



**Muhindi & another v Mahanga Market Committee & 2 others; IEBC
Vihiga Constituency (Interested Party) (Constitutional Petition
E001 of 2023) [2025] KEHC 7462 (KLR) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CONSTITUTIONAL PETITION E001 OF 2023**

JN KAMAU, J

MAY 26, 2025

BETWEEN

LIVINGSTONE OMBODO MUHINDI 1ST PETITIONER

COMMUNITY BASED ORGANIZATION 2ND PETITIONER

AND

MAHANGA MARKET COMMITTEE 1ST RESPONDENT

CHARLES ANIALE ONGOSE & ANOTHER 2ND RESPONDENT

AND

IEBC VIHIGA CONSTITUENCE INTERESTED PARTY

RULING

Introduction

1. In their Notice of Motion dated and filed on 6th September 2024, the Petitioners herein sought orders that the 2nd Respondent, their agents and/or servants and their proxies be restrained from holding themselves as market officials, carrying out any function and/or duties and they be further restrained by way of temporary injunction from carrying activities and posing as the Chairman (sic) of Mahanga Market pending the hearing and determination of the suit.
2. The 1st Petitioner was the Treasurer of Boda boda riders in the said Market and the Chair of the said Market (CBO). He swore an Affidavit in support of the said application. Both he and the 2nd Petitioner averred that he (the 1st Petitioner) was the second person who had vied for the seat of Chairmanship. They pointed out that the election was done on 15th September 2023 and that the 2nd Respondent had been a Chairman of the Market for over forty (40) years contrary to the stipulated time.



3. They contended that on that particular day of election, the 2nd Respondent used the administration and other senior officers to frustrate traders by chasing them away and he was finally declared the winner. They asserted that the 1st Petitioner took the second position in the said elections.
4. They pointed out that since that time, the Respondents had become wild walking with pangas violently in the market and if he was not restrained, security would become an issue. They averred that they had on several occasions reported the complaints to Vihiga Police Station but none of their efforts bore fruit.
5. They stated that they had taken photos to show that they were indeed suffering and had continued to suffer. It was their contention that they stood to suffer irreparable loss if the prayers sought were not granted.
6. In opposition to the said application, the 2nd Respondent filed Grounds of Objection (sic) dated and filed on 22nd October 2024. They contended that the application was erroneous, misconceived and an abuse of the process of court and the same ought to be dismissed or struck out with costs. They contended that the Petitioners had not demonstrated the conditions for granting temporary injunction.
7. The Petitioners' Written Submissions were dated and filed on 29th October 2024 while those of the Respondents were dated 28th October 2024 and filed on 3rd February 2024. The Interested Party did not file any response to the said application. This Ruling is based on the said Written Submissions that both parties relied upon in their entirety.

Legal Analysis

8. On 22nd November 2023, this court dismissed the Petitioner's Notice of Motion application dated 24th October 2023 and filed on 30th October 2023 on the ground that there was no substantive order that had been sought as the said application only had an order for the granting of a temporary injunction pending the hearing and determination of the said application.
9. The main focus of the Petitioners' submissions in this application was that the Respondents had not served them with any responses to their Petition. This court was alive to the fact that they were laymen and had no legal representation and may not have been aware that no party could be compelled to file a response to any pleading but that there were consequences for not filing responses to pleadings. Be that as it may, they were clear in their submissions that they should be granted temporary injunctive orders restraining the 2nd Respondent from acting or posing as a Chairman of Mahanga Market pending the hearing and determination of the suit herein.
10. The Respondents were emphatic that the 2nd Respondent was the Chairperson of the 1st Respondent herein and that the Petitioners had not provided proof of any reports made at the Police Station rendering their averments baseless. They added that no single trader had sworn an affidavit to confirm the said threats.
11. The further submitted that the Petitioners had not demonstrated the conditions of granting a temporary injunction which were that there was a prima facie case with a probability of success and that they would suffer irreparable damages if the interlocutory injunction was not granted. They pointed out that in the event the court was in doubt, it would decide an application on a balance of convenience.
12. They were categorical that as the 1st Petitioner lost the election, he did not have a prima facie case and that if he was successful in the trial herein, he would not suffer any irreparable damage as a fresh election would be conducted. They added that the Petitioners had also not demonstrated that the such



injunctive orders could be issued at this stage of trial and consequently, the balance of convenience lay in this court not granting the interlocutory injunction.

13. It was also their submission that the balance of convenience tilted in favour of not granting the interlocutory injunction as the Petitioners could not injunct the validly elected Chairperson who had been in such position since he was elected on 15th September 2023.
14. The parameters within which a party could be granted an interlocutory injunction were well set out in the case of *Giella vs Cassman Brown Company Limited (1973) E A 358*. The court therein held that for an applicant to be granted an interlocutory injunction, he was required to demonstrate the following:-
 1. That he had a prima facie case with probability of success;
 2. That in the event the interlocutory injunction was not granted, he would suffer irreparable loss;
 3. That if the court was in doubt then it would grant an order of interlocutory injunction on a balance of convenience.
15. Notably, the Petitioners admitted that the 2nd Respondent was the Chairperson of the 1st Respondent herein having been elected as such on 15th September 2023. The 1st Petitioner took the second position in the said elections. It is from that stage that the Petitioners herein were aggrieved.
16. Although, the Petitioners averred that the 2nd Respondents and their agents had been threatening them with pangas, and that they tried reporting to the police who did not respond, they did not provide proof to show that they had indeed reported the threats to the police. No violence was evident from the photos they annexed in their application. The photos showed people going about their business without any sign of violence.
17. Although they had annexed a photo which they purported was the 2nd Respondent carrying a panga grazing at the Market, this court could not be certain if he was the one in that photo or that if he was the one, he was carrying a panga to threaten them at the material time.
18. This court, therefore, agreed with the Respondents that the Petitioners had not demonstrated the ingredients for the granting of a temporary injunction. The court was not in doubt and was also not persuaded to grant an interlocutory injunction on a balance of convenience
19. Notably, the Petitioners had filed a constitutional petition. The threshold of demonstrating a constitutional violation, infringement or contravention was well set out in the case of *HCCR Misc Application No 4 of 1979 Anarita Karimi Njeru vs Republic*. The principle in that case was that a party that seeking relief for a constitutional violation, infringement and/or contravention was required to set out with precision the constitutional provisions that had been infringed, contravened and/or violated and how the same had been infringed, contravened and/or violated.
20. However, the Petitioners herein did not demonstrate what provision of *the Constitution* of Kenya had been violated, infringed and/or contravened so that thus court could hinge the interlocutory injunction on those violations, contraventions and/or infringements. This court was, therefore, not persuaded that they demonstrated the threshold of being granted relief in the present application herein so as to hinge the interlocutory injunction thereon.
21. What was now pending in this file was the hearing and determination of the Petition dated 24th October 2023 and filed on 30th October 2023.



Disposition

22. For the foregoing reasons, the Petitioners' Notice of Motion application dated and filed on 6th September 2024 was not merited and the same be and is hereby dismissed. Costs of the application will be in the cause.
23. As this court gave its directions in respect of the Petitioner's Petition dated 23rd October 2023 and filed on 30th October 2023, it is hereby directed that this matter will be mentioned on 12th June 2025 to confirm compliance and/or for further orders and/or directions.
24. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 26TH DAY OF MAY 2025

J. KAMAU

JUDGE

