



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CONSTITUTIONAL PETITION NO. E004 OF 2026

VICTOR OKOTH ONUNGA PETITIONER
VERSUS
THE CABINET SECRETARY,
NATIONAL TREASURY & ECONOMIC PLANNING 1ST RESPONDENT
THE CABINET SECRETARY,
MINISTRY OF AGRICULTURE AND
LIVESTOCK DEVELOPMENT 2ND RESPONDENT
THE CABINET SECRETARY, MINISTRY OF PUBLIC
SERVICE, HUMAN CAPITAL DEVELOPMENT 3RD RESPONDENT
THE HON ATTORNEY GENERAL..... 4TH RESPONDENT
KENYA REVENUE AUTHORITY..... 5TH RESPONDENT
HON. KAMAU MURANGOINTERESTED PARTY

RULING

- [1] The record of the Court shows that the Petition herein was by an order made on **11/2/2026** transferred to Kerugoya by the High Court at Nairobi upon an application by the Interested Party dated **21/1/2026** which sought *inter alia* an order for **“transfer of Constitutional Petition NO. E039 of 2026 to the High Court at Kerugoya for consolidated hearing with Constitutional petition No. E009 of 2025.”**
- [2] The matter was transferred and set to come up before this court for directions as to hearing on **17/2/2026**. On that date, Counsel for the Petitioner requested for time to consider making an application for transfer to another court which, as he said, had not made a decision on the question in the Petition. The matter was, consequently, set for directions on **2/3/2026**.
- [3] On **2/3/2026**, by an oral application by the Petitioner’s Counsel applied that the matter be placed before the Principal Judge for directions as to hearing and determination before a court which has not dealt with a similar matter pointing out that this Court has dealt with Petition. No. E009 of 2025 and made orders therein which are directly opposite the reliefs sought by the petitioner in this case.
- [4] The application was supported by the Counsel for the Attorney General representing the 1-4 Respondents pointing to the present petition being opposite to the Petition E009 of 2025 and urging that **“it is in the interests of justice that the application be heard by another court.”**

- [5] The application was opposed by Counsel for the Kenya Revenue Authority and Counsel for the Interested Parties who urged the need for the handling of the matters related to the duty-free importation of rice before the same Court to avoid conflicting decisions by Courts of equal jurisdiction.
- [6] The brief submissions made by the respective Counsel in this matter on **2/3/2026** were as follows:

“Mr Ahmednassir, SC for the petitioner

There was a matter of similar nature before this court. The Court has gone too far in the merit of merit of the matter. I will pray that the file be placed before the Principal Judge (Ogola PJ.) so that he can make a decision as to who can hear this Petition because of the various rulings made by this Court. The rulings are directly opposed to our application. We pray that another Judge deals with the matter. I am aware of the applications for contempt of court filed in the Petitions.

Mr. Kaumba for the 1-4 Respondents

I agree with Senior Counsel Nassir. The Petition is opposite of Petition No. E009 of 2025. It is in the interest of justice that eh application be heard by another Court.

Mr. Ochieng for the 5th respondent

I do not agree with Counsel for the Attorney General as the Order was given by this Court. It is proper that this application be heard by this court so that there are no conflicting orders. There is no reason for teh transfer of the file. If it was an application for a bigger bench, I would agree. The case should be heard before this court.

Mr. Muge for the 1st Interested party

I agree with Mr. Ochieng that this is the proper court to handle the petition. Before Bahati, J. On 11/2/2026, he transferred the application to Kerugoya as it was the Court that had been dealing with the matter of duty free rice importation. The order for filing of replying affidavits and submissions. The matters raised in the Petition are teh same in the two petitions. Taking it somewhere lese is to split the issue. If the subject matter is the rice. If the Petition is in the opposite direction from Petition NO. E009 of 2025 this is the proper court to hear it.

Mr. Musyoki for the 2nd Interested Party

Since commencement of Petition No E009 of 2025, it is this court that has been issuing orders. Whether any other court has tried to handle the matter it has been transferred to this court. That applied to all the matters in the petition. It is the court of first instance; it only makes sense for the court to hear and determine the pending issues. If different courts heard and issued orders instead of this court; if the application

was filed in this court, the court would have dealt with the matter and considered the situation. It is this Court that should deal with orders that the court has issued. The matter should proceed.

Mr. Ahmednassir, SC in reply

The matter of rice has been in the whole country. In Mombasa Constitutional Petition no. E650 of 2025. I would have had no problems if the state of affairs was as at 11/2/2026 when Bahati, J transferred the case to Kerugoya. The Petition in this case is directly opposed to the case of the farmers. There is famine within Kenya and we pray for the release of the petitioner's rice. We petitioned the Court at Nairobi. This Court has granted orders for the Kirinyaga Rice belt. We seek release of the rice. This Court has heard the matter substantially for the rice in Kirinyaga. We seek release of the rice. Bahati, J. saw the point differently. The Court will be sitting on appeal from Judge Bahati's decision.

In the light of the quagmire, it is fair that the matter be taken before the Principal Judge for directions as to hearing by a court that has not heard the matter."

- [7] By its ruling of **13/2/2026** in Petition No. E009 of 2025, this Court found the 1st Respondent (Cabinet Secretary, National Treasury and Economic Planning) and 4th Respondent in that Petition and 5th respondent herein (Kenya Revenue Authority) to have acted in contempt of court for, respectively, amending a Gazette Notice the subject of the dispute in that petition and this petition, and for permitting the importation of rice duty-free, while the matter was actively before the Court in Petition No. E009 of 2025, and directed that the Respondents purge their contempt.
- [8] The 1st respondent Cabinet Secretary National Treasury & Economic Planning has by an application dated **25/2/2026** in the Petition No. E009 of 2025 moved this Court for stay of execution of the ruling on contempt of court pending the hearing of a similar application for stay before the Court of Appeal for stay of execution of the ruling on contempt of court pending hearing and determination of an appeal from the decision of this court.
- [9] As this Petition seeks release of the rice imported pursuant to the Gazette Notice No. 262 of 2026 amending the Gazette Notice 10353 of 2025, which is the subject of Petition No. E009 of 2025, it may be said, as urged by the Counsel for the Petitioner and Counsel for the Attorney General have urged, to be the **opposite** or an **"antithesis"** of the Petition in No. E009 of 2025.
- [10] Although, the petitions are at different stages of hearing, this Court would have no problem crafting appropriate directions upon consolidation for the expedited hearing of the full petitions on the merits - even if they be opposites - in the same fashion as in the hearing of a petition and a cross-petition.
- [11] Indeed, the Court had in its ruling of 13/2/2026 pointed to such possibility of joint-hearing with regard to the claim for release of rice by M/S NJEMA

COMMODITIES LIMITED, the Interested Party in Petition E009 of 2025, who unfortunately withdrew an application similar to the Petition herein!

[12] However, with respect, if it is agreed that the prospect of two or more conflicting decisions courts by equal jurisdiction should be avoided as a principle of judicial policy, then the remedy for the Petitioner appears to be the hearing and determination of the Petition for release of the rice **alongside** the application for stay of execution pending hearing of similar application before the Court of Appeal, of the orders of this Court on contempt of court by the Cabinet Secretary National Treasury in Petition No. E009 of 2025, by this Court.

[13] Any other way for the hearing of this Petition and others on the vexed question of duty-free rice importation by different courts stands the real risk of possible multiple conflicting decisions of the same High Court.

[14] But this Court does not wish to stand in the way of the Petitioner who has sought that the Court places the matter before the Principal Judge for administrative directions as to the Court to deal with the Petition, and he is entitled to such direction, in the interest of justice being seen to be done.

ORDERS

[15] Consequently, this Court will send the court file on this **Petition No. E004 of 2026 (formerly Nairobi HC Constitutional Petition No. E039 of 2026)** to the Principal Judge of the High Court for directions as to hearing and disposal.

[16] The matter shall be mentioned on a skeleton file on **Friday 13/3/2026** when the **Petition No. E009 of 2025** comes up for hearing of the application for stay of execution of the ruling on contempt of court, to confirm whether any directions shall have been received from the Principal Judge and for further directions accordingly.

Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF MARCH 2026.

EDWARD M. MURIITHI
JUDGE

APPEARANCES:

Mr. Ahmednassir Abdullahi, SC with Mr. Farouk for the Petitioner.

Mr. Kaumba for the 1st – 4th Respondents.

Mr. Ochieng for the 5th Respondent.

Mr. Muge for the 1st Interested Party.

Mr. Musyoki for the 2nd Interested Party.