



REPUBLIC OF KENYA



**Greenboot Kenya Limited v Kenya Revenue Authority & another (Petition E433 of 2021)
[2025] KEHC 4934 (KLR) (Constitutional and Human Rights) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4934 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E433 OF 2021

LN MUGAMBI, J

APRIL 28, 2025

BETWEEN

GREENBOOT KENYA LIMITED PETITIONER

AND

KENYA REVENUE AUTHORITY 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

Introduction

1. The petition dated 29th September 2021, is supported by the petitioner's affidavit in support of even date sworn by its Director, William Oduor. The petition is additionally supported by Dan Onyango Oduor's affidavit, the Director of Wildan Clearing and Forwarding Agency sworn on 23rd May 2022. The two deponents adopted their affidavits and the annexures thereto during the hearing of the matter.
2. The petition berates the conduct of customs officers from the respondent based at the Port of Mombasa for the manner in which they handled the Petitioner's Director and the Petitioner's consignment which the Petitioner complains was a violation of rights and fundamental freedoms under Article 27(1), 28, 40(1), 46, 47 of *the Constitution*.
3. Accordingly, the petitioner seeks the following reliefs against the 1st respondent:
 - i. A declaration that the petitioner's consignment described as Agro-Fresh fruit cooling chamber machine (No. PCIU 8251722) customs entry No. 2016MSA 5970962 was unlawfully, illegally and irregularly detained and auctioned by the respondents.



- ii. A declaration that the 1st respondent has violated and contravened the rights and freedoms of the petitioner as particularized in the petition herein including the right to equal protection of the law; right to dignity, access to information; acquisition and ownership of property, consumer rights & fair administrative action.
- iii. An award for damages for violation and contravention of the fundamental rights and freedoms of the petitioner.
- iv. An order for compensation for the loss suffered by the petitioner particularized as follows:
 - Item
 - a. Agro-Fresh fruit cooling chamber machine (No. PCIU 8251722) – Ksh.4,853,664.
 - b. Document processing and freight charges – Ksh. 770,945.
 - c. Duty and Handling fees – Ksh. 186,272.
 - d. Auxiliary costs (Technician expenses, transport and accommodation) – Ksh. 289,410.
 - Total cost – Ksh.6,100,291
- v. An order awarding costs of the petition to the petitioner.
- vi. Any other or further orders, writs and directions this Court considers appropriate and just to grant for the purpose of the enforcement of fundamental rights and freedoms of the petitioner.

Petitioner's Case

4. The petitioner depones that in April 2016 it imported a consignment known as Agro-Fresh fruit cooling chamber machine (No. PCIU 8251722) and paid an import duty of Ksh.186,272. The clearance of the consignment was to assigned to the firm of Wildan Clearing and Forwarding Limited.
5. He depones that upon payment of the import duty, the 1st respondent proceeded to physically verify the consignment. The consignment had been imported and packaged in 21 pieces since the machine could not be transported whole. The verification process was done in the Petitioner Director's presence and the clearing agent.
6. Following the verification, the 1st respondent's custom officer stated that an additional Kshs.2,700,000 for the clearance of the consignment. This custom officer alleged that the consignment contained construction equipment despite it being an agricultural equipment. The petitioner disputed this amount which he described as suspicious as the said officer refused to issue an invoice for the additional amount.
7. The Petitioner depones that in view of this fact, it applied for an exemption of duty from the Ministry of Agriculture, Livestock & Fisheries which was granted vide a letter dated 24th May 2016. In addition, the Ministry confirmed that the consignment machine was for horticultural use.
8. This particular correspondence was submitted to the 1st respondent's head office at Nairobi. The 1st respondent in a letter dated 9th June 2016 communicated the information to the Chief Manager, Ports Operations in Mombasa, directing that the consignment be released.
9. In blatant disregard of the said letter, the 1st respondent's customs officers at Mombasa instead went ahead to subject the petitioner to further interrogation insisting that the consignment was construction material.



10. The customs officers at Mombasa further demanded an exemption letter from the Ministry of Industry, Trade and Cooperatives and a declaration from the Kenya Bureau of Standards (KEBS).
11. The petitioner complied and obtained a waiver from the Ministry Industry, Trade and Cooperatives vide a letter dated 30th September 2016 and an approval from the KEBS on 3rd October 2016.
12. It is alleged that upon submission of these two letters to the 1st respondent's customs officers, he was detained on the claim that the letters were forged. After hours of ridicule and harassment by the officers he was released and not informed of the status of his consignment.
13. He asserts that when it became apparent to the 1st respondent's customs officers that the petitioner was not willing to part with Ksh.2,700,000, they suspended its clearing agents Simba account. This is an online portal where a clearing agent monitors the progress of a consignment. The officers additionally continued to detain the consignment on a claim that it was being investigated for fraud. It is averred that these alleged investigations are yet to be completed.
14. He states that following numerous follow ups on the progress of the investigations, the petitioner was informed by the 1st respondent vide a letter dated 5th March 2020, that its consignment had been sold at a public auction on 29th August 2017 on the basis that they were overstayed goods.
15. The petitioner faults the 1st respondent's customs officers' actions as one that was actuated by malice. He asserts that the 1st respondent misled the petitioner under the guise of the purported investigations. He discloses that he was even required to record a statement on 23rd July 2020 in regard to the investigations.
16. He claims that his consignment was sold illegally with the petitioner and its representatives being kept in the dark and being denied any information concerning the consignment. He contends that this is an abuse of office on the part of 1st respondent.
17. He additionally avers that the petitioner's several attempts to resolve the matter using Alternative Dispute Resolution (ADR) mechanisms have been futile as the 1st respondent in a letter dated 4th November 2020 communicated its inability to get involved in that option.
18. Dan Onyango Oduor in his affidavit restated what was in the petitioner's deposition as outlined herein above.

1st Respondent's Case

19. In rejoinder, the 1st respondent filed two sets of replying affidavits. The first was by its officer and Chief Manager in the Customs and Border Control department at Mombasa, Rosemary Mureithi sworn on 16th March 2022 and the second, through its officer, Nelson Obonyo sworn on 23rd June 2023.
20. Rosemary Mureithi depones that the petitioner imported the said consignment in April 2016. Upon presentation of the entry documents, the 1st respondent noted that the petitioner had claimed that the goods are exempt from taxes. As a result, the 1st respondent sought to undertake verification of the consignment to ascertain this fact. They also sought further documentation from the petitioner. She alleges that the clearing agent took a long time to issue the requested documents thus the 1st respondent, imposed taxes.
21. She informs that ordinarily one is supposed to seek and obtain the requisite exemptions prior to importation of a consignment. However, in this case, the petitioner was seeking these exemptions after



- the consignment had arrived at the Port. She avers that by late September 2016 the petitioner had not obtained these exemptions.
22. She avers that as per Section 34(4) of East African Community Customs Management (EACCMA) where goods remain uncleared within 21 days the same are moved to a customs warehouse. If they are not removed within 30 days, the consignment is auctioned as it is deemed abandoned under Section 42.
 23. She depones that the petitioner's consignment was gazetted for auction on 7th April 2017 under LOT number 393/17. This was after being at the customs warehouse for over 10 months. The consignment was later offered for sale on 29th August 2017 and sold to CUMA refrigeration East Africa Limited vide F147 No.2017 MSA 1163910.
 24. She furthermore avers that the two events, recording of a statement by the petitioner and suspension of the clearing agent's account was part of the 1st respondent's enforcement measures.
 25. In view of the foregoing, she asserts that the 1st respondent acted within the confines of the law and as such the petitioner's rights were not infringed as alleged. Instead, she argues that the petitioner was indolent in pursuing the matter.
 26. In closing, she avers that the instant case does not meet the threshold of constitutional petitions as set out under *Anarita Karimi Njeru vs Republic (1979) eKLR*. This is because the petition is a claim for damages clothed as a constitutional petition so as to evade the operation of the Limitations of Actions Act. For this reason, she avers that the instant suit is civil in nature.
 27. Nelson Obonyo in addition to the foregoing, avers that the petitioner's clearing agent, Dan Onyango on 19th April 2016 lodged an entry 2016MSA5970962 and initiated the process of clearing the consignment. The petitioner in this regard also issued the Bill of Landing. As deponed, he notes that the petitioner was required to submit further documentation and provide the technical literature of the consignment.
 28. He depones that when the verification exercise was completed, the petitioner was informed that an examination account report would be issued.
 29. He avers that when the petitioner received the report, disputed it and wrote to the Ministry of Agriculture. This communication resulted in a response and a confirmation of the exemption of the consignment from payment of duty. This is because it is classified for horticultural use.
 30. He states that when the petitioner presented the exemption letter to the officials in Mombasa, it was informed that its clearing agent was being investigated leading to suspension of his account. In addition, the petitioner was told that it did not have a Pre-export Verification of Conformity (PVOC) exemption from KEBS which is mandatory. He notes that the petitioner proceeded to get this exemption. Upon presentation of this letter, he avers that the petitioner was arrested on the claims that the letter was forged. The petitioner was released once KEBS confirmed the authenticity of the letter.
 31. He informs that when the petitioner, yet again presented these documents to the officers, they were told that its clearing agent was still under investigation and would be called once the investigation was finished.
 32. On this premise, he echoes that petitioner contrary to the norm, sought the required exemptions after the consignment had arrived at Mombasa. According to him, the 1st respondent gave the petitioner enough time to clear and remove the consignment but the failed to do so resulting in the actions that was undertaken by the 1st respondent.



2nd Respondent's Case

33. The 2nd respondent's response and submissions to the petition are not in the Court file or Court Online Platform (CTS).

Petitioner's Submissions

34. The petitioner in support of its case through Caroline Oduor & Associates Advocates filed submissions dated 12th January 2024 and supplementary submissions dated 19th July 2024.
35. Counsel relying on the petitioner's exhibits submitted that the petitioner's consignment was identified as a horticultural equipment by the Ministry of Agriculture, Livestock and Fisheries in its letter dated 24th May 2016 hence was legally exempted from the PVOC certificate as claimed by the 1st respondent. Counsel further noted that the 1st respondent also acknowledged this fact in its Gazette Notice for the consignment's auction.
36. As such, Counsel argued that the 1st respondent ought not to have withheld the consignment on that ground. To buttress this point reliance was placed under Paragraph 15 under Part B of the Fifth Schedule of the EACCMA which concerns exemption of horticulture, agriculture or floriculture imports.
37. Counsel further submitted that the petitioner had throughout, contrary to the 1st respondent's claims diligently followed up on the status of its consignment but was consistently frustrated by the 1st respondent's customs agents.
38. Particularly, Counsel pointed out that the respondent's officials had demanded Ksh.2,700,000 from the petitioner; maliciously classified its consignment as construction material; demanded the PVOC certificate form KEBS; blatantly disregarded the 1st respondent's directive dated 9th June 2016; suspension of the petitioner's clearing agent's account; unlawfully detaining the petitioner's director; alleging that there was an investigation of the consignment; withheld information and finally auctioning the consignment.
39. In light of this, Counsel submitted that the 1st respondent's actions were indicative of an elaborate scheme to detain the consignment while frustrating the petitioner and its clearing agent until the legal withholding period had lapsed automatically invoking the operation of Section 42 (1) of the EACCMA.
40. Counsel likewise submitted that this petition raises constitutional issues. This is because the cause of action is based on an act and omission that results in an infringement of the petitioner's rights as envisaged under *the Constitution*.
41. In this matter, Counsel submitted that the petitioner had demonstrated that its consignment had been illegally detained by the respondent while also frustrating and violating the petitioner's director, William Oduor's right to dignity by unlawfully detaining him. The respondent's actions are argued to have been in violation of their rights under Article 27(1), 28, 40(1), 46, 47 of *the Constitution*.
42. Reliance was placed in *Fredricks & Others vs MEC for Education and Training, Eastern Cape & Others* (2002) 23 ILJ 81 (CC) where the Court held as follows:

“*The Constitution* provides no definition of 'Constitutional Matter'. What is a constitutional matter must be gleaned from a reading of *the constitution* itself: if regard is had to the provisions of *the Constitution*, constitutional matters must include disputes as to whether



any law or conduct is inconsistent with *the constitution*, as well as issues concerning the status, powers and functions of an organ of state ... the interpretation, application and upholding of *the constitution* are also constitutional issues. So too ... is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the bill of rights. If regard is had to this and to the wide scope and application of the bill of rights and to the other detailed provisions of *the constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested In the constitutional court to determine constitutional matters and Issues connected with decisions on constitutional matters is clearly on extensive jurisdiction ...”

43. Like dependence was placed in L.A.W & 2 Others vs Marura Maternity & Nursing Home & 3 Others (2023) e KLR, Minister of Safety & Security vs Lulters (2007) 28 ILJ 133 (CC) and Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others (2014) eKLR.
44. In view of the foregoing, Counsel submitted that the petitioner had clearly demonstrated the violation of its rights as can be gleaned from the evidence adduced. For this reason, Counsel submitted that the petitioner was entitled to the relief sought. Dependence was placed in L.A.W & 2 Others (supra) where it was held that:

“What a court endeavors to do upon confirming any infringement is to grant an appropriate remedy. Even in instances where a party fails to ask for a specific relief, a Court depending on the nature of the matter ought to craft an appropriate relief.”
45. Reliance was placed in Total Kenya limited vs Kenya Revenue Authority (2013) e KLR, Fose vs Minister of Safety & Security Cl 977) ZACC 6 and Gitobu lmanyara & 2 Others vs Attorney General (2016) eKLR.
46. On the flipside, Counsel submitted that the respondent had failed to show that its actions were lawful and to adduce evidence to that effect. Counsel stressed that the petitioner having adduced evidence to collaborate its averments, it was then incumbent on the respondent to rebut its claims by demonstrating that the consignment was handled lawfully. Counsel claims that no such evidence was submitted by the respondent.
47. Moreover, Counsel submitted that the respondent had not justified why the petitioner’s rights had been limited in the manner it had. Counsel pointed out that Nelson Obonyo in his testimony indicated that he was not aware whether any written information on the consignment had been shared to the petitioner or its clearing agent.
48. Reliance was placed in Ahmed Mohamed Noor vs Abdi Aziz Osman (2019) eKLR where it was held that:

“For clarity, the legal burden of proof in a case is always static and rests on the Claimant throughout the trial. It is only the evidential burden of proof that may shift to the Defendant depending on the nature and effect of the evidence adduced by the claimant.”
49. Like dependence was placed in Raila Amollo Odinga & Another vs IEBC & 2 Others (2017) eKLR, Karen Nieri Kandie vs Allassane Ba & Another (2017) eKLR and Zachary Waqunza & Another vs Office of the Registrar Academics Kenyatta University & 2 Others (2013) eKLR.



Respondent's submissions

50. On 4th March 2024, the respondent's Counsel Chelang'at Mutai filed submissions and highlighted the issues for discussion as: whether the matter meets the threshold of a Constitutional petition; whether the 1st respondent acted lawfully in disposing of the petitioner's consignment through a public auction and whether there was a violation of the petitioner's constitutional rights by the 1st respondent.
51. On the first issue, Counsel submitted that the petitioner had failed to precisely capture the particulars of the alleged violation of its constitutional rights and the nature of injury caused to the 1st respondent. Reliance was placed in *Dr. Rev. Timothy Njoya vs The Hon. Attorney General and Kenya Review Authority HC Constitutional and Human Rights Division Petition No. 479 of 2013* where it was held that:
- “The Petitioner cannot come to court to seek facts and information he intends to use to prove the very case that he is arguing before the court. He must also plead his case with some degree of precision and set out the manner in which *the Constitution* has been violated by whom and even state the Article of *the Constitution* that has been violated and how it has been violated.”
52. Comparable dependence was placed in *Communications Commission of Kenya (supra)* and *Anarita Karimi (supra)*.
53. Additionally, Counsel submitted that the instant matter was a civil suit disguised as a constitutional petition so as to escape the provisions of the *Limitation of Actions Act*. Specifically, Counsel submitted that the claim is tortious in nature as the petitioner alleges the 1st respondent's invasion of its right to property. Counsel emphasized thus that the petitioner according to Section 4(2) of the *Limitation of Actions Act* had failed to institute this suit within 3 years. On these two points, Counsel argued that this Court lacks jurisdiction to entertain this matter.
54. Turning to the second issue, Counsel relying on the 1st respondent's averments submitted that the respondent had conducted itself lawfully in the circumstances on this case. This is as empowered under Section 34 and 42 of the EACCMA. Counsel equally asserted that the petitioner had failed to adduce any evidence to show that the 1st respondent had acted unlawfully while handling and disposing of the consignment.
55. Reliance was placed in *Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR* where it was held that:
- “As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (1) of the *Evidence Act* (Chapter Bo of the Law of Kenya).”
56. Finally, Counsel submitted that the 1st respondent had not violated the petitioner's rights as alleged. This is since the 1st respondent carried out its functions within the law. Additionally, Counsel submitted that the petitioner's director had also failed to demonstrate that he was held unlawfully by the 1st respondent and that information was not supplied as claimed.
57. Reliance was placed in *Leonard Otieno v Airtel Kenya Limited [2018] eKLR* where it was held that:
- “It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of



constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize *the Constitution* and inevitably result in ill-considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses."

58. To this end, Counsel submitted that the petitioner had failed to prove its allegations against the respondent and thus the petition ought to fail.

Analysis and Determination

59. It is my considered view that the issues that arise for determination are as follows:
- i. Whether the petition satisfies the threshold of a constitutional petition.
 - ii. Whether the petition raises a constitutional question
 - iii. Whether the petitioner's constitutional rights under Articles 27, 28, 35, 40, 46 and 47 of *the Constitution* were violated by the respondent; and
 - iv. Whether the petitioner is entitled to the relief sought.

Whether the petition satisfies the threshold of a constitutional petition

60. This relates to how Constitutional claims should be pleaded or framed. Like any other pleading, a Constitutional Petition must not be ambiguous. It must be pleaded with reasonable degree of clarity and precision in which the articles of *the Constitution* alleged to have been violated are clearly identified and a description of how the violation was accomplished provided. This ensures that the adversary has sufficient details of the case it is required to answer and defend so as to avoid an embarrassing trial.
61. The celebrated case of Anarita Karimi Njeru vs Republic (1979) eKLR laid down this principle. The Court in Kotikash (suing as the next friend of Sironka Kotikash) v Kuyo & 5 others [2022] KEELC 13487 (KLR) cited the case with approval stating thus:

"

- "17. The ingredients of a constitutional petition was clearly formulated in the case of Anarita Karimi Njeru vs Republic (1979) eKLR where it was partly stated as follows: -

"We would, however, again stress that 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 a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."

62. This principle was also affirmed by the Supreme Court in Communications Commission of Kenya and 5 others v Royal Media Services Limited and 5 others [2014] eKLR as follows:

"(349) Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her



grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru v. Republic*, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement...”

63. According to the 1st Respondent, the Petition does not precisely capture the particulars of the alleged violation and the nature of the injury caused hence fails the threshold test.
64. In determining this issue, I only need to examine the Petition dated 29th September, 2021 to find out if it satisfies the threshold of a constitutional petition or not.
65. A perusal of the Petition shows that between paragraphs 33 and 39, the Petitioner has identified and outlined various articles of *the Constitution* that he alleges the 1st respondent through its officer violated. They include Articles 27, 28, 35, 40, 46, 47 and 73 of *the Constitution*.
66. Further between paragraphs 42 to 48; under the heading; ‘NATURE OF THE INJURY CAUSED TO THE PETITIONER’ the Petitioner has provided a factual description of the respondent’s offensive conduct towards the Petitioner’s goods and also its director which formed the basis of filing this Petition.
67. In view of my above observations, I find the claim by the respondent that the Petition fails to meet the threshold of a constitutional petition to be devoid of any merits and thus reject it. The Petition as pleaded is sufficient to inform the respondent of the case it was to meet and defend without being embarrassed at all.

Whether the petition raises a constitutional question

68. When parties institute ordinary disputes that can conveniently be resolved by application of the statute or any other legal means camouflaging them as constitutional petitions, the court may decline to hear such suits. The principle of constitutional avoidance applies to bar cases disguised as constitutional matters yet they do not raise constitutional questions. When such an issue is raised the Court has a duty of the Court to determine if the dispute before is of a constitutional nature or not.
69. An attempt was made by the Court in *Hakizimana Abdoul Abdulkarim v Arrow Motors (EA) Ltd & another* [2017] KEHC 9674 (KLR) to explain what should guide the Court in establishing whether a matter raises a constitutional question or not. In that case, the Court explained thus:

“

“37. A constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute... When determining whether an argument raises a constitutional issue, the court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the court to consider Constitutional rights or values. The issues stated above fall mostly in the realm of negligence, contract, breach of implied terms or conditions only to mention but some...”

40. The question of what constitutes a constitutional question was ably illuminated in the South African case of *Fredericks & Others vs MEC for Education and Training, Eastern Cape & Others* in which Justice O’Regan recalling the Constitutional Court’s observations in *S vs. Boesak* notes that:-



“*The Constitution* provides no definition of “constitutional matter.” What is a constitutional matter must be gleaned from a reading of *the Constitution* itself: If regard is had to the provisions of*the Constitution*, constitutional matters must include disputes as to whether any law or conduct is inconsistent with *the Constitution*, as well as issues concerning the status, powers and functions of an organ of State....., the interpretation, application and upholding of *the Constitution* are also constitutional matters. So too,....., is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly an extensive jurisdiction.”

41. Put simply, the following are examples of constituting constitutional issues; The constitutionality of provisions within an Act of Parliament; the interpretation of legislation, and the application of legislation. At the heart of the cases within each type or classification is an analysis of the same thing – the constitutionally entrenched fundamental rights. Therefore the classifications are not discreet and there are inevitably overlaps, but the classifications are nonetheless useful theoretical tools to organize an analysis of the nature of constitutional matters arising from the cases before the Court.

42. The Petition before me does not raise any constitutional questions at all. This court abhors the practice of parties converting every issue in to a constitutional question and filing suits disguised as constitutional Petitions when in fact they do not fall anywhere close to violation to constitutional Rights.”

70. Correspondingly, in *Munene vs Director of Public Prosecutions & 3 others* [2023] KEHC 25900 (KLR) the Court held as follows:

“ 27. The jurisdiction of the High Court in dealing with Constitutional Petitions is properly invoked once a Petition that complies with the constitutional and legal requirements is lodged. The Court must, therefore, decline any invitation by a Petitioner to deal with an alleged Petition which falls short of the laid down parameters on Constitutional Petitions.”

71. On this premise, the Court went on to discuss what constitutes a constitutional issue as follows:

“

“ 36. The South African Constitutional Court in *Fredricks & Other vs. MEC for Education and Training, Eastern Cape & Others* (2002) 23 ILJ 81 (CC), rightly so, delimited what a constitutional issue entails and the jurisdiction of a Constitutional Court. It stated as follows: -

The Constitution provides no definition of ‘constitutional matter’. What is a constitutional matter must be gleaned from a reading of *the Constitution* itself: if regard is had to the provisions of... Constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with *the Constitution*, as well as issues concerning the status, powers and functions of an organ of State.... the interpretation, application and



upholding of *the Constitution* are also constitutional issues. So too is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...

37. In the United States of America, a constitutional issue refers to any political, legal, or social issue that in some way confronts the protections laid out in the US Constitution.

38. Taking cue from the foregoing, and broadly speaking, a constitutional issue is, therefore, one which confronts the various protections laid out in a Constitution. Such protections may be in respect to the Bill of Rights or the rest of *the Constitution*. In any case, the issue in dispute must demonstrate the link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened or threatened and the manifestation of contravention or infringement.

39. The words of Learned Judge Langa, J in *Minister of Safety & Security vs. Luiters*, (2007) 28 ILJ 133 (CC) captured the essence of a constitutional issue. The Judge had the following to say: -

... When determining whether an argument raises a constitutional issue, the Court is not strictly concerned with whether the argument will be successful. The question is whether the argument forces the Court to consider constitutional rights and values..."

72. Where a constitutional question is found lacking, the court has recourse to the doctrine of constitutional avoidance which allows it to decline jurisdiction to hear such a Petition as a constitutional matter. The Supreme Court in *Communications Commission of Kenya & 5 others vs Royal Media Services Limited & 5 Others* [2014] eKLR discussed this principle as follows:

“

“(256) The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]: “I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

(257) Similarly the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)).”



73. Correspondingly, in *Council of Governors v Attorney General & 5 others* [2018] KEHC 10243 (KLR) the Court expressed itself as follows:

“59. The doctrine of avoidance is primarily viewed by courts from the position that although a court could take up a matter and hear it, it would still decline to do so if there is another mechanism through which the dispute could be resolved. In that regard, the Supreme Court stated in *Communication Commission of Kenya & 5 Others v Royal Media Services Ltd & 5 others* (supra) (at para 256) that the principle of avoidance means that a Court will not determine a constitutional issue when a matter may properly be decided on another basis.

60. In the South African case of *S v Mhlungu*, [1995] (3) SA 867 (CC), Kentridge AJ, stated in the dissenting opinion respecting the principle of avoidance (at paragraph 59), that he would lay down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed. And in *Ashwander v Tennessee Valley Authority*, 297 U.S. 288, 347 (1936)), the U.S. Supreme Court held that it would not decide a constitutional question which was properly before it if there was also some other basis upon which the case could have been disposed of.”

74. The instant petition raises issues relating to violation various constitutional rights, namely under Article 40, 28, 29, 35 and 47 among others. An alleged violation of rights and fundamental freedoms in the Bill of Rights is not an issue that to be taken lightly. The Petition certainly evokes constitutional questions which this Court has a constitutional duty to determine under Article 23 (1) as read with Article 165 (3) (b) of *the Constitution*. A person who comes to the High Court for enforcement of rights and fundamental freedoms under the Bill Rights cannot be turned away as one trying to trivialize constitutional litigation. This argument by the respondent must thus flop.

Whether the petitioner’s constitutional rights under Articles 27, 28, 35, 40, 46 and 47 of *the Constitution* were violated by the respondent;

75. It was incumbent upon the petitioner to prove the alleged violation of its constitutional rights as it shoulders the burden of proof pursuant to the provisions of the *Evidence Act*, Cap 80 Laws of Kenya which provides as follows:

Section 107 provides thus:

Burden of proof

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

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

108. Incidence of burden

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

109. Proof of particular fact



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

76. In *Edward Akong'o Oyugi & 2 others v Attorney General (2019)eKLR* the Court held as follows:

“73. Whether one likes it or not, the legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA in *Britestone Pte Ltd vs Smith & Associates Far East Ltd*[38] :-

“The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him”

74. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Court decisions cannot be made in a factual vacuum. To attempt to do so would trivialize *the Constitution* and inevitably result in improper use of judicial authority and discretion. It will be a recipe for ill-considered opinions. The presentation of clear evidence in support of such prejudice is a prerequisite to a favourable determination on the issue under consideration. Court decisions cannot be based upon the unsupported hypotheses.”

77. The two facets of the burden of proof were judiciously explained by the Court in *Sagala v Sagala [2024] KEHC 5573 (KLR)* where it stated thus:

“the burden of proof is a legal doctrine which principally deals with the duty of a party or parties to adduce evidence in a matter in proof of a certain fact. The standard of proof relates to the evidential threshold required for a claim to be considered as having been proved.

58. The issue of the burden of proof has two facets. There are the legal burden of proof and the evidential burden of proof.

59. Sections 107(1), (2) and 109 of the *Evidence Act*, Cap. 80 of the Laws of Kenya deals with the burden of proof. They states as under: -

Sections 107(1) and (2):

1. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

and

Section 109:

Proof of particular fact

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



60. The foregoing provisions bring out what is referred to as the legal burden of proof. That burden remains on the Claimant throughout the case.
61. ..
62. There is also the evidential burden of proof. This legal principle was discussed in Bungoma High Court Election Petition No. 2 of 2017 Suleiman Kasuti Murunga v IEBC & 2 Others [2018] eKLR as under: -
26. The Petitioner on whom the legal burden of proof lies may or may not adduce sufficient and admissible evidence in proof of any of the allegations in the Petition. On one hand, if no sufficient evidence is adduced to the required standard, then the allegation(s) fail and it all ends there. On the other hand, if evidence is adduced to the satisfaction of the Court that an election ought to be impugned, then it becomes the burden of the Respondent(s) to adduce evidence rebutting the allegations and to demonstrate that the law was complied with and/or that the irregularities did not affect the result of the election. At that point the burden is said to shift to the Respondents. That is the evidential burden of proof..”
78. The Petitioner made depositions through the affidavit of petitioner’s director William Odour sworn on 29th September, 2021 supported by annexures thereof as proof of the violations of fundamental rights, notably under Articles 28, 29, 35, 40, 47 among others. This was supported by the affidavit of Dan Onyango, Petitioner’s clearing agent as per the affidavit dated 23rd May, 2022.
79. The Respondent through the replying affidavits of two of its officers, Nelson Obonyo sworn on 23rd June, 2023 and that of Rosemary Mureithi of 16th March, 2022 sought to rebut the evidence presented by the petitioner to absolve the respondent from the blame piled against it through this Petition.
80. In a nutshell, Petitioner put forth a case that it was unjustifiably treated by the 1st Respondent’s custom officers at the Port of Mombasa who refused to clear its consignment- an Agro-Fresh fruit Chamber Machine which it had imported through the Port of Mombasa in April 2016 despite fulfilling all the requirements.
81. The Petitioner stated that a dispute arose when product arrived and a duty of Kshs. 186, 272 through its clearing agent was paid. The respondent officers demanded to physically verify the equipment after which they alleged it was not an agricultural equipment but a construction equipment which attracted a higher duty, being an additional sum of Kshs. 2,700,000.
82. A standoff ensued between the Petitioner and the custom officers of the respondent who insisted that the consignment could not be released unless the petitioner could seek confirmation from the Ministry of Agriculture that the product was agricultural equipment and also seek the exemption from paying duty for the same from the said ministry.
83. The Petitioner pursued the matter as advised and on 24th May, 2016; the Ministry of Agriculture, Livestock and Fisheries, (State Department of Agriculture Development) not only clarified that the imported product was agricultural equipment but also that it was exempted from duty. The Petitioner presented the letter to the respondent’s Head Office. The Respondent Headquarters vide a letter on 9th June, 2016 wrote to its Customs Officers at the Port of Mombasa instructing that the consignment should be released to the Petitioner on the strength of the letter by the Ministry of Agriculture.



84. This was however the beginning of the Petitioner's endless frustrations. The customs officers at the port of Mombasa did not heed to the written instructions from their own Headquarters. Instead, they further directed the petitioner to seek an additional exemption from Ministry of Industry, Trade and Cooperatives and a clearance from the Kenya Bureau of Standards.
85. The Petitioner did as demanded and went ahead to obtain the Ministry of Industry exemption letter dated 30th September, 2016 and the Kenya Bureau of Standards clearance dated 3rd October, 2016. That was not good enough though.
86. The day he presented the documents to the customs officers at the Port of Mombasa; he was instead arrested and locked up for the better part of that day on allegations that the documents were forged. He was released later in the day when the validity of his documents was confirmed by the issuing authorities.
87. Despite the documents being confirmed genuine, the consignment was not released to the Petitioner.
88. Instead, it was clandestinely advertised in the Kenya Gazette Notice on 7th April, 2017 and sold on 29th August, 2017 by public auction on the premise that the goods had overstayed in the custom warehouse citing section 42 of the East Africa Community Customs Management Act (hereafter, EACCMA).
89. The Respondent through its officers, Rosemary Mureithi and Nelson Obonyo swore replying affidavits on 16th March, 2022 and 23rd June, 2023 respectively in response to this Petition. The officers stated that the Petitioner imported the commodity which he claimed was duty exempt but had not obtained documents prior to importation to that effect.
90. That it took time for him to provide exemption documents hence after 21 days, the product was transferred to the customs warehouse pursuant to Section 34 (5) of EACCMA.
91. That when the letter from their respondent's head office arrived authorizing the consignment to be released on duty free basis following confirmation by the Ministry of Agriculture; they informed the petitioner that its clearing agent was under investigation. That further, they asked the petitioner to provide the pre-export verification of conformity (PVOC) from the Kenya Bureau of Standards. In the meantime, the Petitioner's agents clearing portal was disabled.
92. The Petitioner acquired the PVOC letter on 3/10/2016. When the Petitioner's director presented the letter at the Port of Mombasa, he was referred to Kilindini Kenya Bureau of Standards (KEBS) main Office and that is where he was arrested on grounds the letter was a forgery but he was released later after the authenticity of the letter was confirmed.
93. However, the Port declined to release the consignment because the agent was still being investigated.
94. The Respondent officers blamed the Petitioner for not seeking exemptions prior to importing the equipment and only doing so after it had landed. They claimed that after 21 days lapsed, by dint of Section 34 of the East African Community Customs Management Act (EACCMA) the product was moved to customs warehouse where if not removed within 30 days may be auctioned by public auction pursuant to Section 42 of EACCMA. They insisted that the respondent gave the Petitioner sufficient time to clear the goods before advertising them for sale by public auction in the Kenya gazette notice of 7th April, 2017 and eventually selling the same on 29th August, 2017.
95. I have set out in detail the respective accounts by both sides to enable me decide whether the actions of the respondent were justified.



96. It is clear from the evidence of both parties that by 3rd October, 2016; the Petitioner had obtained all the requisite exemptions to clear the consignment despite not having done so prior to importing the commodity. Further, by 3rd October, 2016, the product was still in the custom warehouse. Furthermore, by 3rd October, 2016; there is indisputable evidence that the respondent custom officers were already aware that the petitioner had fully complied with all the requirements as he had physically presented all these documents to them, a fact they very well acknowledge in the replying affidavit.
97. By the time the respondent advertised the petitioner's equipment for sale on 7th April, 2017; that was six months post the date when it was confirmed the petitioner had now met all the requirements that had been put on his way to have the equipment released. The product was actually sold on 29th August, 2017; almost 10 months from the 3rd October, 2016 allegedly because it had overstayed.
98. From the evidence presented, one theme seems to run through the respondent's officers' actions.
99. This is a stream of endless excuses every time the petitioner complied with the hurdles placed on its way.
100. Every single time the Petitioner presented proof of compliance, a new condition would spring up. The first instance is when he was told to provide the exemption from the Ministry of Agriculture, Livestock and Fisheries, State Department of Agriculture. He not only secured a letter dated 24/5/16 confirming that the machinery was a horticultural equipment and was duty exempt but this was also backed by a letter from the Respondent's Headquarters instructing that the product be released but the officers based at the Port Office in Mombasa refused and imposed two new conditions, the petitioner was told to obtain a further clearance from the Ministry of Industry, Trade and Cooperative Development and PVoC exemption from the Kenya Bureau of Standards.
101. The Petitioner managed to get these documents dated 30th September, 2016 and 3rd October, respectively.
102. What happened after presentation? The Petitioner's director who was the bearer of the documents was arrested on allegations of presenting forgeries and locked up only to be set free later that day after the validity of the documents was confirmed. Why it was necessary to arrest the Petitioner instead of sending him to await verification of the authenticity of the documents is not explained. It confirms how the respondent's officers take the liberty of a citizens for granted.
103. The fact that the documents were confirmed genuine did solve the petitioner's woes. A new hurdle was thrown on its way again.
104. He was told the agent he had used was under investigation. No more information was heard from the respondent until much later when the petitioner made follow ups and discovered his equipment had been publicly auctioned by the respondent.
105. If indeed this investigation was the reason for withholding the Petitioner's equipment, why did the respondent then proceed to auction it without reverting to the petitioner on the outcome of these investigations? Again, nothing much is disclosed as to the nature of the said investigations. If indeed the consignment was under investigation as purported, why was it sold before the outcome of the investigations or without directly contacting the petitioner?
106. To date, long after the property was sold, it is not clear if the said investigation is still ongoing considering that despite the equipment having been sold in August, 2017; the Petitioner and the clearing agent were being required to record statements in the year 2020. Dan Onyango Oduor, the clearing agent says in his sworn affidavit that he was approached by the Operations Department of the 1st Respondent to record a statement on 25th August, 2020- annexure 'DOO 3.'



107. In my humble view, the malice exhibited by the respondents' customs officers is extreme and beyond.
108. The deprivation of the petitioner's property was a calculated criminal extortion concealed as lawful pursuit of the law. *The Constitution* in Article 47 guarantees every person fair administrative action by providing as follows in Article 47 (1):
- 47 (1)- Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
109. The question I ask is this, was it reasonable for the respondent to go ahead and advertise for sale an equipment they knew well belonged to the petitioner when he had already complied with all the requirements they had demanded and were already aware of this fact? Is it again reasonable to dispose the property of the petitioner claiming it was subject to investigations then purport to still carry investigations three years after the sale? Is that procedurally fair? I find the respondent's treatment of the Petitioner to be in breach of Article 47 (1) of *the Constitution*.
110. Equally, the manner in which the petitioner property was sold cannot be justified in law. It was in breach of Article 40 of *the Constitution* which prohibits arbitrary deprivation of a person property of any description or of any interest in, or right over, any property of any description.
111. The act of arresting and locking up the Petitioner's Director simply for presenting documents to claim his property was unwarranted. It was an act of embarrassment and an affront to his inherent human dignity for no apparent reason and thus violated Article 28 of *the Constitution*. The groundless arrest of the Petitioner's Director at the instigation of the respondent's customs officers violated Article 29 (a) for denying him his freedom arbitrarily.
112. In view of all the circumstances, I find that the Petitioner has been proved in regard to violation of its rights and fundamental freedoms under Articles 28, 29 (a), 40 and 47 of *the Constitution*.
113. I now proceed to consider the reliefs the Petitioner is entitled to.

Reliefs

114. In considering the appropriate reliefs; I turn to the principles that courts have resorted to in determining reliefs in constitutional infringements.
115. In *Charles Muturi Macharia & 6 Others v Standard-Group & 4 Others* (SC Petition No.13 (E015) of 2022) the Supreme Court steered as follows:
- “(91) By the provisions of Articles 22 and 23 of *the Constitution*, the High Court has the power and authority to enforce and uphold the Bill of Rights in claims of infringements. In proceedings brought by any person claiming that a right or fundamental freedom has been denied, violated or infringed, or is threatened, the court may, under Article 23 grant appropriate relief, including:
- “(a) a declaration of rights
 - (b) an injunction
 - (c) a conservatory order
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under article 24.



- (e) an order for compensation
- (f) an order of judicial review.”

(92) This Court in the case of *Gitobu Imanyara & 2 Others v. Attorney General*, SC Petition No. 15 of 2017, described Article 23 as “the launching pad of any analysis on remedies for Constitutional violations”... As a launching pad, it is acknowledged that the list of six remedies in Article 23(3) is not closed; that the court can grant any other appropriate relief not included in the list; that whether or not to grant a constitutional relief is an act of judicial discretion which must be exercised upon known legal principles and not arbitrarily, whimsically or capriciously.”

116. The Superior Court concluded as follows:

“(94) To answer directly the question posed by this issue, under common law principles, it is settled that an injured party is entitled to damages for the loss and injury suffered under private law causes of action, like in tortious claims. In situations like those, compensation for personal loss depends on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable are broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in Article 23. While it is not necessary to prove loss or damage in cases of constitutional rights violations, the court may consider the extent, nature, gravity and immensity of harm suffered by the aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review will suffice to vindicate the right.

(95) In assessing the appropriate sum to be awarded as compensation, the court must feel satisfied that the sum will afford the victim adequate redress to vindicate the victim’s constitutional right. Assessment of the right quantum for compensation will take into account all the relevant facts and circumstances of the violation and the victim in the particular case, bearing in mind any aggravating features. We stress that the purpose of constitutional relief of an award of compensation is not necessarily intended to punish the violator, but only to vindicate the right of the victim.

....

Therefore, once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violation cases is different from that in tortious claims....”



117. On its part, the Court of Appeal in Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others [2021] KECA 328 (KLR) explained:

“ 15. The relevant principles applicable to award of damages for constitutional violations under *the Constitution* were also explained by the Privy Council in the case of Siewchand Ramanoop vs The AG of T&T, PC Appeal No 13 of 2004. It was held by Lord Nicholls at Paragraphs 18 & 19 that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:

“When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

16. The guiding principle to be gleaned from these decisions is that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.”

118. On punitive damages, the Court of Appeal in Godfrey Julius Ndumba Mbogori & another v Nairobi City County [2018] eKLR guided as follows:

“

“ 32. The appellants claimed for exemplary and punitive damages. Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of Rookes V Barnard [1964] AC 1129 where Lord Devlin set out the categories of case in which exemplary damages may be awarded which are:

i) sem in cases of oppressive, arbitrary or unconstitutional action by the servants of the government,



- ii) cases in which the defendant's conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and
- iii) where exemplary damages are expressly authorized by statute.}}

Lord Devlin also gave expression to 3 considerations which must be borne in mind in any case in which an award of exemplary damages is being claimed. The first category is that the plaintiff himself must be the victim of the punishable behaviour; the second category is that the power to award exemplary damages must be used with restraint for it constitutes a weapon and can be used either in defence of liberty or against liberty and thirdly, the means of the defendant, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages.”

119. Similarly in Abdulhamid Ebrahim Ahmed Vs Municipal Council Of Mombasa[2004]eKLR the Court observed as follows:

“Exemplary damages on the other hand are damages that are punitive. They are awarded to punish the defendant and vindicate the strength of the law. They are awarded in actions in tort, and only in three categories of cases. The first category relates to the oppressive, arbitrary or unconstitutional actions of servants of government. This category is not confined to acts of government servants only but includes those of other bodies exercising functions of a governmental character. The case of Rookes supra related to the acts of a trade union. The reason why exemplary damages are awarded mainly against the government or bodies exercising functions of a governmental character is because the servants of the government are also servants of the people and the use of their power must always be subordinate to their duty of service.”

120. Guided by the principles from the above cited authorities, the Court grants the Petitioner the following reliefs:

- a. A declaration is hereby issued that the respondent officers conduct and actions against the petitioner resulting in arrest, advertising and auctioning and sale of his property namely, Agro-Fresh Fruit cooling Chamber Machine (No. PCIU 8251 722) Customs entry No. 2016MSA 5970962 violated the rights and fundamental freedoms of the Petitioner under Articles 28, 29 (a), 40 and 47 of *the Constitution*.
- b. An order for compensation being special damages for the loss suffered by the Petitioner made up as follows:
 - i. The value of Agro-Fresh Fruit Cooling Chamber Machine (PCIU 8251722) - as per commercial invoice and receipt (annexture WO3) being- 45,600 US Dollars to be multiplied by the current exchange rate for the Kenyan shilling.
 - ii. Duty and handling fees (per annexture WO4) Kshs. 186,272/-
- c) For the unlawful detention and treatment meted by the custom officers of the respondent upon the Petitioner's director, the Court awards general damages of Kshs. 750,000/-.
- d) Costs of this Petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL, 2025.



.....

L N MUGAMBI
JUDGE

