shall after hearing decide on the matter giving the discretion of the court. We pray that the application be dismissed.

Mr. Theuri for the 3rd Respondent

We rely on the 3rd Respondent's Replying Affidavit of 15/12/2025

The application is brought under the Mutunga Rules – Rule 5 (c) allows substitution where the court is satisfied that there is a mistake made in good faith and a necessary party was not sued. The court may add a party.

The Mutunga Rules do not contemplate situation where after a Notice for Withdrawal, a party can make an application for substituted as a Petitioner. The application lacks merit. It is not contemplated.

The Mike Sonko case – Attempt to withdraw a Petition. The Court allowed the party who was withdrawing but because there were other petitioners, the Court allowed the other petitioners to continue with the case.

The present application seeks to find that the Petitioner should have reason for withdrawing the petition. There is no such requirement in Rule 27. The Court is only required to pronounce on the juridical effect of the withdrawal.

In the Dock Workers Union v. AG [2019] eKLR – the petitioner withdrew the Petition, they go away with their pleadings. There will be no Petition when the withdrawing Petitioner leaves with his Petition and supporting affidavit.

What Affidavit will the Intended petitioner rely on?

Once a Notice of Withdrawal has been filed it is only the juridical effect of the withdrawal that should be considered.

Public interest is affected if withdrawal of Petition is allowed?

No prejudice as there are proceedings in other courts. We have quoted these proceedings at paragraphs 9 of the replying affidavit - that seek to address the same question. There is another suit before the Commercial Court at Nairobi (Gikonyo, J.) where KRA (4th Respondent herein) has been sued.

Public interest to be affected has not been identified by the Intended petitioner and they have not made submissions on how the public interest is likely to be impacted negatively.

Intended Petitioner had made an application before the and they did not attend the hearing even though they were aware. they did not make any submissions in support of the petition.

And what they are now seeking to do is to rely on a party who has withdrawn from the proceedings. It is absurd and contrary to rules of natural justice.

If they had participated they would be asking the court to rely on their submissions. The court could then rely on their submissions. The Intended Petitioner did not submit as they did not attend. The Petitioners withdrew wholly their petition and submissions made.

Public interest matter does not belong to the Petitioner.

Multiple cases in court also offend public interest. There is another case before the High Court in Milimani. Public Interest lies in withdrawing the Petition to avoid multiple suits and save judicial time.



We submit that even if the court went by the decisions by counsel for the applicant, the court must consider the delicate balance of the interests of public interest. The court cannot force the Petitioner to proceed.

A party who was aware of proceedings [and] did not make attempt to participate until after learning that petitioner seeks to withdraw should not be allowed. It is prejudicial to the respondents and public interest. The respondents would be responding to a case which he Petitioner has come – after parties have submitted and seek to take over proceedings well after submissions have been made by he parties. It would be unfair to the Respondents as they would not have a chance to know what caser they have to respond to, because of the late coming of the Petitioners as he case before the Court has been withdrawn.

We shall be meeting a new case with new parties without opportunity to respond to the case.

The court should authorize the withdrawal. Before Gikonyo, J. is coming up in January 2026.

Mr. Musyoki for the petitioner

I have ben diligent in complying with court orders. The Notice fo Withdrawal was by instructions by my client. I have not received instructions of the Intended Petitioner's application. I am unable to respond and I shorthanded as an advocate to the extent that I do not have anything to tell the court save to rely on the Notice of withdrawal.

Mr. Muge in reply:

We have not seen the Petition before Gikonyo, J.

The replying Affidavit attaches the petition in the case of John Samuel Nderitu Mirichu v. Cabinet Secretary, Ministry of Agriculture and Livestock Development, filed contrary to Rule 9 and it has not been marked.

There is no other mater before any other court.

On the 11/12/2025, I explained that I had called advocate for the Petitioner toinform him that I was sick. Just wo days before he had told the court that he could nor proceed as he was bereaved.

The Intended Petitioner field application with supporting Affidavit. All that remained was to urge it. The application was for joinder in the Petition. The application is an attempt to takeover the Petition not an attempt to kill he petition.

The earlier application for joinder cannot affect the present application.

Allowing the application for substitution will delay the Petition?

The withdrawal will take away the Petition when it is withdrawn there is nothing to delay.

Rule 27 that Court must satisfy itself on he juridical effect of the withdrawal – There is withdrawal in this case also another withdrawal. Why? The Court should satisfy itself as to the withdrawals.

Rule 27 (3) of the Mutunga Rules - the Court can proceed with hearing in the absence of the Petitioner. The petitioner does not leave with the petition. Pleadings do not belong to any party.



The decision in the case stated that the issue whether the petitioner had withdrawn and the remaining Petitioner could be forced to rely on any affidavit and they could file their own affidavit. There is nothing about withdrawing petitioner leaving with any documents.

Prejudice on the County of Kirinyaga

If the petition is withdrawn, the conservatory orders is withdrawn, there will be importation of rice in the country only because a person has decided they are interested in the matter.

Petition is in public interest and the importation of rice should continue to be stopped.

Mr. Kuria [with leave of court]

Petition NO. E1029 of 2025 Taxwatch v. Cabinet secretary, Ministry of Agriculture and 6 others is coming up for adoption of Notice of withdrawal on 25/3/2026.

Mr. Muge:

We cannot rely on the Petition as there are no conservatory orders in that Petition.”

10. Ruling was reserved for 22/11/2025.

Pending Ruling on request to make further duty-free imports

11. At the time of the purported withdrawal, the matter was pending ruling on an application for leave to import the balance of amount of rice sought to be imported duty free on the authority of the Gazette Notice subject of this litigation made through an application in that behalf set out in Paragraph 9 of the Further Replying Affidavit sworn on 31/10/2025 by Dr. Kiprono Ronooch PS, Ministry of Agriculture, for the 2nd Respondent for orders as follows:

“9. That accordingly, it is in the public interest and in the interest of justice that the Government should be allowed to import the remaining 250,000 metric tonnes in the Gazette to avert a food shortage crisis.”

12. A similar request for an order to allow importation was made through the 3rd Respondent’s Affidavit sworn by CALISTUS EFUKHO KUNDU 3rd Respondent’s Director, Food Crops Directorate of 19/11/2025 filed in compliance with court orders of 29/8/2025 and building the case for importation in paragraphs 4-9:

“4. That historically, the Government has been approving duty free importation to maintain supply, stabilize domestic prices and meet the gap since Kenya is a net importer of rice.

The following tax waivers were approved through Gazette Notices before the current Gazette Notice No. 10353: -

- (i) In 2024, two approvals through Kenya Gazette Notice No. 14094 of 13th October 2023 for 500,000 MT and Kenya Gazette Notice No. 6468 dated 29 May, 2024 for 500,000 MT.
- (ii) In 2023, the Government approved the importation of rice duty-free through the Kenya Gazette Notice No. 15802 dated 23rd December 2022 for 600,000 MT, Kenya Gazette Notice No. 3424 dated 13th March 2023 for 500,000 MT and Kenya Gazette Notice No. 14094 dated 13th October 2023 for 500,000 MT.



5. That this year, only one Gazette Notice was approved and further reduced to 250,000 MT by this Honourable Court as compared to the last two years which had two and three duty free Gazette Notices respectively, exposing the country to speculations, hoarding and panic buying which could lead to price spikes.
6. That the 245,827 MT imported cannot meet the Country's five months' requirement of 625,000 MT to the end of December.
7. That the imports, even though low and intermittent, have caused a price decrease of Non-Basmati Long Grain from Kshs.166 – Kshs.189 in July/ August 2025 to the current Kshs.149 – Kshs.175 (Annexed and marked "CEK-1" are retail prices from various retailers summarized on a table and photographs).
8. That in the event of failure to allow the importation of the remaining 254,173 MT duty-free, the Government's aim to stabilize domestic prices, prevent shortages and cushion low-income households from the rising food costs, ensuring food availability, accessibility and affordability will be compromised.
9. That accordingly, it is in the public interest and in the interest of justice that this Honourable Court allow the importation of the remaining 254,173 MT duty-free rice."

Intended Petitioners' opposition to further importation

13. The intended Petitioners had by an Affidavit entitled "REPLYING AFFIDAVIT (In Response to the Reports filed by the 1st, 2nd and 5th Respondents and the 4th Respondent)" sworn by the 1st Intended petitioner James Murango Mwenda on 19/11/2025 in response to the Reports as ordered by the Court of 19/8/2025 "indicating Hon the progress of the mop up exercise and accurate information as to the local production of rice and the resultant deficit by 3/11/2025" by the Respondents by Further Replying Affidavit and Replying Affidavit by the 4th Respondent dated 11/11/2015.
14. In the said Affidavit, the intended Petitioners summarise their opposition at paragraphs 28-32 as follows:
 - "28. The Court's Orders of 19th August 2025 specifically required the Respondents to file reports indicating: a) Progress of the mop-up exercise (implying a comprehensive effort to purchase local production) b) Accurate information regarding local production and resultant deficit
 29. The Respondents have failed to comply with the spirit and intent of these Orders by:
 - a) Conducting a token and belated mop-up exercise
 - b) Providing unreliable data
 - c) Failing to demonstrate that all reasonable efforts were made to exhaust local supplies before resorting to imports.
 30. The chronology of events demonstrates bad faith on the part of the Respondents:



- a) Gazette Notice No. 10353 was published on 28th July 2025 authorizing 500,000 MT of duty-free imports.
 - b) The token purchase of rice in early July was nothing other than paper trail to support plans to import rice.
 - c) The "mop-up" exercise due to this Petition resulting in this Honourable Court's coercive powers was absolutely inadequate and did nothing to rectify the rice glut in Mwea.
 - d) No proof is provided that the LPO's issued have actually been paid for.
 - e) The quantities bought and paid for, if any, are negligible compared to available local stocks.
 - f) The importation quota far exceeds any genuine deficit.
31. This sequence of events suggests the decision to import was made without genuine consideration of local production capacity, and the "mop-up" exercise is merely a cosmetic measure to create the appearance of compliance with Court, constitutional, and statutory obligations.
32. Perhaps most critically, the import is structured so as to benefit private importers who enjoy duty-free pricing in direct conflict with the farmers and local business in Kenya generally and Mwea specifically. Huge amounts of rice remain in stores in Mwea and in the rice fields ready for harvest while favoured business have been allowed to import cheap rice the local farmers and businesses cannot compete with."

Question as to life of Gazette Notice subject to suit

15. At the conclusion of submissions on the application for the applicant/intended petitioner to take over the petition following a Notice of Withdrawal by the Petitioner, Counsel for the Attorney General pushed for an expedited ruling urging that the time prescribed in the Gazette Notice permitting duty free importation of rice was due to expire on 31/12/2025. The Court fixed the application for ruling on 22/12/2025.
16. If Gazette Notice has a life of its own parallel to the judicial petition, then further proceedings in the matter would be otiose because there is no reasonably practicable prospect that the Respondents would be able to implement the Gazette by importation of the 250,000 MT of rice in the period of one week to the end of the year mark of the term of the Gazette Notice, that is assuming that the Court declined the application for takeover of Petition by the intended petitioner applicant.
17. And if the Court ruled in favour of allowing the takeover of the Petition, the further necessary proceedings would bust the Gazette Notice timeline.
18. If the Gazette timelines were running independent and inspite of the Court suit, the absurdity of any stay orders is obvious. Indeed, the Petitioners and the Respondents might well have been advised to wait for the Gazette Notice to expire, in which case, for the Petitioners, it's authority to import duty free, which the Petitioners was opposed would expire; and for Respondents, it would, probably, present an opportunity to renew the importation program under a fresh Gazette.



19. The applicants/intended petitioners would then not require to seek to take over the Petition as the filibuster would be complete, as result of the late withdrawal of the suit.
20. In the applicants' seeking a takeover of the Petition, the Court must read an admission, or at least an acceptance, that the Gazette Notice became what this Court loosely described as a 'ward of court' to capture the control of the Court over the life and validity of the Gazette Notice whose timeline is correspondingly affected by any order of stay of implementation made by the Court.
21. The Court proceeds with the ruling herein on the basis that the authority of the Gazette Notice, of which the Court is seized and which was suspended by the earlier order of the Court, is valid for the six-month duration taking into taking into account the suspension period as made necessary by the order of the Court. That is, of course, if the Court does not outlaw the Gazette Notice altogether.
22. Consequently, the application for takeover of the Petition against the Petitioner's Notice of Withdrawal of the Petition and the pending Ruling on the application by the Respondents for leave of Court to import the balance of the rice subject of the GN are still validly before the Court.

Takeover of the Petition

23. The Intended Petitioners' application dated 30th October 2025 for joinder as Interested Party was made when the Petitioner was in full charge of the Petition and was actively prosecuting it. The circumstances changed when the Petitioner sought to withdraw the Petition, and the application for joinder as Interested Party must be taken to have been overtaken by events. The application presently before the Court as fitting of the situation is the application dated 11/12/2025 to take over the Petition and substitute the withdrawing petitioner.
24. The constitutional character of the Petition as pleaded clearly raises constitutional issues of public participation, consumer rights, violation of rights to property, life etc. as shown in the details of contravention and relief sought in the Petition dated 7/8/2025, as follows:

“B. INCONSISTENCY WITH / VIOLATIONS OF *THE CONSTITUTION* AND/OR OTHER STATUTES

- i) Violation in Article 10 on Public Participation
 55. The arbitrary decision of the Respondents to deliberately lock out farmers from decision making derogates their right under Article 10 of *the Constitution* sets out national values and principles of governance as well a legitimate expectation to be consulted on the price of their harvest
- ii). Violation of Article 24 on Unjust Limitation of Fundamental Rights
 56. Controlling the price without consulting stakeholders or even giving a period of notice to mop up agricultural produce when there is no emergency situation in the country amounts to a Limitation of the Petitioner's right to property (Article 40), access to justice, and due process without lawful Justification or adherence to constitutional standards of reasonableness and proportionality under Article 24.
- iii). Violation of the Right to Equality and Equal Protection under Article 27



57. The 1st and 2nd Respondents acted discriminatorily and selectively by targeting the Petitioner's rice produce when it had an opportunity to control the price of Grade 1 rice without allowing for the importation of Duty Free Grade 1 rice. Additionally making the decision to import duty free rice when there is already produce on the shelf, turn and warehouse is discriminatory to the Kenyan farmer and does not afford the Petitioner equal benefit of the law. This constitutes unequal treatment under Article 27.
- iv. Violation of Right to Property under Article 40(1), (2), and (3)
58. The control of Grade 1 rice price through the injection of 500,000MT Grade 1 rice which is imported so that the actual price of Grade 1 rice and other rice varieties that were in the Country before 28th July 2025 will now be sold at a loss is actually depriving the farmers of Kenya the value of their crop.
- v. Violation of the Right to Fair Administrative Action under Articles 47(1) and (2) and Sections 4(3), 7(2) of the Fair Administrative Act
59. The 1st and 2nd Respondents failed, ignored and/or neglected to give the farmers of Kenya prior notice or a hearing, as to the manner of controlling the price of rice without flooding the market with duty free imports when there is in fact no calamity in Kenya. The decision was procedurally unfair, irrational. And ultra vires.
- vi. Disregard for the EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004, LAWS OF KENYA (NO. 1 OF 2005)
60. The 1st and 2nd Respondents have no jurisdiction to control the price of any commodities in Kenya within the meaning of EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT though duty free imports except during an emergency or a catastrophe that has been declared.
61. The 1st and 2nd Respondents have no jurisdiction to control the price of any commodities exceeded the powers conferred upon her by the EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT. Nowhere does the Act authorize a registrar to unilaterally cancel a title on grounds of fraud.
62. The Gazette Notice is ultra vires, null and void ab initio, and offends Article 10 (rule of law), Article 159 (judicial authority), and Article 162 (2) (exclusive jurisdiction of the High Court in matters involving legality of administrative action).
63. This Petition is further supported by the attached affidavit of the petitioner sworn on the same date.

RELIEFS SOUGHT



A. A Declaration that the conduct of the Respondents is a violation of 10(2), 118(1)(b), 210; 225.226(1)(2) and 227(1)(2) of *the Constitution* as read with Section 114 (2.) read together with Paragraph 20 Part B to the Fifth Schedule to East African Community Customs Management Act.

B. A Declaration that the Conduct of the Respondents is a violation of Articles of 26, 27, 40, 43 (1), 46(1) & 47 of Chapter IV of *the constitution*

C. AN ORDER OF CERTIORARI to bring into this honorable court and quash the decision of the Cabinet Secretary, National Treasury and Planning & The Cabinet Secretary, Agriculture and Livestock. Development vide Gazette Notice No. 10353 published on the 28^m July, 2025 in a special issue of Kenya Gazette Volume CXXVII - No. 161 purporting to approve the duty free importation of 500.000 MT of grade 1 rice from the 28th July 2025 up until the 31st December 2025.

D. AN ORDER OF PROHIBITION to bring into this honorable court and prohibit ~ Cabinet Secretary, National Treasury And Planning & The Cabinet Secretary, Agriculture And Livestock. Development vide Gazette Notice No. 10353 published on the 28th July, 2025 in a special issue of Kenya Gazette Volume CXXVII - No. 161 purporting to import and importing 500,000 MT of grade 1 rice from the 28^h July 2025 up until the 31st December 2025.

E. AN ORDER OF MANDAMUS do issue to compel the respondents herein to strictly comply with *the Constitution* and the Law with respect to the procedure for procuring exceptions or waiver of import duty on Grade 1 Rice.”

25. The Court is mindful of the risk of abuse of the process as urged by Counsel for the Intended Petitioner with some backing of the Court in *Luka v Narok Bursaries Management Board & 6 others; Narok County Assembly (Interested Party) (Constitutional Petition E016 of 2023) [2024] KEHC 2523 (KLR) (13 March 2024) (Ruling)* as follows:

“ 17. The jurisprudence coming through is that public interest litigation is not a party’s private suit which he may withdraw or discontinue at whims. Any withdrawal or discontinuance of such proceedings as constitutional petitions, must be sanctioned by a Court. The requirement of leave of the court also protects public interest litigation from abuse by parties for ulterior or personal motives. For instance, Odunga JA always states that some parties file public interest litigation with the sole aim of having them dismissed, thereby blocking any other litigation on the subject on the basis of *res judicata* or the doctrine of *functus officio*. Others file public litigation cases for personal gain or to settle scores. And, the list could be long.

18. The threshold, therefore is that, public litigation should not be withdrawn for ulterior motive or for personal gain or upon collusion between the parties. And, presence of the ills stated above, the court should consider proceeding with the hearing of the public litigation.”

Need for leave of Court to withdraw constitutional petition

26. There is no contest that the Court’s permission is required to give effect to a notice of withdrawal of a constitutional petition. In *Harry John Paul Arigi & 2 others v Board, Kenya Ports Authority & 2 others [2016] KECA 141 (KLR)* the Court of Appeal (Makhandia, Ouko (as he then was) & M’Inoti,



JJ.A. traced the origin, and put paid the question, of the requirement for leave of court to withdraw a constitutional petition as follows:

“Pursuant to Article 22(3) of *the Constitution*, on 28th June 2013, Vide Legal Notice No 117, the Chief Justice made the 2013 rules. Clause 3(1) of the rules provides that they shall apply to all proceedings for enforcement of fundamental rights and freedoms under Article 22. Of immediate concern in this appeal is rule 27, which provides for withdrawal or discontinuance of constitutional petitions. The rule provides as follows:

“27.

- (1) The petitioner may—
 - (a) on notice to the court and to the respondent, apply to withdraw the petition; or
 - (b) with the leave of the court, discontinue the proceedings.
- (2) The Court shall, after hearing the parties to the proceedings, decide on the matter and determine the juridical effects of that decision.
- (3) Despite sub rule (2), the Court may, for reasons to be recorded, proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw or discontinue the proceedings.”

Rule 27 (1) (a) allows a petitioner who wishes to withdraw a petition to apply to withdraw the same after giving notice of his intention to both the court and the respondent. Clearly under that provision, the withdrawal of the petition is not automatic and is not achieved merely by notice. Under 27(1)(b) the petitioner can also discontinue the proceedings, but after obtaining the leave of the court. If there ever was any doubt from rule 27(1) that the leave of the Court is required before a constitutional petition may be withdrawn, Rule 27(2) puts the matter beyond dispute by stating that the court shall decide on the matter “after hearing the parties to the proceedings”. The role of the court in the withdrawal of a constitution petition is reinforced by Rule 27(3), whose effect is that notwithstanding the petitioner’s wish to withdraw the petition or to discontinue the proceedings, the court may for reasons to be recorded, still proceed to hear and determine the petition.

We are satisfied that the right of a petitioner to withdraw a constitutional petition is circumscribed by rule 27; that rule 27 like all the other rules enshrined in the 2013 rules, is constitutionally underpinned and is not a mere technicality; and that the rule is justified granted the public significance of an application alleging violation of the Bill of Rights, literally the heart of *the Constitution*. To the extent that the withdrawal of constitutional petitions is regulated by a specific regime that is traceable directly to the provisions of *the Constitution*, the appellants were obliged to comply with rule 27 before they could competently withdraw the petition. The duty of a party to follow a specifically prescribed procedure has been emphasized by this Court time an again, for example in *Speaker Of The National Assembly V. Karume* (2008) Klr (ep) 425, *Kones V. Republic & Another Ex Parte Wanyoike & 4 Others* (2008) 3 Klr (ep) 291 And *Mutanga Tea & Coffee Company Ltd V. Shikara Ltd & Another*, Ca No 54 Of 2014.



We have no hesitation in holding that, in so far as this appeal involves withdrawal of a constitutional petition, decisions on withdrawal of ordinary suits are not helpful.”

27. Clearly, Rule 5 on substitution parties has no application in the circumstances of the case. It provides for addition, substitution or removal of parties in the circumstances described in the Rules as follows:

“ Addition, joinder, substitution and striking out of parties.

5. The following procedure shall apply with respect to addition, joinder, substitution and striking out of parties—

- (a) Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the respondent is liable, and to what extent, may be determined as between all parties.
- (b) A petition shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every proceeding deal with the matter in dispute.
- (c) Where proceedings have been instituted in the name of the wrong person as petitioner, or where it is doubtful whether it has been instituted in the name of the right petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as petitioner upon such terms as it thinks fit.
- (d) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just— (i) order that the name of any party improperly joined, be struck out; and (ii) that the name of any person who ought to have been joined, or whose presence before the court may be necessary in order to enable the court adjudicate upon and settle the matter, be added.
- (e) Where a respondent is added or substituted, the petition shall unless the court otherwise directs, be amended in such a manner as may be necessary, and amended copies of the petition shall be served on the new respondent and, if the court thinks, fit on the original respondents.”

28. With respect, this is not a case for substitution of the right or proper party for a wrong or an improperly joined one, but one of takeover of the Petition in lieu of withdrawal sought by the current Petitioner. The applicable rule is Rule 27 of the Mutunga Rules set out above.

Juridical Effect of proposed withdrawal

29. The Petitioner need not give an explanation or justification for the withdrawal. A statement that the Petitioner is no longer interested in the Petition is sufficient, and it is for the Court in terms of Rule 27



- (2) of the Mutunga Rules to consider the juridical effect of the withdrawal and make the determination or, finding sufficient reason, “proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw” under Rule 27 (3) of the Mutunga Rules.
30. The Court respectfully agrees with the Court (W. A. Okwany, J.) in *Ratemo v Senate* (Petition 001 of 2024) [2024] KEHC 3915 (KLR) (22 April 2024) (Ruling) that no formal application or explanation for withdrawal is necessary.
 31. There need not be prior consideration of the juridical effect of an withdrawal before an application for taking over the petition may be entertained. The Court may consider the juridical effect of a withdrawal along side an application for taking over of a Petition and as well as the consideration under Rule 27(3), which may even be suo moto, for reasons to be recorded, for direction that the proceedings shall proceed despite the desire of the petitioner to withdraw the Petition.
 32. In terms of Rule 27 (2) of the Mutunga Rules, the juridical effect of the Notice of Withdrawal by the Petitioner is that there would be no bar to the implementation of the Gazette Notice as the suit would have been withdrawn and any conservatory orders would go with the Petition. Without the benefit of the proceedings and order of the Court in HCCHRPE/E009/2025 – *John Nderitu vs Cabinet Secretary Ministry of Agriculture, Livestock and Fisheries and Kamili Packers Limited And 22 Others* said by the 3rd Respondent to be coming up on the 30th January 2026 for Ruling on Applications, this Court is not able to predicate the juridical effect of the withdrawal on that case.

Balance of public interests

33. However, in terms of Rule 27(3), the Court considers that public interest concerns taken up by the departing Petitioner in the Petition are deserving of ventilation in full and a judicial decision on the constitutional challenges. There appears to be a convergence of interests in public interest at the very least for the farmers’ economic returns for their farm produce touching on their right to property; the right of consumers to availability of food of reasonable quality at affordable prices; and the Government’s policy towards maintenance of stability and peace with achievement of food security by making staple foods available at affordable prices for the inhabitants of Kenya - against the backdrop of Constitution’s national values and principles of governance of Rule of Law and Public participation. With such public interests, the proper direction in the matter consistently with Rule 27 (3) of the Mutunga Rules is to ‘proceed with the hearing of a case petition in spite of the wish of the petitioner to withdraw’.
34. Apart from their personal interest and the public interest in the matter, the Intended Petitioners/ Applicants have as “the duly elected Senator, Kirinyaga County and elected Member of County Assembly (MCA), Baragwi Ward, Kirinyaga County, respectively” locus standi to pursue the rights of their constituents, the rice farmers of the Kirinyaga County and relevant County Ward in terms of Article 22 (2) (a) and (b) of *the Constitution*. The Court has respectfully noted the decision relied on by the 3rd Respondent *Khelef Khalifa El-Busaidy v Commissioner of Lands and 2 Others* [2002] eKLR, (D.A. Onyancha, J.) for the proposition that ‘where it was held that for an individual to have locus standi, he must have an interest either vested or contingent in the subject matter before the Court which interest must be a legal one and above that of other members of the public in general’ but in view of the provisions on expanded locus standi of Article 22 (2) (a) and (b) of *the Constitution*, this Court is unable to take benefit of the position. It is noted however, that the Court in that case accepted the position of the two judge Court “*Nairobi High Court Misc. Civil Application No.908 of 2001 - Albert Ruturi, J. K. Wanywela & Kenya Bankers Association vs The Minister of Finance & The*



Attorney-General and Central Bank of Kenya (DONDE case) (Mbaluto & Kuloba, JJ. where it was stated significantly as follows:

“Our legal system is intended to give effective remedies and reliefs whenever *the Constitution* of Kenya is threatened with violation. If an authority which is expected to move to protect *the Constitution* drags its feet, any person acting in good faith may approach the court to seek judicial intervention to ensure that the sanctity of *the Constitution* of Kenya is protected and not violated. We state with a firm conviction, that as a part of reasonable, fair and just procedure to uphold the Constitutional guarantees, the right of access to justice entails a liberal approach to the question of locus standi. Accordingly in constitutional questions, human rights cases, public interest litigation and class actions, the ordinary rules of Anglo-Saxon jurisprudence, that an action can be brought only by a person to whom legal injury is caused, must be departed from. In this type of cases, any person or social action groups, acting in good faith, can approach the court seeking judicial redress for a legal injury caused or threatened to be caused to a defined class of persons represented, or for a contravention of *the Constitution*, or injury to the nation. In such cases the court will not insist on such a public-spirited individual or social action group espousing their cause, to show his or their standing to sue in the original Anglo-Saxon conception.”

35. The Donde case was precursor to the promulgation of the Bill of Rights eight years later in *the Constitution* of Kenya 2010. Indeed, the Judges in Donde said:

“As a general principal relating to this type of public interest litigation, we wish to state, that what gives the locus standi is a minimal personal interest, and such interest gives a person a standing even though it is quite clear that he would not be more affected than any other number of the population.”

36. The rights to access to justice and fair hearing, respectively under Articles 48 and 50 of *the Constitution*, for the parties in the Petition - the Intended Petitioners on their own behalf and on behalf of the rice farmers and consumers in the County on the one hand and the Respondent Government agencies on the other - require a full hearing of the Petition and proceedings thereunder.

37. It was urged by the 3rd Respondent that “in Dock Workers Union & Another v Attorney General & Others [2019] eKLR, it was held that once a Petitioner withdraws a Petition, the Petitioner effectively walks away with all the pleadings, leaving no case to be prosecuted by any other party.” However, it would appear from the decision that the case Dock Workers Union & 2 others v Attorney General & another; Kenya Ports Authority & 2 others (Interested Parties) supra (P.J. Otieno, J.) where there were two petitioners, one who wished to withdraw, is distinguishable from the circumstances in this case, as shown in the Ruling as follows:

“Withdrawal by the 1st Petitioner

6. While the court has the discretion to allow the discontinuance of a petition where public interest is alleged like in the matter, the purpose intended to be served with that restriction against free will withdrawal and discontinuances is to ensure that public interest is not prejudice by a petitioner’s sole decision once a matter is in court. This is more critical where the petition is by a single party.
7. Here there would still remain, the 2nd petitioner who the Advocate say is still keen to proceed with the matter. In those circumstances, I see no possible



prejudice to public interest alleged in the petition if the 1st petitioner is permitted to withdraw its petition. The request is allowed with no orders as to costs.”

38. The Petitioner having indicated desire to withdraw the Petition, the Petitioner's interest and its affidavits in support in the matter must be taken to be abandoned as the substitute Petitioners cannot vouch for the truth, accuracy and cogency of the facts set out therein.
39. In support of the Petition then must be the substituted Petitioners' own affidavits unless the Petition may be prosecuted without reliance on fact, such as a petition which relates to construction of law, or one which deals with facts of public notoriety which the Court may take judicial notice.
40. The substitute petitioners have on record affidavits in support of the application for joinder as Interested Party and of the application for takeover of Petition, as well as Replying Affidavit in opposition of the Respondents application for leave to import the balance of the importation quantity under the Gazette Notice. They should rely on these filed affidavits for their case.
41. The Petition itself remains as drawn by the Petitioner as that is what the substitute Petitioners are taking over in lieu of Petitioner's withdrawal. For sufficient reason, of course, the substitute petitioners may move for leave to amend in accordance with the applicable rules. However, leave to amend a petition cannot be given at large, the particular paragraphs of the pleading to be amended and the changes to be made must be disclosed in the application for amendment to allow the respondents to respond to the application for leave to amend. This having not been done, the application for amendment cannot be granted.
42. For now, as the matter is pending ruling on the Respondents' application for leave to proceed with the importation of the remaining quantities of rice, the substitute petitioners who had already filed a Replying Affidavit of 19/11/2025 in opposition to the request, will make submissions on question based on their affidavits on record.
43. The application in Prayer No. 5 of the present application for an order that “the Respondents, their agents, servants, and/or any persons acting under their authority be restrained from implementing Gazette Notice No. 10353 dated 28th July 2025 or issuing any further duty-free import permits for rice beyond the 250,000 MT already authorized by this Court's interim orders” must be taken as an answer to the first in time application for leave to proceed with the importation, which is pending ruling before the Court.
44. The Respondents who had already made submissions on the application (as against the Petitioner), which remains on record, will be at liberty to make further submissions on response to the new petitioner's submissions. The matter shall then proceed to ruling.
45. That is the way to afford a fair hearing to all the parties in the circumstances of the case pursuant to Articles 48 and 50 of *the Constitution*.

Further necessary directions

46. In view of the urgency in the determination of the matter, one way or the other, the court shall give directions for expedited hearing as below.
47. The Respondents' submissions on record urging the court's leave to make the full importation of the rice subject of the Gazette Notice herein shall remain the Respondents' submissions in chief on the application.



48. The Intended Petitioners/Applicants, now substituted as the Petitioners (and henceforth referred as the substituted petitioners) shall have their Replying Affidavit of 19/11/2025 in which they opposed the Respondents' application for leave to make further imports of rice under the Gazette Notice is deemed their Replying Affidavit for purposes of the application, and they shall file and serve their written submissions on within the next three (3) working days ending on 29th December 2025.
49. The Respondents will, as the applicants in application for leave to make the importation in the impugned Gazette, respond to the Replying Affidavit of 19/11/2025 and file their response to Substituted Petitioners' Submissions within the following four (4) working days ending on Monday 5th January 2026.
50. The Counsel for the parties will, if necessary, highlight the submissions on the 6th January 2026 before ruling on the Respondents' application is reserved.

Orders

51. Accordingly, for the reasons set out above, the Court makes the following Orders:
 1. The matter before the Court is a constitutional petition with impact on public interest at least three-ways of the farmers' right to property, the consumer rights in stable prices of rice and the National Government interest in maintaining food security through availability of rice at reasonable prices, against the public interest in Constitution's National Values and Principles of Governance of the Rule of Law and public participation.
 2. The Petitioner is allowed to withdraw from the Petition and is excused from further proceedings in the matter.
 3. The Applicants/Intended Petitioners are granted leave of court to substitute the Petitioner and to takeover and continue the prosecution of the Petition to hearing and final determination.
 4. As the matter is at the stage of ruling on an application by the Respondents for leave of court to permit the importation of the balance quantity under the suit Gazette Notice, which was urged in the absence of the substitute Petitioner, the said substitute Petitioners shall be heard thereon by written submissions to be filed with three (3) working days and the Respondents as the applicants in the matter of leave to import shall respond to the substitute Petitioner's Replying Affidavit and Submissions within four (4) days.
 5. The proceedings being in the nature of conservatory order/injunctive relief, and in view of the urgency of the matter, the provisions as to time in Order 50 Rule 4 of the Civil Procedure Rules shall not apply and, consequently, all filings should be in by Monday 5/1/2026.
 6. Counsel for the Parties shall on 6/1/2026 orally highlight, as necessary, any submissions filed.
 7. Ruling on the application for leave to import the balance of the quantity of rice under the Gazette Notice shall thereafter be delivered on a date to be given after the highlighting of Submissions.
 8. Directions as to the full hearing of the Petition shall be taken on 29/1/2026.
52. Costs in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 22ND DAY OF DECEMBER 2025.



EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Musyoki Musango for the Petitioner.

Mr. Kaumba with Mr. Kuria for the 1, 2, 5 & 6 Respondents.

Mr. E. Theuri, SC with Ms. Kiunga for the 3rd Respondent.

Mr. Ochieng with Nyaga with Ms. Kahindi for 4th Respondent.

Mr. Muge with Mr. Kazungu for the Intended Petitioners/Applicants.

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