



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CONSTITUTIONAL PETITION NO. E002 OF 2024**

**ISAAC WAITHAKA KIMONDO .....PETITIONER/APPLICANT**

**VERSUS**

**COUNTY GOVERNMENT OF KIRINYAGA .....RESPONDENT**

**JUDGMENT**

[1] The petitioner moved this court vide petition dated 15<sup>th</sup> February, 2024 seeking the following orders:

1. A declaration that this Petition raises weighty fundamental constitutional issues.
2. A declaration that the petitioner's constitutional rights of having his property not arbitrary seized is guaranteed under Article 31(b) of the constitution has been infringed by the respondent.
3. A declaration that the petitioners constitutional right to acquire and own property of any description and in any part of Kenya as guaranteed by Article 40(3) of the constitution has been infringed and or violated by the respondent.
4. Reinstitution of the petitioner's motor vehicle and prohibitory order to the respondent from seizing and/or detaining without following the due process of the law.
5. General damages for illegal seizure and detention of the petitioner's motor vehicle.
6. Costs and interest of this petition.

[2] At the interlocutory stage when the petitioner sought release of the motor vehicle deposited to a supporting affidavit setting out its case that he is the registered owner and driver of motor vehicle registration No. KCL130H operating under Kirinyaga

Shuttle within Kirinyaga county and elsewhere within the Republic of Kenya. On 1<sup>st</sup> February, 2024 while at Kerugoya main stage, he was approached by agents/staffs of the respondent who informed him that his motor vehicle was being required at the respondent's revenue offices within Kirinyaga County. He immediately proceeded to the offices, where upon arrival his motor vehicle was clamped and detained there by the respondent's agents/staff.

- [3] The petitioner avers that he requested the agents/staffs at the revenue department the reason of clamping his car but they failed to disclose to him any offence that he had committed. The petitioner avers that he makes Kshs 6000 daily as the vehicle is his only tool of trade. Lastly, he avers 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 his constitutional rights.
- [4] The respondent deposed to a replying affidavit in response to he petition in similar terms as the it had filed in opposition to the interlocutory application for the release of the vehicle 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] The respondent avers that the Petitioner has been operating Matatu business illegally, without a valid license issued by the National Transport and Safety Authority as required under the National Transport and Safety Authority Act CAP 404 Laws of Kenya. Besides operating illegally, the Petitioner acts with impunity, repeatedly picking and dropping passengers outside the omnibus station located within Kerugoya town contrary to the provisions of the Kirinyaga County Omnibus Stations and Parking Act, 2016. 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 Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant national and County legislations.
- [6] The respondent avers that the Petitioner was also informed that officers of the Respondent were aware that he was operating illegally without a license, and he was therefore requested to present evidence that he was indeed operating under a licensed Sacco as required under Regulation 5(1)(a) of the National Transport and Safety

Authority (Operation of Public Service Vehicles) Regulations, 2014. The Petitioner was adamant that he would not pay the surcharge prescribed under the law and as requested by the revenue officers, and he demanded the immediate and unconditional release of his motor vehicle.

[7] The respondent avers that the Petitioner was as at 1<sup>st</sup> February, 2024, not a member of Kirinyaga Shuttle Ltd as falsely claimed and was therefore operating contrary to Regulation 5(1)(a) of the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014.

[8] 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 Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant national and County legislations.

[9] The respondent aver that the Petitioner was informed that he had violated the provisions of Sections 17(1) and 19(5) of the Kirinyaga County Omnibus Stations and Parking Act, 2016 which outlaw parking, picking and dropping outside the omnibus station. The Petitioner was also requested to pay the surcharge prescribed for the said violation under item 6 of the First Schedule of the Kirinyaga County Omnibus Stations and Parking Act, 2016 as amended by Section 13(c) of the Kirinyaga County Finance Act 2023.

[10] Nevertheless, the respondent avers that while this Petition was still pending, and true to his character, the Petitioner committed further violations and when his vehicle was clamped, he again refused to pay the surcharge and instead filed another Constitutional Petition number E004 OF 2025. This Honourable Court ruled that the Respondent acted lawfully in clamping the Petitioner's vehicle.

[11] Moreover, the respondent avers 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.

[12] Lastly, the respondent avers 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.

[13] The Petitioner had filed a supplementary affidavit in the interlocutory application for release of the vehicle responding to the respondent's case and conceding that it was true that the respondent is mandated under Article 185(1) and

(2) of the constitution of Kenya read together with the fourth schedule of the constitution to make regulations of transport within the county. That the regulations under the 4<sup>th</sup> schedule of the constitution should not be in contravention with fundamental Rights and freedoms under Article 31(B) and 40(3) of the constitution of Kenya 2010. He avers that he is a licensed driver qualified to drive vehicles in classes A1, A2, A3, A, B, C, C1, D1 hence competent to drive any public service vehicles. He has been operating with a valid service badge which has an expiry date of 4<sup>th</sup> December, 2024.

[14] Further, the petitioner avers that his motor vehicle KCL 130H has been operating with an active road service license which will expire on 15<sup>th</sup> November 2024 under Kirinyaga Shuttle Limited Sacco. His motor vehicle had a valid insurance to Carry 14 Fare No. Paying Passengers Under Policy AM20851025939202401(TPO) before it was detained by the respondent. Despite the detention of his motor vehicle without any valid reason, he continued to pay the monthly revenue payment of Kshs. 2,500/= to the respondent account. Lastly, he avers that the Petitioner's averments on any breach of its bylaws is not substantiated. The respondent has violated section 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023.

### **Petitioner's Submissions**

[15] The Petitioner submits that he had fully complied with the regulations needed for his conduct as a matatu operator. It is clear from the respondent's response that they only stated that the applicant violated their rules which were not substantiated. That it is ironical that the respondent's response was only supported by the affidavit of Kirinyaga Central County Ward Administrator officer whose is not an enforcement officer within the meaning of the respondents' inspection and enforcement services Act 2023. Consequently, the respondent has heavily relied on a letter from Kirinyaga Shuttle Limited dated 1<sup>st</sup> March, 2024 which was requested on 27<sup>th</sup> February, 2024 seeking information 27 days after the motor vehicle was wrongly impounded and the same was done intentionally to assist the respondent from shame,

[16] The petitioner submits that the applicant has proved malice in the manner which the respondent's agents conducted themselves by infringing his fundamental rights enshrined under Article 31(b) and 40(3) of the constitution of Kenya 2010 by forcefully impounding his motor vehicle. It is clear from the ruling delivered on 23<sup>rd</sup> May, 2024 that the honourable court made a finding in the first instance that the

petitioner's vehicle was improperly detained and an order for its unconditional release was made.

[17] However, the respondent has failed to substantiate the alleged violations by clearly stating the date and time which suggest how clueless they are in their operations. The motor vehicle was detained on 1<sup>st</sup> February, 2024 and was ordered to be released on 23<sup>rd</sup> May, 2024 which is a period of more than 4 months. It is the petitioner's averments that has been proved by way of bank statements that he would make more than Kshs. 6,000 in a day adding up to Kshs. 180,000 per month and for the 4 months the petitioner has suffered a loss of Kshs. 720,000 which is unfortunate.

[18] The petitioner has sought for General damages and we pursued the court to rely on the case of *Patrick Kamotho King'ori versus Inspector General of Police 4 Others: Alice Chesang (Interested party)* Constitutional petition case No, 12 of 2018 (2019) eKLR where Matheka J. awarded the petitioner damages of Kshs.2,000,000 where his motor vehicle had been impounded for about 10 months.

#### **Respondent's submissions**

[19] The respondent submits that contrary to the assertions of the Petitioner, the Respondent's enforcement officers are mandated under Section 12 of the Kirinyaga County Inspection and Enforcement Services Act 2023 to enforce compliance with relevant County legislations and national Laws, including the National Transport and Safety Authority Act CAP 404. It is therefore within their mandate to ensure that matatu operators carrying out business within Kirinyaga County are compliant with among other laws, CAP 404.

[20] The Petitioner as at 1<sup>st</sup> February, 2024 not only operated illegally but also with wanton disregard for the law. He was not a member of any Sacco as required under the National Transport and Safety Authority Act CAP 404, as evidenced by the annexure marked "CK-1" and attached to the Respondent's replying affidavit. By this annexure, the Kirinyaga Shuttle Sacco disowned him and confirmed that as at the date of the letter and for a while before that, he was no longer their member, duly authorized to operate under the Sacco.

[21] The Respondent has also adduced photographs that show the Petitioner picking and dropping passengers near Rubis petrol station in Kutus town, which is not a designated matatu stage, in violation of the Kirinyaga County Omnibus Stations and

Parking Act, 2016 (now repealed by the Kirinyaga County Transport and Parking Act, 2024).

[22] The respondent submits that the Orders sought are not available to the Petitioner as the same will amount to barring the Respondent or any of its officers from exercising its mandate over matatu operators in the course of discharging their public duties.

[23] The Petitioner is attempting to curtail the Respondent from executing its constitutional mandate contrary to statutory provisions and court decisions. The High Court in the case of ***Thuku Kiroro & 4 others vs County Government of Murang'a, Murang'a*** H.C. Petition No. 1 of 2014, [2014] eKLR, held that:

*“Moreover, where a statute or the Constitution, for that matter, has expressly delegated specific functions, duties or responsibilities to particular organs, state or otherwise, this court will be hesitant to intervene and curtail these organs’ efforts to execute their statutory or constitutional mandates; it is the duty of this court to interpret the constitution in a purposive rather than a restrictive manner. As far as devolution is concerned, the county governments must be encouraged and not restrained to deliver on their devolved functions as long as they act intra vires the constitution and the applicable statutes”*

### **Issues**

[24] The issues for determination are:

- (i) Whether the detention of the Petitioner’s motor vehicle violated his constitutional rights under Articles 31 and 40 of the Constitution. The determination determines on the outcome of the further inquiry whether the Respondent acted within its constitutional and statutory mandate.
- (ii) Whether the Petitioner is entitled to the reliefs sought, including damages.

### **Analysis**

*Whether the detention of the motor vehicle violated articles 31 and 40 of the Constitution*

[25] The Petitioner invokes constitutional rights under Article 31(b) (right to privacy) and Article 40(3) (protection of right to property). Article 40 protects the

right to acquire and own property and prohibits arbitrary deprivation. However, Article 40(6) expressly excludes protection of property that is unlawfully acquired.

[26] The principles governing pleading constitutional petitions were settled in *Anarita Karimi Njeru v Republic* (1979) KLR 154, where the Court held that a petitioner must plead constitutional violations with reasonable precision of the rights that are alleged to be violated in relation to them. In the present case, the Petitioner has alleged violation of Article 31(b). However, Article 31 concerns privacy of person, home, property and communications. The dispute herein relates to regulatory enforcement over a public service vehicle. The Petitioner has not demonstrated how his right to privacy was infringed by the clamping and detention of the vehicle.

[27] As to the right to protection of property under Article 40, the Court must determine whether the deprivation the respondent's action amounted to arbitrary deprivation, that is without following due process of the law. Article 47 of the Constitution guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The Respondent relies on its mandate under Article 185 and the Fourth Schedule of the Constitution, which grants County Governments authority over county transport, including traffic and parking.

[28] The Petitioner had burden of proof under section 107, 108 and 109 of the Evidence Act, with regard to the general burden in the Petition as well as fact of impounding for no cause shown, as follows:

**“107. Burden of proof.**

*(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

**108. Incidence of burden.**

*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

**109. Proof of particular fact.**

*The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”.*

[29] The standard of proof in civil cases is on a balance of probability as discussed by the House of Lords in *Re H & Others (Minors)* (1996) AC 563, 586C, (Lord Nicholls) explaining that serious allegation must be proved by cogent evidence, as follows: -

*“Where the matters in issue are facts **the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability...***

*...**The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind as a factor [...] that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. ...***

*Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. **It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.**”*

[30] It is certainly unusual and improbable that the County Government would single out and pick on the one public transport vehicle owned by the petitioner out of the many other operating in the County to claim that it had habitually picked up passengers at non designated places and operated without paying parking /licence fees to justify enforcement action against it. Such cogent action was not furnished.

[31] In the Supporting Affidavit to the petition sworn by the Petitioner on 15/2/2024, the Petitioner merely averred to the fact of impounding and the losses he had allegedly incurred during the period the vehicle was detained as follows:

**“SUPPORTING AFFIDAVIT**

*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 1st February 2024 while at Kerugoya main stage, I was approached by agents/staffs of the respondent who informed me that my motor vehicle was being required at the respondent's revenue offices within Kirinyaga County.

(4) That I immediately proceeded to the offices, where upon arrival, I my motor vehicle was clamped and detained there by the respondents agents/staff (Attached herewith and marked "IWK2" 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 instructed my advocate on record to issue a demand letter to the respondent which was done, but the same has never been replied Attached herewith and marked "IWK3" is a copy of demand letter)

(7) That I am the sole bread winner in my family and motor vehicle Registration No. KCL 130H is my only tool of trade.

(8) That I make a minimum of Ksh 6,000 daily, which I often deposit the amount in my ABSA Bank account number 2048234561. (Attached herewith and marked "IWK4" is a copy of Bank statement).

(9) That the continued detention of my motor vehicle has greatly affected me financially and has also affected my family psychologically.

(10) 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.

(11) 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.

*(12) 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.”*

[32] From the evidence before the Court, the Respondent demonstrated that the Petitioner was informed of the specific offence, and was accorded an opportunity to be heard prior to or immediately after the vehicle was impounded and he declined to comply with the Respondents choosing to abandon the vehicle, as set out in the Replying Affidavit to the petition, the relevant parts of which are as follows:

*“5. THAT the Petitioner is grounded on falsehoods, illegalities and misrepresentations and the Petitioner was at the time of filing this Petition operating matatu business illegally, without a valid license issued by the National Transport and Safety Authority as required under the National Transport and Safety Authority Act CAP 404 Laws of Kenya.*

*6.THAT Section 26 of the National Transport and Safety Authority Act CAP 404 Laws of Kenya prohibits operation of any class of vehicles including private vehicles as public service vehicles without a license issued by the Authority. Regulation 5(1)(a) of the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014 requires an applicant for a license to be a member of a body corporate with a fleet of at least 30 vehicles operating under it.*

*7.THAT the Petitioner was as at 1st February 2024, not a member of Kirinyaga Shuttle Ltd as falsely claimed and was therefore operating contrary to Regulation 5(1)(a) of the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014.*

***Attached herewith and marked "CK1" is a copy of the letter dated 1st March 2024 from Kirinyaga Shuttle Ltd. Confirming that the Petitioner is not a member, and that the subject motor vehicle is not among its fleet.***

*8. THAT besides operating illegally, the Petitioner acted with impunity, repeatedly picking and dropping passengers outside the omnibus station located within Kerugoya town contrary to the provisions of the **Kirinyaga County Omnibus Stations and Parking Act, 2016** (now repealed by the Kirinyaga County Transport and Parking Act, 2024) to*

no avail. **Attached herewith and marked "CK-2" is a copy of the Kirinyaga County Omnibus Stations and Parking Act, 2016** (now repealed).

**THAT** the Respondent's enforcement officers had on numerous occasions issued verbal warnings to the Petitioner and beseeched him to regularise his operations to comply with statutory requirements under the **National Transport and Safety Authority Act CAP404** and the **Kirinyaga County Omnibus Stations and Parking Act, 2016**.

**9. 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 Section 12 of the **Kirinyaga County Inspection and Enforcement Services Act 2023** to enforce compliance with relevant national and County legislations. **Attached herewith and marked "CK-3" is a copy of the Kirinyaga County Inspection and Enforcement Services Act 2023**

**10. THAT** the Petitioner is guilty of material non-disclosure and has kept from this Honourable Court the true nature of his matatu operations which were as at 1st February 2024, illegal in nature and done with utmost impunity.

**11. THAT** the Petitioner had, as at pt February 2024, for a long time evaded the Respondent's enforcement officers. I am aware that the Petitioner was in the habit of parking and picking passengers outside designated areas and did this with utmost impunity and disregard for the law. I had on 1st February 2024, taken photographs of the Petitioner picking passengers outside Rubis petrol station in Kutus, near the Kirinyaga University, which is not a designated matatu stage. **Attached herewith and marked "CK4" are photos of the Petitioner picking passengers illegally on 1st February 2024.**

**12. THAT** later on the same day we were able to finally corner the Petitioner and we and directed to drive the subject motor vehicle to the Respondent's inspectorate station within Kerugoya town and the motor vehicle was impounded.

**13. THAT** under Sections 12, 13 and 23 of the Kirinyaga County Inspection and Enforcement Services Act 2023, enforcement officers are

*mandated to enforce compliance with relevant national and County Legislations, including by impounding vessels violating the law.*

**14. THAT** *the Petitioner was informed that he had violated the provisions of Sections 17(1) and 19(5) of the Kirinyaga County Omnibus Stations and Parking Act, 2016 which outlaw parking, picking and dropping outside the omnibus station.*

**15. THAT** *the Petitioner was also requested to pay the surcharge prescribed for the said violation under item 6 of the First Schedule of the Kirinyaga County Omnibus Stations and Parking Act, 2016 as amended by Section 13(c) of the Kirinyaga County Finance Act 2023.*

**16. THAT** *the Petitioner was also informed that officers of the Respondent were aware that he was operating illegally without a license, and he was therefore requested to present evidence that he was indeed operating under a licensed Sacco as required under Regulation S(I)(a) of the National Transport and Safety Authority (Operation of Public Service Vehicles) Regulations, 2014.*

**17. THAT** *the Petitioner was adamant that he would not pay the surcharge prescribed under the law and as requested by the revenue officers, and he demanded the immediate and unconditional release of his motor vehicle.*

**18. THAT** *the Respondent was, pending disposal of this Petition, Ordered by this Honourable Court to unconditionally release the subject motor vehicle, which the Respondent did.”*

[33] The Respondent in the Replying Affidavit above detailed the occurrences to justify its action even though the evidential burden had not shifted on the state of evidence provided by the Petitioner. There was no evidence that the Petitioner had complied with all the statutory requirements for the payment of parking fee/licences under the relevant County Government Acts and that the photographs exhibited as “CK4” indicating violation of parking and picking/dropping passengers at non-designated places were false.

[34] On a balance of probabilities, the Court finds that the Petitioner has not proved that this right to property was violated by the impounding of the motor vehicle in this case.

**Whether the respondent acted within its mandate**

[35] County Governments derive legislative authority from Article 185 of the Constitution and regulatory functions under the Fourth Schedule. In ***Republic v County Government of Mombasa Ex Parte Outdoor Advertising Association of Kenya [2014] eKLR***, the Court affirmed that County Governments have constitutional authority to regulate trade and related activities within their jurisdiction, provided they act within the law.

[36] The Respondent contends that the Petitioner was operating without compliance with licensing and designated stage regulations and that enforcement was undertaken pursuant to the Kirinyaga County Inspection and Enforcement Services Act, 2023 and relevant transport regulations. However, constitutional power must be exercised lawfully and procedurally.

[37] On the material before Court shows that the vehicle was detained on 1<sup>st</sup> February, 2024 and remained in custody for over four months until this Court ordered its release. The Petitioner failed to comply with the County traffic law as to the designated places matatu stage, and the Respondents were entitled to impound the motor vehicle. When the vehicle was impounded, the provisions on statutory surcharge applied and when the petitioner failed to pay these, the vehicle could not be released. The Petitioner was required to follow the lawful provisions of the relevant County Acts to secure the release of his vehicle in accordance with the rule of law principle enshrined in Article 10 of the Constitution.

[38] In particular, the general power of the enforcement officers and the specific power to impound a motor vehicle are set out in sections 12 and 23 of Kirinyaga County as follows:

***“Duties and Powers of Enforcement Officers***

*12. (1) An Enforcement officer shall obey and execute all lawful orders in respect of the execution of the duties of office which she or he may from time to time receive from his or her supervisors and may -*

*(a) at any reasonable time, enter any place in which the enforcement officer believes on reasonable grounds that any person is in any way contravening the provisions of a County or applicable National legislation;*

*(b) arrest any person who is in breach of any County or applicable national legislation or standards which is within the area of jurisdiction of the County;*

*(c) seize anything which may be necessary to effectively enforce the laws; or*

*(d) destroy or in any such other way, dispose of any item or good whose continued existence would constitute a breach of the provisions of the County or applicable National laws, subject only to the Executive Committee Member's guidance.*

*(2) The provisions of sub-section (1) (d) notwithstanding, an item may only be destroyed or disposed in accordance with the procedure prescribed under the relevant written law.”*

....

**Power to Impound Vessels**

*23. Where a County Enforcement or Inspection officer reasonably believes that a vessel is parked or controlled in any manner contrary to any County Law 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.”*

[39] The Petitioner was in breach of the County traffic laws and he was obliged to pay the Surcharge set out at section of the relevant Kirinyaga County Omnibus Stations and Parking Act before release of the motor vehicle, which he declined. The Petitioner was the author of his misfortune.

**Whether the petitioner is entitled to reliefs**

*Declaration of Violation*

[40] While the court finds no basis for violation of right to privacy under Article 31(b) of the Constitution, the prolonged detention of the vehicle would have attracted a finding of violation of the right to property contrary to Article 40, if it had been demonstrated that the Respondent's did not follow he statutory procedures for the enforcement of its mandate of public road transport.

[41] In this case, the Court finds that the Petitioner's default in complying with the provisions of the Public road transport law as to picking and dropping zones for the

public service vehicle led to the impounding of the vehicle and the Respondent followed the law in impounding the vehicle.

*Release of motor vehicle*

[42] The Court had at the interlocutory stage ordered the Respondent to release the motor vehicle on 23<sup>rd</sup> May, 2024, and that prayer is spent.

*Damages*

[43] In view of the finding of the Court as to liability of the Respondent, nothing turns on this aspect of proof of damage, and having found that the Petitioner has not established his case for violation of constitutional rights to protection of privacy and property as alleged, there is no basis for award of damages.

**Conclusion**

[44] In conclusion, the Petitioner failed to obey the County laws on the management of traffic operations with regard to designated areas for picking and dropping passengers for public service vehicles. The Respondents were entitled to impound the vehicle. In accordance to its Kirinyaga County Inspection and Enforcement Services Act 2023 and the relevant Kirinyaga County Omnibus Stations and Parking Act, 2016 (now repealed by the Kirinyaga County Transport and Parking Act, 2024).

[45] The Court cannot make an order as to hamper the exercise by the respondent of its constitutional and statutory mandate to regulate the public road transport under Article 185 of the Constitution and the Fourth Schedule of the Constitution together with the applicable Kirinyaga County Omnibus Stations and Parking Act, 2016 (now repealed by the Kirinyaga County Transport and Parking Act, 2024).

[46] A party cannot found a case for violation of rights and compensation on his own disobedience of a law applicable to the subject matter, which has not been declared unconstitutional, as that would be in direct affront of the rule law principle under Article 10 of the Constitution.

**ORDERS**

[47] Accordingly, for the reasons set out above, the Court finds that the Petition herein has no merit and it is dismissed.

[48] There shall be no orders as to costs in the constitutional petition.

*Order accordingly.*

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Nyaga Gitari for the Petitioner.

Ms. Muthoni for the Respondent.