



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

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

**PETITION NO. E005 OF 2021**

*Consolidated with*

**PETITION NO. E009 OF 2021**

**BETWEEN**

**OKIYA OMTATAH OKOITI .....1<sup>ST</sup> PETITIONER**

**HABIB OMAR KONGO.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**THE NAIROBI CITY COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**THE SPEAKER, NAIROBI CITY COUNTY ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**THE CLERK, NAIROBI CITY COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT**

**ANNE KANANU MWENDA.....4<sup>TH</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**THE I.E.B.C. ....6<sup>TH</sup> RESPONDENT**

**AND**

**HON. MIKE SONKO MBUVI GIDEON KIOKO.....1<sup>ST</sup> INTERESTED PARTY**

**THE SENATE.....2<sup>ND</sup> INTERESTED PARTY**

**RULING NO. 1**

**Introduction:**

1. This ruling is with respect to two applications in two Petitions. The first Petition is *Nairobi High Court Constitutional Petition No. E005 of 2021*. This Petition is dated 8<sup>th</sup> January, 2021. In the main, it challenges *inter alia* the nomination of *Anne Kananu Mwenda* (hereinafter referred to as '**the Nominee**') for the position of the Deputy Governor of the Nairobi City County by the then Governor of Nairobi City County and the subsequent vetting of the said Nominee by the County Assembly of Nairobi City County.

2. The second Petition is *Nairobi High Court Constitutional Petition No. E009 of 2021*. This Petition is dated 10<sup>th</sup> January, 2021. The

Petition also challenges the nomination of the Nominee for the position of the Deputy Governor of the Nairobi City County by the then Governor of Nairobi City County and the subsequent vetting of the said Nominee by the County Assembly of Nairobi City County.

3. The two Petitions were consolidated by an order of this Court made on 12<sup>th</sup> January, 2021. ***Nairobi High Court Constitutional Petition No. E005 of 2021*** is the lead file. The appearance of the parties in the consolidated Petitions was also re-organized and is currently as in the heading of this ruling.

4. Together with the Petition, each of the Petitioners filed an application by way of a Notice of Motion under a certificate of urgency. The application filed by the 1<sup>st</sup> Petitioner herein, *Okiya Omtatah Okoiti*, is dated 8<sup>th</sup> January, 2020. I will hereinafter refer to this application as ***'the First Application'***.

5. The Notice of Motion filed by the 2<sup>nd</sup> Petitioner is dated 10<sup>th</sup> January, 2021. I will hereinafter refer to this application as ***'the Second Application'***.

6. This ruling is on the two applications.

#### **The Applications:**

7. The First Application seeks the following orders: -

1. ***THAT*** the Honourable Court be pleased to certify this application as extremely urgent and hear it ex-parte at the earliest opportunity during the Court Vacation/Recess.

2. ***THAT*** pending the inter-partes hearing and determination of this Application and/or the Petition herein the Honourable Court be pleased to issue a temporary suspending the announcement titled, "Notice to the Public and the Nominee on the Nomination and vetting of the Deputy County Governor Nominee, Nairobi City County".

3. ***THAT*** pending the inter-partes hearing and determination of this Application and/or the Petition herein the Honourable Court be pleased to issue a temporary order of prohibition prohibiting the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents vetting, approving, appointing and swearing the 1<sup>st</sup> Interested Party, ANNE KANANU MWENDA, into office as the Nairobi City County Deputy Governor.

4. ***THAT*** consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.

5. ***THAT*** costs be in the cause.

8. The application is supported by the Affidavit sworn by the 1<sup>st</sup> Petitioner herein, *Okiya Omtatah Okoiti*, on 8<sup>th</sup> January, 2021. He filed a Reply to the parties' responses.

9. The Second Application seeks the following orders: -

1. ***THAT*** the Application herein being extremely urgent be certified urgent and heard at the earliest possible moment during the vacation of this Honourable Court.

2. ***THAT*** pending the hearing and determination of this Application, Conservatory orders be issued to restrain the 1<sup>st</sup> Respondent from proceeding in any way with the process of Vetting and Approval of the 3<sup>rd</sup> Respondent as a Deputy Governor of Nairobi City County and/or implementing its Notice issued on the 7<sup>th</sup> January 2021 initiating the Vetting and approval process of the 3<sup>rd</sup> Respondent.

3. ***THAT*** pending the hearing and determination of this Petition, Conservatory orders be issued to restrain the 1<sup>st</sup> Respondent from proceeding in any way with the process of Vetting and Approval of the 3<sup>rd</sup> Respondent as a Deputy Governor of Nairobi City County and/or implementing its Notice issued on the 7<sup>th</sup> January 2021 initiating the Vetting and approval process of the 3<sup>rd</sup> Respondent.

4. ***THAT*** the court does issue any other orders that it may deem fit.

5. ***THAT*** the cost of the Petition be in cause.

10. The application is supported by the Affidavit sworn by the 2<sup>nd</sup> Petitioner herein, *Habib Omar Kongo*, on 10<sup>th</sup> January, 2021. The 2<sup>nd</sup> Petitioner also filed List of Authorities and a Case Digest.

#### **The Responses:**

11. The applications are opposed by all the Respondents. The 1<sup>st</sup> Interested Party supported the applications. The second Interested Party did

not take part in the proceedings.

12. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn on 13<sup>th</sup> January, 2021 and Grounds of Opposition dated 12<sup>th</sup> January, 2021.

13. The 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn on 8<sup>th</sup> January, 2021 and a subsequent Replying Affidavit sworn on 13<sup>th</sup> January, 2021. A List of Authorities dated 13<sup>th</sup> January, 2021 and a Case Digest were also filed.

14. The 3<sup>rd</sup> Respondent filed a Replying Affidavit sworn on 13<sup>th</sup> January, 2021.

15. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn on 11<sup>th</sup> January, 2021 and a Further Affidavit sworn on 13<sup>th</sup> January, 2021. A List of Authorities dated 14<sup>th</sup> January, 2021 was also filed.

16. The 5<sup>th</sup> Respondent filed Grounds of Opposition dated 13<sup>th</sup> January, 2021, skeletal submissions, List of Authorities and a Case Digest all dated 14<sup>th</sup> January, 2021.

17. The 6<sup>th</sup> Respondent a Replying Affidavit sworn on 14<sup>th</sup> January, 2021.

18. The 1<sup>st</sup> Interested Party filed a Replying Affidavit sworn on 11<sup>th</sup> January, 2021 and a List of Authorities.

**Issues for determination:**

19. From my reading of the Court documents filed and consideration of the submissions of the Parties, I have identified the following three issues for determination: -

- (i) The nature of conservatory orders;
- (ii) The guiding principles in conservatory applications; and
- (iii) The applicability of the principles to the applications.

20. I will deal with the above sequentially.

**Analysis and Determination:**

**The nature of conservatory orders:**

16. 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.*

21. 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.*

22. 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.*

23. Given the 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.

24. 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.*

25. 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 the cautionary approach.

26. 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:**

27. 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 settled.

28. The *locus classicus* is the Supreme Court in **Civil Application No. 5 of 2014 Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others (2014) eKLR** 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.*

29. In **Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Others Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR** after going through several decisions, the Court rightly so, 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.*

30. There is also the need to ascertain whether the conservatory order sought will delay the early determination of the dispute. (See **Nairobi High Court Constitutional Petition No. E243 of 2020 Kenya Tea Development Agency Holdings Limited & 55 Others vs. The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries & Co-operatives & 2 Others and Kenya Small Tea Holders Growers Association (Kestega) (Interested Party)** (unreported).

#### **The applicability of the principles to the application:**

##### **A prima-facie case:**

31. 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.*

32. 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** where 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.*

33. 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 allowing 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. .... 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.*

34. In sum, in determining whether a *prima-facie* case is demonstrated 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.

35. Having carefully considered this matter, and without belaboring the point, this Court is satisfied that there are indeed fundamental issues of law for determination in these proceedings. They include whether the nomination of the nominee by the then Governor of the Nairobi City amounted to an election, whether the nominee was legally nominated, the constitutionality of the withdrawal of the nomination, whether the 1<sup>st</sup> Interested Party, then Governor of the Nairobi City, was legally able to nominate a proposed Deputy Governor when barred by a criminal Court from discharging the duties of the office of the Governor, whether the political rights under Articles 38 and 182 of the Constitution have crystalized, the exhaustion doctrine, among others.

36. A *prima-facie* case is hence demonstrated.

**Whether there is real danger that the Petitioners will suffer prejudice and their case rendered nugatory unless the conservatory orders are granted:**

37. The *Black's Law Dictionary 10<sup>th</sup> Edition Thomson Reuters* at page 1370 defines '*prejudice*' as follows: -

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

38. Will the Petitioners therefore suffer any damage or detriment if the conservatory orders are not granted? Generally, any infringement or threat to infringement of any human rights and fundamental freedoms or to the Constitution is an affront to the people of Kenya. That is the clear purport of the Preamble and Chapter 1 of the Constitution.

39. However, due to the nature of the petitions brought under Article 22(1) of the Constitution, which are usually for the protection and enforcement of the Bill of Rights, the gravity of the infringement of such rights and fundamental freedoms or threat thereof is immediately and directly attached to and felt by the aggrieved parties. The position may not be as such in Petitions under Article 258(1) of the Constitution for the reason that such Petitions do not mostly attach to the Bill of Rights. This position must however not be seen as discriminative against the Petitions under Article 258(1) of the Constitution. This is in light of the considerations at an interlocutory stage where the Court may not have had the advantage of all the legal arguments on the alleged infringement of the Constitution or the threat thereto.

40. Courts, therefore, when dealing with Petitions under Article 258(1) of the Constitution must be careful in determining the prejudice, whether real or perceived, at least at the preliminary stages, since the provisions of the Constitution alleged to have been infringed or threatened with infringement are yet to be subjected to legal interpretation.

41. In this case the Petitioners have variously challenged the entire process on the nomination of the nominee to the position of the Deputy Governor.

42. The Petitioners decry that if the vetting of the nominee is allowed to proceed then this Court will be sanitizing a constitutional illegality with the result that the position of the Deputy Governor of Nairobi City and that of the Governor of the Nairobi County will be filled by a person who is not only validly nominated, but also not even elected by the residents of Nairobi County.

43. According to the Petitioners, the result of the foregoing is washing away the substratum of the consolidated Petitions, and, henceforth, the consolidated Petitions will stand overtaken by events. The Petitions will only be good for academic purposes and that is prejudicial to the Petitioners.

44. The opposing parties are of the contrary position. They hold that all the processes and actions on the nomination and the vetting of the nominee have all along been within the constitutional and legal parameters and that no prejudice will be visited upon any one if the said processes are left to continue.

45. The parties in opposition further posit that since the consolidated Petitions relate to filling in of a public office, that is the office of the Deputy Governor of Nairobi County, then this Court, just like in election Petitions, has powers to undo all the processes and to order the removal from office of any holder in the event the Court upholds any or all of the consolidated Petitions.

46. It is, therefore, contended that there is no way the substratum of the Petitions will stand compromised given that the Constitution and the law has never been short of appropriate remedies in any eventuality.

47. I have patiently followed and captured the arguments on this sub-issue. It is clear that the parties in this matter are not in agreement in respect to the interpretation of the alleged impugned provisions of the Constitution and the law. Most of the issues in this matter remain, largely so, disputed. In other words, either of the parties could be correct in its interpretation of the Constitution and the law. However, such can only be ascertained at the determination of the consolidated Petitions. (See the Court of Appeal in *Civil Application Nai. 31 of 2016 Alfred N. Mutua v Ethics & Anti-Corruption Commission (EACC) & 4 Others [2016] eKLR*).

48. Having so found, this Court is, hence, not convinced that, in the unique circumstances of this case, the Petitioners have demonstrated any irreparable prejudice they are likely to suffer in the event the conservatory orders are not granted. I say so because there is no proof that the nominee will be approved upon vetting, the issues yet to be determined in this matter are both factual and legal and are hotly contested and are yet to be settled by this Court, further that this Court is seized of the jurisdiction to grant any remedial appropriate reliefs when need arises.

49. The obtaining legal position in this matter is, therefore, that regardless of what is likely to happen in the event the conservatory orders are not granted, this Court is firmly possessed of the jurisdiction to issue and enforce any remedial reliefs.

50. Putting it clearer, on one hand, in the event the nominee is approved by the County Assembly of Nairobi City and eventually takes over the office of the Deputy Governor of Nairobi City County and, subsequently, ascends to the office of the Governor of Nairobi City County, and on the other hand, the Petitions are, at the end of the day, successful, then the Court will issue orders for the removal of the nominee from any office she would then be holding courtesy of the impugned processes.

51. The above reasoning finds favour in the Court of Appeal decision in *Nelson Andayi Havi vs. Law Society of Kenya & 3 Others (2018) eKLR*. In that case the Court dealt with the argument that once elections of the Law Society of Kenya are held then that will be irreversible and the Petitioner would have been denied his constitutional right to vie for the Presidency of the Society. In rejecting the argument, the Court held as follows: -

*Having carefully considered the rival contentions we are not persuaded, in the circumstances of this case, that the holding of the forthcoming elections will negate the applicant's intended appeal, if it ultimately succeeds. Those elections are not immutable; this Court can nullify them if it finds that they were conducted on the basis of an illegal and unconstitutional framework that among other things discriminated against or disenfranchised the applicant and other members of LSK. The applicant will then have an opportunity to contest if it is determined with finality that indeed he is eligible to run for the office of president of LSK. The determination of this Court after hearing the intended appeal will have two possible consequences. If the appeal is dismissed and we have in the meantime stopped the elections, it will mean losses that are not petty cash for a professional society that is financed primarily by members' subscriptions. It will also throw into confusion the prescribed statutory calendar and disrupt or undermine the discharge of critical statutory and national functions vested in LSK such as regulation of the legal profession, resolution of complaints against practitioners, and assisting in the administration of justice and the practice of law in the country. If on the other hand the appeal succeeds, the applicant will have an opportunity to contest in the ensuing bye-election. The primary prejudice that he will suffer is a delay in the realization of his ambition to lead the LSK, which we think can be mitigated or reduced substantially by fast-tracking the hearing and determination of his appeal. In our view that scenario is not synonymous with rendering the appeal nugatory. If he really wished, the applicant could be adequately compensated for any delay that is entailed, by award of damages. ....*

52. It is in consideration of the foregoing that this Court buttresses the finding that the Petitioners shall neither be prejudiced nor their Petitions compromised if no conservatory orders are issued.

**Public Interest:**

53. '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.*

54. 'Public interest litigation' was described by the Court of Appeal in *Nairobi Civil Appeal No. 364 of 2017 Tom Mboya Odege vs. Edick Peter Omondi Anyanga & 2 Others (2018) eKLR* as follows: -

*A legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.*

55. The Court further held that: -

*.... The best examples are in Articles 22(2)(a) and 258 of the Constitution which grant every person the right to move to court in 'public interest' where there is a claim or alleged contravention or infringement of a right or fundamental freedom, or threat thereto, or a contravention or threat to violate the Constitution.*

56. The nature of public interest litigation was discussed in *Brian Asin's* case (supra). The Court distinguished real public interest litigation from litigation which were disguised as such. The Court referred to Supreme Court of India decision in *Ashok Kumar Pandey vs. State of West Bengal AIR 2004 SC 280* where the Supreme Court held that: -

*.... Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fides and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for*

***oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.***

57. In this case, the Petitioners and the 1<sup>st</sup> Interested Party hold that there is no greater public interest than upholding the Constitution and the law. In that case, they urge, that the vetting process of the nominee ought to be stopped pending the outcome of the consolidated Petitions.

58. Conversely, it is argued that public interest militates against the grant of the conservatory orders. This Court is called upon to balance the interest of the Petitioners against those of the wider public which advocate for the position that constitutional organs and institutions ought to be nurtured by being accorded opportunities to discharge their constitutional mandates, but within the Constitution and the law.

59. The two discordant positions are both right for they are both on the same issue. I think, in this matter, given that the legal issues raised in the consolidated Petitions remain unsettled then, there is wisdom in allowing the constitutional organs and institutions to discharge their constitutional mandates even as parties are battling it out in Court. In this case, stopping the constitutional process which was initiated by the nomination of the nominee based on an uneven legal platform militates against public interest.

60. It is also in public interest that the consolidated Petitions are heard and determined expeditiously. This Court has been informed that there are several other Petitions on this subject. For good order and to avoid conflicting decisions coupled with the intent to save on the limited judicial time, there is need for all such matters to be dealt with together.

61. In the end, this Court finds that public interest in this matter is counter the position taken by the Petitioners and the 1<sup>st</sup> Interested Party.

**Conclusion and Disposition:**

62. As I come to the end of this ruling, I must thank the parties and Counsels for their readiness in proceeding with the hearing of the application within such a short notice. Further, I remain most grateful to Counsel appearing before me for their industry in assembling jurisprudence from within the jurisdiction and further afield and for their cogent and incisive submissions which were of great assistance. If there is any authority I have not referred to, it is not for my non-consideration of it, but out of the satisfaction that the point is otherwise already amply made.

63. The above discussion has led to three key conclusions. The first one is that the issues raised in the consolidated Petitions establish a *prima-facie* case. The second conclusion is that the Petitioners will neither be prejudiced nor the consolidated Petitions rendered nugatory in the event the conservatory orders are not granted. The last one is that public interest militates against the applications.

64. Resulting from the foregoing are the following final orders: -

**(a) The Notice of Motion dated 08<sup>th</sup> January, 2021 and the Notice of Motion dated 10<sup>th</sup> January, 2021 be and are hereby dismissed with no order as to costs.**

**(b) In view of the urgency in this matter and in order to foster an orderly administration of justice, all Constitutional Petitions in any manner whatsoever challenging the nomination of ANN KANANU MWENDA for the position of the Deputy Governor of the Nairobi City County shall be mentioned before this Court on 21<sup>st</sup> January, 2021 for directions on the way forward.**

**(c) To that end, the Deputy Register shall identify and issue directional notices in all such Petitions.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 15<sup>th</sup> day of January 2021.**

**A. C. MRIMA**

**JUDGE**

**Ruling No. 1 virtually delivered in the presence of:**

**Okiya Omtatah Okoiti, the 1<sup>st</sup> Petitioner in person.**

**Mr. Thuita and Mr. Waweru, Learned Counsels for the 2<sup>nd</sup> Petitioner.**

**Mr. Osundwa and Mr. Kokebe, Learned Counsels for the 1<sup>st</sup> Respondent.**

**Mr. Okatch, Learned Counsel for the 2<sup>nd</sup> Respondent.**

**Mr. Ashioya**, Learned Counsel for the 3<sup>rd</sup> Respondent.

**Mr. Paul Muite, SC** and **Mr. Joseph Kiarie**, Learned Counsels for the 4<sup>th</sup> Respondent.

**Mr. Nyamondi, Mr. Ogosso and Miss Cheron**, Learned Counsels instructed by the Honourable Attorney General for the 5<sup>th</sup> Respondent.

**Mr. Mukele**, Learned Counsels for the 6<sup>th</sup> Respondent.

**Mr. Nyamu** and **Mr. Harrison Kinyanjui**, Learned Counsels for the 1<sup>st</sup> Interested Party.

**No appearance** for the 2<sup>nd</sup> Interested Party.

**Dominic Waweru** – Court Assistant