

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. ____ OF 2025

IN THE MATTER OF: ARTICLES 10, 21, 22, 23, 27, 35, 43, 47, 87, 159, 201, 209, 258 AND
259 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE AFFORDABLE HOUSING ACT, 2024 (NO. 2 OF 2024)

AND

IN THE MATTER OF: THE EMPLOYMENT ACT, 2007 (NO. 11 OF 2007)

AND

IN THE MATTER OF: THE LEADERSHIP AND INTEGRITY ACT, 2012 (NO. 19 OF
2012)

BETWEEN

KENYA HUMAN RIGHTS COMMISSION.....1st PETITIONER

TRANSPARENCY INTERNATIONAL KENYA (TI-KENYA)2ND PETITIONER

THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA)3RD PETITIONER

INUKA KENYA NI SISI!4TH PETITIONER

SIASA PLACE.....5TH PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

CABINET SECRETARY FOR NATIONAL TREASURY

AND ECONOMIC PLANNING.....2ND RESPONDENT

CABINET SECRETARY FOR LANDS, PUBLIC WORKS,

HOUSING AND URBAN DEVELOPMENT.....3RD RESPONDENT

THE AFFORDABLE HOUSING BOARD.....4TH RESPONDENT

KENYA REVENUE AUTHORITY.....5TH RESPONDENT

PETITION

**PETITION TO: THE HIGH COURT OF KENYA, CONSTITUTIONAL AND HUMAN
RIGHTS DIVISION**

DATED THIS 24th DAY OF SEPTEMBER, 2025

**The Humble Petition of KENYA HUMAN RIGHTS COMMISSION (hereinafter
referred to as “the Petitioner”), is as follows:**

PARTIES:

PETITIONERS

1. The Petitioner is a non-governmental organisation that campaigns for a culture in Kenya where human rights and democratic rule are entrenched and which

organisation is duly registered under the Societies Act, Cap 108 of the Laws of Kenya. The KHRC has a long-standing mandate to promote, protect, and enhance the enjoyment of all human rights in Kenya, including socio-economic rights such as the right to adequate housing enshrined in Article 43(1)(b) of the Constitution of Kenya, 2010. The Petitioner's address of service for purposes of this Petition is care of **KMK Africa Advocates LLP, Futuristic Centre, Block 2 Church Road/Raphta Road Junction, and P.O. Box 4871-00100, NAIROBI.** (info@kmkadvocates.co.ke)

RESPONDENTS

2. The 1st Respondent, the Attorney General, is the principal legal advisor to the Government of Kenya, responsible for representing the government in legal proceedings and defending the public interest under Article 156 of the Constitution.
3. The 2nd Respondent, the CS, for National Treasury and Economic Planning, is a member of the Cabinet established under Article 152 of the Constitution and specifically Article 225 for the Cabinet Member for Treasury. The CS under the Public Finance Management Act (PFM) Act 2012 (Cap 412A) and Executive Order No. 1 of 2020 (Revised) is tasked with the role of overseeing the fiscal policy of the country and for the purpose of this Petition overseeing public funds through operationalization of accounting standards and overseeing public investment policy.
4. The 3rd Respondent, the Cabinet Secretary for Lands, Public Works, Housing and Urban Development is also a member of the Cabinet established under Article 152 of the Constitution and is in charge of the development and implementation of government land policy, and specifically for this Petition, the housing policy adopted by government. It is the executive authority overseeing the Affordable Housing Programme (AHP), including project implementation and fund utilization as per Sections 20-25 of the Act.
5. The 4th Respondent is established under section 16 of the Affordable Housing Act and is primarily tasked with coordinating the optimal utilisation of the Housing Levy Fund in the implementation of programmes and projects relating to the development of affordable housing and institutional housing and associated social and physical infrastructure.
6. The 5th Respondent is the agency of government that collects all taxes on behalf of national government including the Housing Levy introduced by the Affordable Housing Act, 2024 (No. 2 of 2024) (hereinafter referred to as "the Act")

FACTUAL BACKGROUND

7. This Petition is brought pursuant to Articles 1, 2, 3, 10, 22, 23, 27, 43, 165, 201 and 258 of the Constitution, grounded on emerging facts and the unconstitutional effect of its implementation.
8. The Petitioner seeks the declaration of Sections 3, 4, 5, and 12 of the Act as unconstitutional, null, and void *ab initio*. These sections operationalize the Affordable Housing Levy (hereinafter "the Levy"), which imposes a mandatory 1.5% deduction on employees' gross salaries, matched by employers, to fund the National Housing Development Fund (hereinafter "the Fund"). The KHRC contends that the Levy, as structured and implemented, contravenes multiple constitutional provisions, leading to economic retrogression, politicization of public resources, lack of transparency, unfair administrative actions, and discriminatory practices. These violations have not only failed to advance the progressive realization of the right to housing but have exacerbated poverty, inequality, and distrust in government institutions among over 20 million Kenyans in the formal sector who are directly impacted by these deductions.
9. The Act was enacted on 19th March 2024, with the ostensible purpose of giving effect to Article 43(1)(b) of the Constitution. The Act establishes the Fund under Section 3, specifies sources of funding including the Levy under Section 4, outlines collection mechanisms in Section 5, and grants discretionary investment powers to the Board under Section 12. However, since its enactment, the implementation of the Act has revealed profound constitutional infirmities that were not apparent or fully adjudicated in prior litigation.
10. Pertinently, this Petition is distinguished from earlier challenges, such as the consolidated case in Benjamin & 4 Others v Cabinet Secretary Lands, Public Works, Housing and Urban Development & 4 Others; National Land Commission & 16 Others (Interested Parties) (Petition Nos. E154, E173, E176, E181, E191 & 11 of 2024) [2024] KEHC 13060 (KLR), delivered on 22nd October 2024 by Justices Olga Sewe, Josephine Mong'are, and John Chigiti. That judgment upheld the Act's constitutionality against claims of inadequate public participation, discrimination, infringement on property rights, and devolution principles. However, the *Benjamin* decision predates critical post-enactment evidence, including the KNBS Economic Survey 2025 released in May 2025, which documents economic retrogression in the housing sector, and specific incidents of politicization in mid-2025, such as discretionary presidential allocations.
11. The factual background of the Act is traceable to the Finance Act, 2023 (No. 4 of 2023), which amended the Employment Act, 2007 by inserting Section 84 to impose a 1.5% housing levy on gross salaries without a comprehensive legal framework for its utilization. This led to widespread public outcry and litigation. In the

landmark consolidated judgment in Okiya Omtatah Okiiti & 55 Others v National Assembly & 2 Others (Petition No. E181 of 2023), delivered on 28th November 2023 by Justices David Majanja, Christine Meoli, and Lawrence Mugambi, the High Court declared the levy provisions unconstitutional. The Court found violations of Article 10 on national values including public participation, Article 201 on principles of public finance such as equity and accountability, and Article 209 on the imposition of taxes only by law. Specifically, the levy was deemed discriminatory for burdening only salaried employees while excluding the informal sector, which constitutes over 80% of Kenya's workforce according to KNBS data. Additionally, the absence of a ring-fenced mechanism for fund utilization rendered it arbitrary and prone to misuse.

12. The government appealed to the Court of Appeal in National Assembly & Another v Okiya Omtatah Okiiti & 55 Others (Civil Appeal No. E003 of 2023). On 31st July 2024, Justices Kathurima Inoti, Agnes Murgor, and John Mativo upheld the High Court's decision, emphasizing Parliament's failure to adequately explain acceptance or rejection of public submissions during the legislative process, thus breaching Article 10(2)(a) on public participation. The appellate court noted that the Affordable Housing Act, 2024 had superseded the 2023 provisions, rendering some issues moot. Subsequently, the matter escalated to the Supreme Court in PETITION NO. E031 OF 2024 AS CONSOLIDATED WITH PETITIONS NOS. E032 & E033 OF 2024, where on 29th October 2024, the apex court overturned the Court of Appeal's judgment, declaring the Finance Act, 2023 constitutional on grounds of sufficient public participation.
13. In response to these judicial pronouncements, Parliament enacted the Affordable Housing Act, 2024 on 19th March 2024. The Act's preamble states its objective as providing a framework for the development and access to affordable housing, in line with Article 43(1)(b). Section 1 provides the short title and commencement, with Sections 4 and 5 coming into force upon assent. Section 3 establishes the Fund as a public fund under Article 206 of the Constitution. Section 4 details sources of the Fund, including: (a) the Levy at 1.5% of gross salary for employees and matching employer contributions; (b) appropriations from Parliament; (c) grants and donations; and (d) investment income. Section 5 outlines collection by the Kenya Revenue Authority (KRA) and remittance to the Fund. However, by mid-2025, the Act's implementation has fallen short of its promises, with only approximately 5,000 housing units completed against an ambitious target of 250,000 units as per the National Housing Development Fund (NHDF) Annual Report 2024/2025.
14. Empirical evidence from the KNBS Economic Survey 2025, published in May 2025 and covering the calendar year 2024, paints a grim picture of economic inefficiency and retrogression. The construction sector, which is central to housing delivery,

contracted by 0.7% in 2024, a sharp reversal from the 3.0% growth recorded in 2023. This downturn is attributed to elevated input costs, reduced private sector investment, and the diversion of disposable income through the Levy. Cement consumption, a key indicator of construction activity, decreased by 7.2% to 8.5 million tonnes in 2024, marking one of the steepest declines in recent decades. Steel imports fell by 12% year-on-year, reflecting supply chain disruptions and diminished demand. Employment in the construction sector dropped by 4.2% overall, with private sector jobs declining by 2.8%, contradicting government claims that the AHP would create millions of jobs. Pre-Levy data from 2022 showed robust private-led growth, where 60% of construction output was driven by non-state actors, suggesting that funds retained in private hands foster more efficient housing development than centralized state management.

15. The Levy's annual extraction of KSh 50-70 billion from workers and employers has disproportionately affected low- and middle-income earners, exacerbating economic inequality in a context where inflation hovered at 6.5% and unemployment stood at 5.6% in 2024, per KNBS figures. Completed housing units under the AHP plummeted from 3,357 in 2023 to a mere 1,655 in 2024, far below projections. By contrast, the economy generated only 782,300 new jobs in 2024, down from 848,100 in 2023, with the informal sector absorbing 84% of these, highlighting the Levy's failure to stimulate formal employment in housing-related industries.
16. Politicization of the AHP has further undermined its integrity. On 13th September 2025, President William Ruto, during a meeting at State House with a delegation of teachers, announced the allocation of 20% of the ongoing AHP pipeline – approximately 34,000 units out of 170,000 under construction – exclusively to 10,000 teachers, without prior vetting by the Board or a comprehensive needs assessment. This directive was formalized through a Memorandum of Understanding (MoU) signed on the spot, bypassing the merit-based criteria outlined in Sections 20-25 of the Act, which require public tenders, equitable distribution, and Board approval. Similarly, following Kenya's victories in the CHAN 2025 football tournament in July 2025, the President pledged housing units to national team players during rallies at Kasarani Stadium, framing them as "rewards" rather than rights-based allocations, with the government committing to cover half the costs. These actions, reported widely in media outlets such as The Standard, Tuko.co.ke, and Capital FM, suggest the transformation of the Fund into a tool for political patronage, raising alarms about vote-buying ahead of the 2027 general elections.
17. Transparency and accountability deficits are evident in the management of Levy funds under Part III of the Act, which deals with the Fund's administration but lacks provisions for independent audits, real-time public disclosures, or robust

parliamentary oversight. In a revealing interview on Citizen TV's #CitizenTonight program on 9th September 2025, conducted by journalist Sam Gituku with the CEO of the Affordable Housing Board, the CEO struggled to provide consistent figures on collections and progress, admitting that between March 2024 and June 2025, voluntary and mandatory contributions had reached varying estimates, including unsubstantiated claims of KSh 600 billion in voluntary funds. The interview highlighted discrepancies in reported housing statistics, with no published annual reports or dashboards for public scrutiny, fueling suspicions of corruption and mismanagement.

18. Administratively, the Levy's implementation fails to provide clear, predictable processes for contributors to contest deductions, eligibility for housing, or allocation decisions, thus contravening fair administrative action. Discriminatory practices are rampant, with politically connected groups – such as teachers and athletes – receiving preferential treatment over vulnerable populations like informal sector workers or persons with disabilities, in violation of Part VI of the Act, which mandates equitable access.
19. Section 12 of the Act exacerbates these issues by stating: "The Board may, with the approval of the Cabinet Secretary in charge of Treasury, invest any income that is not immediately required." This provision lacks specificity on investment types, returns, or safeguards against diversion, thus creating a loophole for misallocation of funds collected expressly for housing purposes.

URGENCY

20. The Housing Levy continues to be enforced, deducting billions of shillings annually from workers' salaries amid a contracting economy, rising inflation, and increasing unemployment. Without conservatory orders under Article 23(3)(c), irreparable harm will persist, including the deprivation of disposable income for basic needs, potential misuse of public funds, and erosion of constitutional governance principles. The KHRC, as a public interest litigant with established *locus standi* under Article 22(2)(b), seeks to vindicate these rights on behalf of affected Kenyans, drawing on comparative jurisprudence from jurisdictions like Canada and South Africa, where courts have struck down regressive socio-economic policies.

LEGAL FOUNDATION OF THE PETITION

21. Article 2(1) declares that the Constitution is the supreme law of the Republic and binds all persons and all State organs. Any law, including the Affordable Housing Act, 2024, that is inconsistent with the Constitution is, to the extent of the inconsistency, void *ab initio* under Article 2(4).

22. The Petition invokes the interpretive principles in Article 259(1), which mandate that the Constitution shall be interpreted in a manner that promotes its purposes, values, and principles; advances the rule of law, human rights, and fundamental freedoms in the Bill of Rights; permits the development of the law; and contributes to good governance.
23. The jurisdiction of this Honourable Court is invoked under Article 165(3)(b), which empowers the High Court to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened, and under Article 165(3)(d), to hear questions respecting the interpretation of the Constitution, including the determination of the constitutionality of anything purported to be done under the authority of the Constitution or any law. Furthermore, Article 159(2)(e) guides the exercise of judicial authority to protect and promote the purpose and principles of the Constitution.
24. The Petitioner's standing is derived from Article 22(1) and (2), which allow every person, including a person acting in the public interest, to institute court proceedings claiming that a right or fundamental freedom has been violated. Article 258(1) and (2) similarly permits any person to institute proceedings claiming a contravention of the Constitution, including in the public interest. As a human rights organization, the KHRC has *locus standi* to challenge the Act on behalf of affected Kenyans, consistent with the transformative ethos of the Constitution.
25. The impugned provisions of the Affordable Housing Act, 2024—particularly Sections 3, 4, 5, and 12—violate several constitutional provisions, as detailed below. These violations are not merely incidental but strike at the core of the Constitution's commitment to human dignity, equity, accountability, and the progressive realization of socio-economic rights. **The Petition demonstrates that the Levy's design and implementation fail the tests of constitutionality, proportionality under Article 24, and the principles of public finance under Article 201.**
26. Article 10(2) enumerates key values including democracy, participation of the people, inclusiveness, equality, human rights, non-discrimination, protection of the marginalized, good governance, integrity, transparency, accountability, and sustainable development. The Act's framework, particularly in its politicized allocations and lack of transparent mechanisms under Part III, contravenes these principles. Discretionary presidential directives bypass merit-based processes, eroding accountability and impartiality. Furthermore, Section 12's investment discretion further enables unaccountable diversions on the part of the Cabinet Secretary, undermining good governance. These failures transform a public program into a tool for patronage, contrary to the inclusive and equitable governance mandated by Article 10.

27. Further, Article 21(1) obliges the State to observe, respect, protect, promote, and fulfil the rights in the Bill of Rights. Article 21(2) requires legislative and other measures to achieve the progressive realization of socio-economic rights under Article 43, subject to available resources. The Levy causes retrogression rather than progression, as KNBS data shows contraction in the housing sector and reduced access for low-income earners. By diverting funds inefficiently without commensurate delivery, the Act fails to fulfil the right to housing, violating the State's positive obligations. Article 21(3) mandates all State organs to address the needs of vulnerable groups, yet discriminatory allocations favour politically connected individuals over the marginalized, thus exacerbating inequality.
28. Article 27(1) guarantees equality before the law and equal protection and benefit of the law. Article 27(4) prohibits discrimination on grounds including ethnic or social origin, political opinion, or other status. The Act's implementation discriminates by prioritizing groups like teachers and athletes through executive fiat, bypassing Part VI's equitable criteria. This creates unequal access to housing benefits, burdening salaried workers while favouring politically aligned beneficiaries. Such practices entrench social divisions and violate the non-discrimination imperative, as the Levy disproportionately affects formal sector employees without inclusive mechanisms for the informal sector.
29. Moreover, Article 35(1)(b) entitles every citizen to access information held by the State, essential for exercising rights and holding authorities accountable. The Act lacks provisions for regular, proactive disclosure of Fund details, such as collections, expenditures, and progress reports under Part III. The CEO's evasive responses in the 9th September 2025 interview underscore this denial, raising corruption concerns. Without accessible information, citizens cannot scrutinize the Levy's use, violating Article 35 and linked transparency under Article 10.
30. In addition to the above, Article 43(1)(b) guarantees the right to accessible and adequate housing. The State must take deliberate, concrete measures for progressive realization, but the Levy induces retrogression: construction sector decline, job losses, and minimal unit completions per KNBS 2025 data. Instead of advancing housing access, the Act misallocates resources, failing the "reasonable measures" test and violating the core socio-economic right intended to be protected.
31. Article 47(1) requires administrative actions to be expeditious, efficient, lawful, reasonable, and procedurally fair. Article 47(2) mandates written reasons for adverse decisions. The Levy provides no clear processes for contesting deductions, eligibility assessments, or allocation denials. Contributors face opaque decisions without remedies, while politicized allocations lack procedural safeguards. This unfairness, compounded by discrimination, breaches Article 47 and the Fair Administrative Action Act, 2015. Furthermore, the further levy is a further tax on

income that is already taxed rendering the levy a violation of the general understanding that income cannot be taxed twice.

32. Pertinently, Article 87(1) establishes principles for the electoral system, including freedom from manipulation and fair representation. The politicization of housing allocations, such as pledges to specific groups ahead of 2027 elections, risks vote-buying and undermines electoral integrity. Using Levy funds for patronage contravenes this provision, eroding public trust in democratic processes.
33. Article 201(a) demands openness and accountability in public finance. Article 201(b) requires equitable sharing of taxation burdens. Article 201(d) mandates prudent and responsible use of public money. The Levy is regressive in nature as it fails to account that low income earners which form the majority of the formally employed persons in Kenya spend a disproportionate portion of their income/salary on basic needs relative to high income earners, thus disproportionately burdening low-income workers without equitable benefits. Lack of oversight invites misuse, while Section 12 permits unaccountable investments. Politicized diversions violate prudence, and opacity contravenes openness, failing the constitutional standards for managing public resources.

SUMMARIZED VIOLATIONS

Economic Inefficiency and Retrogression in Socio-Economic Rights

34. Article 21(1) of the Constitution imposes a positive obligation on the State to "observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights." Article 21(2) specifically requires the State to "take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43," which includes economic and social rights. Article 43(1)(b) guarantees every person "the right to accessible and adequate housing, and to reasonable standards of sanitation." Article 201(b) stipulates principles of public finance, including that "the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations," and that taxation shall be equitable.
35. The Levy contravenes these provisions by inducing economic retrogression rather than progressive realization. The KNBS Economic Survey 2025 provides irrefutable evidence: the construction sector's 0.7% contraction in 2024, down from 3.0% growth in 2023, directly correlates with the Levy's implementation. This slowdown, coupled with a 7.2% drop in cement consumption to 8.5 million tonnes and a 12% decline in steel imports, demonstrates how the Levy's extraction of funds has stifled private investment and increased costs. Employment losses of 4.2% in construction further illustrate retrogression, as the sector's output shifted from 60% private-driven pre-Levy to state-dependent, inefficient models.

36. In Mitu-Bell Welfare Society v Kenya Airports Authority & 2 Others [2021] KESC 34 (KLR), the Supreme Court emphasized that the right to housing requires "deliberate, concrete, targeted, and adequately financed measures" by the State, and that evictions or policies leading to homelessness violate Article 43 unless alternatives are provided. Here, the Levy fails this test, as only 54,319 units were under construction by 2024, with completions lagging far behind targets. Applying the "purpose and effect" doctrine from the Canadian case R v Big M Drug Mart Ltd [1985] 1 SCR 295, adopted in Kenyan jurisprudence via Katiba Institute & 3 Others v Attorney General & 2 Others [2018] eKLR, the Levy's intended purpose of affordable housing is undermined by its actual effect: regressive taxation that burdens the poor without delivering commensurate benefits.
37. Comparatively, in South Africa's Government of the Republic of South Africa v Grootboom [2000] ZACC 19, the Constitutional Court held that housing policies must be reasonable and progressively realize rights without retrogression unless justified. The Levy's disproportionate impact violates Article 24's limitation clause, as it is not reasonable or justifiable in an open democratic society. This Petition relies on post-judgment data under Article 258, making economic critiques justiciable as structural violations as held by the Supreme Court in Institute of Social Accountability v National Assembly [2022] KESC 39.

Politicization and Governance Violations contrary to Articles 10, 87, 201(d) and Section 75 of the Leadership and Integrity Act)

38. Article 10(2) of the Constitution lists national values and principles of governance, including "democracy and participation of the people; inclusiveness; equality; human rights; non-discrimination; protection of the marginalized; good governance, integrity, transparency and accountability." Article 201(d) requires that public money shall be used in a prudent and responsible way, prohibiting arbitrary deprivation. Article 87(1) establishes principles for the electoral system, including fair representation and prevention of manipulation. Section 75 of the Leadership and Integrity Act, 2012 (Cap 185C) criminalizes abuse of office, including using public resources for personal or political gain.
39. The Act's allocation framework under Sections 20-25 mandates Board approval, merit-based criteria, needs assessments, and public procurement processes. However, presidential interventions have subverted these safeguards. The 13th September 2025 allocation of 20% of units to teachers, representing 34,000 out of 170,000, was announced without Board involvement, as confirmed in media reports. Similarly, the July 2025 pledges to footballers post-CHAN victories, framed as rewards, bypass equity, fostering perceptions of patronage. These acts,

involving billions in Levy funds, violate Article 27 on equality and non-discrimination, transforming a national program into an electoral tool.

40. 28. In **Coalition for Reform and Democracy v Republic of Kenya [2015] eKLR**, the Court invalidated executive actions eroding public trust and accountable governance. Comparatively, in India's Common Cause v Union of India (2018) 5 SCC 1, the Supreme Court struck down discretionary allocations of public resources as violative of equality. To address *Benjamin's* finding of no governance infringement, fresh 2025 incidents constitute evolving violations, distinguishing res judicata per Anarita Karimi Njeru v Republic [1979] KLR 154.

Lack of Transparency and Public Accountability

41. Article 10(2)(c) emphasizes "transparency and provision to the public of timely, accurate information." Article 201(a) mandates openness and accountability in public finance matters. Article 35(1)(b) grants every citizen "the right of access to information held by the State" to enable exercise of rights.
42. Part III of the Act, spanning Sections 9-19, establishes the Board and Fund but omits independent mechanisms for oversight, such as mandatory quarterly reports, citizen audits, or parliamentary committees with veto powers. The Gituku interview on 9th September 2025 exposed this opacity, with the CEO providing inconsistent data on collections (e.g., KSh 600 billion voluntary claims) and no verifiable progress metrics. This lack of disclosure contravenes Robert N. Gakuru & Others v Governor, Kiambu County [2014] eKLR, where the Court required reasoned explanations for public finance decisions.
43. In comparative terms, the U.S. Freedom of Information Act jurisprudence, as in *Department of Justice v Tax Analysts* (1989) 492 U.S. 136, underscores proactive disclosure; analogously, Kenya's Access to Information Act, 2016, reinforces Article 35. This Court has previously held that transparency is a non-derogable value and is enforceable in **Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKECA 445**.

Failure of Fair Administrative Action and Discrimination

44. Article 47(1) provides that "every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair." Article 47(2) requires written reasons for adverse actions. Article 27(1) guarantees equality before the law, while Article 27(4) prohibits discrimination on grounds including social origin or political opinion.
45. The current implementation of the levy has been arbitrary and has afforded members of the public no recourse where executive action has been used to

engender favouritism despite the deductions sparing no worker in the formal economy. In Samuel Kamau Macharia v Kenya Commercial Bank [2012] eKLR, procedural fairness was deemed essential; here, its absence is glaring.

46. Comparatively, in Canada's **Baker v Canada [1999] 2 SCR 817**, courts mandated fairness in administrative decisions. *Benjamin* addressed pre-enactment issues, but post-2024 discrimination distinguishes this Petition.

Unconstitutionality of Section 12

47. Section 12's open-ended investment discretion allows diversion of housing-specific funds, lacking criteria or accountability. This violates Article 201(c) on prudent use and Article 10's transparency.
48. In **British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 5 Others [2019] eKLR**, discretionary powers failing proportionality were struck down. Section 12 undermines ring-fencing.

REASONS WHEREFORE, the Petitioner humbly prays for the following ORDERS:

- A. A DECLARATION that Sections 3, 4, 5 and 12 of the Affordable Housing Act, 2024 (No. 2 of 2024), insofar as they introduce and operationalize the Affordable Housing Levy (hereinafter "the Housing Levy"), are unconstitutional, null and void for violating Articles 10, 21, 27, 43, 201, 209 and 230 of the Constitution of Kenya, 2010.
- B. A PERMANENT INJUNCTION restraining the Respondents, their agents, employees, successors in office, or any other person acting under their authority, from collecting, deducting, enforcing, implementing, or otherwise giving effect to the Housing Levy under the Affordable Housing Act, 2024, or any subsidiary legislation thereto.
- C. AN ORDER OF MANDAMUS directing the 2nd and 3rd Respondents to refund, with interest at court rates, all amounts collected as Housing Levy from Kenyan workers and employers since the enactment of the Affordable Housing Act 2024, to the affected persons within 90 days of this Court's orders.
- D. AN ORDER directing the 2nd and 3rd Respondents to render a full accounting of all funds collected under the Housing Levy, including their utilization, allocation, and distribution, within 60 days of this Court's orders.
- E. A STRUCTURAL INTERDICT requiring a comprehensive human rights impact assessment, including public consultations, before any reintroduction of similar measures.
- F. COSTS of this petition be borne by the Respondents.

DATED at Nairobi this 24th day of September, 2025.



KMK AFRICA ADVOCATES LLP
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY: -

KMK Africa Advocates LLP
Futuristic Centre, Block 2
Church Road/Raphta Road Junction
P.O. Box 4871-00100, NAIROBI
NAIROBI
info@kmkadvocates.co.ke

TO BE SERVED UPON: -

1. The Hon Attorney General
NAIROBI
2. The CS Treasury & Economic Planning
NAIROBI
3. The CS Ministry of Lands, Public Works, Housing and Urban Planning
NAIROBI
4. The Affordable Housing Board
NAIROBI
5. Kenya Revenue Authority
NAIROBI