



**Farmers Party v Cabinet Secretary, National Treasury and Planning & 5 others  
(Petition E009 of 2025) [2025] KEHC 12168 (KLR) (26 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA**

**PETITION E009 OF 2025**

**EM MURIITHI, J**

**AUGUST 26, 2025**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE  
CONSTITUTION UNDER ARTICLES 26, 27, 40, 43(1), 46(1) & 47**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE  
CONSTITUTION UNDER ARTICLES 10(2), 11(1)(B), 210, 225,  
226(1)(2) AND 227(1)(2) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT, CAP 26 SECTION 8 AND 9 AND IN THE  
MATTER OF SECTIONS 4,7 AND 9 OF THE FAIR ADMINISTRATIVE ACT, NO. 4 OF 2015**

**AND**

**IN THE MATTER OF AN ORDER 53 RULE 1 OF THE  
CIVIL PROCEDURE AMENDMENT RULES 2020**

**AND**

**IN THE MATTER OF THE EAST AFRICAN COMMUNITY CUSTOMS  
MANAGEMENT ACT, 2004 LAWS OF KENYA (NO. 1 OF 2005)**

**AND**

**IN THE MATTER OF GAZETTE NOTICE NO. 10353 PUBLISHED ON THE 28TH  
JULY 2025 IN A SPECIAL ISSUE OF KENYA GAZETTE VOLUME CXXVII – NO. 161**

**BETWEEN**

**FARMERS PARTY ..... PETITIONER**

**AND**

**THE CABINET SECRETARY, NATIONAL TREASURY AND  
PLANNING ..... 1<sup>ST</sup> RESPONDENT**



<b>THE CABINET SECRETARY, AGRICULTURE AND LIVESTOCK DEVELOPMENT</b> .....	<b>2<sup>ND</sup> RESPONDENT</b>
<b>AGRICULTURE AND FOOD AUTHORITY</b> .....	<b>3<sup>RD</sup> RESPONDENT</b>
<b>THE COMMISSIONER FOR CUSTOMS &amp; BORDER CONTROL</b> ....	<b>4<sup>TH</sup> RESPONDENT</b>
<b>THE HON ATTORNEY GENERAL</b> .....	<b>5<sup>TH</sup> RESPONDENT</b>
<b>KENYA NATIONAL TRADING CORPORATION</b> .....	<b>6<sup>TH</sup> RESPONDENT</b>

## RULING

1. On the basis of the urgency of the matter, the Court on 19/8/2025 delivered its decision on applications relating to conservatory orders in this matter and the Court deferred the delivery of the full reasons of the Ruling for Tuesday 26/8/2025. These are the full reasons for the Ruling.
2. By Notice of Motion dated 7/8/2025, the Petitioner which claims to represent the farmers of Kenya “a political party whose objectives is among other things to safeguard the interests of ordinary farmers and whose membership majorly comprises of ordinary farmers” sought conservatory orders in terms that -

“That there be and is issued a conservatory order staying the implementation of the decision of the Cabinet Secretary, National Treasury and planning and the cabinet secretary, Agriculture and Livestock Development vide gazette No. 10353 published on the 28<sup>th</sup> July 2025 in a special issue of Kenya Gazette Volume CXXVII – NO. 161 approving duty free importation of 500,000MT of grade 1 rice from the 28<sup>th</sup> July 2025 up until 31<sup>st</sup> December 2025 pending the hearing and determination of this petition.”

3. The grounds of the application are set out as follows:

“A. Prima Facie Case with likelihood of Success and likely to suffer prejudice if the prayers of conservatory orders are not granted

- (i) Administrative Decision. The 1st Respondent published a Gazette Notice No. 10353 Published On The 28th July 2025 In A Special Issue Of Kenya Gazette Volume CXXVII - NO. 161 allowing the importation of the duty free of 500,000 MT of Grade 1 Rice by the 2nd and 3rd Respondents for the period running from the 28th July 2025 to 31st December 2025.
- ii) Price Control. That while on the face of it, the Gazette Notice seems like an intervention to avert famine/food scarcity occasioned by global shocks in the supply chain, is in fact a price control measure which unless immediately stayed by this Honourable Court will mean that the current prices of Grade 1 rice at the paddy, private reserves and all the shelves will immediately tank.
- (iii) Public Participation the Public Statement issued by the 3 Respondent and the numerous media press statements by



farmers are self-explanatory. There was no public participation in the arriving of this decision save for a consultation meeting between the Respondents. The statement says "Importation will disrupt the local market or disadvantage the Kenyan farmers. Before the decision was reached, the Government of Kenya through the Kenya National Trading Corporation (KNTC) actively procured rice directly from the paddy as it is milled."

- B Grant of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.
- (i) Grant of conservatory reliefs will enhance the following Constitutional values and freedoms as it directly speaks to Articles 1, 26, 27, 40, 43, 47, 114, 117, 118 and 210 of *the Constitution*, Section 7(2) of the Fair Administrative Actions Act No. 4 of 2015 as well as the Price Control (Essential Commodities) Act No. 26 of 2011 with respect to farmers rights and more specifically:
    - (a) The economic and constitutional right to property of farmers to own the property within the rice and men trade it for value in a free market: infringes upon Article 40 and 43 of *the Constitution* because the importation of 500,000 MT of Grade 1 rice can only bring down the cost of both processed and processed rice which has not been effectively killing the toil and effort of the local rice farmer as well as the Industry of the local importers of rice.
    - (ii) Article 27 is explicit on the prohibition of discrimination of local farmers, the importation of 500,000MT of Grade 1 rice in the absence of a drought or state of emergency only to bring down the cost of their produce and favour the 6th Defendant can only be described as discriminatory, discriminatory because Section 114(2) of the EACCMA read together with Paragraph 20 of Part B to the Fifth Schedule of EACCMA exempts relief goods which are imported for emergency use in specific areas where natural disaster/calamity has occurred in a Partner States.
    - (iii) Article 210 sets out the legal basis for the application of exemptions and waivers. It provides that no tax or licensing fee may be imposed, waived, or varied except as provided by legislation. At a time when the 4th Respondent is on record for not meeting revenue targets it is clear that the Gazette Notice is anchored on profiting the 6th Respondents as demonstrated in the Auditor General's Special Audit Report on Edible Oils at the Kenya National trading Corporation Ltd dated July 2024 where the modus operandi was eerily similar to the instant suit.
    - (iv) Article 10, 114(2), 118(1)(b) and 210 with respect to the Gazette Notice demonstrate that there was no public participation in



knocking out unprocessed Grade 1 rice and processed Grade 1 rice in the private reserves from being tax exempt. No stakeholder except the respondents were consulted before. the decision was made.

- (v) Article 47 of *the Constitution* and section 4(1) of the Fair Administrative Actions Act ("FAA") provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

C. The Application or its substratum will be rendered nugatory unless an interim conservatory order is granted

- (i) Unprocessed rice is at the rice paddy. The market has an abundant supply of Grade 1 rice which is on sale both from the farmer as well as the local importer. Unless the orders herein are urgently granted, the price of Grade 1 rice will as an automatic consequence of the 500.000 MT fall and become a loss for the farmer, importer and retailer.

- (ii) Once the rice is docked, the illegality, procedural impropriety & ultra vires decisions of the Respondents will not be capable of being reversed. The Administrative action and decision within Gazette Notice No. 10353 Published On The 28th July, 2025 In A Special Issue Of Kenya Gazette Volume CXXVII - NO. 161 is anchored on Section 114 (2) and Paragraph 20 of Part B of the Firth Schedule, of the East African Community Customs Management Act (EACCMA) which perceives that a waiver on relief goods can only apply if:

- (a) There is an emergency in specific areas where natural disaster/calamity has occurred in a partner state while in fact:

- (i) No Emergency. There is no declared emergency listed in the said Gazette Notice or any declared emergency in any part of Kenya necessitating the: importation or Grade Rice into the Country duty free.

- (ii) Local Harvest. It is not in dispute the 2nd and 4rd Respondents have not completely mopped up and/or purchased local harvest at the paddy to declare any possible famine for 3 seasons that is;

- (a) The July 2024 -  
December 2024 harvest  
season



- (b) The (Rotoon) February 2025 harvest season
- (c) The March 2025 - July 2025 harvest season
- (d) The August - September 2025 short harvest

(iii) Routine dutied imports. It is not in dispute that Grade 1 rice market has not experienced any global supply chain disruptions to interfere with the availability or the cost of Grade 1 rice in Kenya through routine dutied and customed imports.

(iv) Public Participation. per the Public Statement issued by the 3rd Respondent herein has obviously not conducted in the interest of any stakeholders and especially local farmers. The statement says "Importation will not disrupt the local market or disadvantage Kenyan farmers. Before the decision was reached, the Government through the Kenya National Trading Corporation (KNTC) actively procured rice directly from the paddy as it is milled."

(iii) The Price Control (Essential Commodities) Act No. 26 of 2011 AND NOT East African Community Customs Management Act (EACCMA) was therefore the correct Act should the 1<sup>st</sup> Respondent have been keen on regulating the price of Grade 1 rice if at all there was any justification for an emergency situation as alleged, (which there isn't)."

4. The supporting affidavit of the Petitioner's Notice of Motion dated 7/8/2025, the party leader of the Applicant Simon Chege Kamangu presented the factual basis of their case at paragraphs 3-19 as follows:

- “ 3. That the Applicant is a political party whose objectives is among other things to safeguard the interests of ordinary farmers and whose membership majorly comprises of ordinary-farmers. (Annexed and marked IN 1B is a copy of registration. certificate)
- 4. That the Applicant's party represents ordinary farmers in Kenya and there are ventilates the concerns and interests of farmers in Kenya.
- 5. That I am aware that Kenya produces 294,000 of Rice and imports around 800,000 MT per year to satisfy its demand of rice annually. (Annexed and



marked as SCK 2 is an extract of the Kenya National Bureau of Statistics Economic Survey 2025 page 199).

6. That it is widely reported on mainstream news channels that as at July 2025, the Country had consumed 94,000 metric tonnes of rice since January 2025 with the last duty free rice importation window closed in November 2024 after a famine in 2023/2024. Since then there has not been any shortage in the local market or price hikes as local production has been fairly stable. (Annexed and marked as SCK-2 are screenshots of the current retail prices of different brands, varieties and blends of Grade 1 rice)
7. That the Price of Grade 1 Rice has been retailing at approximately Kshs.355 and Kshs.385 per Kg for imported, brands and between 166 and 277 for locally produced rice per Kg depending on the variety (pishori, basmati, long grain, biryani) as well as the blend. This price is fully determined by market forces as there has not been a duty free waivers to any importers of Grade 1 rice since November of last year with the rains being predictable.
8. That on the 2nd July 2025 however through media reports the party learnt with dismay of Gazette Notice No, 10353 Published On The 28th July, 2025 In A Special Issue Of Kenya Gazette Volum.e cxxvii - NO. 161 the 3rd [hereinafter Gazette Notice] where the Respondent have callously approved the duty free importation of 500,000 Grade 1 Rice from the said 28th July 2025 up until 31st December 2025. (Annexed and marked as SCK 3 is a copy of the Gazette Notice).
9. That we received calls from our members immediately after the publishing of the said notice there was widespread complaint and dissent from rice farmers across the Country who rightfully felt that the Government was being ignorant of their plighr. (Annexed and marked as SCK -4 an electronic certificate of the Farmers media statements in the link below).
  - A. Opposition Protests Rice and Sugar Imports Plan
  - B. Rice Farmers Under Mwea Irrigation Scheme: Oppose Governments Plans to Import Maize
  - C. Rice Farmers in MWEA and Kirinyaga protest against Governments Importation of Rice Imports
  - D. Uproar as rice farmers protest duty free rice imports
10. That in response and to deal damage control and salvage the names of prominent political offices that were widely deemed in social media circles to be larger beneficiaries of the scheme, the 3rd Respondent issued a Public Statement on the 31st July 2025 which justified the Gazette Notice. (Annexed and as SCK 5 is a copy of the Public Statement by the Agricultural Food Authority dated 31st July 2025).
11. That the Public Notice is by the 3rd Respondent misleadingly titled "Rice Imports to Cushion Consumers, Local Farmers' Interests Safeguarded" argued that the Gazette Notice was justified as a price control measure and a promoter of Grade 1 rice availability in the market.



12. That the public notice erroneously argued that the Gazette Notice was justified as there was an anticipated shortfall of Grade 1 rice in the Kenyan Market which cannot be satisfied by existing local production.
13. That the public notice erroneously argued that the Gazette Notice was justified as there was a shortfall which is anticipated and has not crystallized, being compounded by an imagined global supply chain disruption which will presumably affect Grade 1 rice importation in Kenya.
14. THAT the public notice also erroneously argued that the Gazette Notice was justified as the anticipated shortfall and the imagined global supply chain stocks affecting importation in Kenya would cause scarcity of Grade 1 Rice and sharp food spikes.
15. That I am aware that the 3rd Respondent has now commenced the duty-free importation of Grade 1 Rice pursuant to the Gazette Notice and to the detriment of local Rice Farmers in Kenya who have ripe and unsold rice product in the paddy and in the market.
16. That I swear that there is detriment because the public Statement and therefore the Gazette Notice speak to a different set of facts other than the reasons postulated by the 1st and the 3rd Respondent for the following reasons; (sic)
17. That I can confirm on behalf of our members that widespread media reports that the 2nd and 3rd Respondents have not completely mopped up and/or purchased local harvest of Grade 1 rice in the paddy to declare any possible famine for 3 seasons that is:
  - (a) The July 2024 - December 2024 harvest season
  - (b) The (Rotoon) February 2025 harvest season
  - (c) The March 2025 - July 2025 harvest season
  - (d) The August - September 2025 short harvest
18. That it is also not in dispute that the Grade 1 imported rice market has not experienced any global supply chain disruptions to interfere with the availability or the cost of Grade 1 rice in Kenya through routine duties and customs imports.
19. That a plain reading of the Public Statement issued by the 3rd Respondent herein has obviously not been conducted in the interest of any stakeholders and especially local farmers only the 6th Respondent.”

The Supporting Affidavit also made other contentions of legal nature more suited in Submissions.



5. The Respondents' case on the facts is set out at paragraphs 34-51 of the Affidavit in Support of Application of the Cabinet Secretary sworn on 13/8/2025, in similar terms as the Replying Affidavit of the same date in reply the application for Conservatory Orders herein, as follows:

- “ 34. That to address rise in the cost of living, cabinet approved a framework to position the Kenya National Trading Corporation (KNTC) as the anchor of State initiatives to create a price stabilizer for essential household food items. Annexed herewith and marked "MK 4" is a copy of the Cabinet Approval.
35. That in relation to the merit of the Gazette Notice, it should be noted that Rice is the third most important staple cereal, after maize and wheat, whose consumption has been growing progressively over the years.
36. That Kenya's annual demand for Rice is about 1.3 Million MT against an average production of 125,000 MT. The deficit of more than 80% estimated at about 1.0 Million MT is filled through imports majorly from India, Pakistan and Tanzania.
37. That the current retail market price ranges between KES 190 and KES 220 per kilogram for Grade 1 milled white rice, representing a significant increase from last year's average of KES 150 per kilogram during duty-free period.
38. That Kenya's rice consumption per capita was projected at 29kg in 2025 with a population of 54,793,000. The country will therefore require up to 1.5 million MT of rice in 2025 translating to a projected monthly rice consumption of 125,000MT. It is therefore estimated that the country requires about 625,000 MT in the next five months from July 2025 to December 2025.
39. That as at 28th July 2025, Kenya had imported 228,346 MT of Grade 1 milled Rice as per the KENTRADE Trade Facilitation Portal (TFP).
40. That therefore, a deficit of more than 500,000 MT between July and December would necessitate importation. However, the Imported rice with duty is beyond the reach of ordinary Kenyans hence necessitating the duty waiver.
41. That more than 95% of imported rice is non-basrnati type which do not affect the price of local pishori rice which has a niche market. Furthermore, previous importations have not affected the price but rather stabilized it.
42. That the high cost of rice will force consumers to shift to other staples in tum putting pressure on maize, wheat and potato resulting to price hikes.
43. That in light of the foregoing, the cabinet approved the gazettelement of importation of 500,000 MT of Grade 1 Milled white rice duty-free to cater for the deficits for the next five months to 31st December 2025. This would have the net effect of stabilizing the price and contribute to the lowering of the cost of living.
44. That this intervention is legal in light of the ongoing food security challenges in the Arid and Semi-Arid lands (ASAL) regions including Turkana, Marsabit, North Eastern and Parts of the Coastal areas. Annexed herewith and marked



"MK 5" is a copy of the National Drought Early Warning Bulletin and Food Security Assessment Report 2025.

45. That to further protect quality and consumer safety, and ensure proportionality in application of the Gazette Notice:
  - (a) Only Grade 1 milled white rice that meets strict Kenyan and international standards will be permitted.
  - (b) All imports must carry a Certificate of Conformity from the Kenya Bureau of Standards (KEBS).
  - (c) The duty-free window is strictly time-bound, requiring all consignments to arrive on or before 31st December 2025 under close regulatory oversight.
46. That it is important to note that this is not the first time Kenya has resorted to rice importation to supplement local production. This will continue into the foreseeable future only until we attain self-sufficiency.
47. That in addition, the instant Petition is primarily hinged on challenging the merit of issuance of the impugned Gazette Notice, which I am advised by the State Counsel on record, is a policy question within the exclusive jurisdictional domain of the Executive. Courts are ill equipped to entertain questions on the merit of policy decisions of the Executive.
48. That thus in the public interest to allow admit the application for hearing during this Court vacation and allow the application as prayed.
49. That therefore, the conservatory order granted ex-parte poses significant threat to the entire bulwark of constitutionalism including enforcement of fundamental rights and freedoms of Kenyans premised on food security and the economic stability and growth of the Nation, and thus, there is an urgent need to apprehend the risks and harms that may be caused by the conservatory order issued by so setting it aside.
50. That accordingly, it is in the public interest and in the interest of justice that the conservatory orders granted by this Honourable Court be set aside and that the regulatory framework captured under the impugned Gazette Notice which already was effectively having full force of the law as at 28th July, 2025 be enabled to obtain.
51. That in view of the foregoing, the urgency to arrest this unconstitutional and antipublic interest trajectory by setting aside the conservatory orders issued ex parte in the first instance is self-evident."

6. Both the Petitioner's further affidavit and replying affidavit to the 1, 2, 5 and 6 Respondents' application dated 13/8/2025 for setting aside conservatory orders.

### **Hearing of the Applications**

7. The Court heard the two counter-applications together one as the response to the other and counsel for the parties made respective submissions on their contentions. The applications were canvassed by



oral submissions on 15/8/2025 and ruling reserved for 19/8/2025 on the basis of the priority and urgency of the matter.

### **Respective cases of the parties**

#### **The applicants' case**

8. The Petitioner challenges the constitutional validity of the Gazette Notice No. 10353 of 28/7/2025 on the basis of lack of participation, and breach of constitutional rights in the Bill of Rights of discrimination and violation of right to fair administrative action and the East African Community Customs Management Act (EACCMA).
9. Particularly, the Petitioner's contentions are presented in its Replying Affidavit sworn on 13/8/2025 in answer to the Respondents' application for discharge of the conservatory orders, as follows:

“replying Affidavit

[In Response to the Respondents' Notice of Motion dated 13th August 2025]

I, Simon Chege Kamangu a citizen of the Republic of Kenya and resident of Nairobi, P.O. Box 1958-00606, Nairobi County, Kenya and do hereby make oath and state as follows:

1. That I am an adult male of sound mind and a party Leader of the Respondent holding the position of Secretary General of the Applicant herein hence competent to swear this affidavit.
2. That the Petitioner herein was specifically registered to represent the needs of Farmers across the Republic across various for a notwithstanding their association, geographical residence, place of work, tribe, ethnic origin, community, gender or other consideration and therefore, the instant petition represents the will of all Rice farmers in Kenya including Mwea, Ahero, Bunyala, West Kano, Msambweni, Migori, Kuria inter alia.
3. That I have had the Notice of Motion of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents read to me by my Advocates on record to wit I have understood and wish to assert as follows.

On the Allegation of a Catastrophe in Kenya

4. That the Respondents have relied on the "National Drought Early Warning Bulletin and Food Security Assessment Report 2024" which was published in December 2024 AND NOT 2025 as alleged. The report predicted a shortfall in rainfall during the Late March-May season. The Report is overtaken by time.
5. That in April 2025 however the rains as reported by the National Disaster Operations Center exceeded the expectations of earlier predictions and were 11 above average" across the Lake Victoria Basin, highlands west of Rift Valley, Nairobi, South Eastern Lowlands, Northwestern and even parts of North Eastern Kenya. (Annexed and Marked as RA-SCK-I is the National Disaster Operations Center Report April 2025 Weather Forecast Report 2025)
6. That in the season June to September 2025, the IGAD Climate Prediction Applications Center (ICPAC) the largest accredited climate center governing the meteorological trends across 11 East African states again predicted "Above Normal Rainfall expected across Most parts of the Greater Horn of Africa"



7. That the ICPAC Report (Annexed and Marked as RA-SCK-2 is the IGAD-ICPAC Report 2025) specifically provides that "production prospects in the marginal agricultural areas of Embu Tharaka Nithi, Kilifi and Kwale. Similarly, unimodal high and medium potential areas of north Rift and Western Kenya, average to slightly above average production is expected between October and Early December. In the medium potential areas of south rift average to slightly above average maize production is expected between July" and August. Average production of beans has realized in the North and South Rift Areas and medium and potential areas of Central and western Kenya except in Nyanza where production is below average due to excessive rains. Across these locations, poor households are expected to meet their food needs through local production, typical labour activities"
8. That the Famine Early Warning Systems Network (FEWSNET), is a 40 year old organization and branch of the USAID focused on drought prevention had this to state in its {Annexed and Marked as RA-SCK-3 is the FEWSNET July 2025 Report "In late 2024 FEWS.NET projected crises outcomes would persist through May 2025 in pastoral areas of Turkana, Marsabit, Garissa, Tana River, Samburu, Wajir and Mandera as well as marginal agricultural zones of Kitui and Makueni. These projections were based on past and forecast weather shocks including below average October-December 2024 short rains...FEWSNET estimated that 2.5-2.99 million people However, the March-May 2025 long rains were above average and generally favorable leading to better food outcomes than initially expected."
9. That from the foregoing, it is clear that there is currently no famine in the Republic of Kenya or any part of its territories to warrant the immediate importation of duty-free rice or any "scientific forecasted-par 23 of attt" report or analysis that would justify the immediate importation of duty free Grade 1 rice.
10. That the Respondents position therefore that Grade 1 Rice must be admitted therefore fails since it does not meet the threshold set out in Schedule 5 Part B of THE EAST AFRICAN COMMUNITY CUSTOMS MANAGEMENT ACT, 2004, LAWS OF KENYA (NO. 1 OF 2005Lwhich provides for 'The Exceptions Regime' which in Part B provides for "Goods imported or purchased before clearance through customs" and in part 20 itemises "Relief goods imported for emergency use in specific areas where natural disaster/ calamity has occurred in a partner state" .
11. That the public statement is explicit and unequivocal in providing that there is no emergency situation declared to have occurred in in Kenya or any part of Kenya by the National Security Council as the highest organ in the Disaster Risk Reduction (DRR) framework in Kenya as per the Disaster Risk Management Strategy 2025-2030 or the Ad hoc Committee of Cabinet Secretaries which comes second. This is notwithstanding the fact that the 1st and 2nd Respondents sit within the Cabinet Secretaries Ad Hoc Committee. (Annexed and marked as SCK - 6 is a copy of an except of the Disaster Risk Management Strategy 2025-2030).



Unproportionality - In The Alternatlve (Famine in Turkana, Marsabit, North Eastern and part of the Coastal Areas)

12. That even if the Court was to find legitimacy in the Respondents assertions so that there are parts of Kenya that require importation of food items including Grade 1 Rice then Schedule 5 Part B of the Act (The East African Community Customs Management Act, 2004, Laws Of Kenya (no. 1 Of 2005) prescribes that such importation shall be specific "The goods are for use in areas where a natural disaster of calamity has occurred in a partner state. "
13. That. the areas admitted by the 2nd Respondent to having a shortage include Turkana, Marsabit, North Eastern and part of the Coastal Areas in paragraph 44 of the replying Affidavit in support of the Application have not been mentioned, captured or highlighted in the impugned Gazette Notice.
14. That. the Gazetie Notice No. 10353 Published On The 28th July, 2025 In A Special Issue Of Kenya Gazetie Volume CXXVII - NO. 161 broadly applies to every part of Kenya and is not specific to the territories of Kenya where the averred famine is/was likely to take place.
15. That I am informed by my Advocate whose advise I believe to be true that the Supreme Court 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) (Petition 5 of 2017) [2019] KESC 15 (KLR) (26 November 2019) (Judgment)* with approval upheld *Kenya National Commission on Human Rights & another v Attorney General & 3 others [2017] eKLR*, held that where there are competing constitutional rights then the Government must be proportional in according the different groups their rights in line with the relevant statute. That what is reasonable is not what is necessary, essential or unavoidable rather what is less drastic and sensitive to potential adverse consequences such as the infringement of basic common law rights.
16. That from the foregoing one wonders why the Respondents did not unilaterally allow all local importers to import all Grade 1 Rice duty free and instead limited it to the 6th Respondent. The same parastatal that has been indicted by the Auditor General barely a year for multiple and innumerable procurement related irregularities when the 1<sup>st</sup> Respondent authorized the importation of edible oils.
17. That I am informed by my Advocate whose advise I believe to be true that the Honourable Court like in the case of *Shuri & another v Cabinet Secretary for Interior & National Administration & 4 others (Petition E008 of 2024) [2024] KEHC 16631 (KLR) (20 December 2024) (judgment)* limited the generality of the Application of the Gazette Notice can limit the generality of the Application of the Gazette notice to specific areas and in this case the importation of the 500,000MT can be to the potentially drought stricken areas of the Country listed in paragraph 44 of the 2nd Respondents Affidavit.

Eaccma Is Not A Price Control Act



18. That consequently this Honorable Court appreciates that the mischief that the (THE East African Community Customs Management Act, 2004, Laws Of Kenya (NO. 1 OF 2005) Act tries to address IS NOT the controlling of prices as alleged by the Respondents in paragraphs 7,17,18,34,35,36,40-45 of the 2nd Respondent's Replying Affidavit rather availability of food.
19. That it is however clear that throughout the Respondents illegally and irregularly rely on the said Act as a price control mechanism the correct Act should the Respondents have been interested to check is the Price Control Act 2011 Price Control (Essential Commodities) Act.

On Public Participation

20. That the Respondents unanimously agree that they did not do any stakeholder engagement (par 21) or public participation because according to them "Legal Notices" even when they touch on grievous Constitutional questions of livelihood are too menial to go through the rigors of stakeholder engagement. They erroneously misquote Civil Appeal No. E326.2023 CS National Treasury and Anon Vs Eliud Karanja Matindi and Ors.
21. That I have been presented with, and I have read and I am now informed that The Supreme Court in British American Tobacco Kema, PLC v Cabinet Secretary for the Ministry of Health and 2 Others, established the standard that duty bearers must meet, and the threshold courts should use to determine whether duty bearers have fulfilled their obligation with respect to public participation. This threshold is set at a reasonableness standard.

On The Conservatory Order Test

22. That I am informed by my Advocate whose advise I believe to be true that the Supreme Court in Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others [2014] eKLR. the Court stated that for a prima facie case to be arguable, does not call for the interrogation of the merits of the suit and the Court at conservatory stage must not make any definitive conclusions of either fact or law. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully at the hearing before the court. Even one arguable point is sufficient to meet this test.
23. That from the foregoing, farmer produce especially for those who are not part of Associations has not been mopped for several seasons and the Media press statements as well as the Affidavit of farmer actually supports this position.
24. That I am further informed by my Advocate whose advise I believe to be true that the Supreme Court in Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 others. Civil Application No 31 of 2012; [2013] eKLR stated the subject matter being rendered nugatory means that "whether what is sought to be preserved if allowed to happen is reversible; or if it is not reversible, whether damages will reasonably compensate the party aggrieved.
25. That it is obvious that if the 500,000MT of rice are allowed into the Country the price of domestic and foreign imported rice on the shelf at the farm and in private reserves will plummet.



26. That as a third ground, this Court in considering an application for conservatory orders cannot ignore the impact of such orders beyond the parties to the case should the order be granted or denied. Consequently, the Court will make a general inquiry as to where the public interest lies, considering the parties' respective rights.
27. That, since there is no drought or catastrophe declared within the Republic of Kenya and yet, the Respondents are properly clothed with authority and resources to mop up locally grown rice from unregistered farmers in rice growing areas within and outside Mwea.
28. That the Gazette and Public Notice herein were made by the 1st Respondent herein at the recommendation of the 2nd Respondent and in Kenya it is already trite law that such a decision can only be reviewed in the first instance through the High Court or a Court of similar jurisdiction. This Court is therefore vested with appropriate jurisdiction to adjudicate this matter.”

### **The Respondents' case**

10. The Respondents opposed the application as based on mis-representation and non-disclosure of material facts and failure to meet the threshold for the grant of a conservatory orders prescribed in *Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Ors.* (2014) eKLR. On their part 1, 2, 5 and 6 respondents filed, in addition to their replying affidavit, an application dated 13/8/2025, supported by the other Respondents, seeking the discharge of the Conservatory orders granted by the Court pending inter partes hearing of the application.
11. Principally, the Respondents contend that the action taken by the Ministry of Agriculture is targeted towards achieving and attaining food and nutrition security as a constitutional mandate pursuant to Article 21 of *the Constitution*. It is contended that Kenya produces on 20% of the national demand of rice, and the deficit is bridged by imports, and that failure to import the rice to meet the shortfall would lead to acute food scarcity and sharp price increases not only for the rice product but also other foods staple to the Kenyan households such as maize and wheat flour products, with a resultant overall increase in the cost of living for Kenyans. The respondents urge that the decision to approve the duty free importation of 500,000MT of grade 1 rice from 28/7/2025 until 31/12/2025 published in the impugned gazette Notice No. 10353 of 28/7/2025 was informed by scientific projections of the impending rice shortage. The respondents accused the petitioners of material non disclosure of material fact that, contrary to allegation of likely negative impact on the livelihoods of farmers, “the Government has entered into several frame work agreements with rice farmers and cooperatives to mop-up the local produce”.
12. The 3<sup>rd</sup> Respondent's Grounds of Opposition dated 14th August 2025, principally, that this Court lacks the requisite jurisdiction to entertain the Petition, as the issues raised are non-justiciable and fall squarely within the domain of the Executive arm of government and that that the Petition offends the doctrine of separation of powers, as it seeks to have the Judiciary interfere with and substitute its own judgment for that of the Executive in matters of policy-making and resource allocation.
13. The 4<sup>th</sup> Respondent (KRA) set out its objection in the Grounds of Opposition dated 13th August, 2025 supported the Respondents case and urged that its role under Section 5 (2) of the East Africa Community Customs Management Act, 2004 is the management and control of the Customs including the collection of, and accounting for, Customs revenue in the respective Partner State; the import quota is determined based on the current rice stock available within the country, and such



quotas can be adjusted as needed to reflect changes in demand and supply; that the national rice requirement is 1,300,000 MT annually, as per the latest data provided by the 2nd Respondent and the Applicant has acknowledged that local production can only fulfill 264,000 MT of this demand; that once this quota and the local production of 264,000 MT are exhausted, a remaining deficit of 536,000 MT will persist; that the Gazette Notice aims to curb inflation while acknowledging the potential for increased local production, thereby justifying the provision for a deficit of 536,000 MT; that no data or evidence has been presented to suggest a significant surge in local production capable of surpassing the current national demand for rice; and that the mitigation measures outlined in the Gazette Notice constitute an executive process designed to facilitate both consumers and producers of rice within the country.

14. Counsel for the parties made oral submissions on their respective contentions, and ruling was reserved.

## Determination

### Preliminary - Locus standi of the petitioner

15. Articles 22 and 258 of *the Constitution* gives locus standi to a person suing for the enforcement of the Bill of Rights and interpretation of *the Constitution* on behalf of others in a group or class as follows:

- “(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—
- (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.”

16. There is nothing to stop a person acting on behalf of others from raising an issue in public interest, as an issue may well be both an issue of interest to a particular group especially and also in the general interest of the public.
17. Moreover, the Article 22 (3) anticipates that the technicalities as to the form of filing of the claim may even be informal by a requirement that in the rules made for litigating the Bill of Rights “formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation”.
18. In these circumstances, it is difficult for the court to deny the Petitioner standing to approach the Court and agitate for the right (to life) of the farmers as a group of the inhabitants of Kenya, derived from the economic rights to a fair return for their farm produce, which rights may also have an effect of the public interest stable food prices and, ultimately, in food security.



## Principles for the grant of conservatory orders

19. The court has considered the twin applications against the principles for the grant of conservatory orders as set out by the leading authority of the Supreme Court on conservatory orders, *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, which guided as follows:

- “(85) These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.
- (86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.
- (87) The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:
- (i) the appeal or intended appeal is arguable and not frivolous; and that
  - (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.
- (88) These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely:
- (iii) that it is in the public interest that the order of stay be granted.
- (89) This third condition is dictated by the expanded scope of the Bill of Rights, and the public-spiritedness that run through *the Constitution*. This Court has already ruled that election petitions are both disputes in personam and disputes in rem. While an election petition manifestly involves the contestants



at the poll, the voters always have a stake in the ultimate determination of the dispute, hence the public interest.”

### Whether prima facie case established

#### Public participation

20. The decision of the Court of Appeal in Civil Appeal NO. E326 of 2023 as Consolidated with Civil Appeal No. E330 of 2023, CS National Treasury & Others v. Eliud Karanja Matindi & Others (Musinga (p.), Lesiit & Achode, JJ.A.) of 30/12/2024) cited by the Respondents as exempting from public participation a legal notice granting tax exemption to certain individuals does not help matters here because the decision challenged in this case is not the grant of tax exemption to certain individuals but the very decision to import duty free rice to fill alleged gap in consumer demands against the local production. It would appear that the consideration of the extent by quantities to be imported and the time allowed for the importation were matters which ought to have been subjected to public participation.

21. Eliud Karanja Matindi, supra, also related to its facts of an executive decision following on a Government-to-Government negotiations leading to the grant of tax exemptions to certain individuals:

“ 58. We have looked at the impugned Legal Notice and note that it exempts income tax from Japanese companies, Japanese employees and Japanese consultants involved in the projects under the Financing Agreements specified in the schedule to the said notice. The Legal Notice was specific, firstly, as to category of persons to whom the exemption applied, and secondly, the applicable Financing Agreements between the two Governments. On this premise and on the fact that the Legal Notice was issued after government-to-government negotiations, we fully associate ourselves with the views expressed by the appellants that the Legal Notice was executive in character. It was intended to provide information to the public on collection of income tax or exemption thereof for Japanese companies, consultants and employees working in the sixteen projects with which the two governments had Financing Agreements on.”

22. On the occasion, the Court of Appeal found that the Legal Notice did not amount to a Statutory Instrument - a legislative act - subject to public participation as follows:

“ 60. The Legal Notice was, in our view, clothed with executive character from the negotiations aspect thereof, even in the manner in which it was worded. It did not therefore, fall within the definition of a statutory instrument under the section 2 of the *Statutory Instruments Act*.

61. Having held as above, we hold the view that the Legal Notice, not being a statutory instrument, the provisions of sections 5 and 5A of the *Statutory Instruments Act* requiring public participation were not applicable to it. The applicable provision of the law was section 13(3) of the Act which requires that a tax exemption notice under subsection (2) be laid before the National Assembly without unreasonable delay for consideration by the National Assembly, which may either approve it, or annul it, in the event of which it becomes void. The National Assembly therefore plays a pivotal oversight



role in ensuring that any exemption notice issued by the CS Treasury is in accordance with the law.

62. Therefore, while we commend the High Court for its wonderful exposition on the principle of public participation, we hold the view that it erred in arriving at the conclusion that the impugned Legal Notice was a statutory instrument and therefore subject to the provisions of Article 10 and 118 of *the Constitution* as well as sections 5 and 5A of the *Statutory Instruments Act*.”

23. While this Court is bound by the Court of Appeal Matindi decision, the present case appears different on its facts, as the challenge here is not on the power to issue tax exemption by a Legal Notice or Gazette Notice - and there is no contention that the impugned Gazette Notice in this case was a statutory instrument - but rather whether circumstances exist to the invocation of the authority to grant tax exemption. The determination of existence of these circumstances as an act of governance does appear to be subject to Article 10 (2) principle of “participation of the people.”

24. The Court considers that the matter in this case is governed by the general guiding principles nos. (i) and (ii) for public participation set out by the Supreme Court in the BAT case, supra, primarily that:

“Guiding Principles for public participation

- (i) As a constitutional principle under Article 10(2) of *the Constitution*, public participation applies to all aspects of governance.
- (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.
- (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
- (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to ‘fulfill’ a constitutional requirement. There is need for both quantitative and qualitative components in public participation.
- (v) Public participation is not an abstract notion; it must be purposive and meaningful.
- (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
- (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.
- (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
- (ix) Components of meaningful public participation include the following:



- a. clarity of the subject matter for the public to understand;
- b. structures and processes (medium of engagement) of participation that are clear and simple;
- c. opportunity for balanced influence from the public in general;
- d. commitment to the process;
- e. inclusive and effective representation;
- f. integrity and transparency of the process;
- g. capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.”

25. Although, the Petitioners perhaps attempted a strenuous correlation between the impugned decision to import duty free rice and violation of their constitutional right to life, there is merit in the submissions of threatened violation of rights to property and to fair administrative action. The Court also finds that the Petitioners have demonstrated a prima facie case on want of public participation on the decision to permit the importation duty free of the 500,000MT of grade 1 rice.
26. Reading the provisions of section 114 of the EACMA, the Court does not at this stage find that the reliance on the law to found the decision to approve the importation of rice without payment of duty is unreasonable and illegal. The section provides for exemptions regime significantly for foodstuff for emergency relief in a partner state, for relief purposes of such quantities and for such period as necessary. Without finally deciding the point, the lack of detail of areas affected by drought in a partner state and whether it is the appropriate provision for grounding authority to import to fill the national shortage is a matter for determination at the hearing of the Petition, which does not appear to distract the inquiry as to whether such need to import and fill shortages exist.
27. Additionally, in the respectful view of this court, the fact that an action could be done under one statutory provision does not preclude the grounding of the said action upon another similarly applicable legal provision of law. Consequently, the fact that as contended by the Petitioner that the Respondent’s action was a price control measure did not preclude the action being amenable to other objectives such as filling any shortages. The merit of the alleged objective of the Gazette Notice and, therefore, the most suited legal regime should subject of investigation at full hearing.
28. So too should the consideration whether the use of the law perpetuated a discriminatory scheme against the farmers and whether the petitioners right to fair administrative action was violated or is threatened with violation.

**Whether failure to grant conservatory order will render petition nugatory**

29. Should the conservatory order sought be withheld the petitioner’s fears that the imported duty free rice will flood the market and cause a falling in price and affect their means of sustenance and their ability to dispose of their local produce of their farms.
30. The Petition seeking to halt a slide in the prices of rice locally produced by the petitioners would have been defeated and the negative effect on their own economic wellbeing, as well as that of the consumers who have to pay higher prices for the commodity, will have been incurred, if the full act of importation is completed before the Petition is heard and the petitioners’ grievance redressed. The Petition will have been rendered nugatory.



## Public interest consideration

31. The respondents assert the likely effect of a shortage resulting in food crisis, high prices in the product and other staple foods and ultimate adverse impact on food security in the Country. The rights to life (Art.26), economic and social rights (Art.43) and consumer rights to health, safety and economic interests (Art.46) are threatened both for the Petitioners and the larger Kenya population. The situation appears to call for a balancing of the property rights and interests of Petitioners/ farmers who grow rice in the different parts of Republic and the equally important national interest right in food security, and taking into account the convergent interest of both parties in a steady food economy and stable prices.

## Structural interdict

32. The matter of balancing the right to food security and the rights of farmers to fair return on their agricultural efforts is too important to be left to a zero-sum game of winner - loser outcome, where one wins and the other loses. Both have significant and valid interests which lay a claim to a consideration as public interest. There is public interest in a food-secure nation as in a well remunerated farming community, in the same way that the underproduction or scarcity of farm produce should not lead to spiralling inflation and high food prices. It is a complex scenario calling for the balancing of the interests and close monitoring for immediate remedial responses on either side when the determinant variable factors shift.
33. The Court has authority under Article 23 (2) of *the Constitution* to fashion appropriate relief based on the circumstances of the case. In this case, in view of the continuing changes in the circumstances occasioned by the mop-up of rice stores, the expected paddy production which are ongoing exercises and the supplementary importation to meet the local demand, the conservatory order sought must be implemented under the supervision of the Court so that an effective balance of the rights of the parties is achieved and maintained with such modifications as continuous monitoring makes necessary.
34. Since the Supreme Court's *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae) (Petition 3 of 2018) [2021] KESC 34 (KLR) (11 January 2021) (Judgment)*, it is accepted that the Court may grant structural interdicts, where the court in exercise of its judicial authority supervises the compliance with the rule of law and redress of human rights. The Court said that –

“.... Where a court of law issues an order, whose objective is to enforce a right, or to redress the violation of such a right, it cannot be said to have abdicated its judicial function as long as the said orders are carefully and judicially crafted.

122. Having stated thus, we hasten to add that, interim reliefs, structural interdicts, supervisory orders or any other orders that may be issued by the courts, have to be specific, appropriate, clear, effective, and directed at the parties to the suit or any other State Agency vested with a constitutional or statutory mandate to enforce the order. Most importantly, the court in issuing such orders, must be realistic, and avoid the temptation of judicial overreach, especially in matters policy. The orders should not be couched in general terms, nor should they be addressed to third parties who have no constitutional or statutory mandate to enforce them. Where necessary, a court of law may indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions.”



35. In this case, although the respondents claim that the importation of 500,000MT of rice will not be done in one-go and that there shall be monitoring to identify the effect of the importation on the prices, nothing is said as to what is to prevent the importers taking an advantage of the permission to import duty free and bring all the 500,000MT at a go and thereby cause a crushing downward trend on the local farm price of the commodity.
36. In this Court's respectful view, the matter before the Court is not one of mere policy – that is the policy for duty free importation of rice for which there is no dispute - and the Court does not wish to overreach. It is an issue of the implementation of the policy for the mop-up of the rice produced from the farmers and the curing by duty free imports of the deficit established with suitable public participation, as necessary.
37. The Court does not seek to stop the giving effect or implementation of the Policy of importation of the deficit of the rice requirements for the Kenya population on duty free basis to incentivize the importers. The Court's concern is in the manner of implementation and the objective is to ensure that the food situation caused by a deficit in the local rice production and justifying rice importation does not cause adverse effects, firstly, on the consumer prices, which is common ground for both the Petitioners and the Respondents, and, secondly, on the farm prices for the farmers diminishing rice profitability and reducing the farmers' ability to sell their produce is hampered by the availability of cheap imports. To obtain an equitable equilibrium requires the concerted efforts and consultation within the rice/food industry, as regards available stocks in the farmers/dealers' stores, the amount of local production and the crop in the fields, the amounts required to top-up supply to meet the demand and the length of the period of the importation, bearing in mind the next harvest/produce. Hence the principle of public participation.
38. As a Constitutional/ Human Rights Court and Judicial Review Court, this court is enjoined to consider whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened and whether the decision/ action taken by the Respondent was arrived at, as a matter of substance and procedure, in due compliance with the applicable law.
39. The Court recalls, with admiration, the words of Mafusire, J. of the High Court of Zimbabwe in *Grandwell Holdings (Pvt) Ltd* (HH 193 of 2016, HC 1977 of 2016), and it remains this court's stance, that:

“No one stops government from governing. No one stops government functionaries from crafting and implementing government policy. But in all this, the rule of law must be observed. This is paramount. It is a tenet the courts will defend to the last judge standing. The alternative is anarchy. Law and order are indispensable elements of civilised society. This must sound like a broken record. But unless the need for it falls away, the principle may continue to be re-stated.”

## **Conclusion**

40. The solution in this case appears to be two-fold – containment of drop in farm price by phased importation of the deficit and encouragement of local production by the assured mop-up of the farmers' stocks and paddy by contract such the one demonstrated with the Mwea Rice farmers. As scheme that ensures not more than is necessary to meet the deficit is imported, while keeping the price of the product stable, is what is called for.
41. Granted the Petitioner's optimism for good produce in the year and with the Respondents data as to the necessary quantities of local demand against production, and being careful not to cause a food



shortage crisis, the court would, at this stage of the hearing of the case, allow the implementation of the Gazette Notice but not for the entire import window of six (6) months ending 31 December 2025 that it grants and not for the entire volume of rice to be imported, but with a limit of half of the amount so that only a total of 250,000 MT of rice is imported and for a shorter window of three months ending 31<sup>st</sup> October 2025 and subject to continuous monitoring to establish the deficits in view of the paddy rice harvested from the farms and the mop-up of similar stocks in the farmers stores and the need to meet any shortages by further duty free import permits as necessary. This Court undertakes its duty under the Mitubell decision to clarify and “indicate that the orders it is issuing, are interim in nature, and that the final judgment shall await the crystallization of certain actions” as indicated hereinbelow.

42. The Respondents will be required to file an update and compliance report with the Court on the expiry of the import window on 31/10/2025, for further directions as necessary.
43. In view of the many uncertainties in the matter with regard to the production of the paddy in the fields, the mop-up exercise and the price changes, the Court shall give all the parties in the suit liberty to apply for further orders.

### **Orders**

44. Accordingly, for the reasons set out above, the Court finds merit in Petitioner’s case for a conservatory order to the extent indicated hereinbelow and makes the following specific orders:
  1. The Respondents shall implement the Kenya Gazette Notice No. 10353 Published On The 28th July 2025 In A Special Issue Of Kenya Gazette Volume Cxxvii – No. 161 To The Extent Only of importation of 250,000 MT of rice and for the period ending Friday 31<sup>st</sup> October 2025.
  2. The Respondents shall file in Court, such Reports indicating the progress of the mop-up exercise and accurate information as to the local production of rice and the resultant deficit by 3/11/2025.
  3. Liberty to apply.
  4. Cost in the cause.
45. The Petition shall be progressed to hearing upon filing of responses by way of any replying affidavits by the Respondents as necessary.
46. Mention for directions on Monday 3/11/2025.

Order accordingly.

**DATED AND DELIVERED THIS 26<sup>TH</sup> DAY OF AUGUST 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Musyoki Musango for the Petitioner.

Mr. Kaumba with Mr. Muriuki for the 1, 2, 5 & 6 Respondents.

Mr. E. Theuri with Ms. Kiunga for the 3<sup>rd</sup> Respondent.

Mr. Ochieng with Nyaga with Ms. Kahindi for 4<sup>th</sup> Respondent.

