



**Hassan v Senate of the Republic of Kenya & 3 others; Council of County Governors (Interested Party) (Petition E001 of 2024) [2025] KEHC 2850 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2850 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
PETITION E001 OF 2024  
HM NYAGA, J  
MARCH 6, 2025**

**BETWEEN**

**HON ABDI IBRAHIM HASSAN ..... PETITIONER**

**AND**

**THE SENATE OF THE REPUBLIC OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**COUNCIL OF COUNTY GOVERNORS ..... INTERESTED PARTY**

**RULING**

1. Before me is an application dated 4<sup>th</sup> October, 2024 seeking the following orders.
  - a. That this application be certified urgent, service be dispensed with and be heard ex-parte in the 1<sup>st</sup> instance.
  - b. That the Honourable court be pleased to issue a CONSERVATORY ORDER restraining the Respondent and/or particularly the 3<sup>rd</sup> and 4<sup>th</sup> Respondents either by themselves or their agents, employees and/or servants from proceeding with and/or acting upon the recommendation by the Senate Standing Committee on Labour and Social Welfare made on 1<sup>st</sup> October, 2024 recommending arrest and prosecution of the Petitioner for alleged disobedience of the summons dated 19<sup>th</sup> September, 2024 or in any manner interfering with the Petitioner’s liberty pending the hearing and determination of the Application filed herewith.



- c. That the Honourable Court be pleased to issue a CONSERVATORY ORDERs restraining the Respondents and in particular the 3<sup>rd</sup> and 4<sup>th</sup> Respondents either by themselves or their agents, employees and/or servants from conducting any investigations in regard to the recommendations and/or Resolution made by Senate Standing Committee on Labour and Social Welfare on 1<sup>st</sup> October 2024 directing the Inspector General of Police and the DPP the 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein to investigate and recommend prosecution of the Petitioner pending the hearing and determination of the Application filed herein.
  - d. That the Honourable court to please to issue a CONSERVATORY ORDER restraining the Respondents and/or particularly the 3<sup>rd</sup> and 4<sup>th</sup> Respondents either by themselves or their agents, employees and/or servants from proceedings with and/or acting upon the recommendation by the Senate Standing Committee on Labour and Social Welfare made on 1<sup>st</sup> October 2024 recommending arrest and prosecution of the Petitioner for alleged disobedience of the Summons dated 19<sup>th</sup> September, 2024 or in any manner interfering with the Petitioner's liberty pending the hearing and determination of the petition.
  - e. That the Honourable court be pleased to issue a CONSERVATORY ORDERS restraining the Respondents and in particular the 3<sup>rd</sup> and 4<sup>th</sup> Respondents either by themselves or their agents, employees and/or servants from conducting any investigations in regard to the recommendation and/or Resolution made by Senate Standing Committee on Labour and Social Welfare on 1<sup>st</sup> October, 2024 directing the Inspector General of police and the DPP the 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein to investigate and recommend prosecution of the petitioner pending the hearing and determination of the petition filed herein.
  - f. That the Honourable court be pleased to issue CONSERVATORY ORDERS suspending Application of section of the Parliamentary, Powers and Privileges Act, Cap 6 [Revised Edition, 2022] pending the hearing and determination of the application and petition filed herewith.
  - g. That costs of the application be borne by the Respondents.
2. The Application is supported by the grounds set out on its face and the supporting affidavit of the Applicant sworn on even date.
  3. In a nutshell the applicant states that he is the Governor, Isiolo County. That on 1<sup>st</sup> October 2024 the Senate Standing Committee on Labour and Social Welfare (Committee) made a resolution of the house recommending that the Inspector General of Police to arrest him and surrender him for prosecution by the Director of Public Prosecution (DPP) on the allegation of disobedience of lawful summons requiring his utterance before the said Committee. That the said Committee found him guilty of disobedience of lawful summons and fined him Ksh 500,000/- without affording him an opportunity to be heard contrary to the tenets of Articles 25(2), 27, 47, 48 and 50 of *the Constitution* of Kenya, 2010, which embody the principles of fair trial, equality before the law, for reasonable and lawful administrative action, access to justice and fair hearing.
  4. The Applicant further depones that the Committee's resolution to punish him was not arrived at on the basis of reasonable lawful and relevant consideration rather it was actuated by malice.
  5. The Applicant further avers that his failure to appear before the said Committee was not out of disrespect but was occasioned by the fact that he had appearances before various Committees of the Senate including Finance, County Public Investments and Special Funds Committee and PAC which were all slated for the same month. That he had submitted a reports dated 23<sup>rd</sup> May 2024 and 26<sup>th</sup> August 2024, which were comprehensive and answered in totality the issue raised.



6. The Applicant states that while he appreciates the powers of the Senate and its role in the implementation of *the Constitution*, the powers of the Senate under Article 93(3) of *the Constitution* should not be exercised arbitrarily and capriciously.
7. The Applicant avers that he has appeared virtually before almost all the Senate Committees without lawful justification, under the influence of Hon Adan Dullo Fatuma the Senator, Isiolo County who is intent on settling political scores with him.
8. That in acting in a quasi-jurisdiction role, the Senate ought not to act in bad faith or consider extraneous factors. That the pressure exerted by Senator Fatuma vitiates the Senate's exercise of its oversight role.
9. That the Committee's decision recommending his arrest and prosecution, without affording him an opportunity to be heard was unlawful, unreasonable and procedurally unfair and the intended action flies in the face of Article 157, 49, 39, 29, 25, 27, 24 and 19 of *the Constitution*.
10. The Applicant further depones that under Article 20 of *the Constitution* every state organ, body and person are bound to apply and interpret *the Constitution* in a manner that serves the public interest.
11. It is the Applicant's case that the Committee's decision to prosecute him flies in the face of the provisions of article 20(2) of *the Constitution*.
12. It is also deponed that this court has powers, under Article 23 as read with Article 165 of *the Constitution*, to hear and determine an application for redress for denial, violations, infringement of or threat to a right as fundamental freedom in the Bill of Rights.
13. The applicant further avers that the provisions of sections 19(1) and (2) of the *Parliamentary Powers and Privileges Act* are unconstitutional the same arrogate the discretionary powers of the Senate to impose sentence.
14. In response, the 1<sup>st</sup> Respondent file a replying affidavit sworn by Jeremiah Nyegenye, C.B.S. who is its Clerk and Secretary to the Parliamentary Service Commission.
15. In a nutshell it is averred that the 1<sup>st</sup> Respondent is established under Article 93 of *the Constitution* and under Sub-Article (3) thereof, the Senate is bestowed the powers to inter alia, determine the allocation of revenue to the counties and exercise oversight over national revenue allocated to County Governments. That under Article 125 of *the Constitution*, the Senate is empowered to:-
  - a. Enforce the attendance of witnesses and examine them on oath, affirmation or otherwise.
  - b. Counsel the production of documents and
  - c. Issue a commission as request to examine witnesses abroad.
16. It is further averred that under the Parliamentary Power and Privileges Act (the Act) at Section 18,19 and 27, the 1<sup>st</sup> Respondent or its Committee is empowered to impose such fine, not exceeding Ksh 500,000/- to any witness who is duly summoned and fails to appear and fails to satisfy the relevant house or Committee on the reasons for the absence.
17. It is further deponed that the petitioner/applicant was duly served with a letter dated 20<sup>th</sup> February 2024 in which he was requested to submit a response to the Committee on issues raised by the Senator for Isiolo, the Hon Fatuma Dullo. That the applicant did not respond to the letter and 8<sup>th</sup> May 2024 the Committee resolved to issue a reminder to him, which it did vide a letter dated 14<sup>th</sup> May 2024. That the County Government of Isiolo responded to the said letter vide its response by the County Secretary



- and Head of County Public Service dated 23<sup>rd</sup> May 2024. That the Committee found discrepancies in the report and resolved to invite the applicant to appear before on 27<sup>th</sup> August 2024.
18. That the applicant failed to honour invitations to appear before the Committee on 27<sup>th</sup> August 2024 and the Committee resolved to invite him on 16<sup>th</sup> September 2024 , and again he failed to attend. That considering the gravity of the matter and the inadequacy of the responses to the issue raised, said Committee summoned the Petitioner to appear in person before it on 1<sup>st</sup> October 2024 to respond to the issues raised. That, again, the applicant did not show up. That under its powers under section 19 (1) and (3) of the Act the Committee can find the petitioner guilty of an offence under the said Act and impose the penalty prescribed by the law.
  19. It is further averred that the allegations of influence by Hon Dullo are not supported by any evidence.
  20. It is also deponed that the 1<sup>st</sup> Respondent has acted within its mandate and the onus is on the Petitioner to justify his absence before the Committee.
  21. It is also submitted that a suspension of the powers of the 1<sup>st</sup> Respondent under section 19 of the Act would be tantamount to infringement of the independence of Parliament.
  22. It is thus deponed that the Petition and the Application are incompetent, misconceived and an abuse of the court process. That having failed to demonstrate why the court's discretion should be exercised in his favour, the Application and Petition should be dismissed with costs.
  23. The 4<sup>th</sup> Respondent filed grounds of opposition dated 14<sup>th</sup> October 2024. The grounds set out are as follows;
    - a. That the instant Application is frivolous, vexatious and an abuse of the court process.
    - b. That the application does not meet the prerequisite requirements for the grant of the Orders sought.
    - c. That the 4s Respondent has a Constitutional and statutory duty to conduct prosecutions under Article 157 of the constitution and this duty cannot be unnecessarily fettered.
    - d. That Article 157(6) (a) mandates the Director of Public Prosecutions to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed.
    - e. That the Applicant is seeking to take away the constitutional mandate of the 4s Respondent contrary to Article 157 (10) of *the Constitution* which states that the DPP shall not require the consent of any person or authority to commence any criminal proceedings
    - f. That the Police under section 24 the *National Police Service Act*, have the mandate of carrying out investigations and if there is any offence alleged to have been committed then the police will arrest and charge the perpetrators of the Crime.
    - g. That the instant application is pre-mature and purely speculative as the Director of Public Prosecution has not decided whether or not the Applicant is going to be charged with any offence THAT the Applicant has not demonstrated that there is a danger of violations of his Constitutional rights by the 4n Respondent.
    - h. That there is no real or imminent danger that the Applicant is going to be arrested.
    - i. That the laws of Kenya provide essential safeguards for a fair trial which is also entrenched in *the Constitution* of Kenya 2010.



- j. It has not been demonstrated that the applicant will not be accorded a fair trial before the subordinate court to warrant the granting of the orders sought.
  - k. That the instant application is only meant to prevent the Director of Public Prosecution and the Police from carrying out their core mandates.
24. When the matter came up for directions and the parties were directed to file their respective submissions which I will not rehash word for word. It suffices to state that I have duly considered them and will, where necessary, address shortly.
25. It is noteworthy that this court gave clear directions that the conservatory orders that had been issued herein did not impede the 1<sup>st</sup> Respondent or its Committee summoning the petitioner/applicant as provided by the laws

### **Analysis and Determination**

26. Having considered the application, the affidavit in support and the responses to it, I opine that the issues that arise for determination are:-
- a. Whether the Petition raises a constitutional issue or not.
  - b. Whether section 19 of the Act is unconstitutional
  - c. Whether the Senate has powers to summon the petitioner and take action for failure to honour summons.
  - d. Whether the applicant has demonstrated a prima facie case with a likelihood of success
  - e. Who should bear the costs of this application.
27. The question of whether this petition raises a constitutional issue can be assessed against the principles set out in *Anarita Karimi Njeri vs Republic* [1979] eKLR where it was held that a Constitutional petition should set out with a degree of precision the petitioner's complaint, the provisions infringed and the manner in which they are alleged to be infringed.
28. This principle was later reaffirmed by the Court of Appeal in the case of *Mumo Matemo vs Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR when the Court at paragraph 87(3) of the judgment stated as follows: -
- “It is our finding that the petition before the High Court was not pleaded with precision as required in Constitutional Petitions. Having reviewed the petition and supporting affidavit we have concluded, that they did not provide adequate particulars of the claims relating to the alleged violations of *the constitution* of Kenya and the *Ethics and Anti-Corruption Commission Act*, 2011, accordingly the petition did not meet the standard enunciated in the *Anarita Karimi Njeru* case.
29. The court in *Peter Michobo Muiro vs Barclays Bank of Kenya Ltd & another* [2016] eKLR while discussing the Principles enunciated in *Anarita Karimi Njeru's* case observed as follows: -
- “The principle, as this court has previously stated, does not however equate absolute precision. There is no need for absolute and artificial specificity: see *Kevin Turunga Ithagi vs Hon. Justice Fred Ochieng & 5 Others* (No.1) HCCP No.442 of 2015 [2015] eKLR. The general approach should be that each case must be independently viewed and understood by the court and where the court as well as the Respondent can painlessly identify and



understand the petitioner’s case as well as the constitutional trajectory the case takes, then the merits of the case ought to be ventured into. Stalling the case through the technicality of want of formal competence will take a back seat. As was stated in the case of *Donovan Earl Hamilton –v- Ian Hayles* (Claim No. 2009 HCV 04623) by the Supreme Court of Judicature in Jamaica, the striking out of pleadings in constitutional petitions should be done only in the clearest of cases.

The principle established in the *Anarita Karimi Njeru’s* case should thus not be applied line hook and sinker and the court must always be cautious to avoid impeding the course of justice by denying a party access to the court: see *Samuel Gunja Sode & Another vs The County Assembly of Marsabit & 2 others* [2016] eKLR, *Nation Media Group Ltd –v- Attorney General* [2007] 1 EA 261 as well as the Court of Appeal decision in *Peter M. Kariuki –v- Attorney General* [2014] eKLR.”

30. It is thus well settled law that in a constitutional petition therefore, a party is not supposed to merely cite constitutional provisions. He/she must with some reasonable degree of precision identify the constitutional provisions that are alleged to have been violated or threatened to be violated and the manner of the violation and/or threatened violation and state some particulars of alleged infringement to enable the respondent to be able to respond to each allegation accordingly.
31. In short, to succeed, the petitioner must be precise in addressing the rights that are violated or threatened.
32. From the Petition, the Applicant was categorical that his rights under Articles 10, 19,20(1)(2), 22, 24,25,22 and 29 were violated when the 1<sup>st</sup> Respondent’s Committee imposed a fine against him in his absence.
33. It is further stated that section 19 of *Parliamentary Powers and Privileges Act* is unconstitutional in that it curtails the powers of the Director of Public Prosecution (DPP) to make independent and impartial prosecutorial decisions, contrary to Article 157 of *the Constitution*.
34. It is further stated that 1<sup>st</sup> Respondent cannot exercise its powers under Article 96 of *the Constitution* in a manner that cripples the oversight of the County Assembly of Isiolo and other organs, in violation of Article C(21 and 189 (1) of *the Constitution*.
35. Looking at the material before me, it is my finding that the petition raises valid questions on alleged violation of the petitioner’s rights, the power of the 1<sup>st</sup> Respondent vis –a- vis the powers of the DPP and the Applicant’s right to a fair process.
36. Thus, the petition as drawn meets the threshold set out in *Anarita Karimi Case* (supra). Whether the facts of this matter support the allegations made in the petition are to be considered in this Ruling. I will revisit the issue later.
37. The 1<sup>st</sup> Respondent’s argument is that the prayers sought by the petitioner and the grant of the conservatory orders are an infringement of the independence of Parliament.
38. It is well settled now that the powers of this court under Article 23 of *the Constitution* are not limited in any sense and when there is proof of violation of any fundamental right, by any institution, this court has a duty to step in.
39. It is thus a false argument that Parliament is supreme and immune from reach of this court, when a question of violation of fundamental rights arises.



40. The courts powers to grant conservatory orders are anchored on Article 23 of *the Constitution* which provides as follows:-

Authority of courts to uphold and enforce the Bill of Rights

- (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
  - (2) Parliament shall enact legislation to give original jurisdiction in appropriate cases to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
  - (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—
    - (a) a declaration of rights;
    - (b) an injunction;
    - (c) a conservatory order;
    - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
    - (e) an order for compensation; and
    - (f) an order of judicial review
41. The law on the question of conservatory orders is now well settled and is backed by myriads of authorities for instance, in *Centre for Rights Education and Awareness (CREAW) & another v Speaker of the National Assembly & 2 others* (2017) eKLR the Court held that:-

“A party who moves the court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under threat of violation; are being violated or will be violated and that such violation, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending case or Petition.”

42. The principles in regard to the granting of interim or conservatory orders were also outlined by the Supreme Court in the case of *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others*, Supreme Court Application NO. 5 of 2014 (2014) eKLR, where the Court held that:-

“These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.



“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 supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

43. Therefore, if this court is to find that the petitioner has established a prima facie case, that there was violation of fundamental rights, then it is entitled to issue the conservatory orders sought.
44. It is conceded by the petitioner that the 1<sup>st</sup> Respondent under section 18 of the *Parliamentary Powers and Privileges Act*, has powers to invite or summon any person in exercise of its functions under *the Constitution* and statute.
45. It is also not in dispute that the Petitioner was duly served with the notices that required him to appear before the Committee on several occasions. The committee graciously extended time for the applicant to appear before it, but he did not.
46. The petitioner has not tendered evidence that would explain his absence before the Committee on the 1<sup>st</sup> October 2024, and earlier dates, despite having been served with summons.
47. Consequently, the 1<sup>st</sup> Respondent was entitled to take any action and specifically under section 19 of the Act which provides as follows:-

Procedure if witness fails to appear

- (1) Where a witness summoned does not appear, or appears but fails to satisfy the relevant House of Parliament or committee, the relevant House or Committee may impose upon the witness such fine, not exceeding five hundred thousand shillings, having regard to the witness’ condition in life and all the circumstances of the case.
  - (2) A person may pay the fine under subsection (1) to the Clerk of the relevant House.
  - (3) Parliament or its committee may order the arrest of a person who fails to honour a summons.
48. The Applicant has also sought the suspension of the said section terming it as unconstitutional in that subsections (1) and (2) create a strict liability offence which then usurps the powers of the National Police Service and the Director of Public Prosecutions to investigate and prosecute the offence respectively.
  49. In my view and in agreement with the 1<sup>st</sup> Respondent, this court ought to refrain from the suspension of an Act of Parliament at an interlocutory state, before proper submissions are made before it. It is also noted that the said Act was the subject of litigation in *Apollo Mboya vs Attorney General and 2 others* (2018) eKLR, where the court only found sections 7 and 11 thereof to be unconstitutional. I am not aware of any other decision that has held to the contrary. As such the prayer to suspend section 19 of the Act is declined.



50. The next question is that of the of the directions of the Committees to have the applicant arrested and prosecuted.
51. It appears like the Committee actually issued the orders, since there is no denial by the 1<sup>st</sup> respondent as to this averment.
52. However, as has been correctly stated by the 4<sup>th</sup> respondent, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are independent institutions/offices that are expected to make impartial decisions in execution of their functions. It is conceded that the 4<sup>th</sup> respondent has not made the decision to prosecute the applicant at all. Therefore, the application is premature and speculative.
53. That said, the court ought to be wary of being seen to micromanage other Constitutional or statutory institutions in their execution of their mandate.
54. The applicant has blamed the senator, Isiolo County for the situation he finds himself in. I don't find any merit in that argument. The Senator's first responsibility as a member of the the 1<sup>st</sup> Respondent is to provide an oversight role over management of public funds at the county level. That role cannot be downplayed and once a governor is summoned, he/she is obligated to attend such summons. Any absence without good cause may result in the 1<sup>st</sup> Respondent acting as prescribed by a statute.
55. The 4<sup>th</sup> Respondent has conceded that it cannot be directed by anyone in exercise of its constitutional or statutory functions.
56. The 1<sup>st</sup> Respondent also admits that it has no powers to direct the 3<sup>rd</sup> or 4<sup>th</sup> respondents to arrest and prosecute the applicant. To that extent I agree with the applicant.
57. However, looking at the matter in totality, it is my finding that the applicant has not presented a prima facie case to warrant a grant of the orders sought.
58. As I conclude, I wish to state that from the evidence adduced vide the affidavits, the petitioner is the author of his own misery. He was given sufficient time to appear before the Committee, but he was a no-show. There was no explanation given as to why he was absent.
59. It appears like the petitioner decided to put the blame on the Senator, Isiolo for his tribulations. From the material before me, there is nothing to suggest that there was anything personal. The Petitioner were made aware of the request by the Senator in writing, and what he was required to do. The personal invitations and summons were issue by a lawfully constituted Committee and not the senator. Therefore, the petitioner's argument on this issue cannot be entertained.
60. After analyzing the matter I find that the applicant has not established that the orders issued by the 1<sup>st</sup> Respondent violate his rights. He had a right to appear before the Committee but he failed to do so, without any explanation.
61. That said, and in view of the concession by the 4<sup>th</sup> Respondent, I find that, in the event that indeed such orders were issued, the same cannot be lawful for the reasons given hereinabove.
62. Therefore, as regards this application I make these orders.
  - a. The 1<sup>st</sup> respondent has powers to summon the Applicant/Petitioner under section 18 and deal with him in case of failure to punish him under section 19 of the *Parliamentary Powers and Privileges Act*.
  - b. That the 1<sup>st</sup> respondent has no powers to direct the 4<sup>th</sup> Respondent on the prosecution of applicant, which is an independent institution under Article 157 of *the Constitution*.



- c. The court declines to issue conservatory orders in regard to section 19 of the *Parliamentary Powers and Privileges Act*.
- d. Save for the above findings, the application is dismissed.
- e. Costs will abide by the outcome of the petition.

**DATED, SIGNED & DELIVERED AT MERU THIS 6<sup>TH</sup> DAY OF MARCH, 2025.**

**H.M. NYAGA**

**JUDGE**

