



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**IN THE CONSTITUTION AND HUMAN RIGHTS DIVISION**  
**PETITION NO E001 OF 2026**  
**BETWEEN**

**GREEN THINKING ACTION PARTY (GTAP).....PETITIONER**

**VERSUS**

**KENYA BUREAU OF STANDARDS (KEBS)..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**THE MINISTRY OF INVESTMENTS,**

**TRADE AND INDUSTRY..... 3<sup>RD</sup> RESPONDENT**

**THE NATIONAL TREASURY AND**

**ECONOMIC PLANNING.....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY-GENERAL.....5<sup>TH</sup> RESPONDENT**

**AND**

**AUDITOR GENERAL.....INTERESTED PARTY**

**RULING**

1. This ruling on the Petitioner’s Notice of Motion dated 19th December 2025, filed contemporaneously with the Petition challenging the constitutional validity of Legal Notice No. 136 of 2025, namely the **Standards (Standards Levy) Order, 2025**. The Motion was filed under certificate of urgency and is expressed to be brought pursuant to Articles 2, 10, 23, 24 (1), 35, 46, 159 (1) (a), 165 (3) (b), 259 (1) of the Constitution of Kenya, and Rule 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules.
2. The Applicant seeks the following orders:
  - 1) *Spent.*
  - 2) *That pending the hearing and determination of this Application, this Honourable Court be pleased to issue an interim conservatory order,*

*prohibiting the Respondents, their agents, and/or officers from implementing Legal Notice Number 136 of 2025, the Standards (Standards Levy) Order, 2025.*

- 3) *That pending the hearing and determination of this Application, an interim conservatory order do issue, protecting the interests of the Kenyan public by temporarily suspending the continued collection or charging the fees and/or levy provided in Legal Notice Number 136 of 2025, the Standards (Standards Levy) Order, 2025 by the Respondents, their agents, and/or officers from and that the Respondents, their agents, and/or officers continue to apply the fees and/or levy in place prior to the impugned enactment.*
  - 4) *That any other orders that this Honourable Court may deem fit and just in the circumstances*
  - 5) *That the costs of this Application be provided for.*
3. The Motion is based on the grounds on its face and is supported by the Affidavit of Harrison Ochieng, sworn on 19th December 2025, who depones that he is the **Deputy Secretary General of the Petitioner, a political party duly registered under the Political Parties Act, 2011.** He avers that the Petition has been instituted **not only on behalf of the Petitioner's members but in the public interest, as the impugned levy affects manufacturers and consumers across the country.**

#### **Background to the Impugned Levy**

4. The deponent states that manufacturing in Kenya is characterized by activity from both formal and informal enterprises. He avers that the standards levy was historically governed by the **Standards Levy Order, 1990 (Legal Notice No. 267 of 1990)**, which was intended to **support industrial development through promotion of standardization, industry quality control, laboratory testing, and measurement systems.** According to the Applicant, **Legal Notice No. 136 of 2025** has fundamentally altered that framework by revising the **standards levy payable monthly by selected classes of manufacturing entities.** It is deponed that the revised levy is projected to increase the 1st Respondent's annual revenue collection from **approximately KES 700 million to KES 1.4 billion.** **The Applicant contends that the revised framework is revenue-driven and that manufacturers do not stand to derive commensurate benefit from the increment.**

#### **Scale and Nature of the Increment**

5. The Applicant avers that the revised levy represents an unprecedented escalation. It is deponed that in certain instances the increment reflects **a scale-up of between 900%**

and 1400%, with levies increasing from KES 400,000 to between KES 4,000,000 and KES 6,000,000 annually. The Applicant characterizes the increment as **discriminatory, irrational, unreasonable, and contrary to the legitimate expectation that adjustments of such rates would be progressive and not drastic.**

#### **Alleged Violation of Article 201 of the Constitution**

6. The Applicant asserts that the enactment and implementation of the impugned Legal Notice violate Article 201 of the Constitution of Kenya, 2010. It is deponed that Article 201 requires public bodies administering fees and levies to comply with **principles of openness, accountability, fairness, and reasonable predictability in the administration of public charges.** According to the Applicant, the **magnitude and manner of the levy increment** fail to meet those constitutional standards.

#### **Alleged Mischaracterization of “Manufacturers”**

7. A central plank of the Application concerns **the classification of industries brought within the levy framework.** The Applicant avers that the 1st Respondent has no authority to originate its own schedule of industries capable of being constituted as manufacturers outside **the statutory framework of the Standards Act.** **It is deponed that sectors such as dry cleaning, garages, refrigeration and air-conditioning services, software development, and computer engineering installation and maintenance have been improperly classified as “manufacturers” under Parts II, III, and IV of the impugned Legal Notice.** The Applicant contends that these sectors do not fall within the statutory meaning of **“manufacture”** and that their inclusion amounts to **an unlawful expansion of the levy framework.**

#### **Alleged Departure from the Objectives of the 1990 Levy Order**

8. The Applicant avers that the collection and application of funds under the standards levy are guided by **Section 10 of the Standards Levy Order, 1990 (Legal Notice No. 267 of 1990).** According to the Applicant, none of the **objectives contemplated under the 1990 Order** have been made paramount under **the 2025 Order**, and that the 1st Respondent has materially moved from **its core objectives as originally contemplated.** It is contended that the impugned **Legal Notice reflects a departure from development-oriented regulatory objectives to revenue expansion.**

**Alleged Non-Compliance with the Statutory Instruments Act**

9. The Applicant further challenges the procedural validity of the Legal Notice under the Statutory Instruments Act. It is deponed that on or about 11th August 2025, when forwarding Legal Notice No. 136 of 2025 to the 2nd Respondent, **the 3rd Respondent failed to attach all requisite documentation relating to the statutory instrument, including the Schedule of manufacturers.** The Applicant asserts that this omission violated Sections 5A and 7 of the Statutory Instruments Act, which require that a statutory instrument be accompanied by **an explanatory memorandum and its relevant schedules.**
10. It is further alleged that the impugned Legal Notice was not subjected to **meaningful public participation and that no Regulatory Impact Assessment** was conducted as required under Section 5, Section 8, and Part VI of the Statutory Instruments Act.

**Alleged Failure to Conduct Public Participation and Regulatory Impact Assessment**

11. The Applicant avers that the 1st and 3rd Respondents failed to carry out **meaningful public participation prior to the implementation of the new levy regime**, contrary to Article 10 of the Constitution. It is deponed that stakeholders, **including the Petitioner, were not adequately consulted and that their views were not taken into account before implementation of the impugned Legal Notice.** The Applicant further avers that the Respondents failed to conduct a reasonable and meaningful **Regulatory Impact Assessment to determine the likely impact of the revised levy on stakeholders, the public, and the economy.**

**Alleged Non-Compliance with the Public Finance Management Framework**

12. The Applicant avers that contrary to Regulation 66 of the Public Finance Management (National Government) Regulations, **the 3rd Respondent and its Accounting Officer failed to obtain approval from the 4th Respondent, the National Treasury,** for the proposed levy. It is further deponed that the 3rd Respondent failed to include material information relating to the levy structure and anticipated revenue yield in its annual reporting framework. **The Applicant contends that any unlawfully collected amounts under Legal Notice No. 136 of 2025 ought to be**

**refunded pursuant to Regulation 68 of the Public Finance Management (National Government) Regulations.**

**Alleged Failure of Parliamentary Oversight**

13. With respect to the 2nd Respondent, the Applicant avers that it violated Articles 94, 95, 117, and 118 of the Constitution by failing to analyse, scrutinise, and debate the implications and content of Legal Notice No. 136 of 2025. It is deponed that **the 2nd Respondent failed to properly process the statutory instrument in accordance with its internal procedural guidelines and failed to ensure compliance with the applicable fiscal framework, including the alleged absence of mandatory National Treasury approval under Regulation 66 of the Public Finance Management (National Government) Regulations.** The Applicant contends that the 2nd Respondent abdicated its constitutional oversight role.

**Alleged Failure of the 4th and 5th Respondents**

14. The Applicant avers that the 4th Respondent failed to discharge its mandate under **Section 11 of the Public Finance Management Act with respect to oversight of revenue measures.** It is further contended that the 5th Respondent failed to discharge its constitutional mandate under Article 156 of the Constitution, including the **duty to advise on the legality of governmental action.**

**Alleged Violation of Articles 46, 47, and 73 of the Constitution**

15. The Applicant avers that implementation of the impugned **levy will inevitably increase the cost of manufactured goods to the detriment of consumers,** thereby violating Article 46 of the Constitution as read with Section 4 of the Consumer Protection Act. The Applicant further characterizes the **Respondents' conduct as unfair, unreasonable, and unlawful administrative action contrary to Article 47 of the Constitution.** It is additionally alleged that the actions of the 1st and 3rd Respondents contravene Article 73(2)(c) of the Constitution on leadership and integrity. The Applicant concludes that the impugned Legal Notice is unconstitutional, procedurally defective, and ultra vires, and urges the Court to grant the conservatory orders sought pending determination of the Petition.

**RESPONDENTS' CASE**

16. **The 1st Respondent** opposes the application through a replying affidavit sworn on 15th January 2026 by its Director of Finance and Strategy, which addresses **the statutory authority for the impugned levy, the process leading to the enactment of Legal Notice No. 136 of 2025, and the alleged constitutional and procedural violations raised by the Petitioner.**

#### **Statutory Authority to Impose the Standards Levy**

17. The 1st Respondent anchors the impugned Legal Notice in the constitutional and statutory framework governing public finance and standards regulation. It avers that the imposition of a levy is permissible only where authorised by legislation and **that the Standards Act empowers the Cabinet Secretary to make a Standards Levy Order prescribing liability, applicable classes of industry, the amount payable, and the mode of recovery.** It is further deponed that monies collected under the **levy constitute funds of the 1st Respondent and are applied toward the discharge of its statutory mandate.** According to the 1st Respondent, that mandate is aligned with **consumer protection objectives, including ensuring goods of reasonable quality, safeguarding public health and safety, and protecting the economic interests of consumers.** The levy is presented **not as an extraneous revenue measure,** but as **an instrument integral to the discharge of its statutory obligations.**
18. The 1st Respondent further avers that **since the 2012/2013 financial year, it has not received exchequer allocations from the Government and has been compelled to sustain its operations through internally generated revenue, including standards levy collections.** The levy is described as a critical revenue stream necessary to support national quality infrastructure.

#### **Classification of Industries and the First Schedule**

19. In response to the allegation that the 1st Respondent unlawfully created its own classification of “manufacturers,” it avers that **the enabling statute permits the creation of provisions relating to different classes or descriptions of industry for purposes of levy liability.** It maintains that the First Schedule to Legal Notice No. 136 of 2025 was introduced to operationalise that statutory authority and does not substitute or alter the statutory definition of “**manufacturer**” contained in the parent Act. The 1st Respondent further avers that the Schedule was subjected to stakeholder scrutiny during the consultative process and was not unilaterally introduced.

### **Public Participation and Regulatory Impact Assessment**

20. The 1st Respondent disputes the allegation that the impugned **Legal Notice was enacted without public participation or regulatory impact assessment**. It depones that the review process commenced in 2022, prompted in part by the impending expiry of the Standards Levy Order, 1990. According to the 1st Respondent, the proposed Order underwent internal and external consultations involving manufacturers, sectoral associations, government agencies, private sector actors, professional bodies, civil society organisations, research institutions, and academia. Public notices inviting stakeholder engagement were disseminated through various platforms, including digital and written communication. Consultations were conducted both physically and virtually and organised along sectoral lines.
21. The 1st Respondent further avers that a Regulatory Impact Assessment was prepared and that notice of the same was duly gazetted in accordance with the Statutory Instruments Act. An explanatory memorandum was also prepared as required by law. It maintains that comments received from stakeholders were reviewed and incorporated into the final gazetted instrument.
22. It is further deponed that the proposed Order was submitted to the 3rd Respondent and that concurrence was sought from the relevant authority prior to gazettelement. **Although an earlier gazetted Legal Notice (No. 89 of 2025) contained what is described as a fundamental error in the description of the levy assessment base, the error was corrected through the revocation of that instrument and publication of Legal Notice No. 136 of 2025. The corrected instrument was thereafter tabled before Parliament in compliance with statutory requirements.** The 1st Respondent, therefore, maintains that all procedural steps required under the Statutory Instruments Act were complied with.

### **Alleged Illegality, Financial Oversight, and Refund Claims**

23. The 1st Respondent denies that any levy has been unlawfully collected. It avers that all funds received are properly accounted for and subject to audit oversight. It disputes the contention that the levy structure was introduced without requisite approvals under the public finance framework and maintains that the statutory process was duly followed.

Consequently, it rejects the assertion that there exists any basis for a refund of levy collections.

### **Alleged Increment, Discrimination and Unreasonableness**

24. In response to the claim that the levy represents an astronomical increment of between 900% and 1400%, the 1st Respondent avers that the rate of levy under the 2025 Order remains at **0.2% of monthly turnover, which is the same rate that applied under the 1990 Order.** It further depones that the 2025 Order introduces additional relief measures, including the deduction of value-added tax, excise duty, and discounts from monthly turnover prior to computation of the levy. **Manufacturers whose annual turnover does not exceed KES 5,000,000 are exempted from paying the levy.** It is further averred that **only manufacturers with annual turnover exceeding KES 2 billion would be liable to pay more than under the previous regime,** and that even then, the applicable rate beyond that threshold is reduced.
25. According to the 1st Respondent, **the exemption of micro and small enterprises and the revised caps were outcomes of stakeholder engagement,** and it therefore disputes the allegation that the levy was imposed in a discriminatory, irrational, or unfair manner.

### **Exhaustion and Presumption of Constitutionality**

26. The 1st Respondent further contends that certain contested issues could have been resolved through engagement with **the relevant regulatory authorities, thereby invoking the doctrine of exhaustion.** It also relies on the presumption of constitutionality attaching to statutes and statutory instruments, asserting that the impugned Legal Notice is presumed valid until determined otherwise upon full hearing of the Petition.

### **Opposition to Conservatory Orders**

27. Finally, the 1st Respondent contends that the grant of conservatory orders at this stage would effectively determine the constitutionality of Legal Notice No. 136 of 2025 before the Petition is heard and determined. It maintains that the Applicant has not discharged the burden required for the grant of such orders and urges the Court to dismiss the application.

### **The 2nd Respondent**

28. The 2nd respondent opposes the application through a replying affidavit sworn on 26th January 2026 by Samuel Njoroge, the Clerk of the National Assembly, which addresses the allegation **that Parliament failed to discharge its constitutional and statutory oversight role** in respect of Legal Notice No. 136 of 2025.

### **Tabling and Statutory Scrutiny of the Legal Notice**

29. The 2nd Respondent avers that the Standards (Standards Levy) Order, 2025, was gazetted on 8th August 2025 as Legal Notice No. 136 of 2025. **The instrument requires manufacturers to remit 0.2% of their monthly turnover, subject to an annual cap of KES 4,000,000 for the first five years and KES 6,000,000 thereafter.** It is stated that the Legal Notice gives effect to Section 10B of the Standards Act and establishes, inter alia, **the basis of liability to pay levy, the amount payable, the manner of payment, registration and classification of manufacturers, issuance of compliance certificates, consequences of non-compliance, maintenance of records, revocation of the 1990 Order, and the applicable schedules and forms.**
30. The 2nd Respondent avers that Part IV of the Statutory Instruments Act, 2013, governs the scrutiny of statutory instruments laid before Parliament. It is deponed that upon publication of the Legal Notice in the Kenya Gazette Supplement No. 136, **it was transmitted by the Cabinet Secretary of the 3rd Respondent for tabling before the National Assembly.** On 13th August 2025, the Legal Notice was tabled pursuant to Section 11(3) of the Statutory Instruments Act and subsequently referred to **the Committee on Delegated Legislation in accordance with Section 12 of the Act and Standing Order 210(2) of the National Assembly Standing Orders.** The Committee considered the instrument, and its position was conveyed to the Principal Secretary, State Department for Industry, by letter dated 24th October 2025. The 2nd Respondent, therefore, avers that the National Assembly analysed and scrutinised the contents and implications of the Legal Notice in accordance with its constitutional mandate.

### **Public Participation and Accompanying Documentation**

31. In response to the allegation that the Legal Notice was not subjected to public participation, the 2nd Respondent avers that the instrument was transmitted to the

House accompanied by the published Legal Notice, **the Regulatory Impact Assessment, and the Explanatory Memorandum.** It is deponed that the Explanatory Memorandum referenced a **Gazette Notice inviting all persons likely to be affected by the proposed Order to submit written memoranda within fourteen days of publication.** The 2nd Respondent further avers that the Explanatory Memorandum indicates that external consultations were conducted through physical meetings, written submissions, and virtual sessions.

32. According to the affidavit, physical stakeholder sessions were held in Nairobi (3rd August 2023), Nakuru (5th August 2023), Mombasa (5th August 2023), Garissa (7th August 2023), Nyeri (6th August 2023), Eldoret (7th August 2023), and Kisumu (7th August 2023). Virtual sessions were held between 18th and 22nd September 2023.
33. **The 2nd Respondent maintains that there was sufficient public participation prior to the gazettment of the Standards Levy Order, 2025, and that it would not be necessary for the National Assembly to repeat the public participation exercise. It further avers that despite the opportunity afforded, the Petitioner did not submit comments or memoranda for consideration.**

#### **Alleged Absence of Schedules and Approvals**

34. The 2nd Respondent disputes the allegation that the Legal Notice lacked a schedule of manufacturers. It avers that **the transmitted instrument contained classes of manufacturing forming the First Schedule.**
35. With respect to the contention that mandatory approval from the National Treasury was not obtained, the 2nd Respondent depones that any failure by the accounting officer of the regulation-making authority to obtain prior approval cannot invalidate the legislative oversight exercised by the National Assembly. It maintains that **once a statutory instrument is transmitted for tabling, Parliament is entitled to a presumption of regularity that prior administrative steps were undertaken by the originating authority.** The 2nd Respondent further avers that an internal administrative failure by the regulation-making body does not divest the National Assembly of its constitutional mandate to scrutinise, approve, or annul a statutory instrument, and contends that **any omission relating to prior approvals or documentation as a curable defect that does not invalidate the legislative intent or the oversight exercised.**

### **Position on the Application**

36. The 2nd Respondent maintains that there was sufficient and meaningful public participation; that the National Assembly scrutinised both the policy and financial implications of the Legal Notice; and that it discharged its constitutional mandate in accordance with the Constitution, the Statutory Instruments Act, and the Standing Orders. It therefore opposes the grant of conservatory orders on the basis that the Applicant has not demonstrated a failure of legislative oversight or a constitutional violation attributable to the National Assembly.

### **The 3rd and 5th Respondents**

37. The 3rd and 5th Respondents opposed the application through Grounds of Opposition dated 6th February 2026. Their opposition is founded on points of law and jurisdiction rather than affidavit evidence.

38. Firstly, they contend that the Petition and the application are incompetent and constitute an abuse of the court process. It is their position that Section 10B of the Standards Act lawfully empowers the Cabinet Secretary to amend and vary the Standards Levy Order, and that the variations effected through Legal Notice No. 136 of 2025 were valid exercises of that statutory power. According to them, the impugned Legal Notice advances the statutory objectives of the levy, including funding the development and promotion of standardisation, quality control, metrology, research, and training.

39. Secondly, they dispute the allegation that certain sectors were unlawfully brought within the ambit of the levy. They maintain that the inclusion of sectors such as energy generation, software development, computer engineering services, and dry cleaning is consistent with the broad statutory definition of “manufacturer” under the Standards Act. They therefore assert that the Legal Notice does not expand the scope of the parent Act but gives effect to it.

40. Thirdly, the 3rd Respondent maintains that in issuing the Standards Levy Order, 2025, it acted within its statutory mandate under the Standards Act and in accordance with the Constitution. It is asserted that the prescribing, collection and enforcement of levies for the development and regulation of standards falls squarely within its statutory responsibility.

41. The 3rd and 5th Respondents further raise a jurisdictional objection. They contend that disputes relating to the imposition, calculation, applicability, and enforcement of

the Standards Levy fall within the exclusive jurisdiction of the Standards Tribunal established under the Act. In their view, the matters raised in the Petition ought first to have been ventilated before that Tribunal.

42. On public participation, they assert that the Standards Levy Order, 2025, was subjected to adequate stakeholder engagement prior to enactment. Reference is made to Gazette Notice No. 616 and to physical consultations held in Nairobi, Nakuru, Mombasa, Nyeri, Garissa, Eldoret, and Kisumu in August 2023, as well as virtual consultations held between 18th and 22nd September 2023. They maintain that the Legal Notice was thereafter duly transmitted to the National Assembly. They further contend that, despite being afforded an opportunity, the Petitioner did not submit views during the consultative process.
43. The 3rd and 5th Respondents also contend that the 2025 Order does not depart from the objectives of the Standards Levy Order, 1990, but rather enhances and updates it in light of prevailing conditions. They assert that the levy had remained largely unrevised for decades and that the revision represents a rational and progressive adjustment necessary to enable the standards body to discharge its mandate effectively.
44. With respect to the conservatory orders sought, they argue that temporary suspension of the levy would materially impair the operations of the regulator and frustrate the objectives of the Standards Act. They further contend that, in the event the Petition were to succeed, any sums collected would be recoverable or compensable, thereby rendering interim suspension unnecessary and disproportionate.
45. Finally, they rely on the principles governing the grant of conservatory orders and contend that the Applicant has not demonstrated a prima facie case, public interest justification, or imminent constitutional violation warranting the Court's intervention at this stage. They therefore urge that the application be dismissed with costs.
46. The 4th Respondent and the Interested Party did not file any response to the application.
47. In response to the 1st Respondent's replying affidavit, the Petitioner filed a further affidavit in which it joins issue with the averments made in opposition to the application.
48. The Petitioner denies the 1st Respondent's interpretation of Section 10B(1) of the Standards Act and avers that there has been a deliberate misinterpretation of the phrase "classes or description of industry." It contends that the Respondents have

improperly equated that phrase to “classes of manufacturing” as set out in the First Schedule to Legal Notice No. 136 of 2025, thereby introducing new classifications not contemplated under the parent statute.

49. The Petitioner reiterates that the 1st Respondent ought to have drawn from international best practices applicable to national standards bodies, particularly the principle that such bodies should avoid cross-subsidisation within regulated sectors. It maintains that the impugned levy structure imposes a disproportionate burden without lawful justification.
50. The Petitioner further disputes the 1st Respondent’s assertion that the levy rate remains unchanged. It avers that the Respondents have not provided any justification for what it characterises as a 900% increase in levy liability. It also challenges the assertion that the 1st Respondent has been self-funding since the 2012/2013 financial year, describing that claim as unsupported by any provision of Kenyan law and contending that allegations of financial unsustainability are misleading and unfounded.
51. Additionally, the Petitioner maintains that the 1st and 3rd Respondents lack authority to introduce or vary classes of manufacturing outside the framework of the Kenya Standard Industrial Classification (KeSIC). It asserts that the categorisation adopted in the impugned Legal Notice amounts to an exploitative practice and is inconsistent with the statutory framework governing micro and small enterprises under the Micro and Small Enterprises Act, 2012.
52. The Petitioner acknowledges that Legal Notice No. 89 of 2025 was revoked by Legal Notice No. 136 of 2025, but maintains that the procedural defects persisted in the subsequent instrument. It reiterates its contention that the transmitted Legal Notice failed to include the requisite schedule relating to manufacturers.
53. With respect to public participation, the Petitioner avers that the annexures relied upon by the Respondents demonstrate that the stakeholder engagements occurred in 2023. It contends that the Respondents merely repackaged the same legislative proposal into the current Legal Notice, without any fresh engagement with the instrument as ultimately gazetted.
54. Finally, the Petitioner clarifies that the conservatory orders sought are intended to preserve the Petition's substratum pending a full hearing and determination. It asserts that the Court is not being invited at this interlocutory stage to make a final

pronouncement on the validity or invalidity of the impugned Legal Notice, but rather to prevent prejudice pending resolution of the constitutional questions raised.

55. The Petitioner subsequently filed a supplementary affidavit in further response to the replying affidavits of the 1st and 2nd Respondents, and in answer to the Grounds of Opposition filed by the 3rd and 5th Respondents.
56. In relation to the 1st Respondent's position on the character of the levy funds, the Petitioner disputes the assertion that amounts collected pursuant to the Standards Levy Order constitute funds of the 1st Respondent. It avers that Section 10C(1) of the Standards Act provides that monies collected under any Standards Levy Order constitute the Standards Levy Fund and are to be requisitioned through the Cabinet Secretary. According to the Petitioner, such funds only become available to the 1st Respondent upon lawful disbursement. It is further deponed that the total amounts collected under the Standards Levy in the Financial Years 2023/2024 and 2024/2025 were remitted to the Exchequer.
57. The Petitioner also contests the assertion that the criteria for identifying persons liable to pay the levy were subjected to stakeholder engagement. It avers that no such criteria to "identify the persons to whom the liability to pay levy extends" were presented during public participation.
58. Additionally, the Petitioner raises concerns regarding financial accountability. It depones that the absence of audited accounts and financial information relating specifically to the Standards Levy Fund raises questions as to the utilisation of monies collected, particularly in light of the 1st Respondent's admission that it has been collecting and utilising levy funds.
59. In response to the 2nd Respondent's replying affidavit, the Petitioner maintains that the public participation undertaken was inconsistent with the requirements of Article 201 of the Constitution. It further avers that the 2nd Respondent failed to appreciate that the classes of manufacturers were published by the 1st Respondent through a notice in the MyGov newspaper, and that the 1st Respondent unlawfully assumed the role of custodian of industry classifications contrary to the Statistics Act, 2006.
60. The Petitioner also takes issue with the 2nd Respondent's position regarding Regulation 66 of the Public Finance Management (National Government) Regulations, contending that the requirement for approval from the National Treasury is mandatory and not merely directory.

61. With respect to the Grounds of Opposition filed by the 3rd and 5th Respondents, the Petitioner denies them in their entirety. It maintains that this Court has jurisdiction to hear and determine both the application and the Petition, asserting that Articles 23 and 165 of the Constitution confer jurisdiction upon this Court to determine claims concerning the denial, violation, or infringement of fundamental rights and freedoms.
62. The supplementary affidavit, therefore, reiterates the Petitioner's position that the impugned Legal Notice is procedurally and substantively defective and that the threshold for the grant of conservatory orders has been met.

**Submissions of the Parties**

63. In further support of the application, the Petitioner filed written submissions and a bundle of authorities, both dated 26th January 2026.
64. The Petitioner framed the application around a single overarching issue: whether the threshold for the grant of conservatory orders had been met. This was addressed under three limbs, namely:
1. Whether the Applicant has established a prima facie case with a likelihood of success;
  2. Whether, absent conservatory orders, the Petition would be rendered nugatory; and
  3. Whether public interest tilts in favour of the grant of the orders sought.
65. On the nature and purpose of conservatory orders, the Petitioner relied on the decision of the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others*, Application No. 5 of 2014 (2014) eKLR, as well as decisions of the High Court including *Judicial Service Commission v Speaker of the National Assembly & Another* [2013] eKLR and *Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others* [2015] eKLR. The Petitioner submitted that conservatory orders are distinct from interlocutory injunctions, in that they bear a public law and constitutional dimension and are aimed at preserving the subject matter of constitutional litigation.
66. On the existence of a prima facie case, the Petitioner relied on the decisions in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125 and *David Ndii & Others v Attorney General & Others* [2021] eKLR for the proposition that a prima facie case is established where an applicant demonstrates an arguable and genuine case disclosing apparent infringement of a right requiring rebuttal.

67. The Petitioner submitted that the impugned Legal Notice unlawfully introduced what it described as punitive and illegal levy obligations and expanded “classes of manufacturing” in a manner inconsistent with Section 10B of the Standards Act. It was further submitted that the levy increment is contrary to Article 201 of the Constitution and that the Respondents failed to subject Legal Notice No. 136 of 2025 to meaningful public participation.
68. On whether the Petition would be rendered nugatory, the Petitioner contended that the impugned Legal Notice took effect on 8th August 2025 and is presently being implemented. It was submitted that continued enforcement would violate consumer rights under Article 46 of the Constitution and adversely affect manufacturers, potentially leading to scaling down of operations or closure. The Petitioner urged that constitutional violations had crystallised and that post-facto remedies would be inadequate.
69. On public interest, the Petitioner submitted that public interest lies in fidelity to the Constitution and not in revenue collection. It argued that the objective of raising funds for the 1st Respondent cannot justify alleged violations of Article 47 and Article 201 of the Constitution.
70. The 1st Respondent filed written submissions and a list of authorities, both dated 26th January 2026.
71. It framed its opposition around three issues:
1. Whether the Petition discloses inherent merit at this stage;
  2. Whether the grant of the orders sought would create a lacuna in law; and
  3. Whether public interest and proportionality militate against the grant of conservatory relief.
72. On inherent merit, the 1st Respondent submitted that the Petitioner had failed to establish a prima facie case demonstrating that the Standards Levy Order, 2025, violates constitutional principles. It referred the Court to its replying affidavit sworn on 15th January 2026 and maintained that the impugned Legal Notice was enacted within statutory authority and in compliance with procedural requirements.
73. On the argument that the grant of conservatory orders would introduce a lacuna in law, the 1st Respondent submitted that the Standards Levy Order, 1990, was revoked by Legal Notice No. 89 of 2025, which was subsequently revoked and replaced by Legal Notice No. 136 of 2025 following correction of an identified error. It was contended that suspending the current Legal Notice would leave no operative levy

framework in place, thereby offending Article 210(1) of the Constitution, which requires that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.

74. On public interest and proportionality, the 1st Respondent submitted that suspension of the levy would impair its ability to discharge its statutory mandate, including consumer protection and quality assurance functions. It contended that public interest favours continuity of regulatory oversight and invited the Court to be guided by judicial authority addressing the balancing of constitutional values and public interest in the grant of conservatory relief.
75. The 2nd Respondent did not file separate written submissions. Instead, it filed a composite application which incorporated both substantive responses and legal argument.
76. The 3rd and 5th Respondents filed written submissions and a bundle of authorities, both dated 6th February 2026. They identified two issues for determination, namely: whether the petition and application dated 19th December 2025 meet the threshold for grant of conservatory orders; and whether the Petitioner/Applicants are entitled to the orders sought.
77. On the purpose and threshold of conservatory orders, the 3rd and 5th Respondents submitted that such relief is intended to preserve the subject matter or the prevailing circumstances so that constitutional proceedings are not rendered nugatory. They relied on *Muslims for Human Rights (MUHURI) & 2 others v Attorney General & 2 others*, High Court Petition No. 7 of 2011, in support of that proposition. They further cited *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others*, Application No. 5 of 2014 (2014) eKLR—also relied upon by the Petitioner—to distinguish conservatory orders from interlocutory injunctions and to emphasise their public law character.
78. The Respondents also placed reliance on *Law Society of Kenya v Officer of the Attorney General & another; Judicial Service Commission (Interested Party)* [2020] eKLR, where the Court summarised the principles governing the grant of conservatory orders as requiring: demonstration of an arguable prima facie case with likelihood of success and prejudice; consideration whether grant or denial would enhance constitutional values; whether the substratum would be rendered nugatory; and whether public interest would be served or prejudiced.

79. Applying those principles, the 3rd and 5th Respondents contended that the Petition and Application dated 19th December 2025 fail to meet the established threshold. They argued that the Petitioner has not demonstrated an arguable prima facie case, as the levy introduced under Legal Notice No. 136 of 2025 is grounded in the Standards Act. It was further submitted that previous levy rates had remained low for decades and required review. They maintained that any sums collected pursuant to the impugned Legal Notice are recoverable or compensable, and therefore no irreparable prejudice would arise to warrant conservatory intervention.
80. On the question whether the Applicants are entitled to the orders sought, the 3rd and 5th Respondents answered in the negative. They contended that the Petition lacks precision and is defective in form and substance. In that regard, they relied on *Anarita Karimi Njeru v Republic* [1979] eKLR for the proposition that constitutional petitions must be pleaded with reasonable precision as to the rights alleged to have been violated and the manner of violation.

#### **Analysis and Determination**

81. I have considered the application, the responses, the evidence tendered, and the parties' submission. The following issues arise for determination:
1. Whether the Applicant has established a prima facie case with a likelihood of success capable of warranting the grant of conservatory orders.
  2. Whether, absent the grant of conservatory orders, the Petition would be rendered nugatory.
  3. Where does the public interest lie, and does the balance of convenience favour the grant of conservatory orders?

#### **On the Question of Exhaustion and Pleading Threshold**

82. Before proceeding to determine the issues raised in the present Application, the Court must address the Respondents' contention that the Petition offends the doctrine of exhaustion.
83. Section 16 of the Standards Act establishes the Standards Tribunal and vests in it jurisdiction to hear appeals from decisions of the Bureau or the Council made under the Act. The Tribunal's mandate is appellate in character and is triggered where an aggrieved party challenges a specific administrative decision made under the statutory framework.

84. The present Petition, however, does not arise from an enforcement decision, compliance directive, or individual administrative determination. Rather, it challenges the constitutional validity of Legal Notice No. 136 of 2025 and alleges non-compliance with the Constitution in its promulgation. The Tribunal established under Section 16 is not clothed with jurisdiction to determine the constitutional validity of subsidiary legislation or to grant declaratory relief of the nature sought in this Petition.
85. The Court also notes that the Petition identifies the impugned Legal Notice, specifies the constitutional provisions alleged to have been violated, and sets out the manner in which the alleged violations occurred. At this interlocutory stage, the Court is satisfied that the Petition meets the pleading threshold requiring reasonable precision in constitutional litigation as articulated in **Anarita Karimi Njeru v Republic (No. 1) [1979] KLR 154**.
86. Accordingly, the objection founded on exhaustion does not bar this Court from exercising jurisdiction. The Court therefore proceeds to determine the issues arising in the Application for conservatory orders.

**Whether the Applicant has established a prima facie case with a likelihood of success capable of warranting the grant of conservatory orders.**

87. In addressing this issue, the Court will consider the following sub-questions:
- a. Whether there is an arguable constitutional question regarding public participation in the enactment of Legal Notice No. 136 of 2025;
  - b. Whether the impugned Legal Notice materially departs from the framework subjected to stakeholder engagement and Regulatory Impact Assessment;
  - c. Whether there is an arguable question as to whether the impugned Legal Notice exceeds the scope of Section 10B of the Standards Act; and
  - d. Whether there is apparent non-compliance with mandatory statutory requirements governing delegated legislation.

**(a) On Public Participation**

88. Article 10 of the Constitution entrenches public participation as a national value binding all State organs whenever they enact or implement public policy. The requirement extends to delegated legislation.

89. The material before the Court shows that in August and September 2023, stakeholder engagement and public participation were undertaken in respect of a proposed Standards (Standard Levy) Order, 2023. A Regulatory Impact Assessment was prepared and a certificate of adequacy issued by the Kenya Law Reform Commission in November 2023.
90. The impugned Legal Notice No. 136 of 2025 revoked Legal Notice No. 89 of 2025. The 1st Respondent maintains that Legal Notice No. 136 merely amended Legal Notice No. 89, and that the public participation conducted in 2023 sufficiently covered the framework that was eventually gazetted.
91. At this interlocutory stage, the Court must ask: Has the Applicant demonstrated, on a prima facie basis, that Legal Notice No. 136 introduced a framework so materially different from the 2023 proposal as to require fresh public participation?
92. From the record, the levy rate (0.2%), the exemption threshold (KES 5 million turnover), and the classification schedules appear substantially consistent across the 2023 proposal, Legal Notice No. 89, and Legal Notice No. 136.
93. While the Applicant questions the adequacy and evidential sufficiency of the participation process, the Respondents have placed before the Court documentation indicating that stakeholder engagement, memoranda reception, validation forums, and Regulatory Impact Assessment were undertaken.
94. Whether that process meets the constitutional threshold of meaningful participation is a matter requiring substantive evaluation at the hearing of the Petition. At this stage, the Court is not persuaded that the material placed before it demonstrates a manifest absence of public participation so as to amount to a prima facie constitutional invalidity warranting immediate suspension.

**(b) Whether the Impugned Legal Notice Materially Departs from the Consulted Framework**

95. The Applicant contends that Legal Notice No. 136 was not subjected to adequate consultation.
96. The Respondents maintain that the impugned Legal Notice merely amended and corrected the earlier instrument without altering the substantive framework.
97. From the record, the classification of “classes of manufacturing,” the levy rate, and the exemption threshold appear consistent. The Court does not, at this stage, discern a wholly new fiscal architecture introduced outside the consultation framework.

98. Whether specific structural elements constitute a material departure is a question best addressed upon full hearing, where the Court can interrogate the comparative instruments comprehensively.
99. At this interlocutory stage, the Court is not satisfied that a clear and substantial departure has been demonstrated on a prima facie basis.

**(c) Whether the Legal Notice Exceeds the Scope of Section 10B of the Standards Act**

100. Section 10B of the Standards Act empowers the imposition of a levy payable by manufacturers and refers to “classes or descriptions of industry.”
101. The First Schedule to Legal Notice No. 136 includes various activities, including construction works, mechanical services, installation services, software development, food processing, and chemical production.
102. The Applicant questions whether the inclusion of certain service-oriented activities exceeds the scope of the parent Act.
103. This raises a legitimate issue of statutory interpretation regarding the meaning of “classes or description of industry.” However, such an interpretation requires a full merits analysis of the parent statute and the delegated legislation.
104. At this stage, the Court finds that while the issue is arguable, it is not so clear and self-evident as to demonstrate an immediate ultra vires action warranting suspension before a full hearing.

**(d) Compliance with Statutory Requirements**

105. The material placed before the Court indicates that:
1. A Regulatory Impact Assessment was undertaken.
  2. The Kenya Law Reform Commission issued a certificate.
  3. The Attorney General sought clarification on public consultation.
  4. The 1st Respondent responded, outlining the engagement process.
  5. The Applicant disputes the sufficiency of that process.
106. However, at this interlocutory stage, the Court is not persuaded that there is prima facie evidence of a total failure to comply with mandatory statutory processes governing delegated legislation.
107. The Court finds that the Petition raises arguable constitutional and statutory questions deserving full hearing. However, the Applicant has not demonstrated a

prima facie case of such manifest procedural or jurisdictional illegality as would justify immediate conservatory suspension of Legal Notice No. 136 of 2025.

108. The threshold under this limb has therefore not been met.

**Whether, absent the grant of conservatory orders, the Petition would be rendered nugatory.**

109. In addressing this issue, the Court will consider the following sub-questions: The nature of the levy imposed under Legal Notice No. 136 of 2025; Whether the alleged harm is financial and compensable or irreparable in nature; and whether there is evidence of imminent and irreversible constitutional prejudice.

**(a) The Nature of the Levy**

110. Legal Notice No. 136 of 2025 imposes a levy at the rate of 0.2% of turnover, net of value added tax, excise duty, and discounts, payable monthly by manufacturers falling within the classes set out in the First Schedule.

111. The levy is monetary in character. It does not suspend operations, revoke licences, or prohibit trade. It imposes a financial obligation recoverable at source.

112. The Court must therefore assess whether continued enforcement of this monetary obligation, pending hearing of the Petition, would defeat the substratum of the Petition.

**(b) Whether the Alleged Harm Is Financial and Compensable**

113. The Applicant contends that the implementation of the impugned Legal Notice will impose a significant financial burden on manufacturers and may lead to the scaling down of operations or the closure of businesses.

114. The Court observes that the injury complained of, as presently framed, is primarily financial in nature. The Applicant has not placed before the Court specific affidavit evidence demonstrating that identifiable manufacturers face imminent collapse or irreversible operational paralysis attributable solely to the levy.

115. Where the alleged injury is financial and capable of quantification, courts have generally held that such injury does not ordinarily justify conservatory suspension unless exceptional circumstances are demonstrated.

116. The Court is not persuaded, on the material presently before it, that payment of the levy would occasion harm incapable of restitution should the Petition ultimately succeed.

**(c) Whether There Is Evidence of Imminent and Irreversible Constitutional Prejudice**

117. The Applicant further invokes consumer rights under Article 46 and principles of public finance under Article 201 of the Constitution. However, the Court notes that no concrete evidence has been placed before it demonstrating that consumer rights have already been compromised or that constitutional injury of an irreversible nature has crystallised.

118. The Petition remains capable of full adjudication. If the Applicant succeeds, appropriate remedies — including declaratory relief and restitutionary orders — remain available to vindicate any constitutional violations established. The Court is therefore not satisfied that failure to grant conservatory orders would render the Petition nugatory.

119. The Court finds that the alleged harm arising from continued implementation of Legal Notice No. 136 of 2025 is primarily monetary and compensable. The Applicant has not demonstrated imminent, irreparable or irreversible constitutional injury. Accordingly, the substratum of the Petition will not be destroyed if conservatory orders are declined.

**Where does the public interest lie, and does the balance of convenience favour the grant of conservatory orders?**

120. In addressing the public interest issue, the Court will consider the following sub-questions: The public character of the impugned Legal Notice and the statutory mandate under which it was issued. The competing public interests implicated — regulatory funding towards enforcement of standardization versus economic burden on affected industry, and whether suspension of the Legal Notice at this stage would occasion disproportionate disruption to statutory functions.

**(a) The Public Character of the Impugned Instrument**

121. Legal Notice No. 136 of 2025 was issued pursuant to Section 10B of the Standards Act, which empowers the imposition of a levy for purposes connected to the functions of the standards regulatory framework. The levy is therefore not a private commercial

imposition. It is a statutory fiscal measure designed to fund regulatory oversight in matters of standardisation, quality control, certification, inspection, and consumer protection. At this interlocutory stage of the proceedings, the Court must be slow to suspend delegated legislation that affects an entire regulatory sector, unless a clear and compelling constitutional violation is demonstrated.

**(b) The Competing Public Interests**

122. The Applicant asserts that implementation of the levy increases the cost of doing business and may ultimately burden consumers. The Respondents contend that the levy supports the regulatory infrastructure necessary to safeguard standards, promote fair trade, and protect consumers from substandard goods and services.

123. The Court is mindful that public interest is multifaceted inquiry. It includes:

1. The property rights interest of manufacturers in not being subjected to unlawful fiscal impositions (Art.40);
2. The interest of consumers in affordable goods of reasonable quality (Art.46), and
3. The broader public interest for good governance, public participation and rule of law (Art 10) in ensuring and maintaining functional regulatory institutions that enforce standards, and process therefor.

124. Suspending the Legal Notice would halt the collection of the levy nationwide. If the levy funds 1st respondent's core statutory operations, such suspension may disrupt regulatory enforcement mechanisms before the Court has conclusively determined the legality of the instrument. Conversely, permitting continued enforcement preserves the status quo in the regulatory scheme while the Petition is heard on merit.

**(c) Proportionality and Institutional Caution**

125. Conservatory orders are discretionary and must be exercised judiciously, bearing in mind that courts should not, at an interlocutory stage, lightly interfere with fiscal or regulatory measures of general application absent compelling grounds.

126. The Court does not, at this stage, find demonstrable evidence that continued implementation would produce systemic constitutional breakdown or irreversible public harm. The levy remains at **0.2 % of the monthly turnover with annual limit of 4,000,000/-** and manufacturers with **annual turnover which does not exceed KES 5,000,000 are exempted from paying the levy.** In addition, there has not been

demonstrated by affidavit from any businesses of the kind in the new categories on which the levy is introduced to show the impact on their operations as to justify immediate intervention by the Court.

127. The Court considers that the increases being on the annual turnover, a determination of the petition on the basis of an expedited hearing will forestall any substantial losses, and any such levy may by order of the Court be restored to the levy payers, or by administrative arrangement with the 1st respondent by way of rebate in their continuing relationship.

128. On the material presently before the Court, the balance tilts in favour of allowing the statutory framework to operate pending a full hearing.

129. In deference to the respective spheres of competence of the three arms of government, having not determined a public interest need for immediate intervention, the Court finds that public interest and proportionality considerations weigh against suspension of Legal Notice No. 136 of 2025 at this interlocutory stage.

#### **Final Conclusion on the Application**

130. Consequently, having considered (a) Whether a *prima facie* case has been established; (b) Whether the Petition would be rendered nugatory absent conservatory orders; and (c) Where the public interest lies, the Court determines that the application for conservatory orders in this petition will be declined.

#### **ORDERS**

131. Accordingly, for the reasons set out above, the Court finds that, while the Petition raises arguable constitutional and statutory questions deserving of a full hearing, the threshold for the grant of conservatory orders has not been met.

132. The Application for conservatory orders is declined.

133. However, for the expeditious disposal of the matter in the interests of all the parties, the court makes an order for hearing on priority basis on a date to be fixed in consultation with counsel for the parties.

134. The Costs shall abide the outcome of the Petition.

*Order accordingly.*

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Oketch for the Petitioners.

Ms. T. Gachagua for the 1st Respondents.

Mr. Sore for Mr. Emcar for the 2nd Respondent.

Mr. Kiongo for 3rd, 4th & 5th Respondents.