



REPUBLIC OF KENYA



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**Pitch Investors Limited v Capital Markets Authority (Petition E536 of 2024)
[2025] KEHC 7928 (KLR) (Constitutional and Human Rights) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 7928 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E536 OF 2024

AB MWAMUYE, J

APRIL 30, 2025

**ARTICLES 22(1), 23, 48, 50(1), 159, 165 (3)(D) AND 258(1) OF THE CONSTITUTION
OF KENYA 2010**

IN THE MATTER OF:

**RULE 3(2), (3), (4), (5), 4, 13, 23(1) AND (2) OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS OF THE INDIVIDUAL)
PRACTICE AND PROCEDURE RULES, 2013 LEGAL NOTICE 117 OF 2013)**

IN THE MATTER OF:

**ENFORCEMENT OF ARTICLES 1, 2, 3(1), 10, 19, 20, 21, 24, 25(5), 27, 28, 40, 50,
AND 259(1) OF THE CONSTITUTION.**

IN THE MATTER OF:

**ALLEGED VIOLATIONS OF AND/OR THREATS TO RIGHTS AND FUNDAMENTAL
FREEDOMS ENTRENCHED IN THE BILL OF RIGHTS UNDER ARTICLES 27, 28, 40
AND 50 OF THE CONSTITUTION OF KENYA, 2010.**

IN THE MATTER OF:

**ALLEGED CONTRAVENTION OF THE OBJECTIVES OF CAPITAL MARKETS
AUTHORITY AS PROVIDED IN SECTIONS 11(1) (A, C & F)**

IN THE MATTER OF:

**VALIDITY OF REGULATION 6 OF THE CAPITAL MARKETS (INVESTMENT-BASED
CROWDFUNDING) REGULATION, 2022**

BETWEEN



PITCH INVESTORS LIMITED PETITIONER
AND
CAPITAL MARKETS AUTHORITY RESPONDENT

JUDGMENT

Introduction

1. This Petition presents a significant legal contest between an innovative financial services provider and the statutory regulator tasked with overseeing Kenya’s capital markets. At its core, the dispute revolves around the Petitioner’s attempt to operate an investment-based crowdfunding platform and the Respondent’s enforcement of regulatory requirements designed to govern such financial activities.
2. The Petitioner, Pitch Investors Limited, challenges the Respondent’s decisions regarding its applications for regulatory approval, particularly focusing on the rejection of its admission to the Regulatory Sandbox program and the subsequent denial of a crowdfunding operator license. Central to this challenge is the constitutional validity of regulation 6(c) of the *Capital Markets (Investment-Based Crowdfunding) Regulations, 2022*, which imposes a KES 10 million liquid capital requirement for licensing.
3. The Petitioner alleges multiple violations of constitutional rights, including the right to equality and freedom from discrimination under Article 27, the right to property under Article 40, and the right to fair administrative action under Article 47. These allegations are set against the Respondent’s assertion that its actions were lawful exercises of its statutory mandate to regulate capital markets and protect investors.

Factual Background

4. The Petitioner, through its founder Rodgers Okeyo Ochieng, describes itself as a pioneering crowdfunding platform designed to provide alternative financing solutions to small and medium enterprises (SMEs) in Kenya. According to the Petitioner, the company had already established significant operational capacity, with 10 employees, over 200 pre-approved investments, 150 awaiting investors, and 1,744 registered platform users at the time of filing the Petition.
5. The Petitioner’s journey through the regulatory process began in April 2024 when it first applied for admission to the Respondent’s Regulatory Sandbox program. This initial application was made under the business name “PitchBook Investors,” which was registered as a sole proprietorship. The Respondent rejected this application on 12th June 2024, citing the ineligibility of sole proprietorships under the Sandbox Policy Guidance Note. The Petitioner subsequently re-applied on 28th June 2024 under the name “Mich Online Kenya Limited,” a duly incorporated company.
6. During a meeting with the Respondent’s Sandbox Review Committee on 5th July 2024, the Petitioner was advised that its business model was more suited for licensing under the Crowdfunding Regulations rather than the Sandbox program. The Petitioner then submitted an application for a crowdfunding operator license in mid-August 2024. However, this application was preliminarily rejected on 27th August 2024 due to the Petitioner’s failure to meet the KES 10 million liquid capital requirement stipulated in regulation 6(c) of the Crowdfunding Regulations.



7. The dispute escalated in September 2024 when the Respondent discovered that the Petitioner had been representing itself as “regulated by the Capital Markets Authority of Kenya” on its website. This led the Respondent to issue a cease-and-desist letter dated 25th September 2024 and to instruct commercial banks to place caveats on the Petitioner’s accounts. These actions form the crux of the Petitioner’s complaint about constitutional violations.

The Petitioner’s Case

8. The Petitioner’s case, as articulated in the Petition and supporting affidavit sworn by Rodgers Okeyo Ochieng, presents several key arguments that merit detailed examination.
9. The Petitioner contends that the Respondent’s rejection of its Sandbox application was arbitrary and violated its right to fair administrative action under article 47 of the *Constitution*. The Petitioner emphasizes that it sought to participate in the Sandbox program precisely because of the innovative nature of its equity-based crowdfunding model, which it describes as the first of its kind in Kenya’s local market.
10. Regarding the licensing process under the Crowdfunding Regulations, the Petitioner mounts a complex challenge. At the forefront is the constitutional challenge to regulation 6(c), which imposes the KES 10 million liquid capital requirement. The Petitioner argues that this requirement creates an unreasonable barrier to entry that effectively makes crowdfunding operations the exclusive preserve of wealthy players, contrary to the constitutional principles of equality and economic inclusivity enshrined in articles 10 and 27.
11. The Petitioner further contends that the Respondent’s actions in issuing the cease-and-desist letter and freezing bank accounts constituted a disproportionate response that violated its property rights under Article 40. The supporting affidavit particularly highlights the severe operational impact of these measures, claiming they threatened the livelihoods of over 2,000 individuals connected to the Petitioner’s business ecosystem.
12. In its legal arguments, the Petitioner relies heavily on the constitutional principle that limitations on rights must be reasonable and justifiable in an open and democratic society under article 24. It suggests that the Respondent has failed to demonstrate how the KES 10 million requirement meets this standard, particularly when compared to the capital requirements for other financial institutions like microfinance banks.

The Respondent’s Case

13. The Respondent, through the Replying affidavit sworn by Victor O. Oluoch, presents a markedly different narrative. The affidavit systematically addresses each of the Petitioner’s allegations while emphasizing the Respondent’s statutory mandate to regulate capital markets and protect investors under the *Capital Markets Act*.
14. Regarding the Sandbox rejection, the Respondent provides detailed justification based on the Sandbox Policy Guidance Note. It explains that the initial rejection was due to the Petitioner’s status as a sole proprietorship, which is explicitly excluded from the Sandbox program. The subsequent advice to pursue licensing under the Crowdfunding Regulations rather than the Sandbox is portrayed as proper guidance, given that the Petitioner’s business model fell squarely within the scope of existing crowdfunding regulations.
15. The Respondent defends Regulation 6(c) as a necessary investor protection measure. The Respondent avers that the liquid capital requirement serves multiple critical functions: ensuring operators have



sufficient resources to manage operational risks, providing a buffer against potential defaults, and maintaining overall market stability. The Respondent argues that this requirement is neither arbitrary nor discriminatory, as it applies uniformly to all crowdfunding operator applicants.

16. Concerning the cease-and-desist letter and account freezes, the Respondent characterizes these actions as necessary responses to the Petitioner’s misleading representation of being “regulated by CMA.” The Respondent emphasizes that such misrepresentation posed significant risks to potential investors who might have been misled into believing their investments enjoyed regulatory protection. The Respondent cites its investigative powers under section 13B(1)(a) of the Capital Markets Act as the legal basis for these protective measures.

Issues for Determination

17. Having carefully considered the pleadings and submissions, the following issues emerge for determination:
- i. Whether the Respondent’s rejection of the Petitioner’s application to the Regulatory Sandbox program violated the Petitioner’s right to fair administrative action under article 47 of the Constitution.
 - ii. Whether Regulation 6(c) of the Capital Markets (Investment-Based Crowdfunding) Regulations, 2022, which imposes a KES 10 million liquid capital requirement for crowdfunding operators, is unconstitutional for violating: the right to equality and freedom from discrimination under Article 2; the national values and principles of governance under Article 10; and the principle that limitations on rights must be reasonable and justifiable under article 24.
 - iii. Whether the Respondent’s issuance of a cease-and-desist letter and instructions to freeze the Petitioner’s bank accounts violated the Petitioner’s right to property under article 40; and right to fair administrative action under article 47.

Analysis And Determination

Whether the Respondent’s rejection of the Petitioner’s application to the Regulatory Sandbox program violated the Petitioner’s right to fair administrative action under Article 47 of the Constitution

18. The petitioner invoked the provision of Article 47 of the Constitution. Article 47 states as follows:
- 1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) 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.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall--
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.



19. It is important to note that there is an implicit flexibility in Article 47. The primary consideration is whether the procedure adopted is fair. In this regard I adopt the sentiments of Lord Pearson in the case of *Pearlberg v Varty (Inspector of Taxes)* [1972] I WLR 534 at page 547 where he stated;

“Fairness, however does not necessarily require a plurality of hearings or representations and counter representations. If there were too much elaboration of procedural safeguards nothing could be done simply and quickly and cheaply. Administrative or executive efficiency and economy should not be too easily sacrificed.”

20. This is the reason why Article 47 not only has the element of procedural fairness but also provides that administrative action must be “expeditious, efficient, lawful and reasonable” All these elements are relevant and ought to be considered to give effect to the provisions of the Article.

21. The Petitioner’s claim regarding the Sandbox rejection requires examination through the lens of Article 47, which guarantees the right to fair administrative action. This right encompasses several elements, including the requirement that administrative decisions be procedurally fair, reasonable, and lawful.

22. To assess whether the petitioner’s rights guaranteed by Article 47 have been violated, it is crucial to comprehend the function of the CMA. Capital markets in any nation are vital for facilitating investment by mobilizing funds. Both individual citizens and corporations, whether local or international, invest in capital markets with the expectation that their investments will be secure. The significance of capital markets in Kenya is acknowledged in the objectives outlined in the CMA Act.

23. The CMA is a statutory corporation endowed with regulatory authority under the CMA Act to regulate the capital markets in Kenya. Its objectives as set out in section 11(1) of the Act are as follows;

- (a) the development of all aspects of the capital markets with particular emphasis on the removal of impediments to, and the creation of incentives for longer term investments in, productive enterprises;
- (b) to facilitate the existence of a nationwide system of stock market and brokerage services so as to enable wider participation of the general public in the stock market;
- (c) the creation, maintenance and regulation, of a market in which securities can be issued and traded in an orderly, fair, and efficient manner, through the implementation of a system in which the market participants are self-regulatory to the maximum practicable extent;
- (d) the protection of investor interests;
- (e) the operation of a compensation fund to protect investors from financial loss arising from the failure of a licenced broker or dealer to meet his contractual obligations; and
- (f) the development of a framework to facilitate the use of electronic commerce for the development of capital markets in Kenya.

24. To carry out its functions properly, the CMA is granted a wide range of functions, powers and duties which are set out in section 11(3) of the Act as follows;

“For the purpose of carrying out its objectives, the Authority may exercise, perform or discharge all or any of the following powers, duties and functions—

- (a) advise the Cabinet Secretary on all aspects of the development and operation of capital markets;



- (b) implement policies and programmes of the Government with respect to the capital markets;
- (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;
- (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—
 - (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed: Provided that the financial penalties shall be recoverable summarily by the Authority as civil debts;
 - (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
 - (iii) publishing findings of malfeasance by any person;
 - (iv) suspending or cancelling the listing of any securities or exchange-traded derivatives contracts, or the trading of any securities or exchange-traded derivatives contracts, for the protection of investors;
- (d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;
- (e) to grant a licence to any person to operate as a stockbroker, derivatives broker, dealer or investment adviser, fund manager, investment bank, central depository or authorised securities dealer, and ensure the proper conduct of that business;
- (f) to grant approval to any person to operate as a securities exchange, commodity exchange, derivatives exchange, credit rating agency, registered venture capital company or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business;
- (fa) regulate spot commodity markets; (ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;
- (g) register, approve and regulate collective investment schemes;
- (ga) license, approve and regulate private equity and venture capital companies that have access to public funds;
- (h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over-the-counter market;



- (i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over-the-counter market;
- (j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;
- (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;
- (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;
- (o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;
- (p) act as an appellate body in respect of appeals against any self-regulatory organization securities or exchange-traded derivatives contracts exchange, derivatives exchange or central depository in actions by parties aggrieved thereby;
- (q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;
- (r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;
- (s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;
- (t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in an issuer and its securities or insider trading;
- (u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank accounts as may be directed by the Authority, pending determination of any charges instituted against that person;
- (v) prescribe notices or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;
- (va) ensure processing of personal data in the operations of capital markets is in accordance with principles set out under the Data Protection Act (Cap. 411C);
- (w) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or the exercise of its powers under this Act.”



25. I have set out the provisions of section 11 to show CMA has powers to regulate capital markets as it deals with huge amounts of money as evidenced by the various sectors it regulates. The complexity of technology, along with the integration of capital markets into global trade, implies that the CMA needs to maintain flexible regulations to address issues that could undermine investor and public trust in capital markets.
26. The record shows that the Petitioner’s initial Sandbox application was rejected because it was submitted under a sole proprietorship, which is ineligible under Clause 1 of the Sandbox Policy Guidance Note. This rejection was communicated to the Petitioner via email on 12th June 2024 (Annexure VOO2). When the Petitioner re-applied as a duly incorporated company, it was advised during the 5th July 2024 meeting that its business model was more appropriate for licensing under the Crowdfunding Regulations.
27. In assessing whether this process violated Article 47, the Court is guided by principles established in *Catherine Chepkemoi Mukenyang v Evanson Pkemei Lomaduny & another* [2022] eKLR, which emphasize that administrative decisions must be made fairly, reasonably, and in accordance with applicable rules.
28. In the said case, Ogola, J. considered the removal of the petitioner from office in a manner that violated the provisions of Article 47. The learned Judge stated:
- “70. The process for the removal of the Petitioner from office did not accord her the right to fair administrative action and the right to fair hearing as the Petitioner was not served with the evidentiary documents that the Respondents were relying on during the impeachment proceedings so as to enable her file her defence to the serious charges levelled against her. Further, the Petitioner sought for adjournment of the said proceedings on grounds that she had not been served with the said evidentiary documents but the same was denied, breaching of the Petitioner’s right to fair administrative action and fair hearing under Articles 47 & 50 of the *Constitution*.”
29. I am satisfied that the Respondent’s actions are consistent with these principles. The initial rejection was based on clear, published eligibility criteria. The subsequent advice to pursue crowdfunding licensing rather than Sandbox admission was a reasonable exercise of regulatory discretion, given that the Petitioner’s business model involved activities already regulated under existing frameworks. There is no evidence of arbitrariness or procedural unfairness in this process.
30. Even when considering whether the action taken was reasonable, the court must give due deference to the statutory authority having regard to the fact that the authority is equipped with the technical expertise and has a statutory mandate to discharge. This is not to say that the court cannot intervene in an appropriate case but I find that on the basis of the material before me and for the reasons that I have stated, this is not a case where a case for such intervention has been made out. On the whole I find that the CMA conducted itself in a manner consistent with the dictates of Article 47 of the *Constitution*.



Whether Regulation 6(c) of the Capital Markets (Investment-Based Crowdfunding) Regulations, 2022, which imposes a KES 10 million liquid capital requirement for crowdfunding operators, is unconstitutional

31. The principles to be considered in interpreting the *Constitution* were reiterated by the Court of Appeal in the case of *Center for Rights Education and Awareness & Another v John Harun Mwau & 6 others* [2012] eKLR as follows:
- a. It should be interpreted in a manner that promotes its purposes, values and principles; advances rule of law, human rights and fundamental freedoms and permits development of the law and contributes to good governance as provided by Article 259.
 - b. The spirit and tenor of the *Constitution* must preside and permeate the process of judicial interpretation and judicial discretion.
 - c. It must be interpreted broadly, liberally and purposively so as to avoid “the austerity of tabulated legalism.”
 - d. The entire Constitution has to be read as an integrated whole and no one particular provision destroying the other but each sustaining the other as to effectuate the great purpose of the instrument (the harmonization principle).”
32. Equally, there are a number of well-established principles that are employed in the interpretation of an Act of Parliament and making of a declaration of the constitutionality or lack thereof of a statute or a provision. The first is that there is a general presumption that every Act of Parliament is constitutional and as such this court must always be guided on that basis when faced with such questions.
33. This principle was captured in the Court of Appeal of Tanzania decision in the case of *Ndyanabo v Attorney General* [2001] EA 495 being a restatement of the law in the English case of *Pearlberg v Varty* [1972] 1 WLR 534. It was opined that:
- “Until the contrary is proved, legislation is presumed to be constitutional. It is a sound principle of constitutional construction that, if possible, legislation should receive such a construction as will make it operative and not inoperative”
34. Turning over to another fundamental guiding principle, this court is required to examine the purpose and effect of the impugned provision. This principle was indicated in the case of *R v Big M Drug Mart Ltd* [1985] 1 S.C.R.295 as follows:
- “Both purpose and effect are relevant in determining constitutionality, either an unconstitutional purpose or an unconstitutional effect can invalidate legislation. All legislation is animated by an object the legislature intends to achieve. This object is realized through impact produced by the operation and application of the legislation. Purpose and effect respectively, in the sense of legislation, object and its ultimate impact are clearly linked, if not indivisible. Intended and achieved effects have been looked to for guidance in assessing the legislation’s object and thus the validity.”



35. To begin, it is essential to examine the object and intent of this Act to ensure it aligns with the context of the disputed provision. This is revealed in the preamble of the Act, which states as follows:
- “An Act of Parliament to establish a Capital Markets Authority for the purpose of promoting, regulating and facilitating the development of an orderly, fair and efficient capital market in Kenya and for connected purposes.”
36. The regulation of various sectors in Kenya is not a new phenomenon. Similarly, the presence of regulatory authorities is not an unfamiliar aspect in Kenya. Most industries have corresponding authorities whose role is to act on behalf of the Government to oversee the areas they govern in the delivery of goods and services to the public. These authorities, therefore, ensure that the interests of the public are safeguarded by making sure that the operations within their sector adhere to the legal standards established. This, as can be understood, is the aim and intent of the government in creating such organizations.
37. In this case, the Petitioner’s challenge to regulation 6(c) raises complex questions about the intersection of economic regulation and constitutional rights. The regulation states:
- “An applicant for a license as a crowdfunding platform operator shall demonstrate that it has... (c) liquid capital of not less than ten million shillings.”
38. The Petitioner argues that this requirement violates Articles 10 and 27 by creating an unreasonable barrier that discriminates against smaller operators. To evaluate this claim, the Court must apply the proportionality test articulated in *Okoiti v Attorney General & 5 others (Constitutional Petition E364 of 2020)* [2021] KEHC 439 (KLR), which set the three important components of a proportionality test as: -
- i. The measures adopted had to be carefully designed to achieve the objective in question. They were not to be arbitrary, unfair or based on irrational considerations. They had to be rationally connected to the objective.
 - ii. The means, even if rationally connected to the objective in the first sense, should impair as little as possible the right or freedom in question.
 - iii. There had to be a proportionality between the effects of the measures which were responsible for limiting the charter right or freedom, and the objective which had been identified as of sufficient importance.
39. On legitimate objective, the Respondent asserts that the liquid capital requirement serves several legitimate objectives: protecting investors, ensuring operator stability, and maintaining market integrity. These align directly with CMA’s statutory mandate under Section 11(1)(d) of the *Capital Markets Act* to “protect investor interests.” Investor protection is undoubtedly a legitimate government objective, particularly in financial markets where information asymmetries and risks of fraud are significant.
40. On Rational Connection the requirement that operators maintain substantial liquid capital is rationally connected to investor protection. Liquid capital serves as a financial buffer against operational risks, ensures continuity of service, and provides recourse for investors in case of platform failures. This connection is well-established in financial regulation jurisprudence globally.
41. On Minimal Impairment, the Petitioner argues that less restrictive alternatives could achieve the same objectives, such as requiring insurance or implementing graduated capital requirements based



on platform size. However, the Respondent counters that liquid capital provides direct, immediate protection that alternatives cannot replicate. On balance, the Court finds that the Petitioner has not demonstrated that equally effective but less restrictive alternatives exist.

42. On Proportionality, the final proportionality assessment weighs the regulation's benefits against its impacts. While the KES 10 million requirement may limit market entry for some operators, this must be balanced against the substantial investor protection benefits. Given the risks inherent in crowdfunding, including potential for fraud, platform insolvency, and investor losses, I am satisfied that the requirement is proportionate.
43. The Court therefore finds that regulation 6(c) satisfies the article 24 proportionality test and does not violate articles 10 or 27 of the Constitution.

Whether the Respondent's issuance of a cease-and-desist letter and instructions to freeze the Petitioner's bank accounts violated the Petitioner's Right to property under Article 40 and right to fair administrative action under Article 47.

44. The Respondent's actions in September 2024 present another contentious issue in this case. The Petitioner characterizes these measures as draconian and unjustified, while the Respondent maintains they were necessary to prevent ongoing regulatory violations.
45. The legal framework for these actions derives from Section 11(3)(c)(ii) of the Capital Markets Act, which empowers CMA to issue cease-and-desist orders, and Section 13B(1)(a), which grants investigative powers. The critical question is whether these powers were exercised reasonably and proportionately.
46. The record shows that the Respondent acted after discovering the Petitioner's website claimed it was "regulated by CMA" despite lacking approval (Annexure VOO7). This misrepresentation could have seriously misled investors, creating significant risks of financial harm. In such circumstances, regulatory intervention was not only justified but necessary.
47. The account freezes, while severe, were temporary measures taken during an active investigation into potential unlicensed fundraising activities. Such measures are common in financial regulation when there is evidence of ongoing violations that could prejudice the public. The Courts have accepted that funds in a bank account fall within the broad language of Article 40(1); nonetheless, access may be curtailed where a regulator or court proceeds under a clear statutory mandate. It is explicit that though Article 40 protects any property capable of ownership, including bank accounts, investigatory restraints imposed on reasonable suspicion do not of themselves amount to unconstitutional deprivation.
48. The Supreme Court in Popat & 7 others v Capital Markets Authority [2020] KESC 3 (KLR) affirmed that the CMA's overlapping investigative and enforcement powers in s.11 and s.13B of the Act are constitutionally valid provided the Authority remains within the bounds of fairness and proportionality set by articles 24 & 47. The Court thus stated in the words of the Canadian Supreme Court in *Brosseau Case*, quoting Wright J's observation in the *Latimer Case*, the court must ensure that a party:

“ ... is not unfairly dealt with or put in a position of potential unjustified peril at the hands of some person or body exercising jurisdiction. It must on the other hand [ensure that] ... bodies seeking to perform their public duty are not unduly hampered in their work and



that the purpose of the Legislature, if it be the source of their jurisdiction, is respected and realized as it has been expressed.”

49. In the present case, the cease-and-desist letter and freeze were the least restrictive means available to halt an apparently ongoing misrepresentation to the investing public.
50. Courts must weigh the public interest risk created by the impugned conduct against the burden placed on the regulated person. Protecting investors and maintaining market integrity is a legitimate, weighty objective that can justify swift administrative action. The petitioner, mis labelling itself as being “regulated by CMA” directly threatens that objective and therefore does not pass the rational connection limb of the four-part proportionality test under Article 24.
51. Article 47 demands prompt disclosure of reasons and an opportunity to be heard “without unreasonable delay”. The petitioner avers that the Respondent act of freezing its account and writing to it cease-and- desist letter without due cause violates its right to fair administrative action under article 47 of the *Constitution*. On the other hand, the Respondent wrote to the Petitioner outlining the measures it can take regarding the refusal to be admitted to that platform and advising on the appropriate measures to be taken. Further, the Respondent wrote to the Petitioner a letter of cease-and-deceit from before freezing its bank account. Once a notice to show cause and disclosure of evidence is supplied, the right to fair administrative action is satisfied.
52. In the case of *Commissioner General, Kenya Revenue Authority v Silvanous Onema Owaki t/a Marenga Filling Station* the Court of Appeal held that the right to be heard must be determined according to the statutory scheme which sets out the duties of the statutory corporation and the rights of the subject.
53. In the Present case, the Respondent cited the statutory provisions relied on; identified the specific misrepresentation; limited the freeze to the investigation period; and offered the Petitioner the right to make representations under s. 11A of the Act. These steps track the mandatory procedural minima in s. 4(3)–(4) FAAA. Furthermore, the petitioner did not properly demonstrate how his right to fair administrative action was violated.
54. In the same manner, the petitioner asserted that its rights under articles, 27,28,29,40 and 47 were violated. It is clear that the petitioner did not properly and with the required precision demonstrate how these rights were infringed by the respondent herein. It simply quoted the provisions of the *Constitution* but did not precisely or sufficiently demonstrate by way of evidence how those rights were infringed by the respondent.
55. Subsequently, this court finds these actions were reasonable exercises of the Respondent’s statutory powers and did not violate the constitutional rights of the Petitioner.
56. Consequently, I find that the petitioner herein failed to prove its case to the required standard. The upshot is that the petition dated 4th October,2024 lacks merit and is accordingly dismissed and each party shall bear its own costs.
57. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2025.

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BAHATI MWAMUYE

JUDGE

