



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

PETITION NO. E005 OF 2026

IN THE MATTER OF ARTICLES 10, 22, 23, 31(b), 40(3), 73, 165 AND 258(1)

AND

IN THE MATTER OF CONTRAVENTION AND INFRINGEMENT OF THE RIGHTS

AND

**FUNDAMENTAL RIGHTS AND FREEDOMS ARTICLE 31(B) AND 40(3) OF THE
CONSTITUTION OF KENYA, 2010**

ISAAC WATHAKA KIMONDOPETITIONER

VERUS

COUNTY GOVERNMENT OF KIRINYAGARESPONDENT

RULING

[1] The Petitioner public service motor vehicle /matatu operator seeks relief in the nature of conservatory orders for the release of his motor vehicle which he claims was towed and impounded by the Respondent County Government in violation of his right principally to protection from seizure which he asserts under right to privacy Article 31 (2) of the Constitution and the right to protection from deprivation of property under Article 40 of the Constitution.

[2] By a Notice of Motion dated 5/3/2026 and brought 'UNDER RULES 3(3,4,5)4,8(2),13,19,23(1) and (2) OF THE CONSTITUTION OF KENYA PROTECTION OF RIGHT AND FUNDAMENTAL FREEDOMS OF THE INDIVIDUAL PRACTICE AND PROCEDURE RULES 2013 LEGAL NOTICE 117 OF 2013 AND ARTICLES 10, 22, 23, 31(B),40 (3), 73, 165 AND 258 (1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010 AND ALL THE ENBLING PROVISIONS OF THE LAW,' the Petitioner seeks specific reliefs as follows:

“1. That this application be certified urgent and service hereof dispensed with in the first instance as the purpose of this application will be defeated unless the application is heard expeditiously.

2. That pending inter-parties hearing of the application, the honorable court be pleased to issue **an order for the unconditional release of motor vehicle registration No. KCL 130H Matatu Toyota make under the custody of the respondent.**

3. That upon grant of prayer No. 2 the honourable court be pleased to issue an order restraining the respondent herein, its agents, servants, employees from rearresting, detaining motor vehicle KCL 130H Matatu Toyota MAKE pending the hearing and determination of this application.

4. That the costs of the application be provided for.”

[3] The Grounds of the application are set out in the application as follows:

“a) That the petitioner is the owner and the driver of motor vehicle KCL 130H Matatu Toyota Make operating under Kirinyaga Shuttle within Kirinyaga County and elsewhere within the Republic of Kenya.

b) That on 3rd March 2026, the respondent's revenue staff/agents clamped and towed the applicant's motor vehicle to their revenue office within Kirinyaga County from Kutus Stage

c) That upon arrival at the respondent's Kerugoya Offices, the petitioner's motor vehicle was impounded by the respondent's agents/staffs without any disclosure of the same.

d) That the petitioner is confident that the detention of his motor vehicle by the respondent is malicious and out of bad faith.

e) That there is no preferred charge against the petitioner in relation to motor vehicle Registration No. KCL 130H MATATU TOYOTA MAKE.

f) That despite visiting the respondent's revenue offices to inquire about the impounding of the motor vehicle registration number KCL 130H MATATU TOYOTA make, the same has been ignored.

g) That the continued detention of the petitioner's motor vehicle is total infringement of his fundamental constitutional rights under Article h) 31(b) and 40(3) of the constitution of kenya,2010.

h. The petitioner operates the matatu business with his motor vehicle Registration No. KCL 130H as his only source of income and its unlawful detention has caused him to suffer financially.

i) That the petitioner had acquired a loan facility from Progressive Credit limited which he services daily by paying a total of Kshs 2000/= daily.

j) That unless the orders herein are so granted as a matter of urgency the petitioner/Applicant will be subjected to great and irreparable loss as his fundamental rights to protection of property stands to be violated by the respondents.

k) That it is in the interest of justice that the application herein is allowed.

l) That the respondent will not suffer prejudice, should the orders herein be granted.”

[4] The facts of the case relied on by the Petitioner are set out in the Supporting Affidavit as follows:

“I, ISAAC WAITHAKA KIMONDO care of P.O. BOX 87, KUTUS in the Republic of Kenya do hereby make oath and state as follows:-

- 1) That I am the petitioner/applicant herein hence competent to swear this affidavit.*
- 2) That I am the registered owner and driver of motor vehicle registration No. KCL 130H operating under Kirinyaga shuttle within Kirinyaga county and elsewhere within the republic of Kenya. (Attached herewith and marked “IWK1” is a copy of log-book)*
- 3) That on 3rd March 2026 while at Kutus main stage, I was approached by agents/staffs of the respondent who came and clamped and towed my motor vehicle without any valid reason. respondent's revenue offices within Kirinyaga County. Attached herewith and marked "IWK2a,b" is a copy of photograph)*
- 4) That I immediately proceeded to the offices, where upon arrival my motor vehicle was clamped and detained there by the respondent's agents/staff (Attached herewith and marked "IWK3" is a copy of photograph)*
- 5) That I requested the agents/staffs at the revenue department the reason of clamping my car but they failed to disclose to me any offence that I had committed.*
- 6) That I am the sole bread winner in my family and motor vehicle Registration No. KCL 130H is my only tool of trade.*
- 7) That I have a loan facility that I applied from progressive credit limited which I am currently paying daily a sum of kshs 2,000/= and the continued detention has greatly affected me financially and has also affected my family psychologically. (Attached herewith and marked "IWK4" is a copy of statement)*
- 8) That I am advised by my advocate on record whose, advise I verily believe to be true that the continued detention of motor vehicle Registration No. KCL 130H MATATU TOYOTA make is a total violation of Article 31(b) and 40 of my constitutional rights.*
- 9) That I am advised by my advocate on record whose advise I believe to be true that the continued detention of motor vehicle registration No. KCL 130H MATATU TOYOTA MAKE by the respondent, without any disclosure of a probable offence and failure to prosecute the matter is a breach of chapter 4 of the constitution of Kenya 2010.*

10) *That I am further advised by my advocate on record whose advice, I verily believe to be true that it is in the interest of justice that the orders sought are granted.*

11) *That I am further advised by my advocate on record whose advise I verily believe to be true that the respondent, will not suffer any prejudice should the orders sought herein are granted.”*

[5] The Respondent has by a Replying Affidavit sworn on 9/3/2026 by enforcement officer David Munyui set out its case in response, principally, as follows:

“4. THAT it is the Respondent’s position that the Petitioner’s claims are without merit, as the Respondent has the exclusive constitutional mandate under Article 185(1) and (2) of the Constitution read together with the Fourth Schedule to the Constitution to regulate transport within the County and the same includes the regulation of traffic, parking and public road transport.

5. THAT public transport would in that respect include any party or person licensed as a public road transport service provider such as a matatu operator.

6. THAT the Petitioner’s Petition and application are grounded on falsehoods, illegalities and misrepresentations and he has approached this Court with unclean hands.

7. THAT on 17th February 2026, I was deployed by my supervisor to carry out my enforcement duties around the area near the Kerugoya Level 5 Referral Hospital and County Government public works offices.

8. THAT while I was carrying out my duties at around 1100 hrs, I observed a Toyota matatu registration number KCL 130H belonging to Kirinyaga Shuttle stopping and picking passengers along the highway, near the public works offices. The matatu was headed from Kerugoya town towards Kutus.

9. THAT upon witnessing this, I took out my phone and started taking photos of the offending subject motor vehicle. When the driver and conductor noticed my presence, they quickly shut the door of the vehicle and sped off. Attached herewith and marked “DM-1” are the photographs I took on 17th February 2026

10. THAT stopping and picking passengers near the public works offices is a violation of Sections 43 and 44 (1) & (3) of the Kirinyaga County Transport and Parking Act, 2024, which prohibit, respectively, parking on a public road in a manner that impedes the flow of traffic, and parking of a public service vehicle in any place other than the designated public transport vehicles terminal, in this case within Kerugoya town. Attached herewith and marked “DM-2” is a copy of the Kirinyaga County Transport and Parking Act, 2024

11. THAT I knew this motor vehicle very well as it was notorious for contravening County Laws by stopping on public roads and picking

passengers from prohibited and unauthorised areas, ignored numerous warnings from my colleagues and I, and the driver/owner also engaged the County enforcement officers in hide and seek games when attempts to impound the motor vehicle are made.

12. THAT on 3rd March 2026 I finally located the subject motor vehicle parked at Kutus matatu stage. I informed my supervisor and my colleagues and we decided to approach the owner/driver of the motor vehicle for enforcement purposes. We approached the owner/driver and requested him to drive the motor vehicle to the sub-county offices in Kerugoya.

13. THAT we explained that this was because of the violations he committed on 17th February 2026 and other violations so that he could be billed and invoiced for the violations to enable him pay the Surcharge provided for under the Kirinyaga County Finance Act 2023 and secure release of the motor vehicle. He refused and left.

14. THAT we had no option but to clamp the motor vehicle, which was thereafter towed to the sub-county offices parking yard as mandated under Sections 23 and 25 of the Kirinyaga County Inspection and Enforcement Services Act, 2023. Attached herewith and marked "DM-3" is a copy of the Kirinyaga County Inspection and Enforcement Services Act, 2023

15. THAT usually when a vehicle is clamped for violations of County legislation, the owner/driver of the motor vehicle has an obligation to cooperate with County Government authorities. Immediately one presents himself at the revenue offices located within the subcounty parking yard, one is billed and expected to pay the surcharge to secure release of the motor vehicle.

16. THAT contrary to the allegations of the Petitioner, he did not come to our offices and has not done so since 3rd March 2026 so that he can be issued with an invoice for the sum of Kshs. 15,000/= being the surcharge prescribed for the violation under Section 13(c) of the Kirinyaga County Finance Act 2023. Attached herewith and marked "DM-4 (a) & (b)" are copies of; a. Extract of relevant Sections (S. 13(c)) of the Kirinyaga County Finance Act, 2023. (A physical copy of the full Act shall be filed and served). b. The invoice for the sum of Kshs. 15,000/= payable as at 9th March 2026, being the surcharge, impounding and unclamping fees.

17. THAT the Petitioner has approached this Honourable Court for injunctive relief with unclean hands and has based his petition and application on falsehoods. He has withheld from this Honourable Court the facts that he operates with impunity, repeatedly picking and dropping passengers outside the omnibus stations located within Kerugoya and Kutus towns contrary to the provisions of the Kirinyaga County Transport and Parking Act, 2024 and is

notoriously rude to the County Government authorities when issued with verbal warnings.

18. THAT further, the Petitioner, like all other matatu operators are required to pay for parking within the County and are issued with a monthly parking sticker upon payment. The Petitioner has for months been operating illegally without paying parking fees contrary to the provisions of Sections 42, 46 (1,2,3), 56 (3,4,5) and the schedules thereto, of the Kirinyaga County Transport and Parking Act, 2024. An invoice and updated statement for the unpaid parking fees shall be filed and served. The same was not available at the time of filing this affidavit

19. THAT the enforcement action taken against the Petitioner for violating County Legislation on parking, picking and dropping of passengers as well as failing to pay monthly parking fees was justified and within the mandate of the officers of the Respondent under the provisions of Section 56(5) of the of the Kirinyaga County Transport and Parking Act, 2024. The section mandates the Respondent to tow the Petitioner's vehicle (at his cost) for failure to pay parking fees prescribed under the Act.

20. THAT the Respondent has a statutory obligation to ensure law and order is maintained in the matatu business within the County, and its enforcement officers are mandated under Sections 12, 13 and 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023, to enforce compliance with relevant national and County Legislations, including by impounding vessels violating the law.

21. THAT the Petitioner is guilty of material non-disclosure and has kept from this Honourable Court the true nature of his matatu operations which done with utmost impunity.

22. THAT the Petitioner has for a long time evaded the Respondent's enforcement officers. He speeds off every time he spots the County enforcement officers.

23. THAT the Petitioner was duly informed that he has violated numerous provisions of County legislations which outlaw parking, picking and dropping outside the omnibus station, as well as nonpayment of parking fees but he has adamantly refused to present himself at the revenue offices in Kerugoya, comply and pay the prescribed surcharge and penalty.

24. THAT the Respondent's action of clamping the Petitioner's motor vehicle is based on lawful and justifiable reasons, and is only meant to enforce compliance with relevant national and County legislations. Once a motor vehicle is clamped and impounded for violations of relevant national and County legislations, the Respondent is authorised to hold the same until the prescribed surcharge and clamping fees are paid.

25. *THAT it is pertinent to note that the Respondent's actions are in line with its constitutional and statutory obligations and are not intended to unduly interfere with the operations of the Petitioner or any other public transport operator.*

26. *THAT the Orders sought are not available to the Petitioner as the same are sought with unclean hands and grounded on illegalities, falsehoods and material non-disclosure.*

27. *THAT granting an Order for the unconditional release of the subject motor vehicle would amount to a restriction on the Respondent to carry out its constitutional and statutory mandate of regulating public transport in the County and ensuring compliance through enforcement.*

28. *THAT grant of the Orders of unconditional release of the subject motor vehicle, injunction and prohibition from prosecution sought by the Petitioner will have the resultant effect of allowing illegal operation by the Petitioner, violation of national and County Laws and regulations, and will introduce chaos in the conduct of public transport in the County, to the detriment of public good and order.*

29. *THAT the Petitioner/Applicant's case does not merit the award of any injunction as it does not meet the requisite legal threshold as espoused in the celebrated case of Giella vs. Cassman Brown.*

30. *THAT the Petitioner is a habitual offender who, when enforcement action is taken against, him, he runs to this Honourable Court to demand that his vehicle be released unconditionally. This is the third Petition he has filed under the same/similar circumstances. He had previously filed HCCHRPET/E002/2024 and E004/2025 and only because he does not want to comply with County Government legislation. It is therefore in the interest of justice and fairness that the Petitioner be Ordered to comply with the relevant laws and regulations before the subject motor vehicle is released."*

[6] The Respondent filed a supplementary affidavit to set out the statement of account on the Petitioner's liability for parking fees and the surcharge for offensive stopping dropping/picking of passengers as follows:

"2. THAT further to the contents of paragraph 18 of the replying affidavit dated 9th March 2026, the Petitioner has for months been operating illegally without paying parking fees contrary to the provisions of Sections 42, 46 (1,2,3), 56 (3,4,5) and the schedules thereto, of the Kirinyaga County Transport and Parking Act, 2024. 3. THAT the total amount owed by the Petitioner in respect only to monthly parking fees (unified County Sticker) and penalties is Kshs.60,000/= accrued from December 2024 to date. The monthly parking fees paid by each matatu is Kshs. 2,500/= and failure to pay attracts a penalty of Kshs. 1,250/= per month as provided under Section 13(e)

of the Kirinyaga County Finance Act, 2023. Attached herewith and marked “DM-1(a & b) are:

a. Invoice for the sum of Kshs. 60,000/= in respect to the unified county sticker charges.

b. The Petitioner’s statement in respect to the unified county sticker charges.

4. THAT pursuant to the provisions of Section 56(5) of the of the Kirinyaga County Transport and Parking Act, 2024, the Respondent has powers to impound and tow the Petitioner’s vehicle (at his cost) for failure to pay the prescribed parking fees. 5. THAT I swore the Replying affidavit dated 9th March 2026 and under paragraph 10 of the said affidavit, I annexed the annexure marked “DM-2” which is a copy of the Kirinyaga County Transport and Parking Act, 2024. However the annexure filed on the system was wrongly marked as “EM-1”. I wish to correct this honest mistake and attach the same annexure, now marked properly as “DM-2”.”

[7] The Petitioner applicant has filed a Supplementary Affidavit responding to the Respondents case principally as follows:

“I, ISAAC WAITHAKA KIMONDO care of P.O. BOX 87, KUTUS in the Republic of Kenya do hereby make oath and state as follows:-

1. That I am the petitioner/applicant herein hence competent to swear this affidavit.

2. That I reiterate all the averments contained in the application dared 5th March 2026.

3. That I have also read the replying affidavit sworn on 9th march 2026 and the supplementary affidavit sworn on 10th March 2026 which I wish to respond as follows.

4. That I swiftly moved to this court after the respondents/Agents clamped my motor vehicle without material disclosure of the possible offence committed since 3rd March 2026.

5. That on 22nd April 2025 I had written letter to the chief Finance Officer Kirinyaga County and also served the County Attorney with a copy over my challenge of my motor vehicle having been deleted from the online payment system.. (Attached herewith and marked "IWKI" is a copy of the letter)

6. That the said letter has never been responded to date.

7. That I was only orally assured by the said office that I was to operate as they sought their system.

8. That on frequent occasions I have tried to pay the parking fees but I have been deleted from the system. (Attached herewith and marked "IWK2" is a copy of online payment)

9. That I am vindicated by the respondent's own response at paragraph 18 of the replying affidavit, that the invoice and the updated statements of the unpaid parking fees was not available at the time of filling this response.

10. That the respondents enforcement agents have always been bitter on me over the order issued on 23rd June 2024 and have orally insulted me and issued me with threats. (Attached herewith and marked "IWK3" is a copy of the order)

11. That on 17th February 2026 one David munyui and another enforcement officer confronted me and insulted me and I reported the matter at Kerugoya police station awaiting police action.(Attached herewith and marked "IWK4" is a copy of the OB)

12. That the clamping of my motor vehicle was a overlap of the criminal case.

13. That the respondent only updated my motor vehicle on the system on 9th March 202026 after being served with the court documents.

14. That I am not liable to pay the arrears as per respondent Exhibit marked "DM-1(a)".

15. That on 3td Marth 2026 the respondent, ignored my request to have my bill and efforts to have the same became a toll order.

16. That I have not violated any of the respondent's by laws and that the photos taken on 17th February 2026 do not disclose any form of offence committed as per section 46(2) of the Kirinyaga county transport and parking Act, 2024.

17. That since 17th February 2026 the respondent agents have never taken any actions against me.

18. That the annexures in the supplementary affidavit are only filed as an afterthought.

19. That I am advised by my advocate on record whose advise I verily believe to be true that I am entitled to the provisions under chapter 4 of the bills of rights contained in the constitution of Kenya 2010.

20. That this honourable court delivered its ruling on 8th April 2025 over a similar application in Kerugoya High court petition E004 OF 2025.

21. That I am entitled to fair treatment and have the right to be heard, hence the averments at paragraph 30 of the replying affidavit is unfounded.”

[8] The application sha heard *inter partes* on 10/3/2026 when Counsel for the parties then made respective oral submissions on their contentions set out in the pleadings and affidavits and Ruling was reserved for 17/3/2026 at 2.30pm.

Issue for determination

[9] Although framed as an application for an ordinary order for injunction, being an application in a Petition for relief from alleged violation of rights and fundamental freedoms, it would seem

that the applicant is seeking relief in the nature of a **conservatory order** suitable for public litigation cases as here for the release by the County Government of Kirinyaga of the petitioner's impounded motor vehicle unconditionally pending the hearing of the Petition herein.

[10] A **prima facie** case is also a requirement in ordinary applications for injunction both in applications for prohibitory injunction and mandatory injunction. Moreover, in cases of mandatory injunctions, it is trite that grant of a mandatory injunction at interlocutory stage shall only be made in exceptional circumstances and in clearest of cases. In conservatory orders, the public interest in the matter is the paramount consideration.

[11] The issue before the Court, therefore, is whether the Court shall grant the application for an order for the release of the impounded motor vehicle at this interlocutory stage of the hearing of the petition.

Determination

[12] The Principles for the grant of interlocutory mandatory injunction were set out in **Locabail International Finance Ltd. v. Agroexport and others** [1986] 1 ALL ER 901 at pg. 901 -

*“A **mandatory injunction** ought not to be granted on an interlocutory application in the absence of **special circumstances, and then only in clear cases** either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff.*

Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

See also Court of Appeal Civil Appeal No. 332 OF 2000 **Kenya Breweries Limited & Anor. v. Washington O. Okeya.**”

[13] The principles for the grant of conservatory order are now well settled by the leading authority of the Supreme Court, **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others** [2014] eKLR, as follows:

“[85] These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely

denotes that no party nor interested individual or entity is to take action until the Court has given the green light.

[86] “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

[87] The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. **Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:**

(i) the appeal or intended appeal is arguable and not frivolous; and that
(ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.

[88] **These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:**

(iii) that it is in the public interest that the order of stay be granted.

[89] This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through the Constitution. This Court has already ruled that election petitions are both disputes in personam and disputes in rem. While an election petition manifestly involves the contestants at the poll, the voters always have a stake in the ultimate determination of the dispute, hence the public interest.”

[14] While an applicant may adduce evidence of breach of private rights, as in this case of right to privacy and right to property at the stage of grant of conservatory order, there is the touchstone of Article 10 **Rule of Law** principle which is the fundamental principle and national value of good governance. Against the backdrop of the limitations on rights under Article 24 of the Constitution, the Rule of Law principle calls for compliance with the national and county legislation which has not been nullified by a declaration of invalidity by a competent court.

[15] The County Government is mandated to regulate and implement transport and traffic operations in the County in accordance with the national and county legislation in accordance with its functions under Section 5 of the Fourth Schedule of the Constitution. The relevant function here is function to deal with county transport matters as follows:

“5. County transport, including—

(a) county roads;

(b) street lighting;

(c) traffic and parking;

(d) public road transport; and

(e) ferries and harbours, excluding the regulation of 174 Constitution of Kenya, 2010 international and national shipping and matters related thereto.”

[16] The Respondents have statutory authority to enforce payment for parking fees and taking action to enforce regulations relating to dropping/picking of passengers at non designated terminals and stations, and to prosecute violations as provided for under section 42, 46 and 56 of the Transport and Parking Act of the County with authority to tow and impound vehicles that violate the statutes. See section 23 of the Inspection and Enforcement Services Act. On the evidence, the Petitioner was informed of the breach of county legislation by parking/stopping and dropping /picking passengers at non-designated place and the failure to pay parking fees. See paragraphs 28-30 of the Replying Affidavit.

[17] For his failure to pay, the petitioner points to a letter dated 22/4/2025 seeking a reset of his vehicle on the electronic payment system and for a waiver of arrears of parking fees as follows:

“RE: ACCRUED ARREARS OF PARKING STICKERS

*I write this letter addressed to your able office with the above referenced information. That on 11th April 2025 I was served with a forwarding letter from the County Government in relation to the High court ruling Petition No. E004 OF 2025. That I was granted access of my motor vehicle KCL 130H after paying Ksh.15,000 (Kenya shillings fifteen thousand only) as directed by court. That I was also given a 30 days notice to clear the arrears of Kshs 18,750(Kenya shillings Eighteen thousand seven hundred and fifty shillings). **That pursuant to the direction of the court, I wish to state that previously my motor vehicle had been deleted from any registration or payment and I could not access the online payment. I request for a waiver of Kshs.18,750 since it was not my fault .That I promise to continue cooperating with the Kirinyaga county transport and parking Act 2024 for harmonious working environment .That your office is capable of understanding my predicament and for avoidance of unnecessary litigation to challenge the arrears.”***

[18] A person who has an obligation to pay a levy cannot defend such a claim of nonpayment on the ground that he has sought for a consideration of a waiver or that the vehicle is not mapped or registered on the Respondent's electronic payment system for a whole period of one year without demonstrating any effort to have the payment system rectified to enable him to pay or tender of payment otherwise and outside the electronic system to enable him pay the fees due.

[19] The amount of parking fees and penalties applicable under the relevant Act must, therefore, be paid on the clean hands principle, especially where late payments are subject to penalties.

[20] The issue of dropping and picking at non designated place or on a public road, is subject of a criminal offence under section 44 of the Transport and Traffic Act. The applicant should be charged and convicted before the surcharge may be imposed. Section 44 of the Transport and Parking Act is in the following terms:

“Parking and Stopping Places for Public Transport Vehicles

44. (1) A public transport vehicle shall not, without prior authority by the County Government, be parked in any place other than a designated ‘public transport vehicles’ terminal or omnibus station.

(2) This Section shall not apply to a public transport vehicle parked at a terminal or omnibus station for the sole purpose of dropping and picking up passengers.

(3) A person who violates this Section commits an offence, and is liable on conviction to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding nine months, or to both.”

[21] The allegation of dropping picking passengers at a non designated area is a criminal offence and the application of a “Surcharge on non-matatu parking area penalty” in the Second Schedule of the Transport and Parking Act appears subject to a successful prosecution.

[22] The penalty for parking without paying parking charges in section 56 (4) of the Act does not require a criminal prosecution and indeed section 56 (5) of the Act empowers the respondent to clamp and tow the offending vehicle to the county yard.

[23] The Court does not, therefore, find that a ***prima facie*** case on the issue of impounding, clamping and towing of the vehicle for non-payment of parking fees has been established, and the question of ***adequacy of damages*** is put paid by the Petitioners own quantification of alleged loss in the Petition.

[24] ***Public interest*** in the matter tilts the ***balance of convenience*** against the applicant's case for release of motor vehicle unconditionally because of the need to uphold the constitutional mandate of the County Government to implement laws enacted by the County Assembly under Article 185 in accordance with the devolved functions under the Fourth Schedule of the Constitution.

CONCLUSION

[25] The applicant was required on long established principles to demonstrate that he had a *prima facie* case for the grant of the mandatory relief sought for the release of motor vehicle subject of the Petition. A mandatory injunction may only be granted at an interlocutory stage in the clearest of cases where the Court feels that it will appear at the hearing that the interlocutory relief was properly given. See *Locabail* case, supra.

[26] In this case, while the applicant alleges that his motor vehicle was clamped and towed for no reasons and without an explanation from the Respondent's officer, there is evidence that the enforcement action was in pursuit of infraction of the provision on stopping, dropping and picking at non-designated areas and for failure to pay parking fees under the unified monthly ticket applicable to the matatu vehicles operators.

[27] While there are questions as to the photographic evidence presented by the Respondents as to the place of alleged dropping of passengers, which did not clearly show on the photograph that it was at a prohibited or non-designated area, there is no prima facie case in the sense of a clear case of violation of rights.

[28] There, however, an admission that the applicant had not paid the parking fees arrears for a whole year since the order of this Court in Petition no. of 2024 where the Court directed payment of arrears then standing at 18,750/- for which the applicant sought waiver by his letter of 22/4/2025. The applicant sought to explain that his failure to pay was on account of the respondents' failure to respond to an issue of his removal from the electronic payment system of the Respondent which he had raised in the said letter of 22/4/2025. NO evidence was adduced as to any attempt by physically attending the relevant offices of the respondent to get them to rectify the situation as regards on-line payment or otherwise make payment for the due arrears of parking fees. The applicant has continued to operate with paying parking fees for a full year.

[29] The respondents have a constitutional and statutory mandate under the Fourth Schedule of the Constitution and the various Acts of the County Assembly to enforce national and county legislation relating to transport and track operations in the County. While the constitutional validity of the relevant legislation is not challenged, compliance, enforcement or implementation of the legislation cannot be held to be a violation of the law. The principle of the rule of law which is entrenched in Article 10 of the Constitution on the principles and national values of governance call for the obedience by all with all law, unless and until such law is determined to be unconstitutional, null and void.

[30] In this case, the provisions for the payment of parking fees for matatu operators, and the surcharge for stopping and dropping/picking passengers are provided for in the applicable county law, and the respondents are empowered to enforce the law by clamping, towing and impounding an offending motor vehicle. Specifically, section 23 of the Inspection and Enforcement Services Act provides as follows:

"23. Where a County Enforcement Officer or Inspection Officer reasonably believes that a vehicle is parked or controlled in any manner contrary to any

County Laws or without payment of prescribed parking fee, the officer may impound the vessel by clamping or towing it to the nearest police station or designated inspectorate stations.”

[31] At this interlocutory stage of hearing of the Petition, the Court is, on the evidence and law, not able to determine that there is a **prima facie** case less still the clearest case required for the grant of interlocutory **mandatory** injunction. On the **conservatory order** test, the public interest in upholding the mandate of the Respondents in the implementation and enforcement of the County legislation for the operations of the County public transport sector trumps the individual complaint for clamping, towing and impounding of the vehicle for non payment of parking fees, a liability which is not denied. The application for **unconditional** release of the motor vehicle will be declined. The vehicle may only be released upon payment of the arrears of parking fees whose default is not contested.

[32] The surcharge of 10,000/- which is payable for stopping, dropping/picking passengers at non-designated areas appears to be subject to the finding in a criminal court of an offence under section 44 (3) of the Transport and Parking Act, and it must await the hearing and determination of the Petition.

ORDERS

[33] Accordingly, for the reasons set out above, the application for the release of motor vehicle **KCL130H** unconditionally is declined.

[34] The Motor Vehicle may be released upon the payment of the **arrears** of the parking fees of 60,000/- under the unified parking ticket together with the applicable **towing charges and unclamping fees**.

[35] The payment of the Ksh.10,000/- for the **surcharge** shall await the determination of the Petition with respect to the issue whether the Petitioner had on 17/2/2026 stopped to drop and or pick passengers at a non-designated place, which is the basis for the surcharge, and which appears to be subject to a criminal conviction.

[36] The Costs of the application shall be in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF MARCH 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Nyaga Gitari for Petitioner.

Ms. Muthoni for the Respondent.