REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

PETITION NO. E118 OF 2022

BETWEEN

JAMES KAMAU MURANGO ……..……PETITIONER

VERSUS

1. THE ATTORNEY GENERAL

2. WATER RESOURCES AUTHORITY……..……...…… RESPONDENTS

AND

CABINET SECRETARY MINISTRY OF WATER,

SANITATION AND IRRIGATION …… INTERESTED PARTY

RULING NO. 1

Introduction:

1. In the instant Petition, the Petitioner variously challenged *the Water Resources Regulations, 2021* (hereinafter referred to as '***the impugned Regulations***') which were made by the Cabinet Secretary Ministry of Water, Sanitation and Irrigation, the Interested Party herein, *vide* Legal Notice No. 170 of 2021.

2. The Petitioner filed a Petition and a Notice of Motion. Both are evenly dated 22nd March, 2022. I will hereinafter refer to the Notice of Motion as '***the application'***.

3. On the directions of this Court, the application was orally heard on 13th April, 2022, hence this ruling.

The Application:

4. The orders sought in the application are as follows: -

> *1. That on the grounds more specifically set out in the Certificate of urgency filed herewith, this Application be certified urgent, be granted an early hearing date and that the same be heard on priority basis.*
>
> *2. That pending the hearing and determination of this application inter partes, an interim conservatory order be and is hereby issued staying the implementation of Part B of the Second Schedule of the Water Resources Regulations, 2021.*
>
> *3. That pending the hearing and determination of this application inter parties a temporary injunction be and is hereby issued restraining the 2nd Respondent by itself, its employees, agents and or servants form demanding and/or collecting water use Charges as set out in Part B of the Second Schedule of the Water Resources Regulations, 2021.*

4. That pending the hearing and determination of the Petition filed herewith, an interim conservatory order be and is hereby issued staying the implementation of Part B of the Second Schedule of the Water Resources Regulations, 2021.

5. That pending the hearing and determination of the Petition filed herewith, an injunction be and is hereby issued restraining the 2nd Respondent by itself, its employees, agents and/or servants from demanding and/or collecting Water use Charges as set out in Part B of the Second Schedule of the Water resources Regulations, 2021.

5. The application is supported by the Petitioner's Affidavit sworn on even date.

6. In opposition to the application, the 1st Respondent and the Interested Party jointly relied on the Grounds of Opposition dated 11th April, 2022 and a Replying Affidavit sworn by *Dr. Eng. Joseph Njoroge,* CBS, the Principal Secretary in charge of Water and Sanitation within the Interested Party on 4th April, 2022.

7. The 2nd Respondent relied on the Replying Affidavit sworn by one John N. Kinyanjui, the 2nd Respondent's Manager in charge of Water Resources Assessment and Monitoring against the application. The affidavit was sworn on 4th April, 2022.

Issues for determination and analysis:

8. I have carefully considered the application, the responses thereto and the parties' submissions. I, hereby, discern the following areas of discussions: -

(i) The nature of conservatory orders;

(ii) The guiding principles in conservatory applications; and

(iii) The applicability of the principles to the applications.

9. I will deal with the above sequentially.

The nature of conservatory orders:

10. In ***Civil Application No. 5 of 2014 Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others (2014) eKLR,*** the Supreme Court discussed, at paragraph 86, the nature of conservatory orders as follows: -

[86] "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 Applicant's case for orders of stay.

11. The Court in ***Nairobi Civil Appeal 151 of 2011 Invesco Assurance Co. Ltd vs. MW (Minor suing thro' next friend and mother (HW) [2016] eKLR*** defined a conservatory order as follows: -

5. A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter.

12. In ***Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] eKLR*** the Court had the following to say about the nature of conservatory orders: -

Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.

13. Conservatory orders are, therefore, aimed at preserving the substratum of the matter pending the determination of the main issues in dispute.

14. Given the interlocutory nature of conservatory orders, it is argued, that there is need for a Court to exercise caution when dealing with any request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the main Petition ought not to be dealt with finality at the interlocutory stage.

15. The foregoing was fittingly captured by **Ibrahim, J** (as he then was) in ***Muslim for Human Rights (Milimani) & 2 Others vs Attorney General & 2 Others (2011) eKLR***. The Learned Judge, correctly so, stated as follows: -

The court must be careful for it not to reach final conclusion and to make final findings. By the time the application is decided; all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must

be no conclusivity or finality arising that will or may operate adversely vis-a vis the case of either parties. The principle is similar to that in temporary or interlocutory injunctive in civil matters. This is a cardinal principle and happily makes my functions and work here much easier despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side.

16. The decisions in ***Centre for Rights Education and Awareness (CREAW) & 7 Others v. Attorney General (2011) eKLR, Platinum Distillers Limited vs. Kenya Revenue Authority (2019) eKLR*** and ***Kenya Association of Manufacturers & 2 Others vs. Cabinet Secretary – Ministry of Environment and Natural Resources & 3 Others (2017) eKLR*** also variously vouch for the cautionary approach.

17. A Court, therefore, dealing with an application for conservatory orders must maintain the delicate balance of ensuring that it does not delve into issues which are in the realm of the main Petition. In this discourse, I will, therefore, restrain myself from dealing with such issues.

The guiding principles in conservatory applications:

18. The principles for consideration by a Court in exercising its discretion on whether to grant conservatory orders have been developed by Courts over time. They are now well settled.

19. The *locus classicus* is the Supreme Court in ***Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others*** case (supra) where at paragraph 86 stated the Court stated as follows: -

[86] …… 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 courses.

2. In **Board of Management of Uhuru Secondary School vs. City County Director of Education & 2 Others [2015] eKLR,** the Court summarized the principles for grant of conservatory orders as: -

(i) The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.

(ii) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.

(iii) Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.

(iv) Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

3. In ***Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Others Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR*** the Court summarized three main principles for consideration on whether to grant conservatory orders as follows: -

(a) An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.

(b) Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and

(c) The public interest must be considered before grant of a conservatory order.

4. The above principles are, however, not exhaustive. Depending on the nature of the matter under consideration, there may be other parameters which a Court ought to look into. Such may include the effect of the orders on the determination of the case, whether there is eminent danger to infringement of the human rights and fundamental freedoms under the Bill of Rights, the applicability of the doctrine of presumption of constitutionality of statutes, whether the Applicant is guilty of laches, the doctrine of proportionality, among many others.

The applicability of the principles to the application:

(i) **A prima-facie case:**

5. A *prima facie* case was defined in ***Mrao vs. First American Bank of Kenya Limited & 2 Others*** (2003) KLR 125 to mean: -

…. *In a civil application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later.*

52. In a ruling rendered on 8th February, 2021 in ***David Ndii & others v Attorney General & others*** [2021] eKLR, the Court had the

following to say about a *prima-facie* case: -

> *45.* ***The first issue for determination in matters of this nature, is whether a prima facie case has been established and a prima facie case, it has been held, is not a case which must succeed at the hearing of the main case. However, it is not a case which is frivolous. In other words, it has to be shown that a case which discloses arguable issues has been raised and in this case, arguable constitutional issues.***

53. What constitutes a *prima-facie* case was further dealt with by the Court of Appeal in ***Mirugi Kariuki -vs- Attorney General*** Civil Appeal No. 70 of 1991 (1990-1994) EA 156, (1992) KLR 8. The Court, in an appeal against refusal to grant leave to institute judicial review proceedings by the High Court, stated as follows:

> *It is wrong in law for the Court to attempt an assessment of the sufficiency of an applicant's interests without regard to the nature of his complaint. If he fails to show……. that there has been a failure of public duty, this court would be in error if it granted leave. The curb represented by the need for the applicant to show, when he seeks leave to apply, that he has a case, is an essential protection against abuse of the legal process. It enables this court to prevent abuse by busy-bodies, cranks and other mischief-makers... In this appeal, the issue is whether the applicant in his application for leave to apply for orders of certiorari and mandamus demonstrated to the High Court a prima facie case for the grant of those orders. Clearly, once breach of the rules of natural justice was alleged, the exercise of discretion by the Attorney General under section 11(1) of this Act was brought into question.* ***Without a rebuttal to these allegations****, this appellant certainly disclosed a prima-facie case. For that, he should have been granted leave to apply for the orders sought.* (emphasis added).

54. In ***Re Bivac International SA (Bureau Veritas)*** (2005) 2 EA 43, the Court while expounding on what a *prima-facie* case or arguable case is, stated that such a decision is not arrived at by tossing a coin or waving a magic hand or raising a green flag, but instead a Court must undertake an intellectual exercise and consider without making any findings, the scope of the remedy sought, the grounds and the possible principles of law involved.

55. The Court of Appeal in Nairobi Civil Appeal No. 44 of 2014 ***Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another*** (2015) eKLR while dealing with what a *prima facie* case is, made reference to Lord Diplock in *American Cyanamid vs. Ethicon Limited (1975) AC 396,* when the Judge stated thus: -

> *If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant's proposed activities, that is the end of any claim to interlocutory relief.*

56. In sum, therefore, in determining whether a matter discloses a *prima-facie* case, a Court must look at the case as a whole. It must weigh, *albeit* preliminarily, the pleadings, the factual basis, the respective parties' positions, the remedies sought and the law. In so doing, a Constitutional Court must be guided by Articles 22(1) and 258(1) of the Constitution which provisions are on the right to institute Court proceedings whenever a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened or the when the Constitution has been contravened, or is threatened with contravention.

57. In the Petition, the Petitioner seeks the following prayers: -

> *a) A Declaration do issue that regulation 84 of the Water Resources Regulations 2021[Legal Notice 170 2021) is in violation of and inconsistent to Articles 10, 94(5) and 94(6) of the Constitution.*
>
> *b) A declaration that Part of the Second Schedule of the Water Resources Regulations, 2021 (Legal Notice 170 2021) is in violation of and inconsistent to Articles 10, 94(5) and 94(6) of the Constitution.*
>
> *c) Or that such other Order(s) as this Honourable Court shall deem just.*

58. The Petitioner's main contention is that the Interested Party acted *ultra vires* in by usurping the powers of the 2nd Respondent in setting out water use charges in Regulation 84 of the impugned Regulations and Part B of the Second Schedule thereof. To that end, it was contended that Articles 10(2)(a) and (c) and 94(5) and (6) of the Constitution were infringed.

59. It was further contended that the impugned regulations were not subjected to public participation as required under Article 10(2) of the Constitution and Sections 42(2) and 139 of the Water Act.

60. The Respondents and the Interested Party were of the contrary position. They posited that it was the Interested Party who had the duty under Section 41 of the Water Act to make the impugned Regulations and which impugned Regulations would ordinarily contain various fees and charges and that the 2nd Respondent's duty is to only publish the fees and charges under Section 42 of the Water Act before they may be effected. They argued that the Constitution and the law were, therefore, not violated.

61. There was, as well, the contention that adequate public engagement was undertaken prior to making of the impugned regulations. Various exhibits in support were availed.

62. I have carefully considered the parties' positions on the issue of who has the legal mandate to make the impugned regulations and the fees and charges. I must state outrightly that the nature of the matters raised in the Petition and the application call for this Court to be so careful otherwise the temptation of making final findings at an interlocutory stage is real. For instance, if this Court settles the issues of who, between the Respondents and the Interested Party, is to make the impugned Regulations and the charges and fees in the Part B of the Second Schedule together with the issue of public engagement at this point in time, then there will be no further issues to be dealt with going

forward.

63. Having said so, I have, nevertheless, intently probed the provisions of Sections 41 and 42 of the Water Act. I have also perused the documents in support of the position that public engagement was undertaken. The issue of public engagement as laid by the Respondents and the Interested Party is yet to be impugned at the moment.

64. The arguments put forth by the parties on the interpretation of Sections 41 and 42 of the Water Act are cut-throat and call for an in-depth analysis upon hearing the main Petition. It will be premature for this Court to express itself on the hotly contested issue which forms the crux of the Petition at this point in time.

65. Be that as it may, looking at the issues raised and the responses, alongside what a *prima facie* case is, it is this Court's finding that indeed there is a case worth probing. In this matter, a *prima facie* case has, therefore, been established.

(ii) Whether the Petitioner will suffer prejudice and the cases rendered nugatory unless the conservatory orders are granted:

66. The *Black's Law Dictionary 10th Edition Thomson Reuters* at page 1370 defines '***prejudice'*** as follows: -

Damage or detriment to one's legal rights or claims.

67. Will any party, therefore, suffer any damage or detriment if the conservatory orders are not granted? Generally, any contravention or threat to contravention of the Constitution or any infringement or threatened infringement of human rights and fundamental freedoms in the Bill of Rights is an affront to the people of Kenya. That is the express purport of the Preamble and Chapter 1 of the Constitution.

68. Courts must, in dealing with Petitions brought under the various provisions of the Constitution, be careful in determining the prejudice at least at the preliminary stages. I say so because, at such stages of the proceedings, the provisions of the Constitution alleged to have been infringed or threatened with infringement are yet to be subjected to legal scrutiny.

69. As such, the damage or threat thereof to the rights and fundamental freedoms or to the Constitution must be so real that the Court can unmistakably arrive at such an interim finding. Such a breach or threat should not be illusory or presumptive. It must be eminent.

70. The effect of the conservatory orders sought in the application is to suspend a legislation. There is the doctrine of presumption of constitutionality of statutes. The doctrine generally fronts that unless proved otherwise, statutes are deemed constitutional and may only be suspended in the clearest of cases and where the statute is a threat to life and limb or to the Bill of Rights.

71. In ***Kizito Mark Ngaywa v. Minister of State for Internal Security and Provincial Administration & Another*** [2011] eKLR, the High Court (*Mohamed, J* (as he then was) had the following to say on the issue: -

I have considered the application for adjournment and that for temporary suspension of the regulations and the submissions by Counsel. When considering the matter, I recalled my decision in PETITION NO. 669 OF 2009, MOMBASA BISHOP JOSEPH KIMANI & OTHERS –V- ATTORNEY GENERAL, COMMITTEE OF EXPERTS AND ANOTHER which I delivered on 6-10-2010. In the said case I was guided by the decisions of the Constitutional Court in Tanzania in NDYANABO –V- ATTORNEY GENERAL (2001) 2 EA 485 in which the said court presided over by the Hon. Chief Justice Samatta stated as follows: -

> ***Thirdly; until the contrary is proved, a legislation is presumed to be Constitutional. It is a sound privilege of Constitutional construction that if possible, a legislation should receive such a construction as will make it operative and not inoperative.***
>
> ***Fourthly, since, as stated, a short while ago, there is a presumption of Constitutionality of legislation, the onus is upon those who challenge the Constitutionality of the legislation, they have to rebut the presumption. Fifthly where those supporting a restriction on a fundamental right rely on a claw back or exclusion clause in doing so, the onus is on them, they have to justify the restriction."***

I am still persuaded by the above-mentioned principles of Constitutional interpretation. In the BISHOP JOSEPH KIMANI case, the court observed as follows: -

> ***It is a very serious legal and Constitutional step to suspend the operation of statutes and statutory provisions. The courts must wade with care, prudence and judicious wisdom. For the High Court to grant interim orders in this regard, I think one must at the interlocutory stay actually show that the operation of the legislative provision are a danger to life and limb at that very moment.***

It is my view that the principle of presumption of Constitutionality of Legislation in imperative for any state that believes in democracy, the separation of powers and the Rule of Law in general. Further the courts to be able to suspend legislation during peace times where there is no national disaster or war, would in my view be interfering with the independence and supremacy of Parliament in its Constitutional duty of legislating law.

72. The applicability of the doctrine of constitutionality of a statute was further dealt with by the Court of Appeal alongside the aspect of public interest. That was in ***Attorney General & another v Coalition for Reform and Democracy & 7 others*** [2015] eKLR.

73. In the matter, the High Court had suspended some provisions of the Security Laws (Amendment) Act. The State appealed the decision. In dismissing the appeal, the Court of Appeal had the following to say:

> *We agree with Prof. Muigai that in an application of this nature, which is not seeking entirely private law remedies, the Court must also consider where the public interest lies. In* **PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES** *case, (supra), it was held that when the State is the appealing party in an appeal where the constitutionality of a statute is the subject matter for determination, the State interest and harm merges with that of the public. There is also the doctrine of presumption of constitutionality which must be borne in mind. The impugned Act is intended to serve the public.*
>
> *While the Court appreciates the contextual backdrop leading to the enactment of the* **SLAA**, *it must also be appreciated that it is not in the interest of justice to enact or implement a law that may violate the Constitution and in particular the Bill of Rights. Constitutional supremacy as articulated by* **Article 2** *of the* **Constitution** *has a higher place than public interest. When weighty challenges against a statute have been raised and placed before the High Court, if, upon exercise of its discretion, the Court is of the view that implementation of various sections of the impugned statute ought to be suspended pending final determination as to their constitutionality, a very strong case has to be made out before this Court can lift the conservatory order.* ***The State would have to demonstrate, for example, that suspension of the statute or any part thereof has occasioned a lacuna in its operations or governance structure which, if left unfilled, even for a short while, is likely to cause very grave consequences to the general populace.***
>
> *We do not think that the applicant has made out such a case. The Court was not told that the grant of the conservatory orders has brought about a vacuum in our laws which makes it impossible or difficult to investigate and prosecute terror suspects or such other persons who may be targeted by the* **SLAA**. *Apart from the eight (8) sections of the* **SLAA** *whose operationalization has been temporary suspended, all other laws of Kenya are still in full operation. We entertain no doubt that as we await either the hearing of the appeal before this Court, or, the finalization of the petitions before the High Court, the country's security agents and law enforcement organs can still make full use of the existing laws to keep the country and its people safe.*

74. In this case, the Respondents and the Interested Party contended that the Petitioner has not demonstrated any irreparable prejudice he stands to suffer neither has he demonstrated a case for the suspension of the law.

75. This Court agrees with the Respondents and the Interested Party that the Petitioner has fallen short of demonstrating that the impugned regulations are a threat to life and limb. Further, the Petitioner has not demonstrated the nexus between the impugned regulations and how they contravene the Bill of Rights. I say so because the Petition is silent on the said nexus.

76. The Petitioner's main fear is that the fees and charges in Part B of the Second Schedule of the impugned regulations are likely to be effected at any time. That may be so since the 2nd Respondent indicated that the impugned regulations are being implemented. However, for a Court to suspend a legislation at an interlocutory stage and at peace times, it calls for adherence to the aforesaid settled legal principles. The reason is that a legislation is deemed to be constitutional more so in instances where there is uncontroverted evidence of public engagement, failure to show that the legislation is a threat to life, limb and the Bill of Rights.

77. In the unique circumstances of this case, this Court finds that the Petitioner does not stand to suffer any irreparable injury if the fees and charges are paid to the 2nd Respondent. Such fees are readily recoverable from the 2nd Respondent in the event the Petition is successful. There has been no argument that the 2nd Respondent has a history of non-payment of monies due and payable.

78. It is this Court's further position that the Court on its own motion and in consideration of appropriate reliefs, in the event the Petition is successful, may issue orders for refund of any charges and fees irregularly levied under the impugned regulations. Needless to say, in the worst case scenario, such payments are quantifiable and recoverable as civil debts with interests and costs.

79. On the contrary, it will be extremely difficult, if not impossible, for the 2nd Respondent to recover any fees and charges due under the impugned regulations in the event the Petition is unsuccessful. I say so because the charges and fees are to be ascertained before the permit is issued and works undertaken. Further, those against whom the impugned regulations are to apply are spread throughout the country and keeping track thereof may not be an easy task. Conversely, it will be far less a burden if such parties are called upon to comply with the law by making the payments to the 2nd Respondent.

80. There is also another challenge if the orders are issued. It is not lost that not all targeted parties may be legal personalities like companies which can be easily pursued. Some may be natural persons who may disappear after undertaking the works given that the only connection between such parties and the 2nd Respondent is the permit. Calling upon the parties to comply will, hence, strike a balance between the parties, noting that recovery is assured if the Petition is successful.

81. As to whether the Petition will be rendered nugatory if no orders are granted, this Court takes the position that the issues raised in the Petition subsist and ought to be determined in a full hearing. The determination of the Petition will accord direction and serve as a good guide on the issues raised now and in the future.

82. In other words, the Petition cannot be rendered nugatory in the absence of the orders sought.

83. In the end, this Court, therefore, finds that the Petitioner does not stand to suffer any real damage if the interim orders are not granted and further that the failure to grant the conservatory orders will not render the Petition nugatory.

(iii) <u>Public interest:</u>

84. '***Public interest'*** is defined by the *Black's Law Dictionary 10th 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.*

85. Broadly speaking, the Constitution and the laws govern the people. As such, the Constitution remains supreme and the laws are always presumed to be constitutional until the contrary is proved. In a matter, therefore, where the constitutionality of a statute is impugned or an issue arises as to whether the Constitution is contravened, Courts must weigh, with care and at a preliminary stage, the alleged breach against the provisions of the Constitution and the doctrine of presumption of constitutionality of statutes.

86. This Court has already noted that the parties have quite defining interpretations of Sections 41 and 42 of the Water Act, which are the crux of the Petition. The Court has also found out that the legal principles in suspending legislation are not met in this case. As a result, public interest demands that the prevailing law be adhered to pending the final determination of the Petition.

87. On the basis of the foregoing, and in the exceptional circumstances in this matter, this Court finds that public interest tilts in favour of the Respondents and the Interested Party. It is in public interest that the law be adhered to pending the outcome of the Petition.

Disposition:

88. The above analysis yields that the Petitioner has not, in the meantime, successfully laid a basis for the grant of the orders sought in the application.

89. That being the case, the application is unsuccessful. However, given the nature of the Petition herein, there is need for appropriate directions and for expeditious disposal of this matter.

90. In the end, the following orders hereby issue: -

(a) The Notice of Motion dated 22nd March, 2022 is hereby dismissed.

(b) The Petition to be heard by way of reliance on the pleadings, affidavit evidence and written submissions.

(c) The Respondents and the Interested Party shall within 14 days hereof file and serve responses to the Petition, if not yet.

(d) The Petitioner shall, thereafter, and within 14 days' of service file any supplementary responses, if need be, together with written submissions on the Petition.

(e) The Respondents and the Interested Party shall file and serve their respective written submissions within 14 days of service.

(f) Further directions to issue on a date suitable to the Court and the parties.

Orders accordingly.

DELIVERED, DATED and **SIGNED** at **NAIROBI** this **21st** day of **April, 2022.**

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Rienye, Counsel for the Petitioner.

Miss. Robi, Counsel for the 1st Respondent and the Interested Party.

Miss. Olewe, Counsel for the 2nd Respondent.

Elizabeth Wanjohi – Court Assistant.