



REPUBLIC OF KENYA



**KENYA LAW**  
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**Makori v Kenya National Highways Authority (Judicial Review Application E005 of 2022) [2025] KEHC 4443 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
JUDICIAL REVIEW APPLICATION E005 OF 2022**

**MW MUIGAI, J**

**MARCH 28, 2025**

**IN THE MATTER OF: AN APPLICATION JUDICIAL REVIEW ORDERS  
OF CERTIORARI & MANDAMUS BY JORAME OTWORI MAKORI**

**IN THE MATTER OF: ARTICLES 40, 47,48,50 &  
159 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: SECTIONS 17,20 & 22(2) OF THE EAST AFRICAN  
COMMUNITY VEHICLE LOAD CONTROL ACT 2016IN THE MATTER OF:  
SECTIONS 8 & 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA**

**BETWEEN**

**JORAME OTWORI MAKORI ..... APPLICANT**

**AND**

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

**JUDGMENT**

**Introduction**

1. On 26th September, 2023 this Court delivered Ruling on leave as follows:
  1. In my considered opinion the Applicant has persuaded the court that he has an arguable issue that can be resolved by the full hearing of the Judicial Review application
  2. In the premises aforesaid, I find that the exparte application has merits and I do allow prayers (a), (b), (c) (d) and (e).
  3. The substantive application be prosecuted within 90days from the date of this Ruling, failing to which the prayers granted shall lapse.



## Notice Of Motion

1. The Applicant sought grant of Judicial Review Order of Certiorari quashing decision of the Respondent through its agents and/or employees to maliciously, unfairly, subjectively and unlawfully impound and detain the Applicant's motor vehicle Reg KCN 094G and its sand content and consequently condemning the Applicant to pay a sum of Ksh 4,679,199/- being fees for alleged overloading without affording the Applicant the right to be heard through judicious and just process.
2. The Court to issue a Declaration to the effect that the decision to impound and subsequently detain the Applicant's motor vehicle Reg No KCN 094 G and its sand content was illegal, procedural and therefore null and void.
3. That the Court do hereby grant Judicial Review order of Mandamus compelling the Respondent and/or employees and/or servants to unconditionally release forthwith the Applicant's motor vehicle Lorry Reg Reg KCN 094G.
2. The Application is supported by Statutory Statement and Verifying Affidavit of the Applicant.
  1. The Applicant's motor vehicle registration number KCN 094G was being driven by one Mr. Peter Makau and was ferrying sand to Athi River on 25th November 2022 when the Respondent through its agents and/or employees Impounded and detained it together with its sand contents on the claim that it was overloaded.
  2. The Applicant was immediately instructed to pay a sum of Kes. 4,679,199/-being the alleged overload fees. That the imposed fine is not only unreasonable but goes against the basic tenets of natural justice as the fine imposed is even greater than the present value of the impounded motor vehicle.
  3. Further, the Respondent through its agents and/or employees required the ex parte Applicant to pay a further charge of USD 50 as parking fees applicable after three (3) days.
  4. That despite the Applicant's reservation regarding the amounts levied as fees for the alleged overloading, the Respondents and/or its agents or employees failed to accord the Applicant a hearing at all.
  5. To date, the Respondent through its agents and/or employees continue to unjustifiably, illegally and un procedurally detain the aforementioned motor vehicle registration KCN 094G and its sand contents. This has significantly affected the Applicant both financially and emotionally.
  6. Vide the foregoing impugned decision, the Respondent through its agents and/or employees has declined to release the Applicant's motor vehicle and its sand contents unless compelled by this Court.

## Replying Affidavit

3. On 30th January, 2023 Eng. Kennedy Ndugire filed a Replying Affidavit and stated as follows:
  1. That the Respondent is a State Corporation established pursuant to Section 3 of the [Kenya Roads Act](#), No 2 of 2007 of the Laws of Kenya with the mandate to inter alia manage, develop, rehabilitate and maintain National Roads as provided under Section 4 (1) of the [Kenya Roads Act](#).



2. That the Respondent is discharging its responsibility as set out in Section 4 (2) of the [Kenya Roads Act, 2007](#) wherein it is obligated to construct, upgrade, rehabilitate and maintain National Roads under its control; to control national roads and road reserves and access to roadside developments; to implement road policies in relation to National Roads; to ensure adherence to the rules and guidelines on Axle Load Control as set out in the [Kenya Roads Act, 2007](#) and the East Africa Community Vehicle Load Control Act, 2016.
5. That I am advised by our advocate on record, and which advice I believe to be true that the application dated 9th December, 2022 is premature and bad in law and should be dismissed with costs in the first instance for the following reasons:
  - 6.1 The Applicant, Jorame Otwari Makori has failed to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety which is the standard test for granting Judicial Review Orders.
  - 6.2 The procedure leading to the detention of the suit motor vehicle is clearly spelt out in the East Africa Community Vehicle Load Control Act, 2016 and the Applicant has not demonstrated with exactitude the sections of the law that the Respondent violated.
  - 6.3 The Orders sought are seeking correct the process set forth in the East Africa Community Vehicle Load Control Act, 2016 which is not a violation of the spirit of Judicial Review as was held the case of [Kenya National Examination Council v. Republic Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996](#)
7. That I am advised by our advocate on record, and which advice I believe to be true that the applicable law in this case is the East African Community Vehicle Load Control Act, 2016 as the Applicant's vehicle detained at the Mombasa Nairobi (A8) Road a few kilometres from Machakos Junction turnoff on 25th November, 2022 which is along the Regional Trunk Road Network as defined under the First Schedule to the East African Community Vehicle Load Control Act, 2016.
8. That I am aware that the East African Community Vehicle Load Control Act, 2016 provides a detailed procedure and requires that in instances where an overload has been detected, the overloaded vehicle is detained pending payment of overload fees and correction of the overload. Such detained vehicle can only be released upon payment of the overload fees or issuance of a guarantee in the prescribed form to the Respondent.

### **Submissions By The Applicant**

4. The Respondent has continued to detain the said subject motor vehicle together with the merchandise (Sand) the said motor vehicle was ferrying to clients, which arbitral action continues to significantly prejudice the Applicant resulting into huge losses.

### **A. Brief Facts**

5. On the 25th day of November 2022, the Respondent arbitrarily and without regard to the constitutional and legal provisions underpinning administrative actions and/or omissions, and without any justifiable cause and without affording the Applicant an opportunity to be heard as by law provided, maliciously, unfairly, and unlawfully impounded the Applicant's motor vehicle make Isuzu FVZ of registration number KCN 084G together with its sand contents at Athi River weighbridge within Machakos County.



6. Subsequently, the Respondent proceeded to condemn the Applicant to pay to it a sum of Ksh. 4,679,199/- being the fees for the alleged overloading.
7. To date, the Respondent through its agents, employees and/or people working under it, continue to illegally and irregularly detain the said motor vehicle with its sand contents and have profusely declined to release the said motor vehicle unless compelled to do so by this Court.
8. Vide a Ruling delivered on 26 September 2023, this Court found that the ex parte Applicant's leave application raised arguable issues therefore deserving to be accorded a full hearing consequently leading to the instant Application the subject of this submissions.
9. By dint of Section 4(3) of the *Fair Administrative Action Act*, when an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:
  - (a) Prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) An opportunity to be heard and to make representation in that regard;
  - (c) Notice of a right to a review or internal appeal against an administrative action;
  - (d) A statement of reasons pursuant to section 6:
10. On the other hand, Section 22(2) of the East African Community Vehicle Load Act 2016 provides that the Respondent ought to obtain the Applicant's written consent. The Section further provides that the Respondent shall not exercise its powers of condemning an Individual to pay a fine if no written consent is obtained. No such admission notice was ever obtained by the Applicant herein. The Respondent breached the rules of natural justice by failing to accord the Applicant an opportunity to be heard, and if no objection is raised, procure the ex parte Applicant's consent, before Impounding and unilaterally detaining his motor vehicle and its sand contents.
11. The law regarding the grant of judicial review orders is well settled. It is important to appreciate that the judicial review process is a special Jurisdiction that mandates this Court with supervisory powers over a quasi-Judicial administrative body like the Respondent herein. To this end, the Court in *Republic v Public Procurement Administrative Review Board & another Exparte Intertek Testing Services (EA) Pty Limited & Authentix Inc: Accounting Officer, Energy and Petroleum Regulatory Authority & another* [2022] eKLR while quoting from the holding in the case of *Pastoli v Kabale District Local Government Council & Others* [2008] 2 EA 300, held thus.

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality. Irrationality and procedural Impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District Interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision.

Such a decision is usually in defiance of logic and acceptable moral standards... Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making



authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises Jurisdiction to make a decision."

12. Equally instructive in this regard is the holding in the case of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR. In this case, the Court. held that in judicial review.

"...the court would concern itself with such Issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether the in making the decision the decision maker took into account relevant matters or did take into account Irrelevant matters...."

13. The Court to be guided by the holding in the case of *Republic v Kenya National Highways Authority Ex Parte Applicant Benjo Super Stores Limited* [2021] eKLR where the court stated:

"The objective of seeking judicial review orders is to cushion or protect litigants against suffering consequences out of decisions arrived at by public bodies, Institutions or public officers without due regard to due process. procedural propriety, observance of the principles of natural justice by treating everybody equally and fairly, rational and prudent consideration and treatment of issues before them, due regard to the people they are serving and upholding the rule of law.

14. He relied on the case of *Civil Service Unions v Minister for Civil Service* [1985]A,C374 at 401 where Lord Diplock stated that Judicial Review has developed to a stage where one can classify the grounds for consideration as that of Irrationality, illegality and procedural impropriety.

### **Respondents Written Submissions**

15. On 3/5/2025 the Respondent filed written submissions and stated as follows:

#### **A. Whether the law applicable is the East Africa Community Vehicle Load Control Act, 2016.**

16. The EACVELCA was enacted by partner states and assented to by the Heads of States on 1st December, 2015. The objective of the creation of the Act was to ensure control of vehicle loads, harmonized enforcement, institutional arrangements for the Regional Trunk Road Network within the Community and to provide for other related matters.

17. Article 2(6) of *the Constitution* of Kenya states,

"Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."

Section 25 of the EACVELCA provided that;

"This Act shall take precedence over Partner States' laws with respect to which its provisions relate". (Emphasis added)

18. Various provisions of the EACVELCA have been integrated into the *Traffic Act* Cap. 403 of the Laws of Kenya vide *Act No. 18 of 2018* (State Law Miscellaneous Amendments) Act.



19. The EACVELCA prohibits the use of an overloaded vehicle on any part of the Regional Trunk Road Network and defines an overloaded vehicle as a vehicle that is detected to have exceeded the prescribed legal limits for the axle weight or gross vehicle weight. Section 6(1) of the EACVELCA states;

“A person shall not drive, use or permit to be driven or used, any vehicle on the Regional Trunk Road Network while overloaded”.

20. Section 6(2) and (4) of the EACVELCA states;

“Any person who drives, uses, causes or permits to be driven or used, any vehicle on the Regional Trunk Road Network while ever loaded shall be liable to pay overloading fees to the national roads authority or any institution designated by a Partner State where the overloading is detected, such overloading fees as may be from time to time be prescribed and published in the Gazette by the Council”, “A vehicle is said to be overloaded when used on any part of the Regional Trunk Road Network in contravention of the weight limits set out in the Second and Third Schedules”.

21. The EACVELCA provides a detailed procedure and requires that in instances where an overload has been detected, the overloaded vehicle is detained pending payment of overload fees and correction of the overload. Such detained vehicle can only be released upon payment of the overload fees or issuance of a guarantee in the prescribed form to the Respondent. Section 15(1)(a), (c) (h) of the EACVELCA states;

“An authorised officer shall have the power to

- (a) require the driver of a vehicle to stop the vehicle for the purposes of weighing and inspecting the vehicle
- (c) direct a driver to proceed to a weighing station for the purposes of weighing the vehicle;
- (d) weigh the vehicle and any load being carried in or on the vehicle,
- (e) verify the weight of all axles or axle units on a vehicle or combination of vehicles in accordance with this Act:
- (f) issue a weighing certificate for the vehicle providing required particulars;
- (g) in consultation with relevant implementing agencies, cause the offloading of a vehicle at a designated place or the adjustment of the load to ensure that the vehicle is loaded within limits,
- (h) detain a vehicle until such time as an overloading fee has been paid or proof, in the manner prescribed has been provided that payment has been made,

22. Through the Applicant’s Supporting Affidavit dated 7th April, 2021 in paragraphs 3 and 4, the Applicant referred to Exhibits marked FSA-3 and FSA-4 which is a weighting report issued in



accordance to Section 17 (1) of the EACVELCA, after the suit vehicle was weighed. Section 17 (1) of the EACVELCA states;

“When an authorized officer determines that a vehicle is carrying a load in excess of the legal load limit under this Act, he or she shall issue a weighing report setting out the overload particulars and the amount of overload fees payable”. (Emphasis mine).

23. Section 17(6) and (7) the EACVELCA requires that a vehicle be detained without charge of parking fees for the first three days but accrue a parking fee equivalent to 50 USD per day for every extra day until proof of payment is produced and which sum is now due and payable and continues to accrue since the suit vehicle has been detained for more than 3 days. The sections are couched in mandatory terms. The said sections state;

“(6) An overloaded vehicle shall be detained without a charge by the national roads authority for the period prescribed in the regional operation and procedures regulations and, thereafter, a fee as prescribed by the national roads authority or its agents who may be operating the parking lots where the vehicle is detained shall be charged for each extra day until proof of payment is produced. (Emphasis mine)

(7) Subject to the provisions of this section, a detained vehicle shall be held under the transporter’s responsibility and payment of charges and costs for storage and removal of the detained vehicle shall be made in the manner prescribed by the national roads authority”.

24. The Applicant has referred to the *Disarano Limited v Kenya National Highways Authority & Attorney General* [2017] eKLR which rendered the Road (Kenya National Highways Authority) Regulations, 2013 unconstitutional. The said judgment did not render the EACVELCA unconstitutional and of the Applicant wants to challenge the provisions of the same then he can go to the East African Court of Justice. No court of Law has declared the EACVELCA unconstitutional or any of its provisions and in addition there is no pending matter in any court challenging the same.

### **Determination**

25. The Court considered the pleadings and submissions filed by parties through Counsel the issues that emerge for determination are;

- a. Does this Court have jurisdiction to apply the impugned Act East Africa Community Vehicle Load Control Act, 2016.
- b. Was/is action by the Respondent tainted with illegality. Irrationality and procedural Impropriety.
- c. What remedies if at all are amenable in the circumstances?

26. Judicial review is law applied to powers, functions and procedures of administrative authorities and bodies discharging public functions.

27. Judicial review is the process by which the High Court exercises supervisory jurisdiction over proceedings and decisions of public bodies.



28. Dande & 3 others v Inspector General, National Police Service & 5 others [2023] KESC 40 (KLR), the Supreme Court said of Judicial Review;

“Judicial review was introduced to Kenya from England in 1956 through sections 8 and 9 of the *Law Reform Act*, Cap 26. The jurisdiction to hear and determine judicial review was then vested in the High Court. Under that system, the High Court could issue orders of mandamus, prohibition, and certiorari. The grounds for the issuance of such orders were borrowed from common law. Prior to the promulgation of *the Constitution* of Kenya, 2010, there were two legal foundations for the exercise of the judicial review jurisdiction by the Kenyan courts found in sections 8 and 9 which constituted the substantive basis for judicial review of administrative actions on the one hand, and, order 53 of the Civil Procedure Rules which was the procedural basis of judicial review of administrative actions, on the other hand.

The entrenchment of judicial review under *the Constitution* of Kenya, 2010 elevated it to a substantive and justiciable right under *the Constitution*. Accordingly, judicial review was no longer a strict administrative law remedy but also a constitutional fundamental right enshrined in *the Constitution*. Thus, Article 47 of *the Constitution* provided that every person had a right to an administrative action that was expeditious, efficient, lawful, reasonable and procedurally fair.

The entrenchment of judicial review in *the Constitution* had led to the emergence of divergent views on the scope of judicial review. The first group postulated that judicial review was concerned with the process a statutory body employed to reach its decision and not the merits of the decision itself while the second group opined that under the current constitutional dispensation, courts could delve into both procedural and merit review in resolving disputes.”

29. Art 47 (2) of *the Constitution* prescribes that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Art 23 (3) of *the Constitution* prescribes that in enforcing the Bill of rights , the Court may grant any order of judicial review

Article 50 CoK 2010 provides;

- (1) 1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

30. Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa KESC 34 (KLR) (11 January 2021), the Supreme Court addressed applicability of International law to domestic law under *the Constitution* as follows;

“The meaning to be attributed to the phrase “shall form part of the law of Kenya” in articles 2(5) and 2(6) of *the Constitution* was that in determining a dispute, a domestic court of law had to take cognizance of rules of international law to the extent that the same were relevant and not in conflict with *the Constitution*, statutes or a final pronouncement.

Articles 2(5) and 2(6) of *the Constitution* were both inward-looking and outward-looking. They were outward-looking in the sense that they committed Kenya to conduct its



international relations in accordance with its obligations under international law. On the other hand, they were inward-looking because they required Kenyan courts of law to apply international law in resolving disputes before them as long as the same were relevant, and not in conflict with *the Constitution*, local statutes, or a final judicial pronouncement. International law could be applied to fill a lacuna in domestic law in the context of a dispute before a domestic court because international law was part of the laws of Kenya."

31. From the above analogy, the International and Regional instruments ratified by Kenya are applicable as part of Kenya Law enforceable in our Courts. Therefore, the East Africa Community Vehicle Load Control Act, 2016 (herein referred to as the Act) was/is applicable in this instance.
32. The instant Application is Judicial Review brought under Section 8 (2) of *Law Reform Act*, Order 53 Rule 1 of CPR 2010 & Part 3 of *Fair Administrative Action Act*. The applicant posited that upon the motor vehicle (lorry) being detained he was instructed to pay Ksh 4,679,199/- and subsequent USD 50 after every 3 days. The Applicant submitted that he was not given an opportunity to be heard and/or consideration of any admission by the Applicant as required by Statute. The Respondent's decision was illegal irrational and unreasonable, it was/is disproportionate and ultra vires. The Applicant relied on Section 17 & 22(2) of the said Act.
33. The Respondent opposed the application by dint of Preliminary objection which the Court dismissed and granted leave to pursue judicial review.  
  
The Respondent relied on Section 6, 15 & 17 of the Act in exercising its mandate and statutory duty in the process and in compliance with the law and procedure found the Applicant's vehicle overloaded and determined the amount payable.
34. The East African Community Vehicle Load Control Act, 2016 is An Act of the Community to make provision for the control of vehicle loads, harmonized enforcement, institutional arrangements for the regional trunk road network within the community and to provide for other related matters.
35. The Procedure for overloading vehicles is set out in Section  
  - 17(1) When an authorized officer determines that a vehicle is carrying a load in excess of the legal load limit under this Act, he or she shall issue a weighing report setting out the overloading, overload particulars and the amount of overload fees payable.
  - (2) Where an authorized officer, while a journey is being undertaken, determines that a vehicle is carrying a load in excess of the legal load limit, the authorized officer shall in consultation with relevant implementing agencies, not allow the vehicle in question to continue its journey, unless the load is redistributed and the vehicle is, upon being reweighed, found to be within the legal load limit, or the vehicle is off loaded to lower its weight to the legal load limit and—
    - a) any amounts due under subsection-(1) have been paid to the national roads authority or its duly appointed agent; or
    - b) a guarantee in the prescribed format is provided by the transporter that such amounts shall be paid.
  - (3) Where the fact of overloading is not disputed by the transporter, the transporter shall sign and acknowledge the weighing report in the prescribed manner and the transporter shall be liable for the overload fees which may be recovered as a summary debt by the national roads authority.
36. Whereas the stipulated law binds each citizen in this case the Act binds every transporter, the Applicant herein was transporter was not driving the motor vehicle but his driver. On coming and engaging with



the KENHA (national roads authority) Officer(s) the Applicant was served with Weighbridge Ticket marked DD1 on the basis of overloading by his vehicle.

“over loaded vehicle” means a vehicle that is detected by an authorised officer as overloaded, either with regard to the permissible maximum axle or axle unit weight or permissible maximum gross vehicle weight;

37. Upon weighing on weighbridge and confirming overload the overload ought to have been explained and confirmed to the Applicant to understand and appreciate the situation. Art10 of *the Constitution* on national values and principles of governance that bind every person and state organ and public officers should adhere to integrity transparency and accountability. This entails explanation on what constituted overload how measurement was undertaken to arrive at the stated overload and calculation amounting to Ksh 4,679,199.
38. The law provides for various opportunities to seek explanation of, contest, explain circumstances, reduce or remove overload, distribute overload and reweigh the load all prescribed by the said Act.
39. There is no evidence that any of these options processes opportunities were explored to allow the Applicant a hearing explanation or opportunity to be heard. The Respondent while carrying out its mandate, imposed the fee of Ksh 4,679,199/- without notice time to explain or make proposals of settlement of the fee if he understood how the figure was arrived at Ksh 4,679,199/- is a colossal amount to pay instantly by any standard and at the same time the vehicle holding what is excess and what is not excess is detained awaiting payment and attracting detention fee per day. Such drastic action even if it is in application of the law required some modicum of giving the Applicant a hearing even if in the end the applicable law would apply. The Applicant’s plea was rejected prematurely, he was denied a chance to be heard contrary to *the Constitution*, the Fair Administrative Actions Act and the Rules of Natural Justice.
40. The Fair Administrative Act relied on by the Applicant injected life to upsurge of Art 47 of *the Constitution*.
  - (a) Section (7)(2) of Fair Administrative Actions Act (FAAA) outlines the circumstances under which a court or tribunal may review an administrative action or decision. The requirement of a “reasonable opportunity to state one’s case” is an apparent codification of the common law rule of natural justice and prohibits the condemnation of a person unheard.
  - (b) Section 7(2)9b)-(d) of FAAA states other instances to include situations of non-compliance with mandatory and material procedures and conditions precedent, procedural unfairness and errors of law.
  - (c) Section 7(2) (e)-(h) of FAAA judicial review is available where an administrator acts on ulterior motives calculated to prejudice the rights of the applicant, fails to take all relevant considerations into account, acts on the basis of illegal delegation and also in bad faith.
  - (d) Section 7 (2) (k) to (o) Administrative actions which are unreasonable, disproportional, in violation of legitimate expectation, unfair or which result from or in abuse of power are also liable to judicial review.
41. Apart from granting the Applicant a hearing before/after imposing hefty fee for overloading without explanation the Applicant insinuated and subtly deposed in his pleadings that the application of the law was not only for overloading but alluded to the Respondent’s Officers extorting money from the



Applicant so as to 'assist'. This is shown by the 2 page SMS messages marked 'DD1' attached to the Applicant's application that reads in part;

'How much is your client willing to pay and of course a small token for facilitation..... He is waiting....In a minute'

42. The Respondent though served did not respond controvert these allegations. These messages construed in the context of the ongoing overloading fee scenario and at the same time detention of the vehicle pending payment of exorbitant fee at the time, reasonably and logically depict that the decision-making process and outcome of the process is tainted by irregularity illegality and unprocedurally unfair and was in bad faith biased and abuse of power.
43. The Applicant relied on Section 22(2) of the Act that provides; which deals with compounding of penalties payment in relation to offences committed under Section 20 of the Act, yet he was found to have overloaded under Section 17 of the Act which allowed him to appeal against the dispute on the overload fee for payment and detention of the motor vehicle. But the Respondent does not state where in the said Act and/or Regulations and what forum the Applicant would resort to for hearing/review except the National/Domestic Courts.
44. The jurisdiction of East African Court of Justice (EACJ) Under Article 3 of the Protocol, the Court has jurisdiction to deal with all cases and disputes submitted to it regarding the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the concerned States. However domestic disputes as the one in place is subject of decision of the KENHA tribunal process if in place and/or other prescribed internal processes if not it is the High Court which has jurisdiction to interpret and enforce *the Constitution* 2010.
45. Section 9 (2) of FAA provides for the doctrine of exhaustion of mechanisms for appeal or review to be accessed first and in default/finally in the High Court.  
  
The totality of the evidence on record discloses that the decision- making process did not adhere to the mandatory standards outlined in *the Constitution* and legislation as outlined above and there resulted in illegality, irrationality and without procedural propriety. The Applicant was deprived of fair hearing and condemned unheard.
46. The decision-making process was/is irrational due to unreasonableness due to the unfairness occasioned by failure to observe natural justice and to act with procedural fairness towards the Applicant who was affected by the decision of overloading of the motor vehicle and imposed excessive fee of Ksh 4,679,199/- without hearing or alternative options prescribed by Section 17 2 (a) & (b) 7 4 of the Act or appeal in the prescribed forum/tribunal. The decision making process and outcome is marred by allegations of extortion.

## **Disposition**

47. The remedy that commends itself to the matter at hand is remedy of Certiorari and the decision of the Respondent Kenya National High Ways Authority (KENHA) Respondent of finding overloading of motor vehicle KCN 094 G quashed set aside forthwith.
48. Parties shall revert to status quo ante and Respondent to begin the weighing of the motor vehicle KCN 094G afresh by Officers other than those who conducted the exercise before to arrive at an independent decision
49. The process and outcome shall be conducted in compliance with the standards prescribed by Art 10, 47, 50 Constitution 2010 and Fair Administration Act and relevant regulatory legislation



50. The Costs follow the events, the application for Judicial review is allowed with costs.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT IN MACHAKOS HIGH COURT PHYSICALLY /VIRTUALLY ON 28/3/2025.**

**M.W.MUIGAI**

**JUDGE**

