

Kenya's Maritime Regulations at a Legal Crossroads



DAUD AND MATTHYSE ADVOCATES

KSAA, KMA, the Cabinet Secretary and the Road to Appeal

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Executive Summary

A Battle over the Rules Governing Kenya's Maritime Gateway

At the centre of this dispute lies a fundamental question: how far may the State reshape the commercial rules governing Kenya's maritime industry before the businesses affected are properly heard?

The challenge was brought by the Kenya Ships Agents Association (KSAA), a non-profit industry body whose members include international shipping lines and ship agents operating in Kenya. Its members represent carriers, coordinate vessel calls, process shipping documentation, facilitate cargo release and support compliance with maritime and port requirements.

For KSAA and its members, the dispute is therefore not an abstract disagreement over regulatory policy. It concerns the conditions under which shipping businesses may enter and remain in the Kenyan market, the charges they may impose, the licences they must obtain, the structures through which they operate and the consequences of failing to comply.

Current position as at 7th October 2026

The September 2026 appellate ruling is not a final determination of the appeal. The Court suspended the implementation and further implementation of the challenged 2024 instruments pending the substantive appeal. It directed that the intended appeal be filed within 30 days and accorded priority. As at the report date, no subsequently published judgment determining the substantive appeal had been located.

The present controversy developed through two connected but legally distinct disputes.

The first began when the Kenya Maritime Authority issued a notice on **31st October 2023** introducing guidelines on destination charges. KSAA challenged the notice, arguing that the guidelines had been imposed without the legally required consultation and regulatory process.

On **15th November 2023**, the duty judge granted interim relief pending determination of the application in Petition E050 of 2023. On **14th March 2025**, the High Court continued that protection by granting a conservatory order restraining implementation or enforcement of KMA's **31st October 2023** destination-charge notice pending determination of the petition.

The second, and now more consequential dispute, concerns six Merchant Shipping Regulations introduced in 2024, together with KMA's Introduction and Review of Tariff Framework. These instruments sought to establish a broader regulatory regime governing maritime transport operators, including their registration, licensing, tariffs, ownership structures, staffing arrangements, operational systems and continuing compliance obligations.

KSAA maintained that the new regime went far beyond routine regulation. In its view, the instruments could alter the structure and commercial operation of international shipping businesses in Kenya, while exposing non-compliant operators to the loss or non-renewal of licences. It argued that the regulations and tariff framework were introduced through a process that did not adequately address stakeholders' objections, exceeded the respondents' legal authority in certain respects and failed to provide a workable transition for affected businesses.

The Cabinet Secretary, KMA and the other respondents rejected those allegations. They maintained that extensive consultations had taken place, that stakeholders, including KSAA, had been invited to participate, and that the instruments were necessary to modernise maritime regulation, protect port users, domestic international obligations and strengthen local participation in the sector.

On **19th September 2025**, the High Court dismissed KSAA's constitutional challenge and upheld the regulatory process. KSAA then moved to the Court of Appeal.

On **25th September 2026**, the Court of Appeal granted an interim injunction restraining the implementation and further implementation of the challenged instruments pending the substantive appeal. The appellate court did not make a final determination on whether the regulations are lawful. It found, however, that KSAA had raised arguable questions and that allowing implementation to continue could cause commercial harm that might render a successful appeal meaningless.

The result is a regulatory regime caught between implementation and judicial review. The final appeal may determine not only the future of these particular regulations, but also the standards that regulators must observe when introducing technically complex rules with far-reaching consequences for international businesses operating in Kenya.

For shipping lines, ship agents, cargo interests, regulators and legal advisers, the stakes are considerable. The eventual judgment could affect licensing, tariff-setting, foreign investment, local participation, employment requirements and the wider competitiveness of Kenya's maritime gateway.

At its heart, the dispute concerns the boundary between legitimate government regulation and the constitutional rights of the businesses being regulated.

The Government and KMA argue that the framework is necessary to modernise Kenya's maritime sector, align domestic regulation with international maritime conventions, protect port users and strengthen Kenyan participation in the industry. They maintain that KMA requires effective licensing, tariff-monitoring and enforcement powers to supervise operators and promote a transparent, competitive and properly regulated market.

KSAA presents a different picture. It argues that the regulatory process was legally defective and commercially disruptive: consultation was incomplete; its detailed objections were not meaningfully considered; and the tariff framework was issued without adequate stakeholder participation. It also warns that licensing, ownership, staffing and tariff requirements could compel shipping businesses to restructure, alter commercial arrangements and incur substantial costs before the framework's legality is finally determined.

The disagreement is therefore not about whether Kenya should regulate its maritime industry. Both sides accept the importance of effective regulation. The real questions are how the rules were developed, whether the responsible authorities remained within their legal powers and whether affected businesses had a genuine opportunity to influence measures capable of reshaping the industry.

Questions the appeal may clarify

Public Participation: What constitutes meaningful participation for highly technical delegated legislation, and must regulators show how material objections were treated?

Legal Character : When does a guideline or administrative framework become a binding statutory instrument requiring public and parliamentary scrutiny?

Statutory Power: How far may annual licensing be used to implement localisation, staffing, ownership or tariff policy?

Interim Protection: When should courts preserve businesses against harm that a later judgment cannot adequately repair?

THE CORE TEST

Can an important regulatory objective be pursued through a process alleged to have fallen short of constitutional and statutory requirements? The answer will shape both the future of the maritime framework and the standards applicable to regulation across the economy.

Report Map



Identity, Institutions and Legal Architecture

The Principal Actors

KENYA SHIPS AGENTS ASSOCIATION – PETITIONER/APPLICANT

KSAA describes itself as a non-profit company limited by guarantee that promotes ethical business, best practice and seaborne trade. Its membership is drawn from maritime service providers, including shipping lines and shipping agents. It acts as an industry voice where regulation affects market access, charges, agency relationships and the operating environment.

CABINET SECRETARY – FIRST RESPONDENT

The Cabinet Secretary for Mining, Blue Economy and Maritime Affairs promulgated the six impugned 2024 Regulations. The challenge therefore attacks both the legal authority exercised and the process through which the instruments were made.

KENYA MARITIME AUTHORITY – SECOND RESPONDENT

KMA is established under the Kenya Maritime Authority Act. Its functions include monitoring, regulating and coordinating the maritime industry, implementing maritime obligations and supervising maritime services. It conducted consultations, developed and administered the regulatory framework, published the tariff framework and manages the relevant licensing and registration processes.

ATTORNEY GENERAL – THIRD RESPONDENT

The Attorney General is the national government's principal legal adviser and defended the Cabinet Secretary and KMA through the Office of the Attorney General.

NATIONAL ASSEMBLY – FOURTH RESPONDENT

The National Assembly was joined because statutory instruments must be laid before Parliament and reviewed through the Committee on Delegated Legislation. It maintained that the instruments were scrutinised; that adequate consultation was demonstrated and that public participation does not require every stakeholder view to prevail.

KENYA GROUPAGE CARGO HANDLING ASSOCIATION – INTERESTED PARTY/FIFTH RESPONDENT

The groupage association represents members licensed as agents of non-vessel-operating common carriers (NVOCCs). It sought participation in the earlier proceedings and was an interested stakeholder in the 2024 challenge. In the Court of Appeal application, the fourth and fifth respondents did not file affidavits, although the National Assembly filed submissions.

THE GOVERNING LEGAL FRAMEWORK



Constitutional equality, property protections, and fair administrative action underpin the dispute.

THREE QUESTIONS AT THE HEART OF THE CASE



Process: Were stakeholders meaningfully consulted?



Power: Did the Cabinet Secretary and KMA act within their statutory authority?



Effect: Are the tariff framework and licensing conditions administrative guidance or legally binding rules?

The History: From Reform Proposals to Open Conflict

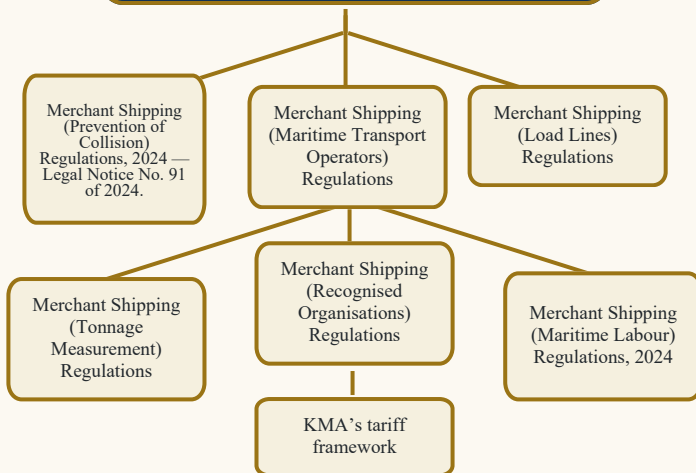
DATE	DEVELOPMENT
11 th November 2021	KMA invited stakeholders to comment on the proposed Maritime Laws (Amendment) Bill and draft MTO Regulations, with a workshop scheduled for 23 rd November.
6 th December 2021	KSAA submitted a 37-page dossier of comments and objections. It later alleged that no direct response was received and its views were reduced to one point in the published report.
5 th -14 th April 2022	KMA invited stakeholders to a workshop on regulations transposing maritime conventions. KSAA declined to participate, saying the instruments did not affect its members and its members already complied with the conventions.
29 th July 2023	A Northern Corridor and Port Reforms forum considered Mombasa's costs and competitiveness, including destination charges.
3 rd August 2023	Gazette Notice No. 10867 invited memoranda on the Regulatory Impact Statement for the proposed MTO Regulations.
7 th -10 th August 2023	KMA communicated a Presidential Directive and convened consultations. A subcommittee was formed; KSAA opposed arbitrary fixing of destination charges.
12 th September 2023	KSAA submitted objections, including concerns that agents were being blamed for port-cost problems.
31 st October 2023	KMA issued destination-charge guidelines with immediate effect. KSAA objected the next day and subsequently brought Petition E050 of 2023, with an application dated 7 th November.
15 th November 2023	The duty judge granted interim relief pending determination of the application in Petition E050 of 2023.
24 th May 2024	The challenged 2024 regulatory package was gazetted, including the MTO Regulations under Legal Notice No. 92 of 2024.

DATE	DEVELOPMENT
29 th May 2024	The Cabinet Secretary transmitted the Regulations to the National Assembly under the Statutory Instruments Act.
29 th July 2024	KSAA says it learned of enforcement when Maersk Kenya received a letter alleging breach of the 2024 MTO Regulations.
13 th -22 nd August 2024	KSAA met KMA and raised licensing and transition concerns. It requested clarity and a two-year grace period on 15 th August; KMA replied on 22 nd August seeking implementation.
August 2024	KMA published the tariff framework. KSAA objected to the 90-day notification requirement and alleged lack of consultation.
2 nd September 2024	KSAA filed Petition E051 of 2024. It amended the petition on 19 th September following the National Assembly's joinder.
14 th March 2025	The High Court granted a conservatory order restraining implementation or enforcement of the 31 st October 2023 notice pending determination of Petition E050 of 2023, continuing earlier interim protection.
19 th September 2025	The High Court dismissed Petition E051 of 2024 and upheld the challenged regulatory process. Each party was ordered to bear its own costs.
21 st November 2025	KMA invited proposals for implementation over five years, expressly stating that this neither guaranteed licence renewal nor suspended the framework.
6 th May 2026	KSAA filed its Court of Appeal application for an injunction pending the intended appeal.
25 th September 2026	The Court of Appeal restrained implementation and further implementation of the challenged Regulations and tariff framework pending the intended appeal. It directed filing within 30 days and priority case management and hearing.

SEPARATE PROCEEDINGS: Petition **E050 of 2023** concerned the destination-charge notice. Petition **E051 of 2024** concerned the six challenged 2024 Regulations and tariff framework.

What the 2024 Regulations Require

THE SIX REGULATIONS AND THE TARIFF FRAMEWORK



The convention-based instruments regulate seafarer conditions, navigation, safe loading, ship measurement, and organisations authorised to survey or certify vessels. The commercial centre of the case is Legal Notice No. 92 of 2024, the Merchant Shipping (Maritime Transport Operators) Regulations, 2024, because it directly governs market entry and operator conduct.

MARKET ENTRY AND ANNUAL CONTROL

Foreign shipping lines must be registered, while local shipping lines, shipping agents and cargo consolidators must be licensed. Operators licensed by related agencies may also require KMA registration. Certificates and licences are generally renewed annually, making continuing compliance relevant not only to entry into the market but also to an operator's ability to remain in it.

OPERATING CONDITIONS

The Merchant Shipping (Maritime Transport Operators) Regulations, 2024 (Legal Notice No. 92 of 2024) do not impose one identical set of operating conditions on every operator. Regulation 11 directs licensed or registered operators to the applicable category in the Fourth Schedule.

Foreign shipping lines are subject to the Fourth Schedule's certificate-of-approval conditions, including applying their filed tariff, handling customer enquiries and complaints, tracking cargo, maintaining compatible electronic records, and complying with applicable customs requirements.

OPERATING CONDITIONS (CONTINUED)

The Fourth Schedule separately sets licence conditions for local shipping lines, including professionally qualified staff, maritime-related training for 60% of staff, cargo and accounts records, third-party liability insurance, a complaints system and cargo tracking. The 10% foreign-workforce limit and the 10% limit for foreigners in management and technical roles appear under the local-shipping-line conditions and should not be attributed to foreign shipping lines generally.

Shipping agents and cargo consolidators have separate Fourth Schedule conditions; ownership, training and staffing requirements vary by operator category.

TARIFF FRAMEWORK

KSAA objected that the framework required 90 days' notice to KMA for tariff changes, public consultation, and 30 days' public notice before changes took effect. It argued that shipping costs respond rapidly to fuel, currency, congestion, security, insurance, equipment imbalance and global capacity, making a long approval pathway commercially problematic.

The respondents' position was that the framework did not create new obligations. It implemented Regulation 11 and the Fourth Schedule by explaining how operators would notify and review tariffs. That classification, administrative guide or binding legislative rule remains one of the appeal's most consequential legal issues.

ENFORCEMENT

KMA may investigate, issue notices, require remediation, and suspend, cancel or revoke authorisations where legal thresholds are met. Regulation 16 provides for review in accordance with Part XX of the Merchant Shipping Act. KSAA said that reference did not provide a coherent appeal route for all administrative decisions; the High Court held that KMA decisions remained reviewable through statutory and judicial safeguards.

WHY THE RULES FELT EXISTENTIAL TO KSAA

The framework did not only regulate safety. It connected pricing, staffing, ownership and local participation, digital systems and service standards to annual permission to operate. KSAA therefore viewed implementation before final judicial review as capable of changing businesses irreversibly.

AUTHORITIES

1. Kenya Ships Agents Association v Kenya Maritime Authority [2025] KEHC 5239 (KLR), High Court at Mombasa, ruling of 14 March 2025, Petition E050 of 2023, paras 21, 27–28. Earlier destination-charge dispute: interim relief was granted on 15 November 2023, and the 31 October 2023 notice was later restrained pending determination of the petition.
2. Kenya Ships Agents Association v Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs & 4 others [2025] KEHC 19824 (KLR), High Court at Mombasa, judgment of 19 September 2025, Petition E051 of 2024, paras 73–74, 77–79, 81–84. Judgment dismissing the 2024 petition, including the Regulatory Impact Statement and section 9 issue, the tariff framework and review of regulatory decisions.
3. Kenya Ships Agents Association v Cabinet Secretary, Ministry of Mining, Blue Economy & Maritime Affairs & 4 others [2026] KECA 1896 (KLR), Court of Appeal at Mombasa, ruling of 25 September 2026, Civil Application E050 of 2026, paras 7–11, 13–17. The Court granted an interim injunction pending the intended appeal, not a final declaration invalidating the regulations, directed that the intended appeal be filed within 30 days, and prioritised it for case management and hearing.

KSAA's Challenge: Grievances, Evidence and Remedies Sought

Why KSAA was Aggrieved

1. ITS 2021 DOSSIER WAS NOT MEANINGFULLY ANSWERED

KSAA attended the 2021 engagement and submitted a detailed 37-page dossier. It said the later report did not address the substance of its objections and reduced them to a single comment. For KSAA, invitation without reasoned response was not meaningful participation.

2. THE MATERIAL CHANGED OVER TIME

The Regulations were promulgated in 2024 after consultation beginning in 2021. KSAA argued that the elapsed time, incomplete drafts and absence of renewed consultation meant stakeholders were not commenting on the instruments ultimately made.

3. ENFORCEMENT ARRIVED BEFORE A WORKABLE TRANSITION

KSAA said it learned of the new regime when a member received a letter alleging a breach of the new requirements in July 2024. At the August meeting it raised a threatened licence and asked for clarity and a two-year grace period. KMA's reply directed implementation rather than accepting the proposed transition.

4. THE TARIFF FRAMEWORK WAS PUBLISHED WITHOUT CONSULTATION

KSAA argued that a document prescribing tariff-change procedure and notice periods has real legal and commercial effect. It characterised the framework as a statutory instrument made without the consultation, explanatory material and parliamentary control required by the Statutory Instruments Act.

5. LICENSING, OWNERSHIP AND EMPLOYMENT CONSEQUENCES

KSAA argued that non-Kenyan shareholders could be pressured to divest control and that workforce restrictions could affect property, equality and investment interests. More broadly, it feared licence refusal or revocation if members did not restructure before legality was settled.

6. COMPETITION AND REGULATORY OVERREACH

KSAA relied on section 21 of the Competition Act, contending that the instruments could distort or lessen competition and that the Competition Authority had not been involved. It also alleged that the Cabinet Secretary and KMA exceeded powers conferred by the Merchant Shipping Act.

The Relief Sought

KSAA asked the High Court to declare all or any of the six Regulations unconstitutional, ultra vires and illegal; quash them by certiorari; declare the tariff framework unconstitutional and unlawful; and quash it. It also sought costs.

The Legal Theories

Its principal theories were Article 10 public participation, Article 47 fair administrative action, the mandatory consultation and impact-assessment provisions of the Statutory Instruments Act, equality and property rights, the Competition Act and the ultra vires doctrine.

Appellate Grounds Identified By The Court Of Appeal

The draft memorandum contained 16 grounds. The Court of Appeal highlighted four arguable themes: the adequacy of public participation; incomplete forms or materials presented for participation; the legal character of the tariff framework; and alleged action beyond the powers conferred by the Merchant Shipping Act.

The Respondents' Case and the High Court Judgment

The Respondents' Arguments

PUBLIC PARTICIPATION DID OCCUR

The Cabinet Secretary, KMA and Attorney General relied on KSAA's own admissions that it was invited, attended and submitted comments on the MTO proposals. They said KSAA chose not to participate in the 2022 engagements on other convention-based Regulations because it considered them irrelevant to its members.

FEEDBACK AND SUPPORTING RECORDS EXISTED

The respondents produced consultation reports, an explanatory memorandum and a Regulatory Impact Statement Gazette Notice No. 10867 of 3rd August 2023 invited written memoranda within 14 days. The Regulations were transmitted to the National Assembly on 29th May 2024.

THE OTHER REGULATIONS WERE SAID TO FALL WITHIN A LIMITED STATUTORY EXEMPTION

The respondents argued that the MTO Regulations were supported by a Regulatory Impact Statement, while the convention-focused instruments fell within section 9 of the Statutory Instruments Act. The High Court accepted that section 9 removed the requirement to prepare a Regulatory Impact Statement in specified circumstances. This was not an exemption from consultation, parliamentary scrutiny or constitutional duties.

THE TARIFF FRAMEWORK WAS GUIDANCE

The respondents and the National Assembly said not every guideline is legislative. The framework merely explained the notification process already authorised by Regulation 11 and the Fourth Schedule; it introduced no new legal requirement and therefore was not a statutory instrument.

FAIR ADMINISTRATIVE ACTION WAS AVAILABLE

Because consultation opportunities existed and Regulation 16 referred aggrieved persons to review under Part XX of the Act, the respondents denied that KMA's powers were absolute or that Article 47 was infringed.

What the High Court Decided

Justice Olga Sewe accepted that public participation must be genuine, purposeful, and accompanied by reasonable notice. She nevertheless held that the evidence demonstrated adequate consultation. KSAA had participated in the MTO process; it acknowledged that its views appeared in the report, although compressed; and it had elected not to join other workshops.

The Court noted that later Court of Appeal guidance requiring reasons for adopting or rejecting public views was delivered in July 2024, after the relevant consultation and shortly after the instruments became operational. It did not use that later standard to invalidate the earlier process.

On the Statutory Instruments Act, the Court found that the explanatory memorandum and Regulatory Impact Assessment established compliance for the MTO Regulations and accepted that the convention-focused instruments fell within the applicable statutory exemptions. It treated the tariff framework as administrative implementation, not a statutory instrument.

On review rights, the Court held that Regulation 16 and Part XX did not insulate KMA. Licence action, detention, compounding of offences, penalties and notices remained subject to fair hearing, statutory challenge and judicial review. The Court found no proof of ultra vires action or a constitutional violation.

HIGH COURT OUTCOME - 19th SEPTEMBER 2025

Petition E051 of 2024 was dismissed. The Regulations and tariff framework remained operative. Because the litigation raised public-interest questions, each party was ordered to bear its own costs.

Why the Judgment Did Not End the Dispute

The judgment resolved the petition at first instance, but the disputed classification and participation questions were capable of appeal. More importantly, implementation continued while operators approached recurring licence decisions. KSAA therefore needed preservation, not merely permission to argue later.

The Court of Appeal Application and Interim Injunction

THE APPLICATION BEFORE THE COURT

KSAA moved the Court of Appeal under Rule 5(2)(b) of the Court of Appeal Rules by a Notice of Motion dated 6th May 2026. It sought an injunction restraining implementation or further implementation of the 2024 Regulations and tariff framework pending the intended appeal. It was not seeking a stay of the High Court's negative dismissal order; it sought affirmative preservation against regulatory implementation.



KSAA'S POSITION

The intended appeal challenged the High Court on participation, incomplete consultation materials, the tariff framework's legal status and alleged excess of statutory power. KSAA said immediate implementation could cause refusal or non-renewal of licences, loss of business and property, broken agency relationships and financial ruin that damages could not repair.

THE RULE 5(2)(B) TEST

The Court applied the two cumulative requirements: the intended appeal must be arguable, and refusing relief must risk rendering the appeal nugatory. Arguable does not mean likely to win; one genuine issue is enough. Nugatory asks whether the threatened act is reversible or adequately compensable by damages.

RESPONDENTS' OPPOSITION

The first three respondents filed grounds of opposition, while KMA adduced affidavit evidence. They argued that negative orders could not be stayed, that KSAA had not shown an exceptional or meritorious case, and that public interest favoured implementation. KMA stated that a substantial number of licensed operators had complied and continued providing services without interruption. KMA also referred to its letter of 21st November 2025, under which applicants could submit proposals for implementing the conditions over five years. Critically, KMA's own formulation said this was not a guarantee of licence renewal and did not suspend the regulatory framework.

THE COURT'S REASONING

The Court found the appeal arguable on the four highlighted themes. On the second limb, it rejected the idea that general compliance by unidentified operators answered KSAA members' risk. Implementation carried the prospect of licence refusal or revocation and losses difficult to reverse.

The judges balanced hardship. KSAA members faced existential consequences; the respondents faced limited prejudice because implementation was already described as progressive over five years. The possibility of later success would be hollow if members had already lost licences and businesses.

COURT OF APPEAL OUTCOME - 25th SEPTEMBER 2026

The injunction was granted. Implementation and further implementation were restrained pending the intended appeal. The Court directed that the appeal be filed within 30 days and set down for priority case management and hearing because the instruments were said to domesticate international maritime conventions.

This did not invalidate the Regulations, determine the substantive appeal, erase the Merchant Shipping Act, cancel past licences, refund payments, or resolve every private dispute. It preserved the controversy. The Court must still determine the substantive appeal, including the legality of the challenged instruments and the appropriate remedy.

Legal and Commercial Consequences: Scenarios and Risk

Immediate legal consequences

A regulatory demand must now be traced to its source. If it depends solely on an enjoined provision of the 2024 Regulations or on the tariff framework, enforcement may raise a direct issue under the Court of Appeal's order. If the demand rests independently on the Merchant Shipping Act, customs law, port-safety legislation, environmental law or contract, it may fall outside the scope of the injunction.

Operators should preserve applications, correspondence, tariff filings, compliance plans, notices and expenditure evidence. The order's practical scope may itself require interpretation. Businesses should neither ignore all regulation nor assume that every act already taken is automatically void.

Commercial Consequences

LICENSING AND CONTINUITY

The order may reduce immediate risk surrounding licence renewal, but uncertainty remains until KMA issues clear operational guidance or the substantive appeal is determined. Carriers and principals will assess whether local agents can operate without interruption.

PRICING AND CONTRACTS

Tariff uncertainty affects surcharge clauses, notice provisions, customer communications and cost allocation. Contracting parties may reserve rights, use change-in-law clauses and seek documentary clarity on the legal source of charges.

INVESTMENT AND LOCALISATION

Companies may postpone ownership, staffing or systems changes while preserving optionality. Kenyan professionals and service providers may experience delayed localisation benefits. A poorly managed pause could freeze investment; a well-managed one could improve the transition design.

PORT COMPETITIVENESS

Mombasa competes within a regional network. Carriers factor uncertainty, delay and administrative complexity into their pricing and routing decisions. But lack of effective regulation can also undermine confidence through opaque charges and weak accountability. Competitiveness requires both speed and credibility.

Possible Outcomes of the Substantive Appeal

SCENARIO A – HIGH COURT JUDGMENT UPHELD

The instruments survive. Attention shifts to transitional fairness, implementation guidance, proportional enforcement and whether affected operators receive reasonable time.

SCENARIO B - PARTIAL INVALIDITY

The Court may sever defective provisions, invalidate the tariff framework while preserving convention-based rules, or suspend invalidity to allow lawful repair.

SCENARIO C - PROCESS FOUND DEFECTIVE

The Regulations may be quashed or remitted for renewed consultation, a Regulatory Impact Statement or further

SCENARIO D - POWER OR RIGHTS LIMITS DEFINED

Even if the framework survives generally, the Court may narrow ownership, employment, tariff or licensing powers and impose procedural safeguards.

Why the Final Judgment Will Be Significant

The final decision may become a leading authority on technical public participation, the boundary between guidance and legislation, regulatory reliance on licensing, and remedies where important economic rules are procedurally defective. Its reach could extend to energy, transport, communications, health and financial regulation.

In particular, the judgment may clarify when administrative guidance acquires binding legal effect and how regulators must demonstrate that stakeholder participation was meaningful rather than merely procedural.

WHY THIS CASE MATTERS

This case may define how Kenya balances regulatory ambition with constitutional accountability and commercial certainty. It will help determine whether sophisticated regulation is judged by its policy purpose, the legality of the process used to create it, or its real-world effect on regulated businesses.

Lessons for Lawyers, Regulators and Maritime Businesses

BUILD THE EVIDENTIARY RECORD BEFORE A DISPUTE ARISES

Consultation letters, successive drafts, meeting minutes, attendance records, regulatory-impact documents and unanswered submissions may later become constitutional evidence. Lawyers should preserve every version of a proposed instrument and prepare a clear record showing what stakeholders were asked to consider, what objections were raised and how the regulator responded.

COMPARE THE CONSULTED DRAFT WITH THE FINAL INSTRUMENT

Participation in an early consultation does not necessarily establish meaningful participation in materially different rules adopted years later. Counsel should conduct a clause-by-clause comparison between the consulted draft and the final instrument, identifying new obligations, altered licensing conditions and provisions that were never placed before stakeholders.

TEST SUBSTANCE, NOT REGULATORY LABELS

Calling a document a “framework,” “guideline” or “administrative procedure” does not determine its legal character. The important question is what the document does in practice. If it creates binding obligations, regulates prices, changes licensing conditions or exposes businesses to sanctions, it may require the constitutional and statutory safeguards applicable to delegated legislation.

TRACE EVERY OBLIGATION TO A LAWFUL SOURCE OF POWER

Each ownership, staffing, tariff, registration and licensing requirement should be traced to an express enabling provision. A legitimate policy objective does not, by itself, confer legal authority. Regulators should be able to identify the statutory source of every substantive obligation they impose.

DISTINGUISH POLICY DISAGREEMENT FROM LEGAL DEFECT

Courts will not invalidate a regulatory framework merely because affected businesses consider it expensive, inconvenient or commercially undesirable. A successful challenge must connect a specific obligation to an identifiable legal defect: absence of statutory authority, inadequate public participation, procedural unfairness, disproportionality or an unjustified limitation of protected rights.

PROVE INTERIM HARM WITH COMMERCIAL PRECISION

Applications for interim protection require more than general allegations of hardship. Evidence should identify the licences at risk, renewal dates, affected agency agreements, restructuring expenses, threatened customer losses and the consequences of business interruption. The objective is to demonstrate why damages would not adequately repair the harm if the applicant ultimately succeeds.

PLAN FOR COMPLIANCE WHILE LITIGATION CONTINUES

An injunction against particular regulations does not necessarily suspend every obligation affecting a maritime operator. Businesses must distinguish requirements arising from the restrained instruments from duties independently imposed by the Merchant Shipping Act, customs legislation, port rules, environmental law or contract. Compliance decisions should be documented and legal rights expressly reserved.

DESIGN WORKABLE REMEDIES, NOT ONLY WINNING ARGUMENTS

Courts may hesitate to invalidate an entire regulatory regime where doing so could create a governance or safety vacuum. Parties should therefore propose practical remedies, including severance of defective provisions, suspended invalidity, transitional arrangements, renewed consultation, reporting obligations or an expedited implementation timetable.

PARLIAMENTARY SCRUTINY MUST BE SUBSTANTIVE

Where delegated legislation must be laid before the National Assembly, lawyers should verify when it was transmitted, what explanatory material accompanied it, whether the applicable committee considered it and whether statutory deadlines were observed. Parliamentary scrutiny should not be treated as a ceremonial step.

PRESERVE RIGHTS AND EVIDENCE OF COMPLIANCE COSTS

Operators that restructure, incur expenditure or comply while reserving their objections should retain documentary proof. That evidence may become important if the final judgment raises questions concerning transitional protection, restitution, compensation or the treatment of businesses that acted before the legal position was settled.

THE BROADER LESSON

This dispute demonstrates that regulatory legitimacy depends on more than the importance of the policy being pursued. It also depends on lawful authority, transparent procedures, meaningful engagement and a realistic appreciation of commercial consequences.

For regulators, the lesson is to build a defensible process as carefully as the substantive policy. For businesses, it is to participate early, preserve evidence and identify legal risk before compliance deadlines arrive. For lawyers, it is to connect constitutional principle with the practical realities of licensing, contracts, investment and business continuity.

What to Watch Next

1 STATUS AS AT 7 OCTOBER 2026

Status as of 7 October 2026. The Court of Appeal had granted an interim injunction pending the intended appeal and directed that the appeal be filed within 30 days and prioritised for case management and hearing. This report does not verify whether the appeal was subsequently filed or whether further directions or orders were made.

2 CASE MANAGEMENT AND HEARING DIRECTIONS

The Court directed KSAA to file the intended appeal within 30 days and prioritised the matter for case management and hearing. These directions do not establish that the appeal was subsequently filed or that further directions or orders were made.

3 THE PRACTICAL SCOPE OF THE INJUNCTION

The interim order restrains implementation and further implementation of the challenged instruments. Questions may nevertheless arise concerning licensing, renewals, pending applications, earlier compliance stages and obligations said to arise from independent statutory powers.

4 KMA'S APPROACH TO LICENSING AND RENEWALS

Clear regulatory guidance will be important. Operators should monitor whether KMA issues directions explaining how registrations, licence renewals and enforcement decisions may be handled while the substantive appeal remains pending.

5 TREATMENT OF OPERATORS THAT HAVE ALREADY COMPLIED

Some businesses may already have restructured, incurred expenditure, changed staffing arrangements or submitted tariffs in response to the regulatory framework. The eventual judgment may need to address the position of operators that acted before the injunction was granted.

6 THE LEGAL STATUS OF THE TARIFF FRAMEWORK

One of the appeal's most significant questions is whether the tariff framework is merely administrative guidance or a binding statutory instrument. The answer may influence how regulators across other sectors distinguish implementation guidance from delegated legislation.

7 RENEWED CONSULTATION OR A NEGOTIATED TRANSITION

The parties may consider renewed stakeholder engagement, revised instruments or a negotiated implementation framework. Any such process should be transparent, properly documented and consistent with the pending appellate proceedings.

8 THE REMEDY SELECTED BY THE COURT

Even if the Court identifies a legal defect, complete invalidation is not the only possible result. The Court may uphold some provisions, sever others, suspend invalidity, require renewed consultation or prescribe transitional safeguards.

Conclusion

The KSAA-KMA dispute is not simply a contest between regulation and deregulation. Kenya has a legitimate public interest in safe shipping, transparent maritime charges, consumer protection, local participation and effective regulatory supervision. International shipping lines and ship agents have an equally legitimate interest in lawful decision-making, predictable licensing and rules that recognise the commercial nature of global carrier networks. The High Court concluded that the evidence demonstrated adequate public participation, statutory compliance and a tariff framework of an administrative character. The Court of Appeal has not reversed those conclusions. It has determined only that the intended appeal raises arguable issues and that continued implementation could cause harm capable of defeating the value of a successful appeal.

The substantive appeal may now confront the questions left unresolved: whether stakeholders were meaningfully consulted on the instruments ultimately adopted, whether the tariff framework required the procedures applicable to statutory instruments; whether the Cabinet Secretary and KMA remained within their enabling powers; and what remedy is appropriate if only part of the regulatory package is found defective.

The eventual judgment may become an important authority on public participation, delegated legislation, regulatory guidance, licensing power and interim protection against irreversible commercial harm. Its implications may extend beyond maritime law to other regulated sectors in which administrative frameworks have significant legal and economic consequences.

For regulators, the case is a reminder that the legitimacy of an important policy depends on the legality and transparency of the process used to implement it. For businesses, it demonstrates the importance of early participation, documentary discipline and carefully planned compliance. For lawyers, it shows that constitutional principle is most persuasive when connected to clear statutory analysis and precise evidence of commercial reality.

The final outcome will therefore matter not only to KSAA, KMA and the maritime industry. It may help define how Kenya balances regulatory ambition, constitutional accountability and commercial certainty.