



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CONSTITUTIONAL PETITION NO. E009 OF 2025**

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE CONSTITUTION UNDER ARTICLES 26, 27, 40, 43(1), 46(1) AND 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 ARTICLES 1, 2, 3, 23, 159 AND 165 OF THE CONSTITUTION OF KENYA, 2010 AND

IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT TO PUNISH FOR CONTEMPT BETWEEN

HON. JAMES KAMAU MURANGO ..... 1ST SUBSTITUTED  
 PETITIONER

HON. DAVID MATHENGE ..... 2ND SUBSTITUTED  
 PETITIONER

AND

HON. JOHN MBADI,  
 THE CABINET SECRETARY,  
 NATIONAL TREASURY AND PLANNING..... 1ST  
 RESPONDENT

THE CABINET SECRETARY,  
 AGRICULTURE AND LIVESTOCK DEVELOPMENT ..... 2ND  
 RESPONDENT

AGRICULTURE AND FOOD AUTHORITY ..... 3RD  
 RESPONDENT

DR. LILIAN NYAWANDA  
 THE COMMISSIONER FOR CUSTOMS  
 AND BORDER CONTROL ..... 4TH  
 RESPONDENT

THE HON. ATTORNEY GENERAL ..... 5TH  
 RESPONDENT

KENYA NATIONAL TRADING CORPORATION ..... 6TH RESPONDENT

MR. HUMPHREY WATTANGA, COMMISSIONER GENERAL,  
 KENYA REVENUE AUTHORITY (KRA) ..... 7TH  
 RESPONDENT

NJEMA COMMODITIES LIMITED.....INTERESTED PARTY

### **RULING**

[1] By Notice of Motion dated 15/1/2026 expressed to be brought pursuant to Articles 22, 23, 159 and 165 of the Constitution of Kenya 2010; the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure rules, 2013; section 5 of the Judicature Act, Cap. 8 Laws of Kenya and the inherent jurisdiction of the Court, the Substituted Petitioners invoke the jurisdiction of the court to punish for contempt of Court against the alleged contemnors the 1<sup>st</sup>, the 4<sup>th</sup> and 7<sup>th</sup> Respondents and sought related reliefs, specifically as follows:

*“1. THAT this Application be certified as extremely urgent, be heard ex parte in the first instance, and that service upon the Respondents be dispensed with at the first instance, the matters raised herein disclosing an imminent, ongoing and consummated contempt of the orders of this Honourable Court.*

*2. THAT pending the inter partes hearing and determination of this Application, this Honourable Court be pleased to issue **interim conservatory orders staying, suspending and prohibiting the implementation, operation, enforcement or reliance upon Gazette Notice No. 262 of the Kenya Gazette published on 9th January 2026, purporting to amend Gazette Notice No. 10353 of 28th July 2025.***

*3. THAT pending the inter partes hearing and determination of this Application, this Honourable Court be pleased to **restrain the Kenya Revenue Authority, the Commissioner for Customs and Border Control, and all customs officers acting under their authority, whether directly or indirectly, from issuing, processing, certifying, approving or facilitating any import permits, customs clearances, duty exemption certificates or authorisations pursuant to or in reliance upon Gazette Notice No. 262 of 2026.***

*4. THAT pending the inter partes hearing and determination of this Application, this Honourable Court be pleased to order **the immediate arrest, seizure and detention, under the supervision of the Court, of any and all consignments of duty-free rice imported, exempted or cleared by the Kenya Revenue Authority pursuant to Gazette Notice No. 262 of 2026, including but not limited to: i. the duty-free rice onboard or offloaded from M/V IVS CRIMSON CREEK, consigned to PREFERED GRAINS LTD; and ii. the duty-free rice onboard or offloaded from M/V SPICA ETERNITY, consigned to ECOVIEW COMMODITIES LTD.***

*5. THAT this Honourable Court be pleased to **declare that Gazette Notice No. 262 of the Kenya Gazette published on 9th January 2026 was issued in deliberate violation and circumvention of the conservatory orders of this Court dated 19th August 2025, and is accordingly null, void and of no legal effect ab initio.***

*6. THAT this Honourable Court be pleased to **declare that any and all consignments of duty-free rice imported into Kenya, exempted and cleared by the***

**Kenya Revenue Authority pursuant to Gazette Notice No. 262 of 2026, including the consignments identified in prayer (4) above, were imported in contempt of court orders and are therefore illegal and contraband, liable to seizure, forfeiture, disposal or re-export strictly under the supervision and directions of this Honourable Court.**

7. THAT this Honourable Court be pleased to **cite the Cabinet Secretary for the National Treasury, Hon. John Mbadi Ng'ongo, for contempt of court, and do order that he personally appears before this Court to show cause why he should not be committed to civil jail, fined personally, or otherwise punished for deliberate disobedience and circumvention of the orders of this Honourable Court.**

8. THAT this Honourable Court be pleased to **cite: i. MR. HUMPHREY WATTANGA, Commissioner General, Kenya Revenue Authority; ii. DR. LILIAN NYAWANDA, Commissioner, Customs & Border Control; and iii. such other senior and operational customs officers as were involved in the processing, certification, clearance or facilitation of imports pursuant to Gazette Notice No. 262 of 2026, for contempt of court, and do order that they personally appear before this Court to show cause why they should not be committed to civil jail, fined personally, or otherwise punished for participation in acts calculated to defeat the orders of this Honourable Court.**

9. THAT pending the hearing and determination of the contempt proceedings, this Honourable Court be pleased to issue such further interim, coercive, supervisory or preservative orders as may be necessary to ensure immediate compliance with its orders and to prevent further consummation of contempt.

10. THAT upon the hearing and determination of the contempt proceedings, this Honourable Court be pleased to impose appropriate punitive sanctions, including committal to civil jail, imposition of personal fines, or such other penalties as may be necessary to vindicate the authority of this Honourable Court and to deter future acts of defiance.

11. THAT the costs of this Application and of the contempt proceedings be borne personally by the contemnors, and not by the public or any State organ.

12. THAT this Honourable Court be pleased to grant such further or other relief as it may deem just, appropriate and expedient in the circumstances.

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

“GROUNDS THAT:

1. On 19th August 2025, this Honourable Court issued conservatory orders restraining the implementation, operation and enforcement of Gazette Notice No. 10353 of 28th July 2025, together with all attendant acts or decisions arising therefrom by allowing the importation of ONLY 250,000 Metric Tonnes of rice,

pending further orders of the court and hearing and determination of the state's application to import the balance of rice.

2. The effect of those conservatory orders was not merely suspensive but normative. They imposed a positive obligation upon all State organs, public officers and parties before the Court to refrain from any conduct whose purpose or effect would be to undermine the Court's control over the subject matter of the Petition. The conservatory orders removed the Gazette Notice from the realm of executive discretion and placed it firmly under judicial supervision.

3. The legal character of conservatory orders issued in constitutional litigation is fundamentally different from ordinary interlocutory injunctions granted in civil disputes. As this Court observed in its Ruling of 19th August 2025, conservatory orders are not linked to such private party issues as prospects of irreparable harm or balance of convenience, but are granted on the inherent merit of a case bearing in mind the public interest, constitutional values and the proportionate magnitudes attributable to the relevant causes. Once granted, such orders bind not only the immediate parties but all persons and institutions who have notice of them, and any act undertaken in defiance or circumvention of such orders strikes at the constitutional order itself.

4. On 22nd December 2025, this Honourable Court delivered a comprehensive Ruling allowing the substitution of Petitioners following a Notice of Withdrawal filed by the original Petitioner. In that Ruling, this Court expressly reaffirmed its continuing supervisory jurisdiction over the Gazette Notice and held that the public interest concerns taken up in the Petition were deserving of full ventilation and judicial determination. The Court further held that the Gazette Notice had become what it described as "a ward of the Court", meaning that its life, effect and disposition were subject to judicial and not executive control. That finding was decisive and binding upon all parties and upon all State organs.

**5. One day after the delivery of that Ruling, and in full knowledge of the conservatory orders and of the Court's reaffirmation of its supervisory jurisdiction, the Cabinet Secretary for the National Treasury executed Gazette Notice No. 262 purporting to amend the stayed Gazette Notice by extending the importation period from 31st December 2025 to 31st May 2026. This act was undertaken without any application to this Court, without leave being sought, and without parties being heard. It constituted a direct intrusion by the Executive into a field already occupied by judicial authority.**

6. The gravity of that conduct is compounded by what occurred during the pendency of active litigation before this Court. The Respondents had filed an application seeking leave of Court to import the balance of 250,000 metric tonnes of duty free rice under the stayed Gazette Notice. That application was scheduled for oral submissions on 6th January 2026. During those oral submissions, counsel

on record for the 4th Respondent, the Commissioner for Customs & Border Control, and the Kenya Revenue Authority sought to withdraw Gazette Notice No. 10353 on grounds that it had allegedly been overtaken by effluxion of time, the import period having lapsed on 31st December 2025. This Honourable Court expressly rejected that submission and held that the Gazette Notice had become “a ward of the Court” and that time could not run against conservatory orders.

7. The submission advanced by counsel for the 4th Respondent and Kenya Revenue Authority on 6th January 2026 was made in circumstances of material non-disclosure. At the time those submissions were made, Gazette Notice No. 262 had already been executed on 23rd December 2025. That fact was directly material to the argument then before the Court, yet it was deliberately withheld. The non-disclosure was not accidental or inadvertent. Disclosure of the amendment would have immediately exposed a direct circumvention of the Court's authority and would likely have triggered immediate corrective action by the Court. Instead, the Court was invited to determine the matter on an artificially constructed narrative of expiry by effluxion of time, while the Respondents retained in their possession an administrative instrument designed to defeat the very ruling they were seeking.

**8. The purported amendment was published in the Kenya Gazette on 9th January 2026, being three days after this Honourable Court rejected the effluxion argument. The timing of the publication reveals a deliberate sequencing of conduct to wit execution of the amendment in secret on 23rd December 2025, concealment of its existence during active litigation on 6th January 2026, and its publication only after the Court has ruled, thereby presenting the executive action as a fait accompli. This sequence of events demonstrates a calculated strategy to evade judicial scrutiny and to render the authority of this Court illusory.**

9. Contempt of court is not limited to open and direct defiance of court orders. **It includes constructive contempt calculated to interfere with the administration of justice or to defeat the purpose and effect of court orders. The conduct complained of in this Application falls squarely within that category. The issuance of Gazette Notice No. 262 was designed to achieve indirectly what the Respondents were expressly barred from doing directly, namely the continuation of duty free rice importation under the judicially controlled Gazette Notice No. 10353.**

10. The Kenya Revenue Authority and its officers including MR. HUMPHREY WATTANGA, Commissioner General, Kenya Revenue Authority (KRA), DR. LILIAN NYAWANDA, Commissioner, Customs & Border Control are not passive bystanders in this matter. They are the operational arm through which the impugned amendment is being translated into economic reality. **Without their acts of exemption, certification, approval and clearance, the contempt would remain theoretical and incomplete. With their participation, it becomes consummated**

**and irreversible.** *Public officers do not enjoy immunity when executing unlawful directives or acting pursuant to instruments issued in defiance of court orders. Where customs officers knowingly process and facilitate imports pursuant to a Gazette Notice issued in violation of conservatory orders, they become personal participants in contempt regardless of institutional hierarchy or any claims of superior orders.*

11. *The Substituted Petitioners are informed and verily believe that the Kenya Revenue Authority has issued customs exemptions and clearances and is CURRENTLY facilitating import of duty-free rice pursuant to the impugned Gazette Notice No. 262, and that two vessels M/V IVS CRIMSON CREEK and M/V SPICA ETERNITY are currently offloading duty-free rice consigned to PREFERED GRAINS LTD and ECOVIEW COMMODITIES LTD pursuant to said customs exemption and clearance by the Kenya Revenue Authority and in direct reliance upon the impugned instrument. Each such customs clearance constitutes a fresh act of contempt and creates irreversible economic consequences that cannot be undone by subsequent orders of this Court. The flooding of the market with duty free rice imports defeats the very purpose of the conservatory orders, which was to protect local rice farmers from economic harm pending the determination of the constitutional issues raised in the Petition.*

12. *Unless this Honourable Court intervenes decisively and imposes coercive sanctions, the message conveyed will be that court orders may be administratively bypassed through executive sequencing, that State organs may litigate in bad faith while concealing material facts, and that the authority of the judiciary may be defeated by presenting executive actions as faits accomplis. Such a result would be fundamentally incompatible with the rule of law, the doctrine of separation of powers, and the constitutional architecture established by the Constitution of Kenya 2010.*

13. *Article 159(2)(d) of the Constitution mandates that justice shall be administered without undue regard to procedural technicalities. That principle applies with equal force to contempt proceedings. The Court is not required to wait for the complete consummation of contempt before acting. Where, as here, the evidence discloses a clear pattern of conduct calculated to defeat court orders, the Court is entitled and indeed obliged to intervene urgently to arrest the contempt and to vindicate its authority.*

14. *The Substituted Petitioners bring this Application not for private gain or political advantage, but in the public interest and in defence of constitutional governance. What is at stake is not merely the enforcement of a particular conservatory order, but the integrity of the judicial process and the maintenance of the constitutional order. If State organs are permitted to ignore, circumvent or administratively defeat court orders with impunity, then the entire edifice of*

*constitutional adjudication collapses and the rule of law becomes a hollow promise.”*

- [3] The application was supported by a Supporting Affidavit sworn by the 1<sup>st</sup> Substituted Petitioner on 15/1/2026 setting out the facts and exhibits relied corresponding to the grounds set out above.
- [4] **The application was opposed by the Respondents who filed respective affidavits contesting the application on various grounds, principally, absence of clear and un-ambiguous court order/directions restraining the alleged acts constituting contempt, want of personal service or notice of any such court order and asserting good faith on the action of the respondents.**
- [5] For the 1, 2, 5 & 6<sup>th</sup> Respondent, the Cabinet Secretary for Agriculture’s Replying affidavit set up a case of good faith action in the public interest to avert national food crisis based on the advice of relevant agencies as follows:

**“1ST, 2ND, 5TH, AND 6TH RESPONDENTS’ REPLYING AFFIDAVIT (In opposition to the application dated 15 January 2026)**

*I, Sen. Mutahi Kagwe, CBS of Post Office Box Number 30028-00100 Nairobi do hereby make oath and state as follows:-*

*1. THAT I am the Cabinet Secretary, Ministry of Agriculture and Livestock Development, the 1st Respondent herein, and therefore competent to swear this affidavit, **which I do on my own behalf and that of my colleague, the Cabinet Secretary, The National Treasury and Economic Planning.***

*2. THAT I have read, understood and where necessary have had explained to me by the State Counsel in conduct of this matter on behalf of the Attorney-General who is on record for the 1st, 2nd and 6th Respondents, the Notice of Motion Application dated 15th January, 2026, the Supporting Affidavit deposed by HON. JAMES KAMAU MURANGO and the annexures thereto, and the Orders issued by this Honourable Court on 19th January, 2026.*

*3. THAT having read the Application, I note that it principally seeks the following orders, inter alia:*

*(a) This Honourable Court be pleased to declare that Gazette Notice No. 262 of the Kenya Gazette published on 9th January 2026 is unconstitutional, null and void;*

*(b) This Honourable Court be pleased to declare that any and all consignments of duty-free rice imported into Kenya, exempted and cleared by the Kenya Revenue Authority pursuant to the impugned Gazette Notice No. 262 of 9th January 2026, including the consignments identified in prayer (4) above, were imported in contempt of court orders and are therefore illegal and contraband, liable to seizure, forfeiture, disposal or re-export strictly under the supervision and directions of this Honourable Court;*

*(c) This Honourable Court be pleased to cite the Cabinet Secretary for the National Treasury, Hon. John Mbadi Ng’ongo, for contempt of court, and*

do order that he personally appears before this Court to show cause why he should not be committed to civil jail, fined personally, or otherwise punished for deliberate disobedience and circumvention of the orders of this Honourable Court;

(d) This Honourable Court be pleased to cite: MR. HUMPHREY WATTANGA, Commissioner General, Kenya Revenue Authority; DR. LILIAN NYAWANDA, Commissioner, Customs & Border Control; and such other senior and operational customs officers as were involved in the processing, certification, clearance or facilitation of imports pursuant to Gazette Notice No. 262 of 9th January 2026, for contempt of court, and do order that they personally appear before this Court to show cause why they should not be committed to civil jail, fined personally or otherwise punished for deliberate disobedience and circumvention of the orders of this Honourable Court.

**4. THAT the Application is premised on the ground that the impugned Gazette Notice No. 262 of the Kenya Gazette published on 9th January 2026 was issued in deliberate violation and circumvention of the conservatory orders of this Court dated 19th August 2025, and is accordingly null, void and of no legal effect ab [initio].**

**5. THAT in response thereto the Ministry reiterates the government position that due compliance with Court Orders is an essential element of the rule of law, and where the Ministry or any of its organ or officer is dissatisfied, to take active steps, at the earliest opportunity, to have the order set aside or varied either on an application for review or on appeal.**

**6. THAT in respect to the instant Application, it is my considered view that the same is premised on a misinterpretation and misapplication of the Order of this Honourable Court dated 19th August, 2025.**

7. THAT the Order of 19th August, 2025 read in material part that:

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 mopup exercise and accurate information as to the local production of rice and the resultant deficit by 3/11/2025**

**8. THAT I am advised by the State Counsel on record for the 1st Respondent, which advice I verily believe to be sound in law, it is trite law that the meaning, scope and intent of court orders is to be ascertained from the context of the proceedings taking into account the language of the ruling or order as construed. The Orders and the reasons thereto must be read as a whole in order to ascertain its intention.**

9. THAT I am further advised by the State Counsel on record for the 1st Respondent, which advice I verily believe to be sound in law, **that the manner of interpretation and application of court orders as defined above, has been affirmed by the Court of Appeal in Gilgil Telcoms Industries Limited & another v Nderitu & another (Civil Appeal (Application) 147 of 2013 & Civil Appeal 137 of 2013 (Consolidated)) [2025] KECA 1041 (KLR) (5 June 2025) (Ruling wherein the Court held that:**

**“19. It is also important for us to point out that it appears the applicant only read paragraph 34 of this Court's judgment dated 4th November 2016 and forgot the key principles for interpreting court judgments. Judgments should not be interpreted mechanically, but instead, it is essential to focus on the context, the intention behind the language, and the overall judgment rather than treating each paragraph or sentence as a stand-alone decision. It is advisable to analyze the context surrounding the use of any words or phrases and to determine the intended meaning. Equally important is the need to look for indications of whether the terms are meant to be inclusive or exclusive based on the surrounding text and the judgment's purpose. This approach ensures a more accurate understanding of the judgment. ” [Emphasis added]**

10. THAT in this light, it is manifestly clear that the order of 19th August, 2025 related to a specific Gazette Notice, being Gazette Notice Number 10353 published on 28th July 2025 in a special issue of Kenya Gazette Volume CONN — NO. 161 approving dutyfree importation of 500,000MT of grade 1 rice from the 28th July 2025 up until 31a December 2025.

11. THAT this fact is apparent in the 1st and 2nd paragraphs of the Ruling, that: "[1] By Notice of Motion dated 7/8/2025, the Petitioner which claims to represent the farmers of Kenya "a political party whose objectives is among other things to safeguard the interests of ordinary farmers and whose membership majorly comprises of ordinary farmers" sought conservatory orders in terms that; "That there be and is issued a conservatory order staying the implementation of the decision of the Cabinet Secretary, National Treasury and planning and the cabinet secretary, Agriculture and Livestock Development vide gazette No. 10353 published on the 28th July 2025 in a special issue of Kenya Gazette Volume CXXVII - NO. 161 approving duty free importation of 500,000MT of grade 1 rice from the 28th July 2025 up until 31st December 2025 pending the hearing and determination of this petition." [2] The Petitioner challenges the constitutional validity of the Gazette Notice No. 10353 of 28/7/2025 on the basis of lack of participation, and breach of constitutional rights in the Bill of Rights of discrimination and violation of right to fair administrative action and the East African Community Customs Management Act (EACMA).

12. THAT further, based on a plain reading of the text of the Ruling, it is clear that this Honourable Court did not issue a permanent injunction or any other order restricting the Cabinet Secretary from issuing any other gazette notice or extending the time period enabling the importation of duty free rice into the country.

13. THAT under Article 21(1) of the Constitution, the State, represented herein by the Cabinet Secretaries Ministry of Agriculture and Livestock Development, and National Treasury and Economic Planning, is obligated to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bills of Rights.

14. THAT in relation to socio-economic rights under Article 43 of the Constitution, by dint of clause (2), the State is obliged to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of these rights. 15. THAT arising out of this constitutional obligation, the Ministry is mandated to create an enabling environment for sustainable development and management of crops and livestock to ensure the country's food and nutrition security. The Ministry plays a key role in economic and social development of the country through enhancing food and nutrition security; employment and wealth creation; and foreign exchange earnings.

16. THAT to achieve its mandate, the Ministry develops and review policies, legislations and regulations, and take executive strategic decisions, in consultation with relevant government agencies and the public, on the country's food and nutrition security. 17. THAT food Security which in its normative sense relate to when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life (World Food Summit, 2023), is at the heart of the enjoyment of fundamental rights and freedoms of individuals including right to life, dignity of the person, and economic and social rights.

18. THAT it is on this basis, and pursuant to Article 21(1) of the Constitution, that it remains a cardinal responsibility of the Government to ensure food security thus observing, respecting, protecting, promoting and fulfilling the rights and fundamental freedoms in the Bill of Rights.

19. THAT sometimes in December, 2025, the Ministry was advised a dire rice shortage in the country which if not addressed urgently were to lead to either acute food scarcity or a sharp spike in prices not only for rice but also for other staples such as maize flour and wheat products. Thus creating a domino effect on the cost of living and place an unsustainable burden on millions of Kenyan households.

20. THAT towards this, and informed by a scientific projection of the impending rice shortage in the country, the Government through the 1st Respondent in consultation with the 2nd and 3rd Respondents amended Gazette Notice No. 10353

of 2025, published on the 28th July, 2025, by deleting the expression "31st December, 2025" and substituting therefor the expression 31st May, 2026.

21. THAT in particular, seasonal climate forecasts for the October—November—December, 2025 short rains indicated erratic and below-average rainfall, with probable negative effect into early 2026. These forecasts showed substantial deficits in rainfall across key agricultural and food-producing regions, including the Northeastern region, the Southeastern lowlands, Coastal areas, parts of the South Rift Valley, and western Arid and Semi-Arid Land (ASAL) counties. (Annexed herewith and marked "MK 1" is a copy of the Seasonal Weather Forecast Report (OND 2025). 7 IPage 7 22. THAT such rainfall deficits are projected to disrupt planting cycles, reduce crop yields, and adversely impact national food production, contributing further to food insecurity. These disruptions have resulted in localized shortages and price increases of staple foods, including rice, thereby exacerbating food insecurity and increasing the prevalence of acute malnutrition, particularly among children under five years, pregnant and lactating women, and other vulnerable populations. Counties most adversely affected by the prevailing drought conditions include Turkana, Wajir, Marsabit, Isiolo, Tana River, Nyeri, Laikipia, Kajiado, Kwale, Lamu, Mandera, Taita Taveta, Kitui and Makueni. 23. THAT as at November 2025, data indicated that approximately 1.8 million persons in ASAL counties were experiencing high levels of acute food insecurity, with projections increasing to approximately 2.1 million persons by January 2026 and The Contingency Emergency Response Action Plan projected food deficit at 3.5 million people. (Annexed herewith and marked "MK-2" is a copy of FAO--WFP Hunger Hotspots and Early Warnings on Acute Food Insecurity (page 31) and "MK-3" is a copy of the Contingency Emergency Response Action Plan (page 11, table 6) 24. THAT the Ministry of Agriculture and Livestock Development Contingency Emergency Response Action Plan 2025 projects a national rice deficit of approximately 7,624,460 50-kg bags (381,225 MT) by end of January 2026 as per the, table 2 page 5. (Annexed and marked "MK-4" is a copy of the Contingency Emergency Response Action Plan 2025) 25. THAT in any event, the amendment did not vary the quantities of rice to be imported, and did not in specific positive terms attempt to defeat the quantity restrictions as imposed by the Court on 19th August, 2025. 81 Page 8 26. THAT, I am advised by the State Counsel on record, which advice I verily believe to be sound in law, that in the event of a fixed time period within which to undertake a given activity is interfered with or clogged by a court intervention, then time is taken to stop running for the period of the court intervention, and that the time frame within which the activity was to be undertaken stands adjusted proportionately. 27. THAT in view of the foregoing, both the Cabinet Secretary, National Treasury and Economic Planning and myself, and all the officers serving in the two Ministries, acted in good faith in

causing an amendment to the impugned Gazette Notice, and therefore cannot be said to be in contempt of the Court Order issued on 19th August, 2025.

28. THAT what is deponed herein is true to the best of my knowledge, information and belief save for where sources of information and grounds of belief have been disclosed”

[6] For the 3<sup>rd</sup> Respondent, Grounds of Opposition dated 26/1/2026 were raised as follows:

**“3RD RESPONDENT’S GROUNDS OF OPPOSITION**

TAKE NOTICE that the 3rd Respondent herein shall oppose the Application dated 15th January 2026 on the following grounds:

1. THAT the Application is **misconceived, incompetent and bad in law.**
2. THAT the Application improperly invokes the contempt jurisdiction of this Honorable Court without **establishing the strict legal prerequisites** necessary for such invocation.
3. THAT the Application fails to meet the **heightened standard of proof applicable in contempt proceedings**, which are quasi criminal in nature and require proof higher than on a balance of probabilities.
4. THAT the Application constitutes **an abuse of the process** of this Honorable Court and should be dismissed with costs.”

[7] By Replying Affidavit of Caroline Njoroge sworn on **19/1/2026**, the alleged contemnors 4<sup>th</sup> and 7<sup>th</sup> Respondents raised the defence of lack of clear and unambiguous order, service and or knowledge of any order of the court stopping the acts complained of after the 31/12/2025, as follows:

**“4<sup>th</sup> & 7<sup>th</sup> RESPONDENTS’ REPLYING AFFIDAVIT**

(To the Notice of Motion Application dated 15th January 2026)

I, CAROLINE NJOROGE of Post office Box Number 48240-00100, Nairobi and a resident of Nairobi in the Republic of Kenya do hereby make oath and state as follows:

1. THAT I am an Officer of the 4th Respondent, appointed under Section 13 of the Kenya Revenue Authority Act, Cap 469, Laws of Kenya, currently serving in the Exemptions Unit within the Customs & Border Control Department.
2. THAT my primary daily duties include. as CI core function. reviewing exemption applications and the operational clearance of exempt goods entering the country.
3. THAT while the 4<sup>th</sup> and 7<sup>th</sup> Respondents are senior officers of the Kenya Revenue Authority. their roles are strategic and administrative. They are not involved in the operational functions at the borders within Customs & Border Control and do not personally verify applications for customs entry.
4. THAT consequently, as the officer directly responsible for these operational tasks. I am the person best placed to depose to the factual matters concerning the clearance process at issue in this application.

5. *THAT I am seized of the facts and attendant circumstances giving rise to these proceedings, having been duly authorized by the 4<sup>th</sup> & 7<sup>th</sup> Respondents to plead and aver on their behalf, and am hence competent to swear this Affidavit.*
6. *THAT I have read and had explained to me by the 4<sup>th</sup> & 7<sup>th</sup> Respondents' Advocate on record, the Applicants' Notice of Motion dated 15<sup>th</sup> January 2026, the Supporting Affidavit sworn by HON. JAMES KAMAU MURANGO, and the supporting annexures thereto, and having understood the same, I respond as follows:*
7. *THAT I am fully aware of the existence, terms, and scope of the conservatory orders issued by this Honourable Court on 19<sup>th</sup> August 2025, pertaining to the importation of rice. The legal implications and binding nature of these orders were duly explained to me by the Learned Counsel for the 4<sup>th</sup> Respondent, Mr. George Ochieng, Advocate.*
8. *THAT I am equally aware that the said Court orders were specifically issued in relation to the importation of duty-free rice authorized under Gazette Notice No. 10353 of 28<sup>th</sup> July 2025.*
9. *THAT my understanding, as guided by counsel, is that Gazette Notice No. 10353 created a limited import window for duty-free rice, which was set to expire on 31<sup>st</sup> December 2025. The Court's orders were thus framed within the context of this specific, time-bound statutory provision.*
10. *THAT based on this clear understanding, the 4<sup>th</sup> Respondent scrupulously complied with the Court's orders of 19<sup>th</sup> August 2025. Our compliance was absolute and in strict adherence to the directive; we permitted the importation of precisely 250,000 Metric Tonnes (MT) of duty-free rice as directed by the Court, and no more, under the authority of the said Gazette Notice No. 10353. The 4<sup>th</sup> Respondent's actions were fully aligned with the Court's intention to regulate the import quota under that specific legal framework.*
11. *THAT I was further made aware that the Cabinet Secretary National Treasury on 9<sup>th</sup> January 2025 issued another Gazette Notice No. 262 that allowed for the importation of duty free white milled rice until 31<sup>st</sup> May 2026.*
12. *THAT based on the clear lapse of the previous legal regime (Gazette Notice No. 10353 of 2025) and the promulgation of Gazette Notice No. 262 of 9<sup>th</sup> January 2026, it was the reasonable understanding of the 4<sup>th</sup> Respondent that this constituted a new, distinct, and valid statutory authorization.*
13. *THAT we understood this new Notice to be outside the scope and temporal jurisdiction of the Court Orders issued on 19<sup>th</sup> August 2025, which were expressly tied to the now-expired Notice of 28<sup>th</sup> July 2025.*
14. *THAT accordingly, and acting in line with our statutory mandate to facilitate lawful trade, the 4<sup>th</sup> Respondent received and processed applications for*

*clearance of duty-free rice presented under the authority of the new Gazette Notice.*

15. *THAT these applications were accompanied by all prerequisite documentation and approvals from the relevant agencies, including the Agriculture & Food Authority (the 3rd Respondent), as required by law for such clearance to be undertaken.*
16. *THAT it is crucial for this Honourable Court to appreciate the limited, verificatory role of the 4th Respondent in this process. The 4th and 7<sup>th</sup> Respondents do not initiate, grant, or generate the underlying approvals or policy for duty-free imports.*
17. *THAT our function is operational and procedural; we act as a gatekeeper to verify that presented cargo matches its documentation and that all necessary external approvals from mandated agencies are present and valid. Upon satisfactory verification, we are obligated by law to allow entry. The provision of the substantive approvals lies entirely with other designated state organs.*
18. *THAT I additionally and emphatically aver that the 4<sup>th</sup> Respondent holds no mandate or authority for the policy decision of quota allocation under the gazette notice, nor for the issuance of the Gazette Notice No. 262 of 9th January 2026.*
19. ***THAT*** *these are executive and regulatory functions vested in other state organs. The role of the 4th Respondent is purely administrative and operational; upon being presented with a consignment accompanied by all valid approvals and documents that complied with the procedure for exemption as prescribed by the new Gazette Notice, the 4th Respondent was legally obligated to effect its release. Its actions, therefore, constituted mere compliance with a valid statutory directive and the fulfilment of its facilitative mandate under the law.*
20. *THAT at all material times, the 4<sup>th</sup> & 7<sup>th</sup> Respondents acted in good faith, in strict accordance with the prevailing law as constituted by Gazette Notice No. 262 of 9th January 2026, and under a reasonable and bona fide belief that this new statutory instrument was legally operative and fell entirely outside the scope and purview of the spent Court Orders issued on 19th August 2025.*
21. *THAT the 4th Respondent actions were those of a public authority diligently implementing a fresh legal directive, not of an entity in defiance of judicial authority.*
22. *THAT I am aware that upon receipt of the Applicants' demand, the 4th Respondent, demonstrating its commitment to transparency and respect for due process, promptly caused its Advocates to respond via letter dated 15<sup>th</sup> January 2026.*

23. *THAT in that response, the Authority sought a brief period of two (2) days to conclusively verify the factual and legal position concerning the new Gazette Notice and the status of the previous orders, and to revert with a comprehensive official position. This request was a measure of procedural diligence, not an admission of fault. Annexed and marked CN-1 is a true copy of the letter from the 4<sup>h</sup> Respondent to the Applicants' counsel dated 15<sup>h</sup> January 2026.*
24. *THAT I am equally aware, that the Applicants unilaterally curtailed the 4<sup>th</sup> and 7<sup>th</sup> Respondent's opportunity to provide a formal explanation on the demand. Despite the Authority's prompt and good-faith request for a brief period to investigate and respond, the Applicants precipitously proceeded to file the present motion for contempt.*
25. *THAT this action deprived the Court of a complete procedural record and initiated these sanction proceedings without allowing for the administrative clarification that was actively being prepared as it would have explained the 4<sup>th</sup> and 7<sup>th</sup> Respondent position currently being advanced so that any action/complain! inquiry would have been directed to the right bodies.*
26. *THAT I unequivocally aver that immediately upon service and receipt of this Honourable Court's Orders issued on 16<sup>th</sup> January 2026, the Authority implemented a directive to cease and desist all processing.*
27. *THAT I confirm that since that date, the 4<sup>1h</sup> Respondent has not facilitated, processed, or exempted any further cargo of duty-free white milled rice thereby demonstrating its absolute and ongoing compliance with the said Order.*
28. **THAT it logically follows that the Order issued on 19<sup>th</sup> August 2025, being expressly anchored to the specific context and quota of Gazette Notice No. 10353 of 28<sup>th</sup> July 2025, lacked the clarity and unambiguity required to extend its prohibitive scope to a subsequent, distinct, and independently promulgated statutory instrument such as Gazette Notice No. 262 of 9<sup>th</sup> January 2026.**
29. *THAT I am informed by the 4<sup>'''</sup> and 7<sup>1h</sup> Respondent's counsel on record that for an order to ground a finding of contempt, its terms must be clear beyond doubt; here, the Order was silent on how to treat any future, replacement gazette notices, creating a legitimate area for interpretation.*
30. *THAT secondly, and fundamentally, there exists no evidence whatsoever of the wilful, deliberate, or intentional disregard for the Court's authority that is the essential cornerstone of contempt. The actions of the 4<sup>U'</sup> and 7<sup>1'</sup> Respondents were undertaken based on a reasonable, good-faith interpretation of a new legal landscape, following the lapse of the previous order's subject matter.*

31. *THAT the conduct of the 4<sup>th</sup> and 7<sup>th</sup> Respondent reflects a bona fide attempt to comply with what they believed to be the current law, not a conscious defiance of a judicial decree.*
32. *THAT accordingly it follows that the Notice of Motion fails to meet the threshold for the 4<sup>th</sup> & 7<sup>th</sup> Respondents to be found to be in contempt for any action in breach of this Court's conservatory orders issued on 19th August 2025.*
33. *THAT I swear this Affidavit in opposition to the Application dated 15th January, 2026 and pray that the same be dismissed with costs.*
34. *THAT what is deposed herein above is true and from my own personal knowledge, save as to matters of advice, information and belief, sources and grounds whereof have been set out."*

[8] The 4<sup>th</sup> and 7<sup>th</sup> Respondents in addition filed written submissions dated 19/1/2026 in opposition of the application as follows:

*"THE 4TH & 7TH RESPONDENT'S WRITTEN SUBMISSIONS (In opposition to the Notice of Motion dated 15th January 2026)*

*May it please Your Lordship,*

*A. THE INTRODUCTION*

*1. These submissions are in opposition to the Petitioners' Notice of Motion Application dated 15th January 2026 filed under certificate of urgency seeking to cite the 4<sup>th</sup> & 7<sup>th</sup> Respondents herein and supported by the Affidavit of Hon. James Kamau Murango sworn on even date.*

*2. The 4<sup>th</sup> & 7<sup>th</sup> Respondents in response to the motion, have filed a Replying Affidavit dated 19th January 2026 sworn by Ms. Caroline Njoroge for which we shall rely on in these written submissions.*

*B. THE BACKGROUND TO THE CASE*

*3. The present Application is seeking inter alia to cite and punish the Commissioner General of KRA Mr. Humphrey Wattanga, the Commissioner of Customs & Border Control Dr. Lilian Nyawanda (the 7<sup>th</sup> & 4<sup>th</sup> Respondents respectively) and any other customs persons involved in the processing, certification, clearance and facilitation of imports pursuant to the Gazette Notice No. 262 of 2026 for contempt of and/or for disobeying Orders of this Honourable Court issued vide the Ruling delivered on 19th August 2025.*

*4. In the said ruling delivered on 19th August 2025, this Honourable Court issued amongst other orders, the following order:-*

*"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.*

*5. It is the Petitioners' case that the Kenya Revenue Authority, through the Commissioner General & the Commissioner of Customs & Border Control and*

other customs officers facilitated the certification, approval and clearance of duty free rice imports in line with the gazette notice no. 262 of 2026 issued on 9th January 2026 in contradiction to the Court's ruling on 15th August 2025.

### C. THE ISSUES FOR DETERMINATION

6. The Superior Court in **Kenya Human Rights Commission v Attorney General & another** stated as follows: contempt is the wilful disobedience or disregard of a court orders, judgments decrees or directions. It is therefore the offence of being disobedient or discourteous towards courts and their officers in the form of behavior that opposes or defies the authority, justice and dignity of the court. Contempt manifests itself in the willful and intentional disregard of or disrespect for the authority of the courts, a behavior that is regarded illegal because it does not obey or respect the authority of the courts and their processes and tends to lower the dignity of the courts.

7. From the foregoing, the Respondent is of the considered view that the issues which requires this Honorable Court to exercise its mind is; **WHETHER THE RESPONDENT ACTION WAS A DELIBERATE DISOBEDIENCE OF THE ORDER OF 19TH AUGUST 2025;**

8. The Applicant seeks that this Honourable Court finds that the 4th, 7th Respondent and any other customs officer to be found in contempt for breaching the orders of 19th August 2025.

9. The superior Court has set the ingredients of what constitute contempt in, **Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] KEHC 9233 (KLR)**, this Honourable Court stated that:

**"40. It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.** Perhaps the most comprehensive of the elements of civil contempt was stated by the learned authors of the book *Contempt in Modern New Zealand* who succinctly stated:- **"There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in civil contempt cases which is higher than civil cases) that:- (a) the terms of the order (or injunction or undertaking) were clear and unambiguous and were binding on the defendant;**

**(b) the defendant had knowledge of or proper notice of the terms of the order; (c) the defendant has acted in breach of the terms of the order; and (d) the defendant's conduct was deliberate.”**

10. Similarly, in the case of *Sheila Cassat Issenberg & another v Anthony Macharia Kinyanjui* [2021] eKLR. The Court held as follows:-

a. Paragraph 47 – For a party to be cited for contempt, he must have violated and or disobeyed an order that was directed to him;

b. Paragraph 49 –The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors;

c. Paragraph 51 – Contempt of court is in the nature of criminal proceedings and, therefore, proof of a case against a contemnor is higher than that of balance of probability. This is because liberty of the subject is usually at stake and the applicant must prove willful and deliberate disobedience of the court order, if he were to succeed;

d. Paragraph 52 – Due to the gravity of consequences that ordinarily flow from contempt proceedings, it is proper that the order be served and the person cited for contempt should have had personal knowledge of that order;

e. Paragraph 54 – ....in order to amount to “civil contempt”, disobedience must be willful. If disobedience is based on the interpretation of court’s order, notification and other relevant documents, it does not amount to willful disobedience;

f. Paragraph 57 – In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and willful violation of the order of the court, even to constitute a civil contempt;

g. Paragraph 58 – The emphasis as shown in the above cases is that there must be “willful and deliberate disobedience of the court order.” There cannot be deliberate and willful disobedience, unless the contemnor had knowledge of the existence of that order. And because contempt is of a criminal nature, it is always important that breach of the order be proved important that breach of the order be proved to the required standard, first, that the contemnor was aware of the order having been served or having personal knowledge of it, and second, that he deliberately and willfully disobeyed it;

h. Paragraph 59 – ....it must be proved that one had actually disobeyed the court order before being - cited to contempt;

i. Paragraph 60 – In order for an applicant to succeed in civil contempt proceedings, the applicant has to prove the terms of the order, knowledge of

the terms by the Respondent, failure by the respondent to comply with the terms of the order;

j. Paragraph 61 – The three element of civil contempt of court which must be established to the satisfaction of the court are

k. The order alleged to have been breached “must state clearly and unequivocally what should and should not be done.” This ensures that a party will not be found in contempt where an order is unclear;

l. The party alleged to have breached the order must have had actual knowledge of it;

m. The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels;

n. Paragraph 64 – The power to punish for contempt is a discretionary one and should be used sparingly. The court’s contempt power should be used cautiously and with great restraint. It is an enforcement power of last resort rather than first resort.

11. It follows that the Court is called to examine whether the Applicant has demonstrated (i) the terms of the order, (ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order and (iv) whether the failure is deliberate and not explainable; Where the terms clear and unambiguous?

12. On the first issue of the terms of Order, it is not in dispute that the terms of the Order was clear as far as its stayed the implementation of the Gazette Notice No. 10353 of 2025, however it is not clear whether the terms extended to any future gazette notices issued as the case was with the Gazette Notice No. 262 of 9th January 2026.

**13. Based on the clear lapse of the previous legal regime (Gazette Notice No. 10353 of 2025) and the promulgation of Gazette Notice No. 262 of 9th January 2026, it was the reasonable understanding of the 4th Respondent and the Customs officers that this constituted a new, distinct, and valid statutory authorization.**

**14. The 4th Respondent understood this new Notice to be outside the scope and temporal jurisdiction of the Court Orders issued on 19th August 2025, which were expressly tied to the now-expired Notice of 28th July 2025.**

**15. It therefore cannot be said that there was clarity in the orders as far as the handling of consignments under Gazette Notice No. 262 of 9th January 2026 was concerned. In any event upon, the Petitioner’s raising concern, no import was cleared and also the 4th Respondent and Customs have fully complied with the orders issued by this Court on 16th January 2026 and no exemptions have been processed. The Application therefore fails on this limb.**

16. So did the alleged contemnors acted willfully in a manner that flouted the Court Order?

17. Based on the above Courts' decision, it is incumbent upon the Petitioners to prove that KRA acted in deliberate and willful disobedience of this Honourable Court's order.

18. The Black's Law dictionary defines the term 'Deliberate' as: Well advised; carefully considered; not sudden or rash; circumspect; slow in determining. **McClendon v. Louisiana Cent. Lumber Co.**, 17 La.App. 246, 135 So. 754, 756. Willful rather than merely intentional. **Cole v. List & Weatherly Const. Co.**, La.App., 156 So. 88, 90. Formed, arrived at, or determined upon as a result of careful thought and weighing of considerations, as a deliberate judgment or plan; carried on coolly and steadily, especially according to a preconceived design; given to weighing facts and arguments with a view to a choice or decision; careful in considering the consequences of a step; slow in action; unhurried; characterized by reflection; dispassionate; not rash.

19. In the present case, the 4th, 7th Respondent and Customs have explained that the circumstance leading to the release and stated as follows. In the Response by Carol Njoroge its has been explained that there exists no evidence whatsoever of the willful, deliberate, or intentional disregard for the Court's authority that is the essential cornerstone of contempt. The actions of the 4th and 7th Respondents or any other officer of customs were undertaken based on a reasonable, good-faith interpretation of a new legal landscape, following the lapse of the previous order's subject matter.

**20. The conduct of the 4th and 7th Respondent reflects a bona fide attempt to comply with what they believed to be the current law, not a conscious defiance of a judicial decree.**

21. In response, the Authority submits that at all material times, it acted in accordance of the law and in strict & absolute compliance of the Court orders of 15th August 2025 which stayed the implementation of the gazette notice no. 10353 in the limited window up to the 31st of December 2025.

**22. The Authority further submits that it was on the strength of a fresh gazette notice no. 262 of 2026, issued on 9th January 2026 that it facilitated the fresh importation of duty free white milled rice which was a separate, distinct and valid authorization.**

**23. It is the Authority's position that the new gazette notice no 262 of 2026 was not within the scope of the orders of the Court and thus any action by the Kenya Revenue Authority in interpretation of the Court orders do not amount to contempt as alleged by the Petitioners.**

24. In any event, the Authority through its officers were statute bound by the provisions of the KRA Act and EACCMA to facilitate the clearance of any imports

including the rice in question upon the receipt of the requisite clearances and approvals amongst which was the clearance by the Agriculture & Food Authority.

25. Contrary to the averments by the Petitioners, the role of the Authority is very minimal, as it is only limited to procedural and operational to the extent of verifying approvals and documentation. The Authority submits that it is not responsible for the issuance of the impugned gazette notice and neither is it responsible for the quota allocations for the imported rice.

26. It is thus KRA submissions that it acted under the belief that the gazette notice was outside the scope of the Court's orders of 15th August 2025, and as soon as it became aware of the new orders issued by this Court on 16th January 2026, it halted any clearance of the imported rice in line with the gazette no. 262 of 2026.

27. The Authority submits that it acted in good faith at all material times, even responding to the petitioners' demand through their counsels, however the present motion was filed without any further reference to KRA who had undertaken in good faith to respond to the issues raised.

28. The upshot of the foregoing is that the motion is unmeritorious as KRA did not act in willful and deliberate defiance of the Court's orders but rather in exercising its statutory mandate under the power of fresh legal and valid directive. The Petitioners in their motion have not adduced any evidence to the contrary.

29. The Authority additionally submits that the orders of 15th August 2025 were silent on the interpretation of any future legal notices with regard to the same subject matter, and as such the intended contemnors cannot be held in contempt of an order that was not unequivocally clear.

30. It is thus KRA submission that the Petitioners have failed to discharge their burden of proof in these contempt proceedings, which burden is higher than that of a regular civil trial being a balance of probability.

31. The Application seeking to punish the 4th & 7th Respondents for disobeying the orders of the Court of 15th August 2025 is thus without merit and should be dismissed with costs.

#### D. THE CONCLUSION

32. In conclusion, we submit that the Petitioners have failed to demonstrate any specific actions taken by the Commissioner of Customs & Border Control and the Commissioner General, KRA, 4th & 7th Respondents respectively, **amounted to deliberate and willful disobedience of the Court orders of 15th August 2025.**

**33. Further, the Petitioners have failed to demonstrate that the terms of the order of 15th August 2025 were applicable beyond 31st December 2025, which was the specific time period for the orders."**

Application for Joinder of Interested Party and subsequent withdrawal

- [9] An application for joinder of the Interested Party dated was allowed by Consent of the parties upon and application dated 18/1/2026 in it was also sought an order ***“to issue interim directions and/or interim orders pending the hearing and determination of this Application, including directions preserving the status quo in respect of the Applicant's consignment of rice currently detained at the Port of Mombasa, so as to avert irreparable prejudice to the Intended Interested Party/Applicant including but not limited to halting demurrage and port storage accruals, pending the Applicant's joinder and participation.”***
- [10] The application, which did not contain any prayers for the release of the rice imported under the Gazette Notice No. 262 was subsequently withdrawn before the *inter partes* hearing of the application for contempt of Court, subject of this ruling, by a Notice dated 20/1/2026 expressed in terms that ***“NJEMA COMMODITIES LIMITED, the Interested Party herein has wholly withdrawn from the present Petition with no orders as to costs.”***

### ***Oral arguments***

- [11] The application was heard by way of oral submissions before the Court and ruling was reserved. The submissions of Counsel verbatim are set out below:

#### ***“Mr. Muge for the 1<sup>st</sup> Substituted Petitioner:***

*[After setting out the application before the Court, application of 18/1/2026 withdrawn by notice of withdrawal of 2026, the affidavits in support and replying affidavits of the respondents together with written submissions of the 4 & 7 respondents] submitted as follows:*

*Application for contempt against 1<sup>st</sup>, 4<sup>th</sup> 5<sup>th</sup> and other senior officers involved in processing of imports. Prayer no. 8 (3) of the Notice of Motion Ms. Caroline Njoroige admitted to the contempt of Court.*

*The 1<sup>st</sup> 4<sup>th</sup> & 7<sup>th</sup> respondents have all failed to file any responses. Instead, CS Kagwe has responded on behalf of the Respondents. Admissions in Affidavits of Caroline and CS Kagwe, the application for contempt is undefended. The orders exist and they were disobeyed and contempt is proved. Summons should issue to show cause why they should not be punished for they have refused to respect.*

*Gazette Notice 10353 had become “ward of Court”. Paragraph 20 of the Ruling. The orders were clear and unambiguous.*

*The Gazette was subject to judicial control. Only a day after the ruling, the 1<sup>st</sup> respondent executed Gazette Notice on 23/12/2025 extending the instrument to 31/5/2026. No leave of court was sought from the court. It was deliberate defiance of judicial authority. Gazette Notice was operationalised immediately; rice was imported immediately with two vessels arriving with rice prohibited. On 16/1/2026, Mr. Kaumba sought to withdraw Gazette 10353 as it had expired. They did not disclose existence of the other Gazette Notice executed 2 weeks earlier. It is a concealment of facts.*

*Contempt of Court proceedings. KHR v AG (2010) eKLR on wilful disregard of the Court. The disobedience is wilful and intentional lowers the dignity of the Court. It is wilful and intentional disregard of the court to lower the dignity of the Court. The elements of contempt of Court as observed in Samwel Mweru v. NLC (2020) KEHC:*

2. *The terms of the orders are clear and unambiguous;*
3. *Defendant had knowledge;*
4. *Defendant acted in breach of the terms of the order;*
5. *Defendant's conduct was deliberate.*

*The elements are demonstrated in this case.*

*The orders breached were issued on 19/8/2025 against particular officers, CSs KRA etc who participated. The respondents in the application were the officials who were bound by the orders. The officers who work in the offices had knowledge of the orders. It is more than constructive knowledge. It is admitted at paragraph 7 of the Replying affidavit. The orders were binding and explained to Counsel Ochieng. The Counsel advised Ms. Njoroge on instructions of the 4<sup>th</sup> and 7<sup>th</sup> Respondents and had knowledge of the orders.*

*CS Mbadi 1<sup>st</sup> respondent executed gazette Notice one day after the Ruling of 22/12/2025. Government Ministries act on advice. Gazette Notice was executed one day after the Ruling. The CS knew of the Ruling.*

*Paragraph 5 of the Mr. Njoroge that she was authorised by 4<sup>th</sup> and 7<sup>th</sup> Respondents to respond on their behalf. In Nyakundi v. Makundi 2024 KLR knowledge of instructions showing that he had knowledge.*

*Mr. Ochieng's Submissions do not claim lack of knowledge or service. They try to make excuses for disobeying. There were no personal defences filed by the alleged contemnors.*

*Contempt is quasi-criminal. See mechanic Kinyanjui case (2021) eKLR that liberty of the subject is at stake and wilful disobedience must be proved. In defences, there must be formal testimony as wilfulness is a personal matter. Top the fact that CS George Mbadi executed a gazette Notice, there is nothing in defence. CS Kagwe is one who swears an affidavit in response to the application for contempt. It alleges good faith. It is a response by proxy. State of mind cannot be vouched for by another person.*

#### RULING of 22/12/2025

*The state of mind of CS Mbadi cannot be testified by another person. He has not sworn an Affidavit as to his own decision. He gets a colleague to swear an affidavit. Dr. Nyawanda and Dr. Wattanga have also not filed affidavits in response. It is a subordinate officer who swears affidavit on instructions of the two. She cannot swear on what they knew or did in the matter. A subordinate cannot testify to a superior's state of mind. The Submissions by 4 & 7 respondents are submissions on*

good faith and that KRA has a minimal role. There is no citation of authority. KRA is the authority but the persons who are responsible may be punished. Institutional good faith may not be individual good faith. Mr. Wattanga is the person who may have good faith. The mental state is what is culpatory. Paragraph 14 of the affidavit of Caroline Njoroge on the new Gazette Notice. The KRA Authority contravened the order of 19/8/2025.

**Burden shifts to the Contemnor**

In **Samuel Mweru** case, it was held that upon proof of the requirements, the presence of bad faith would be inferred but may be rebutted on evidence. In the absence of evidence all the prerequisites of the offence of contempt of court will have been proved. The respondent have not rebutted the evidence of contempt of court.

In **R v. County Government of Bungoma** (2023) eKLR, that by justification of non-compliance, the Court finding that the knowledge of existence of the order is proved. In **Odera v. Odoyo** the elements to be proved of clear order, breach of order, circumstances proved deliberate defiance and there was no rebuttal evidence.

The advocates for the Respondents in this Petition concealed Gazette Notice had been operationalised and had been executed two weeks earlier.

**Obedience of court orders is mandatory – Shimmers’ case (2015) eKLR**

The Court should find the respondent to be in contempt including Ms. Njoroge. We pray for Summons for the Respondents to attend Court and show cause why they should not be punished. We pray for extension of the Court order.

The 4<sup>th</sup> and 7<sup>th</sup> respondent should be directed to file within 48n hours; whether the products were released on whose authority and when they were released. Judicial authority should be vindicated.

**Mr. Musyoki for the 2<sup>nd</sup> Substituted Petitioner:**

I support the submissions of Mr. Muge for the 1<sup>st</sup> Substituted Petitioner. I add that we are in court because of a conspiracy on the part of the respondents. On the 16/12/2025 and 22/12/2025 court was intimated of the nullity of the Gazette Notice after 31/12/2025. The Court explained its order exist post December 31. The Court was explicit as to its orders: No authority to import above the 250,000MT.

The directions of the Court on 22/12/2025 is a court order.

**Conspiracy:** The 1<sup>st</sup> Respondent and 2<sup>nd</sup> respondent have conspired to disobey the Court order and directions immediately after the Court gave directions by publishing of Gazette Notice extending the earlier Gazette Notice. The effect is to allow the 3<sup>rd</sup> respondent to authorize letters of importation duty-free. The Rice has docked and the 4<sup>th</sup> and 7<sup>th</sup> Respondents pursuant to allowance by 3<sup>rd</sup> respondent issued duty free importation of the Rice. So that KRA does not issue demand notice.

*Importers without letters by the 3<sup>rd</sup> Respondent cannot issue clearance for duty free. The demand notes by KRA have not been issued against the importers. By the failure to issue normal demand notes by the 4<sup>th</sup> and 7<sup>th</sup> respondents, duty-free rice was discharged from the vessels and was able to access the Kenya market. As regards the Rice which has been imported duty free against the court order of 22/12/2025, the Court may cure the contempt by directing demand notes to be issued against eh individuals who imported the rice duty-free.*

*We pray that the Notice of Motion dared 15/1/2026 by the 1<sup>st</sup> Substituted Petitioner be allowed as eh case is for the benefit of the farmers of the Nation.*

**Mr. Kaumba for the 1, 2, 5 & 6 Respondents:**

*The application is opposed. There is a replying Affidavit of CS Agriculture of 27/1/2026.*

***Preliminary issues***

*CS Mbadi's failure to swear affidavit in his own name is not an admission. There is no admission. The title to the Replying affidavit is entitled 1, 2, 5 & 6 Respondents. CS Agriculture swears the affidavit on behalf of himself and his treasury colleague. See paragraph 28 on information and belief sources where of are disclosed. It is a representative affidavit to represent the state of affairs leading to the issuance of the impugned Gazette Notice based on objective facts on the ground by 3<sup>rd</sup> respondent AFA who presented information for issuance of the gazette Notice.*

***Court's direction of 22/12/2025***

*See Gilgil Telcoms Industries Limited & another v Nderitu & another (Civil Appeal (Application) 147 of 2013 & Civil Appeal 137 of 2013 (Consolidated)) [2025] KECA 1041 (KLR) (5 June 2025) that judgment should not be interpreted mechanically. Context of the case – Counsel for KRA had argued that the Gazette Notice was expiring, that the Petition had been overtaken by events. I differed with Counsel and I said that since the timelines hold up to the end of the petition. It is was not an order of the Court. It was directions to clarify the position taken by Counsel for the KRA. There was no positive directions of the Court.*

***Prayers sought by the applicant***

*Whether the Respondents are in breach or in contempt of court of Order of 19/8/2025.*

*Paragraphs 5 of the Application of 15/1/2026. Parties are bound by their pleadings filed, without specific prayer for amendment.*

***Were the respondents in contempt of court of the Order of 19/8/2025?***

*It is trite that for contempt to be established (a) the terms of the order must be clear (b) specific knowledge of the order(c) breach and (d) wilful breach. Orders of 19/8/2025 were clear to a limit of 250,000MT for the period ending 31/10/2025. Respondent to file reports by 3/11/2025. By the Minister extending the terms to May*

2026, did he disobey the first part of the order on 250,000MT? No. Did the CS interfere with directions to file reports? NO. There is no contempt.

Knowledge of the terms of the order. Constructive notice of order of 22/12/2025. It was not an order. Respondents were not in breach of an order.

Admission by Counsel for the applicant that there was no personal service on the Respondents. Contempt is quasi-criminal and there must be clear personal service. The applicant did not even attempt service. No failure to comply with order of 19/8/2025. The act of extension of the term of the Gazette Notice is not in contempt of Court. Gazette Notice remained alive, there was no harm in the Cabinet Secretary extending the terms of the Gazette Notice.

Order of 19/8/2025 did not direct:

1. No permanent injunction/prohibition on the Minister to exercise obligation under article 21 to observe, promote and fulfil fundamental rights.
2. No explicit prohibition to issuance of amended gazette Notice. It was specific in quantity. Replying Affidavit observes that the CS did stop exercise of the obligation under Article 21. Based on advice, there was urgent need to prepare the country in terms of Article 43. It is a state obligation.

Paragraph 23 of the Replying Affidavit of November 2025 high level anticipated shortage. Annexure MK 2-3. Applicants mistook annexure as there was no personal service. There was no prohibitory order from exercising the state responsibility. There is no case of disobedience of order of 19/8/2025.

**Mr. Theuri, SC for the 3<sup>rd</sup> Respondent:**

I associate with submissions of Counsel for the 1, 2, 5 and 6 respondents. I rely on Grounds of Opposition to the application filed.

**Grounds 1 &4 - Misconceived and incompetent**

A decision of the Court is the ratio decidendi and not the obiter dicta. Application dated 15/1/2026 is misconceived for the reason that it is based on obiter dicta of the Court. The application is based on the Ruling of 22/12/2025. The application is based on the Ruling on the issue of substitution of the petitioner after a Notice of Withdrawal of the petition. The decision of the Court was to enjoin the Substituted petitioners. During the arguments on Notice of Withdrawal, there was a submission that the Gazette Notice was expiring on 31/12/2025. The application is based on a misunderstanding of the orders. The orders of the Court are at paragraph 51 of the Ruling. None of the 8 orders have been disobeyed by any of the parties. Submissions by Mr. Muge for the Applicants had many assertions, suppositions and presumptions against the respondents. The submission imputed improper motives on the Respondents based on matters not captured in their replying affidavits. The application by the Petitioners is based on section 5 of the Judicature Ac, which was

deleted when the Contempt of Court Act No. 46 was enacted. The Contempt of Court Act was subsequently declared unconstitutional. It is wrong procedure to approach the Court under section 5. Procedure if the handmaiden of justice. If the application sought to use the law as it obtains in England, he should have complied with the procedure in 1981 Contempt of Court Act of England, which is the law obtaining.

**Grounds 2 & 3 of the Grounds of Opposition**

Given the fact that contempt of court is quasi -criminal, it is necessary that the correct procedure is followed by the parties who seek to visit the grave consequences on the Respondents. The threshold of contempt of court application has not been met especially on the terms of the order, the terms of the orders, notice and breach of the orders. The orders of 22/12/2025 are clear and unambiguous. The application has not met the high threshold of the nature of contempt of court proceedings. The standard is higher than the usual standard in civil proceedings. We pray for the dismissal of the application.

**Mr. Ochieng for the 4<sup>th</sup> and 7<sup>th</sup> Respondent:**

Service of the Application of 15/1/2026. Replying Affidavit of Caroline Njoroge. The application was against named officers. It was based on action by the Commissioner General of clearance in official capacity and not personal capacity. It was considered that any officer could swear the Replying Affidavit. It was agreed that the person who is involved in the action for Gazette Notice the complaint had been raised. In the application, there was no action committed by the Commissioner General 4<sup>th</sup> and 7<sup>th</sup> Respondent. The issue was on customs officers. Based on that there was no action before the court undertaken by the 4<sup>th</sup> and 7<sup>th</sup> Respondents for which a complaint was raised.

**Constructive notice on the Commissioner**

That the officers cannot act without instructions. There is nothing placed before the Court where they acted. It was proper for Caroline Njoroge to swear the Affidavit. The 4<sup>th</sup> respondent was not present in court when directions were issued. There was no representation of 4<sup>th</sup> respondent and the 7<sup>th</sup> Respondnet had not been enjoined to the proceedings. Ruling of 22/12/2025 – the Customs officer was not aware of the Ruling of 22/12/2025 [**Court:** It is confirmed that Ruling was placed on CTS on 22/12/2025 at 4:05pm, and Counsel abandoned this submission]. Ruling was uploaded in the CTS. The application on 6/1/2026 that eh gazette Notice had been overtaken by events. Knowledge of the order is not in question. Civil Procedure Rules of England are the applicable Rules. Rules 81.8 – service of the order is important. There is no affidavit of service of any order of 22/12/2025 on the 4<sup>th</sup> or 7<sup>th</sup> Respondents and there is no application for dispensation of personal service. There is no personal service on the persons sought to be committed. Rule 81.8 of the Rules

– prominent warning that disobedience will be penalised. There is no penal notice on the order of the Court. Contempt cannot be invoked.

**Ingredients of Contempt of Court –**

Where there is breach, wilful and deliberate defiance. Replying affidavit of Caroline Njoroge understands that the order of 19/8/2025 was specific to the Gazette Notice 10353 and did not affect any other Gazette Notice. The Court order was made under the Gazette Notice. There is no evidence that the Respondents have breached the order of 19/8/2025. There is no evidence as to the volumes cleared in excess of the 250,000MT. The 4<sup>th</sup> and 7<sup>th</sup> Respondents submit that they were implementing the new gazette Notice. There is no way for the 4<sup>th</sup> respondent to assume the order affected all future Gazette Notices. There is an interpretative question of the order. KRA is clearly a gatekeeper. It does not take part in the giving of Gazette Notice or allocation of quotes. There is no clearance contrary to the Court order. The new clearance which was approved was based on the new gazette.

Application of 15/1/2026. KRA asked for 2 days to consider the fact of any order. The application was filed before we could check on the matter. I refer to Jackson Omwenga case 2014) eKLR; Nyamongo & Anor v. KPTC (1994) KLR. It is clear that the actions of the Respondents were reasonable and there is no action taken in contempt of Court. I refer to the 4 & 7 Respondents submissions and pray that the application be dismissed.”

Mr. Muge then made submissions in reply.

**Issues**

[12] From the Application and responses thereto and the Submissions made by Counsel before the Court, three issues arise for determination namely:

1. Whether the application for contempt is competent.
2. Whether principles for the grant of application for contempt have been established.
3. Whether the reliefs sought may be granted in this application.

*Procedure for application for contempt of Court*

[13] There are binding authorities of Court (and the Court respectfully notes the decisions of persuasive authority cited in the argument of Counsel) on the questions of procedure and substantive law on Contempt of Court. The Supreme Court Petition No. 13 of 2019 **Githiga & 5 Others v Kiru Tea Factory Company Ltd** [2023] KESC 41 has guided that upon the invalidation of the Contempt of Court Act 2016 the courts may fall back on the section 5 of the Judicature Act as follows:

“We note that the Contempt of Court Act having been declared unconstitutional in **Kenya Human Rights Commission v Attorney General & Another** [2018] eKLR on 9th November 2018 the instructive provision remains Section 5 (1) of the

Judicature Act which grants the High Court and the Court of Appeal the power to punish for contempt. It provides:

“5. (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of Subordinate Courts.”

See also **Akoyo v Permanent Secretary, State Department for Devolution; Attorney General (Interested Party)** (Application 440 of 2018) [2023] KEHC 23189 (KLR) (Judicial Review) (6 October 2023) (Ruling).

[14] Commenting on the application of section 5 of the Judicature Act as the procedure law on contempt of court, the Court of Appeal in **Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 others** [2014] KECA 840 (KLR) held:

*“Therefore, today the only statutory basis of contempt of court law in so far as the Court of Appeal and the High Court are concerned is **Section 5 of the Judicature Act**. In addition, Section 63 (c) of the Civil Procedure Act provides that a disobedience of an order of temporary injunction will attract punishment in the form of imprisonment or attachment and sale of the contemnor’s property. Section 28 (4) of the Supreme Court Act vests in that court the power to punish for contempt. Of relevance to the matter at hand is Section 5 (1) of the Judicature Act ....”*

[15] In following the procedure in the High Court of Justice in England in accordance with section 5 of the Judicature Act, Court of Appeal in **Shimmers Plaza Limited v National Bank of Kenya Limited** [2015] KECA 945 (KLR), discussed the applicable procedure law as follows:

*“This provision subjects the proceedings of contempt of court in Kenya to the current law governing the High Court of Justice in England. The law governing the justices in England previously was subject to common law and **Order 52 of the Supreme Court Rules**. However, England enacted the **Contempt of Court Act of 1981** which supplements its common law contempt of court offences. The prevailing law of contempt in England is now found in the **Contempt of Court Act of 1981** and **Part 81** of the procedure in the **Civil Procedure (Amendment No. 2) Rules, 2012** that replaced **Order 52 of the Supreme Court Rules** for contempt proceedings in the Supreme Court of England.*

*This Court has interpreted and applied the said law locally in many important decisions. In the recent Wambora case (supra), the court had opportunity to interpret and apply **Section 5 of the Judicature Act** and made the following observation:-*

***“It is imperative in considering this issue to take into account the applicable law and the governing principles in contempt proceedings. As correctly pointed out by this Court in Christine Wangari Gachege -vs- Elizabeth Wanjiru Evans & 11 Others, - Civil Application No. 233 of 2007 the statutory basis of contempt of***

court in so far as the Court of Appeal and the High Court are concerned is Section 5 of the Judicature Act and Section 63(c) of the Civil Procedure Act. Of relevance to this case is Section 5 of the Judicature Act which provides:-

*“5 (1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of subordinate courts.*

*(2) An order of the High Court made by way of punishment for contempt of court shall be appealable as if it were a conviction and sentence made in exercise of the original criminal jurisdiction of the High Court.” (Emphasis added)*

*Based on the foregoing provision, the applicable law in contempt proceedings in Kenya is the law applicable in the High Court of Justice in England at the time the application for contempt was filed.”*

*Earlier on, this Court in Christine Wangari Gachege -vs- Elizabeth Wanjiru Evans & 11 Others, (supra) when dealing with the same issue concerning the applicability of English Law of contempt in our Courts had this to say:*

*“Following the implementation of the famous Lord Woolf's Access to Justice Report, 1996', the Rules of the Supreme Court of England are gradually being replaced with the Civil Procedure Rules, 1999. Recently on 1st October, 2012 the Civil Procedure (Amendment No. 2) Rules, 2012 came into force and part 81 thereof effectively replaced Order 52 of the Rules of the Supreme Court of England in its entirety.” (Emphasis by underline)*

*Consequently, a careful consideration must be had to the provisions of the Contempt of Court Act of 1981 Act and PART 81 of Civil Procedure (Amendment No. 2) Rules, 2012 with regard to contempt proceedings in Kenya. The Contempt of Court Act of 1981 of England is described as:*

*"An Act to amend the law relating to contempt of court and related matters."*

*The scope of the said PART 81 as provided under Rule 81.1 is limited to contempt of court, penal, contempt and disciplinary provisions of the County Courts Act 1984, and allows a person to be;*

*“(a) guilty of contempt of court; or*

*(b) punishable by virtue of any enactment as if that person had been guilty of contempt of the High Court, to pay a fine or to give security for good behaviour, as it applies in relation to an order of committal.”*

*This also applies to the High Court and Court of Appeal.*

**PART 81 (Applications and Proceedings in Relation to Contempt of Court)** provides for four different natures or forms of violations under contempt of court, that is,

- a. Committal for “breach of a judgment, order or undertaking to do or abstain from doing an act” provided for under Rule 81.4.
- b. Committal for “interference with the due administration of justice” (applicable only in criminal proceedings) provided for under Rule 81.11.
- c. Committal for contempt “in the face of the court”, provided for under Rule 81.16.
- d. Committal for “making false statement of truth or disclosure statement.” provided for under Rule 81.17.

**Of the four forms of violations, only the contempt for “breach of a judgment, order or undertaking to do or abstain from doing an act” has an outlined procedure of service of the order and the penal notice under rule 81.5, 81.6, 81.7 and 81.8.**

According to rule 81.9 all judgments or orders to do or not do an act may not be enforced in contempt proceedings unless a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets, has been prominently displayed, on the front of the copy of the judgment or order served. Consequently, the court order and penal notice must be served simultaneously. The terms of the rule are set out below:

**“81.9 (1) Subject to paragraph (2), a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets.**

**(2) The following may be enforced under rule 81.4 notwithstanding that they do not contain the warning described in paragraph (1)—**

**(a) an undertaking to do or not do an act which is contained in a judgment or order; and**

**(b) an incoming protection measure.**

**(3) In this rule, “incoming protection measure” has the meaning given to it in rule 74.34(1).**

**(Paragraphs 2.1 to 2.4 of the Practice Direction supplementing this Part and form N117 contain provisions about penal notices and warnings in relation to undertakings.)”**

Rule 81.5 governs service of the judgment and or order which must carry a penal notice. Service must be carried out before the expiry of the period to perform an act. Rule 81.6 provides that service must be done personally but this may be dispensed with by the court under rule 81.8. The full text of Rule 81.5 provides as follows:-

**“(1) Unless the court dispenses with service under rule 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not do the act in question, and in the case of a judgment or order requiring a person to do an act –**

- a. **the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;**
  - b. **where the time for doing the act has been varied by a subsequent order or agreement under rule 2.11, a copy of that subsequent order or agreement has also been served; and**
  - c. **Where the judgment or order was made under rule 81.4(5), or was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.**
2. **Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.**
  3. **Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.6 or 81.7, or in accordance with an order for alternative service made under rule 81.8(2) (b).”**

As a general rule under rule 81.6 all service under this breach should be personal service unless the court dispenses with the personal service under rule 81.8. Rule 81.6 provides as follows.

**“81.6 subject to rules 81.7 and 81.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.”**

**Rule 81.8 subjects the dispensation of service of copies of a judgment or order to the issue of notice of the judgment and the courts discretion. It provides that:-**

**“(1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it – by being present when the judgment or order was given or made; or by being notified of its terms by telephone, email or otherwise.**

**(2) In the case of any judgment or order the court may –**

- (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or**

(b) *make an order in respect of service by an alternative method or at an alternative place.*”

[16] As regards service of the Judgment or order on the respondent, the Court said:

*“The issue of dispensation of service under Rule 81.8 has been divided into two parts, that is,*

- ii. *with regard to breach of a judgment or order undertaking to prohibit a person from doing an act on one part and*
- ii. *the breach of any judgment or order, on the other part.*

***As per rule 81.8, dispensation of service on the basis of notice or knowledge of the terms of an order will only apply to a court judgment or order requiring a person not to do an act, that is, a prohibitory order. The dispensation of service under rule 81.8 (1) is subject to whether the person can be said to have had notice of the terms of the judgment or order. The notice of the order is satisfied if the person or his agent can be said to either have been present when the judgment or order was given or made; or was notified of its terms by telephone, email or otherwise. In our view, 'otherwise' would mean any other action that can be proved to have facilitated the person having come into knowledge of the terms of the judgment and/or order. This would definitely include a situation where a person is represented in court by counsel. Once the applicant has proved notice, the respondent bears an evidential burden in relation to willfulness and mala fides disobedience. This Court in the Wambora case (supra) affirmed the application of these requirements.***”

[17] The Court finally observed that despite want of service or proof of service of a judgment or court order, the Kenya Court **has slowly and gradually moved from the position that service of the order along with the penal notice must be personally served on a person before contempt can be proved:**

*“Kenya's growing jurisprudence right from the High court has reiterated that knowledge of a court order suffices to prove service and dispense with personal service for the purposes of contempt proceedings. For instance, Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR pronounced himself as follows:-*

***“...the law has changed and as it stands today knowledge supersedes personal service.....where a party clearly acts and shows that he had knowledge of a Court Order; the strict requirement that personal service must be proved is rendered unnecessary”***

*This position has been affirmed by this Court in several other cases including the Wambora case (supra).*

*It is important however that the court satisfies itself beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it. The threshold is quite high as it involves possible deprivation of a person's liberty. This standard has not changed since the old celebrated case of **Ex parte Langley 1879, 13 Ch D. 110 (C.A)**, where **Thesiger L.J** stated as follows. at p. 119:*

***“...the question in each case, and depending upon the particular circumstance of the case, must be, was there or was there not such a notice given to the person who is charged with contempt of Court that you can infer from the facts that he had notice in fact of the order which has been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt.”***

What then amounts to “notice”?

***Black's Law Dictionary, 9<sup>th</sup> Ed*** defines notice as follows:-

***“A person has notice of a fact or condition if that person-***

***Has actual knowledge of it;***

***Has received information about it; Has reason to know about it;***

***Knows about a related fact;***

***Is considered as having been able to ascertain it by checking an official filing or recording.”***

*Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? **We hold the view that it does. This is more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behoves him/her to report back to the client all that transpired in court that has a bearing on the client's case.***

*This is the position in other jurisdictions within and outside the commonwealth.”*

[18] The application before the Court which is expressed to be brought is competent.

*Principles for the grant of an application for contempt of Court*

[19] It is discernible from the applicable rules and case law authorities that the ingredients of the offence of contempt of court by disobedience of a court judgment/order is (a) the existence of a judgment or court order with clear unambiguous terms; (b) knowledge of the existence of the judgment or order on the part of the alleged contemnor; (c) breach of the judgment or order; and proof of wilful or deliberate disobedience. See *Samuel M. N. Mweru & Others v National Land Commission & 2 others* [2020] KEHC 9233 (KLR) (Mativo, J. as he then was).

*Standard of proof in contempt cases*

[20] In *Mutitika v Baharini Farm Ltd* [1985] KECA 60 (KLR), the Court of Appeal set out the degree of proof in contempt cases which is accepted, **as a standard of proof consistent with the gravity of the alleged contempt**, at a level above the ordinary standard of balance of probabilities in regular civil case, as follows:

*“In, Re Breamblevale Ltd [1969] 3 All ER 1062, Lord Denning MR. (as he then was), at page 1063, had this to say,*

*“A contempt of court is an offence of a criminal character. A man may be sent to prison. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt”.*

*With the greatest possible respect to that eminent English judge, that proof is much too high for an offence “of a criminal character” and, ipso facto, not a criminal offence properly so defined.*

*We agree with Mr. Khaminwa’s submissions in this respect. **In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt. We envisage no difficulty in courts determining the suggested standard of proof. The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to offence which can be said to be quasi – criminal in nature.** Winn LJ on page 1064 was in our view right in saying that the guilt has to be proved “with such strictness of proof ... as is consistent with the gravity of the charge ...”*

[21] The *Shimmers Plaza Limited v National Bank of Kenya Limited* court adopted a standard of *“beyond any shadow of a doubt that the person alleged to be in contempt committed the act complained of with full knowledge or notice of the existence of the order of the Court forbidding it”* in obvious conflict with *Mutitika* but appeared in the end to lower the standard when it said that *“the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings ... more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence”*.

[22] In this case of alleged contempt of court by gazettement of authority for duty-free importation of rice, adopting the higher degree of proof beyond reasonable doubt applicable in criminal cases the Court needs to be **satisfied** and, employing the higher balance of probabilities than a

preponderance of evidence, the Court will look for ***strong and cogent evidence***, that there existed an order of court on limitation of importation of duty-free rice beyond a certain limit, of which the respondents were aware by service thereof or otherwise, and which order the respondents had breached by gazettelement of new authority allowing, and indeed allowed, the importation duty-free of quantities exceeding the quantity allowed by the Court order. The Court is acutely aware of the adverse consequences of a finding of contempt and will, consequently, adopt the necessarily heightened standard of proof beyond reasonable doubt.

***Duty to obey court orders and consequences of breach***

[23] In accordance with ***Hadkinson v. Hadkinson*** [1952] 2 ALL ER 567 (Court of Appeal), it was the duty of all person who were aware of these Orders to obey so as to uphold the authority of the Court and to seek their setting aside if aggrieved thereby. Romer LJ at 569 said:

***"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. LORD COTTENHAM, L.C., said in Chuck v. Cremer (1846) 47 ER 820; (1 Coop. temp. Cott. 342):***

***"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it .... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid-whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed."***

***Such being the nature of this obligation, two consequences will, in general, follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt. It is the second of these consequences which is of immediate relevance to this appeal. The rule, in its general form, cannot be open to question. There are many reported cases in which the rule has been recognised and applied, and I need refer only to Garstin v. Garstin (1865) 164 ER 1443, and Gordon v. Gordon (1904) P. 163."***

[24] The unforgiving consequences of contempt of court are that the action done in contempt of court is null and void, as held in *Clarke and Others v Chadburn & Others* (1985) 1 ALL ER (P.C) 211:

*“An act done in wilful disobedience of an injunction or court order was not only a contempt of Court but also an illegal and invalid act which could not, therefore, effect any change in the rights and liabilities of others. I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed. Wilful disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done....but the legal consequences of what has been done in breach of the law may plainly be very much affected by illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted with illegality that produced them, even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it”*

***The facts of the case***

*Clear order of the court*

[25] The Court granted conservatory orders pending the hearing of the Petition herein by its Ruling of 19/8/2025, in the following clear 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 31<sup>st</sup> 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.”***

[26] Upon a **Notice of Withdrawal** dated 9/12/2025 by the Petitioner, the Substituted Petitioners successfully applied to take over and continue with the petition pursuant to Rule 27 of ***The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*** Legal Notice 117 of 2013 (Mutunga Rules).

[27] At the time of withdrawal of the petition, the matter was pending ruling on the Respondents’ application for leave to proceed with the importation of the remaining quantities of rice under the GAZETTE NOTICE NO. 10353 of 28th July 2025. The application for leave to import the remainder of the duty-free rice had been made in the respective affidavits of the respondents pursuant to the directions of the court in the ruling of 19/8/2025 for reports on impact of the mop-up exercise and the importation of the quantities allowed in the Ruling.

[28] In granting the applicants the leave of court to the Substituted Petitioners to take over the Petition from the departing petitioner, the Court made further directions in the matter in its Ruling of 22/12/2025 as follows:

**“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 **29<sup>th</sup> 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 **5<sup>th</sup> January 2026.***
50. *The Counsel for the parties will, if necessary, highlight the submissions on the **6<sup>th</sup> 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**.*

[29] Clearly, the two orders of the Court, respectively of 19/8/2025 and 22/2025, set the limit of the rice to be imported duty free under Gazette Notice No. 10353 of 28th July 2025 at 250,000MT and a request for further importation of the remainder of 250,000MT under the Gazette Notice was under consideration by the Court for a ruling on a date to be fixed after highlighting of Submissions on 6/1/2026.

[30] All the parties in this Petition have been represented at all times by Counsel. Indeed, the 1, 2, 3, 5 and 6 Respondents were united in seeking the leave of Court to import the balance of the 250,000MT quantity of rice under the Gazette Notice, and the issue was pending ruling after submissions before the Petitioner sought to withdrawal the Petition prompting the takeover application by the Substituted Petitioners. The 4<sup>th</sup> Respondent made an **affidavit sworn by Ms. Caroline Njoroge on 11/11/2025 in compliance with directions of the Court of 19/8/2025**, as follows:

*“2. THAT I am an officer appointed under Section 13(3) of the Kenya Revenue Authority Act, Cap 469 Laws of Kenya (hereinafter referred to as the "KRA Act"). Under Section 5 (1), the Kenya Revenue Authority is an agency of the Government for the assessment, collection and receipt of all revenue.*

3. *THAT I am currently serving within the 4th Respondent's Exemption Unit. My duties include among others, reviewing exemption applications and clearing of exempt goods.*

4. *THAT I have been involved in the various processes giving rise to these proceedings and being seized of the facts and attendant circumstances surrounding this matter, I am competent and duly authorized by the Respondent to swear this affidavit on his behalf.*

5. *THAT on 19th August 2025, the Honourable Court issued the following orders:*

5.1 *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.*

5.2 *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.*

6. *THAT following the Order, the 4th Respondent started receiving applications for processing and clearance of the duty free rice under the gazette notice on 19th September, 2025.*

**7. THAT the importers seeking to benefit from the duty free window were required to procure the approvals from the relevant government agencies which had to indicate the approved tonnage to be cleared duty free before approaching the 4th Respondent.**

**8. THAT as at 6th November 2025, the 4th Respondent had processed 245,827,795 MT of duty free rice imported into the country. (Attached and marked as "CN-J" is a report on duty free rice imported into Kenya)**

9. *THAT the Respondent indicate the date of processing, the importer and the volumes of rice approved to be cleared duty free."*

[31] It is clear to the Court that all the Respondents were aware of the limitation of the Court's authority to import duty free only half of the amount set out in the Gazette Notice and for the period ending 31/10/2025 and that the further importation of duty free rice was pending ruling of the Court initially set for 8/12/2025 but was arrested upon the purported withdrawal by the Petitioner and subsequent application by the Substituted Petitioners for takeover of the Petition.

[32] The question of the life of the Gazette Notice was addressed during the Submissions on the application for the take-over of the Petition by the Substituted petitioners and the Court Ruling of 22/12/2025 captures the argument and decision of the Court as follows:

***"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.”

*Knowledge of the Order by the respondents*

[33] In the Court of Appeal decision of **Shimmers Plaza Limited vs. National Bank of Kenya Limited** [2015] eKLR the question of a party being deemed to be aware of judgment or order of court through the knowledge of his Counsel was answered in the affirmative as follows:

“Would the knowledge of the judgment or order by the advocate of the alleged contemnor suffice for contempt proceedings? **We hold the view that it does. This is**

**more so in a case such as this one where the advocate was in Court representing the alleged contemnor and the orders were made in his presence. There is an assumption which is not unfounded, and which in our view is irrefutable to the effect that when an advocate appears in court on instructions of a party, then it behooves him/her to report back to the client all that transpired in court that has a bearing on the client's case."**

[34] The 4<sup>th</sup> Respondent was not represented at the hearing or at the Ruling of 2/12/2025. However, in accordance with *Shimmers*, supra, she had notice of the orders having known about the related fact of the order of 19/8/2025 upon which she had acted as shown in her affidavit of 11/11/2025 and must be considered as having been able to ascertain the directions of 22/12/2025 by checking an official filing or recording or posting thereof on the Court Case Tracking System (CTS). Further, it was established that the Ruling of 22/12/2025 had been posted on the Court's Case Tracking System (CTS) on the same day. Moreover, in view of the order of 19/8/2025, the 4<sup>th</sup> respondent was obliged to seek a clarification from the Court on any imports over and above the previously approved quantity.

[35] The 4<sup>th</sup> respondent may not, however, be heard to say that *"The role of the 4th Respondent is purely administrative and operational; upon being presented with a consignment accompanied by all valid approvals and documents that complied with the procedure for exemption as prescribed by the new Gazette Notice, the 4th Respondent was legally obligated to effect its release [and] its actions, therefore, constituted mere compliance with a valid statutory directive and the fulfilment of its facilitative mandate under the law."* The 4<sup>th</sup> Respondent was represented by Counsel and must be taken to be aware of the Court orders of 19/8/2025 and directions of 22/12/2025 in the Petition which were binding on her as the 4<sup>th</sup> respondent, and which were always available on the Court Tracking system (CTS) and should, therefore, have sought further orders of the Court if asked to act other than in terms of the Court orders. The affidavit sworn on 11/11/2025 on behalf of the 4<sup>th</sup> respondent indicate she was aware of the limitation as to the importation duty-free rice and reported that only an amount within the allowed quantity of 250,000MT had been imported, as follows:

**"[A]s at 6th November 2025, the 4th Respondent had processed 245,827,795 MT of duty free rice imported into the country."**

[36] Counsel for all the other respondents were present during the arguments and Ruling of 22/12/2025. However, it has not been shown that the 4<sup>th</sup> Respondent acts under the control and direction of the 7<sup>th</sup> Respondent who has hitherto not been a party to the Petition, or that in allowing the duty-free imports subsequent to the amendment of the Gazette Notice, the 4<sup>th</sup> respondent was acting under the instructions, direction or control of the 7<sup>th</sup> Respondent. The Court does not a basis for finding the 7<sup>th</sup> respondent in contempt. In addition, the junior officers of the Respondents may have acted on instructions and were, in any event, not parties to the Petition and their knowledge of the orders may not be inferred unless service is proved.

[37] There is no question of clarity of the order of the Court which of 19/8/2025 which placed a limit of the approved quantity of importation at 250,000MT within the period ending 31/10/2025

and there is no ambiguity as to the direction of the Court (and a direction of the court clarifying any matter is an order of the court) by its ruling of 22/12/2025 that the issue of further importation of duty free rice was subject to a consideration by the Court and ruling upon hearing submissions of the parties. The existence of the orders of the court which were in clear and unambiguous terms is established.

*Breach of the Court orders/directions*

[38] It therefore appears that in making the amendment to the Gazette Notice of 28/7/2025, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5 and 6<sup>th</sup> Respondents were seeking to effect their own understanding of the status of the Gazette Notice, and considering it due to lapse on 31/12/2025, made an amendment by **Gazette Notice No. 262 of the Kenya Gazette published on 9th January 2026** to extend the time limit of the earlier Gazette Notice.

[39] The terms of the **Gazette Notice No. 262 of 9th January 2026** were as follows:

*“GAZETTE NOTICE No. 262*

*THE EAST AFRICAN COMMUNITY CUSTOMS*

*MANAGEMENT ACT*

*(No. I of 2004)*

*IMPORTATION OF WHITE MILLED RICE DUTY FREE*

*IT IS notified for the general information of the public that the Cabinet Secretary for the National Treasury amends Gazette Notice No. 10353 of 2025, published on the 28th July, 2025, by deleting the expression "31st December, 2025" and substituting therefor the expression 31st May, 2026".*

***Dated the 23rd December, 2025.***

*JOHN MBADI NG'ONGO,*

*Cabinet Secretary for the National Treasury.”*

It is this amendment to the Gazette Notice NO. 10353 of 28/7/2025 that the Respondents acted upon to allow the importation of rice over and above the 250,000MT allowed by the Court in its Ruling of 19/8/2025, under the pretext that this was fresh Gazette Notice unaffected by the order of the Court with respect to Gazette Notice of 28/7/2025, despite the Court's directions of 22/12/2025 that the latter Gazette Notice was subject to the control of the Court. The amendment was executed only a day after the directions of the Court on 22/12/2025.

[40] The implementation of the amended Gazette Notice to allow for the import duty free of rice, beyond the quantity of 250,000MT allowed under the Gazette Notice of 28/7/2025 by the Ruling of 19/8/2025 is clearly in breach of the Court order, at the time pending review on an application for leave to import the full complement of the rice under the Gazette Notice.

[41] Being aware of the Orders of the Court of 19/8/2025, by virtue of their representation by Counsel in the suit as held in ***Shimmers*** case, the requirement of service of the court order upon the respondents is dispensed in terms Rule 81.8 of Civil Procedure (Amendment No. 2) Rules, 2012 of England on ***Dispensation with personal service***, applicable to this application by section 5 of the Kenya Judicature Act, the Respondents save for the 7th who was not a party to the Petition

at the time were obliged to obey the court orders and the wilfulness of their disobedience is established there being no explanation for their blatant defiance save for the interpretation that they placed on the orders of the Court as not intended to be a permanent bar to importation.

[42] The 1, 2, 5 and 6 respondents contention that in their understanding the Gazette Notice “*did not issue a permanent injunction or any other order restricting the Cabinet Secretary from issuing any other gazette notice or extending the time period enabling the importation of duty free rice into the country*” and that they had acted pursuant to the Government’s Article 21(1) of the Constitution mandate for right to food security, did not lessen in any way the duty to obey valid court orders, even if they disagreed with them.

[43] The order did not make a permanent injunction to importation of duty-free rice but it was a conservatory orders as regards the importation under the authority of the Gazette Notice then before the Court, which was barred by clear orders, and the respondents were obliged to seek the intervention of the Court for further orders before amending the Gazette Notice. Indeed, the respondents’ alternative view and interpretation is the very reason the respondents should have come to court to seek variation, discharge or review of the orders of the Court, and not subjectively to interpret the orders of the court in manner to favour their extra judicial intervention. see **Hadkinson** case.

#### *Wilful breach of the court orders*

[44] If aggrieved by the orders, the Respondents were obliged to come to court, and initially did come, to seek a review or further orders, as in the words of Lord Cottenham, L.C. in **Chuck v. Cremer** (1846) 47 ER 820; (1 Coop. temp. Cott. 342):

**"A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it .... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed."**

In the same vein Odunga J. (as he then was) in **Wendano Matuu Co. Limited 2 Others v. Joshua Kimeu Kioko & Others** (2019) eKLR after discussing caselaw on the subject observed as follows:

“67. The Respondents contended that the order was ambiguous. However as was held in **Republic vs. The Kenya School of Law & Another** Miscellaneous Application No. 58 of 2014:

**"Court orders, it must be appreciated are serious matters that ought not to be evaded by legal ingenuity or innovations. By deliberately interpreting Court orders with a view to evading or avoiding their implementation can only be deemed to be**

contemptuous of the Court. Where a party is for some reason unable to properly understand the Court order one ought to come back to Court for interpretation or clarification.”

**68. In other words, vagueness or lack of clarity in an order, does not entitle a party to disregard it. If for any reason a party has difficulty in complying with court orders the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order. Once a Court order is made in a suit the same is valid unless set aside on review or on appeal.”**

Needless to state, the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents’ acts of “deliberately interpreting Court orders with a view to evading or avoiding their implementation can only be deemed to be contemptuous of the Court.”

[45] While the burden of proof shifts on proof of the requirements of contempt of court, the alleged contemnors 1<sup>st</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents, as with all accused persons, may well have exercised the right to remain silent (Art. 50 (2) (i) of the Constitution) and, consequently, cannot be faulted for responding, even as regards their **good faith** state of mind, through the affidavits of others. What is important is to see **whether there is on the evidence presented, on a balance of probabilities, rebuttal by the respondents of wilful disobedience after the applicant proves knowledge and disobedience of the orders.** In the attempt by the Respondents to justify their conduct upon advice as to deteriorating food situation, the Respondents do not rebut the wilfulness of their breach in terms of Rule 81.8 of the Civil Procedure Rules of England. They are justifying the disobedience! It is also inexcusable, on the test in **Hadkinson**, that they would seek to achieve the same result which is prohibited by the Court by amending a Gazette Notice of which the Court is seized and which, consequently, is subject of control by the Court.

[46] In this sense, the action of the respondents, as members of the executive branch of government, is a clear breach of Article 10 principles of the rule of law, democracy, good governance and accountability; and the democratic principle of separation of powers under Article 1(3) of the Constitution based on mutual respect of each organ’s respective constitutional competence. It is within the judicial authority of the Court to make judicial interpretation decisions on constitutionality and legality of legislation and executive action, and it is a usurpation of the judicial mandate for the executive to purport to interpret the legality of Gazette Notice pending before the Court.

[47] Before the execution and publication of the Gazette Notice 262 of 2026, affecting a matter which was before the Courts by amending the Gazette Notice 10353 of 2025, the respondents were obliged to seek the **imprimatur** of the Court in this case. As a constitutional democracy principle, it was not permissible for the Executive branch to second guess the orders of the Court by acting on its own interpretation of law with respect to the validity of orders of court on a Gazette Notice which was subject of active litigation before the Courts. Respect by the other arms of government of orders of the Court as the State’s Sovereign judicial authority is essential in maintaining the horizontal accountability required by the principle of Separation of Powers in a constitutional Democracy.

[48] In making the amendment to the Gazette Notice and seeking to implement it, the Respondents adopted impermissible self-help to achieve their goals of importation of duty-free rice - whatever the motivation and whatever their view as to the correctness of the orders - outside the valid existing orders of the Court. That is contempt of court. The only redemption appears to be from the fact appearing in the Replying Affidavits to the application that the respondents' acts were largely based on legal advice given by their respective Counsel as to the nature of the Order of 19/8/2025 and the status of the Gazette Notice after 31/12/2025.

*Whether the relief sought may be granted*

[49] In this application, the Court's duty is to ensure that its conservatory orders herein, which were tailored to create an equilibrium of rights - in the matter of the mop-up of local rice in the interests of local farmers and businessmen (Art.40); the stability of prices of rice for the consumers' sake (Art.46); and the Government's obligation (Arts. 21 & 43) to secure the provision of food of reasonable quality at affordable prices - are obeyed, so as to achieve the desired result that ***(a) promotes the Constitution's purposes, values and principles; (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; (c) permits the development of the law; and (d) contributes to good governance,*** as the Court is enjoined by Article 259 of the Constitution in interpretation of the Constitution. The disobedience of the court orders upsets the equilibrium and it must be reset by remedial action of purging the contempt and punishment of the contemnors as appropriate.

[50] Although as Romer LJ in *Hadkinson* p.571 observed "***an apology is no acceptable substitute for compliance with an order and will not in any circumstances be regarded in itself as a purging contempt***", in this case a public apology to the parties and the Court **together with the active step of withdrawal or revocation of the Amended Gazette Notice will remove the contempt and possibility of continuing breach of the court orders.** In addition, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents shall give an assurance of non-repetition of contempt of court.

[51] The Court has considered the pledge by the respondents as set out in the Affidavit of the 2<sup>nd</sup> respondent (above) that "*the government position [is] that due compliance with Court Orders is an essential element of the rule of law, and where the Ministry or any of its organ or officer is dissatisfied, to take active steps, at the earliest opportunity, to have the order set aside or varied either on an application for review or on appeal.*"

[52] In view of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' pledge and their positions as senior public officers in the Executive arm of Government, and having regard to the need for mutual respect of the organs of government for the respective spheres of competence of each, the Court considers it appropriate to grant them an opportunity to purge the contempt by withdrawing or revoking the impugned Gazette Notice No. 262 of 2026, with a public apology to the Court and the parties in this petition for the disobedience of the subject Court orders with an assurance of non-repetition of such conduct, so as to assure the parties and other litigants of their respect for the Rule of law and the authority of the Court (Art.1(3) (c)) as the sovereign judicial organ of the Republic of

**Kenya, which in terms of Article 4 (2) of the Constitution “is a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.”**

[53] As observed in *Mutitika* case, citing passage from the 3rd Edition of *Oswald on Contempt* at page 16, it is open to court in a proper case to order relief other than committal–

*“The court, however, has power to restrain by injunction threatened contempts. It is competent for the court where a contempt is threatened or **has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal** or sequestration, whether the offender is a party to the proceedings or not”.*

It appears to the Court that this case is a proper case in that the actions of the Respondents were driven or in a large measure based on advice by Counsel as to their interpretations on the orders of the Court and the validity of the Gazette Notice, the subject of these proceedings despite the active litigation before the Court. The Respondents’ responsibility for the contempt of court in this case is to that extent diminished given their professed posture in favour of obedience of court orders.

The Court, however, wishes to remind Counsel of their duty under section 1A (3) of the Civil Procedure Act, and to reiterate the warning of the Court of Appeal in *Commercial Bank of Africa Limited v Isaac Kamau Ndirangu* [1992] KECA 58 (KLR) (per Kwach, JA) that -

*“**Advocates who aid and abet their clients to disobey or circumvent court orders must understand that they are as much liable to be committed for contempt of court as their clients.** If any authority were needed for this perfectly obvious proposition, it can be found in the cases of *Marengo v Daily Sketch & Sunday Graphic Ltd* [1948] 1 All ER 406; *Elliot v Klinger* [1967] 3 All ER 141; and *Acrow (Automation) Ltd V Rex Chainbelt Inc* [1971] 3 All ER 1175.”*

### **ORDERS**

[54] Accordingly, for the reasons set out above, the Court finds that the application for Contempt of Court dated 15/1/2026 is merited to the extent that the acts of the Respondents contravened the order and directions of the Court with regard to the amounts of rice allowed by the Court under *Gazette Notice No. 10353 of 28th July 2025* and the status of the said Gazette Notice as being under judicial control.

[55] In consequence of the finding of contempt of court, the actions of the Respondents in publishing, and implementing, an amending *Gazette Notice No. 262 of 9th January 2026* to amend the *Gazette Notice No. 10353 of 28th July 2025* subject of the Petition herein and the subsequent authorization and importation of rice without demand for import duty are null and void.

[56] Consequently, **any** rice imported into the Country upon the Gazette Notice No. 262 of 2026 is not protected from duty demand notes by the 4<sup>th</sup> Respondent, and may not be released into the market without payment of import duty. It could only be accepted as duty-free importation under the scheme approved by the Court in the Ruling of 29/1/2026 after the mop-up of local rice as directed therein. The Court does not make any orders as to release **specifically** of the rice claimed by the Interested Party NJEMA COMMODITIES LIMITED who had sought a Court Order for its

release, as the said application was subsequently withdrawn by the Notice of Withdrawal dated 20/1/2026.

[57] The Court specifically finds 1<sup>st</sup> and 4<sup>th</sup> Respondents to have acted in contempt of Court. **The 1<sup>st</sup> respondent shall purge their contempt by a suitable Gazette Notice notifying the public of the revocation the impugned Gazette Notice No. 262 of 2026, coupled with a public apology to the Court and the parties in this petition for the disobedience of the subject Court orders with an assurance of non-repetition of such conduct.**

[58] The 4<sup>th</sup> Respondent may purge the contempt by levying the required duty on the imported rice already brought into the Country under the impugned *Gazette Notice No. 262 of 9th January 2026*. Alternatively, the release of the said rice must be withheld and may only be considered under the scheme for importation of duty-free rice allowed by the Court after the mop-up of locally produced rice as directed in the court's ruling of 29/1/2026 as aforesaid.

[59] The matter shall be mentioned on the **2/3/2026** to confirm compliance with the directions of the Court herein. In default of compliance, the appropriate Summons shall issue against the 1<sup>st</sup> and 4<sup>th</sup> Respondents to attend Court on a date to be fixed to show cause why they should not be punished for their contempt of Court.

[60] The costs of the application shall abide the outcome of the Petition.

*Order accordingly.*

**DATED AND DELIVERED THIS 13<sup>TH</sup> DAY OF FEBRUARY 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Muge with Mr. Kazungu for the 1<sup>st</sup> Substituted Petitioner.

Mr. Musyoki Musango for the 2<sup>nd</sup> Substituted Petitioner.

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

Mr. E. Theuri, SC. with Ms. Kiunga for the 3<sup>rd</sup> Respondent.

Mr. Ochieng with Mr. Nyaga with Ms. Kahindi for 4<sup>th</sup> and 7<sup>th</sup> Respondents.