



**Muinde v Inspector General of Police & 2 others (Petition E026 of 2025)
[2025] KEHC 12826 (KLR) (Constitutional and Human Rights) (10 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12826 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E026 OF 2025

AB MWAMUYE, J

SEPTEMBER 10, 2025

**IN THE MATTER OF ARTICLES 22, 23(3), 24, 28, 29, 31, 47,
49 AND 165(3)&(6) OF THE CONSTITUTION OF KENYA;**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013;**

AND

**IN THE MATTER OF THE ARBITRARY ARREST, HARASSMENT,
SUMMONS AND INVESTIGATION OF THE PETITIONER**

BETWEEN

MARGARET MWIKALI MUINDE PETITIONER

AND

INSPECTOR GENERAL OF POLICE 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

KENYA ROAD BOARD 3RD RESPONDENT

RULING

Introduction

1. The application before this court is the Applicant’s Notice of Motion Application dated 20th January 2025 seeking the following orders;

a. Spent



- b. Pending inter partes hearing of this Application, a Conservatory Order be; and is hereby issued Restraining the 1st & 2nd Respondents from Arresting, Arraigning or Summoning the Petitioner/Applicant on matters pertaining to her Employment with the 3rd Respondent, Kenya Roads Board.
 - c. Pending hearing and determination of this Application and the Petition, a Conservatory Order be; and is hereby issued Restraining the 1st & 2nd Respondents from Arresting, Arraigning or Summoning the 2nd Petitioner on matters pertaining to her Employment with the 3rd Respondent, Kenya Roads Board.
 - d. Pending inter-partes hearing of this Application, a Conservatory Order be; and is hereby issued Restraining the 1st & 2nd Respondents from Arresting, Detaining, Arraigning or Summoning the Petitioner/Applicant.
 - e. Costs of this Application be in the Cause.
2. The application is premised on alleged violations of the Applicant’s fundamental rights by officers of the 1st and 2nd Respondents, purportedly acting at the behest of the 3rd Respondent.
 3. Interim Conservatory Order s were granted ex parte on 20th February 2025:

“Pending the highlighting of written submissions, a Conservatory Order be and is hereby issued Restraining the 1st and 2nd Respondents (The Inspector General of Police and the Director of Criminal Investigations), jointly and severally, from summoning, arresting, and/or arraigning the Petitioner/Applicant (Margaret Mwikali Muinde) with respect to any matters pertaining to her employment with the Kenya Roads Board, being the 3rd Respondent herein.”
 4. The orders were extended by this Court to remain in force until 10th September 2025, pending delivery of this Ruling.

Background Of The Application

5. The Applicant is a former employee of the 3rd Respondent, the Kenya Roads Board. She alleges that during the course of her employment, she was subjected to harassment, intimidation, discrimination, and gender-based mistreatment by officials of the 3rd Respondent. Despite making internal complaints, she contends that no redress was afforded to her, and that her employment was ultimately and unfairly terminated in August 2022. Aggrieved by the said termination, the Applicant instituted proceedings for unfair dismissal in the Employment and Labour Relations Court (ELRC Case No. ELRCC/E610/2022), which matter remains pending.
6. Following the institution of the employment claim, the Applicant alleges that she became the subject of persistent and arbitrary police harassment, which she attributes to collusion between the 3rd Respondent and the 1st and 2nd Respondents. In particular, she claims that she has been subjected to repeated police summons and interrogations concerning issues arising from her former employment.
7. The Applicant asserts that she was arrested at night, detained without charge, and generally intimidated by state agents. She contends that these actions amount to abuse of power and a violation of her constitutional rights. The rights alleged to have been infringed include those protected under Articles 19, 27, 28, 29, 31, and 49 of *the Constitution*. The Applicant characterises the Respondents’ conduct as



a deliberate and unlawful effort to intimidate her and hinder the pursuit of justice in her employment dispute.

8. The 1st and 2nd Respondents oppose the application and deny any harassment or abuse, asserting that all actions undertaken by the police were lawful, within their investigative mandate, and based on a complaint allegedly lodged by the 3rd Respondent. They maintain that the Applicant was summoned and questioned solely in the context of ongoing investigations relating to her previous employment.
9. The Respondents assert that the Applicant's arrest and questioning on 14th January 2025 were conducted lawfully and in good faith, emphasizing that she was released in accordance with legal procedures and that no criminal charges have been preferred against her as investigations are still ongoing. Consequently, the 1st and 2nd Respondents deny any infringement of the Applicant's constitutional rights and contend that the present petition constitutes an abuse of the constitutional court process, intended to obstruct and frustrate legitimate criminal investigations.
10. The 3rd Respondent similarly denies any collusion with the police and maintains that the Petition constitutes an abuse of court process. It is further argued that the constitutional issues raised are substantially similar to those already pending before the Employment and Labour Relations Court, rendering this matter potentially sub judice.
11. The Respondents collectively oppose the grant of Conservatory Order s, arguing that the Applicant has not met the requisite legal threshold. They contend that granting the orders sought would improperly impede lawful investigative processes and that the Applicant retains adequate legal remedies should any rights violation occur in future.

Analysis And Determination

12. Having considered the pleadings, and submissions, the Court identifies the issue for determination whether the Applicant has met the threshold for the grant of a Conservatory Order as sought in the application.

Prima Facie Case

13. The Applicant asserts that she has been subjected to a series of actions by the Respondents which, on their face, implicate a violation of her constitutionally protected rights. She avers that following the termination of her employment by the 3rd Respondent, and the subsequent filing of an employment claim in the Employment and Labour Relations Court, she became the target of harassment and intimidation by state agents allegedly acting at the behest of the 3rd Respondent. She specifically alleges that she was trailed, arrested at night, detained without charge, and compelled to record statements in relation to matters connected to her former employment, all without being informed of any lawful reason for her arrest or being presented before a court within the constitutionally mandated time.
14. These events, as narrated and supported in her affidavit, are said to constitute a violation of her rights under Article 29 (freedom and security of the person), Article 49(1)(a) and (f) (rights of arrested persons), Article 31 (right to privacy), and Article 28 (right to dignity) of *the Constitution*. According to the Applicant, these actions were not undertaken in pursuit of a lawful criminal investigation, but rather were intended to intimidate, punish, and deter her from pursuing her legitimate claim against her former employer.



15. In support of her position, the Applicant relies on the definition of a prima facie case as set out by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125, where it was held that:

“a prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
16. The Applicant maintains that the facts presented particularly the uncontroverted narrative of her arrest and subsequent treatment reveal a clear and apparent infringement of her rights which necessitates an answer from the Respondents. She asserts that her Petition is not only arguable, but is supported by credible evidence of actual violations, and thus meets even the higher threshold of a strong prima facie case.
17. The Respondents, on their part, dispute the Applicant’s claims and deny any unlawful conduct. They submit that all actions undertaken by the police fell within the confines of legitimate investigative work. In their view, the summoning and questioning of the Applicant were lawfully undertaken pursuant to a complaint allegedly lodged by the 3rd Respondent, and no constitutional rights were infringed.
18. The 1st and 2nd Respondents argue that an arrest or interrogation in itself does not amount to a violation, particularly where such actions are sanctioned by law and grounded in reasonable suspicion. They maintain that the Applicant has not demonstrated how her constitutional rights were breached, arguing further that mere inconvenience or distress caused during an investigation does not rise to the level of a constitutional infraction.
19. Reliance is placed on *Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General* [2011] eKLR where the Court emphasized that, at the interlocutory stage, an applicant seeking a Conservatory Order need not prove the entire case but must demonstrate that they have a prima facie case with a likelihood of success, and that unless the Conservatory Order is granted, there is a real risk that they may suffer prejudice as a result of a violation or threatened violation of *the Constitution*.
20. Additionally, the 3rd Respondent submits that the Petition is improperly before the constitutional court and may be a veiled attempt to re-litigate an employment dispute under the guise of a rights violation. It is contended that the constitutional questions raised are not genuine, and that the application is both misconceived and an abuse of the court process, given the existence of a pending employment claim involving the same parties and subject matter. All Respondents collectively urge the Court to reject the application for conservatory relief, asserting that the Applicant has failed to demonstrate an arguable case and has not met the threshold required at this preliminary stage.
21. This Court is guided by the jurisprudence laid down in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR where the Supreme Court underscored that Conservatory Orders, unlike ordinary injunctions, are grounded in public law principles, and are issued “on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes and priority levels attributable to the relevant causes.” In line with this guidance, it is not necessary for the Applicant to prove her entire case at this stage; rather, she must establish that the claim is not frivolous, raises serious constitutional questions, and discloses an arguable case.



22. In *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] eKLR the court held:
- “it is not enough to merely establish a prima facie case that is potentially arguable; rather, there must also be a likelihood of success the prima facie case ought to be beyond a speculative basis.”
23. In the instant suit, the Court finds that the Applicant’s case satisfies this requirement. The details surrounding her arrest including the alleged misrepresentation by officers, the failure to inform her of the reasons for arrest, the absence of charges months after the incident, and the apparent linkage of the police action to an employment dispute have not been adequately rebutted by the Respondents. These factors collectively give rise to a reasonable inference that her rights may have been unjustifiably infringed.
24. The Respondents’ reliance on general justifications relating to investigative mandates, in the absence of any tangible explanation or documentation of the alleged complaint against the Applicant, leaves material gaps in their response. The failure to disclose the nature of the complaint, the legal basis for the arrest, or the reasons for the continued lack of prosecution lends support to the Applicant’s assertion that the actions taken against her were not bona fide, but rather calculated to intimidate or punish her for engaging the legal system.
25. Accordingly, the Court is persuaded that the Petition raises substantive constitutional issues concerning the alleged misuse of police power, and the violation of rights to liberty, privacy, dignity, and procedural fairness. These issues are neither speculative nor academic, and they cannot be dismissed as mere extensions of the employment dispute pending before the ELRC.
26. As observed by Ringera J. in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (supra), a prima facie case exists where, on the face of the material presented, there is an apparent infringement of a right that calls for a rebuttal from the opposing party. In the constitutional context, the High *CREAW v Attorney General* [2011] eKLR supra affirmed that an applicant is only required to demonstrate a prima facie case with a likelihood of success, and that unless a Conservatory Order is granted, there is a real risk of prejudice arising from the violation or threatened violation of *the Constitution*.
27. The Court is also guided by the established principle that, at the interlocutory stage, it must exercise caution and avoid making conclusive findings on disputed facts or points of law. The inquiry is limited to assessing whether the claim is neither frivolous nor speculative, and whether it raises substantial constitutional questions deserving of determination at a full hearing.
28. This Court is properly seized of jurisdiction to interrogate and determine the constitutionality of the conduct attributed to state actors, even where the background facts overlap with an employment matter.
29. In the result, I find that the Applicant has met the threshold for a prima facie case under Article 23 of *the Constitution*

Irreparable Harm/nugatory Effect

30. The second consideration for the grant of a Conservatory Order is whether, absent such relief, the Applicant stands to suffer irreparable harm or prejudice that would render the eventual determination of the Petition nugatory.



31. The Applicant submits that unless restrained, the 1st and 2nd Respondent allegedly acting at the instigation of the 3rd are likely to continue harassing and intimidating her. She contends that the risk of further arbitrary arrest or even abduction is real and imminent, particularly as the Respondents have offered no assurance to cease the impugned conduct.
32. She further avers that she lives in constant fear, effectively confined to her home, which has seriously curtailed her freedom of movement and personal wellbeing. Without the court's protection, she is exposed to renewed violations, including unlawful arrest or coercion to abandon her legal claims. Such violations, she argues, would defeat the purpose of this Petition, as the harm to her liberty, dignity, and psychological integrity cannot be remedied through damages or declarations after the fact. In her view, conservatory relief is essential to preserve the substratum of the Petition and prevent irreparable harm.
33. The Respondents oppose this position, arguing that the Applicant's fears are speculative and unsupported by concrete evidence. They maintain that the police have acted lawfully and remain bound by constitutional safeguards, and that the Applicant will be accorded due process should any formal proceedings be instituted. They submit that the Petition would not be rendered nugatory by the absence of interim relief, as it can still be heard and determined on its merits, and any proven violations can be redressed through appropriate final orders.
34. The applicable threshold is not whether harm can eventually be remedied, but whether it is irreparable in the interim. As the Supreme Court emphasized in *Munya supra* and as reaffirmed in *CREAW v AG [2011] eKLR*, courts are empowered to issue conservatory relief where there is a credible risk of ongoing or imminent violations that cannot be effectively reversed. The reversibility or compensability of the harm is a key factor. If harm is irreversible particularly in relation to liberty, dignity, and personal security then a Conservatory Order is warranted.
35. The Court of Appeal in *Nelson Andayi Havi v Law Society of Kenya & Others [2018] eKLR* similarly underscored that where interim harm is reversible, courts may decline Conservatory Order s. But where constitutional rights are at stake, and violations would cause irreversible harm or stultify the Petition, the Court must intervene. Moreover, the substratum of the Petition must be preserved particularly where it concerns the Applicant's continued enjoyment of constitutional rights.
36. Article 23 of *the Constitution* empowers this Court to grant Conservatory Order s to prevent imminent or ongoing violations of the Bill of Rights. The role of the Court at this stage is thus preventive, not merely remedial. The aim is to ensure that by the time judgment is delivered, the subject matter of the litigation has not been overtaken or rendered academic by intervening actions.
37. Applying these principles, this Court finds that the Applicant has demonstrated a real and credible risk of irreparable harm. The alleged conduct by the Respondents, particularly the 1st and 2nd, appears to form part of a sustained pattern of intimidation. The Applicant's fear is not speculative; she did receive summonses and unannounced visits by police officers, and the Respondents do not deny that she remains under investigation.
38. Without court protection, there is nothing to prevent renewed arrest or harassment under the pretext of investigation. Each such incident would constitute a further violation of rights which, by their nature, are not amenable to full restoration. Even brief arbitrary detention causes injury to liberty and personal dignity that no compensation can fully undo. Conservatory relief is therefore necessary to prevent such injury.
39. The Respondents' suggestion that they may charge the Applicant lawfully in future does not dispel the concern. If investigations were bona fide, one would expect some formal progress or clarity on the



nature of the complaint. Instead, the absence of charges months after the initial arrest lends support to the Applicant's claim that the actions are driven by malice and intended to suppress her legal pursuits.

40. The Court also notes that interim orders have been in place since February 2025, during which time the status quo of non-harassment has been maintained without any demonstrable prejudice to the Respondents. There is no indication that the integrity of lawful investigations has been compromised by the existing restraint.
41. The risk of prejudice is, in the Court's view, sufficiently established. Without conservatory protection, the Applicant remains vulnerable to rights violations that may render her constitutional claims hollow by the time the Petition is heard. The substratum of the Petition her enjoyment of fundamental rights must be preserved.
42. Accordingly, the Court finds that the Applicant has satisfied the second limb of the test and demonstrated a real danger of irreparable prejudice warranting conservatory protection

b. Public Interest

43. The Applicant contends that the public interest lies in upholding constitutional rights and ensuring that state power is exercised within legal bounds. She argues that granting a Conservatory Order reinforces the principle that no public officer or institution is above *the Constitution*, and that every citizen has a stake in preventing the abuse of authority. She maintains that there is minimal public prejudice in Restraining the Respondents from acts of harassment, particularly where no legitimate criminal case has been disclosed. On the contrary, permitting continued intimidation, she argues, would erode public confidence in the rule of law and constitutional accountability.
44. In response, the Respondents assert that the public interest favors allowing the police to perform their investigative duties without judicial interference. They warn that granting conservatory relief may embolden suspects to shield themselves from lawful scrutiny by invoking constitutional claims. The 3rd Respondent adds that the matter involves possible misconduct during the Applicant's employment, and that it is in the public interest for such allegations to be investigated without obstruction.
45. It is settled that public interest is a critical factor in determining whether Conservatory Order s should issue. The Supreme Court in *Munya supra* recognized public interest as a distinct and necessary consideration in constitutional applications. While there is undoubtedly a public interest in the proper enforcement of the law, there is equally a compelling interest in protecting individuals from unlawful or abusive exercise of state power. Courts must balance these competing interests with care.
46. In the case of *Coalition for Reform and Democracy (CORD) & Another v Republic of Kenya & Another* [2015] eKLR, the High Court emphasized that Restraining state action at an interim stage should be approached cautiously and only where a clear case of unconstitutionality is shown. Nonetheless, where there is credible evidence of ongoing or imminent rights violations as is alleged in the instant suit before this Honourable court, the public interest in constitutional protection must prevail.
47. Article 19 of *the Constitution* affirms that the Bill of Rights is an integral part of Kenya's democratic framework. Its enforcement serves not just the individual, but the public at large. Accordingly, halting unlawful state conduct even temporarily can enhance public confidence in the constitutional order and in judicial oversight.
48. In the present case, this Court is persuaded that the balance of public interest tilts in favor of granting conservatory relief. The allegations before the Court do not point to a legitimate law enforcement process, but rather to a misuse of police powers in the context of a civil dispute. It would be contrary



to the public interest for state machinery to be deployed to settle private grievances or intimidate parties involved in legal proceedings. Importantly, the orders sought do not bar lawful investigation altogether; they simply restrain arrest and harassment in relation to the Applicant's dispute with the 3rd Respondent. If the police possess credible evidence of criminal conduct, they may apply to vary the orders or proceed under proper judicial oversight. As matters stand, the Respondents have not shown that the Conservatory Order impedes any active or time-sensitive investigation.

49. Removing the interim protection would expose the Applicant to further potential rights violations, undermining not only her access to justice but also public confidence in the constitutional safeguards designed to prevent such abuse.
50. Given the foregoing, this Court finds that granting Conservatory Order s in this case is in the public interest. It affirms the rule of law, protects the integrity of these proceedings, and ensures that state actors remain accountable to constitutional norms pending final determination of the Petition.

Disposition

51. I am satisfied that the Applicant has met the threshold for the grant of Conservatory Order s. The Applicant has established a prima facie case disclosing a credible claim of violation and/or threatened violation of her constitutional rights by the Respondents. She has further demonstrated that, in the absence of interim protection, she is likely to suffer irreparable harm through continued harassment and intimidation, which may render the Petition nugatory. Moreover, the public interest weighs in favour of preserving constitutional order and preventing abuse of state power during the pendency of this Petition.
52. Accordingly, the interim order Restraining the 1st and 2nd Respondents whether by themselves, their officers, servants, or agents from arresting, detaining, charging, summoning, or in any manner harassing the Applicant in connection with matters relating to her former employment with the 3rd Respondent are extended to 20th February, 2025 pending the hearing and determination of the Petition or until further orders of this Court.
53. The costs of this application shall be in the cause.
It is so ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 10th DAY OF SEPTEMBER, 2025.

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BAHATI MWAMUYE

JUDGE

In the presence of :

Counsel for the Petitioner: Mr. Anyona

Counsel for the 3rd Respondent: Mr. Oundo

Court assistant: Ms. Lwambia

