



# Tax Alert

January 2026

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## High Court declares Government's palm oil duty unlawful, requiring both public participation and parliamentary scrutiny of EAC tax proposals

On 27 November 2025, the High Court of Kenya ("HC") delivered a significant judgment in Constitutional Petition No. E491 of 2024. The High Court declared unconstitutional the Government of Kenya's ("Government") decision to stay the application of a 0% rate of import duty on crude palm oil in favour of a 10% import duty made vide paragraph 158 of the East African Community ("EAC") Gazette Notice dated 30 June 2024 (Vol AT1 – No. 18) ("GN"). The judgment emphasized that the measure violated Articles 10, 209, and 210 of the Constitution of Kenya, 2010 ("the Constitution") for lack of adequate public participation and parliamentary scrutiny.

### Background

The dispute was between Consumers Federation of Kenya ("Petitioner", "COFEK") versus the Cabinet Secretary ("CS"), National Treasury ("NT") and others ("the Respondents"), among them the CS Ministry of East African Community, Arid and Semi-Arid Lands (ASALs), and Regional Development, the Kenya Revenue Authority ("KRA") and the National Assembly of Kenya ("NA").

Kenya, being a member of the EAC Customs Union, applies the tariffs laid out within the EAC Common External Tariff ("CET") on imports into the country. Crude palm oil (HS code 1511.10.00) attracts a CET rate of 0%. Under Article 12 of the Protocol on the Establishment of the East African Customs Union ("the EAC Protocol"), the Council of Ministers ("the Council") is empowered to review the CET structure and approve measures designed to remedy any adverse effects which any of the Partner States may experience by reason of the implementation of the EAC CET. Once approved and gazetted by the Council, these measures become law. We understand that the Government sought a stay of the application of the typical CET rate of 0% in favour of 10%, for one year effective 1 July 2024, as a policy measure directed at curbing the misdeclaration of semi-processed palm oil as crude oil, a practice said to have caused significant revenue loss.

COFEK challenged this decision, arguing that the Executive acted unconstitutionally.

The Petitioner argued that imposing or varying taxes is a legislative function vested exclusively in Parliament.

### **The Petitioner's contentions**

The Petitioner argued that imposing or varying taxes is a legislative function vested exclusively in Parliament.

It contended that the Executive's unilateral application for a CET stay and subsequent implementation of the 10% duty usurped Parliament's taxing authority. The Petitioner further asserted that no meaningful public participation occurred and that the tax measure infringed socio-economic rights, e.g., the right to food and consumer rights.

### **The Respondents contentions**

The Respondents maintained that the EAC Treaty and its protocols were domesticated through the Treaty for the Establishment of the East African Community Act Cap. 4C, delegating certain customs and tariff matters, including the consideration and approval of stays of application of the CET to the Council and the East African Legislative Assembly ("EALA"). As such, the Respondents argued that the Petitioner was making an attempt at impugning a decision of the Council and further that the HC had no jurisdiction to entertain the petition.

In addition, the Respondents argued that public participation was achieved through general budget consultations

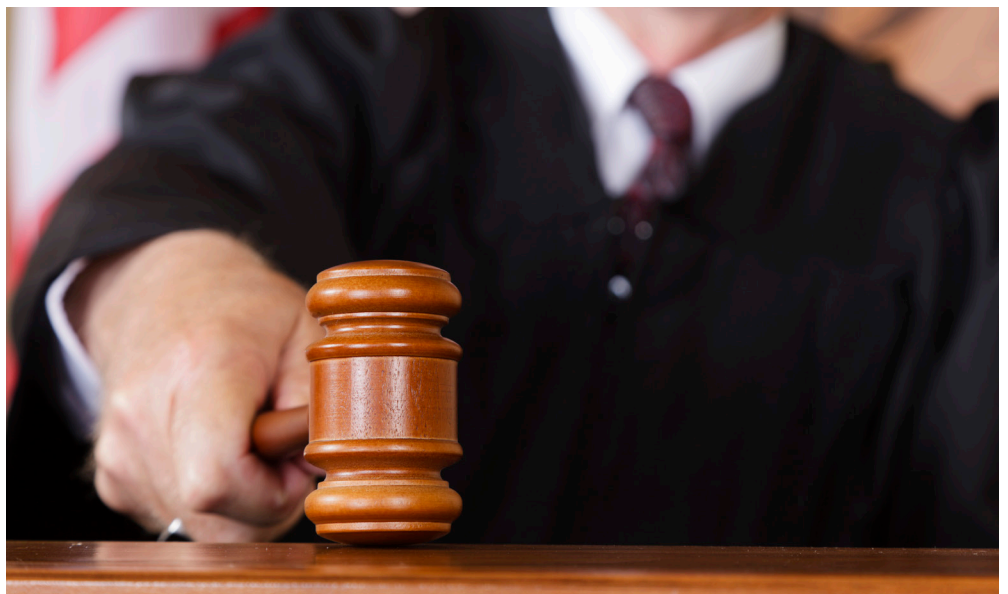
and stakeholder forums. They relied on evidence demonstrating that the NT issued public notices between October and November 2023 inviting submissions.

### **The High Court's determination**

The HC first addressed the question of jurisdiction and concluded that it was properly vested under Article 165(3)(d) of the Constitution to determine whether actions by Kenyan state organs comply with domestic constitutional requirements. It clarified that the petition did not challenge the Council's decision but the conduct of Kenyan authorities in initiating the application without adhering to constitutional safeguards.

On the issue of parliamentary approval, the HC emphasized that taxation is a sovereign function that cannot be delegated to external bodies. The principle of "no taxation without representation" was reaffirmed as a fundamental safeguard, and the HC declared the 10% duty unconstitutional for reasons that Parliament was bypassed.

Regarding public participation, the HC found that the process fell short of constitutional standards under Article 10 of the constitution. The court asserted that generic budget notices and selective stakeholder meetings





The HC consequently declared the 10% duty unconstitutional, null and void, prohibited its implementation, and directed that any future CET stay applications must undergo prior parliamentary scrutiny and public participation.

did not amount to meaningful engagement. Public participation, the HC noted, must be accessible, informed, and capable of influencing decision-making.

Finally, on the alleged rights violations of COFEK's and public rights, the HC observed that while price increases were evident, it was unnecessary to make a definitive finding on these claims since the procedural violations were sufficient to dispose of the matter. The HC also observed that a detailed inquiry into the economic and social impact of the tax would require extensive evidence and would veer into the realm of policy, an area where courts traditionally exercise restraint.

The HC consequently declared the 10% duty unconstitutional, null and void, prohibited its implementation, and directed that any future CET stay applications must undergo prior parliamentary scrutiny and public participation.

### **What this judgment means for taxpayers**

Importers should carefully review any duties paid under the now-invalid 10% rate on crude palm oil for the 12-month period up to 30

June 2025 and explore options for seeking refunds of duties. Given the Court's emphasis on constitutional safeguards, there is an expectation of increased public engagement and transparency when the Executive is seeking EAC tariff stays going forward. Stakeholders, including importers and industry associations, may anticipate more frequent and elaborate consultations, including parliamentary engagements, as the Government adjusts to comply with these requirements.

It is imperative for importers to be alive to the fact that a similar provision staying the application of the 0% EAC rate by Kenya was gazetted vide an EAC Gazette Notice dated 30 June 2025 (Vol AT1 – No. 19). Thus, the rate of 10% persisted until the time of receiving the judgment discussed herein.

### **Conclusion**

We wish to point out that the Respondents reserve the right to appeal the decision. We will monitor developments in this matter. Please feel free to contact your usual PwC contact or any of our tax experts listed herein should you wish to discuss this further.



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