



**Omwando v Principal, Secretary, Ministry of Health & 6 others;
Kingwara & another (Interested Parties) (Constitutional Petition
E037 of 2022) [2023] KEHC 21866 (KLR) (21 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21866 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTIONAL PETITION E037 OF 2022**

**OA SEWE, J
AUGUST 21, 2023**

BETWEEN

JOSEPHAT KAZEH OMWANDO PETITIONER

AND

PRINCIPAL, SECRETARY, MINISTRY OF HEALTH 1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF HEALTH 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

HEAD, NATIONAL LABORATORY SERVICES 4TH RESPONDENT

**HEAD, NATIONAL AIDS & STI'S CONTROL PROGRAMME ... 5TH
RESPONDENT**

DIRECTOR, MEDICAL SERVICES PREVENTIVE & PROMOTIVE

HEALTH 6TH RESPONDENT

HEAD, MALARIA CONTROL PROGRAMME 7TH RESPONDENT

AND

LEONARD KINGWARA INTERESTED PARTY

NELSON OTWOMA INTERESTED PARTY

RULING

1. The Notice of Motion dated August 11, 2023 was filed by the Attorney General on behalf of the 1st Respondent the Principal Secretary, Ministry of Health. It was brought under Sections 1A and 3A of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, Order 45 Rule 1 and Order 51 Rules 1 and 4 of the *Civil Procedure Rules, 2010*, for orders that;



- (1) Spent
 - (2) Pending the hearing and determination of this Application inter partes, this Court be pleased to grant a stay of the conservatory orders issued on April 26, 2023.
 - (3) Pending the hearing and determination of the Petition dated August 19, 2022, the Court be pleased to review and set aside the conservatory orders issued on April 26, 2023.
2. The matter was placed before the duty Judge on a Certificate of Urgency on August 14, 2023 and directions given for hearing today, the August 21, 2023. Accordingly, what is coming up for consideration is whether Prayer (2) ought to be granted in the interim, pending the hearing and determination of the application inter partes.
 3. The application was supported by the affidavit of Mr Harry Kimtai sworn on August 11, 2023 as well as a further Affidavit by the same affiant sworn on August 18, 2023. The application was also supported by the 2nd interested party but was opposed by the Petitioner, who filed a detailed Replying affidavit sworn by him on August 16, 2023.
 4. Having perused and considered the application and the pertinent affidavits for the limited purposes of Prayer 2, and having given careful thought to the averments set out at paragraphs 2 and 6 of the Certificate of Urgency as well as paragraphs 16 and 17 of the supporting Affidavit, I am satisfied that sufficient justification has been made by the 1st and 3rd Respondents to warrant the issuance of the Orders prayed for in terms of Prayer 2 of the Notice of motion dated August 11, 2023. Accordingly, it is hereby ordered that:
 - (a) Pending the hearing and determination of this application inter partes, an order of stay be and is hereby granted in respect of the conservatory orders issued by this Court on April 26, 2023 to enable compliance with the funding timelines.
 - (b) Responses to the said application be filed within 7 days from the date hereof.
 - (c) The application shall be canvassed by way of written submissions.
 - (d) The applicant to file and serve written submissions written 14 days from today.
 - (e) The respondent to file and serve written submissions within 14 days from the date of service of the applicant's written submissions.
 - (f) Mention on September 26, 2023 for highlighting of submissions.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 21ST DAY OF AUGUST, 2023

OLGA SEWE

JUDGE

