



#OKOAMOMBASA

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The Managing Director,
Kenya Ports Authority
Mombasa
Jmwangemi@kpa.co.ke

The Commissioner General,
Kenya Revenue Authority,
Times Tower Building
Haile Selassie Avenue
P. O. Box 48240 – 00100
Nairobi

11 November 2021

Dear Sirs,

Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 – Ruling of 30th September 2021

Okoa Mombasa is a coalition of workers' unions, businesses, professional associations, civil society organisations and others who have come together out of concern for the livelihoods and wellbeing of the residents of Mombasa. We believe in and defend the values of freedom, equality and solidarity. We have actively supported the petitioners and interested parties in the above-mentioned case as members of Okoa Mombasa.

We are writing to bring to your attention the lapse of the conservatory orders issued by the High Court on 30th September 2021. As a consequence, the directives issued by the Cabinet Secretary, Ministry of Transport and Infrastructure, dated 15th March 2019 and 3rd August 2019 are in violation of the Constitution and stand quashed per the High Court's judgment of 6th November 2020.

As you know, the directives have had a devastating effect on the socio-economic status of Mombasa and its residents, leading to the loss of many jobs and closure of businesses. The affected residents and businesses were never afforded the opportunity to participate in

decision-making of the directives, as envisioned by article 10 of the Constitution. The Court found that KPA

'has no right to impose the decision [the impugned directives] resulting from that agreement [the Take of Pay Agreement] on the [Kenya Transporters Association] members and other stakeholders without involving them through public participation'.

The quashing of these directives means that importers can now choose their mode of transportation of cargo as they wish. It also means that no decisions that impact this choice can be made without prior public participation of those affected, as envisioned in Article 10 of the Constitution and as elaborated by the courts.

We, therefore, urge you as a matter of adherence to the rule of law and the respect of court orders to, with immediate effect, facilitate the transportation of cargo in accordance with importers' choices as was the case prior to the directives mentioned above were issued. Through our members, we will monitor adherence with the Court orders and will not hesitate to seek further legal redress should the orders not be implemented. This letter serves as a penal notice should you not obey the Court's orders.

Kind regards,



Khelef Khalifa
Chairman, MUHURI
On behalf of Okoa Mombasa

CC
Kenya Transporters Association (KTA)
Kenya Ships Agents Association (KSAA)
Kenya International Freight and Warehousing Association (KIFWA)