



**Kamau & another v Clerk, Senate Parliament & 3 others (Constitutional Petition E031 of 2024) [2025] KEHC 4059 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CONSTITUTIONAL PETITION E031 OF 2024  
SM MOHOCHI, J  
MARCH 14, 2025**

**BETWEEN**

**BENSON MACHARIA KAMAU ..... 1<sup>ST</sup> PETITIONER**

**SIMON SANKALE NASIEKU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE CLERK, THE SENATE PARLIAMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE SENATOR, TABITHA KARANJA KEROCHE ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY OFFICE MANAGER, NAKURU COUNTY SENATOR .... 3<sup>RD</sup> RESPONDENT**

**BRANCH MANAGER EQUITY BANK(K) LTD GATE HOUSE**

**BRANCH ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before me are two Notices of Motion, the 1<sup>st</sup> Application is dated 4<sup>th</sup> November 2024 filed pursuant to Sections 1A, 3, and 3A of the Civil Procedure Act Chapter 21 and Order 40 of the Civil Procedure Rules; the Penal Code Act Chapter 63, the Banking Act Chapter 488, The Tax Procedure Act 2015 and The Public Finance Management Act 2012, Section 42 of The Leadership and Integrity Act and all enabling applicable relevant laws of The Republic of Kenya including Articles 3(1),10, 19-23,25,27,28,43,48,50, 96, 225-227 & 258-260 of the Constitution of Kenya 2010 and the Petitioners seek the following reliefs;

I. Spent

II. That, an order freezing Bank Account number XXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru or any other similar account be frozen forthwith until the determination of this Notice of Motion and/or annexed petition.



- III. That, the clerk to the Senate be refrained forthwith from releasing any further funds under Articles 96 & 225-227 of *the Constitution* to The Senator Nakuru County at Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru and/or any other account until the determination of this Notice of Motion and/or the petition.
  - IV. That, an Audit Independent Report be furnished by a certified Public Accountant enjoined by The Auditor General on the operation of The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru be filed and served pending the determination of this Notice of Motion and/or the petition.
  - V. That, a Criminal Investigation Report be furnished, on the operation of The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank (K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru and/or any other account, by The Directorate of The EACC Nakuru Regional Officer for further orders of the trial Court pending the determination of this Notice of Motion and/or the petition.
  - VI. That, the costs of making and filing the Audit Report and/or the Criminal Investigation Report on the operation of The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru be borne by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
  - VII. That, the trial Court be at liberty to issue further orders consequent to the Audit Report and/or the Criminal Investigation Report on the operation of The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru.
  - VIII. That, the Respondents bear the costs of this Application at the higher scale pursuant to the Remuneration Order.
2. The 1<sup>st</sup> Application is premised on the grounds that, the urgency flow from the unfettered and the continued operations The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru.
  3. That, the urgency flow from the unfettered and the continued deceitful and fraudulent expropriations of the Public Funds by the Respondents who are perpetrating their deceitful and fraudulent expropriation of public funds availed under Articles 225-227 of *the Constitution* of Kenya 2010 using The Bank Account number XXXXXXXXXXXXXXXX at Equity Bank(K) Ltd Gate House Kenyatta Lane Nakuru Branch City of Nakuru.
  4. That, the Respondents are in unfettered and continuous breach of the *Penal Code Act* Chapter 63; the *Public Finance Management Act* 2012; the Ethics and Anti Economic Crimes Act; the Ethics and Conduct of Public Officers Act, with impunity unless the Court issue forthwith, the orders sought.
  5. That, the Respondents are in unfettered and continuous violation of *the Constitution* of Kenya 2010 with naked and unfettered impunity in particular in violation of Articles 3(1),10,19-23, 25, 27, 28, 40, 43, 47, 48, 50, 96, 225-227 of *the Constitution* of the Republic of Kenya with impunity unless the Court issue forthwith the orders sought herein above.
  6. That, the Respondents have deceitfully fraudulently expropriated Public Funds upon impersonating the petitioners in the schemes to expropriate public funds entrusted under The *Public Finance*



Management Act for the period commencing March 2023 to date with impunity unless the Court issue forthwith the orders sought herein above.

7. That, the Application flows from and is supported by Certificate of Urgency and the supporting affidavit sworn at Nakuru by Benson Macharia Kamau and the Annexed Petition by both Benson Macharia Kamau and Simon Sangale Nasieku plus any further oral submissions imminent therefrom.
8. The Supporting Affidavits of the Petitioners regurgitates the contents of Application.
9. That, the Branch Manager at Equity Bank (K) Gate House Branch maintains the Operation of the Bank Account Number XXXXXXXXXXXXXXXX by the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents to deceitfully and fraudulently defraud and expropriate public funds entrusted to the by 1<sup>st</sup> Respondent from the National Appropriation Funds under and in utter violation of the Articles 225-227 of The Constitution of Kenya 2010 with impunity unless the Court issue forthwith the orders sought herein above.
10. That, the Notice of Motion Application is not dilatory and/or is not bad in law and/or malicious and/or prejudicial and/or embarrassing and/or harassing and/or is not vexatious and/or is not in any way in breach of any statute and/or in any way in violation of the Constitution of Kenya 2010.
11. That, none of the Petitioners is privy and/or in consent to the deceitful and fraudulent operations in expropriation of The Public Funds made available under and pursuant to Articles 96 & 225-227 of the Constitution of Kenya 2010 read with Public Finance Management Act 2012 by the Respondents in the breach of the applicable relevant statutes and/or in violation of the applicable relevant articles of the Constitution of Kenya 2010 at all so far.
12. That, the 1<sup>st</sup> Petitioner has never received any money amount Kshs 25,765 paid by the County Office Manager County of Nakuru Senator's Office under the schemes dubbed Financial Returns for Oversight Kitty October 2023 to March 2024 at all so far per se.
13. That, the 1<sup>st</sup> Petitioner has never participated in the incidents generating the Minutes of Meeting held at 18th September 2023 at Nakuru County Senators Office at 9.00Am.
14. That, the 1<sup>st</sup> Petitioner has never participated in the verification of the request for Quotations" NKR/SEN/09/2023" conducted allegedly on 05/09/2023 at all so far.
15. That, the 1<sup>st</sup> Petitioner has never participated in the public Engagement occurrences involving any of the Eleven (11) Sub Counties under The Senator County of Nakuru as scheduled for 24th October 2023 to 14th February 2024 at all so far per se.
16. That, the 1<sup>st</sup> Petitioner has never received any remittance in money amount Kshs 25,765 from the 2<sup>nd</sup> 3<sup>rd</sup> or 4<sup>th</sup> Respondents at all so far.
17. That, the enlisting of the 1<sup>st</sup> Petitioner as beneficiary of the Kshs25,765 is a naked mere forgery and/or a naked perjury per se.
18. That, the Court has the requisite Jurisdiction obligation and duty to rescue forthwith further Public Funds from any further deceitful and fraudulent expropriation of the Public Funds by freezing the Bank Accounts operated at Equity Bank (K) Ltd forthwith plus at any other Bank and Bank Branch hither kept secret by the Respondents from the Petitioners until the Audit Report and the Investigation Report is filed for further consequent Court orders.
19. The 2<sup>nd</sup> Application is the Notice of Motion Application by the Clerk of the Senate (1<sup>st</sup> Respondent) dated 11<sup>th</sup> November 2024 brought under Articles 50(1), 159 and 165 of the Constitution of Kenya, Section 3A and 6 of the Civil Procedure Act Cap 21, Order 2 Rule 15 (1)(d) Civil Procedure Rules seeks:



- i. Spent;
  - ii. That, this Court be pleased to grant orders of stay of these proceedings pending the outcome of the investigations by the Ethics and Anti-Corruption Commission and audit by the Parliamentary Service Commission on the allegations of the misuse of funds of the Nakuru County Senate Office.
  - iii. That, this Court do grant such further, other and / or consequential orders that it deems fit and just to grant in the circumstances;
  - iv. That, costs of this Application be in the cause.
20. The Application is premised on the grounds on its face and the annexed supporting affidavit sworn by the Applicant on the same date.
  21. That the Petitioners herein allege fraud and misuse of the funds allocated to Nakuru County Senate Office to aid in the discharge of functions of the Nakuru County Senator.
  22. That the 1<sup>st</sup> Respondent has received several complaints touching on the financial irregularities and employment disputes from the current and former employees of the Nakuru Senate Office.
  23. That in accordance with the terms of the employment of the staff serving in the offices of the Members of Parliament signed between the said employees and the Hon. Senator, any disputes relating to their employment is determined through arbitration by an Arbitration Panel constituted by the Speaker of the National Assembly and Chairman, Parliamentary Service Commission.
  24. That pursuant to the said provision, all employment disputes emanating from the office of the 2<sup>nd</sup> Respondent were referred to the Chairman Parliamentary Service Commission who has since constituted an arbitration panel to determine the same.
  25. That with regard to complaints of alleged financial irregularity and impropriety in the 2<sup>nd</sup> Respondent's office, the 1<sup>st</sup> Respondent herein authorized a special audit to be carried out on the financial operations of the said office between 7<sup>th</sup> and 9<sup>th</sup> of October, 2024 and the findings of the said audit are awaited.
  26. That it has been reported in the Nation Newspaper of 31<sup>st</sup> October, 2024 that EACC is also investigating the 2<sup>nd</sup> Respondent herein for possible misuse of funds allocated to her office in the FY 2023/2024 for payment of salaries to staff.
  27. That the 1<sup>st</sup> Respondent further notes from the annexures to the application that, the Applicants/ Petitioners herein filed a complaint with the Ethics and Anti-Corruption Commission on 15<sup>th</sup> August, 2024 requesting investigations by the Commission over alleged misappropriation of public funds allocated to the Nakuru Senate Office.
  28. That, it is therefore evident that the allegations and issues made herein are already under active investigations and/or consideration by other competent public bodies.
  29. That, in the circumstances, this Court should stay these proceedings to allow the Ethics and Anti-Corruption Commission and the Parliamentary Service Commission to first discharge their mandate of investigations into alleged misuse of the funds allocated to the office of the 2<sup>nd</sup> Respondent.
  30. That no prejudice or harm that will be occasioned upon the petitioners or any of the parties in these proceedings for the following reasons:



- i. The issues leading to this Petition have already been seized by the Ethics and Anti-Corruption Commission and the Parliamentary Service Commission.
  - ii. The prayers being sought by the Petitioners are a likely outcome of the ongoing investigations and consideration.
  - iii. The results of the investigations by the Ethics and Anti-Corruption Commission may lead to resolution of the issues raised by the Petitioners herein.
  - iv. The results of investigations by the Ethics and Anti-Corruption may lead to prosecution for those found to have misappropriated public funds and recovery of the same.
  - v. The measure initiated by the 1<sup>st</sup> Respondent including approval of conduct of the special audit in the operations of the office is likely to resolve the allegations made by the Petitioners.
  - vi. This Honourable Court still retains residuary jurisdiction to review and consider any decision made by the EACC and the Parliamentary Service Commission.
31. That since the allegations made herein are currently under investigation by the EACC consideration by the Parliamentary Service Commission with the likelihood of being resolved, these proceedings ought to be stayed to await the outcome of the said investigations and or audit.
  32. That the public interest lies in allowing the application for stay pending consideration of the Ethics and Anti-Corruption Commission and the Parliamentary Service Commission.
  33. This Court had initially directed that the 1<sup>st</sup> Application to be heard on the 12<sup>th</sup> November 2024 upon compliance by the parties, on the scheduled hearing the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were yet to comply and sought for more time, the 1<sup>st</sup> Respondent on its part indicated they had an application equally filed under urgency seeking to stay the proceedings. The Court Allowed parties more time while directing that both the 1<sup>st</sup> and the 2<sup>nd</sup> Applications would be heard concurrently on the basis of filed written submissions and the 23<sup>rd</sup> January 2025 was fixed as the date to mention the matter to determine compliance by the parties and fix a ruling date.
  34. On the 23<sup>rd</sup> January 2025, the 1<sup>st</sup> Petitioner had not complied and sought a further 7 days, the 2<sup>nd</sup> Petitioner indicated that he was opposed to the directions by the Court to consider both motions and he demanded for a ruling on his oral opposition.
  35. The Court delivered an ex-tempore Ruling dismissing the 2<sup>nd</sup> Petitioner's Objection on the basis that the Petitioners moved Court on certification of urgency and that considering the two Applications concurrently is to save upon the rare judicial time and efficacy demands both Applications be considered simultaneously. That when parties move the Court they should be willing to be directed, and parties cannot themselves dictate as to how their case should be conducted.
  36. The Court allowed the parties a further fourteen days to comply and a Ruling date was scheduled for the 25<sup>th</sup> February 2025.
  37. This Court recalls that the 2<sup>nd</sup> Petitioner was dissatisfied with the Court Directions and he indicated his intention to Appeal the decision of the Court.
  38. The Delivery of this Ruling is slightly delayed having been deferred once on the 11<sup>th</sup> of March 2024.
  39. On her part the 2<sup>nd</sup> Respondent in her filed sworn Affidavit dated 18<sup>th</sup> November 2024 Hellen Chepngetich Swears and avers that, she is the Current County Office Manager of the 2<sup>nd</sup> Respondent



- and the 3<sup>rd</sup> Respondent in the instant motion with personal knowledge of the matter hence fit and competent.
40. That, the contents of the application and Petition dated 5<sup>th</sup> November, 2024 has been read and explained to her by her advocates Kamau Ngigi & Co. Advocates and she has verily understood the same, and believe the same to be mischievous, mistaken, incompetent and devoid of any merit.
  41. That, she has also received counsel from her advocates on record hence have fully understood its tenor, import and purport and wish to respond as thus in opposition.
  42. That, the Petitioners/ Applicant is not entitled to any of the orders sought at all and in particular that the Honourable Court issue orders Freezing the Bank Accounts Number XXXXXXXXXXXXXXXX established at Equity Bank (K) Ltd, Gate House, Nakuru Branch in the title of the County Office Manager.
  43. That, the 1<sup>st</sup> Petitioner/Applicant was an employee of the 2<sup>nd</sup> Respondent, whereof he was working in the office of the 3<sup>rd</sup> Respondent for a period of Twelve (12) Months from 12<sup>th</sup> day of October 2023 to the 31<sup>st</sup> October 2024.
  44. That, the Petitioners have acted in concealment of material facts, by failing to inform the Court that, the dispute herein is before the Parliamentary Service Commission, arbitration panel for consideration and the allegations of misuse of funds is currently under investigation by the Ethics and Anti-corruption Commission, thereby offending the doctrine of exhaustion.
  45. That, there is no material evidence that has been brought before the Court to warrant the orders sought, no criminal charges have been preferred to the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent under the *Anti-Corruption and Economic Crimes Act*.
  46. That, no report has been issued by the Ethics and Anti-corruption commission towards the outcome investigations by the commission over the alleged misappropriation of Funds allocated the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent, she is advised by her aforesaid advocates that, the petition is premature as the Petitioners have not adduced evidence to substantiate their allegation and therefore the Court cannot be used as an investigating organ and or to fact-find the baseless claims such as the ones raised on the instant suit.
  47. That, there is no evidence that has been adduced to warrant the Freezing of the Bank Accounts Number XXXXXXXXXXXXXXXX established at Equity Bank (K) Ltd, Gate House, Nakuru Branch in the title of the County Office Manager, furthermore the 2<sup>nd</sup> Respondent is not a signatory of the said account and as the current County Manager we have already lodged inquiries on the said account and therefore the current management should not suffer due to acts of commission or omission of the former management if any .
  48. That, the application by the Petitioners/ Applicants is a clear abuse of this Courts processes, as the Petitioners have not exhausted the already established mechanisms that effectively and conclusively deals with the issues such the one raised by the Petitioners.
  49. That it is only fair and just that this Court dismisses the instant application and the Petition and or in the alternative stay the proceeding pending the investigation of the issues by the Ethics and Anti-Corruption Commission and the audit by the parliamentary service commission to avert any contradictions in their findings.



50. That, she is advised by her advocates that, this Court has inherent powers to prevent abuse of its process and also to filter out applications that are patently frivolous, vexatious, or legally oppressive and untenable.
51. That, the particulars in the Petition do not indicate or even remotely suggest that the Petitioners has any shroud of right or merit warranting any of the orders of the Court.

### **Applicant's Written Submissions**

52. The Petitioners in this case are Kenyans Citizen and residence of Nakuru County bringing this Petition on their behalf and that of the People of Nakuru County. In order to facilitate the 2nd Respondent in discharging her oversight duties over the County Government as provided for under the Constitution, the 1<sup>a</sup> Respondent dispatched funds to the 2nd and 3rd Respondents.
53. It is a constitutional imperative that the said funds would be used in an open and accountable manner including public participation.
54. It is the Petitioners averment that the 2nd and 3rd Respondent have used the public funds allocated to it by the 1<sup>st</sup> Respondent in a manner that is in total breach of the Constitution and the law. The issue has been reported and is under investigation by the Ethics and Anti-Corruption Commission and the DCI
55. In exercise of their rights under Article 258 (1) which grants every person the right to institute Court proceedings claiming that the constitution has been contravened, or is threatened with contravention, the Petitioners brought the Application dated 5<sup>th</sup> November, 2024 seeking to have orders freezing the 2<sup>nd</sup> Respondent's Account No. XXXXXXXXXXXXXXX held with the 4<sup>th</sup> Respondent and the restrain the 1<sup>st</sup> Respondent from further releasing any funds to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents pending audit of the account and conclusion of investigations by the EACC and the DCI.
56. A dispute is also before the Arbitration Panel established by the Chairman, Parliamentary Service Commission is employment dispute between the 2nd and 3rd Respondents and its employees.
57. The Petitioners have filed a replying affidavit sworn on the 4th day of December, 2024 opposing the Application for stay filed by the 1 Respondent on the ground that this Application does not in any way hinder the EACC and the DCI from continuing with its investigation.
58. The petitioners framed a solo issue as to whether this Court should allow the Orders sought in the Application dated 4<sup>th</sup> November, 2024.
59. That the object of the Public Finance Management Act (PFMA) is articulated in Section 3 of PFMA, which is to ensure public finances are managed at both the National and the County Levels of Government in accordance with the principles set out in the Constitution and public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances.
60. When the public officer mandated to manage public funds fails in its duty, this will amount to violation of National Values and Principles of Governance as provided for under Article 10 (2) (c) of the Constitution of Kenya, 2010 which provides that national values and principles of governance include good governance, integrity, transparency and accountability, When these values are breached, the constitution under Article 258 (1) which grants every person the right to institute Court proceedings claiming that the constitution has been contravened, or is threatened with contravention.



61. It is apparent from the evidence adduced by the Petitioners that there is misuse of public funds by the 2nd and 3rd Respondents. This fact is admitted by the 1<sup>st</sup> Respondent and confirms that the EACC and DCI is in conduct of the matter.
62. That the outcome of the investigations by the EACC and DCI will address the issue of money already misused by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The prayers sought by the Petitioners in the Application dated 5<sup>th</sup> November, 2024 seeks to stop further misuse of public funds pending audit of the account and conclusion of investigations by the EACC and the DCI. The Application dated 4<sup>th</sup> November, 2024 will in no way interfere with the conduct of Investigation by the EACC and DCI.
63. Article 259(1) command Courts to interpret *the Constitution* in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights, permits the development of the law and contributes to good governance. The Purpose of *the Constitution* cannot be to promote misuse of public resources. It is the Petitioners submissions that in order to protect public funds, it tilts in the interest of justice that this Court allows the prayers sought in the Application dated 4<sup>th</sup> November, 2024.
64. As to whether this Court should allow the Application dated 11<sup>th</sup> November, 2024 seeking stay of proceedings pending conclusion of investigations by the EACC and the DCI.
65. Reliance is placed in the case of Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo I held that:
- “Stay of proceedings should not be confused with stay of execution pending appeal, Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justior, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.
66. In *Global Tours & Travels Limited: Nairobi HC Winding up Cause No. 43 of 2000 Ringera J.* (as he then was) stated that: -
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice... the sole question is whether it is in the interest of justice to order a stay of proceeding<sup>s</sup> and if it is, on same terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable case, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.
67. In the Kenya Wildlife Case (Supra), Gikonyo J quoted Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, that:
- “The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not



be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue."

68. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.
69. It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay on this ground must show not merely that the Plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.
70. That stay of proceedings can be entertained only in the most deserving cases as it impacts the right to expeditious trial.
71. The reason advanced by the 1<sup>st</sup> Respondent in seeking stay of execution is that, there is a pending investigation by the EACC and DCI on the allegations of corruption against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. They have however not demonstrated how those investigations will affect the instant application or the main Petition.
72. It is the Petitioners submissions that the 1<sup>st</sup> Respondent has not advanced sufficient reason to warrant grant of Orders for stay of proceedings herein and pray that the Application dated 11<sup>th</sup> November, 2024 is dismissed with costs to the Petitioners.
73. It is the Petitioners submission that the Application dated 4<sup>th</sup> November, 2024 is merited and the same be allowed as prayed. On the other hand, the 1<sup>st</sup> Respondent's Application dated 11<sup>th</sup> November, 2024 lacks merit and the same be dismissed with costs to the Petitioners.

#### **Respondents Written Submissions**

74. The 1<sup>st</sup> Respondent in its written submissions dated 27<sup>th</sup> November 2024, submitted that, the matter was prematurely before the Court, urging for the deployment of the doctrine of judicial restraint to stay the proceedings and await the outcome of active investigations by EACC and the relevant parliamentary committee where the petitioners had already addressed their complaint which were pending.
75. That the allegations of misappropriation of funds was subject to criminal investigations by the DCI and it is admitted by the Petitioners in their supporting documents that they have already reported the matter to the Ethics and Anti-Corruption Commission to investigate the matter. Further, the investigations by EACC have widely been reported in the national newspapers.
76. Further, following the said allegations, the Parliamentary Service Commission, a body charged with facilitating the Office of the 2<sup>nd</sup> Respondent initiated a special audit on the use of the funds allocated to the said office.
77. That in the circumstances, this Court should stay these proceedings to allow the Ethics and Anti-Corruption Commission, the Directorate of Criminal Investigations and the Parliamentary Service Commission, the bodies that already seized of the allegations herein to first discharge their mandate.
78. That the Orders being sought by the Petitioners from this Court have already been actioned on by various public bodies responsible. As such, it is the 1<sup>st</sup> Respondents submission that the proceedings herein will be a waste of precious judicial time unless stayed.
79. Furthermore, this Court still retains residuary jurisdiction to review any decision of either the EACC, DCI or the Parliamentary Service Commission arising out of their investigations and/or audit.



80. Further, under Article 165 (3) (b) of *the Constitution*, this Court has jurisdiction

“to hear any question respecting the interpretation of this Constitution including the determination of the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.”

81. That in the case of Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR provided the following guidelines and principles with regard to the Courts exercise of power involving workings of other bodies as follows: -

“From the course of reasoning emerging from such cases, it is possible to formulate certain principles, as follows:

- c) the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;
- d) for the due functioning of constitutional governance, the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case;”

82. Further, in Diana Kethi Kilonzo -v- Independent Electoral and Boundaries Commission (IEBC) & 2 Others HCCP 359 of 2013 [2013] eKLR the Court observed that:

“We note that *the Constitution* allocated certain powers and functions to various bodies and tribunals. It is important that these bodies and tribunals should be given leeway to discharge thuandate bestowed upon them by *the Constitution* so long as they comply with *the Constitution* and national legislation. These bodies and institutions should be allowed to grow. The people of Kenya, in passing *the Constitution*, found it fit that the powers of decision-making be shared by different bodies. The decision of Kenyans must be respected, guarded and enforced. The Courts should not cross over to areas which Kenyans specifically reserved for other authorities.”.

83. That, from the foregoing, it is apparent that in order for this Court to invoke its jurisdiction to entertain this Petition, the Petitioners must establish that there is a violation or threatened violation of *the Constitution* and/or its fundamental rights and freedoms. In the circumstances of this case, the Petitioners have not demonstrated that any of their rights and fundamental freedoms have been violated by the Respondents.

84. Considering the allegations are already being investigated by other competent bodies, there is therefore premature and unripe for determination as the said bodies are yet to conclude their work.

85. Consequently, we pray that the Application and the Petition herein be stayed awaiting the outcome of the investigations and/or audit by the relevant bodies touching on the said allegations.

86. The 3<sup>rd</sup> Respondent swore a replying Affidavit dated 4<sup>th</sup> December 2024 deponing that, she is the Current County Office Manager of the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondent in the instant motion with personal knowledge of the matter hence fit and competent to swear/ depone.



87. That, the contents of the application and Petition dated 5<sup>th</sup> November, 2024 have been read and explained to her by her advocates Kamau Ngigi & Co. Advocates and she has verily understood the same, and believe the same to be mischievous, mistaken, incompetent and devoid of any merit.
88. That, she has also received counsel from my advocates on record hence have fully understood its tenor, import and purport and wish to respond as thus in opposition.
89. That, the Petitioners/ Applicant are not entitled to any of the orders sought at all and in particular that the Court issue orders Freezing the Bank accounts number XXXXXXXXXXXXXXXX established at Equity Bank (K) Ltd, Gate House, Nakuru Branch in the title of the County Office Manager.
90. That, the 1<sup>st</sup> Petitioner/Applicant was an employee of the 2<sup>nd</sup> Respondent, whereof he was working in the office of the 3<sup>rd</sup> Respondent for a period of Twelve (12) Months from 12<sup>th</sup> day of October 2023 to the 31<sup>st</sup> October 2024.
91. That, the 1<sup>st</sup> Petitioner/ Applicant avers that, during the subsistence of his employment they were not informed on how much they were supposed to receive as salaries and other allegations which constitutes an Employer-Employee dispute.
92. That, the dispute sited herein has already been lodged for consideration by the parliamentary service commission, further to the foregoing investigations by the Ethics and Anti-Corruption Commission are going.
93. That, the instant application by the Petitioners is only meant to delay. incapacitate, disrupt and stall the daily operations of the office of the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent at the detriment of the general public.
94. That, *the Constitution* of Kenya under Article 96 provides for the role of the Senate to include oversight over National Revenue allocated to the County Governments, that the commission provides funds for each county office of the members of Parliament to enable hire staff and operation of the said office, she is advised by her aforesaid advocates that if orders sought by the Petitioner are granted the office of the Senator shall cease to operate.
95. That, she is advised by her aforesaid advocates that in order to discharge their mandate effectively and efficiently, the commission provides funds to facilitate the senate to exercise its role of oversight, allocates money to each senator to enable him/her effectively carry-out their oversight functions, and therefore if the orders to freeze accounts are granted, the daily operations of such a critical office shall be interrupted.
96. That, she is verily advised by her advocates on record that, the Parliamentary Service Commission has received the allegations lodged by the Petitioners on the fund's issues allocated to the 2<sup>nd</sup> Respondent and the Employer-employee dispute sited by the Petitioners.
97. That, all disputes emanating from the office of the 2<sup>nd</sup> Respondent are referred to arbitration committee for adjudication, The Arbitration Panel is constituted by the Chairman Parliamentary Service Commission whereof the arbitration panel in this case has already been constituted to determine the issues raised by the petitioner.
98. That, the Petitioners have acted in concealment of material facts, by failing to inform the Court that the dispute herein is before the Parliamentary Service.
99. That the Petitioners have acted in concealment of material facts, by failing to inform the Honourable Court that the dispute herein is before the Parliamentary Service Commission, arbitration panel for



consideration and the allegations of misuse of funds is currently under investigation by the Ethics and Anti-Corruption Commission, thereby offending the doctrine of exhaustion.

100. That, there is no material evidence that has been brought before the Court to warrant the orders sought, no criminal charges have been preferred to the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent under the *Anti-Corruption and Economic Crimes Act*.
101. That, No report have been issued by the Ethics and Anti-Corruption Commission towards the outcome investigations by the commission over the alleged misappropriation of Funds allocated the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent, she is advised by her advocates that, the petition is premature as the Petitioners have not adduced evidence to substantiate their allegation and therefore the Honorable Court cannot be used as an investigating organ and or to fact find the baseless claims such as the ones raised on the instant suit
102. That there is no evidence that has been adduced to warrant the Freezing of the Bank accounts number XXXXXXXXXXXXXXXX established at Equity Bank (K) Ltd, Gate House, Nakuru Branch in the title of the County Office Manager, furthermore the 2 Respondent is not a signatory of the said account and as the current County Manager we have already lodged inquiries on the said account and therefore the current management should not suffer due to acts of commission or omission of the former management if any.
103. That the application by the Petitioners/ Applicants is a clear abuse of this Courts processes, as the Petitioners have not exhausted the already established mechanisms that effectively and conclusively deals with the issues such the one raised by the Petitioners.
104. That, it is only fair and just that this Court dismisses the instant application and the Petition and or in the alternative stay the proceeding pending the investigation of the issues by the Ethics and Anti-Corruption Commissions and the audit by the Parliamentary Service Commission to avert any contradictions in their findings.
105. That she is advised by her advocates that this Court has inherent powers to prevent abuse of its process and also to filter out applications that are patently frivolous, vexatious, or legally oppressive and untenable.
106. That, the particulars in the Petition do not indicate or even remotely suggest that the Petitioners has any shroud of right or merit warranting any of the orders of the Court.
107. The 4<sup>th</sup> Respondents relied on its Written Submissions dated 11<sup>th</sup> December 2024 contending that, the 4<sup>th</sup> Respondent notified the Court that, though it does not oppose the 1<sup>st</sup> Respondent's Application dated 11<sup>th</sup> November, 2024, it is a passive party in the matter as there is no substantive claim raised in the Petitioner/Applicants Application and Petition as against it. as such it has been wrongly dragged into this matter and for that matter as a Respondent to respond to internal affairs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent of which it has never been a party to.
108. It is the 4<sup>th</sup> Respondent's submission that from a perusal of the grounds and the orders sought by the Petitioner/Applicants in their Application, the key issues for determination in this Application can be summarized into two:
  - i. Whether the suit has been brought to Court prematurely.
  - ii. Whether the Petitioner/Applicants have established the applicable principles for grant of the interim temporary orders sought and or whether the Petitioner/Applicants should be granted the orders sought.



109. As to Whether the suit has been brought to Court prematurely, it is not in dispute that the Petitioner/ Applicants filed the suit before the investigation processes being conducted had been concluded by the relevant bodies being the Ethics and Anti-Corruption Commission, the DCI and the Parliamentary Service Commission which not only have not been made parties as such the orders being sought in the instant Application and Petition if issued will be issued in vain but also the said investigations as admitted by the Petitioner/Applicants are still underway and are yet to be concluded.
110. The 4<sup>th</sup> Respondent thus humbly submits that, the matter before this Court is premature and ought to await the outcome of the investigations that are underway. On the said basis, 4<sup>th</sup> Respondent submit and pray that the suit as a whole be dismissed with costs to the 4<sup>th</sup> Respondent as the Petitioner/ Applicants at an opportune time will be invited to a hearing by an impartial body which will deliberate of the violations allegedly committed by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents which does not then necessitate these proceedings unless they wish to challenge the reports emanating from the bodies that will have generated them.
111. That, the Petitioner/ Applicants are inviting this Court to deal with issues which it is not mandated to due and thus has no jurisdiction to deal. It is trite law that the High Court may conduct review of decisions of statutory bodies based on procedure and legality to determine if it meets the constitutional threshold of which there in none in place in the instant case as investigations are still ongoing. In Civil Appeal No. 307 of 2012: Ex Chief Peter Odoyo Ogada & Others v Independent Electoral and Boundaries Commission & Others, the Court of Appeal held as follows:
- “A body or organ performing statutory duties has discretion when handling matters falling within its mandate. There is a margin of discretion conferred by *the Constitution* and the law upon those who make decisions and the test of rationality ensures that any legislation or official act is confined within the purposes set by the law. It is the Insistence that decisions must be rational that limits arbitrariness and not discretion by itself. Where a body like IEBC applied its mind to constitutional requirements, regarding delimitation, reaching a rational conclusion, the Courts should not review that decision.”
112. To buttress the above holding further, 4<sup>th</sup> Respondent relies on the case of Kenya Youth Parliament & 2 Others v AG & Another, Constitutional Petition No. 101 of 2011, where the Court observed as follows:
- “We state here with certain affirmation, that in an appropriate case, each case depending on its own peculiar circumstances, facts and evidence, this Court clothed with jurisdiction as earlier stated, would not hesitate to nullify and revoke an appointment that violates the spirit and letter of *the Constitution* but the Court will hesitate to enter into the arena of merit review of a constitutionally mandated function by another organ of State that has proceeded with due regard to procedure. The Court's Intervention would of necessity be pursuant to a high threshold.” (Emphasis supplied).
113. As to whether the Petitioner/Applicants have established the applicable principles for grant of the Interim temporary orders sought and or whether the Petitioner/Applicants should be granted the orders sought., the 4<sup>th</sup> Respondent posits that, without prejudice to the foregoing, the Petitioner/ Applicants moved Court for reliefs relating alleged deceitful and fraudulent expropriation of Public Funds by the Respondents in Constitutional Petition and that, the Application and Petition at hand do not meet threshold of a constitutional petition as enunciated in the case of Anarita Karimi Njeru



v Repu [1979] 1 KLR 154 and augmented in Mumo Matemvu v Trusted Society of Human Rights Alliance [20 eKLR.

114. That, the Petitioner/Applicants have not in any way set-out with a degree of precision their complaint, constitutional provisions infringed and the manner in which such provisions are infringed and in this Instance by the 4<sup>th</sup> Respondent, and to that effect the instant Petition does not meet the threshold of a constitutional petition as postulated by the foregoing authorities. In the premise, the 4<sup>th</sup> Respondent humbly submits that the instant Petition and entire suit does not meet the threshold of a Constitutional Petition and should be struck-out at once.
115. The 4<sup>th</sup> Respondent humbly submits that, in no way has it been demonstrated by the Petitioner/Applicants its involvement in any of the said allegations. In view of the foregoing, the instant Petition and Application is frivolous, vexatious, and an abuse of the Court process as there is no cause of action raised against the 4<sup>th</sup> Respondent, as such the suit against it should be dismissed with costs.
116. That, a clear reading of the Petition and Application it is indicative that the 4<sup>th</sup> Respondent is a total stranger to the grounds set out in the Petition and application as they relate to parties that are not the 4<sup>th</sup> Respondent as the subsequent dispute among the Petitioners/ Applicants and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents regards to the deceitful and fraudulent schemes to defraud and expropriate public funds which should not impede the rights and interests of the 4<sup>th</sup> Respondent, which is not a party to any such conflict and thus should not be dragged into Court issues such as this as there is clearly no cause of action raised against the 4<sup>th</sup> Respondent.
117. That, in in view of the above, and to buttress the above position, the 4<sup>th</sup> Respondent rely on the case of Paul Kiplagat Birgen & 25 Others V Interim Independent Electoral Commission, Minister For Local Government & Attorney General [2011] KEHC 1246 (KLR) wherein the Court held as follows:

“It is incumbent upon who seeks a legal remedy to come with a clear road map so that the Court can hear, evaluate, interrogate and determine the grievances suffered or likely to be suffered by the person seeking to benefit from the power of the Court. The Court can only Intervene on clear factual and legal basis. There must be a cause of action against an individual before Court clearly and correctly framed in a proper manner.”
118. The principle articulated underscores the necessity for a party seeking legal relief to present a clear and well-founded case. It is trite law that it is not enough to make generalized allegations, the Petitioners must set out specific grievances, supported by factual evidence and legal grounds that demonstrate the harm suffered or likely to be suffered. In the instant case, the Petitioner/Applicants have merely made generalized allegations against the Respondents without specifically articulating the acts or omissions done by the 4<sup>th</sup> Respondent Bank
119. That, the applicable 3 guiding principles for the grant of interlocutory orders laid out in law are that an applicant who seeks an injunction must show; firstly, a prima facie case with a probability of success; secondly, that failure to grant the temporary injunction sought would expose such an applicant to irreparable injury which injury would not be adequately compensated by an award of damages; and thirdly, that where a Court is in doubt, it would decide the application on a balance of convenience.
120. Reliance is placed on the famous case of Giella v Cassman Brown (1973) E.A. 358 on the said principles for the grant of an injunction as such the issue that arises for determination is therefore whether the Petitioner/Applicants have satisfied the requirements for grant of an injunction.



121. The Court of Appeal in *Mrao v. First American Limited and 2 Others* (2003) K.L.R. defined a prima facie case to mean:

“..... A case which on the material presented to 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 latter.....”

122. That, in view of the circumstances of this case, it is undisputed that the relationship between the 4<sup>th</sup> Respondent, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is that of a banker and a customer as such, the 4<sup>th</sup> Respondent is not cognizant of any internal affairs of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. Noting that there is no cause of action raised against the 4<sup>th</sup> Respondent, the Petitioner/Applicants have thus not established a prima facie case to be granted the orders sought.

123. Despite the serious nature of the allegations, no factual or legal nexus has been established between the 4<sup>th</sup> Respondent's role as a custodian of customer funds and the purported wrongdoing. This omission leaves the Court with no basis to sustain the suit by the Petitioners, rendering the claims against it frivolous and unwarranted. The Petitioner/Applicants have not shown that they would suffer irreparable harm in the context of the nature of the harm to be suffered which cannot be compensated through damages. They have not demonstrated that the loss would not be remedied by an award of damages unless the orders prayed for are granted as such, he has not established a prima facie case.

124. That the term irreparable harm basically refers to harm or injury that cannot be adequately compensated by any amount of monetary award or one which cannot be reversed to the state before the damage. In legal parlance, irreparable harm has been defined as follow: - "A legal concept that argues that the type of harm threatened cannot be corrected through monetary compensation or conditions that cannot be put back to the way they were."

125. That the concept of irreparable harm seeks to protect the prima facie case established by the Applicant from being rendered nugatory, and as stated above, the Applicants have not established a prima facie case herein.

126. The 4<sup>th</sup> Respondent associate itself with the holding in the case of *Dave Gitonga Kaura v Tharaka Nithi County Government & another* [2018] eKLR where the Court held thus:

“Whereas there is proof that a dispute exists, if indeed he is entitled to relief, per the decision in *Glella v Cassman Brown*, he will be entitled to damages in the premises should the threshold for the grant of the injunctive remedy not be met. The Claimant has been unable to demonstrate that the loss would not be remedied by an award of damages.”

127. That, the Petitioner/Applicants shall not suffer prejudice if the orders sought are not granted. It is the interest of justice that the suit against the 4<sup>th</sup> Respondent is struck-out and dismissed in its entirety to avoid precious judicial time and resources from unnecessarily being expended and further to prevent the 4<sup>th</sup> Respondent from having to further expend funds to defend matters where there is no cause of action against it.

128. The 4<sup>th</sup> Respondent equally agitates for costs in tandem with section 27 of the [civil procedure Act](#).

### **Analysis and Determination**

129. I have considered the two Applications and the following are the issues for determination identified by the Court: -



- i. Whether the conservatory orders should be issued herein
  - ii. Whether the ongoing active investigations and inquiries should constrain this Court to stay the proceedings to await conclusion
130. It is important that while parties have extensively submitted on merits or otherwise of the Petition, the Court has only pre-occupied itself on the merits or otherwise on the two interlocutory Applications.
131. This Court is alive to the uniqueness of the constitutional remedy of conservatory orders to preserve the substratum of the petition.
132. In this instance the Petitioners are purporting to be moving the Court in public interest while one Petitioner was clearly in the employ of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.
133. The Petitioners impute conspiracy and criminality by the Respondents as a collective without elaborating the 4<sup>th</sup> Respondent has argued misjoinder an issue to be addressed in the substantive motion.
134. This Court in adjudicating constitutional dispute does not undertake investigations and the Court in the circumstances while considering where the petition presents a prima facie case has to consider if there are other available dispute resolution mechanism which a litigant ought to exhaust before moving the Court.
135. To this end the Court of Appeal in the case of *Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others* (2015) eKLR observed as follows:

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be the fora of last resort and not the first port of call the moment a storm brews within churches, as is bound to happen. The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is 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 of Courts. This accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

136. The question therefore that follows this background is, what then invokes the doctrine of exhaustion before embarking on the Court process. This was aptly discussed in the case of *William Odhiambo Ramogi & 3 others v Attorney General & 3 others; Muslims For Human Rights & 2 others* (Interested Parties) [2021] KEHC 3392 (KLR) by the five-judge bench as follows:

“52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is 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 the Courts...”

137. The Court went on to outline the exceptions to the rule as follows:

“60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement



would not serve the values enshrined in *the Constitution* or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.

61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court's jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.
  62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere "bootstraps" or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court."
138. This Court finds it perplexing that the two Petitioners in their quest for public interest would trigger four simultaneous investigatory processes while initiate a constitutional petition and that it is constitutional hygiene to strengthen all institutions mandated by law, by allowing them to undertake their work which is subject to this Court's jurisdiction on review.
  139. The committing of crime by a state officer or public officer is not per se a primary infringement of or violation of *the constitution* but rather a crime subject to criminal law and the criminal investigatory agencies are equally mandated to seek judicial orders to facilitate their work which would include freezing of bank account where they are persuaded of an active theft ongoing.
  140. This Court is guided by the Supreme Court decision in the case of *Dock workers Union and Anor vs Portside Freight Terminals Limited & 10 Ors* 2024 eKLR that the Court must always consider the larger impact of the orders sought in considering an application for conservatory orders cannot ignore the impact of such orders beyond the parties to the case should the order be granted or denied. What one would term as the public interest question.
  141. The Conservatory Orders sought are focused on the operational bank account of the office of the County Senator who is expected to provide oversight functions and whose operations would then ground to a halt should all resources allocated be instantly frozen.
  142. This Court is unpersuaded that the only activity ongoing in the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent is theft of public funds and the role and place of the 4<sup>th</sup> Respondent remains foggy, the 4<sup>th</sup> Respondent is a commercial banking institution contractually bound to maintain the 2<sup>nd</sup> Respondent bank account.
  143. The crippling of operations of the 2<sup>nd</sup> Respondent office with conservatory orders shall not be in the greater public interest of the electorates of Nakuru and the Petitioners have not demonstrated the greater prejudice to be suffered if the orders they are seeking are not granted.
  144. The fact that, the Petitioners are admitting having initiated other simultaneous processes is in itself indicative of availability of alternative mechanisms some specialist such as EACC best placed to dig in



and verify the allegations and with legal instruments under criminal law to take consequential action including criminal prosecution.

145. Owing to the foregoing this Court finds the petition and filed being premature and that the Application dated 4<sup>th</sup> November 2024 is without merit and the same is accordingly dismissed.
146. The Application dated 11<sup>th</sup> November is allowed and the proceedings shall be stayed to await the outcome of the ongoing investigations and inquiries.
147. With regards to costs this Court sitting as a Constitutional Court is reluctant to award costs unless in exceptional circumstances by virtue of the motion being in public interest. At this juncture parties shall bear their own costs.

It is so Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 14<sup>TH</sup> DAY OF MARCH, 2025**

**MOHOCHI S.M**

**JUDGE**

