



REPUBLIC OF KENYA



KENYA LAW
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Masinde & 2 others v National Transport and Safety Authority & 2 others (Constitutional Petition E010 of 2026) [2026] KEHC 4338 (KLR) (31 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4338 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E010 OF 2026**

RN NYAKUNDI, J

MARCH 31, 2026

**THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 28, 47,
48, 50, 159, 210 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS GUARANTEED UNDER THE CONSTITUTION**

AND

**IN THE MATTER OF THE NATIONAL TRANSPORT
AND SAFETY AUTHORITY ACT, NO. 33 OF 2012**

AND

IN THE MATTER OF THE TRAFFIC ACT, CAP 403 LAWS OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

AND

IN THE MATTER OF THE STATUTORY INSTRUMENTS ACT, 2013

AND

**IN THE MATTER OF THE DIRECTIVE ISSUED BY THE DIRECTOR
GENERAL OF THE NATIONAL TRANSPORT AND SAFETY
AUTHORITY INTRODUCING THE INSTANT TRAFFIC FINES SYSTEM**

BETWEEN

MICHAEL WABOMBA MASINDE 1ST PETITIONER

ODILIA CHEBET MAYODI 2ND PETITIONER

MERCY NABWIRE WANYAMA 3RD PETITIONER



AND

**THE NATIONAL TRANSPORT AND SAFETY AUTHORITY 1ST
RESPONDENT**

**THE DIRECTOR GENERAL NATIONAL TRANSPORT AND SAFETY
AUTHORITY 2ND RESPONDENT**

THE HONORABLE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before this court is a Notice of Motion Application dated 10th March 2026 brought expressed under Articles 2(1), 2(4), 3(1), 19, 20, 21, 22, 23(1) & (3), 24, 25, 27, 28, 29, 31, 33, 35, 37, 40, 47, 50, 159(2) (d), 165(3) (b), 165(3)(d) (i) & (ii), 165(4), 258 and 259 of *the Constitution* of Kenya, 2010, Sections 3, 4, 5 and 11 of *the Constitution* of Kenya, Protection of Rights and Fundamental Freedoms, Practice and Procedure Rules, 2013 where the Applicants are seeking the following orders: -
 - a. Spent
 - b. Pending the hearing and determination of this Application inter parties, this Honourable Court be pleased to issue a conservatory order;
 - i. Restraining the Respondents, their agents, servants or assigns from implementing, enforcing or giving effect to the Instant Traffic Fines Directive.
 - ii. suspending all administrative consequences, fines, and restrictions arising from the Directive including but not limited to licensing, vehicle registration, and renewal of driving permits.
 - c. Pending the hearing and final determination of the Petition herein, this Honourable Court be pleased to issue a conservatory order;
 - i. restraining the Respondents, their agents, servants or assigns from implementing, enforcing or giving effect to the Instant Traffic Fines Directive.
 - ii. suspending all administrative consequences, fines, and restrictions arising from the Directive including but not limited to licensing, vehicle registration, and renewal of driving permits.
 - d. An order directing the Respondents to refrain from any actions or communications that may compel payment or enforcement of fines under the Directive pending determination of this Application.
 - e. An order directing the Respondents to refrain from any actions or communications that may compel payment or enforcement of fines under the Directive pending determination of the Petition.
 - f. This Honourable Court be pleased to issue such further directions as maybe necessary for the expeditious, fair and just disposal of this matter.⁷. The cost of this application be provided for.
2. The Application is made on the following grounds on the face of it among others: -



- a. This Petition challenges the NTSA Instant Traffic Fines Directive, which constitutes a blatant violation of *the Constitution* of Kenya, 2010, particularly Articles 1, 2, 10, 27, 28, 47, 48, 50, 159, and 210
- b. By purporting to impose monetary fines and administrative sanctions without recourse to judicial determination, the Directive undermines the supremacy of *the Constitution*, disregards the rule of law and infringes the fundamental rights of citizens.
- c. The Directive represents a usurpation of judicial authority. By assuming powers that properly vest exclusively in the courts, namely the power to determine criminal liability, impose penal sanctions, and adjudicate disputes, the Respondents violate the constitutional doctrine of separation of powers.
- d. The Respondents have also violated the principle, enshrined under Articles 159 and 210 which ensures that the judiciary remains independent, impartial, and the ultimate arbiter of rights and obligations.
- e. Administrative imposition of fines outside judicial scrutiny constitutes an unconstitutional encroachment upon the independence and authority of the judiciary, threatening the very foundation of constitutional governance.
- f. The Directive was issued without notice, consultation, or opportunity to be heard, in direct contravention of Articles 47 and 50 of *the Constitution*, which guarantee fair administrative action and the right to be heard before being subjected to adverse decisions.
- g. The Directive also violates the *Fair Administrative Action Act*, 2015, which mandates that administrative authorities exercise their powers transparently, fairly, and lawfully.
- h. The Respondents lack any express statutory authority to assume quasi-judicial powers. The NTSA Act, 2012, read together with the *Traffic Act*, Cap 403, empowers NTSA to regulate road safety, licensing, and administration, but does not confer powers to determine liability or impose penal sanctions independently of the courts. The Directive therefore constitutes an exercise of power beyond the enabling statute, making it ultra vires and legally unsustainable.
- i. By coercing citizens to pay fines without prior adjudication, the Directive renders itself procedurally defective, arbitrary, and null and void.
- j. The Directive presumes guilt and compels compliance without judicial determination, in violation of Articles 50 and 28. By enforcing fines prior to adjudication, the Respondents strip citizens of their constitutional protections, coercing them to submit to administrative penalties without a fair hearing.
- k. The implementation of the Directive inflicts immediate, irreparable, and ongoing harm upon the Petitioners and the public at large. These harms include financial loss, restriction of access to essential services, interference with professional and advocacy work, and erosion of fundamental rights. The harm is systemic and cannot be remedied adequately by monetary compensation or later judicial review.
- l. *The Constitution* and enabling legislation require public participation in the formulation of rules, regulations, or directives that affect rights. The *Statutory Instruments Act*, 2013, and Article 10, which codifies the national values and principles of governance, obliges the Respondents to exercise administrative authority with transparency, accountability and



inclusivity. The Directive, however, was introduced without meaningful public consultation, depriving citizens of their right to be heard on matters affecting their rights.

- m. By circumventing courts, the Directive threatens the rule of law, a cardinal principle under Article 10. Administrative agencies cannot adjudicate criminal liability or impose penal sanctions as if they were courts. Allowing this Directive to operate sets a dangerous precedent, enabling administrative authorities to act above the law, thereby undermining public confidence in constitutional governance and the independence of the judiciary.
 - n. The Directive imposes fines without assessing proportionality or reasonableness, as required under Articles 10, 47, and 50, and under the principles of fair administrative action. The arbitrary imposition of fines without evidence-based adjudication violates the constitutional guarantee that administrative power must be exercised reasonably, lawfully and proportionately.
 - o. The Petition meets the constitutional threshold under Article 165(4) for referral to a multi judge bench, as its determination will have far reaching implications for the interpretation of *the Constitution*, legislative power, executive authority, and fundamental rights jurisprudence in Kenya.
 - p. The Directive is already operational, affecting millions of motorists, including the Petitioners. Delay in restraining its implementation will perpetuate irreversible constitutional violations, entrench unlawful administrative practices and deprive citizens of their rights under *the Constitution*. The matter is of profound public importance, raising urgent and compelling constitutional questions, including the integrity of the separation of powers, procedural fairness and the supremacy of *the Constitution*.
 - q. The Petitioners have demonstrated a strong prima facie case that the Directive is unconstitutional, ultra vires, procedurally defective, and violative of fundamental rights. The balance of convenience overwhelmingly favors the Petitioners, as the suspension of the Directive will maintain the status quo, protect constitutional rights, and prevent irreparable harm without prejudicing the Respondents.
 - r. This Honourable Court is clothed with the requisite jurisdiction under Articles 22, 23 and 165 of *the Constitution* to grant the orders sought.
3. The application is further supported by the annexed affidavit of the Michael Wabomba Masinde who deponed as follows: -
- a. That I am the 1st Petitioner herein, duly competent and authorized to swear this Affidavit on my own behalf and on behalf of my Co-Petitioners, all of whom have consented to the deposition herein.
 - b. That I am conversant with the facts, matters and circumstances giving rise to the Petition and the Notice of Motion filed herewith, and I deponed to the matters herein from my personal knowledge, save where otherwise stated and where so stated, such information is true to the best of my knowledge, information and belief.
 - c. That the subject matter of this Petition raises issues of profound constitutional importance, touching on the supremacy of *the Constitution*, the rule of law, the separation of powers, judicial independence, procedural fairness, and the protection of fundamental rights enshrined in Articles 1, 2, 3, 10, 27, 28, 47, 48, 50, 159, 210, and 263 of *the Constitution* of Kenya, 2010.



- d. That the Respondents, through the Director General of NTSA, issued the Instant Traffic Fines Directive on 9th March 2026, which purports to impose monetary fines and administrative penalties on citizens alleged to have committed traffic infractions, while simultaneously restricting access to licensing, registration, and vehicle transfers for non-compliance.
- e. That the Directive purports to operate automatically through technological surveillance and electronic notifications, without any judicial determination of liability, and without providing the citizens affected with notice, opportunity to be heard, or any recourse to appeal before the imposition of fines.
- f. That the NTSA Act, 2012, read together with the *Traffic Act*, Cap 403, does not confer any authority on the Respondents to adjudicate criminal liability or impose penalties independently of courts of competent jurisdiction.
- g. That in issuing and seeking to enforce the Directive, the Respondents have arrogated to themselves powers that constitutionally and statutorily vest exclusively in the courts, thereby usurping judicial authority and violating the constitutional principle of separation of powers under Articles 159 and 210.
- h. That by enforcing fines without judicial oversight, the Respondents have infringed the rights of citizens, including the Petitioners, to fair administrative action under Articles 47 and 50, as well as the right to equality, presumption of innocence, dignity, and access to justice under Articles 27,28 and 48.
- i. That the Directive is procedurally defective, arbitrary and unlawful, as it was issued without consultation, notice, or any meaningful opportunity for affected citizens to make representations, in violation of *the Constitution* and the *Fair Administrative Action Act*, 2015.
- j. That the Directive is also ultra vires, as it exceeds the powers conferred on NTSA by statute. The NTSA Act empowers the Authority to regulate road safety, licensing, and administration, but it does not empower it to assume judicial functions, determine criminal liability, or impose fines without a court's involvement.
- k. That the enforcement of the Directive constitutes an immediate and irreparable threat to the Petitioners and to the public at large. The Petitioners are at risk of compulsory financial liability, restrictions on their vehicles, and interference with their professional, academic, and advocacy work. Millions of Kenyans are also subjected to coercive administrative sanctions that cannot be undone, thereby creating systemic, irreversible harm to constitutional rights and governance.
- l. That the Directive undermines the rule of law, which is a cornerstone of our constitutional democracy under Article 10. Allowing administrative agencies to impose fines without judicial adjudication sets a dangerous precedent that erodes public confidence in the judiciary and the integrity of constitutional governance.
- m. That the Directive also violates the principles of proportionality, reasonableness, and fairness, as it imposes penalties without establishing guilt through evidence or affording the accused a proper hearing. This is contrary to Articles 10, 47, and 50, which require that administrative action must be fair, reasonable, and lawful.



- n. That the Petitioners have a strong prima facie case demonstrating that the Directive is unconstitutional, ultra vires, procedurally improper, and coercive, and therefore warrants urgent intervention by this Honourable Court.
- o. That implementation of the Directive will cause the Petitioners and other citizens irreparable harm that cannot be remedied by subsequent legal action, as it compromises fundamental rights, imposes financial liabilities, and restricts access to essential services.
- p. That the balance of convenience lies overwhelmingly in favor of the Petitioners. Suspending the Directive preserves the status quo and prevents irreparable harm without causing substantive prejudice to the Respondents, who remain able to perform their lawful statutory functions in accordance with the law.
- q. That the matter is of exceptional public interest, affecting millions of Kenyans, and raises profound questions regarding constitutional governance, separation of powers, procedural fairness, and the supremacy of *the Constitution*. Urgent intervention by this Honourable Court is therefore imperative to prevent ongoing and irreversible violations of *the Constitution* and fundamental rights.
- r. That the Petitioners therefore pray that this Honourable Court grants urgent interim and conservatory orders restraining the Respondents, their agents, servants, or assigns, from implementing, enforcing, or giving effect to the Directive pending the hearing and determination of the main Petition, and any other orders deemed just, equitable, and in the public interest, including costs of this application.

Decision

4. In Kenya the transfer of suit from one county or court to another is governed by Section 17 & 18 of the *Civil Procedure Act* which empowers the High court to transfer matters to ensure justice, convenience and proper jurisdiction. The power bestowed upon the High Court on transfer of suits is clearly spelt out in Section 18 of the *Civil Procedure Act* that stipulate as follows: -
 1. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage -
 - a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - i. try or dispose of the same; or
 - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
 2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.



5. This kind of jurisdiction has also to bear in mind the provision of Section 1A & 1B of the [Civil Procedure Act](#) in which the legislature in its wisdom proclaims as follows nuancing the overriding objective in the administration of justice: -

“For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-

- a. The just determination of the proceedings.
 - b. The efficient disposal of the business of the Court
 - c. The efficient use of the available judicial and administrative resources
 - d. The timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties; and
 - e. The use of suitable technology:”
6. This court can also invoke the inherent powers under Section 3 as read with 3(A) of the [Civil Procedure Act](#) to take a particular cause of action in the interest of justice. In *Rev. Madara Evans Okanga v Housing Finance Company of Kenya HCCC No. 262 of 2005* the court held that;

“..... the jurisdiction of the Court which is comprised within the term “inherent”, is that which enables it to fulfill itself properly and effectively, as a court of law... in sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being reserve or fund of powers, a residual source of powers which the court may draw upon as necessary whenever it is just and equitable to do so, in particular to ensure the observance of the due process of the law, to prevent improper vexation or oppression, to do justice between the parties and secure a fair trial between them.”

7. This is what the courts have said on transfer of suits from one county or court to another:

- a. *Kaunda v Wambua* [2025] KEELC 802 (KLR): The Environment and Land Court (ELC) at Machakos held that while there is no explicit statutory provision for transferring a case from one High Court registry to another, the High Court has inherent jurisdiction to do so to serve the interests of justice and convenient administration.
- b. *Helmann v Mbogo & another* [2025] KEELC 3458 (KLR): The High Court ordered the transfer of a suit pending before the Maua Chief Magistrates’ Court to the ELC Mombasa for hearing and determination.
- c. *Malombo v Kibumba* (Miscellaneous Civil Application E002 of 2025): A case involving the transfer of a suit from the Small Claims Court (SCC) at Voi to the Voi Magistrate’s Court, reinforcing that SCC is intended to complement, not replace, Magistrates’ Courts.
- d. *Kanampiu & another v Marithi* (Civil Case E009 of 2023 [2025]): The High Court considered a preliminary objection regarding the transfer of a suit from Meru County to Nairobi County based on Section 15(a) of the [Civil Procedure Act](#), which requires suits to be filed where the defendant resides or carries on business.
- e. *Ochieng v Mwangi* (Miscellaneous Civil Application E234 of 2025): The Court confirmed that judicial discretion to transfer a suit can be exercised when the trial magistrate gives directions to move a matter for trial in another station.



8. In the affidavit before this court there is a pending Constitutional Petition No. E010 of 2026 which I was informed during the status conference by legal counsels retained to represent the parties that there are other such similar or identical petitions currently ongoing before the constitutional court in Nairobi Milimani Division and it would be prudent for this court to exercise powers under Section 17 & 18 of the Civil Procedure Act to order for a transfer to effectuate consolidation and determination of the interlocking issues.
9. For those reasons, the following orders shall abide: -
 - a. That I am persuaded to remove Constitutional Petition E010 of 2026 from Eldoret Constitutional and Human Right Division registry and have it transferred to the parent division at Milimani Constitutional and Human Rights Division for further directions.
 - b. That a status conference be held on 9th day of April 2026.
 - c. That therefore, the Deputy Registrar Eldoret High court shall dispatch this case docket to his counterpart Deputy Registrar at Constitutional and Human Rights Division at Nairobi.
 - d. There are no orders as to the costs of this application.
 - e. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 31ST DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE

<i>constitutional petition no e010 of 2026</i>	0
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