



**Great Meru Timber Manufacturers Association v Kenya Forest Service & 2 others (Environment & Land Petition E002 of 2022) [2022] KEELC 3348 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3348 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION E002 OF 2022**

**CK NZILI, J**

**MAY 4, 2022**

**BETWEEN**

**GREAT MERU TIMBER MANUFACTURERS ASSOCIATION ..... PETITIONER**

**AND**

**KENYA FOREST SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY FOR ENVIRONMENTAL AND  
FORESTS ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**A. The Application**

1. By a notice of motion dated 8.2.2022, the court is asked to grant conservatory orders barring and restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents from proceeding with the process of tendering and or inviting bids for forest materials, receiving tenders or awarding tenders to forest industry investors for the FY 2021/2022 – 2022/2023. The application is supported by an affidavit of Robert Muthomi sworn on 8.2.2022. The grounds are that, the 1<sup>st</sup> respondent has lifted a three year old moratorium and began tendering or inviting bids for forest materials to forest industry investors from the general public to the detriment of applicants who have a legitimate expectation to be prioritized as forest industry investors with a binding pre-existing contractual relationship with the respondents; it is averred the applicants have been made to suffer economic loses since the freeze and which was done without prior notice by the 1<sup>st</sup> respondents under Rule 10(1) and 25 *Forest Rules 2009* and Section 56 of the *Forest Conservation and Management Act* 2016.
2. It is averred the petitioners possess timber licenses, permits and special use licenses under Section 56 of the *Forest Conservation and Management Act* 2016, after meeting the mandatory requirements thereof, including the legal, technical and financial capacity to undertake forest activities.



3. It is averred that the petitioners complied with all the statutory and regulatory requirements of the respondents including the establishment of mill yards, procurement of heavy machinery and specialized harvesting equipment for the full production tailor made for the exclusive use in the timber harvest and production activities.
4. The petitioners aver that they incurred huge expenses to finance the foregoing activities including taking up loans which they have been unable to service and or settle as a result of the moratorium and directions from the respondents.
5. The petitioners aver that after a thorough review and inspection of the equipment and machines by the 1<sup>st</sup> respondent, their members were notified that they had been pre-qualified as saw millers and fuel wood operator's category.
6. It is averred after the pre-qualification notices, the 1<sup>st</sup> respondent required each of the members of the petitioners to pay for such licences, permits and authorizations licence fees of Kshs 30,000/= periodically so as to begin the commercial timber harvesting operations which they did and the 1<sup>st</sup> respondent issued them with licences valid for the period 2017-2018.
7. It is averred after the payment of the licences following the pre-qualification, members of the petitioners in their capacity as licencees were in writing allocated over mature material/trees by the 2<sup>nd</sup> respondent with authority allowing them to harvest the said materials for the purpose of removing timber and fuelwood.
8. It was averred that the aforesaid notices indicated the county where the materials were located, the number of portions, the area in acreage, age of the trees, species of the trees, number of trees, volume of the tree cubicles, and the total amount of money to be paid for the harvest of the said over mature trees.
9. The petitioners aver that depending on the data and categories above, their members were required to pay between Kshs 1.1 million and Kshs 8 million per dealer, as harvesting fees which sums they paid to the 1<sup>st</sup> respondent in February 2018 on the assurance and understanding that they would be allowed to harvest the said materials for commercial purposes of removing timber and fuel wood, which cumulative amount received by the 1<sup>st</sup> respondent was to the tune of Kshs 100,000,000/= (one million) but are yet to access the forest to harvest the said trees due to the moratorium.
10. It was averred that on 27.2.2018, the 2<sup>nd</sup> respondent without any prior notice or warning, to the petitioners as stakeholders and licencees, arbitrarily issued a notice indicating that the "government" had with immediate effect imposed a moratorium on timber harvesting in all public and community forests thus effectively blocking the members of the petitioners from harvesting and removing the over mature trees which they had been allocated and paid for using their hard-earned money.
11. The petitioners aver that on the same day a letter was issued to all heads of conservancies and ecosystem conservancies and ecosystem conservators by the respondents stating that all logging and harvest must stop with immediate effect and further suspended the issuance of forest movement permits whether from public, community or private forests.
12. The petitioners aver that they ought to have been given a chance to defend themselves or to challenge the directive in the interest of public participation and in conformity with the rules of natural justice before the decision to halt the issuance of business permits was reached.
13. Further the petitioners aver that the government acted in an arbitrary manner causing them irreparable damages and job losses.



14. It was averred by Gazette Notice No Vol. CXX No 8 of 26.2.2018 the 3<sup>rd</sup> respondent established a 15 member's task force to inter alia, review the procedures, qualifications and conditions for licencing of saw millers.
15. The petitioners aver the respondents have now partially lifted the moratorium on tree harvesting and invited forest industry investors to bid for forest materials for FY 2021/2022-2022/2023.
16. The petitioners state that unless conservatory orders are issued they are likely to suffer irreparably if the respondents are allowed to proceed with tending and or by inviting bids form forest industry investors yet at the time the moratorium was imposed their members had already paid to the 1<sup>st</sup> respondent licence and timber harvesting fees, had felled trees, logged them and produced timbers for the onward transport to their yards or to customers; their various timber products lay scattered in the forest and or their yards wasting away; they had entered into commercial obligation with consumers of timber and furniture who are at liberty to sue them for breach of contract; had closed their saw mills and timber yards thus sending them out of business and rendering their personnel jobless and redundant.
17. It is averred that the petitioners are likely to suffer irreparable loss with no amount of compensation befitting if the orders sought are not granted until the respondents take care of and or are allowed or allocated timber materials for the initially paid sum given that their efforts to engage the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents for such allocation and or collection or in the alternative refund have been in vain.
18. The petitioners have attached to the supporting affidavit sworn by their chairman Robert Muthomi a copy of certificate of registration, list of members to the umbrella association of timber dealers or forest industry producers, inventory of the machinery and specialized equipment procured, copies of prequalification letters, receipts for payments of licences, notification of the allocation letters; receipts for payment of harvesting fees, bank statements; copy of the ban, gazette notice, bank loan default notices; photos showing scattered timber materials in various yards and forests; invitation to bid for forest materials and letters addressed to the respondents marked as annexures RM 1-14 respectively.

## **B. Grounds of Opposition**

19. The application is opposed through the respondents grounds of opposition dated 16.3.2022. On the first ground, it is the respondents' view that the notice of motion and the petition do not raise constitutional questions for determination but raise contractual issues which are provided under Section 56 of the *Forest Management and Conservation Act* as read together with Rule 7 of the Rules.
20. Secondly, the respondents aver that the notice of motion offends Section 70 of Act No 14 of 2016, Rules 12, 69 of 2009 of the Rules which provide for dispute settlement procedures.
21. Thirdly, the respondents maintains the application and the petition did not anchor a claim for legitimate expectation as the *Rules on Forest Management and Harvesting 2009* set out additional qualification that must be met by individual contractors.
22. Fourthly, it is stated the claim of legitimate expectation for prioritization of members of the applicant was unreasonable and contrary to public interest as it fetters statutory powers and duties.
23. Fifthly, the respondent aver that the claim for legitimate expectation was untenable as the state has general and overriding constitutional obligation to environment under Article 69 (1) and a concomitant duty to the petitioners under Article 69 (3) of the *Constitution*.
24. Sixth, the respondents averred that there was no evidence of compliance with Rule 13-19 of the *Forest (Participation in Sustainable Forest Management) Rules 2009* with regard to timber licences, Rule 21 for special licences and Rule 22 for contracts.



25. The seventh ground was that the applicant lacks the requisite locus to enforce contractual provisions on behalf of its members as provided by Section 57 of the *Forest Management and Conservation Act* read together with the *Forest (Participation in Sustainable Forest Management) Rules 2009* which envisage an individualized criterion.
26. Lastly the respondents maintain the notice of motion offend Section 9 (3) of the *Fair Administration Actions Act* 2015 and therefore both the notice of motion and the petitioner were premature, deal with most issues and was an abuse of the court process.

### C. Oral Submissions

27. Mr. Mutuma counsel for the petitioners, relied entirely on the grounds on the face of the application and the supporting affidavit. Mr. Kieti senior litigation counsel for the respondents relied entirely on the grounds of opposition dated 16.3.2022.
28. Counsel Mr. Kieti submitted that the general rule in law provides that where an alternative procedure for addressing issues is available, the court lacks jurisdiction in the first instance. Counsel submitted the proceedings before this court even if they raised any constitutional issues, the bottom line was Section 70 of the *Forest Management and Conservation Act* and Rule 69 of *Forest (Participation in Sustainable Forest Management) Rules 2009*.
29. Counsel submitted that prayer 2 of the notice of motion was contractual in nature which is addressed by section 70 of the Act aforementioned and further that a legitimate expectation was not a constitutional issue since the dispute could be addressed by Section 70 of the Act and that the supporting affidavit to the notice of motion was entirely on contractual issues.
30. In sum counsel urged the court to find the notice of motion offending the law and defer the dispute to where it properly belongs.
31. In a rejoinder Mr. Mutuma advocate took the view that the matter before the court was constitutional in nature since the effect of Section 70 of The *Forest Management and Conservation Act* was that the constitutional court must answer five questions namely:
  - i. Whether the reliefs sought are capable of being awarded by the tribunal or any other quasi – judicial body. The court was urged to find that 90% out of the reliefs sought were seeking for declaratory orders which can only be granted by a constitutional court.
  - ii. If the dispute herein spills beyond the dispute mechanisms set out under Section 70 of the Act.
  - iii. Whether thereon was public participation before imposing the moratorium.
  - iv. Whether there was compliance with Article 10 in lifting the moratorium in a manner discriminating the rights of the petitioners and putting them in the same position as the rest of tenders yet they had acquired a better and higher interest than the rest of the tenders.
  - v. Whether the issue of legitimate interest is squarely under the jurisdiction mandate of this court or the quasi-judicial boundaries.



32. Mr. Mutuma advocate submitted that the above issues could not be reduced into a contractual obligation and that if the court was to find that there was a legitimate expectation then the dispute can only be handled before a constitutional set up.
33. Counsel submitted that, constitutional rights and freedoms are not exercised in vacuum and must be premised on a violation or actions of the respondents some of which emanate from contractual obligations and therefore there was nothing wrong with a violation arising from contractual set up and then maturing into a full-blown constitutional dispute.
34. Additionally, counsel submitted the court should ask itself if there was an administrative action by the respondents and if so, did it violate the rights and freedoms of the petitioners? If the answers were in the affirmative then the court should find it has jurisdiction.
35. Further, counsel submitted that the respondents had not filed a preliminary objection but grounds of opposition which was a response to the petition which not on the validity of jurisdiction and that since there was no replying affidavit challenging the application, the court should find the application unopposed.
36. In a further response to the new issues raised Mr. Kieti submitted section 70 of the Forest Management and Conservation Act was not opposed to the court's jurisdiction in enhancing alternative dispute resolution in line with Article 159 (2) (c) of the *Constitution* since the two complement each other.
37. Mr. Kieti learned state counsel brought to the attention of the court that the matters raised were contractual in nature and have been filed elsewhere such as Nairobi ELC Petition No E053 of 2021 Japheth Kithi Chenga v Kenya Forest Services which Mr. Mutuma also confirmed he was aware of.

#### **D. Issues for determination**

38. The issues commending themselves for determination are:
  - i. If the petitioners have raised constitutional questions or ought to have exhausted the internal mechanism under the law.
  - ii. If the petitioners are entitled to any conservatory orders.
39. The basis of the notice of motion herein is the petition dated 8.2.2022 in which the petitioners allege the respondents have threatened and or violated their; right to equal protection and benefit of law under Article 27 of the *Constitution* by imposing the moratorium, of right to human dignity under Article 28 of the *Constitution*, by imposing a moratorium barring them from harvesting forest products hence imposing them financial loss. Article 40 of the *Constitution*, on the right to property as regards the acquired right over mature trees already allocated and paid for; right to fair administrative act under Article 47 (1) and (2) of the *Constitution*, over the impugned moratorium without notice which was unreasonable and unprocedurally unfair. They pray for orders compelling the respondents to allow them to access the forest and harvest the over mature materials already paid for and allocated to them and in the alternative an order of compensation by refund for the money already paid for the 2<sup>nd</sup> respondent.
40. Further, the petitioners in the alternative averred that the directives were draconian; that the task force contravened national values and principles of governance; it was only the 1<sup>st</sup> respondent under the rules who could vary or cancel licences and permits after giving a 14 days' notice and not the "Government"; there was no fair hearing or a chance to challenge the moratorium; it was arbitrary; it violated their economic rights under Article 43 of the *Constitution* and Section 49 of the Forest Act 2016, and that



it was detrimental to their legitimate expectation was shattered as licences and permit holders; who are small enterprises with right to earn a living.

41. Therefore the petitioners under Articles 20, 21, 22, 23, 40 & 43 of the Constitution sought for declaratory orders; that the aforesaid rights continue to be threatened, infringed upon, violated and or denied by the unlawful and arbitral imposition of a moratorium and or by making an arbitral and inconsiderate decision of tending and or inviting bids for forest materials, receiving tenders, or awarding tenders to forest industry investors from the general public for 2021/2022/2023 to the detriment of the petitioners who have an existing relationship with the respondents; order to issue compelling the respondents to allow the petition and its members. On priority to access and harvest the over mature materials already paid for and allocated to them and in the alternative compensation for the monies already paid for to the 2<sup>nd</sup> respondent; an order declaring Gazette Notice Vol. CXX No 28 dated 26<sup>th</sup> February 2018 as illegal and subsequently quash the same for lack of public participation; and lastly for an order to issue compelling the 1<sup>st</sup> respondent to reconstitute a new task force inclusive of representatives of all key stake holders including the petitioners to inquire into the forest resources management in Kenya.

### **E. Constitutional Threshold**

42. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, require a party seeking for the enforcement of rights and freedoms under Articles 22 and 23 of the Constitution to plead the nature rights and freedoms infringed, threatened or violated, the nature of injuries or loss or damage, any civil or criminal cases pending or otherwise and the reliefs sought.
43. In Mumo Matemu v Trusted Societies of Human Rights Alliance & 5 others [2013], the court held a party must plead with specificity and clarity the specific rights and freedoms violated, infringed or threatened.
44. In Gabriel Mutava & 2 others v Managing Director Kenya Posts Authority and another (2016) eKLR the court held that where there exists other sufficient and adequate avenues to resolve a dispute, a party should not to trivialize the jurisdiction of a constitutional court by bringing actions that could very well and effectively be dealt with in that other forum.
45. In Daniel N. Mugenda v Kenyatta University [2013] eKLR the court held that where a fundamental right was regulated by legislation such as legislation and not the underlying constitutional provisions would become the primary means for granting such a constitutional right and or freedom.
46. In Kusow Billow Issack v Ministry of Interior and Coordination of National Government & 3 others [2021] eKLR the court held that a party wishing to file a constitutional claim must plead with precision, the provisions of the Constitution which he alleges to have been breached and the manner in which the same has been breached while in Martin Lemaiyan Mokoosio & another v Reshma Praful Chandra Vadera & 3 others [2021] eKLR, the court held it had jurisdiction to hear a matter notwithstanding how the matter was pleaded.
47. In this petition, the petitioners have specified the constitutional rights and freedoms infringed or likely to be breached or violated by the respondents' imposition of the moratorium in 2018, its continued implementation, the establishment of the task force and the alleged partial lifting and or invitation for tenders or bids from the forest industry investors.
48. In my view, the petitioners appear to have complied with the Mutunga Rules and met the threshold of a constitutional petition as per Anarita Karimi Njeru v Republic [1979] eKLR threshold.



49. The next issue raised by the respondents was whether the court should be the first port of call given the clear provisions of Section 56 and 70 of the *Forest Management and Conservation Act*, Rules 7, 12, 13-19, 63 and 69 of The *Forest (Participation In Sustainable Forest Management) Rules 2009* as read together with Articles 69 (1) and (2) of the *Constitution* and Section 9 (3) of the *Fair Administrative Actions Act*.
50. In other words, the respondents take the view the petition does not raise constitutional questions and, in the alternative, if it does raise any the same are contractual issues which are governed by statute with clear dispute settlement procedures which the petitioners have failed to explore hence the court should defer the dispute and decline to issue any conservatory orders.
51. On the other hand, the petitioners have submitted that there was nothing wrong with a contractual dispute maturing into a constitutional controversy. They urged the court to find the declaratory orders sought herein beyond were the powers of any quasi-judicial bodies under the statute to grant or issue.
52. In the *Attorney General v Tolphine Nafula & others* [2020] eKLR, the Court of Appeal held that jurisdictional issues must be determined first before the court issues any conservatory orders or interim orders to avoid any judicial overreach or usurpation of jurisdiction.
53. In *Samuel Kamau Macharia v KCB & 2 others* [2011] eKLR, the court held it could not arrogate it itself jurisdiction exceeding what was conferred by law.
54. In *Ahmed Ismail Adan & 7 others v The National Constituency Development Fund Board & 2 others* [2017] eKLR, the court held it must exercise restraint and give an opportunity to the relevant constitutional bodies or state organs to deal with a dispute under the provisions of the parent statute, especially where there existed sufficient and adequate mechanism to deal with a specific issue or dispute and that the jurisdiction of the court should not be invoked until such mechanisms were exhausted.
55. In *Okiya Omtata Okoiti v KPLC & 10 others* [2018] eKLR citing with approval *Patrick Musimba v NLC & 4 others* [2016] eKLR and *Republic v NEMA exparte Sound Equipment Ltd* CACA No 84 of 2010 [2011] eKLR the court held where there was a provision for redress for the violations of constitutional rights and freedoms available elsewhere that redress must be pursued within the rubric provided. The court held it must exercise restraint and first give an opportunity to the relevant state bodies or organs to deal with the dispute as provided under the relevant statute.
56. Further, the court citing with approval *Samson Vuko v Nelson Kilimo & 2 others* [2016] eKLR, stated that wherever an act of parliament provided for a clear procedure or mechanism for redress the same ought to be strictly followed first before resorting to the court in line with Article 159 (3) (c) of the *Constitution* which expressly recognized alternative dispute resolutions mechanism.
57. In *Republic v Land Adjudication and Settlement Officers, Tigania sub-county and another* [2021] eKLR, this court held Section 9 of the *Fair Administrative Actions Act* mandates parties to exhaust internal disputes mechanisms before resorting to court. This court citing with approval *Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others* [2015] eKLR held the exhaustion doctrine was sound one and serves the purpose of ensuring that there was a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside court.
58. Applying the foregoing principles and reasoning, the petitioner avers the nature of the issues and prayers sought in this petition are beyond the scope of the quasi – judicial bodies set out under Sections 56 and 70 of the *Forest Management and Conservation Act* and the rules made thereunder. Further, the petitioners aver they have a legitimate expectation herein given the petitioners hold pre-qualification



status as opposed to the general public the respondents have invited to bid or tender alongside them which catapults the issues raised to constitutional questions that can only be determined by a constitutional court.

59. In *Nyeri Timber Manufacturers Association and 3 others v Kenya First Service and 3 others* (2018) eKLR the court held Section 70 (9) and (b) of the *Forest conservation and Management Act* as regards permits licences, special use licence for forest products required any dispute thereof to be in first instance filed at the lowest possible structure and if not resolved, at National Environment Tribunal and thereafter the Environment and Land Court, irrespective of whether the dispute was of commercial nature or not.
60. The court citing with approval *Methodist church Kenya Trustees & another v Rev. Jeremiah Muku & another* [2013] eKLR and Lord Diplock in *Harrison v Attorney General of Trinidad and Tobago* [1980] A.C 265 held that the notion that whenever there was failure by an organ of government or public authority or public officer to comply with the law that entailed contravention of some constitutional human rights or fundamental freedoms was fallacious and should not be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.
61. In *Ernest C.O Muga v Attorney General* [2018] eKLR the court held a constitutional court should not be misused for the determination of ordinary civil and legislative disputes that are made to masquerade as constitutional litigation seeking to enforce fundamental rights. Citing with approval *Royal Media Services Ltd v the A.G* Court of Appeal No 45 of 2012 the court held the trend of constitutionalizing virtually everything was actually an abuse of court processes and needed to be nibbled in the bid and frowned upon.
62. Further the court cited with approval *Francis Gathangu v Kenyatta University* [2018] eKLR where it was held a labour dispute brought as a constitutional petition was unsuitable since there was a specific statute for its remedies.
63. In this matter the petitioners are seeking declaratory orders questioning a moratorium imposed on 27.2.2018. They urge the court to quash a task force set vide Gazette Notice No 28 of 26<sup>th</sup> February 2018. The petitioners are also questioning the alleged partial moratorium invitation of bids dated November 2031, to the general public yet they have a pre-qualification status granted prior to the moratorium by the respondents.
64. The petition was filed on 11<sup>th</sup> March 2022. This was close to four years and four months respectively after the moratorium gazettment, constitution of the task force and the invitation of bids and tenders on 2018 and November 2021 respectively.
65. There has been no explanation for the delay in filing the petition by the petitioners. The petitioners appear to be basing their claim on a legitimate expectation solely on the pre-qualification aspects for the financial year 2018 prior to the ban. There is no evidence placed before the court on whether the petitioner's ought for and were denied participation in the task force among which issues to be determined was the contractual arrangements issuance of permits/licenses and the stake holders' engagement.
66. The respondents allege this is a purely contractual dispute masquerading as a constitutional controversy hence there should be no conservatory orders particularly on account of Article 69 (1) and (3) of *the constitution* and the *Forest Conservation and Management Act*.
67. In *B.P.A v Directors Brook House School and 3 others DPGT (proposed) interested party* (2020) eKLR, the court held the issue of violation of consumer rights could attract both statutory and constitutional remedies and that issues arising as contractual relationships also call for the interpretation of *the*



- constitution. The court has been asked to find this petition as one of those cases in which other available remedies may not be adequate as held in *Bench Murage v Fineserve Africa Ltd & 3 others* [2015] eKLR.
68. In my view, the petition herein transcends contractual relationships between the parties. Consequently, it requires ventilation on merits before a constitutional court.
69. As regards whether the petitioners are entitled to conservatory orders, a party seeking such orders as held in *Gatirau Peter Munya v Dickson Mwenda Kithinji and 2 others* [2014] eKLR must demonstrate irreparable harm and high probability of success. The court went on to hold that conservatory orders should be granted on the inherent merit of a case bearing in mind the public interest, constitutional values and principles, proportionate magnitudes and the priority levels attributable to the relevant causes.
70. The petitioners in this matter have the duty to demonstrate an arguable *prima facie* case with a probability of success and in that absence of conservatory orders they were likely to suffer. Secondly, the petitioners have to satisfy the court that by granting the conservatory orders it will enhance the constitutional values and objects of a specific right or freedom; that the orders are not granted, the petition or substratum will be rendered nugatory and lastly, the court should consider the public interest and the relevant material facts in exercising its discretion.
71. In this matter the petitioners have not stated why they did not invoke Sections 56 and 70 of the *Forest Management and Conservation Act* in the first instance in 2018. It is not clear why the petitioners had to wait for four years to come and question the constitutionality of the moratorium, the task force gazette and mandate and four months after the alleged partial lifting of the ban done in November 2021.
72. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125, the court held a *prima facie* case is established if based on the material placed before the tribunal a right has been infringed calling for a rebuttal from the other party.
73. In this petition the petitioners are alleging breach of a contractual obligation based on pre-qualification status acquired in 2018. There are no contracts attached to the supporting affidavit binding the respondents to certain legal and constitutional rights for this court to enforce. Similarly, there is no evidence showing that the applicants are likely to suffer irreparable damages which cannot be quantified.
74. If anything, the losses suffered or likely to be suffered by the petitioners are quantifiable and recoverable through other means other than by way of conservatory orders.
75. In sum I find that the petitioners raised constitutional issues beyond the alleged contractual obligations requiring this court to determine on merits. That notwithstanding and given the inordinate delay as well as in the public interest I decline to grant any conservatory orders at this stage.
76. The petition shall however be listed for hearing on priority basis.
- Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 4<sup>TH</sup> DAY OF MAY, 2022**

**HON. C.K. NZILI**

**ELC JUDGE**

In presence of:



Kieti for 1<sup>st</sup>-4<sup>th</sup> respondents

