

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
PETITION NO. E001 OF 2026

**EDWARD MUCHIRI
KAMAU.....PETITIONER/APPLICANT**

VERSUS

**KENYA NATIONAL HIGHWAYS AUTHORITY..
.....RESPONDENT**

R U L I N G

Brief facts

1. The application for determination dated 5th January 2026 seeks for orders of a temporary injunction restraining the respondent from detaining the petitioner's vehicle registration number KCA 952V Tipper Lorry/Truck pending the hearing and determination of the petition.
2. The respondent opposed the application by filed a Replying Affidavit dated 21st January 2026.

The Applicant's Case

3. The applicant states that he is the registered owner of motor vehicle registration number KCA 952V Tipper

Lorry/Truck. He states that on 17th December 2025, his vehicle was loaded with 650 pieces of

machine cut stones for delivery to Embakasi and was allegedly tagged at the Athi River weighbridge for an alleged total weight overload of 10,010 Kgs. The applicant further states that on 18th December 2015, he received a call from the driver informing him that the respondent through its agents at Juja weighbridge had unlawfully impounded and detained his vehicle at the Juja weighbridge yard without any reasonable justification. The respondent alleged that the vehicle had on 17th December 2025 an excess weight of 10,010 Kgs as per a purported tag ticket from the respondent requiring him to pay an alleged fine of USD 9113.60. The applicant argues that no such weight was measured and the respondent relied on wrong estimates since the vehicle was not manually weighed.

4. The applicant states that the respondent has failed to charge the driver in a court of law and the vehicle as per the documents was carrying the right weight measures on 17th and 18th December 2025. Upon being given a tag ticket indicating the overload of 10,010Kgs, the applicant states that he disputed the same and sought to have the vehicle released to continue with its journey but his request has since been met with resistance.

5. The applicant argues that the charge of USD 9113.60 is baseless and unfounded considering the fact that the subject vehicle's maximum load capacity is 16,000 kgs translating to 26,000 GVW and therefore cannot carry a weight of 36,010 kgs GVW as alleged by the respondent in the weighing and tag ticket. The applicant further

argues that the acts of the respondent are inconsistent, not transparent, unreasonable, unconscionable and aimed to frustrate him and violate his rights to property, access to information, fair administrative action, fair hearing and the right to social security which needs the court to intervene.

6. The applicant argues that he is incurring massive losses as his vehicle is grounded at the Juja weighbridge with a load that is set to be delivered to a client and the vehicle is not only wasting away but he is also losing business. Further, failure to deliver the goods exposes him to claims for breach of contract from innocent third parties. The applicant states that granting the orders sought will not prejudice the respondent as he is willing to have the load reweighed and offload any excess load if any before the release of the vehicle but disallowing the application will further the losses occasioned by the illegal impoundment of the vehicle by the respondent and will further violate his rights.

The Respondent's Case

7. The respondent states that it is a body corporate established under **Section 3 of the Kenya Roads Act No. 2 of 2007** whereby **Section 4 of the Act** lists its functions and responsibilities. Pursuant to **Section 22(1)(c) of the Act**, the respondent states that it has the power to measure and assess the weights, dimensions and capacities of vehicles using any road and provide measures to ensure compliance with rules relating to axle load control, other provisions of the Traffic Act and any regulations under the Act and

the East Africa Community Vehicle Load Control (EACVLC) Act, 2016. The respondent further states that pursuant to Section 55(2), 56 and 58 of the Traffic Act it is mandated to weigh all vehicles and protect road infrastructure from any damage and all vehicles that could be overloaded.

8. The respondent states that motor vehicle registration number KCA 952V was detected by the High Speed Weigh in Motion (HSWIM) system at the Athi river weighbridge on 17th December 2025 and was flagged for weight verification. Further, the said vehicle had passed through the traffic filtering lane which holds the HSWIM system and was weighed and detected to be overloaded and was shown a red light which required the vehicle to get into the static weighbridge for weight confirmation and further processing. However, the driver failed to comply with the said directive whereupon a system tag was generated against the vehicle to facilitate future enforcement action should the vehicle be subsequently sighted or detained.

9. The respondent avers that the HSWIM system detected that the subject vehicle was carrying a gross vehicle weight of 36,010 kgs instead of the maximum permissible weight of 26,000 kgs therefore overloaded by 10,010 kgs. The vehicle was subsequently intercepted at the Juja weighbridge the next day and detained pursuant to the detection of an overload at the Athi River weighbridge as well as a system generated tag placed on the vehicle. The vehicle was held at

Juja weighbridge holding yard pending the payment of overload fees.

10. The respondent states that upon the vehicle being placed at the holding yard, the driver escaped without providing his particulars to the police officers or weighbridge officials present. Further, to date, the said driver has not been traced and remains at large, which has hindered the commencement of criminal proceedings in respect of the failure to divert to the Athi River Static weighbridge and disregarding a traffic signal directing him to proceed to the static scale.

11. The respondent states that the said weighbridge station is located along the Regional Trunk Road Network to which the EACVLC Act is applicable. Pursuant to Section 17 of the EACVLCA provides in the case of overloading, the applicant is meant to pay overloading fees of USD 9113.6 which sum he was duly advised but failed to pay within 3

days as anticipated in the Act. Thus, the suit motor vehicle was detained where it lies to date. The respondent further states that according to Section 17(6) of the Act, an overloaded vehicle shall be detained without charge for a period of three days and thereafter a fee of USD 50 shall be charged for each extra day of detention thus as at 15th January 2026, the vehicle has accrued parking fees of USD 1250.

12. The respondent argues that the applicant has demonstrated a deliberate unwillingness to operate within the prescribed limits of the law. the allegation that the applicant's motor vehicle was within

the permissible weight limits is untrue and untenable particularly in light of the fact that the driver failed to divert to the static weighbridge despite having been issued with a red light signal. Further the applicant has not offered any plausible explanation as to why the driver absconded upon interception of the vehicle at Juja weighbridge.

13. The respondent further argues that there can be no basis to state that they acted in violation of the highlighted articles of the Constitution when they are in fact acting within the provisions of Section 55, 56 and 106 (4A) of the Traffic Act. The respondent states that the applicant has failed to set out the constitutional violations with a reasonable degree of precision stating the issue complained of, the provisions said to be infringed and the manner in which they are alleged to be infringed. Further, there can be no basis for declaring that the authority

acted in violation of Article 40 and 47 of the Constitution when they were in fact acting within provision of Section 55, 56 and 106(4A) of the Traffic Act.

14. The respondent invites the court to consider that Kenyans and all road users require quality, safe and adequate national trunk roads to carry out their daily activities and that the damage to the roads affects the general public at large; the roads being an expensive national treasure that ought to be jealously guarded. The respondent states that the applicant has failed to satisfy the established legal principles for the grant of an injunction.

15. The applicant filed a Supplementary Affidavit dated 13th February 2026 and states that the documents annexed by the respondent were never served upon him or his driver. Further the applicant states that it is not in dispute that the truck was not weighed so as to determine the excess load as the respondent admits that it used the HSWIM system to detect the overload but required the vehicle to get into static weighbridge for the weight confirmation and further processing. Consequently, the alleged overload was not confirmed as stated in the respondent's response.

16. The applicant argues that the vehicle was required to be weighed to meet the requirements of the Traffic Act which was not done which leads to the conclusion that the truck was not weighed and the penalty of USD 9113.6 was imposed without determining whether the truck was

overloaded or not. Thus, the respondent having not established an offence of overloading had no justification detaining the subject motor vehicle.

17. The applicant further argues that the regulations relied on do not envisage a judicial process given the fact that the respondent gets evidence, tenders to itself, makes the determination and imposes the sentence and auctions the motor vehicles where the motorist has not paid the fines which amounts to being a judge in one's own case.

18. The applicant states that his driver did not abscond and puts the respondent to strict proof as he has on several occasions between 18th and 24th December 2025 gone to Mlolongo and Juja weighbridge in a bid to resolve the issue. The applicant further states that the due

process of the law was not followed in imposing the fine for the law requires that the affected party be afforded an opportunity to be heard.

19. Parties put in written submissions.

The Applicant's Submissions

20. The applicant submits that his right to own property has been violated and infringed by the respondent in detaining and impounding his motor vehicle without affording him an opportunity to be heard contrary to Articles 47, 48 and 50 of the Constitution. The applicant argues that the entire process by the respondent of detaining his motor

vehicle and imposing an overload fee of USD 9113.6 outrightly violates his rights under **Articles 22, 23, 24, 159, 165, 258, 59, 40, 47, 48 and 50 of the Constitution**. The applicant relies on **Section 58 of the Traffic Act** and the case of **Disaranio Limited vs Kenya National Highways Authority & Attorney General (2017) eKLR** and submits that the respondent failed to follow the procedure in the said provision in the unlawful detention and impounding of the subject motor vehicle.

21. The applicant submits that Parliament shall not allow laws that slow the State or any person to arbitrarily deprive another person of their property and the respondent's reliance on the EACVLCA to arbitrarily deprive him of its property is in violation of the

supremacy of the Constitution in that the same is inconsistent with Article 40 of the Constitution.

22. The applicant refers to **Articles 47, 48 and 50 of the Constitution** and the cases of **R vs Kenya National Highway Authority ex parte John Mwaniki Kiarie Nairobi J.R Application No. 437 of 2015** and **Disaranio Limited vs Kenya National Highways Authority & Attorney General (2017) eKLR** and submits that whilst the statutes relied on by the respondent expressly create offences, the rules of natural justice and the Constitution dictates that an offender alleged to have committed an offence to be charged and

the prerequisites set out in Article 50(2) be met before any penalty or fee is imposed. The applicant argues that his right to a fair trial was infringed before his vehicle was detained and impounded by the respondent. Without a fair trial, the detention and subsequent impoundment amounts to a nullity and was illegal, unlawful and unconstitutional.

23. The applicant submits that all laws including Kenya Road Accts and EACVLCA are required to be constitutional as they must be consistent with the provisions and principles set out in the Constitution. The applicant further submits that the detention of his vehicle for over three months unreasonably, restricted his right to use and enjoyment of the property as enshrined in Article 40 of the Constitution. The 16 tonne lorry would bring in an average of Kshs. 10,000/- in profit per day, thus the applicant petitions the court to invoke its jurisdiction under **Article 23 of the Constitution** and award damages for loss of user of the suit motor vehicle.

The Respondent's Submissions

24. The respondent refers to the decisions in **Martin Nyongesa Barasa vs Traffic Commandant & 2 Others [2021] eKLR** and **R vs Director General, KenHA & 2 Others ex parte Daniel Ocheing Olula** (no citation given) and submits that the applicant has not exhausted the dispute resolution mechanism provided for under Section 17 of the EACVLCA and the Regulations provided

thereunder. The respondent further submits that the detention of motor vehicle registration number KCA 952V at the Juja weighbridge and the requirement that the petitioner pays the prescribed overload and parking fees was lawful, justified and firmly grounded on statute.

25. The respondent further relies on the cases of **Marius Wahome Gitonga vs Kenya National highways Authority [2019] eKLR**; **Morris Mwavuo Ngonyo vs Kenya National Highways Authority Constitutional Petition No. 14 of 2015** (unreported) and **Republic vs Kenya National Highways Authority ex parte Sohan Singh Rai & Others [2019] eKLR** and submits that road infrastructure is designed based on specific axle load limits and any excess load significantly accelerates the deterioration of road surfaces thereby increasing the costs of maintenance and endangering other road users. The Authority is therefore under statutory obligation to enforce axle load regulations in order to safeguard public infrastructure and ensure road safety. The respondent thus submits that it acted strictly within the law in detecting the overload, intercepting the vehicle and detaining it pending payment of the

statutory overload and parking fees. Thus the detention was lawful, reasonable and undertaken in the proper discharge of the Authority's statutory mandate.

26. The respondent relies on the cases of **Giella vs Cassman Brown Co. Ltd (1973) EA 358** and **Mrao Ltd vs First**

American Bank of Kenya Ltd (2003) eKLR and submits that the petitioner has failed to demonstrate the existence of any right that has been violated as it acted within the confines of its statutory mandate under the Kenya Roads Act, the Traffic Act and the EACVLCA in detecting the overload, intercepting the vehicle and detaining it.

27. The respondent submits that the record shows that the relevant documents including the weigh report, the HSWIM ticket and the invoice for payment of overload fees were issued to the applicant's driver at the material time. The respondent argues that the petitioner has failed to plead with precision the alleged constitutional violations as required under the well-established principle in **Anarita Karimi Njeru vs Republic (1979) KLR 154** and **Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR**.

28. The respondent argues that the applicant has not established a prima facie case with any possibility of success as he has not identified or demonstrated which right had been infringed or violated. Further the applicant has not demonstrated that the HSWIM system was faulty, damaged or dysfunctional or otherwise affected by any technical, mechanical or manual errors so as to

render the weighing process defective. Additionally, the applicant has not proved that the fines imposed on him are unreasonable.

29. On the issue of irreparable harm, the respondent argues that the applicant will not suffer any irreparable harm as he has failed to mitigate his loss by paying the overloading fees. Furthermore, it would be prejudicial to order the release of the motor vehicle unconditionally and the applicant ought to be ordered to deposit the fine with the court pending the determination of the petition. The respondent further submits that the petitioner has failed to demonstrate that he stands to suffer irreparable harm that cannot be compensated by damages as the alleged loss arising from the detention of the motor vehicle is purely commercial in nature and is therefore quantifiable. To support its contentions, the respondent relies on the case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR**.
30. Relying on the cases of **Aziz vs Kenya National Highway Authority (2023) eKLR**; **Marius Wahome Gitonga vs Kenya National Highways Authority [2019] eKLR** and **Kiarie & Another vs Kenya National Highway Authority (Petition E005 of 2024) [2024] KEHC 5576 (KLR) (9 May 2024) (Ruling)**, the respondent submits that the balance of convenience tilts in its favour as it is mandated by law to safeguard road infrastructure and ensure compliance with axle load regulations. Furthermore, the applicant is in breach of the law, committed acts of overloading which have

very adverse effects on the roads as it causes serious damage which is expensive resource to construct and maintain.

Issue for determination

31. The main issue for determination is whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction.

The Law

Whether the applicant has met the requisite conditions to warrant the granting of a temporary injunction

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32. Gikonyo J. in **South Imenti Bar Owners S.H.G through its Chairman James Gikunda Ntaragwi vs County Government of Meru [2018] eKLR** observed as regards injunctions in constitutional petitions as follows:-

Provision of the relief of an injunction in a constitutional petition is doubtless a development of law. See Article 23 of the Constitution which gives court authority to grant appropriate orders including an injunction in order to uphold and enforce the Bill of Rights.

33. In order for a petition to qualify to be a constitutional petition that seeks to enforce or protect fundamental rights and freedoms under

the bill of rights, it must meet the test in **Anarita Karimi Njeru vs Republic [1979] eKLR** whereby the court held:-

If a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with precision that of which he complains the provisions said to be infringed and the manner in which they are alleged to be infringed.

34. Thus, the first question this court ought to ask is whether the petitioner has established a *prima facie* case. A *prima facie* case was defined by the Court of Appeal in **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125,**

“The principles which guide the court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless an applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience....A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence. It is true that the

court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the

defence has been heard. It may not be easy to define what is meant by “*prima facie* case” but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “*prima facie*” case, and “genuine and arguable” case do not necessarily mean the same thing, for in using another term, namely a suitable cause of action, the words “*prima facie*” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant’s interest to adopt a genuine and arguable case standard rather than one of *prima facie* case, the former being the lesser standard of the two...In civil cases a *prima facie* case is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently being infringed by the opposite party to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an arguable

case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly, a standard, which is higher than an arguable case."

35. From the foregoing, the petitioner has pleaded provisions of the Constitution particularly Articles 40, 47, 48 and 50 of the Constitution have been violated by the respondent in detaining and impounding his motor vehicle registration KCA 952V Tipper Lorry/Truck for overloading. The petitioner has further argued that

he disputes the fact that his vehicle was said to have an overload weight of 10,010 Kgs. Further, the petitioner argued that the respondent failed to arrest and charge his driver which is required by law but instead have levied with a hefty fine of USD 9113.60. I have perused the record and noted that the main contention in the petition is overloading of the petitioner's motor vehicle. It is a fact and admitted by the respondent that they did not weigh the motor vehicle at the weighbridge but the said motor vehicle was detected by the High Speed Weigh in Motion (HSWIM) system at Athi River weighbridge and it was flagged for weight verification. According to the respondent the petitioner's motor vehicle upon being detected was required to go to the static weighbridge for weight confirmation and further processing. However since the driver failed to do so, the vehicle was intercepted at the Juja weighbridge and detained for

detection of an overload at the Athi River weighbridge. It is therefore clear that the said motor vehicle was weighed at the static weighbridge for the respondent to ascertain that it was overloaded by 10,010 kgs. Therefore since the issue of overloading is contentious, subsequently the fine and detention of the motor vehicle are contentious. Furthermore, I have noted that although the respondent claims that they did not arrest and charge the driver of the suit motor vehicle because he ran away, they later state that they gave him the HSWIM ticket and the invoice for payment of overload fees. It is not clear from the respondent why they did not charge the driver under the Traffic Act as the petitioner states that his driver did not run away and he has been trying to solve the said issue. Upon considering whether the subject motor

vehicle was overloaded, the court can ascertain whether the petitioner's constitutional rights were abrogated by the respondent and what injuries he suffered.

36. In **Paul Gitonga Wanjau vs Gathuthi Tea Factory Company Ltd & 2 Others [2016]eKLR** the court considered **Halsbury's Laws of England** on what irreparable loss is and stated that:-

“First, that the injury is irreparable and second, that it is continuous. By the term irreparable injury is meant injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and

the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by injunction, if his rights cannot be adequately protected or vindicated by damages.”

37. The applicant has demonstrated that he will suffer loss unless the injunction is granted. However, the loss would adequately be compensated by an award of damages. The loss would entail loss of business since the applicant's vehicle is still being held.

38. In the case of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai [2018] eKLR**, the court in dealing with the issue on balance of convenience held as follows:-

The meaning of balance of convenience in favour of the plaintiff is that if the injunction is not granted and the suit is ultimately decided in favour of the plaintiffs, the inconvenience to the plaintiff would be greater than that which would be caused to the

defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer? In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to

arise from withholding the injunction will be greater than which is likely to arise from granting it.

39. In this regard, the court considers the case of both parties herein. The applicant continues to suffer loss in business by the detention of his vehicle. On the other hand, the respondent has a duty to protect the public by maintaining safe and quality roads by ensuring that damage on the existing roads is controlled, if not totally prevented. It is not in dispute that overloaded trucks caused damage on roads and that these roads are expensive to construct and to repair.

40. In my considered view, the balance of convenience does not tilt in favour of the applicant. For this reason, I am not convinced that the applicant has satisfied the conditions of grant of an interlocutory injunction.

41. Accordingly, it is my considered view that the application dated 5th January 2026 is not merited and it is hereby dismissed.

42. However in the interests of justice for both parties herein, I hereby give orders as follows:-

a) That pending hearing and determination of this petition, the respondent do release motor vehicle registration number KCA 952 V Tipper Lorry/Truck to the Petitioner/Applicant upon the applicant

depositing the amount of USD 9113.6 in court being assessed fine and storage charges in respect of the said motor vehicle.

- b) That in default of the deposit, the vehicle shall remain in the custody of the respondent pending hearing and determination of this petition.
- c) That parties do exchange submissions on the petition within twenty (20) days.

43. Costs of the application shall abide in the petition.

44. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 30TH DAY OF APRIL 2026.***

**F. MUCHEMI
JUDGE**