



**Matrix Logistics Limited v County Government of Nairobi (Constitutional Petition E286 of 2024)
[2025] KEHC 9703 (KLR) (Constitutional and Human Rights) (24 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9703 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E286 OF 2024**

EC MWITA, J

JUNE 24, 2025

BETWEEN

MATRIX LOGISTICS LIMITED PETITIONER

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

JUDGMENT

Introduction

1. The petitioner carries on the business of transporting quarry materials within the Republic of Kenya. It owns several trucks, including prime mover KDB 291 W with trailer ZG 1672 (the vehicle).
2. On 5th June 2024, the petitioner's vehicle was transporting sand from Kajiado county to Kiambu county through the City County of Nairobi, the respondent county. The respondent's officers demanded payment of cess from the vehicle for transporting quarry materials (sand) through the respondent's territorial jurisdiction.
3. The petitioner's driver declined to pay cess and the vehicle was, therefore, impounded. This forced the petitioner to pay cess in order to have the vehicle released. The petitioner has now filed this petition to challenge the respondent's decision, claiming that it violated its rights and has sought various relief.

Petitioner's case

4. The petition is supported by an affidavit sworn by Bernard Mwaura Mwaniki and written submissions. The petitioner states on the material day, 5th June 2024, the vehicle was transporting quarry materials from Kajiado county to Kiambu county through the respondent county. On reaching the respondent's jurisdiction, the vehicle was impounded for failing to pay cess. The vehicle was towed to a storage facility and detained until cess was paid. It is the petitioner's case that under section 8 of the Nairobi



City County Finance Act, 2023, the respondent county is not entitled to levy cess in respect of quarry materials transiting through its territorial jurisdiction.

5. The petitioner argues that the respondent's actions have caused it financial loss; that collecting cess levy amounts to double taxation and that the respondent's action violated the provisions of Articles 10, 40, 47, 174, 210, 209 and 259 of *the Constitution* and the *Public Finance Management Act* 2012. The petitioner has not [leaded which section of the *public Finance Management Act* was violated.
6. The petitioner therefore seeks the following relief:
 1. A declaration that the levy of cess imposed by the respondent whether by themselves, their agents, employees and/or servants on the petitioner's motor vehicles transporting quarry materials, and transiting through Nairobi County is unlawful, unconstitutional and null and void.
 2. An injunction to restrain the respondent whether by themselves, their agents, employees and/or servants, from enforcement of unlawful cess on the petitioner's motor vehicles transporting quarry materials, and on transit through Nairobi County, under the Nairobi City County Finance Act, 2023.
 3. That the Honourable Court be pleased to issue an order directing the respondent whether by themselves, their agents, employees and/or servants to forthwith immediately and unconditionally release the motor vehicles prime mover KDB 291 W and Trailer ZG 1672 to the petitioner.
 4. The court do find that the petitioner is entitled to damages for violation of constitutional rights.
 5. Any other relief as this Honourable Court deems appropriate in the circumstances to grant.
 6. The respondents be condemned to pay the petitioner the costs of the petition.

Response

7. The respondent has opposed the petition through grounds of opposition and a replying affidavit sworn by Boniface Waweru, the respondent's Acting Litigation officer. The respondent states that the petitioner's affidavit did not comply with Order 9 Rule 2 (c) as there is no resolution under the Company seal authorizing or nominating the deponent to file the petition or swear the affidavit on behalf of the petitioner.
8. The respondent contends that prayers (2) and (3) in the petition are not specific on the petitioner's motor vehicles hence cannot be enforced.
9. The respondent maintains that it has the right to collect cess under the Finance Act, 2023; the petitioner's vehicle was not impounded, but the petitioner's driver drove the vehicle to the yard after the petitioner refused to pay the requisite cess.
10. The respondent contends that annexure BMM-4 is for cess and not an invoice for impounding the vehicle. According to the respondent, the petitioner's cause of action is not definite because it alleges its motor vehicle was transiting through Nairobi City County but does not provide details of the road the vehicle was on within its territory.
11. The respondent asserts that the petitioner's claims for loss and damage was not particularized; the petition does not meet the threshold in *Anarita Karimi Njeru v Republic* [1979] eKLR and the burden of proof in sections 107 and 109 of the *Evidence Act* has not been discharged.



Submissions

12. The petition has been disposed of through written submissions with brief oral highlights.

Petitioner's submissions

13. Miss Ndungu, learned counsel for the petitioner, submits highlighting their written submissions, that the respondent's decision to impose cess on its motor vehicle on transit is a violation of article 209(5) of *the Constitution*. Counsel further argues that under section 8 of the Nairobi City County Finance Act, 2023, cess is not applicable to vehicles on transit.
14. Learned counsel argues that the petitioner had paid cess to Kajiado county and should only have paid cess upon offloading in Kiambu county. The respondent's demand for cess amounts to double taxation.
15. According to learned counsel, the respondent's action placed a heavy burden on the petitioner's business operations as the vehicle was impounded for more than two months which affected the petitioner economically.
16. Miss Ndungu maintains that the petition meets the threshold for granting injunctions and relies on *Giella v Cassman Brown* [1973] EA 358 and *American Cyanamid Co. v Ethicon Limited* [1975] UKHL 1.
17. Counsel again relies on section 27 of the *Civil Procedure Act* and the decision in *Jasbir Singh Rai & 3 others v Tarlochan Singh Estate & 4 others* [2013] eKLR and urges the court to allow the petition with costs.

Respondents' submissions

18. Miss Mwikali, learned counsel for the respondent argues, highlighting their written submission, that the petition is improperly before court because there is no resolution authorizing the deponent to swear an affidavit on behalf of the petitioner. Counsel relied on Order 4 rule 1(4) and Order 9 rule 2 of the Civil Procedure Rules. It is important to point out here that the petition was brought under Article 22 as read with articles 23 and 165 of *the Constitution* and *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules) which do not have the requirements in the Civil Procedure Rules, counsel for the respondent seeks to rely on.
19. Learned counsel argues that under section 8 of the Nairobi City County Finance Act 2023, cess applies to transportation of quarry materials in and out of Nairobi. This covers transportation of all quarry material, whether entering or exiting or passing through the respondent's territorial jurisdiction.
20. Learned counsel relies on the decisions in *Anarita Karimi Njeru v Republic* (supra) and *Mumo Matemu v Trusted Society for Human Rights Alliance & 5 others* [2013] eKLR for the position that the petitioner merely cited constitutional provisions without a link to the specific actions by the respondent that violate those constitutional provisions.
21. Counsel further submits that the prayers sought in the petition are vague and lack specificity. The petition does not state the amount of cess paid or provide the registration number of the vehicle that was impounded. Counsel has urged the court to dismiss the petition with costs.



Determination

22. I have considered the petition, the response, arguments made on behalf of the parties and the decisions relied on. The issue for determination is whether the petitioner's rights and fundamental freedoms were violated and should be compensated.
23. The gravamen of this petition stems from the respondent's demand that the petitioner pays cess levy for the vehicle which was transporting quarry material within its territory. The petitioner argues that this is unlawful since the vehicle was transiting the respondent's territory. The respondent maintains that the law allows it to levy cess on vehicles entering or leaving its territory. Determination of his issue turns on section 8 of the respondent's Finance Act, 2023.
24. Before addressing the main issue, the facts of the petition from the petitioner's perspective are that on the material day, its vehicle was transporting sand from Kajiado county to Kiambu county through the respondent's territorial jurisdiction. However, the vehicle was impounded and towed to a yard after the petitioner's driver declined to pay cess. The vehicle was detained and was only released after cess was paid. The petitioner feels that this is a double charge, maintaining that it should only pay cess to Kiambu county when offloading the material since it had paid cess to Kajiado county where the material originated from. According to the petitioner, it is not required to pay cess for materials on transit.
25. The respondent on its part maintains that the law allows it to levy cess for vehicles entering or leaving its territorial jurisdiction carrying quarry materials, including sand. According to the respondent, section 8 of the Finance Act, 2023 permits it to levy cess and, therefore, there is nothing unconstitutional about its actions. The respondent further argues that the vehicle was not towed but the driver drove it to the yard to await payment of cess.
26. Section 8 of the Finance Act, 2023 provides that the Nairobi City County Revenue Act, 2015 titled "Transport of Quarry Materials In and Out of Nairobi" is amended by inserting new charges to/in the following items-
27. Building materials (building stones, Hardcore, Sand and Ballast, Timber, Gypsum, Quarry Dust, Mud/Cly, Bricks/Granite (All materials) the cost is given in terms of weight/ carrying capacity and one has the option to pay per trip or monthly. Vehicles weighing up to 7 tons- Kshs. 10,000 per month; over 7-10 tons-Kshs. 15,000 per month; over 10-15 tons Kshs. 20,000 per month; over 15-20 tons-Kshs. 25,000 per month and vehicles above 20 tons-Kshs. 30,000 per month.
28. The schedule which provides for charges for single trips for the same classes of materials provides as follows:

Vehicles weighing up to 7 tons- Kshs 500; above 7-10 tons-Kshs. 1,000; above 10-15 tons Kshs 1,500; above 15- 20 tons Kshs. 2,000 and vehicles weighing above 20 tons Kshs. 2,500.

There is a provision for a penalty equivalent to one month payment based on the material and tonnage of the truck to be imposed for non-compliance, in addition to other charges for impounding, towing and storage, as applicable.
29. The petitioner has argued that the respondent violated its rights and *the Constitution* and further, that levying of cess on its vehicle was a double charge since it was only transiting the respondent's territory to Kiambu county to deliver sand. The respondent's position is that it was complying with its laws thus, acted lawfully.



30. The petitioner argues that it should only pay cess to the county of origin and county of delivery. The respondent maintains that the law, section 8 of its Finance Act 2023 permits it to levy cess.
31. When the court is called upon to interpret words used in a statute, the general rule is that if the words used are clear and unambiguous, they should be given their ordinary meaning. The court should also in a proper interpretation of the language used in a statute, looking at not only the text, but also the context of the statute.
32. The importance of considering both text and context in interpreting a statute was emphasized by the Supreme Court of India in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., 1987 SCR (2) 1 thus;

Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

33. The same Court pointed out in Commercial Tax Officer, Rajasthan v M/s Binan Cement Ltd [2014] SCR, that the Court should be mindful of the principle that it should examine every word of a statute in its context and must use context in its widest sense.
34. It is also important that when interpreting a statute, the court takes a holistic approach to that interpretation. This was ably stated by the Court of Appeal in the case of The Engineers Board of Kenya v Jesse Waweru Wahome & others Civil Appeal No 240 of 2013, referencing Halsbury's Laws of England 4th Edition Vol. 44 paragraph 1484 that;

One of the canons of statutory interpretation is a holistic approach....no provision of any legislation should be treated as 'stand-alone. An Act of parliament should be read as a whole, the essence being that a proposition in one part of the Act is by implication modified by another proposition elsewhere in the Act.

35. Section 8 of the Finance Act, 2023 amended the Nairobi City County Revenue Act, 2015 regarding the levies or charges for Transporting of Quarry Materials In and Out of Nairobi. The amendment provides charges payable monthly per vehicle, or for each trip for vehicles entering or leaving the respondent's territorial jurisdiction.
36. The law provides for charges for transport of quarry material in and out of the respondent. That is; any vehicle carrying any class of quarry material identified in section 8, pays given charges. The transporter may elect to pay monthly or for every trip. The petitioner's argument is that the respondent's decision to levy cess when the vehicle was transporting sand to Kiambu County was unconstitutional.



37. I have carefully read section 8 of the respondent's Finance Act, 2023. The language used in the section is plain that charges apply to vehicles transporting quarry material in and out of the respondent county. The section does not distinguish whether the transporter is transiting through the respondent's territorial jurisdiction or not. That is as long as the vehicle is entering or leaving the respondent's territorial jurisdiction, it is to pay the charges.
38. The petitioner's counsel admitted during the hearing of this petition that section 8 does not have a provision exempting vehicles transporting building materials to other counties through the respondent from paying the charges. Counsel also admitted that legislations of other counties have express provisions exempting vehicles transiting through such counties from pay the charges. In that respect, the petitioner's argument that its vehicle transiting through the respondent to should not pay the charges, is contradictory and self-defeating.
39. In my respectful view, the issue of payment of cess for vehicles transiting the respondent's territory is a matter of legislation rather than interpretation of section 8 of the respondent's Finance Act. I say so because, the petitioner's main argument is that its constitutional rights were violated without showing which rights and how they were violated.
40. That being my view of the matter, the petitioner cannot legitimately argue that charges amounted to double charges. Perhaps that explains why the law provides for an option of paying for a single trip so that if the vehicle does not operate daily, it can only when it is transporting material.
41. In the circumstances, I am unable to agree with the petitioner that the respondent's action of demanding payment of charges for transporting building materials through its (respondent's) territorial jurisdiction was violative of *the Constitution*. It is also important to point out that the constitutional validity of section 8 of the respondent's Finance Act was not challenged and therefore the court cannot find an action to be unconstitutional when the law authorising it has not been challenged.
42. I am unable to see how the petitioner's constitutional rights were violated by the respondent's actions.
43. On the amount paid, this court is unable to address the issue whether the amount paid was excessive or not since the mandate of this court moved under Article 22 as read with articles 23 and 165(3) of *the Constitution*, is to determine whether rights and fundamental freedoms have been violated. I note, without making a conclusive determination on the issue, that section 8 provides for imposition penalty payment based on the material and tonnage of the truck for non-compliance in addition to other charges for impounding, towing and storage, as the case may be. I do not know whether this applied to the petitioner's case.
44. In the circumstances, and flowing from my discussion above, the conclusion I come to, is that the petition lacks merit. Consequently, the petition fails and is dismissed. Costs being discretionary, each party shall bear its own costs.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JUNE 2025

E C MWITA

JUDGE

