



Position Paper: The Impact of the Court Order on the Implementation of EPR Regulations in Kenya

Monday, 19 May 2025

Introduction

On **May 7th, 2025**, the journey towards a more sustainable waste management landscape in Kenya encountered a significant challenge when the High Court in Nairobi, under Justice Bahati Mwamuye, issued a conservatory order temporarily halting the National Environment Management Authority (NEMA) from implementing or initiating any further enforcement of the Sustainable Waste Management (**Extended Producer Responsibility**) Regulations, 2024. This order was granted pending the inter-parties hearing and determination of a Notice of Motion application dated May 7th, 2025, with the case set to be mentioned on June 16 to confirm compliance and give directions on an expedited hearing.

While the Kenya Plastics Pact respects the due legal process and the judiciary's role, the temporary suspension of these vital regulations disrupts the circular economy momentum. The petition leading to this order, as reported, challenged the legality of the regulations, particularly the fee model, arguing it could impose an unjust financial burden on producers, especially small and medium-sized businesses, and characterized a flat fee per packaging unit as regressive and lacking proportionality. The delay in implementing the EPR Regulations, regardless of the eventual outcome of the legal challenge, has immediate and potentially far-reaching negative implications. It risks undermining the significant progress made in preparing for EPR, creates uncertainty among businesses that were gearing up for compliance, and postpones the tangible environmental benefits that the regulations are designed to deliver, such as reduced pollution, increased recycling rates, and a cleaner environment.

Furthermore, it may **dampen the enthusiasm and commitment of stakeholders** who have been actively involved in advocating for and preparing for a circular economy. The concerns raised must be addressed expeditiously and constructively to ensure that the overarching goals of environmental protection and sustainable development are not unduly compromised.

Background

The Kenya Plastics Pact (KPP), a collaborative initiative bringing together stakeholders across the plastics value chain, is steadfast in its commitment towards a circular economy for plastics in Kenya. Our mission is to ensure that plastic packaging never becomes waste by promoting systemic change through collaboration, innovation, and measurable action.

Extended Producer Responsibility (EPR) is a **globally recognized environmental policy approach** in which a producer's responsibility for a product is extended to the post-consumer stage of a product's life cycle. This principle is paramount in promoting environmental sustainability and significantly reducing waste, particularly in a country like Kenya, which faces escalating waste management challenges. The proliferation of single-use plastics and other non-biodegradable materials has strained existing waste infrastructure, leading to environmental degradation, pollution of waterways, and risks to public health.



The Sustainable Waste Management (Extended Producer Responsibility) Regulations, 2024, which were officially gazetted on November 4, 2024, and were slated to come into effect on May 5, 2025, represent a critical legislative step towards addressing these pressing issues. These regulations aim to instill a culture of accountability among producers and brand owners for the entire lifecycle of their products. Key provisions include the requirement for producers to design products that generate minimal waste, support reuse and recycling, establish take-back schemes, register with the National Environment Management Authority (NEMA), and submit regular reports on their Extended Producer Responsibility (EPR) obligations. A six-month grace period was thoughtfully provided to allow producers and brand owners adequate time to understand the requirements and ensure compliance, demonstrating a balanced approach to regulatory enforcement. The implementation of these EPR regulations is not merely a punitive measure but a transformative framework designed to drive innovation in product design, encourage the growth of the recycling sector, and ultimately create a cleaner, healthier environment for all Kenyans.

Way forward

In light of the current situation and our unwavering commitment to environmental stewardship, the Kenya Plastics Pact calls for the following actions:

- We urge all parties involved in the ongoing legal proceedings to **work towards a swift, amicable, and constructive resolution** that prioritizes the urgent need for effective waste management in Kenya. While due process is respected, prolonged delays in implementing the EPR Regulations will only exacerbate existing environmental challenges. We encourage dialogue to address legitimate concerns and refine implementation mechanisms where necessary, without sacrificing the core principles and objectives of EPR.
- We call upon all producers, manufacturers, importers, and brand owners to proactively **continue their preparations for EPR compliance**. This includes assessing product portfolios, exploring sustainable packaging alternatives, engaging with Producer Responsibility Organizations (PROs), and investing in systems for waste collection and recycling. The temporary halt should not be viewed as a reprieve from responsibility but as an opportunity to enhance preparedness.
- We call for an **intensification of collaborative efforts** among NEMA, KEPSA, industry associations like the Kenya Plastics Pact, individual businesses, civil society organizations, and county governments. Open and transparent dialogue is essential for building trust, sharing knowledge, and co-creating solutions that ensure the EPR framework is both environmentally effective and economically viable. We must work together to ensure that the regulations support businesses in their transition to sustainable practices rather than solely penalizing them.

In conclusion, the Kenya Plastics Pact reaffirms its commitment to serving as a central hub for collaboration, knowledge-sharing, and capacity-building. We will continue to support our members and the broader stakeholder community in understanding and implementing EPR, encouraging innovation, and tracking progress toward a circular economy for plastics in Kenya.

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