REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E517 OF 2025

(AS CONSOLIDATED WITH E546 OF 2025 AND E661 OF 2025)

IN THE MATTER OF ARTICLES 10, 22, 23, 46, 73, 201, 227, 232, AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED THREATENED VIOLATION AND INFRINGEMENT OF CONSTITUTIONAL PRINCIPLES ON PUBLIC FINANCE, PUBLIC PARTICIPATION, TRANSPARENCY, ACCOUNTABILITY, CONSUMER PROTECTION, NATIONAL SECURITY, AND PRUDENT MANAGEMENT OF STRATEGIC NATIONAL ASSETS

AND

IN THE MATTER OF THE PRIVATISATION ACT, 2005; THE PUBLIC FINANCE MANAGEMENT ACT, 2012; THE STATE CORPORATIONS ACT (CAP. 446); THE ENERGY ACT, 2019; THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015; THE FAIR ADMINISTRATIVE ACTION ACT, 2015; AND THE CONSUMER PROTECTION ACT, 2012

BETWEEN

THE CONSUMERS FEDERATION OF KENYA (COFEK).....1ST PETITIONER

KENYA PETROLEUM AND OIL WORKERS UNION.....2ND PETITIONER

TRANSPARENCY INTERNATIONAL KENYA.....3RD PETITIONER

KENYA HUMAN RIGHTS COMMISSION.....4TH PETITIONER

INUKA KENYA NI SISI!.....5TH PETITIONER

THE INSTITUTE OF SOCIAL ACCOUNTABILITY.....6TH PETITIONER

-VERSUS-

KENYA PIPELINE COMPANY .....1ST RESPONDENT

THE PRIVATIZATION COMMISSION.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

THE NATIONAL ASSEMBLY.....4TH RESPONDENT

THE CABINET SECRETARY,

NATIONAL TREASURY & ECONOMIC PLANNING.....5TH RESPONDENT

-AND-

CAPITAL MARKETS AUTHORITY.....1ST INTERESTED PARTY

NAIROBI SECURITIES EXCHANGE.....2ND INTERESTED PARTY

THE COMPETITION AUTHORITY OF KENYA.....3RD INTERESTED PARTY

THE NATIONAL LAND COMMISSION.....4TH INTERESTED PARTY

KENYA CONSUMERS PROTECTION

ADVISORY COMMITTEE.....5TH INTERESTED PARTY

THE OFFICE OF THE AUDITOR GENERAL.....6TH INTERESTED PARTY

JUDGMENT

INTRODUCTION

1. This consolidated Petition presents a constitutional challenge of profound public importance concerning the proposed privatization of Kenya Pipeline Company Limited, a strategic State corporation that owns and operates the national petroleum pipeline network and storage infrastructure. The matter calls for determination of weighty issues touching on the scope and legality of executive authority exercised under the Constitution of Kenya, 2010; the constitutional imperative of meaningful public participation in decisions affecting strategic national assets; adherence to the principles of public finance management; the protection of national security interests; and the safeguarding of consumer and labour rights within the petroleum sector

2. At the core of the present controversy is the Respondents' reliance upon a Cabinet approval allegedly issued in December 2008 to justify the proposed disposal of up to sixty-five percent (65%) of the shareholding in Kenya Pipeline Company Limited through an Initial Public Offering, projected to raise approximately Kenya Shillings One Hundred Billion for the 2025/2026 national budget. The Petitioners contend that an executive decision taken nearly two decades ago, and under a repealed constitutional dispensation, cannot lawfully be operationalized in 2025 absent renewed and demonstrable compliance with the Constitution of Kenya, 2010. In their view, such compliance must encompass meaningful public participation, contemporaneous national security assessments, independent and transparent valuation processes, and fidelity to the transformative values and principles introduced by the current constitutional order.

3. The Constitution of Kenya, 2010 fundamentally reconfigured the architecture and legitimacy of public power. It effected a decisive transition from executive supremacy to constitutional supremacy, under which all State organs, State officers, and public officers are bound by the national values and principles of governance, including public participation, transparency, accountability, and the rule of law. It established, under Chapter Twelve, an elaborate framework for public finance predicated upon openness, accountability, and prudent stewardship of public resources. It entrenched consumer protection as a constitutional right under Article 46; guaranteed fair labour practices under Article 41; and imposed upon the State, under Article 238, an obligation to safeguard national security in a manner consistent with constitutional values and democratic accountability. The central question for determination is whether the proposed privatization of Kenya Pipeline Company Limited, grounded upon a pre-2010 executive approval, satisfies these constitutional imperatives.

4. The Court has had the benefit of extensive pleadings, affidavits, written submissions, and authorities filed by all participating parties. The 1st Petitioner, the Consumers Federation of Kenya, lodged its Amended Petition dated 4th September 2025, together with written submissions dated 4th February 2026 and a comprehensive bundle of authorities. The 2nd Petitioner, the Kenya Petroleum and Oil Workers Union, filed a Petition dated 25th August 2025, a Further Affidavit sworn by its Secretary General, George Okoth, on 4th September 2025, and written submissions of even date. The 3rd to 6th Petitioners adopted, in substance, the submissions of the 1st Petitioner.

5. The 1st Respondent, Kenya Pipeline Company Limited, filed Grounds of Opposition dated 26th January 2026 and a Replying Affidavit sworn by its Managing Director, Joe Kimutai Sang, on 9th December 2025. The 2nd Respondent, the Privatization Commission, relied on the Replying Affidavit sworn by its Acting Chief Executive Officer, Dr Janerose Omondi, on 1st September 2025. The 3rd Respondent, the Office of the Attorney General, filed written submissions dated 1st February 2026 and 3rd September 2025, and relied on the Replying Affidavits sworn by John Mbadi Ngongo, the Cabinet Secretary for the National Treasury and Economic Planning, on 22nd August 2025, 1st September 2025, and 30th October 2025.

6. The 4th Respondent, the National Assembly of Kenya, filed Grounds of Opposition dated 27th August 2025, written submissions dated 2nd September 2025, and a Replying Affidavit sworn by its Clerk, Samuel Njoroge. The 1st Interested Party, the Capital Markets Authority, filed written submissions dated 30th January 2026. The 2nd Interested Party, the Nairobi Securities Exchange, filed a Replying Affidavit sworn by its Chief Executive Officer, Frank Lloyd Mwiti, on 11th September 2025, together with written submissions dated 21st January 2026. The 3rd Interested Party, the Competition Authority of Kenya, filed written submissions dated 30th January 2026 supported by the Replying Affidavit of its Director General, David Kemei, sworn on 11th September 2025.

7. The National Lands Commission, cited as the 4th Respondent, together with the 5th and 6th Interested Parties, did not file responses to the consolidated Petitions, notwithstanding due service of the pleadings and hearing notices.

8. Before turning to the substantive merits, it is apposite to record that the interlocutory applications filed herein were disposed of by a ruling delivered on 12th September 2025. In that ruling, the Court declined to grant conservatory orders to restrain Parliament's consideration of Sessional Paper No. 2 of 2025, holding that it would be premature and constitutionally inappropriate to interfere with an ongoing legislative process at that stage. The Court, however, expressly affirmed that it remained seized of constitutional jurisdiction and stood ready to intervene should subsequent stages of the privatization process disclose constitutional violations or procedural improprieties. The consolidated Petitions now fall for final determination.

BACKGROUND

9. The Kenya Pipeline Company Limited was established in 1973 as a State corporation to provide an efficient, safe, and cost-effective means of transporting and storing petroleum products. It commenced commercial operations in 1978. The company is wholly owned by the Government of Kenya, with 99.9% shareholding held by the National Treasury and approximately 0.1% by the Ministry of Energy and Petroleum. Its infrastructure comprises an extensive pipeline network spanning 1,342 kilometres, total storage capacity of 1,128,324 cubic metres, loading facilities at key depots, oil jetties including the Kipevu Oil Terminal 2, and a fibre optic cable network with excess capacity leased to telecommunication firms.

10. According to the Privatization Proposal contained in Sessional Paper No. 2 of 2025, the company reported revenue of Kenya Shillings 35.4 billion and

profit after tax of Kenya Shillings 6.9 billion in the financial year 2023/2024. The company's Vision 2025 Refocused Strategic Plan, annexed to the 2nd Petitioner's Further Affidavit as exhibit "GO-1", projects revenue targets of Kenya Shillings 150 billion and profit before tax of Kenya Shillings 80 billion by the year 2025.

11. The genesis of the proposed privatization is traceable to the Privatization Programme formulated pursuant to the Privatization Act, 2005. The Programme received Cabinet approval in December 2008 and was subsequently published in the Kenya Gazette of 14th August 2009 vide Gazette Notice No. 8739. Among the twenty-six entities earmarked for divestiture was Kenya Pipeline Company Limited. The stated objectives of the Programme included the mobilization of capital for further investment, enhancement of transparency and corporate governance, broadening of share ownership within the economy, deepening of capital markets, and the raising of resources in support of the Government's budgetary framework.

12. In October 2023, Kenya Pipeline Company Limited acquired one hundred percent (100%) of the shares in Kenya Petroleum Refineries Limited, the country's sole crude oil refining and storage entity, through a share transfer effected by the National Treasury. As confirmed by the 3rd Interested Party in the Replying Affidavit sworn by its Director General, David Kemei, on 11th September 2025, the transaction constituted an internal restructuring between undertakings under common ownership and did not amount to a merger requiring authorization under the Competition Act. The effect of that transaction was to consolidate refining and storage functions within a single State-controlled enterprise.

13. Subsequent to the approval of the overarching Programme, the Privatization Commission prepared a specific Privatization Proposal for Kenya Pipeline Company Limited in accordance with Section 23 of the Privatization Act, 2005. The Proposal was approved by Cabinet on 24th March 2025, as evidenced by the Cabinet Memorandum annexed as "JMN 6" to the Replying Affidavit of John Mbadi Ngongo, the Cabinet Secretary for the National Treasury and Economic Planning. The Cabinet directed that the Proposal be subjected to public participation prior to its resubmission to Cabinet and onward transmission to the National Assembly of Kenya for consideration.

14. On 31st July 2025, the Cabinet Secretary for the National Treasury and Economic Planning transmitted to the National Assembly of Kenya Sessional Paper No. 2 of 2025, embodying the Privatization Proposal for Kenya Pipeline Company Limited. The Sessional Paper was tabled before the House on 5th August 2025 and referred, pursuant to Standing Order No. 202, to the Departmental Committee on Energy and the Select Committee on Public Debt and Privatization for joint consideration and report.

15. In purported compliance with Article 118(1)(b) of the Constitution, the Joint Committee caused advertisements to be placed in two newspapers of national circulation on 6th August 2025 inviting memoranda from members of the public regarding the proposed privatization. The said advertisements are exhibited at pages 43-44 of the exhibit marked "SN-1" in the Replying Affidavit sworn by the Clerk of the National Assembly of Kenya, Samuel Njoroge. At the close of the exercise, forty (40) memoranda had been

received. By letters dated 7th August 2025, the Joint Committee invited identified stakeholders to a consultative retreat convened in Machakos County for the purpose of receiving oral submissions.

16. The stakeholders who appeared before the Joint Committee included the National Treasury and Economic Planning, the Ministry of Energy and Petroleum, the Privatization Commission, the Office of the Attorney General, the Central Bank of Kenya, the Nairobi Securities Exchange, the Capital Markets Authority, the Institute of Certified Investment and Financial Analysts, the Institute of Economic Affairs, and, significantly, the Kenya Petroleum and Oil Workers Union, being the 2nd Petitioner herein.

17. The Joint Committee conducted six sittings, examined the memoranda submitted, and thereafter prepared a detailed report tabled before the National Assembly of Kenya on 14th August 2025. The Report, extending to forty-two pages and exhibited as pages 1-42 of "SN-1", made several observations and recommendations. These included recommendations that the valuation of the Company be disclosed within the prospectus, that a citizen-friendly initial public offering (hereinafter IPO) valuation report be prepared and publicized, that the Privatization Commission undertake a comprehensive valuation of the financial and asset position of Kenya Pipeline Company Limited and submit the same to the National Assembly of Kenya, that a post-transaction audit be conducted by the Auditor-General, that the process be structured so as to preserve the State's capacity to safeguard critical infrastructure and ensure uninterrupted fuel supply; and that, to forestall monopolistic outcomes, the entity retain its core mandate of transportation and storage of petroleum products and refrain from

engaging in importation or sale of petroleum products absent prior approval from the Competition Authority of Kenya, the Energy and Petroleum Regulatory Authority, and the National Assembly of Kenya.

18. The Report of the Joint Committee presently awaits debate and determination by the plenary of the National Assembly of Kenya. The proposed privatization accordingly remains at the stage of parliamentary consideration. The subsequent phases comprising valuation by qualified persons appointed by the Privatization Authority, preparation of a prospectus, regulatory review by the Capital Markets Authority, and the eventual Initial Public Offering have yet to be undertaken.

19. It is against this factual matrix that the Petitioners approached this Court alleging a constellation of constitutional violations and seeking declaratory as well as prohibitory relief

THE PETITIONERS' CASE

20. The Petitioners' case is founded on the contention that the proposed privatization of Kenya Pipeline Company Limited is constitutionally infirm both in process and substance. The 1st Petitioner, through its Amended Petition dated 4th September 2025 and written submissions dated 4th February 2026, submits that the Respondents cannot lawfully rely on a Cabinet approval allegedly issued in December 2008 to justify the disposal of a controlling stake under the Constitution of Kenya, 2010. It is contended that executive authority exercised under a repealed constitutional order cannot be resurrected without renewed constitutional compliance. The Constitution of Kenya, 2010 fundamentally redefined the source and

exercise of executive power, with Article 129 affirming that such authority is derived from the people and must be exercised in accordance with the Constitution. Article 10 further binds all State organs, officers, and persons exercising public power to adhere to national values and principles of governance, including public participation, transparency, accountability, and the rule of law. The Petitioners submit that a Cabinet approval issued in 2008 under vastly different legal, political, economic, and security circumstances cannot substitute for the rigorous safeguards now constitutionally required.

21. The Petitioners further argue that the process leading to the proposed privatization violates the constitutional requirement of meaningful public participation. Placing reliance on ***Centre for Rights Education and Awareness (CREAW) v Attorney General [2011] eKLR*****,** they contend that public engagement must be real, informed, timely, and capable of influencing decision-making. Access to material information such as independently verified valuations, the proposed structure of the Initial Public Offering, fiscal implications, and proposed safeguards is essential for meaningful participation. Parliamentary consideration of Sessional Paper No. 2 of 2025, while indicative of representative debate, cannot cure deficiencies where the public itself was not meaningfully engaged.

22. On public finance, the Petitioners submit that the proposed privatization contravenes Articles 201 and 227. No evidence has been adduced demonstrating that the decision to dispose of a controlling stake was informed by an independently verified valuation disclosed to the public, or that a comprehensive cost-benefit analysis comparing long-term public ownership with short-term fiscal gains was undertaken. The proceeds of

sale lack budgetary specificity, undermining transparency, accountability, and traceability, in violation of public finance management principles.

23. The Petitioners also raise grave concerns regarding national security and consumer protection under Articles 238 and 46. Kenya Pipeline Company Limited constitutes critical national infrastructure, and the proposed privatization was advanced without contemporary risk assessments, proportional safeguards, or mechanisms to protect service continuity and consumer welfare. The absence of these measures exposes the nation to avoidable security risks and consumers to foreseeable harm, while withholding material information undermines both the right to information and participatory governance.

24. The 2nd Petitioner, the Kenya Petroleum and Oil Workers Union, further submits that the privatization threatens employees' rights to fair labour practices under Article 41. Potential consequences include job losses, unilateral alteration of terms of engagement, restructuring, and erosion of collective bargaining agreements. The Sessional Paper provides no post-privatization safeguards for employees, and critical information regarding the Employee Share Ownership Plan remains undisclosed. The 2nd Petitioner also invokes the United Nations Guiding Principles on Business and Human Rights, which, by virtue of Articles 2(5) and 2(6) of the Constitution, form part of the law of Kenya. The Respondents failed to undertake a Human Rights Impact Assessment to anticipate, evaluate, and mitigate impacts on employees, consumers, and communities.

25. The 2nd Petitioner further challenges the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited, asserting that it entrenched a monopoly, and contends that the Competition Authority of Kenya abdicated its statutory mandate to ensure effective competition. Additionally, the proposed privatization involves the transfer of public land without the oversight of the National Land Commission as required under Article 67(2)(c) and the National Land Commission Act, rendering the process regarding land assets unlawful.

26. The 3rd Petitioner, Transparency International Kenya, submits that critical information, including valuation reports, IPO structure, and fiscal impact assessments, was not disclosed, contravening the principles of good governance under Article 10 and the right of access to information under Article 35.

27. The Petitioners collectively seek declaratory and restraining reliefs to prevent implementation of the proposed privatization pending compliance with constitutional requirements. They contend that once a controlling stake in a strategic State corporation is disposed of, public control is irreversibly diluted and subsequent remedies may be illusory. The Petitioners submit that the proposed privatization is constitutionally untenable, threatens irreversible harm to public resources, national security, and consumer interests, and fails to meet the standards set under Articles 10, 35, 41, 46, 129, 201, 227, 232, and 238. They urge the Court to declare the proposed privatization unconstitutional, restrain its implementation in its current form, and grant such further orders as may be

necessary to safeguard constitutional supremacy, public trust resources, and the welfare of the Kenyan people.

THE RESPONDENTS' CASE

28. The Respondents collectively oppose the consolidated Petitions on both preliminary and substantive grounds. The 1st Respondent, Kenya Pipeline Company Limited, through its Grounds of Opposition dated 26th January 2026 and the Replying Affidavit of its Managing Director, Joe Kimutai Sang, sworn on 9th December 2025, submits that the Petitions are misconceived and instituted before the wrong forum, seeking to challenge matters that fall squarely within the statutory mandate of the Capital Markets Authority and the Nairobi Securities Exchange under Part IVA of the Capital Markets Act and the Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023.

29. The 1st Respondent contends further that the Petition proceeds on a misapprehension of this Court's prior ruling of 12th September 2025, which expressly held that the Court would not pre-empt or interfere with the privatization process, and would intervene only upon the demonstration of clear, future, and demonstrable constitutional infractions, none of which have been pleaded or shown in the present proceedings. The 1st Respondent invokes the doctrine of res judicata, asserting that the Petitions amount to a disguised attempt to re-litigate issues already conclusively addressed, and that the Petitioners have failed to satisfy the threshold for constitutional relief, having neither established a prima facie case nor demonstrated any imminent or continuing violation of the Constitution.

30. The 2nd Respondent, the Privatisation Commission, through the Replying Affidavit of its Acting Chief Executive Officer, Dr Janerose Omondi, sworn on 1st September 2025, sets out the statutory framework governing privatization under the Privatization Act, 2005, which prescribes a structured, sequential procedure encompassing formulation of the Privatization Programme, Cabinet approval, gazettement, preparation of a specific Privatization Proposal, Cabinet and parliamentary consideration, valuation, conduct of the sale, and accounting for proceeds. The 2nd Respondent avers that all statutory steps have been duly undertaken, including the formulation of the Privatization Programme, Cabinet approval, and gazettement on 14th August 2009. The specific Privatization Proposal was prepared in compliance with Sections 23 and 24 of the Privatization Act, 2005, approved by Cabinet, and submitted to the National Assembly as Sessional Paper No. 2 of 2025, which is presently under consideration following public participation and stakeholder engagement. Comprehensive due diligence was conducted across financial, technical, operational, legal, human resource, commercial, environmental, and social dimensions, supported by detailed feasibility and cost-benefit analyses, all exhibited to the Court.

31. The 2nd Respondent further demonstrates that employee consultation was undertaken, with staff sensitization forums held across multiple stations, and that measures to safeguard employees, including consideration of an Employee Share Ownership Plan, were undertaken in compliance with Section 24(d) of the Privatization Act, 2005. It is submitted that the Petitioners have failed to demonstrate any constitutional or statutory

violation, and that their allegations are speculative and prematurely aimed at frustrating a lawful statutory process.

32. The 3rd Respondent, the Honourable Attorney General, through written submissions dated 1st February 2026 and 3rd September 2025, adopts the Replying Affidavits of Hon. FCPA John Mbadi Ngongo, Cabinet Secretary for the National Treasury and Economic Planning. The Attorney General submits that the Petitions are premature, speculative, and founded on a misapprehension of the applicable law and facts. Relying on the doctrine of ripeness, as articulated by the Supreme Court in Petition No. 12 of 2021 (consolidated with Petitions 11 and 13 of 2021- Building Bridges Initiative), it is contended that a cause of action arises only once a party has been subjected to, or faces a real threat of, prejudice. At the time of filing, the privatization process remained incomplete, with the Privatization Proposal pending parliamentary consideration.

33. On the issue of public participation, the Attorney General relies on the Supreme Court decision in ***British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party) [2019] KESC 15 (KLR)***, submitting that the privatization process at each stage accorded due regard to the sovereign will of the people, through public participation, Cabinet approval, gazettement, and parliamentary review. Memoranda were received from forty members of the public, stakeholders, including the 2nd Petitioner, were heard, and a comprehensive Joint Committee Report was prepared and

tabled, which addressed the concerns raised regarding valuation, transparency, national security, and employee protection.

34. Regarding access to information, the Attorney General invokes the doctrine of exhaustion of remedies under Section 14(1)(a) of the Access to Information Act, contending that the Petitioners failed to utilize the statutory mechanism provided by the Commission on Administrative Justice, and no exceptional circumstances have been demonstrated to justify bypassing this process as contemplated under Section 9(4) of the Fair Administrative Action Act.

35. Employment-related grievances raised by the 2nd Petitioner, it is submitted, fall within the exclusive jurisdiction of the Employment and Labour Relations Court under Article 162(2)(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act. Reliance is placed on ***Daniel N Mugendi v Kenyatta University & 3 others [2013] KECA 41 (KLR)***, affirming that the High Court lacks jurisdiction to entertain employment disputes or related constitutional claims.

36. On consumer protection, the Attorney General submits that robust legislative and regulatory mechanisms under the Energy Act and the Energy (Petroleum Pricing) Regulations, 2022, provide for the regulation of petroleum importation, storage, transport, pricing, and sale, which remain fully operative and unaffected by changes in corporate shareholding.

37. The 4th Respondent, the National Assembly, through its Grounds of Opposition dated 27th August 2025, written submissions dated 2nd

September 2025, and the Replying Affidavit of the Clerk of the National Assembly, Samuel Njoroge, contends that the Petition does not disclose any cause of action against it, relying on the decisions in ***Orange Democratic Movement Party & 4 others v Speaker of National Assembly & 5 others [2024] KEHC 11494 (KLR)*** and ***Speaker of the National Assembly & another v Orange Democratic Movement Party & 8 others [2025] KECA 681 (KLR).*** The 4th Respondent details the parliamentary process undertaken in relation to Sessional Paper No. 2 of 2025, demonstrating meaningful public participation, receipt of memoranda, stakeholder hearings, and tabling of a Joint Committee Report addressing issues raised by the Petitioners.

38. It is submitted that the Court should exercise restraint in interfering with ongoing parliamentary processes, invoking the doctrine of separation of powers, as reinforced in ***Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2017] eKLR,*** which emphasizes judicial deference to the independence of other arms of government unless a clear constitutional violation is demonstrated.

INTERESTED PARTIES' CASE

39. The 1st Interested Party, the Capital Markets Authority, through its written submissions dated 30th January 2026, distances itself from the policy decision to privatize Kenya Pipeline Company Limited. It submits that its mandate under the Capital Markets Act is confined to licensing and supervising securities exchanges, regulating public offers and listings of securities, and ensuring compliance with disclosure and investor protection requirements. It contends that it is not a decision-maker in the privatization of State assets and that its role, if any, would arise only after the lawful

exercise of privatization authority by competent State organs, limited to ensuring compliance with capital markets law at the point of market entry.

40. The 2nd Interested Party, the Nairobi Securities Exchange, through its Replying Affidavit sworn by its Chief Executive Officer, Frank Lloyd Mwiti, on 11th September 2025, and written submissions dated 21st January 2026, similarly submits that it is not a decision-maker in the privatization of State assets. Its core function is to provide a transparent, orderly, and efficient securities market, enforcing listing and disclosure requirements, facilitating trading, and ensuring post-listing compliance by issuers. It contends that the Petition discloses no justiciable controversy against it and that any orders issued by the Court should expressly ring-fence and exclude it from their scope and effect. The 2nd Interested Party further details its successful track record in facilitating landmark IPOs, including its own self-listing in 2014 which attracted 17,859 investors and was oversubscribed by 663.92%.

41. The 3rd Interested Party, the Competition Authority of Kenya, through its written submissions dated 30th January 2026 and the Replying Affidavit sworn on 11th September 2025 by its Director General, David Kemei, addresses the allegation that it failed to interrogate the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited. The Authority avers that, prior to the transaction, both entities were wholly owned by the Government of Kenya through the Cabinet Secretary, National Treasury, and that following the acquisition, the ultimate controlling shareholder remained the same, the only alteration being a restructuring from parallel ownership to a parent–subsidiary configuration. In its view, there was no change in control within the meaning of Sections 2

and 41 of the Competition Act, and consequently the transaction did not constitute a merger requiring notification or approval. The Authority relies on its letter dated 18th August 2023 addressed to Kenya Pipeline Company Limited as evidence of its considered position on the matter.

42. The 3rd Interested Party further submits that it is a creature of statute whose mandate is circumscribed by the Competition Act, and that it cannot undertake a merger analysis in the absence of formal notification by the parties to a transaction. To do so, it contends, would be ultra vires and in excess of its statutory authority. The Authority maintains that the Petitioners' expectation that it should interrogate the proposed privatization absent a notifiable merger has no foundation in law, and that any such intervention would amount to an impermissible expansion of its mandate beyond the confines of the governing statute.

ANALYSIS AND DETERMINATION

43. Having carefully considered the pleadings, the rival affidavits, the extensive written submissions, and the authorities cited by all parties, it is evident that the dispute, though framed through multiple constitutional and statutory lenses, crystallizes into the following defined issues for determination by this Court:

    i. ***Whether this Court has jurisdiction to hear and determine the consolidated Petitions, and whether the Petitions offend the doctrines of exhaustion, ripeness, and constitutional avoidance;***

    ii. ***Whether the Respondents may lawfully rely on a Cabinet approval issued in December 2008 to privatize Kenya Pipeline Company Limited under the Constitution of Kenya, 2010;***

iii. ***Whether the process leading to the proposed privatization of Kenya Pipeline Company Limited complied with the constitutional requirement of public participation under Article 10 of the Constitution;***

iv. ***Whether the impugned privatization process violates the constitutional principles governing public finance under Articles 201 and 227 of the Constitution;***

v. ***Whether the proposed privatization violates constitutional obligations relating to national security under Article 238 and consumer protection under Article 46 of the Constitution;***

vi. ***Whether the proposed privatization violates employees' rights to fair labour practices under Article 41 of the Constitution, and whether this Court has jurisdiction to determine such grievances;***

vii. ***Whether the Competition Authority of Kenya abdicated its statutory and constitutional mandate in relation to the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited;***

viii. ***Whether the proposed privatization involves the unlawful disposition of public land contrary to Article 67 of the Constitution;***

ix. ***What reliefs, if any, are constitutionally appropriate in the circumstances of this case.***

Whether this Court has jurisdiction to hear and determine the consolidated Petitions, and whether the Petitions offend the doctrines of exhaustion, ripeness, and constitutional avoidance

44. Jurisdiction is the lifeblood of any judicial proceeding. It is the foundational and threshold question that must be resolved at the earliest opportunity, for without jurisdiction a court must forthwith down its tools. This principle

was authoritatively enunciated by the Court of Appeal in ***Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd***, where Nyarangi, JA delivered the oft-cited dictum:

"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence."

45. The question of jurisdiction in the present matter must therefore be examined through the prism of the constitutional grant of authority under Articles 165, 22 and 258 of the Constitution; the doctrines of exhaustion and ripeness as invoked by the Respondents; and the prudential principle of constitutional avoidance.

46. Article 165(3)(d) of the Constitution expressly vests in the High Court jurisdiction:

"to hear any question respecting the interpretation of this Constitution including the determination of-

(i) the question whether any law is inconsistent with or in contravention of this Constitution;

(ii) 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…"

47. Further, Article 22(1) provides that:

"Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened."

48. Similarly, Article 258(1) stipulates:

"Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention."

49. These provisions, read conjunctively, establish a broad, purposive, and generous jurisdictional framework for constitutional adjudication. They not only empower but oblige the High Court to interrogate alleged constitutional violations where properly invoked.

50. The Supreme Court in ***Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5*** **others 2014 KESC 53 (KLR)** affirmed that constitutional adjudication lies at the very core of the High Court's mandate. While acknowledging the utility of prudential doctrines such as constitutional avoidance and exhaustion of alternative remedies, the Court underscored that such doctrines cannot be deployed to subvert the Court's primary duty to interpret and safeguard the Constitution. The Court pronounced itself thus:

"Article 165(3)(d) makes it clear that that power extends well beyond the Bill of Rights when it provides that the High Court has jurisdiction to hear any matter relating to any question with respect to interpretation of the Constitution 'including the determination of (i) the question whether any law is inconsistent with or in contravention of this Constitution; (ii) 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; (iii) any matter relating … to the constitutional relationship between the levels of government.' These provisions make clear that

Kenyan courts have a far-reaching constitutional mandate to ensure the rule of law in the governance of the country.”

51. The import of the foregoing dictum is unmistakable. Where a dispute raises a bona fide and substantive question of constitutional interpretation or enforcement, the High Court cannot abdicate its jurisdiction merely on the basis of prudential doctrines. Jurisdiction, once constitutionally conferred and properly invoked, must be exercised in fidelity to the supremacy of the Constitution and the rule of law.

52. The present Petitions do not invite this Court to resolve a peripheral statutory disagreement, rather, they challenge the constitutionality of executive and legislative conduct in the management and proposed disposal of a strategic national asset. The gravamen of the dispute is whether the impugned conduct comports with the Constitution. Once such a controversy is properly pleaded under Articles 22, 258, and 165(3)(d) of the Constitution, jurisdiction follows as a matter of constitutional command.

53. The Respondents have strenuously invoked the doctrine of exhaustion, contending that the Petitioners ought first to have pursued statutory or administrative mechanisms under the Access to Information Act, the Consumer Protection Act, and the Privatization Act, 2005 before approaching this Court. This contention must be evaluated against the settled jurisprudence governing the exhaustion doctrine and its recognised exceptions.

54. The Court of Appeal in ***Muthinja & another v Henry & 1756 others*** (***2015) KECA 304 (KLR)*** articulated the constitutional rationale underpinning the doctrine, holding that where a dispute resolution mechanism exists outside the courts, the same ought to be exhausted before recourse is had to the judicial process. The Court emphatically observed that:

"It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews."

55. The doctrine thus serves the salutary purpose of postponing judicial consideration so as to ensure that parties are diligent in the protection of their interests through the mechanisms provided by statute.

56. However, the exhaustion doctrine is not absolute. It admits of well-defined exceptions, particularly where a dispute raises pure or substantial constitutional questions, or where the alternative forum lacks the jurisdiction or capacity to grant effective and appropriate relief.

57. The High Court in ***Krystalline Salt Limited v Kenya Revenue Authority (2019])KEHC 6939 (KLR),*** comprehensively elaborated the exceptional circumstances that may exempt a litigant from the exhaustion requirement. The Court held that where an internal remedy would not be effective, where its pursuit would be futile, where an internal appellate tribunal has adopted a rigid policy rendering exhaustion illusory; or where the dispute transcends the jurisdictional competence of the statutory body, a litigant

may properly approach the Court directly. In setting out the governing principles, the Court stated:

"What is ordinarily contemplated by the words 'exceptional circumstances' is something out of the ordinary and of an unusual nature… something uncommon, rare or different… Whether or not exceptional circumstances exist is not a decision which depends upon the exercise of a judicial discretion: their existence or otherwise is a matter of fact which the court must decide accordingly… Thus, where an internal remedy would not be effective and/or where its pursuit would be futile, a court may permit a litigant to approach the court directly."

58. The Court further emphasised that what constitutes exceptional circumstances depends on the facts of each case and the nature of the administrative action impugned.

59. Applying the foregoing principles to the present case, this Court is satisfied that the Petitions fall squarely within the recognised exceptions to the exhaustion doctrine. The Petitions do not impugn discrete administrative determinations amenable to internal review under the Access to Information Act or the Privatization Act. Rather, they challenge the constitutional validity of reliance upon a 2008 Cabinet approval as the legal foundation for privatizing a strategic State corporation in 2025, together with alleged systemic failures to comply with constitutional imperatives relating to public participation, public finance management, transparency, consumer protection, and national security.

60. No statutory body, regulatory authority, or administrative tribunal established under the cited statutes is clothed with jurisdiction to pronounce upon the constitutionality of such conduct, nor to grant the declaratory, conservatory, and structural relief contemplated under Article 23 of the Constitution. To insist on exhaustion in these circumstances would be to compel the Petitioners to pursue remedies inherently incapable of addressing the constitutional grievances raised. Such an approach would elevate procedural form above substantive constitutional justice.

61. The Respondents' reliance on the doctrine of ripeness is similarly unavailing. In In the Matter of th***e Constitution of Kenya 2010 & the Building Bridges Initiative; Attorney General v. David Ndii & 73 Others [2022] KESC 8 (KLR)***, the Supreme Court defined the doctrine of ripeness as one that prevents a court from adjudicating upon a dispute prematurely, before a party has suffered prejudice or faces a real threat of prejudice arising from the impugned conduct. The Court observed that ripeness requires a litigant to await a concrete action capable of grounding judicial relief.

62. In the present matter, the Petitioners challenge ongoing and operative conduct. The reliance on a 2008 Cabinet approval is not a speculative future contingency, it is the present juridical foundation upon which the privatization process is being advanced. The alleged failures to undertake meaningful public participation, to conduct contemporaneous security assessments, and to adhere to constitutional principles of public finance are not conjectural they are pleaded as procedural omissions that have already occurred in the course of implementation.

63. Articles 22 and 258 of the Constitution expressly authorise proceedings not only where rights have been violated, but also where violations are threatened. Constitutional adjudication is therefore preventive as much as it is remedial. It would defeat the purpose of these provisions to require litigants to await the consummation of an allegedly unconstitutional process before invoking the Court's protective jurisdiction.

64. This conclusion is reinforced by the decision in ***Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] KEHC 4297 (KLR),*** where the Court held that where a prima facie case with a likelihood of success is demonstrated, together with a real danger of prejudice resulting from a threatened constitutional violation, the Court is properly seized of jurisdiction to intervene. The principles articulated therein apply with equal force to the present Petitions.

65. As regards the doctrine of constitutional avoidance, the Supreme Court in ***Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others (supra)*** held that a court will ordinarily refrain from determining a constitutional issue where a matter may be resolved on another legal basis. However, the Court was equally clear that avoidance has no application where constitutional compliance is itself the central and inescapable question. In the instant case, the core issue is whether the Respondents' conduct conforms to constitutional standards introduced by the 2010 Constitution. There exists no alternative statutory pathway through which that question may be resolved without direct recourse to constitutional interpretation.

66. In the premises, this Court finds and holds that it possesses full, original, and undoubted jurisdiction under Articles 22, 23, 165(3)(b) and (d), and 258 of the Constitution to hear and determine the consolidated Petitions on their merits. The preliminary objections founded upon the doctrines of exhaustion, ripeness, and constitutional avoidance are hereby overruled.

Whether the Respondents may lawfully rely on a Cabinet approval issued in December 2008 to privatize Kenya Pipeline Company Limited under the Constitution of Kenya, 2010

67. The Petitioners' challenge to the foundational validity of the impugned privatization process is anchored on the contention that a Cabinet approval issued in December 2008, under the former constitutional dispensation, cannot lawfully be implemented in the year 2025 without demonstrable compliance with the Constitution of Kenya, 2010. This contention raises a question of profound constitutional significance, implicating the doctrine of continuity of State action within a transformative constitutional order, as well as the supremacy and normative force of the 2010 Constitution.

68. The Constitution of Kenya, 2010 fundamentally reconfigured the nature, source, and exercise of executive authority. Article 129(1) provides that:

"Executive authority derives from the people of Kenya and shall be exercised in accordance with this Constitution."

69. Article 129(2) further stipulates that executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya

and for their well-being and benefit. Article 10(1) binds all State organs, State officers, public officers and all persons whenever they apply or interpret the Constitution, enact, apply or interpret any law, or make or implement public policy decisions, to the national values and principles of governance, including public participation, transparency, accountability and the rule of law.

70. Executive power is therefore no longer a matter of residual prerogative or unreviewable discretion, it is constitutionally constrained, value-laden, and subject to judicial oversight. Its legitimacy is measured not merely by formal legality, but by fidelity to constitutional values.

71. Against this constitutional backdrop, the Respondents' reliance on a Cabinet approval issued under a repealed constitutional regime raises the critical question whether executive decisions taken prior to 27th August 2010 possess perpetual vitality capable of implementation decades later without renewed constitutional compliance. The Respondents contend that the Privatization Programme was lawfully formulated under the Privatization Act, 2005, approved by Cabinet in December 2008, and gazetted on 14th August 2009, and that by virtue of Section 71 of the Privatization Act, 2025, the process may be finalized in accordance with the new Act. The Attorney General characterizes Section 71 as a saving and transitional provision intended to ensure continuity and to operate as a bridge between the old order and the new.

72. The legal effect of a declaration of unconstitutionality of a repealing statute was considered by the Court of Appeal in ***Speaker of the National Assembly***

& another v Orange Democratic Movement Party & 8 others [2025] KECA 681 (***KLR***). At paragraph 29, the Court stated:

"This argument is fallacious. The legal effect of the declaration of unconstitutionality of the Privatisation Act, 2023 is to render inoperative all the provisions thereof including the provisions that repealed the existing statute to pave way for the new one. It cannot, therefore, be true that the effect of the High Court judgment is to create a vacuum in this area. The effect of the High Court judgment is to return the statutory landscape to the status quo ante."

73. The import of that holding is that the Privatization Act, 2005 remains the operative statutory framework governing the privatization process.

74. However, the continued operation of the Privatization Act, 2005 does not ipso facto validate, in 2025, the implementation of a Cabinet approval granted in 2008 without renewed constitutional scrutiny. The Constitution does not recognize fossilized executive mandates insulated from constitutional evolution. The supremacy clause in Article 2(1) and (4) demands that all State action, whenever undertaken, conform to the Constitution as presently in force.

75. The Supreme Court in ***Macharia & another v Kenya Commercial Bank Ltd & 2 others (Application 2 of 2011) [2012] KESC 8 (KLR)***, affirmed the general principle governing retrospectivity of legislation, holding:

"As for non-criminal legislation, the general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or evidence are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature."

76. Although that decision addressed legislative retrospectivity, its reasoning underscores a broader constitutional principle: new normative frameworks govern future action. Thus, implementation of a pre-2010 executive decision in 2025 must be evaluated against the constitutional standards in force at the time of implementation.

77. The Court of Appeal in ***Philip K. Tunoi & another v Judicial Service Commission & another [2016] KECA 715 (KLR),*** described transitional provisions as serving as a "bridge" from the old order to the new. Section 71 of the Privatization Act, 2025 may serve such a bridging function; however, a bridge facilitates continuity of process, not immunity from constitutional compliance. The Constitution of Kenya, 2010 introduced substantive requirements governing the management of public resources (Article 201), public participation (Article 10), accountability (Article 232), and the exercise of executive authority (Article 129). Decisions affecting strategic national assets must therefore satisfy current constitutional standards, not merely historical legality.

78. In ***Judicial Service Commission v Speaker of the National Assembly & 4 others*** **[2014] KEHC 7493 (KLR),** the Court affirmed that any action undertaken by a State organ must conform to the Constitution, and that

conduct inconsistent with the Constitution is void to the extent of that inconsistency. The logical corollary is that executive approvals issued prior to the 2010 Constitution cannot operate autonomously within the new constitutional order. Where such approvals are acted upon post-2010, they must be implemented through processes demonstrably compliant with constitutional imperatives, including adherence to national values, public participation, fiscal responsibility, and accountability.

79. The Respondents have not demonstrated that the 2008 Cabinet approval was reconsidered and reaffirmed under the normative framework of the 2010 Constitution through a process expressly grounded in Articles 10, 129, 201, and 232. The approval of a specific Privatization Proposal by Cabinet on 24th March 2025 introduces an element of contemporaneity; however, that approval relates to the proposal, not to the foundational decision incorporating Kenya Pipeline Company Limited into the privatization programme. The enduring question is whether the inclusion of that entity in 2008 can, without fresh constitutional appraisal, sustain the weight of constitutional scrutiny in 2025, particularly in light of evolving economic, fiscal, and national security considerations.

80. The Supreme Court in ***In the Matter of the Interim Independent Electoral Commission (Constitutional Application 2 of 2011)[2011] KESC 1 (KLR)***, emphasized that constitutional interpretation must promote the Constitution's purposes, values, and principles. The Court observed that the Constitution must be interpreted in a manner that advances its transformative character. To permit the implementation in 2025 of an executive decision made in 2008 without renewed constitutional

compliance would risk entrenching precisely the culture of opaque and insulated executive decision-making that the 2010 Constitution sought to dismantle.

81. Nevertheless, the Court must weigh this principle against the practical and institutional context. The Privatization Programme was gazetted on 14th August 2009, the Privatization Act, 2005 remains operative; Cabinet approved the specific Privatization Proposal on 24th March 2025 and the National Assembly has undertaken extensive public participation in considering the relevant Sessional Paper. These post-2010 steps are not insignificant. They reflect an attempt at least procedurally to situate the process within the contemporary constitutional framework.

82. In the result, this Court finds that while the original 2008 Cabinet approval cannot, standing alone, sustain the constitutional validity of the process in 2025, the subsequent steps taken most notably the 2025 Cabinet approval of the specific proposal and the parliamentary process have infused the process with a measure of contemporary constitutional consideration. The more judicious approach is not to invalidate the entire process solely because its genesis predates the Constitution, but to interrogate, at each stage, whether the requirements of the Constitution as currently in force have been met. Such an approach accords with the principle of constitutional avoidance and with the Court's duty to preserve lawful governmental action where it is capable of being sustained within constitutional bounds.

83. Accordingly, while this Court harbours serious reservations regarding reliance upon a pre-2010 executive approval as the sole juridical foundation for the impugned process, it is not persuaded that this ground, standing alone, is sufficient to vitiate the entire privatization framework. Constitutional adjudication demands a measured and proportionate inquiry. The mere historical origin of a decision does not, ipso facto, invalidate subsequent actions taken under a new constitutional order, provided those actions demonstrably conform to the Constitution as presently in force.

84. The decisive question, therefore, is not the antiquity of the initial approval, but whether the process as implemented post-2010 satisfies the substantive and procedural imperatives of the Constitution, including adherence to Articles 10, 129, 201, and 232. The validity of the privatization process must consequently be determined through a stage-by-stage examination of compliance with specific constitutional requirements.

85. The Court accordingly proceeds to interrogate, in the succeeding issues, whether the impugned actions meet the constitutional thresholds governing public participation, public finance management, transparency, accountability, and the protection of strategic national interests.

Whether the process leading to the proposed privatization of Kenya Pipeline Company Limited complied with the constitutional requirement of public participation under Article 10 of the Constitution

86. Public participation is one of the foundational values and principles of our democratic State. It is entrenched in Article 10 of the Constitution as a national value and principle of governance binding on all State organs, State

officers, public officers and all persons whenever they apply or interpret the Constitution, enact, apply or interpret any law, or make or implement public policy decisions.

87. Article 118 reinforces this requirement, providing that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees.

88. The Supreme Court has had occasion to elaborate on the nature and scope of public participation. In ***British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tabacco Kenya Limited (Affected Party) (supra)*** the Court established guiding principles for public participation, holding that it is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. The Court emphasized that public participation must be real and not illusory, not a cosmetic or public relations act, and not a mere formality to be undertaken as a matter of course just to fulfil a constitutional requirement. There is need for both quantitative and qualitative components in public participation.

89. The Supreme Court further held that public participation must be accompanied by reasonable notice and reasonable opportunity, and that allegations of lack of public participation must be considered within the peculiar circumstances of each case. The mode, degree, scope, and extent of public participation is to be determined on a case-to-case basis. Components of meaningful public participation include clarity of the subject

matter for the public to understand, structures and processes of participation that are clear and simple, opportunity for balanced influence from the public in general, commitment to the process, inclusive and effective representation, integrity and transparency of the process, and capacity to engage on the part of the public.

90. The High Court in ***Gakuru & others v Governor Kiambu County & 3 others [2014] KEHC 7516 (KLR)*** stated that public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the constitutional dictates. It behoves legislative bodies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively.

91. The Court of Appeal affirmed this decision in ***Kiambu County Government & 3 others v Gakuru & others [2017] KECA 459 (KLR),*** adding that public participation must include, and be seen to include, the dissemination of information, invitation to participate in the process, and consultation on the legislation.

92. In the seminal South African Constitutional Court decision in ***Doctors for Life International v Speaker of the National Assembly and Others (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006),*** the Court held that merely allowing public participation in the law-making process is not enough. More is required, and measures need to be taken to facilitate public participation in the law-making process. The duty to facilitate public involvement includes the duty to provide meaningful opportunities for public participation and the duty to take

measures to ensure that people have the ability to take advantage of the opportunities provided.

93. Measured against the constitutional standards of Article 10, the public participation undertaken in respect of the proposed privatization of Kenya Pipeline Company Limited must be closely evaluated. The Respondents have placed before this Court extensive evidence of the parliamentary process. The Joint Committee issued advertisements in two national newspapers on 6th August 2025, inviting memoranda and submissions from the public on the Sessional Paper. At the conclusion of this exercise, the Committee received memoranda from forty members of the public.

94. In addition, the Committee invited and heard a wide range of stakeholders, including the National Treasury, the Ministry of Energy and Petroleum, the Privatization Commission, the Office of the Attorney General, the Central Bank of Kenya, the Nairobi Securities Exchange, the Capital Markets Authority, the Institute of Certified Investment and Financial Analysts, the Institute of Economic Affairs, and notably, the Kenya Petroleum Oil Workers Union, the 2nd Petitioner in these proceedings.

95. The record thus demonstrates that the participatory process was inclusive, comprehensive, and extended opportunities for both institutional and civil society engagement, consistent with the constitutional mandate that public participation under Article 10 be meaningful, consultative, and capable of informing decision-making.

96. The 2nd Petitioner's Secretary General, George Okoth, appeared before the Joint Committee on 13th August 2025 and made submissions. The Joint Committee Report records the submissions made by the 2nd Petitioner, including its opposition to the privatization, concerns regarding national energy security, potential job losses, and demands for legal protection for employees' rights. These submissions were considered by the Committee and informed the observations and recommendations contained in its Report.

97. The Joint Committee's Report, demonstrates a thorough engagement with the issues raised by stakeholders. The Report addresses the suitability of Kenya Pipeline Company Limited for privatization, the proposed shareholding structure, market conditions, regulatory environment, benefits of an Initial Public Offer, valuation and transparency, post-audit processes, safeguards for national and energy security, safeguarding of affected parties, ownership limits, resource mobilization risks, valuation costs and risks, treatment of subsidiaries, procurement of transaction advisors, use of proceeds, policy synchronization, public disclosure and marketing, periodic reporting, eligibility of investors, and safeguarding competition in the petroleum sector.

98. The Petitioners contend that this process was insufficient because the public was not provided with critical information such as an independently verified valuation, the proposed structure of the Initial Public Offering, and the fiscal implications of disposing of a controlling stake. However, as the Respondents correctly submit, valuation under Section 31 of the Privatization Act, 2005, is an implementation-stage deliverable to be

prepared by qualified persons appointed by the Privatization Commission upon approval of the proposal by the National Assembly. The Joint Committee's Report itself notes that there is limited information and transparency in the pre-approval stage of the privatization process due to current weaknesses and lack of specification of the privatization law, and recommends that the valuation of the company should be contained in the prospectus and a separate citizen-friendly IPO valuation report that should be produced and publicized for the general public.

99. The Petitioners further contend that the public participation was rushed, with only one week provided for submissions. However, the Supreme Court in ***British American Tobacco Kenya PLC (supra)*** held that what amounts to a reasonable opportunity will depend on the circumstances of each case.

100. The Privatization Proposal was submitted to the National Assembly on 5th August 2025. Advertisements were placed on 6th August 2025. Submissions were received by 13th August 2025. The Joint Committee held stakeholder engagements on 11th, 12th, and 13th August 2025, and tabled its Report on 14th August 2025. While this timeline was undoubtedly compressed, it must be viewed in the context of the broader process. The proposed privatization had been under consideration for many years, having been included in the Privatization Programme gazetted in 2009. The 2025/2026 budget, which includes privatization proceeds of Kenya Shillings 149 billion, was subject to public participation during the budget-making process. The 2nd Petitioner itself had ample opportunity to prepare and present its submissions, which it did on 13th August 2025.

101. The South African Constitutional Court in ***Doctors for Life International (supra)*** held that when it comes to establishing legislative timetables, the temptation to cut down on public involvement must be resisted. Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public involvement are reasonable. The timetable must be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable. However, in this case, the timetable was driven by the need to consider the Sessional Paper before the parliamentary session ended, and the process was designed to ensure that public input was received and considered before the Committee finalized its Report.

102. The Petitioners have not demonstrated that they sought and were denied access to information that was reasonably available at the time. The valuation, which the Petitioners contend was essential for meaningful participation, is an implementation-stage document that, by law, is prepared after parliamentary approval.

103. The doctrine of exhaustion requires that a party seeking information must first invoke the statutory mechanisms under the Access to Information Act before complaining of denial of access. The Petitioners have not shown that they made any formal request for information that was unlawfully denied.

104. Considering the totality of the evidence, this Court finds that the public participation conducted by the National Assembly in respect of Sessional Paper No. 2 of 2025 was meaningful within the framework established by the Supreme Court in ***British American Tobacco Kenya PLC (supra)*****.** The

process provided for the dissemination of information through newspaper advertisements, invited public submissions, received and considered memoranda from forty members of the public, held stakeholder engagements, and produced a comprehensive Report addressing the issues raised. The 2nd Petitioner was given and took the opportunity to present its views, which were considered by the Committee. The fact that the Petitioners may disagree with the outcome of the process does not render the process itself constitutionally infirm.

105. This Court is fortified in this conclusion by the decision in ***Orange Democratic Movement Party & 4 others v Speaker of National Assembly & 5 others [2024] KEHC 11494 (KLR)***, where the Court found that the legislative process leading to the enactment of the Privatization Act, 2023, did not meet the constitutional threshold of public participation.

106. In that case, the Committee received only six memoranda, and only four stakeholders appeared before it, most of them government institutions. By contrast, in the present case, the Joint Committee received forty (40) memoranda from members of the public and heard ten stakeholder groups, including civil society and the 2nd Petitioner. The process in this case demonstrates a genuine effort to facilitate public participation that meets both quantitative and qualitative standards.

107. Accordingly, upon a comprehensive evaluation of the evidentiary record and the applicable constitutional standards, this Court finds and holds that the process leading to the proposed privatization of Kenya Pipeline

Company Limited satisfied the constitutional threshold of public participation as contemplated under Article 10 of the Constitution.

Whether the impugned privatization process violates the constitutional principles governing public finance under Articles 201 and 227 of the Constitution

108. Articles 201 and 227 of the Constitution establish a comprehensive normative framework for public finance. Article 201 demands openness, accountability, and prudent and responsible use of public resources, while Article 227 requires that any procurement or disposal of public assets be undertaken in a manner that is fair, equitable, transparent, competitive, and cost-effective. These provisions are binding constitutional commands that condition the legality of State action.

109. The Petitioners contend that the Respondents have not demonstrated that the decision to dispose of a controlling stake in Kenya Pipeline Company Limited was informed by a current, independently verified valuation disclosed to the public. They argue that no comprehensive cost-benefit analysis weighing the long-term revenue streams and strategic value of continued public ownership against the short-term fiscal gains of privatization has been placed before the Court. They further argue that the proceeds of sale lack budgetary specificity, contrary to the accountability and traceability requirements of public finance management.

110. The evidence before the Court tells a different story. The 2nd Respondent has placed before the Court comprehensive due diligence reports covering financial, technical, operational, legal, human resource, commercial, and

environmental aspects of Kenya Pipeline Company Limited. These reports include a Financial and Tax Due Diligence Report, Legal Due Diligence Report, Technical and Operational Due Diligence Report, Market and Commercial Due Diligence Report, Environmental and Social Due Diligence Report, and Human Resource Due Diligence Report. A detailed feasibility study and cost-benefit analysis was undertaken to inform the Privatization Proposal.

111. The Privatization Proposal itself, contained in Sessional Paper No. 2 of 2025, sets out in detail the rationale for privatization, the recommended method, the estimated costs, the benefits to be gained, and a work plan. The Sessional Paper discloses that the government intends to retain thirty-five percent ownership and privatize up to sixty-five percent, and that the projected revenue from the transaction is approximately Kenya Shillings 100 billion. The Joint Committee's Report notes that this figure is based on the last audited accounts, which valued the company at approximately Kenya Shillings 120 billion as of FY 2023/24, and that a comprehensive valuation will be conducted to determine the optimal value for the Government.

112. Section 31 of the Privatization Act, 2005, provides that a valuation shall be conducted to assist the Commission in implementing a privatization proposal, and that such valuation shall be performed by a qualified person appointed by the Commission. The statutory scheme contemplates that the valuation is an implementation-stage deliverable, prepared subsequent to the approval of the privatization proposal by the National Assembly.

113. The Joint Committee's Report acknowledges that, at the pre-approval stage, there is limited information and transparency owing to the current deficiencies and lack of specificity in the privatization law. The Committee accordingly recommends that the company's valuation be included in the prospectus, and that a separate, citizen-friendly IPO valuation report be prepared and publicized for the general public, thereby enhancing transparency and facilitating meaningful engagement by stakeholders.

114. This approach underscores the importance of ensuring that critical information, including valuation data, is accessible and comprehensible, in line with the constitutional principles of transparency, accountability, and public participation under Articles 10 and 232.

115. The requirement that valuation be undertaken by qualified persons appointed by the Commission/Authority, and that the valuation be disclosed in the prospectus, provides assurance that the process will be informed by independent expert opinion. The involvement of the Capital Markets Authority and the Nairobi Securities Exchange in reviewing the prospectus and ensuring compliance with disclosure requirements provides additional layers of oversight. The post-transaction audit by the Auditor-General, as recommended by the Joint Committee, will provide further accountability.

116. With respect to the utilisation of proceeds, the Sessional Paper provides that the funds generated from the proposed privatization will be applied towards development expenditure, settlement of pending bills, or liability management. The Joint Committee's Report, however, observes that due to

deficiencies in the Privatization Act, 2005, there exists no clear statutory mechanism to ensure that the proceeds of privatization transactions are properly managed, safeguarded for fiscal sustainability, or preserved for the benefit of future generations.

117. In light of these concerns, the Committee recommended that the measures identified in its Report to address these gaps be incorporated into legislation regulating privatization in Kenya. This recommendation reflects a constitutional imperative that public resources derived from the disposal of strategic assets must be managed transparently, prudently, and in accordance with the principles of fiscal responsibility enshrined in Articles 201 and 232 of the Constitution.

118. The Petitioners' concern regarding lack of budgetary specificity must be viewed in light of the fact that the exact amount of proceeds will depend on market valuation and price discovery during the Initial Public Offering process. Flexibility at the appropriation stage is a standard fiscal practice and does not negate constitutional safeguards. Robust accountability and traceability mechanisms exist and will apply to privatization proceeds, including parliamentary appropriation and oversight, Exchequer procedures overseen by the Controller of Budget, mandatory audit and reporting by the Auditor-General, and IFMIS, procurement rules, and quarterly budget implementation reporting.

119. This Court finds that the Respondents have taken reasonable steps to comply with the principles of public finance under Articles 201 and 227. The process has been informed by comprehensive due diligence, including

financial analysis. The valuation will be undertaken by qualified persons at the implementation stage. The proceeds will be subject to parliamentary appropriation, oversight by the Controller of Budget, and audit by the Auditor-General. The Joint Committee's recommendations address the concerns regarding transparency and accountability.

120. Accordingly, this ground of challenge fails.

Whether the proposed privatization violates constitutional obligations relating to national security under Article 238 and consumer protection under Article 46 of the Constitution

121. Article 238 of the Constitution defines national security as the protection against internal and external threats to Kenya's territorial integrity and sovereignty, its people, their rights, freedoms, property, peace, stability and prosperity, and other national interests. Article 238(2) provides that the national security of Kenya shall be promoted and guaranteed in accordance with the Constitution and subject to the authority of Parliament and the national executive.

122. The Petitioners contend that Kenya Pipeline Company Limited constitutes critical national infrastructure whose control has direct implications for energy security, economic stability, and sovereignty. They argue that the Respondents have placed no evidence before the Court of any contemporary national security risk assessment undertaken prior to advancing the privatization, exposing the nation to avoidable security risks.

123. The Respondents have placed before the Court the Environmental and Social Due Diligence Report. This report addresses the alignment of the privatization with national environmental and social frameworks, including the Environmental Management and Coordination Act, the Energy Act, and international standards such as the IFC Environmental, Health and Safety Guidelines for Oil and Gas Development and the Equator Principles. The report covers pollution control and waste management, spill control and rapid remediation, leak detection and pipeline integrity management, and remediation of historical spills.

124. The Joint Committee's Report addresses safeguards for national and energy security. The Committee observed that given the strategic importance of the Kenya Pipeline Company (KPC) to the country's petroleum supply chain and overall energy security, the privatization process must be designed to preserve the State's ability to safeguard critical infrastructure and ensure uninterrupted fuel supply. The Committee recommended embedding provisions in the transaction structure or relevant legislation to protect national security and interests, maintaining State oversight over strategic assets, and ensuring compliance with national energy policy objectives.

125. The Joint Committee further recommended, that to prevent the emergence of a monopoly, the privatization of KPC should be structured to ensure the entity retains its core mandate of transporting and storing petroleum products and does not venture into the importation or sale of petroleum products without prior approval from the Competition Authority of Kenya, Energy and Petroleum Regulatory Authority, and the National Assembly.

126. Article 46 of the Constitution entitles consumers to goods and services of reasonable quality, to information necessary to derive full benefit from such goods and services, and to protection of their health, safety, and economic interests. The Petitioners contend that the privatization of a monopoly operator without robust safeguards may expose consumers to harm, including price escalation, diminished accountability, or disruptions in service delivery.

127. In response, the Respondents have placed before this Court evidence demonstrating the existence of comprehensive legislative and regulatory frameworks to protect consumers in the petroleum sector. The Energy and Petroleum Regulatory Authority (EPRA), established under the Energy Act, 2019, is mandated to regulate the importation, refining, transportation, storage, and sale of petroleum products. The Energy (Petroleum Pricing) Regulations, 2022 prescribe the methodology for computing petroleum pump prices, taking into account landed cost, storage and distribution costs, gross margins, and applicable taxes and levies. Submissions from the Cabinet Secretary for the Ministry of Energy and Petroleum to the Joint Committee confirmed that petroleum prices in Kenya are regulated by EPRA under a three-year tariff model, and that privatization of Kenya Pipeline Company Limited (KPC) will not alter this regulatory oversight. EPRA will continue to ensure fair competition, safeguard consumer interests, enforce product quality compliance, and maintain equitable regional access to petroleum products.

128. The Joint Committee's Report further underscores the strength of the regulatory environment, noting that Kenya maintains a robust and

transparent framework particularly in the energy sector and capital markets which is critical for investor confidence and the integrity of the IPO process. Effective oversight by institutions such as the Capital Markets Authority, the Central Bank of Kenya, the Nairobi Securities Exchange, and EPRA is expected to promote fairness, mitigate risks, enhance investor confidence, and contribute to the overall success and sustainability of the privatization initiative.

129. The Petitioners have not adduced any evidence substantiating their allegations that privatization will materially impair consumer rights or threaten national security. The purported risks remain speculative. The existing statutory and regulatory architecture, coupled with the safeguards proposed by the Joint Committee, provides sufficient protection for consumers' rights and national security interests. The Court is therefore satisfied that the process, as currently structured, maintains compliance with constitutional obligations relating to consumer protection.

130. The Court is guided by the decision in ***Orange Democratic Movement Party & 4 others v Speaker of National Assembly & 5 others (supra)*** where the Court considered similar arguments regarding the constitutionality of privatization provisions. At paragraph 118, the Court held that:

"Privatization means that the government would be shedding off its ownership or part of it in public entities. The objects and purposes of privatisation as stated in section 6 cannot, in my respectful view, be said to contravene article 43(1) as read with article 19 of the Constitution as the petitioners perceive it. In any event, the petitioners have not shown

that without the purposes of privatisation in section 6, the rights under article 43(1) are achievable."

131. This Court finds and holds that the Petitioners have failed to demonstrate that the proposed privatization violates constitutional obligations relating to national security under Article 238 or consumer protection under Article 46 of the Constitution. The regulatory framework governing the petroleum sector remains intact and will continue to protect consumers and safeguard national security interests regardless of changes in corporate shareholding.

Whether the proposed privatization violates employees' rights to fair labour practices under Article 41 of the Constitution, and whether this Court has jurisdiction to determine such grievances

132. The 2nd Petitioner, the Kenya Petroleum and Oil Workers Union, raises detailed concerns regarding the impact of privatization on employees' rights to fair labour practices under Article 41 of the Constitution. They contend that the privatization threatens job losses, unilateral alteration of terms of engagement, restructuring, and erosion of collective bargaining agreements. They argue that no information has been provided regarding the Employee Share Ownership Plan, including what percentage of shares will be allocated to employees and on what preferential terms.

133. The 2nd Petitioner further relies on the United Nations Guiding Principles on Business and Human Rights, arguing that the Respondents failed to undertake a Human Rights Impact Assessment to anticipate, evaluate, and mitigate the impact of privatization on employees' labour rights.

134. The 1st Respondent and the 3rd Respondent raise an objection to this Court's jurisdiction to entertain employment-related grievances. They argued that Article 165(5)(b) of the Constitution ousts the jurisdiction of the High Court to hear disputes relating to employment and labour relations, which are matters within the exclusive jurisdiction of the Employment and Labour Relations Court pursuant to Article 162(2)(a) of the Constitution and Section 12 of the Employment and Labour Relations Court Act.

135. The Court of Appeal in ***Mugendi v Kenyatta University & 3 others [2013] KECA 41 (KLR)*** addressed this issue directly. The Court adopted the position enunciated in the South African case of ***Gcaba v Minister of Safety and Security & Others CCT 64/08 (2009) ZACC 26***, holding that the Industrial Court (now the Employment and Labour Relations Court) is a specialist court to deal with employment and labour relations matters, and that since the court is of the same status as the High Court, it has jurisdiction to enforce labour rights in Article 41 and to interpret the Constitution and fundamental rights and freedoms incidental to the exercise of jurisdiction over matters within its exclusive domain. The Court concluded that the High Court had no jurisdiction to entertain claims based on breaches of contract of employment along with claims of breaches of rights.

136. The Supreme Court in ***Republic v Chengo & 2 others [2017] KESC 15 (KLR)*** affirmed this position, holding that pursuant to Article 162(3) of the Constitution, Parliament enacted the Environment and Land Court Act and the Employment and Labour Relations Act and respectively outlined the separate jurisdictions of the ELC and the ELRC. The Court held that these

are different and autonomous courts and exercise different and distinct jurisdictions, and that as Article 165(5) precludes the High Court from entertaining matters reserved to the ELC and ELRC, it should, by the same token, be inferred that the ELC and ELRC too cannot hear matters reserved to the jurisdiction of the High Court.

137. The grievances raised by the 2nd Petitioner concerning potential job losses, unilateral alteration of terms of service, alleged violations of collective bargaining agreements, and the terms of the Employee Share Ownership Plan are, by their very nature, matters of employment and labour relations. They arise directly from the employment relationship and therefore fall squarely within the exclusive jurisdiction of the Employment and Labour Relations Court under Article 162(2) of the Constitution and the Employment Act, 2007.

138. This Court, however, is not obliged to disregard the 2nd Petitioner's concerns entirely. In ***Mugendi v Kenyatta University & 3 others supra***, it was recognised that where alleged violations of fundamental rights and freedoms are ancillary or incidental to employment matters, the Employment and Labour Relations Court retains jurisdiction not only to enforce rights under Article 41, but also to safeguard all fundamental rights that are incidental to the labour dispute. The 2nd Petitioner is accordingly at liberty to pursue these grievances in the appropriate forum.

139. On the merits of the concerns raised, the evidence before the Court demonstrates that the Respondents have proactively taken steps to address employee interests. Staff sensitization forums were conducted in Mombasa,

Nairobi, Nakuru, Eldoret, and Kisumu between 30th July and 18th August 2025, with attendance registers confirming participation by numerous employees across all stations. The Joint Committee's Report emphasises the need to safeguard affected parties, recommending that employees be represented in the company's ownership structure to ensure their perspectives are considered at the board level, with the national government leveraging its majority stake to protect their interests. The Report further notes that the IPO includes an Employee Share Ownership Plan, affording staff the opportunity to acquire shares and participate in the company's future growth.

140. The Human Resource Due Diligence Report confirms that KPC employs experienced, well-trained personnel with appropriate skills and competencies. It records that KPC maintains a recognition agreement with the Kenya Petroleum Oil Workers Union, that the industrial relationship is cordial, and that no disputes are pending aside from the ongoing collective bargaining agreement covering 2026-2030. KPRL similarly has a recognition agreement with the Union.

141. In its Replying Affidavit, the 2nd Respondent states that under Section 24(d) of the Privatization Act, 2005, the Commission is mandated to recommend measures to safeguard employees directly affected by privatization. In compliance with this provision, a detailed human resource due diligence exercise was undertaken, ensuring adherence to domestic labour laws and international best practices. The Employee Share Ownership Plan forms part of these measures, designed to ensure that employees share in the company's future growth and prosperity.

142. The 2nd Petitioner's reliance on the United Nations Guiding Principles on Business and Human Rights is well-founded. By virtue of Articles 2(5) and 2(6) of the Constitution, these principles are incorporated into the law of Kenya. Principle 18 requires States to undertake human rights due diligence to identify, prevent, mitigate, and account for adverse human rights impacts. Principle 20 requires the establishment of effective grievance mechanisms.

143. The evidence demonstrates that the Respondents have undertaken significant due diligence in this regard. The staff sensitization forums provided a platform for employees to be informed of the privatization process and to raise concerns. The Employee Share Ownership Plan is a mechanism to ensure employees benefit from the privatization, while the Joint Committee's Report acknowledges the 2nd Petitioner's concerns and proposes measures to safeguard employee interests.

144. Notwithstanding the foregoing, the precise terms of the Employee Share Ownership Plan including the percentage of shares allocated to employees and the preferential terms remain matters for the implementation stage. The 2nd Petitioner will have the opportunity to engage with the Privatization Authority and the transaction advisors on these matters as the process advances. Any disputes arising regarding these terms fall within the exclusive jurisdiction of the Employment and Labour Relations Court.

145. This Court therefore finds that, while it lacks jurisdiction to adjudicate the employment-related grievances raised by the 2nd Petitioner, such grievances

are properly within the exclusive jurisdiction of the Employment and Labour Relations Court and may be pursued therein. Notwithstanding this limitation, the Respondents have demonstrated that they have undertaken measures to address employee concerns and to ensure that employees are not prejudiced by the privatization process, including through staff sensitization forums and the establishment of an Employee Share Ownership Plan.

Whether the Competition Authority of Kenya abdicated its statutory and constitutional mandate in relation to the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited

146. The 2nd Petitioner contends that the Competition Authority of Kenya failed in its statutory mandate to interrogate the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited, which effectively established the Kenya Pipeline Company as a monopoly in the petroleum and oil sector. The 2nd Petitioner argues that this failure of regulatory oversight constitutes a dereliction of duty and a failure to protect the welfare of consumers.

147. The 3rd Interested Party, the Competition Authority of Kenya, through the Replying Affidavit of its Director General, David Kemei, sworn on 11th September 2025, sets out the statutory framework governing mergers. Section 2 of the Competition Act defines a merger as an acquisition of shares, business or other assets resulting in the change of control of a business. Section 41(1) provides that a merger occurs when an undertaking directly or indirectly acquires control over the whole or part of another undertaking. Section 41(3) defines control to include beneficial ownership

of more than half of the issued share capital, entitlement to vote a majority of votes, ability to appoint a majority of directors, or ability to materially influence the policy of the undertaking.

148. The Authority argued that both Kenya Pipeline Company Limited and Kenya Petroleum Refineries Limited were wholly owned by the Government of Kenya through the Cabinet Secretary, National Treasury. After the transaction, the ultimate controlling shareholder remained the Cabinet Secretary, National Treasury, with the shareholding structure merely changing from parallel ownership to parent-subsidiary structure. The Authority contends that since there was no change of control, the transaction did not constitute a merger within the meaning of Sections 2 and 41 of the Competition Act and did not require authorization from the Authority.

149. The Authority's letter to Kenya Pipeline Company Limited dated 18th August 2023 confirms this position. The letter states that the proposed transaction is not a merger in terms of sections 2 and 41 of the Competition Act No. 12 of 2010 and Rule 6 (2) of the Competition (General) Rules, 2019, and that the transaction is an internal restructuring involving undertakings controlled by the same shareholder and DOES NOT require authorization from the Authority prior to its implementation.

150. The Authority further argued that Kenya operates a suspensory merger regime, meaning that parties to a proposed merger must notify the Authority before implementation, and implementation of a notifiable merger without approval is unlawful. The privatization of the 1st Respondent

has not been notified to the Authority and is not at a notifiable stage as it is in the Privatization Programme/Proposal Policy approval phase.

151. The Authority's interpretation of the Competition Act is consistent with the statutory definition of a merger. Where there is no change in ultimate control, there is no merger requiring notification. The transaction between KPC and KPRL was an internal restructuring within the same corporate group, ultimately controlled by the same shareholder. The Authority correctly advised that no authorization was required.

152. The 2nd Petitioner's prayer that the Authority conducts a competitive market analysis and undertakes an audit and renders a public report on the market impact of the acquisition and the proposed privatization is misconceived. The Authority cannot conduct a merger analysis in respect of a proposed transaction in the absence of notification by the parties thereto. Any attempt to do so would be ultra vires, unlawful, and in excess of its statutory mandate.

153. The principle that a public body must exercise only powers expressly conferred upon it by statute is well established. In ***Muigai & another v Law Society of Kenya & another [2015] KEHC 6973 (KLR)***, the Court held that where the law exhaustively provides for the jurisdiction of a body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation. To require the Authority to conduct a merger analysis of a transaction that has not been notified would be to require it to act beyond its statutory mandate. The court, in arriving at the conclusion, stated as follows;

"Consequently, where the law exhaustively provides for the jurisdiction of a body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation. Further, Courts will not be rubber stamps of the decisions of administrative bodies. However, if Parliament gives great powers to statutory bodies, the Courts must allow them to exercise it. The Courts must nevertheless be vigilant to see that the said bodies exercise those powers in accordance with the law. The administrative bodies and tribunals or boards must act within their lawful authority and an act, whether it be of a judicial, quasi-judicial or administrative nature, is subject to the review of the Court on certain grounds. The tribunals or boards must act in good faith; extraneous considerations ought not to influence its actions; and it must not misdirect itself in fact or law. See Re Hardial Singh and others [1979] KLR 18; [1976-80] 1 KLR 1090."

154. This Court finds and holds that the Competition Authority of Kenya did not abdicate its statutory or constitutional mandate in relation to the acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited. The transaction was properly assessed and found not to constitute a notifiable merger. The privatization of the 1st Respondent is not at a stage where merger notification is required. The Authority has acted within the confines of the Competition Act and the Constitution.

Whether the proposed privatization involves the unlawful disposition of public land contrary to Article 67 of the Constitution

155. The 2nd Petitioner contends that the proposed privatization entails the transfer of public land to a private entity without the mandatory involvement, oversight, and approval of the National Land Commission (NLC) as required under Article 67(2) of the Constitution and the National Land Commission Act, 2012, and that this renders the entire process concerning land assets unlawful.

156. Article 67(2)(a) of the Constitution provides that the National Land Commission shall manage public land on behalf of the national and county governments. Section 5(1)(a) of the National Land Commission Act similarly mandates the Commission to manage public land on behalf of the national and county governments, while Section 5(2)(a) provides that the Commission may, on behalf of, and with the consent of, the national and county governments, alienate public land.

157. The 1st Respondent holds and operates on tracts of land that constitute public land. The proposed privatization, however, involves the transfer of shares in the company, not the direct alienation of the land itself. The company will continue to hold the land as a corporate entity, albeit with a change in shareholding. In other words, the land is not being directly alienated; rather, the ownership of the corporate entity that holds the land is changing.

158. This distinction is critical. The alienation of public land would necessitate the involvement of the National Land Commission. The transfer of shares in a State corporation holding public land is governed by the Privatization Act, 2005, which prescribes its own procedures to ensure that the corporation's

assets are properly valued and that the transaction is conducted transparently and competitively. The Joint Committee's Report recommends that the valuation of the company be contained in the prospectus, and that, pursuant to Section 31 of the Privatization Act, 2005, the Privatization Commission shall undertake a comprehensive valuation of the financial and asset position of Kenya Pipeline Company Limited (KPC) and submit a report to the National Assembly. The valuation should also take into account the future business potential of the company.

159. In submissions to the Joint Committee, the Institute of Economic Affairs observed that KPC owns significant land assets beyond its pipeline operations, but that limited disclosures risk undervaluing these assets. The Sessional Paper lists leasehold land at Kshs.15 billion but does not specify acreage or the inclusion of developed sites, such as the Mombasa Kipevu Oil Storage Facility and the Nairobi Terminal, both of which have substantial real estate potential. Greater transparency in disclosures is necessary to enable investors to accurately value KPC's land holdings.

160. The Joint Committee's Report further addresses valuation costs and risks, recommending that all liabilities both debt and credit and risks affecting the valuation of KPC be comprehensively assessed, transparently disclosed, and incorporated into the transaction valuation prior to the IPO. The valuation conducted at the implementation stage will necessarily include the company's land assets.

161. This Court finds that the involvement of the National Land Commission is not required at the parliamentary approval stage of the privatization

process. The transfer of shares in a State corporation does not constitute the alienation of public land. The valuation of KPC's land assets will be undertaken at the implementation stage under the oversight mechanisms provided in the Privatization Act. Should any actual disposition or alienation of land occur, the National Land Commission will have a role in accordance with Article 67(2) of the Constitution. At this juncture, no such disposition has taken place, and the Petitioners' concerns are therefore premature.

162. Accordingly, this ground of challenge fails.

CONCLUSION

163. Having carefully considered the consolidated Petitions, the responses thereto, the written submissions, and the authorities cited, this Court makes the following findings:

a) On jurisdiction, this Court has full and undoubted jurisdiction to hear and determine the consolidated Petitions. The Petitions raise pure constitutional questions regarding the validity of the proposed privatization of Kenya Pipeline Company Limited. The doctrines of exhaustion, ripeness, and constitutional avoidance do not apply to oust this Court's jurisdiction.

b) On the reliance on the 2008 Cabinet approval, while the original approval alone cannot sustain the constitutional validity of the process in 2025, the subsequent steps taken, including the 2025 Cabinet approval of the specific proposal and the extensive parliamentary process, have infused the process with sufficient contemporary constitutional consideration to address this foundational concern.

c) On public participation, the process conducted by the National Assembly in respect of Sessional Paper No. 2 of 2025 was meaningful within the framework established by the Supreme Court in ***British American Tobacco Kenya PLC (supra)***. The Joint Committee received forty memoranda from members of the public, heard ten stakeholder groups including the 2nd Petitioner, and produced a comprehensive Report addressing the issues raised. The 2nd Petitioner was given and took the opportunity to present its views, which were considered by the Committee.

d) On public finance, the Respondents have taken reasonable steps to comply with the principles of public finance under Articles 201 and 227. The process has been informed by comprehensive due diligence, including financial analysis. The valuation will be undertaken by qualified persons at the implementation stage. The proceeds will be subject to parliamentary appropriation, oversight by the Controller of Budget, and audit by the Auditor-General.

e) On national security and consumer protection, the Petitioners have failed to demonstrate any violation of constitutional obligations. The regulatory framework governing the petroleum sector remains intact and will continue to protect consumers and safeguard national security interests regardless of changes in corporate shareholding.

f) On employees' rights to fair labour practices, this Court lacks jurisdiction to determine the employment-related grievances raised by the 2nd Petitioner. Those grievances may properly be pursued before the Employment and Labour Relations Court. The Respondents have demonstrated that they have taken steps to address employee concerns

and to ensure that employees are not disadvantaged by the privatization process.

g) On the role of the Competition Authority, the Authority did not abdicate its statutory or constitutional mandate. The acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited was properly assessed and found not to constitute a notifiable merger. The privatization of the 1st Interested Party is not at a stage where merger notification is required.

h) On the disposition of public land, the involvement of the National Land Commission is not required at the parliamentary approval stage. The transfer of shares in a State corporation is not the alienation of public land. The valuation of the company's land assets will be undertaken at the implementation stage and will be subject to the oversight mechanisms provided in the Privatization Act.

164. In the result, the consolidated Petitions fail. The proposed privatization of Kenya Pipeline Company Limited has been conducted in substantial compliance with the Constitution and the law. The process has been transparent, has involved meaningful public participation, and has taken into account the legitimate concerns of stakeholders.

165. The Court makes the following orders:

a. The consolidated Petitions dated 14th August 2025, 25th August 2025, and the Amended Petition dated 4th September 2025 are hereby dismissed.

b. For the avoidance of doubt, the proposed privatization of Kenya Pipeline Company Limited as set out in Sessional Paper No. 2 of 2025

is not unconstitutional and may proceed in accordance with the Privatization Act, 2005, and subject to the observations and recommendations contained in the Report of the Joint Committee on Energy and the Select Committee on Public Debt and Privatization dated 14th August 2025.

c. The 2nd Petitioner, the Kenya Petroleum and Oil Workers Union, is at liberty to pursue any employment-related grievances arising from the implementation of the privatization before the Employment and Labour Relations Court.
d. Each party shall bear its own costs, this being a matter of public interest litigation.

Orders accordingly. Files closed accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF FEBRUARY 2026.

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BAHATI MWAMUYE MBS

JUDGE

In the presence of :-

Counsels for the 1st Petitioner – Mr. Mulomgo and Mr. Tali Tali

Counsel for the 2nd Petitioner – Mr. Otokoma h/b. Mr. Onyonyi

Counsel for the 1st Respondent- Ms. Mbaya

Counsel for the 2nd, 3rd and 5th Respondents- Mr. Kaumba

Counsel for the 4th Respondent – Ms. Nganyi

Counsel for the 2nd Interested Party - Ms. Kaunda

Counsel for the 3rd Interested Party – Ms. Maina

Court Assistant – Ms. Lwambia