



**Gidion v Amollo & 10 others; Commission for Integration and National  
Cohesion & 2 others (Interested Parties) (Petition E079 of 2023)  
[2023] KEHC 2282 (KLR) (Constitutional and Human Rights) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2282 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E079 OF 2023**

**HI ONG'UDI, J**

**MARCH 27, 2023**

**BETWEEN**

**HON.MIKE SONKO MBUVI GIDION ..... PETITIONER**

**AND**

**ODINGA RAILA AMOLLO ..... 1<sup>ST</sup> RESPONDENT**

**MUSYOKA KALONZO STEPHEN ..... 2<sup>ND</sup> RESPONDENT**

**JEREMIAH KIONI ..... 3<sup>RD</sup> RESPONDENT**

**MARTHA WANGARI KARUA ..... 4<sup>TH</sup> RESPONDENT**

**EUGENE LUDOVIC WAMALWA ..... 5<sup>TH</sup> RESPONDENT**

**AZIMIO LA UMOJA ONE KENYA COALITION ..... 6<sup>TH</sup> RESPONDENT**

**WIPER DEMOCRATIC PARTY ..... 7<sup>TH</sup> RESPONDENT**

**GEORGE LUCHIRI WAJACKOYA ..... 8<sup>TH</sup> RESPONDENT**

**WYCLIFFE AMBETSA OPARANYA ..... 9<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF INTERIOR AND  
COORDINATION OF NATIONAL GOVERNMENT ..... 10<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 11<sup>TH</sup> RESPONDENT**

**AND**

**THE COMMISSION FOR INTEGRATION AND NATIONAL  
COHESION ..... INTERESTED PARTY**

**THE GOVERNOR, NAIROBI CITY COUNTY ..... INTERESTED PARTY**



**RULING**

1. Today morning this Court granted the petitioner leave to amend his Petition and Notice of Motion both dated March 20, 2023. By the same breath the Court ordered that the said amended petition and Notice of motion be deemed as duly filed. Mr Ng'eno for the 9<sup>th</sup> Respondent also confirmed having been served with the amended pleadings alongside the application seeking leave to amend.
2. Mr Kinyanjui for the petitioner is now asking the Court to issue the following conservatory orders *exparte*.

4A pending the hearing and determination of the Motion herein, in maintaining the integrity of the Nation of Kenya and in deference to the critical importance of the Rule of Law, peace and tranquility in the Republic of Kenya, pursuant to Article 245(4) of the Constitution of Kenya, the 10<sup>th</sup> Respondent therein, the Cabinet Secretary Ministry of Interior and Coordination of National Government do issue such expedient directions to the Inspector General of Police to assist in the Arrest of any such of the stated Respondents declaring or announcing any day to be a Public holiday that has not been so declared Constitutionally and/or Gazetted by the Government of the Republic of Kenya or the Cabinet Secretary, Ministry of Interior and Coordination of National Government, convening and/or taking part in “Azimio public demonstrations” in any part of the Republic of Kenya on the bases of such unlawful declaration of a purported public holiday, and any person acting at their behest, and/or their direction to damage any private or public property during any and all such public gatherings, picketing, demonstrations and/or marches organized, planned, and/or undertaken by the 1<sup>st</sup> to 9<sup>th</sup> respondents, and for the 10<sup>th</sup> and the 11<sup>th</sup> respondents herein named to oversee the effectual enforcement of all Court orders herein issued against the stated Respondents, and to use such necessary and reasonable force in the event of the stated Respondents defying compliance, in any demonstrations thereafter organized and/or called by the 1<sup>st</sup> to 9<sup>th</sup> Respondents and/or their agents, emissaries, or persons acting under their behest and direction.

5B Pending the hearing and determination of the Motion herein, a conservatory order do issue, by way of an injunction prohibiting the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> respondents by themselves, their servants, agents, employees, members of their political parties in the 6<sup>th</sup> respondent, and/or by the 6<sup>th</sup> respondent, or otherwise howsoever form holding any public gathering in the Republic of Kenya without complying with the requirements of Section 5(1) of the Public Order Act, and any such meeting be held in strict compliance with the provisions of Part III of the Public Order Act, Cap 56 of the Laws of Kenya.

5D pending the hearing and determination of the Motion herein, a conservatory order do issue, by way of an injunction, that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> respondents by themselves, their servants, agents, employees, members of their political parties in the 6<sup>th</sup> respondent, and/or by the 6<sup>th</sup> respondent, or otherwise howsoever be prohibited and forthwith restrained from;



- a. Inciting, instigating, or promoting any unlawful conduct in furtherance of, or incitement of such public gatherings convened by them at any time in compliance with Section 5(1) of the Public Order Act.
- b. In any way hindering, hampering, preventing or interfering with any means of public service conveyance including the loading, transportation and delivery of any product and/or service by any service delivery company or Officer of any Department of the Government of Kenya, or otherwise howsoever interfering with service delivery in any part of Kenya by any person;
- c. Placing and/or burning tyres on any highway, road, pavement, easement, pathway, premises (whether private or public), or otherwise however blocking the ingress and egress from any such stated places;
- d. Blocking, obstructing or obscuring any and all entrance, whether to public or private premises, pedestrian or vehicular on, or at any public way and any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building place which is for the time being used for any public or religious meetings or assembly of the public;
- e. Attending at any department or officer of the Government of Kenya's premises at any time either alone or in the company of more than 2 persons comprising a crowd of their supporters, within a radius of 5 Kilometers, save for the purpose of the 1<sup>st</sup> to 9<sup>th</sup> respondents (and any of their servants, agents, and/or employees) presenting themselves at such premises for the execution of any request for services in accordance with the laid down procedures for the respective Departments for the delivery of such services.

7 Leave be granted to the applicant to advertise such orders as are made in these proceedings and service thereof on the cited Respondent's in a daily newspaper of national circulation, pursuant to Rule 23(3) of Legal Notice 117 of 2013.

3. The application is based on the following grounds:
  - i. The call for mass action countrywide has caused a lot of disruptions, affecting a number of people not participating in the demonstrations. He submits that a number of businesses, schools, properties etc have been affected.
  - ii. Counsel argues that every Kenyan has a right to protection of the law which this court should uphold.
  - iii. There are other dates slated for mass action, and Kenyans will continue suffering.
4. Mr. Ng'eno for the 9<sup>th</sup> respondent submitted that the amended pleadings had just been admitted and he would respond once he gets instructions from his clients.
5. I have considered the submissions by Mr Kinyanjui alongside the orders that the Petitioner seeks.

Prayer No 4A

As earlier indicated when this matter was filed, there is a set procedure on declaration of public holidays in Kenya. What happens when the procedure is not followed? That is the reason why we have the Cabinet Secretary Ministry of Interior & Coordination of National Government and the Inspector General of Police. It is not for this court to direct these two senior Government officers on their mandate or on who to arrest and who not to arrest.

We have a principle known as separation of powers.



Prayers 5B & 5D

6. Section 5 of the *Public Order Act* Revised Edition 2018 clearly sets out Regulations of Public meetings and Processions. No person is allowed a public meeting or a public procession except in accordance with the provisions of the said section. The Regulating Officer must be notified and given all details of the meeting or procession.
7. Who then is a Regulating Officer? The Act defines him/her as follows:

“The officer in charge of the police station in the area in which a proposed public meeting is proposed to be held, or in case of a public procession, the police officer in-charge of the police station in the area in which the procession is proposed to start and to end.”
8. Sections 6 and 11 of the Act prohibit possession of offensive weapons at public meetings and processions.
9. Enforcement of all these provisions falls within the docket of the security enforcement officers. It is the duty of the Regulating Officers and their seniors to ensure compliance with the law as set out to avoid infringement of the rights of Kenyans.
10. This is also set out under Section 5 (6) (7), (8), (9), (10), (11). It would therefore not be proper for this Court to appear to be setting out new Regulations which is not within its docket.
11. At this stage I do not find the prayer for conservatory orders to be merited. Let the officers concerned carry out their lawful mandate. Application is declined.

Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 27TH DAY MARCH 2023 IN OPEN COURT AT MILIMANI NAIROBI.**

**H. I. ONG’UDI**

**Judge of the High Court**

