



REPUBLIC OF KENYA



**KENYA LAW**

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**Farmers Party v Cabinet Secretary, National Treasury and Planning & 5 others  
(Petition E009 of 2025) [2025] KEHC 12169 (KLR) (19 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12169 (KLR)

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

**PETITION E009 OF 2025**

**EM MURIITHI, J**

**AUGUST 19, 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. 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 he 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.”
2. 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 (EACMA).
3. 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.
4. 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.
5. Principally, the respondents’ case is that the action taken by the Ministry of Agriculture is targeting 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 foro 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.

6. The 3<sup>rd</sup> Respondent's grounds of opposition dated 14th August 2025 principally that this Honorable 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.
7. The 4<sup>th</sup> respondents (KRA) grounds of opposition dated this 13th day of August, 2025 supported the respondents case and urged that under Section 5 (2) of the East Africa Community Customs Management Act, 2004 provides that (2) the 4th Respondent shall be responsible for 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.
8. The Petitioner's further affidavit and replying affidavit to the 1,2,5.and 6 respondents' application for setting aside conservatory orders reflects the petitioner's case in the petition as does the respondent's application for setting aside
9. Counsel for the parties made oral submissions on their respective contentions and ruling was reserved.

## **Determination**

### **Preliminary - Locus standi of the petitioner**

10. Articles 22 and 259 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.”



11. 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.
12. 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”.
13. 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**

14. 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

15. The decision 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 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.
16. The Court considers that the matter is governed by the general guiding principles nos. (i) and (ii) for public participation set out by the Supreme Court in the BAT case 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.”

17. 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.
18. 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.
19. 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**

20. 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.
21. 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 will have been incurred, if the act of importation is completed before the petition is heard and the petitioners' grievance redressed.

### **Public interest consideration**

22. 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 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 interests for both parties in a steady food economy and stable prices.

### **Structural interdict**

23. 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.
24. 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.
25. 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.”

26. 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.
27. 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.
28. 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.”
29. 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.
30. 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.



31. 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.
32. 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.
33. The full reasons of the ruling will be handed down and published in the Court Tracking System (CTS) in seven (7) days on Tuesday 26/8/2025.

### **Orders**

34. 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 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.
35. The Petition shall be progressed to hearing upon filing of responses by way of any replying affidavits by the Respondents as necessary.
36. Mention for directions on Monday 3/11/2025.

Order accordingly.

**DATED AND DELIVERED THIS 19<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.

