



**Legal Advice Centre t/a Kituo Cha Sheria v Cabinet Secretary Energy & Petroleum & 2 others (Petition E501 of 2023) [2025] KEHC 13715 (KLR) (Constitutional and Human Rights) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13715 (KLR)

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

**PETITION E501 OF 2023**

**EC MWITA, J**

**SEPTEMBER 23, 2025**

**BETWEEN**

**LEGAL ADVICE CENTRE T/A KITUO CHA SHERIA ..... PETITIONER**

**AND**

**CABINET SECRETARY ENERGY & PETROLEUM ..... 1<sup>ST</sup> RESPONDENT**

**ENERGY & PETROL REGULATORY AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed this petition as a public interest litigation over the increase in fuel prices that had seen petrol prices surpass Kshs. 200 per litre for the first time, causing concern and economic strain for both the people and businesses. This, the petitioner asserted was a violation of socio economic rights and fundamental freedoms.
2. The petition which was supported by an affidavit sworn by Annette Mbogo, stated that despite high fuel prices, the 1<sup>st</sup> respondent while submitting a report before the National Dialogue Committee on 6<sup>th</sup> November 2023, stated that there was a looming increase in fuel prices and petroleum pump prices could go up to Kshs. 300 per litre, attributed to the escalation of war in the Middle East between Israel and Hamas.
3. The petitioner averred that after petroleum price review in October 2023, fuel price went up to Kshs. 217 per litre of petrol resulting in very high cost of basic commodities and affected both public and private transport. The petitioner asserted that members of the public stood to suffer irreparable loss and great inconvenience if the respondents were not ordered to urgently perform their legal obligations



to protect citizens from further suffering, slow economic growth, declining living standards and high inflation rate.

4. According to the petitioner, the respondents had failed, neglected and or refused to control and stabilize fuel prices leading to extreme hardship to people despite having a duty to effectively control refinery, distribution and supply of petroleum products. The petitioner alleged that the respondents' inactions or omissions had resulted in violation of articles 43 and 46 rights guaranteed under *the Constitution*.
5. Based on the above assertions the petitioner sought the following relief:
  - a. A declaration that the respondents' failure to stabilize and reduce high fuel prices violates article 43 of *the Constitution* which guarantees the citizens economic and social rights to wit; free from hunger and adequate food of acceptable quality among others.
  - b. A declaration that the respondents' failure to stabilize and reduce high fuel prices has occasioned high food prices thus violating article 43 of *the Constitution* which guarantees the petitioners and other citizens economic and social rights to wit; free from hunger and adequate food of acceptable quality among others.
  - c. A declaration that the respondents' failure to stabilize and reduce high fuel prices violates article 46 of *the Constitution* which guarantees the petitioners and citizens consumers rights to wit; to goods and services of reasonable quality and to the information necessary for them to gain full benefit from the goods and services among others.
  - d. An order compelling the respondents to take appropriate fiscal, administrative, regulatory, good governance and other necessary steps to stabilize and reduce high fuel prices to ensure that the rights and freedoms of the citizens are not infringed.
  - e. Any further remedy that this Honourable court shall deem fit to grant.
  - f. An order that the respondents do pay the costs of this petition.

#### **1<sup>st</sup> and 3<sup>rd</sup> respondents' response**

6. The 1<sup>st</sup> and 3<sup>rd</sup> respondents informed the court that they had filed a replying affidavit sworn by Mohamed Liban but the affidavit could not be downloaded on the CTS.

#### **2<sup>nd</sup> respondent's response**

7. The 2<sup>nd</sup> respondent opposed the petition through a replying affidavit sworn by Eng. Edward Kinyua, PE, OGW, (Eng. Kinyua). Eng. Kinyua stated that the 2<sup>nd</sup> respondent had effectively discharged its mandate under *the Constitution*; the *Energy Act*, 2019 and the *Consumer Protection Act*, 2012. Eng. Kinyua asserted that sections 74, 75 and 92 (1) of the *Petroleum Act*, 2019 deal with the requirements for licencing petroleum business; factors to be considered in reviewing an application and forms and conditions for a licence or permit while section 10 (hh) of the *Energy Act* provides that one of the functions of the Energy and Petroleum Regulatory Authority is to protect consumer, investor and other stakeholder interests. These factors are to be considered before granting a license to conduct petroleum business in Kenya.
8. According to Eng. Kinyua, all petroleum products for local use are currently imported in refined form. To guard against consumer exploitation and standardise pricing of petroleum products, the 1<sup>st</sup> respondent pursuant to section 101 (y) of the *Petroleum Act* and on recommendation of the 2<sup>nd</sup> respondent, promulgated the Energy (Petroleum Pricing) Regulations, 2022 (Legal Notice No. 192 of



- 2022) after complying with the [Statutory Instruments Act](#), 2013. Section 101 provides that the Cabinet Secretary may, on recommendation of the Authority, make regulations-(y) determining the maximum whole sale and retail prices of petroleum and petroleum products.
9. Eng. Kinyua stated that under the regulations, petroleum pump prices computation considers the landed cost which is the weighted average cost (per product) of imported super petrol, diesel and kerosene; storage and distribution costs; gross margins; and applicable taxes and levies. Eng. Kinyua further stated that the landed costs of imported petroleum products is calculated and determined using the pricing formula and cost components provided in Part I of the Second Schedule to the Act. That is, Free On-Board price of imported petroleum products as per the OTS; Freight and Premium in US Dollar per metric ton; Letter of credit charges in US Dollar per metric ton, among others.
  10. It was Eng. Kinyua's position that landed cost of super petrol, Diesel and Kerosene contributes to about 53%, 59% and 60% respectively of the pump price and is dependent on the international prices of refined petroleum products. The 2<sup>nd</sup> respondent has no control over landed cost since price movement at this level is driven by demand and supply depending on geopolitical issues and market conditions.
  11. Eng. Kinyua maintained that taxes and levies contribute about 38%, 33% and 32% of the pump prices of super petrol, diesel and kerosene respectively, based on the various laws. Storage and distribution costs and supplier margins form a lesser component of the pump price contributing to about 8% of the total computed prices and were determined through a cost of service study which validated costs and underwent public participation. They had however not been adjusted since November 2018 despite changes in business environment.
  12. Eng. Kinyua stated that to cushion the economy from the effects of high landed costs and pursuant to section 3(1) of the [Petroleum Development Fund Act](#), 1991, the 1<sup>st</sup> respondent promulgated the Petroleum Development Levy Order 2020, which came into operation on 15<sup>th</sup> July 2020. Under paragraph 4, the levy is to be used for matters relating to the development of the oil industry, including stabilizing local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the authority.
  13. Eng. Kinyua further asserted that the 1<sup>st</sup> respondent has authority to write to the administrator and request for a draw down from the Petroleum Development Fund to stabilize local petroleum pump prices when deemed necessary. Eng. Kinyua maintained that the government had since 15<sup>th</sup> April 2021 cushioned the public using the Petroleum Development Fund as provided for in the [Petroleum Development Fund Act](#) as read with the Petroleum Development Levy Order of 2020. Kshs. 179.881 billion had been spent between April 2021 to date to cushion the economy from the effects of high landed costs caused by increased prices of petroleum in the international markets.
  14. Eng. Kinyua maintained that in the August-September 2022 pricing cycle, the actual calculated price of super petrol was Kshs. 214.03 per litre while the published price was Kshs. 159.12 per litre, providing a cushion of Kshs. 54.91 per litre which was compensated by the Petroleum Development Fund. During the September-October 2022 pricing cycle, the cushion for super petrol was removed. There was also cushioning in the October-November 2023 and November-December 2023 pricing cycles.
  15. Eng. Kinyua urged that having demonstrated the steps taken to cushion Kenyans against the volatility in petroleum prices, this court should not consider the merits of such steps. He stated that under section 24 of the [Energy Act](#) the dispute should have been taken to the Energy and Petroleum Tribunal which has mandate to consider appeals from decisions of the Authority.



## Submissions

16. This petition was disposed of through written submissions with brief oral highlights.

## Petitioner's submissions

17. Dr. Khaminwa, learned counsel for the petitioner submitted that the respondents had violated article 43 of *the Constitution* by failing to adequately control fuel prices leading to an escalation in the cost of living as a result of increase in food prices, transport and other essential goods and services.
18. Learned counsel submitted that under articles 21 and 165 of *the Constitution*, the State and its organs are obligated to observe respect, protect and fulfil the rights and fundamental freedoms in the Bill of Rights and to take legislative, policy and other measures, including setting standards, to achieve the progressive realization of socio-economic rights. Further, that the court has the mandate to determine whether a right had been violated and to ensure social transformation through the protection of these rights. Counsel relied on the decisions in John Kabui Mwai and 3 others v Kenya National Examination Council and Others [2011] KEHC 1696 (KLR) and Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme & 2 others [2011] KEHC 3992 (KLR).
19. Dr. Khamina cited articles 43 (3) and 46 (1) (b) and (c) of *the Constitution*, sections 10 (a) (ii) and 10(hh) of the *Energy Act*, rule 3(1) of the Petroleum (Pricing) Regulations, 2022, and paragraph 4 of the Petroleum Development Levy Order, 2020 on the obligations of the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Learned counsel submitted that the respondents had failed to take necessary steps to ensure that the levy and its application to stabilize petroleum pump prices are reviewed so as to cushion the public from high pump prices. The respondents were also accused of having failed to take administrative measures to remove in full, the subsidies on super petrol and to partially remove subsidies on diesel and kerosene pump prices.
20. Dr. Khaminwa argued that by virtue of articles 43 and 46 of *the Constitution* and the Universal Declaration of Human Rights, the socio-economic rights guaranteed under *the Constitution* require the government to take affirmative action to ensure their realization. Counsel further argued that under articles 3(1), 43 and 35 of *the Constitution*, every person, including the respondents, are obligated to respect and uphold *the Constitution* which guarantees socio-economic rights such as the right to freedom from hunger and to have adequate food of acceptable quality, among other rights, and to access information held by the State or by another person and required for the exercise and protection of any right or fundamental freedom.
21. Learned counsel maintained that the respondents' omission violated article 46 of *the Constitution* since they were under a duty to effectively control refinery, distribution and supply of petroleum products in the country. They should also take appropriate fiscal, administrative, regulatory, good governance and other necessary steps to reduce high food prices and a looming food shortage.
22. Dr. Khaminwa argued that it is the respondents' duty to ensure that fuel prices are reasonable as that is the only way to bring the cost of living down since article 43 of *the Constitution* guarantees Kenyans access to food and other socio-economic rights. He added that the Universal Declaration of Human Rights also guarantees access to these rights while article 46 guarantees consumer rights to the people.
23. Learned counsel asserted that the respondents had not demonstrated existence of regulations that are practical or reasonable on the administration of the petroleum stabilization Fund. Counsel relied on the Bill of Rights Handbook, Fifth Edition, by Iain Currie & Johan de Waal and the decision in



Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19.

24. According to learned counsel, while socio economic rights are justiciable, the respondents are required to apply as much practicability as possible in the realization of these rights and within the available resources. Learned counsel maintained that the respondents had failed to demonstrate concrete policy measures, guidelines and the progress the government had made towards realizing social economic rights.
25. Dr. Khaminwa went on to submit that the respondents failed to apply practical measures like compensating oil marketing firms (out of the stabilization fund) on time to avoid settlement in arrears, which is believed to have compelled most oil marketing firms to export much of their oil supply to the international market, where they would be paid up front. According to Dr. Khaminwa, the respondents should also have increased the capacity of the state-owned National Oil Corporation to store more fuel reserves which would stabilize supply in the event the private oil marketing firms engaged in hoarding or opted to export their petroleum oil stocks to the international market.
26. Dr. Khaminwa argued that scrapping the stabilization Fund which, though legal, is not entrenched in the Kenya *Energy Act* or the *Petroleum Act* could have been another practical measure. This would mean higher pump prices but supply might be much more assured. Counsel relied on articles 20 and 23(3) of *the Constitution* and the decision in Minister of Health & others v Treatment Action Campaign & others [2002] ZACC 15; (2002) 5 LRC 216 and urged the court to allowed the petition.

### **Respondents' submissions**

27. Mr. Kaumba, learned counsel for respondents, argued that the cause of action is not about the cost of living but the interaction between the cost of fuel and the cost of living. Learned counsel admitted that under article 21(1), the State has an obligation to respect, uphold and fulfil rights and fundamental freedoms. This should be read with article 20(5) and 21(2). According to counsel, under article 21(2), the duty of the state should be assessed in terms of whether the government has taken reasonable legislative, policy and other measures, including setting up of standards.
28. It was Mr. Kaumba's position that from the respondents' documents, the government had taken a three-pronged approach in stabilising fuel prices: Long term measures which require investment in capacity to diversify the sources of fuel in order to avoid over reliance on imported petroleum oil; restructuring of the various agencies involved in the value chain of importation, storage and supply of petroleum to enhance efficiency; legislative steps-standardization, crystalizing the formular for calculating the price of petroleum products and remedial measures that the government takes whenever there is a shock in the market which is found in the Petroleum Development Levy Order, 2020. According to Mr. Kaumba, under paragraph 4 of the Order, the levy collected can be used for matters relating to the development of the fuel industry when there are shocks due to fuel costs.
29. Learned counsel argued that the government has taken reasonable steps to stabilize petroleum prices in the country. it should also be appreciated that fuel prices had been stable for almost one year and had taken a downward trend.
30. Learned counsel invited the court to take notice that it is not the first time the issue of high cost of fuel and associated effect on the cost of living is being litigated. He referred to the decision in Consumer Federation of Kenya v Attorney General & 4 others [2012] eKLR where the same issue was raised and the court held that the government had taken reasonable steps to stabilize fuel prices. The burden was on the petitioners to demonstrate the gap if any. Mr. Kaumba argued therefore that the petitioner in the present petition had not pointed out any existing gaps.



31. Mr. Kaumba relied on sections 107 and 109 of the [Evidence Act](#) to for the argument that the petitioner had failed to particularise the gaps in the existing policies, legislations and strategic interventions and show how the gaps contribute to the high fuel prices and high cost of living thus, the evidential burden had not been discharged.
32. Learned counsel maintained that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have taken a focused, reasonable and objective approach through short, medium and long-term interventions and investments to contain fuel prices. This had been achieved through the enactment of the [Energy Act](#) and [Petroleum Act](#); the Energy (Petroleum Pricing) Regulations, 2022 (Legal Notice No. 192 of 2022) and the Petroleum Development Levy Order 2020.
33. Counsel asserted that measures had been taken and the government continues to invest in long term strategic measures to stabilize fuel supply and prices, including undertaking oil explorations and diversification to biofuels in order to reduce dependency on imported petroleum products in into the country. The government is also focusing on a strategy to revive and commercialize National Oil Corporation of Kenya in order to enhance efficiency and competitiveness in the market.
34. Counsel submitted that the government has approved acquisition of Kenya Petroleum Refineries Limited by Kenya Pipeline Company Limited in order to enhance petroleum supply chain infrastructure thereby improving security of supply and cost efficiency through reduced demurrage costs and enhanced penetration of LPG usage in the country.
35. Mr. Kaumba submitted that the government has fulfilled its mandate under articles 20(5) and 43 of [the Constitution](#) and relied on the decision in Consumer Federation of Kenya v Attorney General & 4 others (supra). Learned counsel further submitted that in assessing the reasonableness of the legislative, policy and other measures the government has taken to contain the cost of petrol, it is not for the court to enter into a merit determination of such initiatives. In this regard counsel urged the court to be guided by the provisions of Article 20(5) (c) of [the Constitution](#) and relied on the decision in Republic v Firearms Licensing Board & another Ex parte Boniface Mwaura [2019] eKLR.
36. Mr. Kaumba again relied on the decisions in Kenya National Examination Council v Republic ex parte Geoffrey Gathenji Njoroge & 9 others [1997] eKLR and Kenya Legal and Ethical Network on HIV & AIDS (KELIN) & 3 others v Cabinet Secretary Ministry of Health & 4 others [2016] eKLR and urged the court to dismissal the petition with costs.

### **Determination**

37. I have considered the pleadings, arguments by parties and the decisions relied on. The issue for determination is whether the government has failed to take reasonable steps to contain fuel prices; failed to perform its obligations under article 21 (1) of [the Constitution](#) and has thus, violated social economic and consumer rights guaranteed under articles 43 and 46 of [the Constitution](#), respectively.
38. The petitioner argued that the respondents had violated article 43 of [the Constitution](#) by failing to adequately control fuel prices. As a result, the cost of living had escalated due to increase in food prices as well the cost of transport and other essentials goods and services.
39. According to the petitioner, article 21 of [the Constitution](#), obligates the State and State organs to observe respect, protect and fulfil the rights and fundamental freedoms in the Bill of Rights and to take legislative, policy and other measures, including setting standards, to achieve the progressive realization of socio-economic rights. In this respect, that the court does not only have mandate under article 165 of [the Constitution](#) to determine whether a right had been violated but also ensure social transformation through the protection of these rights.



40. The petitioner relied on articles 43 (3) and 46 (1) (b) and (c) of *the Constitution*, section 10 (a) (ii) and 10(hh) of the *Energy Act*, regulation 3(1) of the Petroleum (Pricing) Regulations, 2022, and paragraph 4 of the Petroleum Development Levy Order, 2020 for the position that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have obligations to discharge but had failed to take necessary steps to ensure that the levy used to stabilize petroleum pump prices is reviewed so as to cushion the public from high pump prices. The petitioner took the view, that the respondents had also failed to take administrative measures to remove in full, the subsidies on super petrol and to partially remove subsidies on diesel and kerosene pump prices.
41. The petitioner maintained that the respondents' omission also violated article 46 of *the Constitution* since they were under an obligation to effectively control refinery, distribution and supply of petroleum products in the country. They should also have taken appropriate fiscal, administrative, regulatory, good governance and other necessary steps to reduce high food prices and a looming food shortage but failed to do so.
42. The respondents admitted that the state has obligations under article 21(1) of *the Constitution*, to respect, uphold and fulfil rights and fundamental freedoms. It was however their view, that article 21(1) should be read together with articles 20(5) and 21(2). According to respondents, the government has taken reasonable legislative, policy and other measures such as setting up of standards in compliance with *the constitution* and the law.
43. The respondents cited long term measure such as investment in capacity to diversify sources of fuel in order to avoid over reliance on imported petroleum oil; restructuring various agencies involved in importation, storage and supply of petroleum to enhance efficiency and legislative steps-standardization, crystalizing the formular for determining prices of petroleum products and remedial measures the government takes whenever there is a shock in the market under the Petroleum Development Levy Order, 2020.
44. The respondents maintained that the government has taken reasonable steps to stabilize petroleum prices in the country and fuel prices had been stable for some time. It was the respondents' position therefore, that the government had taken a focused, reasonable and objective approach through short, medium- and long-term interventions and investments to contain fuel prices, both legislative, administrative and other measures.
45. The petitioner's argument, as I understand it, is that the government's failure to contain fuel prices had led to increase in the cost of living thereby violating both socio economic and consumer rights guaranteed under articles 43 and 46 respectively.
46. Article 21 of *the Constitution* on the implementation of rights and fundamental freedoms in the Bill of Rights provides at Clause (1) that it is the fundamental duty of the State or every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. Cluse (2) requires the State to take legislative, policy and other measures, including setting of standards for progressive realisation of the rights guaranteed under article 43.
47. It is this aspect of the rights that the petitioner argued the State had failed to take measures to achieve in so far as fuel prices are concerned. According to the petitioner, the State's failure to take measures to contain surging fuel prices had led to escalating cost of living thereby affecting a significant segment of the population. The respondents argued that the government had taken legislative and other measures and that, in fact, fuel prices had seen a downward trend.



48. In *John Kabui Mwai and Others v Kenya National Examination Council and Others* (supra) the court observed:

The inclusion of economic and social, cultural rights in *the constitution* is aimed at advancing the socio - economic needs of the people of Kenya, including those who are poor, in order to uplift their human dignity. The protection of these rights is an indication of the fact that *the constitution*'s transformative agenda looks beyond merely guaranteeing abstract equality. There is a commitment to transform Kenya from a society based on socio-economic deprivation to one based on equal equitable distribution of resources. This is borne out by Article 6(3) and 10(2) (b).

49. A similar view was expressed in *Satrose Ayuma & 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme & 2 Others* (supra) where the court observed that “the crave for a new constitution in this country was driven by peoples’ expectation of better lives in every aspect, improvement of their living standards and just treatment that guarantees them human dignity, freedom and a measure of equality.”

In that respect, Socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to enhancing decent working conditions and other social amenities thereby improving their living conditions.

50. I have considered respective parties’ arguments in this petition. In determining whether the state has complied with its obligations under article 43 with regard to the issue at hand, the court has to consider whether the state has taken reasonable legislative and other measures to not only meet but also ensure that there is reasonable fuel pricing in the country thus, discharging its obligation to fulfil socio-economic rights of the citizenry in this regard.
50. The respondents cited, among others, the Energy and Petroleum statutes as part of the legislative measures the government had taken. The government enacted the *Energy Act* with a view to, among others, consolidating laws relating to energy. Section 9 of the Act establishes the Energy and Petroleum Regulatory Authority while section 10 provides for the functions of the Authority. These functions include, protecting consumers, investors and other stakeholder interests.
51. The government again enacted the *Petroleum Act* whose section 74 is on the requirements for licensing petroleum business; section 75 deals with factors to be considered in reviewing applications while section 76 deals with forms and conditions of a licence and permit.
50. The government further enacted The Petroleum (Pricing) Regulations 2022 pursuant to section 101(y) of the *Petroleum Act* as the legal framework for setting of the capped petroleum retail pump prices as announced by the Energy and Petroleum Regulatory Authority (EPRA). The regulations are for super petrol, Kerosene and Diesel. The regulations enumerate the parameters necessary for determining pump prices.
51. Under regulation 3(1), the Authority is required to determine and publish the maximum wholesale and retail prices of petroleum products on the 14<sup>th</sup> of every calendar month. Part II of the Regulations deals with the Tariffs on importation and transportation of petroleum products while Part III is on wholesale and retail cost elements and margins and how to calculate the prices.
52. There is also the Petroleum Development Levy Order, 2020 enacted pursuant to the *Petroleum Development Fund Act*. Paragraphs 4 of Petroleum Development Levy Order provides that the levy should be paid to the Petroleum Development Fund while paragraph (5) thereof provides that the levy shall also be used for matters relating to the development of the oil industry, “including to stabilize



local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority.” The order authorises the Cabinet Secretary to write to the administrator of the Fund, requesting for a draw down from the Fund to stabilize local petroleum pump prices when he deems it necessary.

53. It is clear from the foregoing that indeed, there are legislative steps taken by the government with regard to managing petroleum products and prices in the country. The Petroleum (Pricing) Regulations 2022 provide for the parameters to be considered and applied in determining both wholesale and retail prices for fuel. The petitioner did not point out any aspect of the regulations that would be deemed inadequate in so far as fuel prices are concerned or violative of *the constitution*; any other law or rights and fundamental freedoms.
54. Similarly, there is Petroleum Development Levy Order, 202. Paragraph 5 of the Order is clear that the levy is to be used for matters relating to the development of the oil industry, but more importantly, including “to stabilize local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Authority.” The order authorises the Cabinet Secretary to write to the administrator of the Fund for a draw down from the Fund to stabilize local petroleum pump prices whenever this is deemed necessary.
55. Paragraph (5) of the Order demonstrates clearly that there is a legislative mechanism through which the government through the Cabinet Secretary, may take steps to stabilize fuel prices when the situation so dictates such as when there is a spike in fuel prices. The petitioner merely stated that the measures had not been reviewed regularly without pointing out any inadequacies in the existing measures.
56. The petitioner again argued that the respondents had also failed to take administrative measures to remove in full, subsidies on super petrol and partially remove subsidies on diesel and kerosene pump prices. Subsidies were administrative measures taken to cushion consumers from the effects of high fuel prices. The petitioner did not show how subsidies led to high fuel prices or how removal of subsidies would ease or reduce fuel prices. In short, the petitioner did not demonstrate that failure to remove fuel subsidies led to increase in fuel prices and consequently to high cost of living.
57. In *Consumer Federation of Kenya (COFEK) v Attorney General & 4 others* (supra), the same issue of high fuel prices and cost of living was raised. The petition sought several declarations and orders, namely; a declaration that the respondents’ failure to stabilize and reduce high fuel prices violated article 43 of *the constitution* which guarantees the petitioners and other citizens economic and social rights to wit; free from hunger and adequate food of acceptable quality among others; a declaration that the respondents’ failure to stabilize and reduce high fuel prices had occasioned high food prices thus, violating article 43 of *the constitution* which guarantees economic and social rights to wit; free from hunger and adequate food of acceptable quality among others; a declaration that the respondents’ failure to stabilize and reduce high fuel prices violated article 46 of *the constitution* which guarantees consumer rights to wit; to goods and services of reasonable quality and to the information necessary for them to gain full benefit from the goods and services among others and a declaration that Energy Regulatory Commission actions to control fuel prices to guarantee maximum profits in favour of the petroleum companies is discriminatory, against fair trade practices, reasonable competition and unconstitutional.
58. The petition sought an order compelling the respondents to take appropriate fiscal, administrative, regulatory, good governance and other necessary steps to stabilize and reduce high fuel prices to ensure that the rights and freedoms of the respondents and citizens are not infringed; an order compelling the respondents to take appropriate fiscal, administrative, regulatory, good governance and other necessary steps to reduce high food prices and the looming food shortage to ensure that the rights and freedoms of



citizens are not infringed and an order that failure to comply with the above within a reasonable period of time, the board of directors of Energy Regulatory Commission and National Oil Corporation of Kenya be reconstituted/ restructured in accordance with *the constitution* of Kenya and other statutory provisions. The court considered arguments by parties and determined that it was not possible, on the basis of the material placed before the court, to discern any failure on the part of the respondents to fulfil their constitutional obligations under Article 43 and dismissed the petition.

59. It is important to point out that the petition was determined in October 2012. In this petition, all the legislative measures taken by the government were between 2019 and 2022, which means they address any gaps that may have existed then.
60. When considering whether the government had discharged its obligation under article 21(1) as read with 43, the test is one of reasonableness. That is; whether legislative and other measures taken are reasonable in the circumstances of the case before court. In this regard, this view find favour with the position taken by the Constitutional Court of South Africa in *Grootboom v Ostenberg Municipality* 2000 (3) BCLR 227(C) where it expressed itself as follows:

The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable. In any challenge...in which it is argued that the state has failed to meet the positive obligations imposed upon it by section 26(2), the question will be whether the legislative and other measures taken by the state are reasonable. A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent.

The question would be whether the measures that have been adopted are reasonable. It is necessary to recognise that a wide range of possible measure could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met.

61. Flowing from the above observation and considering the pleadings and arguments by parties in this petition, I am unable to find in favour of the petitioner. The petitioner failed to make a case demonstrating failures by the respondents to protect the rights guaranteed under articles 43 and 46 of *the Constitution*. This court takes the view, that the policy and legislative measures taken by the government are reasonable and the petitioner acknowledged their existence. Any other measures may be in addition to those already in place but not the only measures.
62. Fuel prices may also be affected by other factors but not fuel prices alone. Factors such as taxation affect prices but the petitioner did not challenge any statutes or provisions as violating *the constitution* and fundamental rights including rights in articles 43 and 46 of *the Constitution*. Food prices can also be affected by factors such as weather and inadequate rainfall due to climate change which may have a negative impact on availability of food leading high cost of living which cannot be attributed to the state.
63. In the circumstances, the petitioner did not establish that the state or its organs had failed to comply with *the Constitution* or the law. Consequently, and for the above reasons, the petition fails and is dismissed.
64. This being a public interest litigation, each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2025**

**E C MWITA**



**JUDGE**

