



Mundia v Kenya Copyright Board & 5 others; Kenya Dental Association & 6 others (Interested Parties) (Petition E076 of 2024) [2025] KEHC 11144 (KLR) (Constitutional and Human Rights) (29 July 2025) (Judgment)

Neutral citation: [2025] KEHC 11144 (KLR)

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

PETITION E076 OF 2024

EC MWITA, J

JULY 29, 2025

BETWEEN

KAHURA MUNDIA PETITIONER

AND

KENYA COPYRIGHT BOARD 1ST RESPONDENT

KENYA ASSOCIATION OF MUSIC PRODUCERS 2ND RESPONDENT

PERFORMER'S RIGHTS SOCIETY OF KENYA 3RD RESPONDENT

MUSIC COPYRIGHT SOCIETY OF KENYA 4TH RESPONDENT

YOUTH AFFAIRS, ARTS AND SPORTS 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

AND

KENYA DENTAL ASSOCIATION INTERESTED PARTY

KENYA MEDICAL ASSOCIATION INTERESTED PARTY

PHARMACEUTICAL SOCIETY OF KENYA INTERESTED PARTY

KENYA MEDICAL PRACTITIONERS PHARMACISTS AND DENTISTS UNION INTERESTED PARTY

KENYA HEALTHCARE FEDERATION INTERESTED PARTY

KENYA ASSOCIATION OF PRIVATE HOSPITALS INTERESTED PARTY

RURAL PRIVATE HOSPITALS ASSOCIATION INTERESTED PARTY



JUDGMENT

Introduction

1. On 29th January 2023, the Cabinet Secretary for Youth Affairs, Arts and Sports, (the 5th respondent) gazetted Legal Notice No. 84 pursuant to section 46(A) of the [Copyright Act](#), introducing consolidated Music tariffs. The legal notice required institutions, among them, all hospitals with a television set to pay an annual flat rate depending on the level of the hospital.
2. Following that legal notice, hospitals and members of the interested parties experienced harassment from people claiming to be officers from PRISK, KAMP and MCSK. The facilities also received invoices of varied amounts followed with threats from persons claiming to be from the respondents demanding illegal fees. In some instances, collection of the tariffs involved intrusive and undignified practices potentially violating patients' rights to dignity and privacy.

Petition

3. The petitioner filed a petition dated 12th February 2024 and amended on 27th February 2024, challenging the constitutionality of that Legal Notice on grounds that there was no public reasonable and effective public participation. That the impugned legal notice had the potential to violating rights and fundamental freedoms of patients and the petitioner prayed for several declarations and orders. The petition is supported by an affidavit sworn by the petitioner.
4. The petitioner stated that through the legal notice, the Cabinet Secretary for Sports and Arts approved consolidated tariffs requiring all hospitals with a television set to pay an annual flat rate as follows; Level 1 and 2 hospitals Kshs. 50,000, Level 3- Kshs. 80,000, Level 4- Kshs. 200,000, Level 5-Kshs. 500,000, Level 6- Kshs. 1,000,000 and Clinics-Kshs. 25,000.
5. Following the impugned legal notice, different members of the interested parties were being harassed by officials claiming to be from PRISK, KAMP and MCSK. Members of the interested parties had also received invoices of varied amounts from the respondents demanding illegal fees with threats. It is the petitioner's case that the interested parties' members in different parts of the country were experiencing harassment from the respondents which had in some instances interfered with the provision of services. In some cases, collection of tariffs had involved undignified practices, violating patients' rights to dignity and privacy.
6. The petitioner asserted that the respondents did not have the legal authority to impose the charges and public participation was not undertaken. There was also breach of due process because the respondents had not put in place adequate protocols for tariff collection, creating numerous loopholes that could potentially result in exploitation and continued harassment of members of the interested parties' members.
7. According to the petitioner, the impugned Legal Notice introduced significant changes and directives that negatively impact on the rights and obligations of members of the interested parties. The tariffs will also negatively impact medical facilities since medical officers may need to navigate complex regulatory requirements related to TV ownership and copyright, which could divert their time and resources away from patient care and operation of their clinics. Ensuring compliance with copyright and TV ownership tariffs may require legal and administrative efforts thus, increasing compliance costs for medical facilities. Failure to comply with TV, speakers or computer ownership tariffs and copyright



regulations may result in legal consequences. The imposed tariffs are also higher than the rate of licensing professional members of the interested parties by the health sector regulators.

8. The petitioner maintained that the tariffs were imposed without proper legal authorization and threatens to violate parties' right guaranteed under article 47 of the Constitution. The respondents' actions violated the provisions of articles 10 (2), 27, 80, 118 (1) (b), 174, 232 (1) (d) and (f) of the Constitution
9. Based on the above arguments the petitioner sought the following relief:
 - a. A declaration that the fundamental rights and freedoms as encapsulated and guaranteed in articles 10, 27, 118, 174 and 232 of the Constitution of Kenya, 2010 have been derogated, contravened and infringed upon by the respondents.
 - b. A declaration that there was no procedural and substantive public participation on the interested parties' sector and as such the imposition of respondent tariffs and demands for payments thereof is ultravires, illegal, illegitimate and unconstitutional.
 - c. A declaration do issue that Legal Notice No. 84 of 2023 is unconstitutional, null and void to the extent of its inconsistency to the Constitution.
 - d. An order of prohibition be and is hereby issued restraining the respondents from proceeding and implementing the Legal Notice No. 84 of 2023, by imposing tariffs upon the interested parties' members until all stakeholders are engaged with notices, research undertaken on all competing interests as regards effects on healthcare access, healthcare information sharing and healthcare promotion.
 - e. The respondents to pay the costs of the petition.

1st respondent's response

10. The 1st respondent opposed the petition through a replying affidavit sworn by George Nyakweba. The 1st respondent asserted that the consolidated tariffs imposed through the impugned legal notice were gazetted in compliance with section 46A of the Copyright Act and are therefore lawful. The tariffs were also enacted in a transparent, and inclusive manner and adhered to all constitutional and procedural requirements.
11. Section The section provides that Notwithstanding any other provision of this Act, no collecting society shall—(a) impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time; or (b) levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.
12. According to the 1st respondent, on 18th November 2022, it invited public comments on the draft tariffs for the year 2023-2024. Comments were received from different stakeholders but none of the parties in the petition submitted comments on the tariffs.

2nd respondent's response

13. The 2nd respondent also opposed the petition through a replying affidavit sworn by Maurice Okoth. The 2nd respondent stated that it only collects royalties based on a tariff that has been approved by the Cabinet Secretary in charge and published in the Gazette. According to the 2nd respondent, it has together with the 3rd and 4th respondents been invoicing every tariff category using the consolidated



music tariffs for the period 1st January 2023 to 31st December 2024 published through the impugned legal notice which is a statutory requirement.

14. The 2nd respondent maintained that its members have a constitutional right to property which is protected under article 40 of the *Constitution* and as such, have a right to be compensated by any person who uses their creative works, including the petitioner and the interested parties.
15. The 2nd respondent contended that through the impugned legal notice, the government supports, promotes and protects intellectual property rights of members of the three collective management organisations in Kenya pursuant to article 40(5) of the *Constitution*. The 2nd respondent denied sending agents to harass users of its members creative copyrighted works.

3rd respondent's response

16. The 3rd respondent opposed the petition through grounds of opposition asserting that the impugned legal notice was enacted pursuant to section 46A of the *Copyright Act*. The petitioner had knowledge of the public notice inviting members of the public to submit comments on the proposed Joint music tariffs for 2023-2024, but did not object.
17. The 3rd respondent stated that the interested parties use copyrighted works and are therefore subject to the *Copyright Act*. The 3rd respondent maintained that the petition does not meet constitutional threshold set out in *Anarita Karimi Njeru v Republic* [1979] eKLR.

4th respondent's response

18. The 4th respondent also opposed the petition through grounds of opposition, asserting that the Cabinet Secretary acted lawfully and within his powers under the *Copyright Act*; the tariffs set out in the impugned legal notice were compiled after consultation with relevant collective management organisations and stakeholders and therefore the petition does not disclose a cause of action against it.

5th and 6th respondents' response

19. The 5th and 6th respondents also opposed the petition through grounds of opposition. They contended that the petition does not meet the test of a constitutional petition set in *Anarita Karimi Njeru v Republic* (supra) and emphasized in *Mumo Matemu v Trusted Society of Human Rights Alliance* [2014] eKLR.
20. The 5th and 6th respondents asserted that the consolidated tariffs imposed through the impugned legal notice were enacted in compliance with section 46A of the *Copyright Act* and are therefore lawful. The process followed in enacting the tariffs was transparent, inclusive and adhered to constitutional and procedural requirements.
21. The 5th and 6th respondents maintained that there was compliance with constitutional requirement in article 10(1) (b) and 10(2) (b) of the *Constitution* but the petitioner and interested parties did not take part in the public participation.

Submissions

22. The petition was disposed of through written submissions with oral highlights.



Petitioner's submissions

23. Mr. Outa, learned counsel for the petitioner submitted highlighting their written submissions that the petitioner had satisfied the requirements of a constitutional petition as set out in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR and *Anarita Karimi Njeru v Republic* (supra).
24. Learned counsel argued that the process leading to the enactment of the impugned legal notice did not meet public participation threshold required under articles 10 and 118 of the *Constitution*; views of relevant stakeholders were not sought or considered. Counsel relied on the decision in *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* [2019] KESC 15 (KLR); *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* 2006 (2) SA 311 (CC); *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others (CCT41/07)* [2008] ZACC10; *John Muraya Mwangi & 501 others v Minister for State for Provincial Administration & Internal Security & 4 others* [2014] eKLR and *Kenya Human Rights Commission v Attorney General & another* [2018] eKLR.
25. Mr. Outa argued that the notice calling for public comments did not have sufficient information that would have enabled the general public or relevant stakeholders to make informed and substantive submissions and memoranda. Citing the decisions in *Katiba Institute v Presidents Delivery Unit & 3 others* [2017] eKLR and *Francis Chachu Ganya & 4 others v Attorney General & another* [2013] KEHC 3986 (KLR), learned counsel posited that the right to information is the cornerstone from which public participation flows. The respondents were required to provide quality information and disclose salient facts and features of the new tariffs.
26. Counsel again relied on the decisions in *Doctors for Life International v Speaker of National Assembly and Others* (CCT12/5) [2006] ZACC 11; *Aura v Cabinet Secretary, Ministry of Health and 11 others; Kenya Medical Practitioners & Dentists Council & another (Interested Parties)* [2024] KEHC 8255 (KLR) and *Independent Electoral and Boundaries Commission & 4 others v Ndiir & 312 others; Ojwang & 4 others (Amicus Curiae)* [2021] KECA 363 (KLR).
27. Mr. Outa submitted that information was only in English language and was published in my gov news leaflet and the draft tariffs pasted in an URL. Furthermore, from the list of stakeholders attached to the affidavit of Mr. Nyakweba, interested parties were not consulted and the list of persons consulted was so inadequate to be held to be a true representation of the affected groups. Counsel urged the court to allow the petition be.

1st respondent's submissions

28. Mr. Kaindo, learned counsel for the 1st respondent and holding brief for Mr. Mburu for 3rd respondent, argued that there was sufficient public participation and relied on articles 10 and 118 of the *Constitution* and the decision in *Laban Toto Juma & 4 others v Kenya Copyright Board & 9 others* [2018] eKLR. According to learned counsel, on 18th November 2022, the 1st respondent issued a public notice inviting comments on the draft tariffs for the year 2023-2024 and stakeholders were given ample time to submit their comments.
29. Learned counsel relied on the decision in *Isaac Mugo & 14 others v Fred Okengo Matiang'i, the Cabinet Secretary, Ministry of Interior and Coordination of National Government & another; Independent Electoral and Boundary Commission of Kenya & 19 others (Interested Parties)* [2022] eKLR on the



threshold for public participation. According to counsel, the fact that none of the interested parties submitted comments despite an open invitation did not invalidate the public participation process.

30. Mr. Kaindo maintained that the consolidated tariffs were gazetted in compliance with section 46A of the *Copyright Act* and the legal notice is lawful having complied with constitutional and procedural requirements.

5th and 6th respondents' submissions

31. Mr. Terrell, learned counsel for the 5th and 6th respondents, also argued that the petition does not meet the threshold of a constitutional petition and relied on *Anarita Karimi Njeru v Republic* (supra) as emphasized in *Mumo Matemu v Trusted Society of Human Rights Alliance* (supra).
32. Learned counsel further relied on the decision in *Kenya Bus Services Ltd & 2 others v Attorney General & 2 others* [2005] eKLR for the position that the petition does not raise a cause of action against the 5th and 6th respondents as there is no evidence of contravention of the *Constitution*. Counsel maintained that the consolidated tariffs imposed under the impugned legal notice complied with the section 46A of the *Copyright Act* and are lawful. The process followed in enacting the tariffs was transparent, inclusive and adhered to all constitutional and procedural requirements.
33. Mr. Terrell argued that the requirements for public participation were met. Counsel relied on article 10 and the decisions in *Laban Toto Juma & 4 others v Kenya Copyright Board & 9 others* (supra) and *Cabinet Secretary for the National Treasury and Planning and Others v Okiya Omtatah Okoiti and Others*.
34. Learned counsel maintained that the petitioner and interested parties did not take part in public participation and did not submit comments over the impugned legal notice. Counsel urged the court to dismiss the petition.
35. The 2nd, 3rd and 4th respondents did not file written submissions while the interested parties did not take part in these proceedings.

Determination

36. I have considered the petition, responses and arguments by counsel for the parties. I have also considered the decisions relied on. The issues for determination are whether there was public participation and whether enactment of the impugned legal notice met the constitutional and procedural requirements.
37. The petitioner argued that there was no effective public participation. Further that the legal notice and the tariffs violate the rights of not only members of the interested parties but also intrude the patients' right to dignity and privacy.
38. The respondents on their part maintained that there was public participation and the tariffs were enacted in accordance with the *Constitution* and met the constitutional procedural requirements. They also denied that they violate rights and fundamental freedoms of anyone.
39. Before dealing with the main issues, there is a small argument raised by the respondents that the petition does not meet the threshold of a constitutional petition established in the *Anarita Karimi* case. The principle in that case is that a constitutional petition should plead with specificity the constitutional rights violated, the constitutional provisions violated and the manner of violation or infringement. The petitioner herein did indeed, plead the violations the articles violated and the manner of violation thus, the petition meets the threshold.



Public participation

40. Public participation is a founding value in our Constitution. Article 10 provides for the values and principles of governance which include participation of the people otherwise called public participation. Article 10 also provides in firm and clear language that national values and principles of governance bind all State organs, State officers, public officers and all persons whenever any of them —applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.
41. The enactment of the legal notice was not only an act of subsidiary legislation but also implementation of public policy decision which required public participation. None of the parties argued that public participation was not required. The issue therefore is whether there was public participation and, if so, whether the public participation was effective. The petitioner argued that there was no sufficient public participation while the respondents maintained that there was effective public participation.
42. The issue of public participation has been the subject of litigation in this country and other jurisdictions and there are many decisions on the issue. From those decisions, the law is now settled that public participation should be real and effective and not an illusory. People must be given an opportunity to make their views known on the issue and the views should be capable of influencing the legislative or public policy decisions.
43. In *Robert N. Gakuru & others v Kiambu County Government & 3 others* [2014] eKLR, the court stated that “public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates...It behoves the Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively.”
44. On appeal, in *Kiambu County Government & 3 others v Robert N. Gakuru & Others* [2017] eKLR), the Court of Appeal affirmed the High Court decision and stated:
 - [20] The issue of public participation is of immense significance considering the ... primacy it has been given in the supreme law of this country and in relevant statutes relating to institutions that touch on the lives of the people. the Constitution in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideals and aspirations of our democratic nation.
45. The Court of Appeal went on to state that public participation must include, and be seen to include, the dissemination of information, invitation to participate in the process and consultation on the legislation. That is, people must be accorded an opportunity to participate in the legislative process, a fact to be proved by the party that was required to comply with this constitutional requirement that indeed there was compliance.
46. Addressing the same issue in *Minister for Health v New Chicks South Africa Pty Ltd CCT 59/04*, the Constitutional Court of South Africa observed that the forms of facilitating an appropriate degree of participation in the law-making process are of infinite variation. “What matters is that at the end of the day, a reasonable opportunity is offered to the members of the public and all interested parties to know about the issue and to have an adequate say.”



47. In the words of Ngcobo, J. in *Doctors for Life International v Speaker of the National Assembly & Others* (CCT 12/05) [2006] ZACC 11, “merely allowing public participation in the law-making process is not enough. More is required and measures need to be taken to facilitate public participation” (See also the *British American Tobacco* case.)
48. The decisions make it clear that public participation must be real, reasonable and meaningful both qualitatively and quantitatively. The public must be given an opportunity to participate in the legislative or other processes and the body responsible must take reasonable measures to facilitate public participation and has to discharge the burden by demonstrating that it discharged the obligation of facilitating public participation that was reasonable, efficient and effective.
49. The 1st respondent filed a replying affidavit sworn by Mr. Nyakweba stating that the consolidated tariffs enacted through the impugned legal notice were gazetted in compliance with section 46A of the [Copyright Act](#); they were made in a transparent, and inclusive manner and adhered to all constitutional and procedural requirements and are therefore lawful.
50. According to Mr. Nyakweba, on 18th November 2022, the 1st respondent invited comments on the draft tariffs for the year 2023-2024. Comments on the tariffs were received from different stakeholders but none of the parties in the petition submitted comments. He annexed the notice inviting comments and the report on public participation to his affidavit.
51. I have perused the notice inviting comments published by the 1st respondent. The notice stated that Kenya Copyright Board had published the proposed joint Music Tariffs for 2023-2024 as required the Copyright law. The notice gave an online link through which the draft tariffs could be accessed. The notice then stated:
- This is therefore to invite written comments to the Executive Director, Kenya Copyright Board (KECOBO) not later than 5 pm on 22nd November 2022 to the address below:
- infor@copyright.go.ke or by post to P.o. Box 34670-00100, or
- Dropped at the reception, 8th Floor NHIF, Ragati Road.
52. According to Mr. Nyakwara, the notice was issued on 18th November 2022 and gave the window for submissions of comments up to 5pm on 22nd November 2022.
53. Once the petitioner attacked the process on grounds that it did not meet the constitutional threshold for public participation, the burden fell on the 1st respondent to satisfy the Court that the process complied with the constitutional requirements on public participation.
54. I have gone through the affidavits filed on behalf of the respondents, as well as their bundle of documents. From the evidence placed before this court, the question is whether there was reasonable, meaningful and effective public participation before the tariffs were gazetted. The petitioner argued that there was no public participation while the respondents maintained that there was meaningful and effective public participation.
55. the [Constitution](#) as the supreme law, binds all persons, State organs and public officers in the discharge of their duties. Article 3(1) obligates every person to respect, uphold and defend the [Constitution](#). Every “person” includes the 1st respondent, as a state agency.
56. Public participation being a founding value, is central in governance, legislative and other processes. In this regard, the 1st respondent’s Executive Director issued a public notice on 18th November 2022, calling for comments to be submitted by 5pm on 22nd November 2022. The notice also indicated that



- the draft tariffs could be obtained online. The comments were also to be forwarded to the Executive Director online; by postal address or hand delivery.
57. From the calendar, 18th was a Friday while 22nd was a Tuesday. That means members of the public were only given three working days to access the draft tariffs online; read and understand them and make recommendations.
 58. The report on the comments received which is annexed to Mr. Nyakweba's affidavit was prepared by the 1st respondent's Chief Legal Officer (Paul Kaindo). The report mentions only three business organisations that submitted comments, namely: Family Media; Tourism Industry (Kenya Association of Hotel Keepers & Caterers) and Pubs, Entertainments and Restaurants Association of Kenya.
 59. Kenya is founded on national values and principles of governance one of which is public participation. The constitutional text in article 10(1) leaves no doubt that national values and principles of governance must be adhered to in the conduct public affairs which must be done in an open and transparent manner. In that regard, the 1st respondent was required to facilitate public participation that was reasonable, meaningful and effective both qualitatively and quantitatively.
 60. To facilitate public participation the 1st respondent was to have taken deliberate positive measures that would make it possible for the public to receive the draft tariffs and thereafter, accord them an opportunity to contribute their views on the tariffs. That is, public participation must be reasonable and meaningful so that those interested are given an equal opportunity to know about the Bill or issue and have adequate say on it.
 61. According to the petitioner, the 1st respondent published the notice calling for comments in my gov. news (government advertising agency) and the draft was to be obtained from an URL and the notice gave the public three working days to submit comments.
 62. In conducting public participation, the 1st respondent was not doing a favour to the public but fulfilling a constitutional command. The 1st respondent was required to disseminate information to the public about the tariffs; invite them to give comments but at the same time allow them reasonable opportunity to receive, read and understand the tariffs so that they could participate and have a say on the tariffs.
 63. There is no evidence that information about the tariffs was disseminated in sufficient time before the notice was put out on 18th November 2022, inviting members of the public to submit comments. The time of three working days given was also not adequate for the people to get the draft tariffs, read and understand them before submitting their comments. The notice was also published on a platform whose accessibility by the public was not shown to be sufficient for purposes of public participation.
 64. The respondents' argument that neither the petitioner nor interested parties submitted comments did not disqualify them from challenging the legal notice. They were entitled to challenge the process leading to enactment of the tariffs as a right to defend and protect the *Constitution*, its values and principles. It is also not necessary that every member of public must attend and give views during public participation. However, the *Constitution* demands that the public take centre stage in governance issues. The public cannot do so without being given reasonable opportunity to participate in the affairs that affect them, including the enactment of the tariffs.
 65. Public participation must not be reduced to a ritual meant to merely fulfil a constitutional requirement. It must be real, meaningful and effective so that it can influence the process for which it is being undertaken. Accepting the respondents' argument that the manner in which public



participation was conducted met the threshold of meaningful and effective public participation, would reduce public participation to a farce and therefore a mockery of the Constitution.

66. In the circumstances of this petition, the respondents did not demonstrate that the primacy of articles 10 on public participation was met both qualitatively and quantitatively since the exercise was reduced to a ritual thus, failed to meet the test of reasonable, meaningful and effective public participation as envisioned by the Constitution and court pronouncements.
67. I agree with the petitioner that the purported public participation violated the constitutional threshold thus, the legal notice fails the constitutional validity test in this ground.

Statutory instruments Act

68. The respondents argued that the process of enacting the tariffs and the subsequent gazettment of the impugned legal notice complied with constitutional and procedural processes. Section 2 of the Statutory instruments Act defines an instrument to mean any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.
69. Section 46A of the Copyright Act provides that no collecting society shall— impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time. or levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.
70. The tariffs were gazetted by the Cabinet Secretary through Legal Notice No 84 of 2023 on 29th January 2023 and is therefore a statutory instrument based on the definition under the Statutory Instruments Act. Section 11 (1) of the Act requires every Cabinet Secretary responsible for a regulation-making authority to ensure that within seven sitting days after publication of a statutory instrument, a copy of the instrument is transmitted to the responsible clerk for tabling before the relevant House of Parliament.
71. Subsection (2) states that notwithstanding subsection (1) and pursuant to legislative powers conferred on the National Assembly under article 109, all regulation making authorities have to submit copies of all statutory instruments for tabling before the National Assembly. Subsection (3) requires the responsible clerk to register or cause to be registered every statutory instrument submitted to the respective House(s) for tabling or laying.
72. Subsection (4) provides that if a copy of a statutory instrument that is supposed to be laid before the relevant House of Parliament is not laid as required, the statutory instrument “shall cease to have effect immediately after the last day for it to be so laid without prejudice to any act done under the statutory instrument before it became void.”
73. The Tariffs were gazetted on 29th January 2023 but the respondents did not show that they were laid before the National Assembly as required by the Act without which the tariffs gazetted under Legal Notice No. 84 of 2023 became void after seven sitting days as required by section 11(4). The respondents’ argument that all constitutional and procedural processes were met fell short of demonstrating that the section 11(3) of the Statutory Instruments Act was complied with.



Conclusion

74. Having considered the pleadings and arguments by parties as well as the Constitution and the law, the conclusion I come to, is that the enactment of the tariffs did not comply with the requirements of public participation. The notice calling for comments was not published in a manner that would reach a wide section of the public; there was no evidence that the notice reached the public and the three (3) working days the notice gave the public and stakeholders within which to receive, read and submit comments was insufficient for a reasonable, meaningful and effective public participation thus; the process failed a vital constitutional requirement of public participation.
75. There was also no evidence that the Legal Notice containing the tariffs was tabled before the National Assembly as required by the Statutory Instruments Act thus, became void for failure to comply with the law.
76. Consequently, and for the above reasons, the petition succeeds and the court makes the following declarations and orders it considers appropriate:
1. A declaration is hereby issued that there was no reasonable meaningful and effective public participation on the imposition of the tariffs thus, the consolidated tariffs published on 29th January 2023 through Legal Notice No. 84 of 2023 is unconstitutional.
 2. A declaration is hereby do issued that Legal Notice No. 84 of 2023 is unconstitutional, null and void for failing to comply with the Statutory Instruments Act.
 3. An order of certiorari is hereby issued quashing Legal Notice No 84 of 2023 published on 29th January 2023.
 4. An order of prohibition is hereby issued prohibiting the respondents from implementing the consolidated tariffs contained in Legal Notice No. 84 of 2023, published on 29th January 2023
 5. This being a public interest litigation each party shall bear their own costs

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY 2025

E C MWITA

JUDGE

