Okoth v Attorney General & 4 others; Kenya Sugar Millers Association (Interested Party) (Petition E042 of 2025) [2025] KEHC 7279 (KLR) (Constitutional and Human Rights) (10 April 2025) (Ruling)

Neutral citation: [2025] KEHC 7279 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E042 OF 2025

AB MWAMUYE, J

APRIL 10, 2025

IN THE MATTER OF: ARTICLES 2, 3, 10, 19, 20, 22, 23, 24, 25, 27, 40, 47, 48, 93(1) & (2), 94(1), (4) & (6), 109(1) & (4), 118, 119, 156, 159(2)(E), 232, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010;

AND

IN THE MATTER OF: THE CONTRAVENTION OR BREACH OF ARTICLES 10(1)(B), 10(2)(A) AND 10 (2)(D) OF THE CONSTITUTION OF KENYA, 2010;

AND

IN THE MATTER OF: THE INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT OF ARTICLE 259 OF THE CONSTITUTION OF KENYA, 2010;

AND

IN THE MATTER OF: SECTION 8 OF THE FAIR ADMINISTRATIVE ACT, 2015;

AND

IN THE MATTER OF: SECTIONS 2, 9(A), 19, 20(1), 20(2), 20(3), 40(1)(5) OF THE SUGAR ACT, 2024

BETWEEN

VICTOR OKOTH ..... PETITIONER

AND

ATTORNEY GENERAL ..... 1ST RESPONDENT

THE SENATE OF THE REPUBLIC OF KENYA ..... 2ND RESPONDENT

THE NATIONAL ASSEMBLY ..... 3RD RESPONDENT

THE KENYA SUGAR BOARD ..... 4TH RESPONDENT

THE CABINET SECRETARY, MINISTRY OF AGRICULTURE .... 5TH RESPONDENT

AND

KENYA SUGAR MILLERS ASSOCIATION ..... INTERESTED PARTY

RULING

1. The Petitioner/Applicant filed a Notice of Motion Application dated 28th January, 2025 seeking conservatory orders suspending the implementation and/or application of the provisions of Sections 9 (a), 20(2) and 40(1) of the Sugar Act, 2024 pending the hearing and determination of both the Application and Petition.

2. The 2nd and 3rd Respondents passed the Sugar Act, 2024 on 29th October 2024 and 15th October 2025 respectively; following which it received presidential assent on 1st November, 2024. The Act provides, inter alia, for the development, regulation, and promotion of the sugar industry.

3. The Applicant claims that the Act established a sugar catchment area for the geographical clustering of sugarcane farmers for purposes of election and cane management; and it goes further under the First Schedule to delineate five (5) sugar catchment areas, namely; Central, Upper Western, Lower Western, Southern, and Coastal.

4. The Applicant alleges that Section 19 of the Act prohibits Sugar millers from purchasing sugarcane from a grower unless;

    i. Such a grower is registered with a valid supply agreement;

    ii. The miller's factory is situated within the grower's catchment area; or

    iii. The grower is exempted.

5. The Applicant further avers that Section 20(2) of the Act provides for exemption of growers' delivery from sugarcane catchment area and it further states that the grower who intends to enjoy such an exemption shall notify the Board of their intention to supply cane outside their designated sugarcane catchment area.

6. The Applicant further alleges that Section 20(2) of the Act is unconstitutional since from the Parliamentary records, that Section is neither featured in the draft bill emanating from the National Assembly nor in the amendments preferred by the Senate; but was instead a product of the Mediation Committee of the two Houses of Parliament. In the Petitioner's mind, that Section could not have been subjected to public participation and it is thus in contravention with Article 118 of *the Constitution*.

7. The Applicant also contends that Section 9(a) of the Act confers unlimited and otherwise arbitrary powers to the 4th Respondent to impose levies upon millers and growers for the purposes of giving effect to the provisions of the Act; yet Section 40 (1) permits the 5th Respondent in consultation with the 4th Respondent and by order in the gazette to impose a levy on domestic sugar not exceeding four per centum of the value and a four per centum of the CIF value on imported sugar to be known as the Sugar Development Levy.

8. According to the Applicant, the impugned sections being Section 9 (a), 20(2) and 40(1) of Act will result in vagueness, ambiguity, uncertainty, and threats to the rights and fundamental freedoms of both the millers and sugarcane growers.

9. The 1st Respondent opposed the application by filing Grounds of Opposition dated 9th February 2025 to which they stated that both the Notice of Motion Application and Petition are bad in law having been premised on a wrong legal foundation since the Petitioner adopted a selective contextual interpretation.

10. They further state that the impugned Section 20(2) of the Sugar Act is to be read in harmony and context established in Sections 4, 18, 19,20 and 58 of the Sugar Act, and it thus is incapable of interlocutory stoppage.

11. Further, the 1st Respondent refutes the assertion by the Petitioner that Section 20(2) of the Act was the subject of the Mediation Committee; and the 1st Respondent annexed a parliamentary report to that end.

12. The 1st Respondent also responded that Sections 9(a) and 40 of the Sugar Act are merely enabling provisions of the law that should be read in harmony with other relevant provisions of the Sugar Act; specifically, Section 61(2) (c) that enjoins the Cabinet Secretary, in consultation with County Governments and the Board, to make regulations concerning the fees that may be charged.

13. With regard to Section 40 of the Sugar Act, the 1st Respondent contends that it is specific and lawful as it provides for the upper limit on the levy chargeable, due notice in the gazette, the money flow, and the mode, distribution and accounting for the levy.

14. The 1st Respondent further alleges that the conservatory orders sought by the Petitioner herein does not satisfy the threshold under Article 23 of *the Constitution* as they do not seek to maintain the existing state of affairs but to alter them. Therefore, the 1st Respondent has urged that the Application be dismissed with costs.

15. The 2nd Respondent opposed both the Petition and Notice of Motion Application through a Replying Affidavit sworn by the Clerk of the Senate, Jeremiah Nyegenye, on the 7th day of February, 2025. The 2nd Respondent averred that in line with Article 118 (1) (b) of *the Constitution* and Standing Order 145(5) of the Senate Standing Orders, the Senate Standing Committee on Agriculture, Livestock and Fisheries invited members of the public to submit written memoranda on the Bill on 20th October, 2023.

16. The 2nd Respondent further avers that the Senate Standing Committee on Agriculture, Livestock and Fisheries sent out invitations to key stakeholders inviting them to appear before the Committee to submit their comments during public hearings on the Bill. The Senate Standing Committee on Agriculture, Livestock and Fisheries received submissions of memoranda from stakeholders and recommended that the Bill be adopted with the proposed amendments.

17. According to the 2nd Respondent, after the conclusion of the public participation, the Senate Standing Committee on Agriculture, Livestock and Fisheries, recommended the following amendments pertinent to the Application pending before this Court:

    i. Amendment of Clause 2 of the Bill to modify the definition of a catchment area to mean a geographical area where growers and millers are restricted in the delivery and receipt of case respectively;

ii. Amendment of Clause 19 to provide for inter-miller agreements in cases where a mill is temporarily broken down or over supply of cane; and

iii. Insertion of Clause 19A to empower the Board to exempt a commercial grower from the restrictions of supply of cane within a defined catchment area.

18. It was also their position that the Report that was tabled in the Senate on the 26th March 2024 and passed by the committee with necessary amendments on 25th April, 2024. The Bill was then referred back to the National Assembly on 13th May, 2024.

19. The 2nd Respondent avers that on 1st August, 2024, the National Assembly approved the motion on the Report of the Committee of the Whole House but rejected some of the amendments by the Senate warranting the committal of the Bill to the Mediation Committee pursuant to Article 112 (2)(b) of *the Constitution*.

20. According to the 2nd Respondent, following deliberations by the Mediation Committee, the Committee developed an agreed version of the Bill wherein the following clauses were considered:

i. Senate Amendment to Clause 2 – The Committee deliberated on the matter and resolved to redefine the definition of "sugar catchment area" to capture the aspect of election of farmers' representatives to the Board and cane management. The Committee further resolved that zoning should not be introduced in the Bill because I was strongly opposed by farmers and other players in the sugar industry.

ii. Senate Amendment to Clause 6 – The Committee deliberated on the matter and agreed to drop the proposed amendment on representation in the Board on the basis that the Mwongozo Code of Governance provides for between seven and nine board members whereas the proposed Sugar Board already has twelve. The Committee further introduced a new subclause 2A to ensure that the principle of gender balance and representation of the youth and persons with disabilities is adhered to.

iii. Senate Amendment to Clause 19 – The Committee adopted the amendments to protect both the grower and the miller from cane poaching.

iv. Senate Amendment to Clause 29 – The Committee deliberated on the matter and resolved to amend it by replacing a nominee of the universities with one person who has knowledge and experience in agricultural research in the sugarcane field nominated by the Cabinet Secretary for Agriculture.

v. Senate Amendment to Clause 38 – The Committee deliberated on the matter and resolved to revise the amendment to have the fifteen per centum allocated for infrastructure development and maintenance managed by the board and shared by the sugarcane producing regions on pro-rata basis.

vi. Senate Amendment to Clause 59 – The Committee resolved to delete the Clause on the basis that it is illegal to compel private companies to have farmer representatives in their boards as private companies should be managed privately.

vii. New Clause 19A – The Committee adopted the new clause because it provides instances when farmers can deliver sugarcane to sugar companies that are outside their sugarcane catchment areas.

viii. New Clause 19B – The Committee adopted the Amendment to ensure that Millers supply sugarcane to milling companies within their sugarcane catchment areas.

ix. New Schedule – The Committee adopted the new schedule for purposes of elections and cane management in line with the recommendation of the Sugar Taskforce Report.

21. The 2nd Respondent states that after the amendments were made to the Bill, the President Assented to the Sugar Bill, 2022 on 1st November, 2024 and commencement date of the Act was 7th November, 2024.

22. They further stated that *the Constitution* under Article 94(5) and (6) permits Parliament to delegate to any person or body the power to make subsidiary legislation and that changes to a policy need to be done by the Executive and should be based on prevailing circumstances at any given time.

23. They aver that a reading of Section 20(3) of the Act clearly depicts that the Cabinet Secretary is required to prescribe regulations on the notification process for applications for exemptions to be made before the Kenya Sugar Board. The Cabinet secretary is yet to prescribe such regulations and a Court of law cannot base its decision on speculative consideration, reason and/or evidence.

24. The 2nd Respondent further contends that on the issue pertaining to purported ambiguity of a provision of an Act, the same can be dealt with through a petition to Parliament as stipulated under Articles 37 and 119 of *the Constitution*.

25. The 3rd Respondent opposed the Petition and Notice of Motion Application through a Replying Affidavit sworn by the Clerk of the National Assembly, Samuel Njoroge on the 11th day of February, 2025.

26. They aver that Article 119(1) of *the Constitution* serves a useful purpose in allowing citizens to petition Parliament to consider matters of concern to them that are within the purview of Parliament, including the repeal and amendment of legislation as in the instant petition, yet the Petitioners failed to approach the 3rd Respondent before filing the present petition.

27. The 3rd Respondent further avers that Parliament has unfettered constitutional mandate to legislate and as such, the court cannot interfere with such mandate as the same would amount to over-reaching and hijacking the constitutional legislative mandate bestowed on the legislature. Therefore, this Court lacks jurisdiction to entertain the present Petition based on the doctrine of exhaustion.

28. According to the 3rd Respondent, the Petitioner has failed to demonstrate specifically the manner in which the 3rd Respondent has violated the provision of Article 93 and 94 of *the Constitution* and has equally failed to substantiate the allegations of negative discrimination against the growers of sugarcane as against the millers of sugarcane by the national assembly thus failing to define the dispute to be decided by this Court.

29. The 3rd Respondent further contends that the grant of conservatory orders at an interlocutory stage as sought by the Petitioner in this case would pose the danger of exposing millers and growers of cane to sanctions under the impugned Act without recourse whereas there may be subsisting contracts for supply of cane entered into well before the enactment of the impugned Act falling within the impugned exceptions. It is thus not in public interest or the interest of the growers to suspend the application of the impugned Act.

30. The 3rd Respondent avers that since taxation is a policy decision solely within the exclusive mandate of the Executive, this Honourable Court lacks the Jurisdiction to delve into policy decisions and the

3rd Respondent was well within its legislative role in enacting section 40(1) of the Sugar Act,2024 as mandated by Article 209 and 210 of *the Constitution*.

31. The Interested Party responded to the application via a Replying Affidavit sworn by the Chairman of the Kenya Sugar Manufacturers Association, Jayantilal Patel on 11th February, 2025 to which it stated that at no point did the Interested Party instruct the Petitioner to file the Petition on its behalf or its members neither has it authorized the Petitioner to swear the Supporting Affidavit on its behalf or its members.

32. The Interested party avers that the Petitioner committed perjury in the said affidavit which affects the integrity of the instant application and petition and should therefore be struck out as this Honourable Court has a duty not to aid any illegal process or transgression of the law.

Submissions of the Parties

Applicant's submissions

33. The Applicant submits that it has established an arguable prima facie case with a likelihood of success to warrant the grant of interim conservatory orders pending the hearing and determination of the instant petition and should the court not grant the conservatory orders sought, he and the public in whose interest he represents will be prejudiced. He invited the court to be guided by the jurisprudence set in the cases of Gatiru Peter Munya v Dickson Mwenda Kithinji and two others [2014] eKLR, Nathif Jama Adam v Abdikhalim Osman Mohamed and 3 Others [2014] eKLR and the case of Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR.

34. The Applicant further argues that he has demonstrated that the impugned provisions as enacted violate and/or threaten the provisions of *the Constitution* as the process leading to their enactment was fundamentally flawed, and violated the express provisions of *the Constitution* on public participation.

35. In addition, the Applicant further submits that the sugarcane growers and millers have a right of certainty and predictability in the applicability of the economic activities and that this right militates against requirements of notifications, regulations and procedures which are haphazardly resorted to by public regulatory bodies without adequate notice to those whose conduct or behaviour is to be regulated. He referred to the case of Commissioner of Income Tax vs Westmont Power (K) Ltd [2006] eKLR.

36. The Applicant is of the position that the passing of the Act flies in the face of provisions of *the Constitution* under Chapter 4 of the Bill of Rights, Article 118, Article 47 and Article 10. The complete departure from constitutional values and objects of the bill of rights warrant conservatory orders which would serve the purpose of preserving the substratum of the Petition.

1st Respondent's submissions

37. The 1st Respondent argued that the Application does not meet the threshold for granting conservatory orders as defined by the Supreme Court in the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR which stated that for a conservatory order to be granted, a party must show that they have an arguable case in which if orders sought are not granted, the suit would be rendered nugatory. One must also show that it is in the public interest to grant the orders sought.

38. They reiterated contents of their Grounds of Opposition dated 9th February, 2025 and argued that a party to a suit guilty of maneuvering court processes for selfish ends should not benefit from the

process. They stated that concept of abuse of the court process has been subject of many a decision of superior courts such as the Supreme Court in the case of Kenya Section of the International Commission of Jurists v Attorney-General & 2 others [2012] eKLR , the Court of Appeal in the case of National Assembly and 47 others v Okoiti & 169 others (Civil Application E577, E581, E585 & E596 of 2023 (Consolidated) (2024) KECA 39 (KLR), the High Court in Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] eKLR & Gikenyi & 41 others v Cabinet Secretary Lands & 13 others (Petition E154, E173, E176, E181, E191 & 11 of 2024 (Consolidated) [2024] KEHC 8475 (KLR) (Constitutional and Human Rights) (11 July 2024) (Ruling) among others.

39. The 1st Respondent further submitted that conservatory orders by their legal nature are not meant to undo a situation or the status of a subject matter but are strictly meant to preserve the obtaining status of a subject matter of a suit, which in this case is the implementation of the impugned provisions of the Sugar Act. In support of this, they referred to the case of Judicial Service Commission v Speaker of the National Assembly & another [2013] eKLR. They therefore prayed that the Application be dismissed with costs.

2nd Respondent's submissions

40. The 2nd Respondent equally reiterated contents of their Replying Affidavit and submitted that the Applicant has not demonstrated to this Honourable Court how the impugned sections pose a threat to the rights and fundamental freedoms of both the millers and sugarcane growers as the impugned sections seek to promote and develop the sugar industry and curb cane poaching therefore protecting the bill of rights including economic and social rights. They relied on the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR where the Supreme Court outlined the guiding principles in granting conservatory orders, and the Court of Appeal case of Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR) where the court stated that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success.

41. The 2nd Respondent argues that the Applicant has not pointed out the rights that have been denied, violated, infringed or threatened and mere allegations of contravention of a right or a fundamental freedom or a provision of *the Constitution* is not sufficient to entitle grant of conservatory orders.

42. The 2nd Respondent submitted that the court ought to decline to extend the conservatory orders and set aside the interim orders issued on 30th January, 2025.

3rd Respondent's submissions

43. The 3rd Respondent relied on its Grounds of Opposition dated 7th February, 2025 and Replying Affidavit sworn by Samuel Njoroge, on 11th February, 2025. They submitted that the Applicant has not produced any evidence of having invoked the provisions of Article 119 of *the Constitution* in a manner contemplated under the Petitions to Parliament (Procedure) Act and as such he has not demonstrated that he has exhausted all the remedies available to him for resolution of the issues outlined in the petition and in the application. The Petitioner is therefore not entitled any orders having circumvented the provisions of the law in order to defeat the provisions of the above referenced statute and in effect *the Constitution*.

44. The 3rd Respondent relied on the case of Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR where the Court of Appeal held that where special procedures are provided by any law they must be strictly adhered to since there are good reasons for such special procedures. They further stated that this court lacks jurisdiction to entertain this matter as the

Applicant has not exhausted the remedies provided to him under *the Constitution* and the Petitions to Parliament Act.

Interested Party's Submissions

45. The Interested Party reiterated contents of its Replying Affidavit sworn by Jayantilal Patel on 11th February, 2025. It submitted that the petitioner committed perjury by alleging and insinuating that the Petition was brought on his behalf and on behalf of the interested party. The present Application and Petition is therefore void and fatally defective. The Interested party relied on the Court of Appeal case of Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 Others Civil Appeal No. 2010 of 1997.

46. The Interested Party further argued that the Petitioner is guilty of material non- disclosure, misrepresentation and suppression of facts as this Honourable Court was duped into believing that this is a course sanctioned by the Interested party, representing all millers in Kenya, which was not the case. They urged the court to be guided by the case of Uhuru Highway Development Limited v Central Bank of Kenya & 2 others (Civil Appeal no. 126/1995).

47. They urged this Court to vacate the ex- parte Conservatory orders issued on 30th January, 2025 since the application and petition filed herein is irregular and illegal having been filed on the premise of fraud and perjury.

48. Having considered the application herein, the response thereof and submissions by all parties, the only issue that germinates for determination is whether the Applicants have met the legal threshold for the grant of conservatory orders.

Whether the Applicants have met the legal threshold for grant of conservatory orders

49. Conservatory orders are issued to preserve the subject matter of litigation and prevent violations of constitutional rights pending the final determination of a case.

50. The issuance of conservatory orders is governed by Article 23(3)(c) of *the Constitution* of Kenya, 2010, which empowers the High Court to grant appropriate relief, including conservatory orders, to enforce and protect fundamental rights and freedoms.

51. The Court while discussing the issue of conservatory orders in the case of Gatirau Peter Munya v Dickson Mwendwa Kithinji & 2 Others (2014) eKLR held that a party who moves the court seeking conservatory orders must show to the satisfaction 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.

52. A mere allegation of contravention of a right or fundamental freedom is not itself sufficient to entitle grant of the conservatory orders. The Petitioner must demonstrate real danger that is so actual, so imminent, so evident and so true so as to warrant the immediate intervention of the court.

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

54. Given the interlocutory nature of conservatory orders, it is argued, that there is need for a court to exercise caution when dealing with any request for such prayers for the reason that matters which are preserved for the main petition ought not to be dealt with finality at the interlocutory stage.

55. The principles guiding grant of conservatory orders were discussed by the Supreme Court in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (2014) eKLR where the Court laid down the four-part test for the grant of conservatory orders, which requires the Applicant to demonstrate:

A prima facie case with a likelihood of success, that denial of conservatory relief would cause irreparable harm, that the balance of convenience favours the grant of the order and that public interest considerations justify the order.

56. Additionally, in Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR, the court reaffirmed that conservatory orders are not granted as a matter of right, but rather on a clear demonstration that constitutional rights are under imminent threat.

57. Therefore, it is incumbent upon the applicant to demonstrate a prima facie case with a likelihood of success and in the absence of the conservatory orders, he is likely to suffer prejudice.

58. It is worth noting that it should not be lost that the potential arguability is not enough to justify a conservatory order but rather there must be evidence of a likelihood of success.

59. Once the Applicant has established to the court's satisfaction a prima facie case with a likelihood of success, the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of Rights.

60. The Court must then answer the question whether, in the event the conservatory order is not granted, the Petition or its substratum will be rendered nugatory. It is the business of the court to ensure that so far as possible secure any transitional motions before the court so as not to render nugatory the ultimate end of justice.

61. The fourth principle which emerges from the various cases above, is that the court must consider conservatory orders also in the face of the public interest dogma expressed in the Supreme Court in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (2014) eKLR as follows:

> " Conservatory Orders" bear a more decided public law connotation: for these are ordered to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the court, in the public interest. Conservatory orders, therefore are not, unlike interlocutory injunctions linked to such private – party issues on the "prospects of irreparable harm occurring during the pendency of a case; or "high probability of success" in the applicant's case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case bearing in mind the public interest, the Constitutional values and the proportionate magnitudes, and priority levels attributable to the relevant causes."

62. Public interest demands that *the Constitution* and the law be respected and upheld. Nothing can be of greater public interest than court playing its constitutional mandate of ensuring all laws and actions of other public bodies conform to the law.

63. Finally, the court is to exercise discretion in deciding whether to grant or deny a conservatory order. The concept of irreparable harm in the context of conservatory orders requires the petitioners to demonstrate that they have suffered or are likely to suffer harm that cannot be remedied by any legal or equitable relief at a later stage. In Giella v Cassman Brown & Co. Ltd [1973] EA 358, the court held that an applicant must show that they would suffer irreparable damage that cannot be compensated by an award of damages. Similarly, in Centre for Rights Education and Awareness (CREAW) & Another

v Speaker of the National Assembly & 2 Others [2017] eKLR, the court reiterated that irreparable harm must be real, imminent, and not speculative. The court stated as follows:

> " ...a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*."

64. In the instant case, the Applicant states that the impugned provisions, Sections 9(a), 20(2) and 40(1) of the Sugar Act as enacted violate and/or threaten the provisions of the values and principles of governance to be specific the value of sustainable development provided under Article 10 of *the Constitution*. The Applicant further contends that the process leading to the enactment of the impugned provisions was also fundamentally flawed and violated the authority donated in trust and acting contrary to the functions outlined in *the Constitution*.

65. The Applicant has pointed out that the provisions of Section 20(2) of the Sugar Act once implemented will violate Article 27(4) of *the Constitution* which prohibits the discrimination of any person on any ground, through mandatory zoning.

66. It would suffice for me to state that the Petitioner has raised pertinent issues that the impugned provisions of the Sugar Act threaten to infringe upon his constitutional rights which warrants this Honourable Court to uphold the conservatory orders already in place until determination of the main petition herein.

67. I am aware that I cannot at this stage delve into the merits of the respective party's case for obvious reasons, that is, such matters will be determined at the hearing of the Petition.

68. This court has considered and satisfied itself that the Applicant herein has a strong case with very high likelihood of success on merit. It is trite law that in order to set aside conservatory orders, the court must be satisfied that the Applicant will be irreparably injured absent of a stay. The injury complained of herein is infringement of constitutional rights under Article 10 and Article 27(2) of *the Constitution* and also risk of conviction, payment of fines and even imprisonment.

69. The court has further considered whether the issuance of a stay order will substantially injure the other parties interested in the proceedings and I am persuaded that should the stay be lifted, the subject matter will be jeopardized in that the Respondents have demonstrated the willingness to bring into effect the impugned Statute. This will render the Petition nugatory and merely an academic exercise.

70. However, this court is also bound to consider where the public interest lies. While the Applicant has satisfied the criteria for the grant of conservatory orders with respect to two of the three impugned Sections of the Sugar Act, this Court is satisfied that the public interest favours the interim continued application of Section 40(1) of the Act, as any revenue collected under the same can only be lawfully used for the public benefit purposes under Section 40(6) of the Act.

71. Consequently, I find it prudent to maintain the conservatory orders, save for that applying to Section 40(1) of the Act, until the petition is heard and determined.

72. Accordingly, this Honourable Court makes the following orders:

    a. The Conservatory order issued on 13th January 2025 staying the Application, implementation, or further implementation of Sections 9(a), 20(2) and 40(1) of the Sugar Act [*Act No. 11 of 2024*] is partially confirmed, in terms of Sections 9(1) and 20(2) only.

b. The Respondents are restrained from taking any further steps towards executing the impugned provisions until the matter is fully heard and determined.

c. Costs shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF APRIL, 2025

BAHATI MWAMUYE

JUDGE

In the presence of: -

Mr. Kipkorir for the Petitioner

Mr. Kivumba for the 1st and 5th Respondents

Ms. Mwaura for the 2nd Respondent

Ms. Omuom for the 3rd Respondent

Ms. Awuor h/b for Ojienda SC for the 4th Respondent

Mr. Bwiro for the Interested party

Ms. Neema – Court Assistant

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