

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT LODWAR
CONSTITUTIONAL PETITION NO. E004 OF 2025

**IN THE MATTER OF ENACTMENT OF STATUTORY INSTRUMENTS BY
THE EAST AFRICAN COMMUNITY UNDER THE EAST AFRICAN
COMMUNITY CUSTOMS MANAGEMENT ACT, 2004**

&

**IN THE MATTER OF THE NATIONAL TAX POLICY, SESSIONAL PAPER
NUMBER 2 OF 2023**

&

**IN THE MATTER OF USURPATION OF POWER OF THE PEOPLE TO
PARTICIPATE IN ENACTMENT OF CUSTOMS REGULATIONS UNDER THE
EAST AFRICAN COMMUNITY**

BETWEEN

ESEKON

LOTIENG.....1^S

^T PETITIONER

JOSEPH

LOCHILIA.....2ND

PETITIONER

EDWIN

AKUNJA.....3^R

^D PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF NATIONAL TREASURY
AND ECONOMIC**

PLANNING.....1ST

RESPONDENT

THE HON ATTORNEY	
GENERAL.....	2ND RESPONDENT
EAST AFRICAN	
COMMUNITY.....	3RD
RESPONDENT	
SECRETARY GENERAL, EAST AFRICAN	
COMMUNITY.....	4TH RESPONDENT
CHAIRPERSON, EAST AFRICAN COMMUNITY,	
COUNCIL OF	
MINISTERS.....	5TH
RESPONDENT	
KENYA REVENUE	
AUTHORITY.....	6TH
RESPONDENT	
COMMISSIONER OF CUSTOMS AND BORDER CONTROL,	
KENYA REVENUE	
AUTHORITY.....	7TH
RESPONDENT	
CABINET SECRETARY, MINISTRY OF EAST AFRICAN COMMUNITY,	
ASALS & REGIONAL	
DEVELOPMENT.....	8TH RESPONDENT
CABINET SECRETARY, MINISTRY OF INVESTMENTS,	
TRADE &	
INDUSTRY.....	9TH
RESPONDENT	
CABINET SECRETARY, MINISTRY OF NATIONAL TREASURY	

AND ECONOMIC	
PLANNING.....	10TH
RESPONDENT	
NATIONAL	
ASSEMBLY.....	1ST
INTERESTED PARTY	
KENYA ASSOCIATION OF MANUFACTURERS.....	2ND
INTERESTED PARTY	

RULING

The Application

1. By way of a Notice of Motion dated 30th July 2025, contemporaneously filed with the petition, the Petitioners moved this court under provisions of Articles 22 and 23 of the Constitution of Kenya 2010 and the relevant Practice and Procedure Rules. The immediate trigger for the Petition and the Application herein follows the issuance of *EAC Gazette Vol. AT 1 No. 18* dated 30th June 2025. Unlike the previous years, it is alleged, this Gazette Notice did not include an extension of the stay of application for Kenya regarding steel billets. As a result, the duty rate automatically reverted from 10% back to the standard 0% effective 1st July 2025.
2. The Petitioners/Applicants contend that this reversion and the preceding failure of the Respondents to apply for an extension was an administrative action and/or inaction that effectively waived a tax and altered the fiscal landscape without the mandatory public participation and parliamentary approval required by the Constitution of Kenya and the National Tax Policy.
3. Accordingly, the application sought urgent intervention to preserve the subject matter of the petition and to address the structural requirements for hearing the substantial constitutional questions raised. The orders sought include:

- i. Spent
- ii. THAT ending the hearing and determination of this Application inter-partes and so as to preserve the subject matter of this suit, conservatory orders do issue barring the Respondents from implementing/further implementing the zero-rating of customs rate on imported steel billets falling under the Harmonized System (HS) codes (7206.10.00), (7206.90.00), (7207.11 .00), (7207.12.00), (7207.19.00), (7207.20.00), (7224.10.00) and (7224.90.00) vide EAC Gazette Vol.AT 1 No 18 dated 30th June 2025 and/or in any manner whatsoever exempting customs rate on the same.
- iii. THAT the Court be pleased to certify that the Petition herein raises substantial constitutional questions of general public importance and therefore refer the Petition to her ladyship, the Chief Justice, for appointment of a bench of an uneven number of judges being not less than three (3) pursuant to Article 165(4) of the Constitution of Kenya, 2010.
- iv. THAT pending the hearing and determination of this Petition and so as to preserve the subject matter of this suit, conservatory orders do issue barring the Respondents from implementing the zero-rating of customs rate on imported steel billets falling under the Harmonized System (HS) codes (7206.10.00), (7206.90.00), (7207.11.00), (7207.12.00), (7207.19.00), (7207.20.00), (7224.10.00) and (7224.90.00) vide EAC Gazette Vol.AT 1 No 18 dated 30th June 2025 and/or in any manner whatsoever exempting customs rate on the same.
- v. Costs of this Application be borne by the Respondents.
- vi. The court be pleased to issue any other relief it may deem fit in the circumstances.

4. To the Petitioners, these orders are necessary to prevent the immediate influx of duty-free steel, which they argue would cause irreparable harm to the domestic manufacturing sector before the court can pronounce itself on the legality of the transition.
5. Because there had been a request for an order for the empanelment of a bench of uneven number of judges and a Preliminary Objection contesting the jurisdiction of the court, when parties attended court on the 25.9.2025, it was agreed and directions given that the court determines the two issues preliminarily before the other aspects of the application is considered. The understanding was that if the Objection succeeds, the file would rest closed, but if it fails, then the court determines if indeed the petition raises substantial questions of general public importance, and if so satisfied, order so and dispatch the file to the Chief Justice for her action.
6. This ruling thus is confined to the determination to the questions raised by the Preliminary Objection and where a bench of uneven number of judges be ordered.

Applicant's case

7. The Applicants' petition rests on the premise that the supremacy of the Constitution of Kenya, 2010, extends to all acts of the Executive, including those undertaken within the framework of international treaties. Through the supporting affidavit of the 2nd Petitioner, Joseph Lochilia, the Applicants present a narrative of procedural failure and constitutional breach by the Respondents.
8. The Applicants argue that the transition from a 10% duty to 0% constitutes a provision having the force of law in Kenya, as it directly alters the tax liability of importers and the competitive standing of local producers. That under Article 94(5) of the Constitution, such provisions can only be made under authority conferred by the Constitution or by legislation enacted by Parliament. The Applicants contend that the

Respondents utilized the EAC regional framework as a backdoor to alter tax rates without involving the National Assembly, which possesses the sole mandate to impose or vary taxes under Articles 209 and 210.

9. Central to the Applicants' argument is the role of public participation as a national value and principle of governance under Article 10(2)(a). They assert that the setting of customs rates has a direct and substantial impact on the business environment and the cost of living, thereby necessitating meaningful engagement with the public and stakeholders. They cite Section 5 of the Statutory Instruments Act, which requires regulation-making authorities to conduct consultations before making instruments that affect business or competition.
10. The Applicants further highlight the specific breach of the National Tax Policy. They depose that the National Assembly, in its oversight capacity, had specifically directed that any amendments to the EACMA or changes in customs administration must undergo parliamentary approval *prior* to the government making proposals to the EAC. By failing to seek this approval before allowing the stay to lapse, the Respondents allegedly ignored a binding policy framework designed to safeguard the sovereign power of the people.
11. The Applicants categorize the Respondents' conduct as inaction that resulted in an arbitrary fiscal change. They argue that the failure to apply for an extension of the stay was not a neutral act, but a deliberate decision to allow the protective tariff to expire, which in their view, amounts to an unconstitutional waiver of tax income for the state. They conclude that a prima facie case has been established, as the disregard for procedural requirements under the Statutory Instruments Act and the Constitution is evident on the face of the record.
12. As said before the application attracted the opposition from all the respondents and the 1st interested party. In particular, the 6th and 7th respondents raised the all-important question of the authority of the court to entertain and deal with the matter.

The preliminary objection by the 6th and 7th Respondents

13. The 6th and 7th Respondents challenged the competence of the application and the petition through a Preliminary Objection dated 28th August 2025. The objection is premised on three primary pillars; lack of subject-matter jurisdiction, the immunity of regional organs, and the failure to exhaust alternative remedies.
14. On the first limb, the Respondents argue that the High Court of Kenya is *coram non iudice* in this matter. They assert that the dispute relates to the interpretation and application of the EAC Treaty and its Protocols, a mandate that Article 27(1) of the EAC Treaty reserves for the East African Court of Justice (EACJ). They contend that under Article 30 of the Treaty, any challenge to the legality of a decision or action by an EAC organ, such as the Council of Ministers' Gazette Notice, must be filed in the EACJ.
15. Secondly, the Respondents raise the shield of diplomatic immunity. They argue that the 3rd, 4th, and 5th Respondents are protected from suit in domestic courts by the Privileges and Immunities Act (Cap 179) and the EAC Treaty itself. They maintain that suing these entities in the High Court is a fatal defect that should lead to the immediate striking out of the suit.
16. Thirdly, the Respondents invoke the doctrine of exhaustion. They argue that the Petitioners have bypassed the specialized dispute resolution mechanisms provided under the East African Community Customs Management Act and the Fair Administrative Action Act (FAAA). Specifically, they cite Section 9(2) of the FAAA, which prohibits a court from reviewing an administrative action unless all internal mechanisms for appeal or review have been exhausted. They contend that the Petitioners' grievances should have been addressed through the regional legal framework before invoking the constitutional jurisdiction of this court.

17. Because of the limited scope of this decision, the court shall avoid comments on the attacks on the petition as contained in the Grounds of opposition and the Replying Affidavits. That is for the need to avoid possible prejudice to the merits of both parties' case that may call for determination if the petition and application were to proceed for hearing on the merits.
18. It is however important to point out that all respondents oppose the petition and the Motion for Conservatory orders, and support the preliminary objection but, conversely, agree that the matter raises substantial constitutional questions that merit the invitation of the provisions of Article 165 (4).

Summary of the Petitioners' Submissions

19. Regarding jurisdiction, the Petitioners cite Article 2(4) of the Constitution, which declares that any law inconsistent with the Constitution is void to the extent of the inconsistency. They argue that the EAC Treaty and its Protocols are laws in Kenya by virtue of domestication, but they remain subject to the supreme authority of the Constitution. They contend that the High Court has an unlimited original jurisdiction under Article 165(3) to hear any question respecting the interpretation of the Constitution, including whether anything said to be done under the authority of any law is inconsistent with it.
20. The Petitioners make a distinction regarding the jurisdiction of EACJ stating that while the EACJ has jurisdiction over the *interpretation* of the Treaty, Article 33(1) of the Treaty explicitly acknowledges that national courts are not excluded from disputes to which the Community is a party. They cite the EACJ decision in ***East African Centre for Trade Policy and Law v Secretary General of the EAC (2013) RC 1 (KLR)***, where the regional court admitted that its jurisdiction can be limited when jurisdiction is conferred on organs of Partner States. The Petitioners argue that the *domestic implementation* of customs rates in Kenya is an action

by an organ of a Partner State (and thus falls squarely within the jurisdiction of the High Court.

21. On the issue of exhaustion of remedies, the Petitioners submit that there is no other forum capable of resolving the constitutional questions they have raised. They argue that neither the Customs Tribunal nor the EACJ can determine whether the Kenyan Executive has violated the public participation requirements of the 2010 Constitution. They maintain that when a fundamental right or a core constitutional principle is at stake, the High Court is the first port of call.
22. Regarding empanelment, the Petitioners argue that the criteria set out in ***Okiya Omtatah Okoiti v Anne Waiguru (2017) KECA 679 (KLR)*** are fully met, and identify the following as substantial questions of law:
 - (a) *The constitutionality of implementing regional customs regulations that bypass domestic requirements for public participation;*
 - (b) *The conflict between the Executive's treaty-making powers and the National Assembly's sole authority to impose taxes;*
 - (c) *The legal status of the National Tax Policy 2023 and whether its five-year predictability principle creates a legitimate expectation;*
 - (d) *The extent to which domestic courts can interfere with regional customs rates to protect local industry;* and,
 - (e) *The Petitioners conclude that these issues are novel, complex, and of general public importance, requiring a bench of at least three judges to provide a definitive interpretation of the Constitution.*

Summary of the 6th and 7th Respondent's submissions

23. The Respondents argue that the Single Customs Territory is the cornerstone of the EAC, and its integrity depends on the uniform application of the CET. They warn that if the High Court were to grant the prayers sought, it would set a dangerous precedent allowing domestic courts to cherry-pick which regional tariffs to apply, thereby collapsing the entire Customs Union. They cite the case of ***Samuel Kamau Macharia***

vs KCB & 2 Others (2011) eKLR to emphasize that the EACJ's jurisdiction over the Treaty is supreme.

24. The Respondents submit that the Petitioners' move to use a Constitutional Petition to challenge a trade tariff is a misuse of the court process. They argue that the doctrine of constitutional avoidance should apply, meaning the court should decline to resolve the issue on constitutional grounds if a specialized mechanism of EACJ is available. They reiterate that under Section 9 of the FAAA, the court *must* direct the Applicants to exhaust alternative remedies before granting any relief.
25. Regarding empanelment, the Respondents maintain that the issues are not substantial in a constitutional sense. They frame the dispute as a narrow commercial disagreement regarding the price of steel billets. They argue that the Petitioners have failed to identify a specific constitutional right that has been denied, describing the allegations as generalized and speculative. They conclude that the petition should be struck out in limine for lack of jurisdiction.

Summary of the 1st, 2nd, 8th, 9th, and 10th Respondents' submissions

26. The State Respondents' submissions emphasize the international nature of the dispute. They argue that because the impugned Gazette Notice was issued by the EAC Council of Ministers, the dispute is inherently international. They cite Article 23 of the EAC Treaty, which designates the EACJ as the judicial body to ensure adherence to the law in the interpretation and application of the Treaty. They contend that any person aggrieved by an EAC Act, regulation, directive, or decision must refer the matter to Arusha, not Lodwar.
27. The State Respondents also go into detail regarding the immunity of the EAC and its officers. They cite Section 6 of the Treaty for the Establishment of the East African Community Act, which provides that employees and organs of the Community are immune from civil

proceedings in Kenya for acts done in the course of their duties. They argue that the Secretary General and the Council of Ministers cannot be made parties to a domestic suit for issuing a Gazette Notice.

28. The State Respondents offer a nuanced alternative position on empanelment. They admit that the Petition raises serious issues of Constitutional interpretation regarding the threshold of public consultation required for regional regulations. They concede that if the court finds it has jurisdiction, the question of whether the inaction of the Executive in failing to seek a tariff stay violates the Constitution is a matter of great public importance that would justify a multi-judge bench under Article 165(4). However, they maintain that the primary relief should be the dismissal of the petition for lack of jurisdiction.

Issues, Analysis and Determination

29. Having carefully perused the pleadings and analysed the rival and comprehensive submissions from all parties, the following issues crystallize for determination by this court:

- (i) **Whether the High Court of Kenya possesses the jurisdiction to hear and determine a challenge to the domestic implementation of regional customs tariffs?**
- (ii) **Whether the 3rd, 4th, and 5th Respondents (EAC organs) are immune from suit and legal process in the High Court of Kenya?**
- (iii) **Whether the Petitioners are barred from seeking constitutional relief for failing to exhaust the specialized dispute resolution mechanisms provided under regional and domestic law?**
- (iv) **Whether the Petition raises substantial questions of law that warrant the intervention of an uneven bench of judges?**
- (v) **What orders are appropriate on costs of the proceedings leading to this decision?**

Whether the High Court of Kenya possesses the jurisdiction to hear and determine a challenge to the domestic implementation of regional customs tariffs?

30. The question of jurisdiction is the golden thread that runs through every judicial proceeding. As famously stated in the **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (1989) KLR 1**, jurisdiction is everything and without it, a court has no power to make one more step. For that well established jurisprudence, the 6th and 7th Respondents contend that because the dispute involves the EAC Gazette and the Common External Tariff, it is a Treaty-based dispute that belongs exclusively to the EACJ.
31. In the court's view, the Respondents' position is grounded in a monist view of international law, where the EAC Treaty is seen as a self-contained regime with its own judicial organ. However, the court is cognizant of the fact that Kenya operates under a dualist framework, where treaties must be domesticated to have force of law, but the Constitution remains the supreme standard for all domesticated laws. Article 2(6) of the Constitution provides that treaties ratified by Kenya form part of the law of Kenya.
32. Article 165(3)(d)(ii) of the Constitution is indubitably clear that the High Court has unlimited and original jurisdiction to determine the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution. The *law* in this instance includes the domesticated EAC Treaty and the EACMA. The thing said to be done is the application of a 0% duty rate in Kenya without following the procedural safeguards of public participation and parliamentary approval.
33. The EAC Treaty itself provides a solution to this perceived conflict in its article 33(1). The provision stipulates, that disputes to which the Community is a party shall not on that ground alone be excluded from the

jurisdiction of national courts. Furthermore, the Supreme Court of Kenya in **Attorney General (On Behalf of the National Government) vs Karua [2024] KESC 21 (KLR)** settled the position of the law to be that the EACJ is not part of the hierarchy of Kenyan courts and that the High Court and Supreme Court remain the final authorities on the interpretation of the Kenyan Constitution. Similarly, in **Consumers Federation of Kenya (COFEK) (Suing through Ephraim Kanake, Stephen Mutoro and Henry Ochieng) v Cabinet Secretary, National Treasury and Planning & 4 others [2025] KEHC 18223 (KLR)**, the High Court held that while Kenya is a member of the EAC, regional obligations cannot override the Constitution. Any tax imposed or varied within Kenya must, constitutionally comply with Articles 94, 201, and 210, which require public participation and parliamentary approval.

34. The Petitioners in this case are not merely challenging the text of the EAC Gazette; they are challenging the non-action and omission of the Kenyan government in failing to apply for a stay extension and failing to consult the public before reverting to a 0% rate. This is a challenge to a domestic administrative and legislative process or lack thereof. The court holds that the EACJ, while supreme in Treaty interpretation, is expressly prohibited from interpreting national laws of Partners States outside the purview of the Treaty. In other words, it does not have the jurisdiction to supervise the Kenyan Executive's compliance with the Kenyan Constitution.
35. If the Kenyan government implements a regional tariff in a manner that violates the domestic Bill of Rights or the public finance principles of the 2010 Constitution, the High Court is not only empowered but obligated to intervene. In the instant matter, the core of the grievance being the alleged violation of the Kenyan National Tax Policy and the domestic requirement for public participation in financial matters, the Court finds that it is clothed with the requisite jurisdiction to hear that

specific constitutional claim in the Petition to the extent it alleges domestic constitutional violations.

Whether the 3rd, 4th, and 5th Respondents are immune from suit and legal process in the High Court of Kenya?

36. As to the 8th Respondent's argument regarding immunity, the court wish to point out that international organizations and their officers enjoy certain privileges and immunities to enable them to perform their functions without interference from the domestic legal processes of member states. Under Article 138 of the EAC Treaty and Section 6 of the Treaty for the Establishment of the East African Community Act, the Community and its officers enjoy immunity from suit for acts performed in their official capacity. This immunity is further reinforced under Section 4 of the Fourth Schedule to the Privileges and Immunities Act (Cap 179).
37. The Supreme Court in **Kandie vs Ba & another [2017] KESC 13 (KLR)** affirmed the position of the law to be that the immunity is a procedural bar to jurisdiction and is a reasonable limitation on the right of access to justice. The Petitioners have sued the EAC, the Secretary General, and the Chairperson of the Council of Ministers for their roles in issuing regional Gazette Notices. The court appreciates the general jurisprudential position to favour the bar on domestic courts from direct jurisdiction over supranational entities like the EAC or its Secretariat.
38. While the High Court can issue orders against Kenyan government departments regarding the implementation of policies within Kenya, it lacks the mandate to entertain claims against the 3rd, 4th, and 5th Respondents. The matters raised in the petition are clearly official acts performed within the scope of their regional mandates.
39. In the absence of an express waiver of immunity by the Secretary General, this court has no power to hear a claim against the 3rd, 4th, and

5th Respondents. The suit against these specific parties is thus defective and must be struck out.

Whether the Petitioners are barred from seeking constitutional relief for failing to exhaust the specialized dispute resolution mechanisms provided under regional and domestic law?

40. The 6th and 7th Respondents, rely on Section 9(2) of the Fair Administrative Actions Act, to argue and urge that the Petitioners should have sought redress through regional mechanisms first, specifically exhaustion of the remedies under Article 30 of the EAC Treaty. The exhaustion doctrine is indeed a cornerstone of administrative law in Kenya, intended to promote efficiency and respect specialized expertise.
41. However, the courts have consistently held that the doctrine of exhaustion is not a magic wand to oust the jurisdiction of the High Court in constitutional matters. In **Republic vs Independent Electoral and Boundaries Commission (IEBC); Al Ghurair Printing and Publishing LLC & 5 others (Interested Parties); The National Super Alliance (NASA) Kenya (Ex parte Applicant) [2017] KEHC 4663 (KLR)**, the Court identified that exceptions apply where a party who pleads issues that verge on constitutional interpretation especially in virgin areas or where a statutory forum lacks the ability to balance complex constitutional values.
42. The present dispute is not a routine customs appeal. The Petitioners are challenging the usurpation of power of the Kenyan National Assembly. This involves the virgin area of how treaty obligations interact with the 2010 Constitution's robust requirements for public participation. The EACJ is not a forum for enforcing the internal legislative procedures of a Partner State's Parliament. Furthermore, the grievance involves the National Tax Policy 2023, which is a domestic sessional paper.
43. The court finds that there exists no alternative regional or administrative mechanism capable of determining whether the Kenyan

Executive bypassed the National Assembly in a manner that violates the sovereign rights of the people. Seeking redress for a violation of Article 10 and Article 201 in the Customs Tribunal would be futile as that body lacks the jurisdiction to interpret the Constitution. Consequently, the exception to the exhaustion doctrine finds its applicability in the instant petition and the court thus holds that the doctrine of exhaustion does not bar the Petitioners from moving this court as they have done.

Whether the Petition raises substantial questions of law that warrant the intervention of an uneven bench of judges?

44. Article 165(4) mandates that any matter certified as raising a substantial question of law shall be heard by an uneven number of judges assigned by the Chief Justice. The threshold for certifying a matter as raising a substantial question of law requires that the issue transcend the immediate parties and have a significant bearing on public interest. The criteria also include whether there is a state of uncertainty in the law.
45. The instant petition presents a classic example of such a question. It raises at least three substantial constitutional questions including the interpretation of Article 10, Article 94, and Article 201 of the Constitution in a novel regional context; (i) *Does the transition from a protective tariff to a default regional rate, resulting from executive inaction and require public participation under Article 10 of the Constitution?* (ii) *To what extent does the National Assembly have the authority to approve or reject regional customs instruments that have fiscal implications in Kenya, and what is the legal status of the National Tax Policy 2023 in this context?* And, (iii) *How should the domestic courts balance the constitutional principle of popular sovereignty with the regional principle of pacta sunt servanda in the context of the EAC Customs Union?*
46. The decision in **Consumers Federation of Kenya (COFEK) (Suing through Ephraim Kanake, Stephen Mutoro and Henry Ochieng) vs Cabinet Secretary, National Treasury and Planning & 4 others**

[2025] KEHC 18223 (KLR) regarding the 10% crude oil import duty underscores the substantial nature of these issues. In that case, the court found that adopting EAC framework measures without parliamentary scrutiny violates the Constitution. The potential for conflicting decisions and the massive socioeconomic impact on the steel industry further satisfy the public interest criteria for empanelment.

47. The foregoing discussion has been necessary even on the face of concurrence by the respondents because, the duty rests upon the court to be satisfied that at least a substantial question of law arises and to certify so. Even where parties agree by consent, the court must be satisfied before the matter can be certified.
48. Flowing from the foregoing discussions and conclusions, the Court makes the following orders: -
- i. The Preliminary Objection dated 28th August 2025 is partially upheld only to the extent that the 3rd, 4th, and 5th Respondents are struck out of the suit on grounds of immunity and is dismissed in all other respects.
 - ii. The petition is determined to be properly before a competent court with requisite jurisdiction to determine it.
 - iii. The Petition is hereby certified as raising substantial questions of law under Article 165(4) of the Constitution. The Deputy Registrar is directed to forthwith forward the file to Her Ladyship, the Chief Justice, for the appointment of a bench of an uneven number of judges for the hearing and determination.
 - iv. Pending the appointment of the bench and the hearing of the Petition and the interlocutory application for conservatory orders, the interim orders issued on the 30.07.2025 are extended.
 - v. The costs of the proceedings leading to this determination shall abide the outcome of the Petition.

Dated, signed and delivered virtually this 19th day of February, 2026

Patrick J O Otieno
Judge