

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
HCCHR PETITION NO. E012 OF 2025

NAIROBI BEAUTY WORLD LIMITED.....1ST
PETITIONER

ABDIRAHMAN HASSAN.....2ND
PETITIONER

FATHIYA SHEIKH ALI.....3RD
PETITIONER

VERSUS

THE ANTI-COUNTERFEIT AUTHORITY.....1ST
RESPONDENT

SIME DERBY OILS PROFESSIONAL SDN. BDH.....2ND
RESPONDENT

KENYA INDUSTRIAL PROPERTY INSTITUTE.....3RD
RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....4TH
RESPONDENT

JUDGEMENT

1. The petitioner instituted the present petition dated 23rd September 2025, seeking the following prayers;

a) A Declaration that the continued seizure and detention of the 1st Petitioner's goods by the 1st Respondent under ACA/HQ/ENF/IPRC/69/2023 is illegal, unconstitutional, and in violation of Articles 40(1), 47(1), and 29(d) & (f) of the Constitution.

b) A Declaration that the complaint giving rise to the seizure and investigation was lodged by a person without legal

standing or authority, in contravention of Section 33 of the Anti-Counterfeit Act, and therefore invalid ab initio.

- c) A Declaration that the intended arrest, detention, or prosecution of the Petitioners by the 1st and 4th Respondents is unlawful, constitutes harassment, and infringes on their rights under Articles 29, 47, 49, and 50 of the Constitution.*
- d) An Order of Mandamus compelling the 1st Respondent to unconditionally release all goods belonging to the Petitioners seized under ACA File No. ACA/HQ/ENF/IPRC/69/2023.*
- e) An Order of Prohibition restraining the 1st and 4th Respondents, whether by themselves, their officers, agents, or any person acting under their authority, from arresting, detaining, charging, or prosecuting the Petitioners in connection with ACA/HQ/ENF/IPRC/69/2023 or any other complaint made by the purported agents of the 2nd Respondent.*
- f) A Declaration that the application giving rise to the expungement proceedings was lodged by a person without legal standing or authority and therefore invalid ab initio.*
- g) A Declaration that the Petitioners are entitled to compensation for the violation of their constitutional rights to property, fair administrative action, fair trial, dignity, and freedom from arbitrary enforcement action.*
- h) An Order for General Damages and Exemplary Damages against the 1st, 2nd, and 3rd Respondents, jointly and severally, for Arbitrary deprivation of property; Unlawful seizure and detention of goods; Psychological distress,*

reputational harm, and business disruption; and Violation of the Petitioners' constitutional rights.

i) Costs of this Petition.

The Petitioner's Case

2. The 1st Petitioner, Nairobi Beauty World Limited, is a limited liability company duly incorporated in Kenya and engaged in the business of beauty and cosmetic products. The 2nd and 3rd Petitioners are its directors and beneficial owners.
3. The Petitioners' case is that on 8th August 2011, the 1st Petitioner was duly registered as the proprietor of Trade Mark No. KE/T/2011/72138 for "CBC PURE WHITE COCONUT OIL" (WORDS AND DEVICES) under Class 3 of the Nice Classification. It is the Petitioners' contention that they have used the said trademark continuously and in good faith in Kenya and acquired substantial goodwill and commercial reputation.
4. The Petitioners state that on 9th April 2021, their trademark was unlawfully, irrationally, and unprocedurally expunged from the Register by the 3rd Respondent, the Kenya Industrial Property Institute (KIPI). They contend that this expungement followed proceedings initiated on 17th April 2020 by an individual purporting to be an agent of the 2nd Respondent, Sime Darby Oils Professional SDN. BHD. The Petitioners assert that this individual has since been discovered to be a fraud and an impostor with no legal authority to act on behalf of the 2nd Respondent.
5. It is the Petitioners' further contention that the expungement decision was only published on 31st March 2023, long after the decision had been made, and that the proceedings were

conducted without according them a fair hearing or complying with due process.

6. The Petitioners aver that on 18th December 2023, the 1st Respondent, the Anti-Counterfeit Authority, acting on the behest of the alleged agents of the 2nd Respondent, conducted a raid on the 1st Petitioner's business premises and seized all goods bearing the 1st Petitioner's trademark. They contend that these goods had been legally imported on 2nd July 2018, well before the expungement proceedings were initiated and prior to the 2nd Respondent's own trademark registration, which they note was registered on 8th August 2023.
7. The Petitioners state that they had informed the 1st Respondent that the goods were not being sold and had been stored pending resolution of the trademark dispute. Despite this, the goods were seized on the false basis that they were counterfeit under the Anti-Counterfeit Act.
8. The Petitioners contend that the complaint forming the basis for the seizure was made on 11th December 2023 by a person fraudulently purporting to be an agent of the 2nd Respondent. They assert that this was in violation of Section 33 of the Anti-Counterfeit Act, and that the 1st Respondent failed to verify the complainant's identity and authority before taking enforcement action. The Petitioners further aver that their goods have now been detained for over two years, in violation of Section 28(1) of the Anti-Counterfeit Act, which limits such detention to three months. They state that their requests for the release of the goods have been met with threats of arrest and prosecution, with no formal response from the 1st Respondent.

9. It is the Petitioners' case that they are now under threat of imminent arrest and prosecution under the Anti-Counterfeit Authority Investigation File No. ACA/HQ/ENF/IPRC/69/2023, based on a flawed investigation and a complaint by an impostor. The Petitioners contend that the remedies available under the Trademarks Act and the Anti-Counterfeit Act are inadequate to provide redress for the constitutional violations they have suffered.

10. Based on the foregoing, the Petitioners allege violations of their constitutional rights, particularised as follows:

(i) Violation of the Right to Property (Article 40) -The continued seizure and detention of their goods without legal justification, criminal charge, court order, or due process constitutes an arbitrary deprivation of property.

(ii) Violation of the Right to Fair Administrative Action (Article 47) - The expungement of their trademark was conducted without a fair hearing or procedural fairness. The 1st Respondent accepted and acted upon a complaint from a person without legitimate authorization and failed to verify the complainant's authority. The seizure of goods was therefore based on an improperly lodged complaint and without due verification.

(iii) Violation of the Right to Fair Hearing (Article 50) - The Petitioners are under imminent threat of arrest and prosecution without being informed of the charge or given an opportunity to be heard.

(iv) Violation of Rights of Arrested Persons and Freedom from Arbitrary Arrest (Articles 29 and 49) - The threats of arrest and criminal charges without just cause amount to harassment and psychological torture.

(v) Contravention of the Anti-Counterfeit Act - The 1st Respondent unlawfully accepted a complaint from a person without locus standi, failed to interrogate the complaint as required under Section 33, and detained the goods for over two years in contravention of Section 28(1).

(vi) Violation of the Right to Dignity (Article 28) - The continued threats of arrest and criminalization have subjected the Petitioners to stigma, humiliation, and reputational harm.

11. The Petitioners assert that they have no adequate alternative remedy as the statutory remedies under the Trademarks Act and the Anti-Counterfeit Act do not provide for constitutional redress or relief for the infringement of fundamental rights. The Petitioners urge that the issues raised relate to the abuse of power by public authorities, the protection of intellectual property, and the protection of lawful businesses from arbitrary interference, and that it is in the public interest for this Court to intervene.

The Respondents' Case

12. The 1st Respondent, the Anti-Counterfeit Authority, is a statutory body established under the Anti-Counterfeit Act and is mandated under Section 33 of the said Act to receive complaints from intellectual property rights owners or their agents, licensees, or assignees, and from consumers, and to act on those complaints. The 1st Respondent filed a Replying Affidavit to the Petition, dated 8th October 2025, stating that the 2nd Respondent is the registered owner of Trademark No. 111560 in Class 3 of the Nice Classification, registered since 2020, and Trademark No. 41399 in

Class 29, registered since 1994. Copies of the relevant certificates have been annexed to the affidavit.

13. It is the 1st Respondent's position that on 25th March 2020, the 2nd Respondent applied to register "C.B.C. Brand" (word and device) in Class 3, but the application was rejected by the Registrar of Trademarks on the ground that the 1st Petitioner, Nairobi Beauty World Limited, had already registered "C.B.C. Pure White Coconut Oil" and had been issued with Certificate of Trade Mark No. 72138.
14. The 1st Respondent avers that, being aggrieved by the 1st Petitioner's registration, the 2nd Respondent, on 17th April 2020, filed proceedings to expunge the 1st Petitioner's trademark from the Register. According to the 1st Respondent, in a ruling delivered by the Registrar of Trademarks on 9th April 2021, the registration of the 1st Petitioner was expunged, and from that date onwards, its trademark ceased to exist. A copy of the said ruling has been annexed. It is further stated that the 2nd Respondent was thereafter issued with a certificate of registration for Trademark No. 111560 in Class 3.
15. The 1st Respondent contends that the Petitioners have never obtained a stay of the Registrar's decision, even after filing an appeal against the said ruling in **High Court Civil Appeal No. E288 of 2024**. Consequently, following the expungement, the 2nd Respondent holds the exclusive rights to use the trademarks in question under the Trademarks Act.
16. It is the 1st Respondent's assertion that the allegation that the trademark was illegally expunged through a fraudulent process initiated by alleged agents of the 2nd Respondent is false. The Petitioners were accorded an equal opportunity to be heard, and

this is not an issue for determination in a constitutional petition but rather a matter of appeal against the Registrar's decision.

17. The 1st Respondent states that on 11th December 2023, the 2nd Respondent, through its agent Onyony & Company Advocates, formally lodged a complaint regarding infringement with the 1st Respondent. It is stated that full and relevant disclosures were provided, sufficiently demonstrating to the 1st Respondent that the complaint was made in good faith in accordance with Section 33 of the Anti-Counterfeit Act. The 1st Respondent clarified that the complaint was submitted by Onyony & Company Advocates, not by an individual named Abdulkadir Warsame, as alleged by the Petitioners. The Respondent annexed a copy of the said complaint form, ACA 8.
18. The 1st Respondent contends that it conducted an evaluation of the complaint based on the documentation and information provided by the 2nd Respondent's agents and confirmed that the complaint was valid and legitimate, in compliance with the provisions of the Anti-Counterfeit Act. According to the 1st Respondent, the allegation that the agents lacked legal authority is baseless and a fishing expedition intended to mislead the Court.
19. The 1st Respondent further states that the Petitioners have failed to provide any evidence supporting their claims of fraud by the 2nd Respondent's agent, and such allegations appear to be maliciously aimed at discrediting the 1st Respondent's actions.
20. It is the 1st Respondent's case that the Petitioners previously filed Nairobi **High Court Petition No. E118 of 2024**, in which conservatory orders were granted restraining the Respondents from investigating, arresting, charging, or prosecuting the

Petitioners. This order restricted the Respondents from charging the Petitioners within the three-month statutory period provided under the Anti-Counterfeit Act.

21. The 1st Respondent avers that the Petitioners also initiated **Milimani Miscellaneous Civil Suit No. E2199 of 2024** seeking orders for the release of the seized goods, but subsequently withdrew the said application by notice dated 11th September 2025. The 1st Respondent contends that this withdrawal constitutes a clear abandonment of any claim to the seized goods, thus precluding the Petitioners from obtaining the release orders sought in the present Petition.
22. The 1st Respondent asserts that the Petitioners have consistently filed suits against the Respondents, and given the active court cases concerning the ownership of the trademark affixed to the goods, the release of the alleged counterfeit goods cannot occur without a judicial determination that the goods are indeed counterfeit, as required under Section 28(3) of the Anti-Counterfeit Act. It is the 1st Respondent's position that the prayers sought in the present Petition are identical to those sought in **Nairobi High Court Petition No. E118 of 2024**, thus rendering this suit res judicata.
23. Suffice to note at this juncture that the issue of whether this matter is res judicata was spent vide the ruling of this Court delivered on 25th November 2025, where this Court dismissed the 1st Respondent's Preliminary Objection mounted on the grounds that the instant petition is res judicata and sub judice.
24. Turning back to the 1st Respondent's case, they contend that the prayers sought in this Petition are in conflict with an active injunction order issued against the Petitioners in **Nairobi High**

Court Commercial Case No. E604 of 2023, in a ruling delivered on 25th April 2025. That injunction has neither been successfully appealed nor stayed, and the suit is pending hearing.

25. The 1st Respondent further contends that in **Nairobi High Court Petition No. E118 of 2024**, the Court determined that the 1st Respondent acted within its statutory authority under the Anti-Counterfeit Act, establishing probable cause to investigate the Petitioners based on a properly lodged complaint.
26. The 1st Respondent notes that the 2nd Petitioner himself confirms at paragraph 11 of his supporting affidavit that the **High Court in Petition No. E118 of 2024** dismissed their claims, holding that the Petitioners failed to demonstrate any violation of their rights under various Articles of the Constitution, and emphasized that an investigation alone does not constitute a violation of rights. The 1st Respondent asserts that the Petitioners understood the effect of the judgment in **High Court Petition No. E118 of 2024**, namely that none of their rights had been violated, and are therefore on a forum shopping mission before this Court to acquire favourable orders for non-existent intellectual property rights through concealment of material facts.
27. Regarding the alleged new information about a fraudulently lodged complaint, the 1st Respondent states that the Petitioners have failed to provide evidence substantiating the claims of fraud against the 2nd Respondent's agent. Furthermore, the introduction of new facts concerning any matter already adjudicated does not justify the initiation of a new, similar suit seeking identical reliefs in a different court, especially while concealing material facts.

28. The 1st Respondent contends that the Petitioners have approached this Court with unclean hands and are thus not entitled to any of the relief sought, based on false allegations intended to secure orders irregularly from this Court.
29. It is the 1st Respondent's position that the issues raised by the Petitioners regarding the legality of the proceedings resulting in the Registrar's decision are matters for appeal against the Registrar's ruling in **E288 of 2024**, rather than constitutional issues to be addressed by this Court. Similarly, the claim of fraud is an issue under the purview of the civil court and raises no constitutional issue for determination.
30. The 1st Respondent denies that it or its agents have threatened or harassed the Petitioners, or that they have usurped the powers of the 4th Respondent or abused the legal process as alleged. It maintains that the investigations have been conducted impartially, in good faith, objectively, and professionally, based on a complaint from the 2nd Respondent, while respecting the rights and freedoms of the Petitioners as upheld by this Court in High Court Petition No. E118 of 2024.
31. The 1st Respondent concludes that the Petition fails to meet the necessary threshold for the granting of conservatory orders, that this Court lacks jurisdiction to hear and determine issues already resolved in Petition E118 of 2024, and that the Petition is based on falsehoods, concealment of material facts, suppression of evidence, and substantial non-disclosure. The 1st Respondent, therefore, urges that the Petition be dismissed with costs.
32. The 2nd Respondent did not file a substantive response. However, I note that they filed a List of Documents dated 6th October 2025, which I have considered.

33. The 3rd and 4th Respondents did not file responses altogether.

ISSUES FOR DETERMINATION

34. I have considered the petition, responses and documents filed by parties. The following issues are for determination;

- (i) Whether the Complaint giving rise to the seizure of the Petitioners' goods was lodged by a person without legal authority and therefore invalid ab initio.
- (ii) Whether the Petitioners' rights under Articles 40(1), 47 (1), and 29(d) & (f) of the Constitution were violated.
- (iii) Whether the Petitioners are entitled to the reliefs sought.

ANALYSIS AND DETERMINATION

- (i) **Whether the Complaint giving rise to the seizure of the Petitioners' goods was lodged by a person without legal authority and therefore invalid ab initio.**

35. The petitioners' case is that the complaint that formed the basis for the seizure was made on 11th December 2023 by a person fraudulently purporting to be an agent of the 2nd Respondent; the purported agent had no lawful authority to act for the 2nd Respondent. The Petitioner did not, however substantiate this claim. On the other hand, the 1st Respondent has asserted that the complaint was submitted by Onyony & Company Advocates, who have been instructed by the 2nd Respondent. The 1st Respondent has produced a copy of Form ACA 8 on the lodged complaint.

36. I have examined the said Form ACA 8 and note that the complaint was indeed lodged on 11th December 2023, by the firm of Onyony & Company Advocates, on behalf of the 2nd

Respondent. This is the complaint that prompted the 1st Respondent to seize the Petitioners' goods.

37. Without belabouring, it is my finding that the complaint giving rise to the seizure of the Petitioners' goods was lodged by a person with legal authority and therefore valid.

38. Prayer 2 of the Petition seeking to invalidate the complaint is therefore dismissed.

(ii) **Whether the Petitioners' rights under Articles 40(1), 47 (1), and 29(d) & (f) of the Constitution were violated.**

39. The foundation of any constitutional petition is the requirement for precise pleading. A court will first examine whether the petitioner has clearly identified the specific constitutional rights allegedly violated and the manner of their violation.

40. As affirmed in **Centre for Minority Rights Development (CEMIRIDE) & 2 others v Attorney General & 2 others [2022]**, a petition must "*disclose, with precision, the rights and freedoms violated.*" A mere invocation of several constitutional provisions is insufficient; the petitioner must "*demonstrate to the required standard how their rights and fundamental freedoms have been violated*".

41. In the instant case, the petitioners have indeed pleaded with specificity the constitutional infractions alleged to have been committed by the Respondents. The Court is thus called upon to examine whether indeed the actions complained of violate the particular provisions of the Constitution relied on.

42. Turning to the first ground of violation, being the right to property under Article 40 of the Constitution, the Petitioners

contend that the 1st Respondent unlawfully seized, detained, and continues to detain goods belonging to the 1st Petitioner. It is their case that these goods were lawfully imported and bore their trademark, being Trademark No. KE/T/2011/72138 for "CBC PURE WHITE COCONUT OIL."

43. From the totality of the evidence placed before this Court, and as admitted by the 1st Respondent in its Replying Affidavit, the sequence of events is not in dispute. Upon receiving a complaint from the 2nd Respondent, lodged through its advocates, the 1st Respondent initiated a search and seizure operation at the 1st Petitioner's business premises on 11th December 2023. In the course of that operation, goods belonging to the 1st Petitioner were seized and have remained in the custody of the 1st Respondent to date.

44. It is the Petitioners' contention that the actions of the 1st Respondent to detain their goods beyond the statutory period of three months are unlawful and a violation of their right to property.

45. I agree with the Petitioners' contention that the powers of search and seizure of goods under the Anti-Counterfeit Act are not to be exercised *carte blanche* but must be exercised in strict compliance with the governing legislation. In this regard, **section 28 of the Anti-Counterfeit Act, 2008** provides as follows: -

“(1) Where any goods are seized and detained under section 23, they shall be returned, less any portion thereof which has been reasonably

utilized for the purpose of any test or analysis, to the person from whom they were seized within a period of three months after the date of seizure

unless, within such period, some person is charged

with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods. {*Emphasis Mine*}

(2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1), and any person is convicted of that offence, the court which made the conviction may order that any goods seized and detained in relation to or in connection with which such offence was committed shall be forfeited to the Government for destruction at the expense of the person so convicted. ...”

46. Section 28(1) of the Act is couched in mandatory terms, requiring that goods seized thereunder be returned within three months from the date of seizure, unless within that period a person is charged with an offence under the Act in relation to those goods. The exception is narrow and strictly confined to circumstances where criminal proceedings are instituted within the prescribed timeframe.

47. In the present case, the Petitioners’ goods were seized on 11th December 2023 and have remained in the custody of the 1st Respondent for a period exceeding two years. It is not disputed that no criminal charges have been preferred against the Petitioners in relation to the seized goods. On the face of it, therefore, the continued detention appears inconsistent with the statutory framework.

48. However, the material placed before this Court reveals that the dispute over the seized goods is inextricably linked to an ongoing

dispute regarding trademark ownership. In particular, the decision of the Registrar of Trademarks expunging the 1st Petitioner's trademark is the subject of an appeal before the **High Court in HCCOMMA No. E288 of 2024, Nairobi Beauty World vs Sime Darby Oils Professionals SDN. BHD.** Further, in **HCCOMM No. E604 of 2023, Sime Darby Oils Professionals SDN. BHD vs Nairobi Beauty World,** there exist subsisting injunctive orders touching on the same subject matter.

49. These proceedings demonstrate that the proprietary interests in the good, and the legitimacy of their branding, are matters actively pending before courts of competent jurisdiction. The determination of those issues will directly inform the legality of the seizure and continued detention of the goods.

50. In those circumstances, this Court is constrained from making definitive pronouncements on the alleged infringement of the Petitioners' right to property, as doing so would risk prejudging issues that are squarely before other courts and may result in conflicting decisions.

51. Accordingly, while the delay in concluding investigations or preferring charges is not satisfactorily explained, the continued detention of the goods cannot be viewed in isolation from the subsisting commercial disputes over the trademark. The detention, though prolonged, is intertwined with and contingent upon the outcome of those proceedings.

52. It follows that the Petitioners have not demonstrated, to the requisite standard, that the continued detention amounts to an arbitrary deprivation of property within the meaning of Article 40 of the Constitution. The right to property is not absolute and must

be considered within the broader legal context, including pending judicial processes concerning the same subject matter.

53. For the foregoing reasons, I find that the alleged violation of the right to property under Article 40 has not been established. The issues raised are more appropriately ventilated and determined within the pending civil proceedings.

54. The petitioners have also sought a declaration that their constitutional right to fair administrative action under Article 47 has been violated. The basis is that the Petitioners were never accorded a fair hearing or procedural fairness prior to the expungement of their trademark from the Register of the 3rd Respondent.

55. The petitioners also contend that seizure of the goods based on a complaint lodged improperly and without legitimate authorization from the 2nd Respondent and without due verification or a valid basis, is a direct breach of Article 47 (1) and (2) of the Constitution.

56. Starting with the second limb, that the seizure was based on an unlawful complaint, I have already established that the complaint lodged by the 2nd Respondent was proper and initiated by a person with lawful authority. This ground, therefore fails. The first limb of the petitioners' argument is that they were never accorded a fair hearing or procedural fairness prior to the expungement of their trademark from the Register of the 3rd Respondent.

57. Section 25(3) of the Anti-Counterfeit Act provides that;

“Any person aggrieved by a seizure of goods under section 23 may, at any time, apply to a court of competent jurisdiction for a determination that

**the seized goods are not counterfeit goods and
for an order that they be returned to him.”**

58. From the above provision, I am of the view that this Court, exercising its jurisdiction under Article 165(3)(b) of the Constitution is clothed with the requisite jurisdiction to determine whether the seized goods are counterfeit or not. This the preserve of civil courts and particularly the Commercial and Tax Division of the High Court. The determination of whether seized goods are counterfeit or not is a weighty and substantial issue which ought to be determined after a full trial where the trial Court would have the benefit of hearing evidence from both parties, including expert witnesses, if available and upon each party's' evidence being tested on cross-examination.
59. The material placed before this Court reveals that the decision of the Registrar of trademarks expunging the 1st Petitioner's trademark is the subject of appeal before the High Court being **HCCCOMMA NO. E288 of 2024 Nairobi Beauty World vs Sime Darby Oils Professionals SDN.BHD.** Additionally, in **HCCOMM NO. E604 of 2023 Sime Darby Oils Professionals SDN.BHD vs Nairobi Beauty World**, the suit relates to the issues revolving around the contested trademark between the 1st Petitioner and the 2nd Respondent wherein an injunctive order in favour of the Plaintiff in that suit is in force.
60. In view of the pending appeal against the expungement proceedings by the Registrar of Trademarks, the assertion by the Petitioners that their right to fair administrative action was infringed in the course of the impugned proceedings does not arise. Entertaining that question in this Petition would unfairly jeopardize the outcome of the pending appeal and would further

risk having two courts of concurrent jurisdiction issuing conflicting decisions.

61. To this end, it is my considered view that matters relating to the trademark and the expungement thereof are matters pending before the Courts of competent jurisdiction where the Petitioners and the 2nd Respondent will be able to ventilate their competing claims with regard to the ownership of the disputed trademark.
62. Whereas the 2nd Respondent did not file a response to the Petition, the documents filed in court demonstrate they have a legitimate claim over the disputed trademark which claim will be weighed against the 1st Petitioner's claims. Being purely commercial claims, this Court declines the invitation to descend into this arena to give room to the civil courts to determine the said disputes with finality.
63. The claim for violation of the right to fair administrative action under Article 47 of the Constitution, therefore, fails.
64. The Petitioners have also sought a declaration that their rights under Article 29(d) and (f) of the Constitution, alleging that the threatened arrest and prosecution of the Petitioners by the 1st Respondent, together with the continuing investigations amount to harassment and psychological torture under this Article.
65. As highlighted above, it is not in dispute that two (2) years and three (3) months have lapsed since the seizure of the Petitioner's goods. It is also not in dispute, and no material has been placed before the Court to demonstrate that the 1st Respondents have neither returned the seized goods nor commenced criminal prosecution of the Petitioners. The silence on the part of the 1st Respondent on its non-compliance with section 28(1) of the Anti-

Counterfeit Act is deafening and has not been satisfactorily explained to this Court.

66. The 1st Respondent, being a State Agency has a positive duty to act in accordance with the enabling statute. This duty is rooted in the rule of law, requiring the 1st Respondent to carry out its duties lawfully, transparently and in compliance with the Constitution and the governing legislation. Acting outside the authorized parameters and mandate established by statute renders such acts or omissions legally impermissible, and the Court ought to rise to the occasion to remedy such actions which would otherwise be *ultra vires*. Additionally, the 1st Respondent has a positive obligation to ensure that in discharging its mandate, it acts with procedural fairness, efficiency, and lawfulness, ensuring that its actions or omissions do not unfairly and unnecessarily infringe on and violate the rights of individuals as guaranteed by law.

67. It is undeniable that the failure by the 1st Respondent to release the seized goods within the statutory period of three (3) months and without any criminal prosecution has caused untold anxiety to the Petitioners for the last two (2) years and three (3) months. The actions of the 1st Respondent are best equated to the ancient Greek parable, “**the Sword of Damocles,**” where Damocles, a courtier to King Dionysius I of Syracuse, envied the king’s luxurious life. To teach him a lesson, Dionysius sat him at a luxurious banquet but hung a razor-sharp sword above him, suspended by a single horsehair, illustrating the precariousness of power.

68. Like Damocles, within the afore-stated long period, the Petitioners have had to anxiously live under constant anxiety,

reminding them that the 1st Respondent while dangling its Sword of Damocles, may at any time strike, arrest and prosecute the Petitioners while flouting the mandatory provisions of its enabling legislation.

69. Notably, section 28(1) of the Act is couched in mandatory terms and leaves no room for the 1st Respondent to conjecture, or selectively apply the law to the detriment of the petitioner's commercial interests or personal liberties. Parliament in its wisdom granted the 1st Respondent a period of three (3) months upon seizure of any alleged counterfeit goods to either return the goods to the person from whom they were seized, or, where necessary mount criminal prosecution of that person. This was geared towards ensuring certainty and predictability of the law in counterfeit matters, which have a public interest connotation insofar as the 1st Respondent's duty to protect consumers and the wider market from counterfeit products is concerned.

70. Accordingly, I am satisfied that the 1st Respondent's actions, inaction and/or omissions failing to comply with section 28(1) of the Act pose a threat to the rights of the Petitioners. Should a criminal prosecution be instituted against the Petitioners by the 1st Respondent, the same would not only be an affront to section 28(1) of the Act but would also be an abuse of the legal process as well as a direct insult to the administration of justice. This Court has a duty to safeguard the rights of the Petitioners particularly where their personal liberties are threatened.

(iii) **Whether the Petitioners are entitled to the reliefs sought.**

71. The final issue for determination is whether the Petitioners are entitled to the reliefs sought. It is a settled principle of constitutional adjudication that where a violation of fundamental rights and freedoms is proved, relief must follow.
72. This Court is guided by the maxim *ubi jus ibi remedium* (there is no right without a remedy) and holds that where a violation of fundamental rights has been proved, the court is constitutionally obligated under Article 23(3) to grant appropriate relief, which may include a declaration of rights, an injunction, a declaration of invalidity, or an award of compensation.
73. The only question for the court therefore, is not whether to grant the reliefs sought, but, what form of relief is appropriate, effective, and sufficient to vindicate the rights that have been infringed. The Petitioners have asserted that the 1st Respondent has unwarrantedly detained the 1st Petitioner's goods for over two years and three months now, which fact is admitted by the 1st Respondent.
74. I have also found above that the 1st Respondent has not demonstrated any justification for such continued and arbitrary detention of the goods. However, I have found that I do not have jurisdiction to determine whether the seized goods are counterfeit or not. Furthermore, there is a pending dispute before a court of competent jurisdiction on whether the Petitioner indeed infringed on the trademark. The question of whether there is indeed an infringement of their property rights can therefore not be conclusively determined by this court. Additionally, I am unable to make definitive orders of mandamus for the release of the goods pending the conclusive determination of the civil disputes before the civil Courts. In the meantime, it is only fair that the seized

goods are safely stored by the 1st Respondent as required under section 27 of the Anti-Counterfeit Act.

75. Additionally, the 1st Respondent's non-compliance with section 28(1) of the Anti-Counterfeit Act forecloses its right and ability to mount any criminal prosecution against the Petitioners on account of the seized goods. Should such a scenario arise, such prosecution would not only be malicious, an abuse of the court process, but also an inherent affront to the administration of justice.

76. Further, in view of the fact that the issue as to whether the seized goods are counterfeit or not, I am unable to issue an order for compensation at this stage. As such, I am constrained not to award any damages.

77. Accordingly, I grant the following reliefs;

- I. An Order of Prohibition is hereby issued restraining the 1st and 4th Respondents whether by themselves, their officers, agents, or any person acting under their authority from arresting, detaining, charging, or prosecuting the Petitioners in connection with ACA/HQ/ENF/IPRC/69/2023, a complaint made by the agents of the 2nd Respondent.
- II. Costs of this Petition are awarded to the Petitioners to be borne by the 1st Respondent.
- III. For the avoidance of doubt, any other relief sought that is not expressly granted is hereby declined.

Orders accordingly.

**Judgement dated and delivered virtually this 9th day of April
2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Kemunto h/b for Ms. Sinana for the Petitioners

Ms. Nyawera h/b for Mr. Adera for the 1st Respondent

Mr. Olonde h/b for Mr. Onyony for the 2nd Respondent

No appearance for 3rd and 4th Respondents

Karimi Court Assistant.

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