



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CONSTITUTIONAL PETITION NO. E011 OF 2021**

**IN THE MATTER OF THE ARTICLES 1, 10, 19, 20, 21 ,22,23,27,29,41, 43,47, 48, 73, 75,  
159, 165, 174, 175, 176, 179, 183, 189, 190, 207, 228 & 232 OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF SECTIONS 109 (4), (6) (a) AND (7), 117, 129, 130 AND 131  
OF THE PUBLIC FINANCE MANAGEMENT ACT, 2012**

**-AND-**

**IN THE MATTER OF SECTIONS 43 AND 45 OF THE PUBLIC FINANCE  
MANAGEMENT (COUNTY GOVERNEMENTS) REGULATIONS 2015**

**-AND-**

**IN THE MATTER OF THE NYANDARUA COUNTY APPROPRIATION ACT, 2021**

**-AND-**

**COUNTY ASSEMBLY SERVICES ACT, 2017**

**-AND-**

**IN THE MATTER OF LEADERSHIP AND INTEGRITY ACT**

**-AND-**

**IN THE MATTER OF BREACH OF THE CONSTITUTION OF KENYA, PUBLIC FINANCE  
AND MANAGEMENT ACT AND THE LEADERSHIP AND INTEGRITY ACT AND PUBLIC  
FINANCE MANAGEMENT (COUNTY GOVERNMENTS) REGULATIONS 2015**

**-BETWEEN-**

**NYANDARUA COUNTY ASSEMBLY SERVICE**

**BOARD.....1<sup>ST</sup> PETITIONER/APPLICANT**

**THE SPEAKER-NYANDARUA COUNTY**

**ASSEMBLY.....2<sup>ND</sup> PETITIONER/APPLICANT**

**THE CLERK-NYANDARUA COUNTY**

ASSEMBLY.....3<sup>RD</sup> PETITIONER/APPLICANT

-VERSUS-

THE GOVERNOR-NYANDARUA COUNTY

GOVERNMENT.....1<sup>ST</sup> RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER

FOR FINANCE AND ECONOMIC DEVELOPMENT,

NYANDARUA COUNTY.....2<sup>ND</sup> RESPONDENT

THE COUNTY ASSEMBLY OF

NYANDARUA.....3<sup>RD</sup> RESPONDENT

COUNTY GOVERNMENT OF

NYANDARUA.....4<sup>TH</sup> RESPONDENT

ZACHARY MWANGI NJERU.....5<sup>TH</sup> RESPONDENT

-AND-

THE CONTROLLER OF BUDGET.....1<sup>ST</sup> INTERESTED PARTY

THE NATIONAL TREASURY.....2<sup>ND</sup> INTERESTED PARTY

#### RULING

1. The Petitioners/Applicants herein filed a Petition dated 31<sup>st</sup> October 2021 before this court and simultaneously filed an Application by way of Notice of Motion of even date. The Petitioners contended that the basis for their Petition is the legality of the Budget Estimates for the Financial Year 2021/2022 and the Nyandarua County Appropriation Act, 2021 (*also referred to as the 'Impugned Act' herein*).

2. The Petitioners namely the Nyandarua County Assembly Service Board, the Speaker and the Clerk, Nyandarua County Assembly contended that they being key players in the budget preparation and approval and matters that pertain to requisition of funds were never involved in the process and the same was authorized and approved by the 5<sup>th</sup> Respondent which was done without the knowledge, authority and/or consent of the Petitioners herein.

3. The Petitioners averred that the Nyandarua County Appropriation Act, 2021, (*hereinafter referred to as the "Act"*) is unlawful, unconstitutional and of no effect for the following reasons:

*i. That the Budget Estimates for the Financial Year 2021/2022 for the Executive was never received by Gideon Mukiri Muchiri who is the Clerk for onward transmission to the relevant Budget Committee of the Assembly for deliberation.*

*ii. That the Nyandarua County Assembly Budget for the Financial Year 2021/2022 which is part of the Nyandarua County Budget was never prepared by the Nyandarua County Assembly Service Board as provided in the Law.*

*iii. That the Nyandarua County Budget for the Financial Year 2021/22 was never signed by the Speaker of the County Assembly nor by Gideon Mukiri Muchiri the Clerk.*

*iv. That all the sittings of the Nyandarua County Assembly including the sittings for the approval of the County Budget for the Financial Year 2021/22 were without the authority of the Speaker of the County Assembly and were against court orders issued by several courts and therefore all proceedings are illegal and any resolutions thereof were and are null and void.*

*v. That the vellum was never signed by the Speaker of the County Assembly nor by the Acting Clerk of the Assembly certifying its authenticity as provided for by the Law.*

*vi. That during the whole process of the purported enactment of the law on the County Budget for the Financial Year 2021/22, the 4<sup>th</sup> Respondent herein and an impostor clerk one Elizabeth Wanjiku Muthui were acting contrary to express court orders and have since been found guilty of contempt of court in Nakuru High Court Petition No. E008 of 2021.*

4. Additionally, the Petitioners argued that from the foregoing the County Budget for the Financial Year 2021/22 is therefore null and void *ab initio* and of no effect nor consequence on the face of the law and un-implementable. That the actions of the Respondents purporting to prepare a Supplementary Budget without the involvement of the Petitioners/Applicants herein are intended to sabotage the operations and services of the 1<sup>st</sup> Petitioner and if the said Supplementary Budget is approved by the 4<sup>th</sup> Respondent, the County Assembly will be brought to a halt and the 1<sup>st</sup> Petitioner who is mandated with the operations of the Assembly will be unable to discharge its services to the public among other reasons as particularized on the face of the Petition.

5. On the basis of these facts, the Petitioners seek final orders that:

*i. A declaratory order do issue to the effect that the budget making process of Nyandarua County for the Financial Year 2021/22 was unlawful and unconstitutional.*

*ii. A declaratory order do issue that the Nyandarua Budget Estimates for the Financial Year 2021/22 and Nyandarua County Appropriation Act, 2021 as approved by the County Assembly of Nyandarua executed by the 5<sup>th</sup> Respondent, one Elizabeth Wanjiku Muthui and assented to by the 1<sup>st</sup> Respondent is hereby declared as unlawful, illegal and therefore null and void for being in breach and contravention of Articles 10,73,178,196 and 232 of the Constitution, express provisions and regulations of the Public Finance Management Act,2015, County Government Act, 2012 and the regulations thereto and therefore null and void ab initio.*

*iii. A declaratory order that no Supplementary Budget or Appropriation Law can arise from the impugned Nyandarua County Budget for the Financial Year 2021/2022 and the appropriation law thereof the same being null and void ab initio and therefore a nullity in law.*

*iv. A permanent injunction restraining and /or prohibiting the Respondents jointly and severally, their agents and/or any person acting at their behest from usurping the powers and mandates of the Acting Clerk Gideon Mukiri Muchiri and the Honorable Speaker Hon. James Wahome Ndegwa, MBS by purporting to receive, process, preside over County Assembly sittings, signing the vellum and/or signing any County Assembly bills*

*v. That an order of mandamus do issue compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents to commence the budget process that is in full compliance with the Constitution, Public Finance Management Act No. 18 of 2012, County Government Act and Nyandarua County Assembly Standing Orders.*

*vi. That the costs of the Petition be provided for.*

*vii. That the costs above be met personally by the Respondents.*

6. Contemporaneous with the petition, a Notice of Motion dated 31<sup>st</sup> October 2021 was filed which sought conservatory orders appertaining to the implementation of the Nyandarua County Budgetary Estimates for the Financial Year 2021/22 and Nyandarua County Appropriation Act, 2021 specifically and is premised on the grounds on the face of the Application. In support of the Application, is the affidavit of Gideon Mukiri Muchiri the Acting Clerk of Nyandarua County Assembly and the Secretary to the 1<sup>st</sup> Petitioner/Applicant, the affidavit of Hon. James Wahome Ndegwa, the Chairman of the 1<sup>st</sup> Petitioner/ Applicant and the Speaker of Nyandarua County Assembly.

7. Moreover, the 3<sup>rd</sup> Respondent vide a replying affidavit dated 4<sup>th</sup> November 2021 sworn by John Kieru on behalf of the 3<sup>rd</sup> Respondent where he deponed that the 3<sup>rd</sup> Respondent associates itself with the suit herein in its entirety as the same is merely meant to restore sanity at the assembly.

8. On the other hand, the Petition and accompanying Application was opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents vide grounds of opposition dated 2<sup>nd</sup> November 2021. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents opposed the Application on the following, amongst other grounds:

*i. That the Application and indeed the main suit is based on mere speculation as the County Government of Nyandarua has not tabled any Supplementary Budget before the County Assembly for deliberation and approval.*

*ii. That this suit offends the provisions of Section 6 of the Civil Procedure Rules as there are numerous suits filed before various courts across the county in a concerted effort at forum shopping and abuse of the process of this honorable court.*

*iii. That the current Petition is calculated at undermining the leadership of the County by paralyzing operations at the County Government of Nyandarua hereby denying the people of Nyandarua the right to be served by the devolved government.*

*iv. That the alleged "Impugned Budgetary Estimates" have not been annexed and hence the Petitioners have failed to demonstrate any prima facie case.*

*v. That the grounds in support of the Application and the Petition are issues that have been substantially addressed and, or are before other courts of law and hence thus court lacks jurisdiction to determine.*

9. Additionally, in opposition to the Petition and the Application dated 31<sup>st</sup> October 2021, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents filed a replying affidavit sworn by Stephen M. Njoroge, the County Executive Member in charge of Finance and Economic Development, Nyandarua County and Zachary Mwangi Njeru on 5<sup>th</sup> November 2021 and 1<sup>st</sup> December 2021 respectively.

10. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents raised a Preliminary Objection vide a Notice of Preliminary Objection dated 1<sup>st</sup> November 2021, on a point of law but same was compromised and or/ abandoned thus I would not belabor on same.

### **PETITIONERS'/APPLICANTS' SUBMISSIONS**

11. The Applicants argued that the Petition before this court challenges the legality of the Budget Estimates for the County Government of Nyandarua for the Financial Year 2021/22 and the Appropriation Act, 2022. They sought the courts intervention to stop the intended passage of the Supplementary Budget for the same period contending that the Respondents want to pass it through the same illegal process.

12. It was argued that the Respondents' main intention is to remove and/or reallocate funds meant for various activities and projects for the county assembly which will cripple the operation of the assembly. Further, the Applicants submitted that the said budget and appropriation act are illegal for the following reasons: -

- *Violation of express court orders*
- *Violation of constitutional and statutory provisions*
- *Want of authority on the part of persons who purported to receive, process for approval and preside over the process leading to the enactment of the impugned budget estimates and the Appropriation Act.*

13. Reliance was placed on *Judicial Service Commission v Speaker of the National Assembly & Others (2014) eKLR, Republic vs Attorney General & Another ex parte Council of Legal Education (2017) eKLR, Tyson Ngetich & Anor vs The Governor, Bomet County Government & 5 Others & Nyahururu High Court Succession Cause No. 166 of 2017 In the Matter of the Estate of Cyrus Kingori Ngotho (deceased).*

14. On irreparable harm, the Petitioners/Applicants maintained that to allow the implementation of the Impugned Budget Estimates and the Impugned Appropriation Law will be tantamount to thumb printing and/or sanitizing the illegalities and throwing the rule of law through the window and opening doors to anarchy and/or lawlessness.

15. In addition, the Petitioners/Applicants averred that the Respondents are in the process of preparation and tabling before the 3<sup>rd</sup> Respondent a Supplementary Budget which they intend to pass through the same illegal process as the Budget Estimates and Appropriation Act for the year 2021/22. They submitted that in the said Supplementary Budget, it is sworn under oath that it is intended to remove monies meant for the 3<sup>rd</sup> Respondent's key financial obligations which will cripple the operations of the 3<sup>rd</sup> Respondent which are entrusted and steered by the Petitioners/Applicants.

### **3<sup>RD</sup> RESPONDENT'S SUBMISSIONS**

16. The 3<sup>rd</sup> Respondent reiterated that it is not opposed to all the prayers sought by the Petitioners and that they fully associate with the pleadings filed by the Petitioners including the submissions dated 9/12/2021.

17. It was averred that the office of the Speaker has never fallen vacant at any given time and no evidence has been tabled to confirm that the Speaker was successfully removed from office to warrant the 5<sup>th</sup> Respondent to perform his duties including administrative functions.

18. The 3<sup>rd</sup> Respondent contended that the provisions of **Article 178 (2)(b) of the Constitution, Section 9 (4) of the County Government Act and Standing Order 15 of Nyandarua County Standing Orders** invoked by the 5<sup>th</sup> Respondent in an attempt to sanitize his unlawful acts are not applicable in the instant case.

19. Moreover, the 3<sup>rd</sup> Respondent asserted that the word absence in the aforesaid provisions of the law can only be interpreted to imply to circumstances where the Speaker is unable to report to work maybe due to illness, bereavement, incapacitation or any other compelling grounds and this does not include circumstances arising under the present case where the Speaker would report to work but he would be denied access to the assembly by the 5<sup>th</sup> Respondent and his cronies.

20. The drafters of the aforesaid legislations did not have such a situation in kind and giving such an interpretation to the law which allows the deputy speaker to preside over sittings of the assembly in the absence of the speaker as sought by the 5<sup>th</sup> Respondent would lead to anarchy and upfront to the rule of the law as currently seen in Nyandarua County. Further reliance was placed on *County Government of Nyeri & another v Cecilia Wangechi Ndungu [2015] eKLR.*

21. The 3<sup>rd</sup> Respondent argued that the 5<sup>th</sup> Respondent has not supplied copies of the 3<sup>rd</sup> Respondent's Hansard and therefore it would be difficult for the honorable court to indeed believe that the Act passed through the relevant stages before the assembly before it was enacted to law.

22. In addition, they submitted that the 5<sup>th</sup> Respondent's acts of presiding over the assembly without the 2<sup>nd</sup> Petitioner's authority have already been criminalized by the High Court sitting at Nakuru and if at all it is in one such sitting where the Impugned Act was passed, it follows that the act and that many other Acts which he has mentioned in his affidavit are null and void abinitio.

23. Lastly, the 3<sup>rd</sup> Respondent averred that it is only fair and just that public funds be protected from misuse by granting the orders sought.

## **1<sup>ST</sup>, 2<sup>ND</sup> & 5<sup>TH</sup> RESPONDENTS' SUBMISSIONS**

24. The Respondents laid out the chronology of how the Nyandarua County Appropriation Act, 2021 was enacted and maintained that the same is constitutional and its implementation should not be suspended as its enactments strictly adhered to the law and relevant processes.

25. It was argued that it is illogical for the Petitioners to demand specific individuals to be in charge of executing the budget for it to be constitutional. The Respondents asserted that the Acting Clerk for the Assembly, one Elizabeth Muthui who was appointed pursuant to ***Gazette Notice No. 10399 of 2021*** which has not been quashed received the Budget Estimates in accordance with the law. Further, the 5<sup>th</sup> Respondent acting as the Speaker signed the said budget as per the provisions of the law. Reliance was placed on ***Section 7 (1) (b) & 9 (4) of the County Governments Act, 2012*** and ***Article 178 (2) (b) of the Constitution***.

26. On public participation, the Respondents contended that the preparation of the Supplementary Budget is purely a responsibility of the 2<sup>nd</sup> Respondent, hence the allegation that the 1<sup>st</sup> Petitioner was not involved in the preparation of the budget is misplaced. Additionally, the Supplementary Budget is a work in progress and has not been tabled before the county assembly therefore the Petitioners are being speculative.

27. Moreover, the Respondents asked the court to refer to the 2<sup>nd</sup> and 4<sup>th</sup> Respondents' replying affidavit sworn by Stephen M. Njoroge for annexure "SMN 1" for a copy of the advertisement inviting the public for participation through a nation-wide circulating newspaper where the 4<sup>th</sup> Respondent placed an advert, informed members of the financial budget for the year 2021/22 and advised the public where to get copies of the same and how to make submissions therefore the threshold for participation has been met. Reliance was placed on ***Article 10 (2) of the Constitution, British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v cabinet secretary for ministry of health & 2 others; Kenya Tobacco Control Alliance & Another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) [2019] Eklr***

28. The Respondents 1, 2 & 5 stated that the orders sought attempt to subvert the doctrine of separation of powers and an encroachment of the mandate of the county assembly and the executive as contemplated in the Constitution of Kenya as the Petitioner herein is asking the court to overrule the decision of the county assembly and the county executive yet it is their task and mandate to enact the Appropriation Act and Supplementary Budget where necessary. Reliance was placed on the case of ***Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another [2017] eKLR***.

29. The Respondents 1,2 & 5 insisted that the Application herein is not in public interest and the conservatory orders should not be granted as if granted they will have the effect of creating a non-functional county. The Respondents alleged that the Petitioners have personal interests and the Application is calculated to paralyze the operations of the county.

30. To avoid the miscarriage of justice, the Respondents averred that the court should invoke the doctrine of necessity and deny the Applicants the orders sought. They quoted the case of ***Margaret Kisingo Muga & 21 Others vs County Government of Mombasa & 2 Others [2020] eKLR***. It was asserted that the county is midway in its financial year thus halting the implementation will occasion miscarriage of justice to the residents of Nyandarua County.

## **1<sup>ST</sup> INTERESTED PARTY SUBMISSION**

31. On whether the Deputy Speaker can legitimately preside over the sitting of a county assembly, it was asserted that by dint of ***Article 178 (2) of the Constitution as read together with Section 9 (4) of the County Governments Act and Rule 15(3) of the Nyandarua County Assembly Standing Orders***, the Deputy Speaker can legitimately preside over the sittings of the county assembly in the absence of the speaker and any resolutions passed therein have the full force of the law. The interested party averred that it is upon the Petitioners to establish that indeed the speaker was not absent and therefore the deputy speaker could not act on his behalf as provided for in law or in the alternative the Respondents 1 2 & 5 to establish that the speaker was absent and that the deputy speaker was legitimately acting.

32. They submitted that in the event the court finds that the Speaker was not absent and the Deputy Speaker did not legitimately preside over the sitting of the Assembly, they prayed that that this court suspends the invalidity of the actions of the Deputy Speaker and allow the budget to be implemented by both The County Executive and County Assembly in recognition of the fact that they are already at the tail end of the second quarter of the financial year with implementation of the budget at almost 50% thus invalidating the Appropriation Act and stopping the implementation of the budget at this late stage will have a negative effect on the delivery of services to the people of Nyandarua. Thus, the greater public interest would require continuation of the delivery of services.

33. On the effect of signing the Vellum by the Deputy Speaker, the 1<sup>st</sup> interested party stated that the Vellum is a letter of transmittal and is a procedural issue that does not affect the validity of an Appropriation Bill. Further, ***Section 24(1) of the County Governments Act*** only provides that the Speaker shall forward a Bill passed by the County Assembly to the Governor. However, the law falls short of providing the procedure on how such transmission is to be undertaken.

## **ANALYSIS AND DETERMINATION**

34. The determination here is whether the Application has met the threshold for grant of conservatory orders.

35. The tenor, import and scope of a conservatory order was defined by the Supreme Court in ***Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR*** as follows:

***“Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within***

**public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as ‘the prospects of irreparable harm’ occurring during the pendency of a case; or high probability of success’ in the Applicants’ case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes and priority levels attributable to the relevant causes.”**

36. Further, in **Board of Management of Uhuru Secondary School v City County Director for Education & 2 Others [2015] eKLR**. The court outlined the principles for grant of conservatory orders. These are that an Applicant must demonstrate an arguable *prima facie* case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice.

37. Further, that the court should decide whether a grant or a denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the bill of rights, and whether if an interim conservatory order is not granted, the Petition or its substratum will be rendered nugatory. Lastly, that the Court should consider the public interest and relevant material facts in exercising its discretion whether to grant or deny a conservatory order.

38. Accordingly, the Petitioners have to demonstrate that they have established a *prima facie* case with a likelihood of success. In the case of **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] eKLR** it was held that:

**“It is important to point out that the arguments that were advanced by counsel and that I will take into account in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the Petitioner’s Application and not the Petition. I will not therefore delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a *prima facie* case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”**

39. (See also **Godfrey Mutahi Ngunyi v The Director of Public Prosecution & 4 Others NBI HCCP No. 428 of 2015 and also Muslims for Human Rights and Others v Attorney General & Others HCCP No. 7 of 2011.**)

40. The questions raised in this Petition and Application herein center on the legality of the budget estimates for the County Government of Nyandarua for the Financial Year 2021/22 and the Appropriation Act, 2022. As a result, they sought the courts intervention to stop the intended passage of the Supplementary Budget for the same period contending that the Respondents want to pass it through the alleged illegal process.

41. It is my view that the Applicants have raised valid questions on the constitutionality of the Impugned Act and the procedural illegitimacy involved in coming up with the impugned act and the aforementioned budgetary estimates. The Petition cannot therefore be said to be groundless or without substance. Without saying more, I find that the Applicants have a *prima facie* case with a likelihood of success.

42. Secondly, this court is tasked with deciding whether a grant or a denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights, and whether if an interim conservatory order is not granted, the Petition or its substratum will be rendered nugatory.

43. The Petitioners/Applicants maintained that to allow the implementation of the Impugned Budget Estimates and the Appropriation Law will be tantamount to thumb printing and/or sanitizing the illegalities and throwing the rule of law through the window and opening doors to anarchy and/or lawlessness. They sought the courts intervention to stop the intended passage of the Supplementary Budget for the same period contending that the Respondents want to pass it through the same illegal process.

44. In my view, the Applicant has not put forward a satisfactory argument that the substratum of the Petition will be rendered nugatory if the conservatory orders is not granted because even if the Supplementary Budget is received, tabled, debated/processed and/or approved and the court eventually finds in favour of the Applicants, this Court still retains the jurisdiction to quash and reverse the same amongst other appropriate reliefs.

45. The Applicants’ arguments mainly challenge the Respondents’ procedural improprieties in passing the impugned Appropriation Law and Impugned Budget Estimates particularly the issue of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants involvement during the enactment of the Impugned Act and Impugned Budget Estimates. I am not convinced that the Petitioner will suffer irreparable harm if the orders sought are not granted. Conservatory orders are issued not to aid a party but to preserve the status quo that is being challenged by the Petition.

46. In my view, the issue at hand is delicate as it involves county finances which dictate the operations of the county government of Nyandarua and it would be presumptuous for the court to suspend these operations without having had the full benefit of the substantive arguments of the parties. I find that the Applicants have not demonstrated that if the supplementary budget is operationalized, an immediate and real violation or threat to the Bill of rights will ensue.

47. Lastly, conservatory orders should be granted bearing in mind the public interest, the constitutional values, and the proportionate magnitudes and priority levels attributable to the relevant causes. There can be no greater public interest than upholding the Constitution and the law. **Public interest** is defined by the **Black’s Law Dictionary 10<sup>th</sup> Edition at page 1425** as: -

**“The general welfare of a populace considered as warranting recognition and protection. Something in which the public as a whole has stake especially in something that justifies government regulation.”**

48. The court is mandated with balancing between the competing interests of the parties against the public ‘s interest. I have considered the suspension of the passage of the supplementary budget versus the proper functioning of the County Government of Nyandarua and it is my

view, that granting the orders sought and thereby crippling the county's financial operations is not within the public's interest.

49. The general and economic welfare of the people of Nyandarua County is at stake as the budgets assist the county in discharging its mandate to the people and I find that public interest does not favour the grant of the conservatory orders.

50. I therefore make the following orders;

*i. The Petitioners Notice of Motion dated 31<sup>st</sup> October 2021 is hereby dismissed.*

*ii. The costs of the said Notice of Motion to abide with the outcome of the petition.*

**DATED AND SIGNED AT NYAHURURU THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2022.**

.....

**CHARLES KARIUKI**

**JUDGE**