



Farmers Part & another v Cabinet Secretary, National Treasury and Planning & 5 others (Petition E009 of 2025) [2026] KEHC 530 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 530 (KLR)

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

PETITION E009 OF 2025

EM MURIITHI, J

JANUARY 29, 2026

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 PART PETITIONER



AND

**HON JAMES KAMAU MURANGO, SENATOR, KIRINYAGA COUNTY, AND
HON DAVID MATHENGE, MEMBER OF THE COUNTY ASSEMBLY (MCA),
BARAGWI WARD, KIRINYAGA COUNTY SUBSTITUTE PETITIONER**

AND

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

**THE CABINET SECRETARY, AGRICULTURE AND LIVESTOCK
DEVELOPMENT 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

RULING

1. By its Ruling of 19/8/2025, the Court granted a conservatory order in the following terms:
 1. The Respondents shall implement the Kenya Gazette Notice to the extent ONLY of importation of 250,000 MT of rice and for the period ending Friday 31st October 2025.
 2. The Respondents shall file in Court, such Reports indicating 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.”
2. The Respondents filed various affidavits indicating the extent of mop-up and seeking leave of court to implement the subject Gazette Notice in full by importing the balance of the rice imports duty free on the argument that the full complement of the 500,000MT rice was necessary to fill the production gap and stabilize prizes thereby cushioning the consumers from likely adverse price increases on the product and other staple foods.
3. The evidence indicated that the Respondents had imported a total of 254,827.795MT of rice duty-free as at the end of October 2025 and had mopped up from the local farmers a total of 10,280 bags (514MT) according to the 3rd Respondent’s Director General’s report dated 31/10/2025, and for the period of July – October 2025 “the total expected to be harvested by Societies working with KNTC is 125,000 bags (6,250MT)”.
4. The Respondents, therefore, sought the leave of court to implement the Gazette Notice No. 10353 published on 28th July 2025 in Special Issue of the Kenya Gazette Volume CXXVII – No. 161 by importation of the balance of duty free rice in the volume of 254,173MT (rounded up to the nearest whole number Thousands at 254,000MT), the remainder of the rice quantity of 500,000MT authorised therein for importation duty free, the importation of half of which the Court had approved by its Ruling of 19/8/2025.



5. The Petitioners opposed the application principally on the ground that the mop-up had inadequate and a lot of rice quantities remained in the farmers shamba and stores, demonstrating “fundamental disregard for the livelihoods of the local rice farmers and rice businesses”, pointing out that the Respondent’s report dated 31/10/2025 on the mop-up indicated that farmers still held 65,000 bags (3250MT) in stock and a projected harvest of 1,420,000bags (71,000MT) expected from mid-November to December 2025. In addition, it was demonstrated that millers in the Mwea region had close to 100,000bags of unsold rice and crop in the field.
6. The Court has considered the affidavits filed by the parties and the Submissions filed and made by their Counsel before the Court.
7. In the court’s view, the following factors are determinant:
 1. There is a confluence of rights in this Petition: there is public interest in Food security and the Court considers that food security is a factor in national security and stability. The farmers represented by the substitute Petitioners have economic rights over the production and sale of their rice produce and the consumers have rights to the food of reasonable quality and affordable prices.
 2. There was compliance to some extent with the requirement for mop-up by framework contracts entered into by the respondents with various cooperatives societies and groups. It was conceded by the respondents that the mop-up was only conducted at the level of cooperatives and groups and not at the agricultural processors’ stores/shops, and that the prices were at farm gate basis.
 3. Pursuant to Article 43 of the *Constitution*, it is reasonable for the State to take measures to avert or address shortages in local food production. The overall deficit in demand/supply of rice - which is not denied and only the extent of deficit is challenged - must be addressed by allowing the importation of rice and the incentive of importation duty-free is understandable for the balance of the shortage after effective mop-up of the locally produced rice. In dismissing as inflated the reported 750,000MT rice six months’ consumption needs for the country, the petitioners do not offer alternative figures and the Court on a balance of probabilities accept the projections on demand, supply and deficit given by the Respondents.
 4. It would appear, however, as regards compliance with court order of 19/8/2025 for mop-up of locally produced rice, the Mop-up of the rice produce at farm gate prices through co-operatives/groups does not afford the farmers a full benefit of their produce or return on value addition for processing of the rice, as those farmers who are not members of cooperatives or farmers groupings did not benefit.
 5. The substituted petitioners demonstrated that substantial stocks of rice were still held at the farmers/business stores despite the mop-up efforts by the Respondents which was carried out at farmgate prices from the cooperatives/farmer groups thereby leaving out individual farmers who did not belong to cooperatives or farming groups.
 6. The Respondents’ explanation that it was only able to mop-up rice produce from co-operatives and groups and that the rice in stores shown by the substituted petitioners were for sale in alternative markets is unacceptable as there was no demonstration of offer to buy such rice and a rejection by the farmer or traders. In fact, the 3rd Respondent’s report clearly indicates the mop-up was only considered for ‘Societies working with KNTC’ whose projected production for the period under consideration was set at 125,000bags.



7. The Court accepts that the mop-up cannot be on the retail prices set by the traders or farmers. As the Government procurement is in bulk, the mop-up cannot be based on retail prices but on the wholesale prices according to the current market index as established by the 3rd respondent, and on the basis of willing buyer willing seller.
 8. An importation of duty-free rice would undoubtedly impact on the prices of stocks of rice in the farmers stores, in addition to upcoming harvests of the crop. While the Court approves the importation of the balance of 254,000MT to fill the supply gap and stabilise both availability and the prices, the same must be structured as to avoid dumping of large quantities of duty free rice as to cause an abrupt and drastic decrease in the price of the rice and therefore income of the farmers.
 9. To allow the duty-free importation before effective mop-up will adversely affect the farmer's returns at farm and processed production by the resultant downward effect on the price of the produce on account of availability of the cheaper duty-free rice.
 10. It is possible to uphold the farmers' interests to an economic return on their agricultural production as well as seal the deficit in the demand/consumption against the available production and thereby implement the Government obligations in respect of the constitutional right to adequate food.
8. The Court finds that pending the hearing of the Petition it is necessary to find a balance of the interests of the parties herein - the farmers and businesses in the agricultural and food processing sector, the public interest in avoiding food shortage that may manifest in undesirable situation of spiralling prices, hunger and social instability, and the State's responsibility under Article 43 of the *Constitution*.
 9. A judicial direction on a programme of action that calls for the prior effective mop-up of the local rice produce from the farmers at the farm-gate and millers/business stores all around the country, whether the sellers are members in cooperative societies and others groups or not, followed by the importation of the established deficit at phased intervals to seal the shortage/production gap and keep the availability, and therefore the prices, of rice stable for the benefit of the public/consumers is warranted.

Orders

10. Accordingly, for the reasons set out above, the Court makes Orders as follows:
 1. The Respondents shall for the period of thirty (30) days from the date of this Order undertake a mop-up exercise for the locally produced and processed rice by purchase of the rice from the local farmers through cooperative and other farming groups and individuals farmers and traders/business/shop/stores all over the country, in the rice producing areas of Mwea, Bura, Ahero, Nyatike, Bunyala, Kuja and Kano, and not restricted to Societies working with 6th Respondent (KNTC), who are willing to sell their produce/stocks to the Government at the farm-gate and or whole-sale prices, as applicable, to be established by the 3rd Respondent in consideration of the market price index for the current period and in consultation with the rice farmers and businesses.
 2. The Respondents have leave of court to implement the impugned Gazette Notice G.N. No. 10353 of 28th July 2025 by further importation of the balance of 254,000MT of Grade 1 rice duty-free in three (3) equal tranches of 85,000MT each phased to commence on 1st March 2026, 1st April 2026 and 1st May 2026, respectively.



3. In view of the several actions directed to be taken by the parties herein, there is granted, on all parties, liberty to apply for any further relevant directions.
4. In terms of Section 1A (3) of the *Civil Procedure Act*, Counsel for the parties are required to assist the Court “to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.”

11. Costs in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 29TH DAY OF JANUARY 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Muge with Mr. Kazungu for the 1st Substituted Petitioner.

Mr. Musyoki Musango for the 2nd Substituted 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 Mr. Nyaga with Ms. Kahindi for 4th Respondent.

