



Gachuki & another v Cabinet Secretary, Ministry of Co-operatives and Micro, Small & Medium Enterprises (Msmes) Development & 3 others (Constitutional Petition E039 of 2025) [2025] KEHC 13080 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEHC 13080 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E039 OF 2025
DO CHEPKWONY, J
JUNE 24, 2025**

BETWEEN

JOSEPH KIHURA GACHUKI 1ST PETITIONER

JOSEPH NDUNGU KIMANI 2ND PETITIONER

AND

**THE CABINET SECRETARY, MINISTRY OF CO-OPERATIVES
AND MICRO, SMALL & MEDIUM ENTERPRISES (MSMES)
DEVELOPMENT 1ST RESPONDENT**

**CHIEF EXECUTIVE OFFICER, CAPITAL MARKETS AUTHORITY(CMA) .. 2ND
RESPONDENT**

**CHIEF EXECUTIVE OFFICER, NAIROBI COFFEE EXCHANGE
(NCE) 3RD RESPONDENT**

**GROUP MANAGING DIRECTOR AND CEO, THE CO-OPERATIVE BANK OF
KENYA 4TH RESPONDENT**

RULING

1. On 12th June, 2025. Mr. Gakunju appeared before the court as counsel for the Petitioners, while Ms. Wahinya represented the 4th Respondent. Mr. Gakunju informed the court that he had duly served all the Respondents with the Petition and the accompanying Notice of Motion dated 19th May, 2025 but despite this. None of the Respondents had filed any responses within the prescribed timelines. He noted that only the 4th Respondent had entered appearance but had similarly failed to file any substantive response within time. Mr. Gakunju further submitted that the 1st to 3rd Respondents were on the verge of implementing a directive issued on 18th November, 2024, which, if enforced, would have far-reaching implications on Coffee Farmers across Kenya.



2. In view of the urgency and potential national impact of the directive, Mr. Gakunju urged the court to grant prayer No.(4) of the Notice of Motion wherein the Petitioners have sought a temporary stay of suspension of the implementation of the said directive, pending the hearing and determination of the application dated 19th May, 2025.
3. In response, Ms. Wahinya, counsel for the 4th Respondent, submitted that there were three (3) other similar Petitions currently pending before the High Court in Kerugoya, wherein substantially similar constitutional and legal issues have been raised. On that basis, she requested that the current Petition and application be transferred to the High Court at Kerugoya for consolidation and hearing alongside the other related matter, in the interest of consistency, judicial economy and the avoidance of conflicting decisions.
4. Having considered the respective submissions and upon a careful scrutiny of the record, this court notes as follows: Firstly, that despite counsel for the Petitioners asserting that service was effected upon all the Respondents, there is no Affidavit of Service filed on the Court Tracking System (CTS) platform or in the court file to support this claim. It is trite law that service of pleadings is a fundamental procedural requirement that ensures the principles of fair hearing and natural justice as guaranteed under Article 50(1) of the *Constitution* of Kenya, 2010 are adhered to. A party cannot be expected to respond to proceedings which they have no knowledge of.
5. Without a Return of Service duly sworn and filed, the court cannot independently verify whether any or all the Respondents were served, when they were served, or the exact documents served. In light of this, no adverse inferences or interim orders can be issued against the Respondents at this stage.
6. Secondly, the Petitioners' counsel claimed that the directive would take effect on 1st July, 2025, hence the urgency in seeking conservatory relief. However, no documentary or evidentiary material was tendered to substantiate this assertion. The court cannot act on bare allegations or assumptions without a factual basis.
7. Lastly, while the court takes note of the 4th Respondent's counsel submissions that there are three (3) similar and consolidated Petitions pending before the High Court of Kenya in Kerugoya, the request for transfer was made orally and without the support of a formal application or accompanying affidavit disclosing the nature, parties, and issues involved in those Petition. In consideration of this, a transfer of this matter as requested requires a formal and structured approach to ensure that there is no prejudice to any party and if the matters are truly related in substance and scope, the request can only be allowed upon full disclosure and opportunity for all parties to be heard.
8. Thus, in view of the foregoing, the court declines to grant the interim conservatory relief sought at this stage for want of proper proof of service and lack of evidence establishing the urgency based on the alleged implementation date. In the upshot, the following directions issue:-
 - a. The Petitioners to effect proper service of the Petition and Notice of Motion dated 19th May, 2025 upon all Respondents within seven (7) days from the date of this ruling.
 - b. Upon service, the Petitioners to file the Affidavit(s) of Service for the same to be placed on record prior to the next mention date.
 - c. The 4th Respondent, if still desirous of pursuing the request for transfer of the matter to the High Court in Kerugoya, is directed to file a formal application within seven (7) days from the date hereof.



- d. Mention on 7th July, 2025 before the Deputy Registrar for parties to confirm compliance and take further directions.

It is so ordered.

RULINGS DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JUNE 2025.

D. O. CHEPKWONY

JUDGE

