



**Okiro v Attorney General (Constitutional Petition E007 of 2024)
[2024] KEHC 3604 (KLR) (16 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3604 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CONSTITUTIONAL PETITION E007 OF 2024**

PN GICHOHI, J

APRIL 16, 2024

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA.

**IN THE MATTER OF: ARTICLES 2, 3, 10, 22 (1) & (2), 23, 40,
43,160 (4), 165(3) (D), 186, 207, 209(5), 258(1) & 2(C) AND THE
FOURTH SCHEDULE OF THE CONSTITUTION OF KENYA 2010.**

**IN THE MATTER OF: VIOLATIONS POSED BY SECTION 4, 5, 16, 17 AND
26 OF THE AFFORDABLE HOUSING ACT, NO. 75 OF 2024 TO ARTICLES
1,2(4),3(1),10,40,43,186 AND 207 OF THE CONSTITUTION AND THE
FOURTH SCHEDULE TO THE CONSTITUTION ON DISTRIBUTION OF
FUNCTIONS BETWEEN THE NATIONAL AND COUNTY GOVERNMENT.**

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF SECTIONS 4 &
5 OF THE AFFORDABLE HOUSING ACT, NO. 75 OF 2024 TO THE EXTENT THAT THEY
IMPOSE A MANDATORY AFFORDABLE HOUSING LEVY TO THE INCOME OF EVERY
CITIZEN CONTRARY TO ARTICLES 10,40,43 AND 209(5) OF THE CONSTITUTION.**

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF SECTION 4
AND 5 OF THE AFFORDABLE HOUSING ACT, NO. 75 OF 2024 TO THE EXTENT THAT
THEY ALTER REMUNERATION AND BENEFITS OF JUDGES TO THEIR DETRIMENT,IN
THE MATTER OF: THE CONSTITUTIONAL AND LEGAL VALIDITY OF SECTION 4
AND 5 OF THE AFFORDABLE HOUSING ACT NO. 75 OF 2024 TO THE EXTENT THAT
THE ACT VESTS NATIONAL GOVERNMENT WITH THE FUNCTION OF HOUSING
CONTRARY TO ARTICLES 186, 207 AND FOURTH SCHEDULE TO THE CONSTITUTION.**

BETWEEN

PETER OKIRO APPLICANT

AND

THE HON. ATTORNEY GENERAL RESPONDENT



RULING

1. The Petitioner herein moved this Court vide a Petition dated 25th March 2024 filed on 26th March 2024 through the firm of Kipkoech B. Ngetich Advocate challenging Sections 4, 5, 16, 17 and 26 of the *Affordable Housing Act* No. 75 of 2024.
2. Simultaneously, he filed Notice of Motion under a certificate of urgency seeking among other orders, conservatory orders restraining the Respondent from implementation of and /or enforcement of Sections 4,5,16,17 and 26 of *the Act* pending hearing and determination of the Application.
3. He also sought directions as to whether this Petition raises weighty issues to warrant the same being sent to the Chief Justice to empanel a 3- Judge Bench.
4. This Court handled the Certificate of urgency on 26th March 2024 and directed the Respondent be served for further directions on 16th April 2024.
5. This morning, both parties appeared before this Court for directions. Ms Adomeyen, Mr. Kiragu Kimani Appeared for the Respondent.
6. Also seeking to be acknowledged was Mr. Kuyion for National Assembly who filed a Certificate of Urgency dated 15th April 2024 seeking that the National Assembly (Proposed Respondent) be enjoined in these proceedings.
7. Acknowledging having been served with a Preliminary Objection by the Respondent, Mr. Kipkoech urged that in the directions, this Court grants conservatory orders in terms of prayer No. 3 and 4 of the Notice of Motion. He was not opposed to the National Assembly being enjoined as a party to these proceedings.
8. On behalf of the Respondent, Mr. Somane led Ms Adomeyen and Mr Kiragu Kimani opposed granting of any orders on the grounds that there were six (6) other similar Petitions being handled by Hon. Mwita J and coming for directions before the Judge on Friday 19th April 2024. On behalf of his colleagues, he urged the Court to transfer this file to Nairobi to be handled by Hon. Mwita J.
9. Mr. Kimani Kiragu added that suspending the provisions of the Act at this juncture is draconian. That the issue should be at inter-parties hearing of the Application and the Petition and not at the point of Directions. He urged the Court to decline issuance of the conservatory orders as sought at this juncture.
10. In response, Mr. Kipkoech argued that since the Respondent has raised the issue of jurisdiction in the Preliminary Objection dated 12th April 2024, then this Court has no jurisdiction to transfer the matter to Nairobi.
11. Having heard those arguments by parties herein, there is no dispute that that six (6) other Petitions are before Hon. Mwita J of Milimani High Court Constitutional and Human Rights Division on similar issues as those raised by the Petitioner herein. No orders have been issued therein.
12. What this Court is made to understand is that directions on all those Petitions will be issued on 19th April, 2024 before the Honourable Judge. The transfer of this file from by this Court to another Judge of High Court in the circumstances is perfectly in order and not in the context raised by Mr. Kipkoech for the Respondent.
13. Further, it has been indicated that National Assembly is a Party in those Petitions. This Court therefore finds it prudent to have this file sent to the Honourable Judge so that all issues being raised here are



dealt together with the issues in the other Petitions coming for directions on Friday this week and that includes the issue of joinder.

14. For those reasons, this Court declines to give any orders at this stage but gives Directions that:-

1. This file be and is hereby urgently transferred to Milimani Constitutional and Human Rights Division.
2. The matter be listed before Hon. Justice E.C. Mwita on 19th April, 2024 for further directions.

DATED, DELIVERED AND SIGNED AT NAKURU THIS 16TH DAY OF APRIL, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Mr. Kipkoech for Petitioner

Mr. Somane, Mr. Kiragu Kimani and Ms Adomeyen for Respondent

Mr. Kuyion for National Assembly (Proposed Respondent)

Ruto - Court Assistant

RULING HIGH COURT NAKURU CONST. PET. NO. E007 OF 2024

Page 2

