



Thuo v Kenya National Highways Authority & 3 others (Constitutional Petition E014 of 2022) [2025] KEHC 11967 (KLR) (11 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E014 OF 2022**

RN NYAKUNDI, J

AUGUST 11, 2025

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010
AND IN THE MATTER OF: SECTION 17, 20 AND 22(2) OF THE EAST
AFRICAN COMMUNITY VEHICLE LOAD CONTROL ACT, 2016**

AND

IN THE MATTER OF: THE NATIONAL TRANSPORT & SAFETY ACT NO. 33 OF 2012

AND

IN THE MATTER OF: SECTIONS 55 AND 56 OF THE TRAFFIC ACT

AND

**IN THE MATTER OF: SECTION 8&9 OF THE LAW
REFORM ACT, CHAPTER 26 LAWS OF KENYA**

BETWEEN

JOHN WAITHAKA THUO PETITIONER

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 2ND RESPONDENT

KENYA BUREAU OF STANDARDS (KEBS) 3RD RESPONDENT

MASTER FABRICATORS LIMITED 4TH RESPONDENT

JUDGMENT

1. John Waithaka Thuo filed an amended petition dated 14th December, 2022 against the respondents seeking orders as follows:



- a. A declaration that the rights and or fundamental freedoms of the petitioner enshrined under Articles 40, 47, 48 and 50(2) of *the Constitution* of Kenya 2010 were infringed and/or violated by the actions of the Respondent.
 - b. A declaration that the detention and subsequent impoundment of motor vehicle registration no. KCJ 132U was illegal, unlawful and/or unconstitutional.
 - c. A declaration that the petitioner is not in contravention with section 58 of the *Traffic Act* Cap 403 Laws of Kenya as they were inspected by the 2nd Respondent and given a green light to begin operations pursuant to section 58 of the *Traffic Act* Cap 403 Laws of Kenya.
 - d. An order of Certiorari in Judicial review do issue to remove to this Honorable court for purposes of being quashed, and to quash the decision of the 1st Respondent to infer charges against the Petitioner's driver in Eldoret Law Courts.
 - e. An Order of Certiorari in Judicial Review do issue to remove to this Honorable Court for purposes of being quashed, and to quash the ongoing proceedings in Eldoret Law Courts Eldoret Mtrc No. 401 Of 2022 R. V Benson Maina Kuria.
 - f. An order of Mandamus in Judicial Review directed at the Respondents to have the said Motor Vehicle Reg. KCJ 132U be re-weighted and amended as per the ascertained weights.
 - g. The Costs of the Petition.
2. The Petitioner contends that the Respondent discriminated against the Petitioner contrary to Article 27 of *the Constitution* of Kenya, 2010 as well as section 17, 20 and 22(2) of the East African Community Vehicle Load Control Act, 2016. That the respondent has violated the Petitioner's rights and or fundamental freedom of the Petitioners enshrined under Articles 40, 47, 48 and 50(2) of *the Constitution* of Kenya 2010.
 3. The Petitioner argued that the said action of the Respondent violates the Petitioners rights to a fair administrative action as well as the right to be afforded reasons for an administrative action contrary to Section 8 and 9 of the Fair Administrative Act.

The Petitioner's case

4. The Petitioner states that on the 22nd May, 2022 his driver/employer and motor vehicle registration no. KCJ 132U was unlawfully detained by the 1st Respondent on the allegations of an overload on the diverse dates between 2nd February, 2019 and 21st December, 2021.
5. According to the petitioner, on the diverse dates between 2nd February, 2019 and 21st December, 2021 while its motor vehicle registration no. KCJ 132U was passing and Eldoret Webuye highway within Uasin Gishu County it was recorded to have carried an overload as per the Kenya National Highways Authority ticket number TAG132497683. The petitioner stated that as a result of the said overload, the 1st Respondent summoned his driver/employee to appear at Eldoret law courts on 23rd May, 2022, to answer charges of using a motor vehicle on a road with a load greater than the load specified under Sec. 58(2) and Rule 41 of the *Traffic Act*.
6. That the 5th Respondent preferred charges against the petitioner's driver in Eldoret MTCR No. 401 OF 2022 R. V Benson Maina Kuria the applicant's driver.
7. The Petitioner averred that the suit motor vehicle is a class 2 category which should have a maximum axle load of 18,000 Kgs. That the motor vehicle has never carried an overload as alleged by the 1st



Respondent since its manufacture. He further stated that the 2nd respondent's inspection report indicates that the gross vehicle weight of the said motor vehicle was 13000kgs being 8000kgs tare weight and 5000kgs load capacity after the body manufacture. The Petitioner states that recordings on the said motor vehicle's log book are 11000kgs for the tare weight and 5000kgs for the load capacity giving a total of 16000kgs as gross weight for the same.

8. The petitioner avers that from the differences on the inspection report and the log book, it is evident that the said motor vehicle reg. KCJ 132U was never weighed to ascertain its correct weight. He averred that since the bus body was built by the 4th Respondent, it has never added or removed any part of the said body. That there is a similar motor vehicle KCL 065A the subject of Kisumu High Court Petition No. 1 OF 2022 which also faces similar challenge on the exact weight more than the recorded weight on the log book.
9. It is also the Petitioner's averment that the motor vehicle KCJ 132U has a tare weight exceeding 15000kgs against the recorded weight of 11000kgs as tare weight hence the reasons for re-weighing. The petitioner stated that there was an oversight during the inspection by the 2nd Respondent and the 3rd Respondent leading to wrong entries being entered on the log books regarding the tare weight and the load capacity of the said motor vehicle. That he has never been given an opportunity to defend the overload allegations by the 1st Respondent since the motor vehicle belongs to him. He avers that the Respondent's actions to detain the said motor vehicle at Webuye weighbridge and to summon his driver/employee are unconstitutional, capricious, arbitrary, pre-determined, injudicious, and contaminated by and actuated by malice, self-interest and improper motive and violates the rules of natural justice.
10. It is the Petitioner's case that the Constitution under Article 2 provides for the supremacy of the Constitution and that it binds all persons and state organs at both levels of government and any law that so contravenes it suffers only one fate that of being declared unconstitutional.
11. That Article 27(1), (2) and (4) of the Constitution of Kenya entitles the petitioner to equality and freedom from discrimination including equality before the law and the right to equal protection and equal benefit of the law, full enjoyment of all rights and fundamental freedoms, non-discrimination including equality before the law and the right to equal protection and equal benefit of the law, full enjoyment of all rights and fundamental freedoms, non-discrimination any ground whatsoever which thus renders the actions of the targeted to only but suppress the hardworking Kenyan employees to a state of economic crisis despite Art. 43 guaranteeing everyone the right to economic development which the state through the Respondents has to play a central role in promoting.
12. That Article 47 of the Constitution guarantees every person's right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Further that Article 50(2) of the Constitution guarantees every person's right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate, another independent and impartial tribunal or body.
13. Article 22 of the Constitution of Kenya entitles the Petitioner to institute these proceedings to remedy the Respondent's denial, violation or infringement of his rights or fundamental freedoms jealously protected under the Bill of Rights in so far as fair labor practices as contained under Art. 41 and fair administrative actions founded under Article 47 of the Constitution of Kenya, 2010.
14. That the decision or indecision of the Respondent as it stands curtails and/or interferes with the Petitioner's economic freedom exposing them to possible loss of earnings and livelihood thus denying him a fundamental right to economic well-being and a right to earn a living contrary to provisions



of *the Constitution*. That the Respondents' hurry in preferring charges against the Petitioner is illegal, arbitrary, excessive, unimplementable and speculative as against the petitioner rights under Article 47 and 50 of *the Constitution*.

Petitioner's further Affidavit

15. The Petitioner deposed that on the 7th February, 2023 this Honorable Court issued an order for re-weighing of Motor Vehicle Registration No. KCJ 132U.
16. That with the assistance of the 2nd Respondent, Motor vehicle Registration No. KCJ 132U was weighed and the weight turned to be 13,850 Kgs.
17. That the weight of 13,850 Kgs super secedes the weights of 11000 Kgs as presented in the log book.

Petitioner's submissions

18. Learned Counsel Mr. Ojienda appearing for the Petitioner submitted that his client's fundamental freedoms and rights under Articles 40, 47, 48, and 50(2) of *the Constitution* of Kenya 2010 were infringed and violated by the actions of the respondent. He emphasized that this violation was substantial and required immediate judicial intervention.
19. Mr. Ojienda submitted that his client, as the registered owner of motor vehicle registration number KCJ 1321, was properly registered under class 2 axle category with a maximum axle load of 18,000kgs. In advancing his argument, learned counsel drew the court's attention to the significant discrepancy in weight measurements. He pointed out that while the log book indicated a true weight of 11,000kgs, the actual re-weigh conducted on diverse dates between 1st February 2023 and later in 2023 showed 13,850kgs.
20. Mr. Ojienda vigorously argued that his client was never accorded the opportunity to defend against the overload allegations, despite being the rightful owner of the motor vehicle. This, he submitted, was a clear violation of natural justice principles and constitutional rights to fair administrative action.
21. In addressing the statutory framework, learned counsel directed the court's attention to Section 17,20 and 22(2) of the East African Community Vehicle Load Control Act. Mr. Ojienda outlined how these provisions, particularly section 17 provided crucial pointers regarding property rights and administrative procedures that were relevant to his client's case.
22. Learned counsel couched various issues for determination, which I shall endeavor to briefly highlight. The issues are:
 - a. Whether the rights and or fundamental freedoms of the Petitioner enshrined under Art. 40, 47, 48 and 50(2) of *the Constitution* of Kenya 2010 were infringed and/or violated by the actions of the Respondent.
 - b. Whether an order of Certiorari in judicial review should issue to remove to this honorable court for purposes of being quashed, and to quash the criminal proceedings ongoing at Eldoret Law Courts; ELDORET MTCR NO. 401 of 2022 – R v. BENSON MAINA KURIA.
 - c. Whether the detention and subsequent impoundment of petitioner's motor vehicles were illegal, unlawful and/or unconstitutional.
 - d. Whether the petitioner is in contravention with section 56 of the *Traffic Act* CAP 403 Laws of Kenya as they were inspected by the 2nd Respondent and given a greenlight to begin operations pursuant to section 56 of the *Traffic Act* Cap 403 Laws of Kenya.



- e. Whether an ORDER OF MANDAMUS in Judicial Review should be directed at the Respondents to have the said Motor vehicles log books amended as per the ascertained weights.
23. On the first issue, counsel submitted that the Petitioner's right to own property has been violated and/or infringed by the Respondent to detain and/or impound the applicant's vehicle without affording the Petitioner an opportunity to be heard as is prerequisite before taking any form of action that is likely to adversely affect the rights and/or fundamental freedoms of an individual as is provided for under Art. 47, 48 and 50 of *the Constitution* 2010.
24. Counsel submitted that the Respondent's reliance on the East Africa Community Vehicle Load Control Act 2016 to arbitrarily deprive the petitioner of its property is in violation of the supremacy of *the Constitution* in that the same is inconsistent with the provisions of Art. 40, and therefore the actions of the Respondents employees of agents are invalid, unlawful and/or unconstitutional as they contravene the provisions of *the Constitution* and the Petitioner's right to property. He stated that the petitioner was never given the opportunity to defend the overload allegations since the motor belongs to him. That the Respondent as such violated Art. 40, 47 and 50 of *the Constitution*, and that the Respondent acted in excess of the powers vested upon them and in contravention of the law. In support of his argument, the Petitioner relied on the case of Joram Nyaga Mutegi v. Kenya National Highway Authority (2017) eKLR.
25. Moving to the second issue, learned counsel started by submitting that the objective of seeking judicial review orders is to cushion or protect litigants against suffering consequences out of decisions arrived at by public bodies, institutions or public officers without due regard to due process, procedural propriety, observance of the principles of natural justice by treating everybody equally and fairly, national and prudent consideration and treatment of issues before them, due regard to the people they are serving and upholding the rule of law.
26. It is submitted for the Petitioner that decisions that are arrived at irrationally, illegally, unprocedurally through considerations of extraneous factors or in breach of principles of natural justice are null void abinitio hence subject to quashing through the tool of judicial review. To support his argument, learned counsel relied on the case of Civil Service Unions v Minister for Civil Service (1985) A, C374 where Lord Diplock stated that Judicial Review has developed to a stage where one can classify the grounds for consideration as that of Irrationality, illegality and procedural impropriety. That as a general principle, judicial review is not concern with merits or demerits of the decision but rather, the procedural impropriety aspect. He highlighted that with the advent of the 2010 constitution and the enactment of the *Fair Administrative Action Act* 2015, it is difficult sometimes to isolate judicial review proceedings challenging legality of the processes without touching on its merits.
27. On this limb, learned counsel submitted that an order of Certiorari in Judicial Review do issue to remove to this Honorable court for purposes of being quashed, and to quash the proceedings in Eldoret MTCR No. 401 of 2022 R. V. Benson Maina Kuria.
28. On the third issue, learned counsel submitted that the 1st Respondent declared a crackdown and clamped all the suit motor vehicles alleging overload on various highways. The said suit motor vehicles have never carried an overload as alleged by the 1st Respondent. That the suit motor vehicles were compliant and thus not in contravention with section 56 of the *Traffic Act* as they were inspected by the 2nd Respondent and given a green light to begin operations.
29. It is submitted for the Respondent's that actions to detain the said motor vehicles at different weighbridges and to summon his drivers/employees are unconstitutional, capricious, arbitrary, pre-



determined, injudicious, and actuated by malice, self-interest and improper motive and violates the rules of natural justice.

30. As to whether the Petitioner was in violation of Section 56 of the Traffic Act, learned counsel submitted that the vehicles were compliant and thus not in contravention with section 56 of the Traffic Act as they were inspected by the 2nd Respondent and given a green light to begin operations.
31. Finally, in seeking an order of mandamus as against the Respondents, learned counsel started by citing the decision in Republic v The Commissioner of Lands & Another Ex-parte Kithinji Murugu M'agere, Nairobi High Court Misc. Application No. 395 of 2012 where it was held that mandamus is employed to enforce the performance of a public duty which is imperative, not optional or discretionary, with the authority concerned. In addition, that mandamus may be issued to enforce mandatory duty which may not necessarily be a statutory duty, but which has "a public element" which may take any forms. Counsel submitted that on the re-weighing of the motor vehicle and shown to this Honorable court the discrepancies, it is only prudent that an order of mandamus in judicial review should be directed at the Respondents to have the said motor vehicle log books amended as per the ascertained weights.
32. Mr. Ojienda Seth in concluding submitted that the Petitioner has demonstrated that his rights and or fundamental freedoms enshrined under Art. 40, 47, 48 and 50(2) of the Constitution were infringed and/or violated by the actions of the Respondent. That the detention and subsequent impoundment of his motor vehicles were illegal, unlawful and/or unconstitutional. That an order of mandamus in judicial review should directed at the Respondents to have the said motor vehicles log books amended as per the ascertained weights.

4th Respondent's Replying Affidavit

33. The 4th Respondent filed a replying affidavit sworn by one Bobby Virdee. He deposed that the 4th Respondent is a limited liability company as well as registered as such under the Companies Act and responsible for the buses body building. He stated that the petitioner contracted the 4th Respondent to fabricate motor vehicle registration No. KCJ 132U Chassis No. 9BSF4X20003882352.
34. That while fabricating the said motor vehicle body the 4th Respondent applied the standards supplied to us by the 3rd Respondent and which it has always used on all its customers. That after the fabrication the 4th Respondent released the said motor vehicle back to the petitioner for subsequent processing and approvals with other authorities.
35. It is the 4th Respondent's averment that it was directed to inspect and confirm any addition and or subtraction on the fabrications which it did and filed a report. That during the inspection, it was realized that the said motor vehicle fabricators have never been amended in addition or subtraction. Further that the petitioner has not demonstrated on how the 4th Respondent has violated its rights as pleaded in the petitioner.
36. Finally, the 4th Respondent deposed that the it did not violate the petitioner's rights as pleaded and the Petitioner has failed to demonstrate any such violation.

4th Respondent's submissions

37. Learned Counsel Mr. Ndeda filed written submission on behalf of the 4th Respondent and couched two issues for determination:
 - a. Whether the 4th Respondent by its actions have violated the petitioner's rights under Art. 40, 47, 48 and 50(2) of the Constitution.



- b. Whether the 4th Respondent should be condemned to pay costs of the petition.
38. As relates to the first issue, learned counsel submitted that the 4th Respondent while fabricating the motor vehicle in question, it applied the standards supplied by the 3rd Respondent and which it has always used on all its customers. That after fabrication, the 4th Respondent released the said motor vehicle back to the petitioner for subsequent processing and approvals with other authorities. That the 4th Respondent was directed to inspect and confirm any addition and or subtraction on the fabrications which it did and filed a report. During the inspection, it was realized that the said motor vehicle fabrications have never been amended in addition or subtraction. The same has been produced in the 4th Respondent's report dated 12th April, 2023.
39. To this end, learned counsel submitted that it is the 4th Respondent's position that its mandate was only to fabricate the suit motor vehicle as per the standards provided by the 3rd Respondent which it did and released the vehicle back to the petitioner.
40. Regarding the second issue, counsel submitted that costs are awarded at the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event unless the court has good reason to order otherwise.
41. He maintained that there is no cause of action against the 4th Respondent that should warrant the unfettered discretion of the court to incline towards awarding costs against the 4th Respondent.

1st Respondent's submissions

42. Learned Counsel Mr. Munga submitted on behalf of the 1st Respondent and made reference to the decision in *Kenya Transport Association & 3 others v Attorney General & Another* (2012) eKLR. Learned Counsel gave a background of the case and singled out three issues for determination as follows:
- a. Whether the petitioner fundamental rights and freedoms as enshrined under *the Constitution* have been infringed.
- b. Whether the Respondent acted within the law in apprehending the suit motor vehicle.
- c. Whether the Petitioner is entitled to the orders sought.
43. It is submitted for the 1st Respondent that the Petitioner failed to meet the test as set out in the locus classicus case of *Anarita Karimi Njeru v. Republic* No. 1 (1979) I KLR, 54. That the petition is extremely vague and does not point out with precision, the manner in which the Petitioner's rights have been infringed by the 1st Respondent.
44. Learned counsel submitted that the Petitioner has failed to point out with precision in this petition how his right to protection to property as enshrined under Art. 40 of *the Constitution* of Kenya, 2010 has been infringed by the 1st Respondent. Further, the Petitioner has failed to point out how his rights to fair administrative action and right to access to justice as provided under Art. 47 and 47 respectively have been infringed as alleged in the petition.
45. That the petitioner had failed to prove that his right enshrined under Art. 50(2) to fair trial has been infringed, considering that all the matters that were to be referred to the lower court for determination were stayed pending the hearing and determination of the petition herein. Further that in advancing his position, the Petitioner alleged that he was never accorded the opportunity to defend himself against the various overload offences. The position advanced by the petitioner is contrary to the order he



successfully sought herein restraining the 1st Respondent from charging him with various overload offences disclosed in law.

46. It is submitted for the 1st Respondent that the petitioner has failed to point out with precision how the 1st Respondent failed to perform the said duties contrary to the laid down statutory obligations. That the Petitioner has admitted that all the suit motor vehicles, were weighed and the extent of their overload determined; and has as such not disputed the process through which weighing was undertaken.
47. Counsel submitted that the 1st Respondent in its replying affidavit of Eng. Michael Ngala clearly demonstrated that, pursuant to the prevailing law, All motor vehicles shall be weighed at various weighbridges spread across the country. To that end, the Petitioner's motor vehicles were weighed and determined to be overload. That upon the said determination, inquiry files were prepared by the Axle Load (Highway Enforcement) unit proposing the Petitioner be charged with the offences of permitting a motor vehicle on road with a load beyond statutory limits contrary to section 56(1) as read with Section 58(1) and Rule 41(2) of the Traffic Act, Cap 403.
48. Learned Counsel submitted that upon compilation of the various police inquiry files, the said files were forwarded to the office of the Director of Public Prosecutions (ODPP) for approval. That in the instant cases herein, the ODPP concurred that conduct criminalized in law had been established against the Petitioner thereby prompting the DPP's decision to charge the petitioner with the said offences.
49. As to whether the 1st Respondent acted within the law in apprehending the suit motor vehicles, learned counsel submitted that there was no evidence adduced by the Petitioner and concurrence by the 2nd and 3rd Respondent as alleged to demonstrate that wrong entries were entered in the motor vehicle log books.
50. That the Petitioner has failed to annex in his pleadings each and every of the motor vehicles log books for the court to ascertain the alleged wrong entries. Further, the Petitioner failed to point out with precision, the remedial measures he took to ensure the anomalies are corrected.
51. In the 1st Respondent's view, the Petitioner has admitted that the suit motor vehicles are fitted with two axles and are permitted to carry Gross vehicle weight of 1800Kgs. The authority's mandate is triggered when a motor vehicle is weighed and determined to have exceeded the motor vehicle gross vehicle weight. This court was then invited to consider the holding of Hon. Justice D.S Majanja in Kenya Transport Association & 3 others v. Attorney General & another (2012) eKLR.
52. That the petitioner has failed to demonstrate that the suit motor vehicles having been weighed were within the permitted Gross Vehicle weight limit as prescribed in the Traffic Act. That for those reasons the apprehension of the suit motor vehicles was undertaken in compliance with the 1st Respondent's statutory duties which did not in any way amount to a violation of the Petitioner's human rights and fundamental freedoms protected under the Constitution.
53. On the final issue for determination, it is submitted for the 1st Respondent that the petitioner has failed to demonstrate that the Respondent acted in breach of his human rights and fundamental freedoms in apprehending the suit motor vehicles. The suit motor vehicles were weighed in accordance with the law and a weight ticket generated as annexed in the Petitioner's pleadings. Thereafter, it was determined that the motor vehicle was overloaded and the transporter was notified.
54. That the Petitioner cannot have his cake and eat it too. The suit motor vehicles were clearly overloaded and in violation of the cited provisions of the Law and despite the court directing to ensure that they do not overload, they have persisted and continued to operate with impunity.



55. Counsel submitted that the 1st Respondent has the mandate of securing the quality of National Trunk Roads. It invited this court to have a look at the holding of the Learned judge, Hon. Justice Hellen Omondi in *Marius Wahome Gitonga v. Kenya National Highways Authority* (2019) eKLR.
56. According to counsel, an order of mandamus is a discretionary order and the Petitioner has failed to offer cogent evidence why the 1st Defendant should be restrained in performing its duties. If the court is to issue such an order, the petitioned petitioner will overload at will and occasion damage on the great road infrastructure that is a shared public good and a treasure that Kenyan tax payer incurs a lot to build and maintain.
57. Finally, counsel submitted that the acts of the petitioner are not only economic cries against expensive socio-economic road assets but are transgressions against the sanctity of human life due to the carnage experienced on our roads as a result of overloaded vehicles failing to manage their weight, losing control or damaging roads leading to uneven road surfaces and eventual fatal accidents. That the right to the preservation of human life is paramount and must be jealously guarded.

3rd Respondent's submissions

58. The 3rd Respondent through learned counsel Ms. Gachagua filed written submissions dated 6th June, 2023 in opposing the petition. She couched the following issues for determination:
 - a. Whether the issues complained of by the petitioner fall within the ambit of the 3rd Respondent's statutory mandate;
 - b. Whether the 3rd Respondent has by its actions violated the petitioner's rights under Articles 40, 47,48 and 50(2);
 - c. Whether an order of mandamus should issue to the 3rd Respondent to have the Petitioner's motor vehicle log books amended; and
 - d. Whether the 3rd Respondent should be condemned to pay costs of the Petition.
59. Learned Counsel started by submitting that in the context of this petition, the 3rd Respondent has set a standard of KS 372:2019 to ensure manufacture of quality buses. In exercise of its statutory mandate, the 3rd Respondent has signed a scheme of supervision and control (SSC) with the 4th Respondent based on the set standard KS 372:2019 and the manufacturers' respective manuals through which the 3rd Respondent continuously monitors the 4th Respondent to ensure compliance. That the 3rd Respondent has also established the standard KS 1515:2019 whose clauses 4.2 and 4.4 are applied alongside clause 8.2 of the standard KS 372:2019 by the 2nd Respondent in conducting inspection of road vehicle upon completion of manufacture and prior to registration. In cases of modification, clause 3.3 of the standard KS1515:2019 applies in re-inspection by the 2nd Respondent upon completion of modifications.
60. It was further submitted for the 3rd Respondent that it has also established applicable to weighing procedures applied by 1st and 2nd Respondents in their respective statutory mandates. This is standard clause 4.5.1 of the standard KS 1515:2019.
61. That in light of the above, the petitioner has not demonstrated any fault on the part of the 3rd Respondent. That it is clear that the standards set by the 3rd Respondent have not been challenged in the petition.
62. Further that while the 3rd Respondent has no objection to the prayers for re-weighing and re-weighing and re-inspection save that it does not have the statutory mandate to carry out the afore-stated tasks.



On this counsel cited the case of Aluoch Polo Aluochier v Kenya National Commission on Human Rights & 4 others (2016).

63. On the second issue, learned counsel submitted that the petitioner has not demonstrated any fault on the part of the 3rd Respondent in exercise of its statutory mandate. The actions complained are beyond the ambit of the 3rd Respondent's statutory mandate. That the 3rd Respondent has not conducted any actions in violation of the Petitioner's rights under Articles 40, 47, 48 and 50(2).
64. It was submitted for the 3rd Respondent that the Petitioner's prayer in the nature of mandamus is outside the scope of the 3rd Respondent's statutory mandate. That it would be in vain to issue orders that the 3rd Respondent is not empowered to execute by statute. He cited the decision of Justice Odunga in Republic v. Sacco Societies Regulatory Authority & Another Ex Parte Martin Njuhigu & 24 others (2017) eKLR.
65. On costs, counsel submitted that costs follow the event. That the petitioner has not no demonstrable cause of action against the 3rd Respondent. The Petition fully misapprehends the 3rd Respondent's statutory mandate. To that end, the prayers sought against the 3rd Respondent ought to be dismissed with costs.

Analysis and determination

66. Having carefully considered the petition, responses, affidavits, submissions by learned counsel and the authorities cited, I note that this matter raises significant issues regarding the enforcement of axle load regulations vis-à-vis constitutional rights. The petitioner, John Waithaka Thuo, has moved this court seeking declarations that his constitutional rights were violated through the detention of his motor vehicle registration number KCJ 132U and subsequent criminal proceedings against his driver.
67. The facts leading to this petition are that on 22nd May, 2022, the petitioner's driver and motor vehicle were detained by KENHA based on allegations of overloading between 2nd February, 2019 and 21st December, 2021. The petitioner's vehicle was commandeered to the weighbridge where it was subjected to weight determination. KENHA then proceeded to prefer charges against the petitioner's driver to appear at Eldoret Law Courts to answer to charges under Section 58(2) and Rule 41 of the [Traffic Act](#).
68. The petitioner contends that his motor vehicle is a class 2 category which should have a maximum axle load of 18,000 kgs. He points out discrepancies between inspection reports and logbook entries regarding the vehicle's weight specifications. According to the inspection report by the 2nd respondent, the gross vehicle weight is 13,000 kgs (being 8,000 kgs tare weight and 5,000 kgs load capacity). However, the logbook indicates 11,000 kgs for tare weight and 5,000 kgs for load capacity, giving a total of 16,000 kgs as gross weight.
69. The petitioner argues that these discrepancies demonstrate that his vehicle was never properly weighed to ascertain its correct weight. He maintains that since the bus body was built by the 4th respondent, no additions or modifications have been made. The petitioner draws the court's attention to a similar vehicle KCL 065A which was the subject of Kisumu High Court Petition No. 1 of 2022 facing similar challenges regarding exact weight versus recorded weight in the logbook.
70. The maximum weights and dimensions in section 55(2) and Rule 41(2) of the Traffic Rules are provided in the Twelfth Schedule to the [Traffic Act](#). The schedule provides, in part, as follows;

“2.



(1) The maximum weight which may be transmitted to the road in the case of a vehicle fitted with pneumatic tyres, whether laden or unladen, shall not exceed-

- (a) by way of any single axle fitted with four or more wheels 10,000 kg.
- (b) by way of any single steering axle, whether controlled by a drawbar or driver operated steering mechanism 8,000 kg
- (c) by way of a tandem axle group having four wheels on each axle .. 16,000 kg
- (d) by way of a triple axle group having four wheels on each axle 24,000 kg
- (e) by way of a four axle group having four wheels on each axle 32,000 kg

Provided that in the case of any axle or axle group (excluding a steering axle) where one or more of the axles is fitted with only two wheels, the appropriate maximum allowable load figure given in this subparagraph shall be reduced by twenty-five per cent.

(2) Notwithstanding subparagraph (1), the maximum total weight of any vehicle or combination of vehicles fitted with pneumatic tyres, whether laden or unladen, shall not exceed the following -

- (a) vehicle with two axles 18,000kg.
- (b) vehicle with three axles 24,000 kg.
- (c) vehicle and semi-trailer with total of three axles 28,000kg.
- (d) vehicle with four axles..... 28,000kg.
- (e) vehicle and drawbar trailer with total of four axles 34,000 kg.
- (f) vehicle and semi-trailer with total of four axles 36,000kg.
- (g) vehicle and semi-trailer with a total of five axles 42,000 kg.
- (h) vehicle and drawbar trailer with total of four axles 42,000kg.
- (i) vehicle and semi-trailer with total of six axles..... 48,000 kg.



- (j) vehicle and drawbar trailer with total of six axles
48,000 kg.
- (3) The maximum total weight of a vehicle fitted with solid tyres, lawfully on a road under these Rules, shall be seventy-five per cent of the maximum weight specified for a similar type of vehicle with pneumatic tyres under subparagraph (1) and (2).
- (4) Not more than seventy-five per cent of the laden weight of any motor vehicle (other than a motor cycle) shall be transmitted to the road by any two wheels of the vehicle.
- (5) For the purposes of this paragraph, each person apparently over the age of sixteen years, and every two persons of or under that age, shall be deemed to weigh 65 kg. when carried on a vehicle.
- (6) Where the application of the provisions of this paragraph result in two or more different weights being applicable to a particular vehicle, the lower or lowest weight shall be the maximum weight of that vehicle for the purposes of section 55(2) of the Act.
- (7) The maximum number of axles which may be fitted on any vehicle shall be seven provided that the rear most axles shall be steering axles.
- (8) No vehicles with a rigid body shall have more than three axles except for a vehicle with two steering axles and two rear axles.”

71. The penalty applicable to persons who are in breach of the provisions of section 55(2) as read with the Traffic Rules is provided for under section 58(1) and (2) of the [Traffic Act](#) which provides;

“ 58.

- (1) Any person who drives or uses on a road a vehicle in contravention of the provisions of section 55 or section 56 shall be guilty of an offence and liable to a fine not exceeding four hundred thousand shillings or to imprisonment for a term not exceeding two years or to both:

Provided that rules under this Act may provide that a person who is guilty of an offence under section 55 or 56 shall be liable to pay a fine according to a prescribed scale, and different scales may be prescribed for first offenders, and for second or subsequent offenders, within a prescribed period, but so that no person shall thereby be liable to pay a fine greater than the maximum provided by this subsection; and for the avoidance of doubt it is declared that liability of a person to pay a fine on a prescribed scale shall not affect that person’s liability to imprisonment under this subsection as an alternative to, in addition to, or in default of, the payment of a fine.

- (2) For the purposes of subsection (1), any person who is shown to the satisfaction of the court to be responsible for the maintenance



of the vehicle, and any person who is shown to the satisfaction of the court to have been responsible for the loading of the vehicle, shall be deemed to have used the vehicle on the road.”

72. From the totality of the material placed before me, the following issues emerge for determination:
- a. Whether the detention and subsequent impoundment of motor vehicle registration number KCJ 132U was illegal, unlawful and/or unconstitutional.
 - b. Whether the respondents exercised their statutory powers in accordance with Articles 47 and 50 of *the Constitution* regarding fair administrative action and fair hearing.
 - c. Whether there was proper basis in law and evidence for the criminal charges preferred against the petitioner's driver
 - d. Whether the petitioner's rights under Articles 40, 47, 48 and 50(2) of *the Constitution* were infringed
 - e. What appropriate remedies, if any, should flow from the findings
73. Article 23(1) of *the Constitution* establishes that the High Court possesses jurisdiction, in accordance with Article 165, to adjudicate applications concerning the denial, violation, infringement, or threat to any right or fundamental freedom enshrined in the Bill of Rights. Furthermore, Article 165(3)(d) of *the Constitution* specifically grants the High Court jurisdiction to adjudicate matters pertaining to constitutional interpretation, including determining whether any action purportedly taken under constitutional or legal authority is inconsistent with or contravenes *the Constitution*.
74. The threshold required to satisfy a constitutionality of a Petition was set in Anarita Karimi Njeru vs. R Miscellaneous Criminal Application No 4 of 1979 the Court held as follows:
- “We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed”
- Whether the detention and subsequent impoundment of motor vehicle registration number KCJ 132U was illegal, unlawful and/or unconstitutional
75. The threshold for constitutional petitions established in Anarita Karimi Njeru (supra) requires petitioners to demonstrate with reasonable precision the constitutional provisions allegedly infringed and the manner of such infringement. This standard serves as an important gateway to ensure constitutional jurisdiction is appropriately invoked while remaining accessible to genuine constitutional grievances.
76. In examining this petition, several issues emerge that need this court's consideration of both the factual matrix and the applicable legal principles. The intersection of administrative enforcement powers, constitutional rights, and criminal law procedures presents nuanced questions that must be analyzed systematically.
77. The petitioner has raised legitimate concerns about discrepancies in weight measurements. The inspection report indicates a gross vehicle weight of 13,000 Kgs (8,000 Kgs tare weight plus 5,000 Kgs load capacity), while the logbook records 11,000 Kgs tare weight plus 5,000 Kgs load capacity, totaling



16,000 Kgs. Such discrepancies, if unexplained, could potentially affect the validity of enforcement actions.

78. However, the court-ordered re-weighing conducted on 7th February 2023 provides crucial additional evidence. The actual weight recorded was 13,850 Kgs. Under the *Traffic Act*'s Twelfth Schedule, a two-axle vehicle has a maximum permitted weight of 18,000 Kgs. The petitioner correctly identifies his vehicle as falling within this category. The question then becomes whether the enforcement action was justified based on the available evidence or information at the time.
79. The right to fair administrative action requires government agencies to act expeditiously, efficiently, lawfully, reasonably and procedurally fairly. The petitioner argues this right was violated when he was not afforded an opportunity to verify the weight allegations before enforcement action was taken. KENHA's position, as articulated through counsel, is that they followed established statutory procedures under Section 106(4) of the *Traffic Act* and relevant provisions of the East African Community Vehicle Load Control Act. The authority maintains that weighing was conducted at certified weighbridges and proper protocols were followed.
80. The re-weighing ordered by the court revealing a weight of 13,850 Kgs needs consideration. This represents the vehicle's tare (empty) weight, which is significantly higher than both the logbook entry (11,000 Kgs tare weight) and the inspection report (8,000 Kgs tare weight).
81. This finding is particularly significant because it validates KENHA's enforcement concerns. With an actual tare weight of 13,850 Kgs, this vehicle can only carry approximately 4,150 Kgs of cargo before reaching the maximum permissible weight of 18,000 Kgs for a two-axle vehicle, far less than the 5,000 Kgs load capacity recorded in both the logbook and inspection report. The petitioner's argument that discrepancies prove improper weighing must be weighed against the possibility that the discrepancies actually validated the need for proper weight verification and enforcement action.
82. This case requires balancing the petitioner's legitimate commercial interests and constitutional rights against the broader public interest in road safety and infrastructure protection. KENHA's mandate serves vital public purposes that affect all road users and the national economy. The enforcement of axle load limits is not merely administrative housekeeping but serves to prevent road damage, reduce maintenance costs borne by taxpayers, and enhance road safety. These considerations must inform the court's analysis without predetermining the outcome.
83. Having examined the evidence and legal principles, certain patterns emerge that guide the court's analysis. The re-weighing evidence, rather than supporting the petitioner's case, appears to validate regulatory concerns about vehicle compliance. The procedural challenges raised by the petitioner, while deserving serious consideration, must be evaluated against the statutory framework that governs enforcement actions and the practical realities of regulatory administration.
84. Upon careful review, the alleged constitutional violations appear to be more accurately characterized as disagreements with administrative decisions rather than fundamental breaches of constitutional rights and as such after thorough analysis, this court finds that the petitioner has not established the constitutional violations alleged with the precision required under Anarita Karimi Njeru. The weight discrepancies, while requiring administrative attention, do not constitute constitutional breaches.
85. The petition is therefore dismissed with each party bearing its own costs.
86. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 11TH DAY OF AUGUST 2025

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R. NYAKUNDI
JUDGE

