



**Kirungumi v Speaker of the National Assembly of the Republic of Kenya & 3 others
(Petition E039 of 2024) [2024] KEHC 12532 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12532 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E039 OF 2024
DO CHEPKWONY, J
OCTOBER 14, 2024**

**IN THE MATTER OF: THE SOVEREIGNTY OF THE PEOPLE, SUPREMACY OF THE
CONSTITUTION AND ENFORCEMENT OF THE CONSTITUTION UNDER ARTICLES
1, 2, 3(1), 145, 150(1)(B), 258(1) AND 259 OF THE CONSTITUTION OF KENYA.**

AND

**IN THE MATTER OF: IMPEACHMENT OF THE DEPUTY PRESIDENT
OF THE REPUBLIC OF KENYA, HON. RIGATHI GACHAGUA.**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE
NATIONAL VALUES AND PRINCIPLES OF GOVERNANCE
UNDER ARTICLE 10 OF THE CONSTITUTION OF KENYA.**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE POWER
AND FUNCTIONS OF THE LEGISLATURE UNDER ARTICLES
10, 94(4), 95(5), 96(4) AND 118(1) OF THE CONSTITUTION.**

AND

**IN THE MATTER OF: JURISDICTION AND AUTHORITY OF THE HIGH
COURT UNDER ARTICLES 21, 22(1), 23(1)(3), 165(3), 258 & 259 OF THE
CONSTITUTION OF KENYA 2010, READ TOGETHER WITH SECTION 5 OF THE
HIGH COURT (ORGANISATION AND ADMINISTRATION) ACT, NO. 27 OF 2015.**

BETWEEN

BERNARD WANGOMBE KIRUNGUMI PETITIONER

AND

**THE SPEAKER OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF
KENYA 1ST RESPONDENT**



**THE NATIONAL ASSEMBLY OF THE REPUBLIC OF
KENYA 2ND RESPONDENT**

**THE SPEAKER OF THE SENATE OF THE REPUBLIC OF
KENYA 3RD RESPONDENT**

THE SENATE OF THE REPUBLIC OF KENYA 4TH RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion application dated 11th October, 2024 which was filed alongside a Petition dated on even date. In the application, the Applicant Bernard Wangumi Kirungumi describing himself as a Kenyan voter who participated in the 2022 General elections and exercised his sovereign right under Article 38 of *the Constitution* to choose leaders that would preside over governance until 2027, seeks for:-
 - a. Spent;
 - b. Spent;
 - c. That this Honourable Court be pleased to certify that this matter raises questions of great general public importance, fit to be heard and determined by an uneven number of Judges to be empanelled by the Chief Justice of the Republic of Kenya (hereinafter the Chief Justice);
 - d. That pending the hearing and determination of this application, this Honourable Court be pleased to issue the prayer for conservatory orders restraining the Senate of the Republic of Kenya (hereinafter the Senate) from investigating, debating, hearing, processing, passing and/or making any resolution concerning the Special Motion dated 26th September 2024 for removal of the Deputy President of the Republic of Kenya, Hon. Rigathi Gachagua (hereinafter the Deputy President) by impeachment (hereinafter the Special Motion) following the resolution of the National Assembly of the Republic of Kenya (hereinafter the National Assembly) made on 8th October 2024 to remove from office the Deputy President by impeachment;
 - e. That pending the hearing and determination of the substantive Petition herein, the Honourable Court a conservatory order be issued restraining the Senate from investigating, debating, hearing, processing, passing and/or making any resolution concerning the Special motion for removal of the Deputy President from office by impeachment following the resolution of the National Assembly made on 8th October 2024, to remove from office the Deputy President by impeachment;
 - f. That the costs of this application be provided for.
2. The Application is premised on the grounds set out on its face and Supporting Affidavit sworn by the Petitioner/Applicant and annexures attached thereto.
3. The gist of this is that there are glaring mistakes, illegalities and irregularities in the manner in which the Special Motion has not only been introduced in the 2nd Respondent but also processed, debated, heard and determined and voted on by the members of the 2nd Respondent. That it is these illegalities that need to be addressed urgently by this Honourable Court before the Senate further processes the Special Motion.



4. The said mistakes, illegalities and irregularities are outlined in Paragraphs 5 to 22 of the grounds on the face of the application and as reiterated and substantiated in Paragraph 5 to 55 of the Supporting Affidavit in support of the application and Petition sworn on 11th October, 2024 together with the annexures attached thereto.
5. The application was opposed by the Respondents who filed Notices of Preliminary Objection dated 11th October, 2024.
6. In the Notice of Preliminary Objection by the 1st Respondent the following grounds were raised:-
 - a. At this stage, this Honourable Court does not have the jurisdiction to entertain this Petition and Application, which seeks to prevent Parliament from carrying out its constitutional duties. As such, Article 165 of *the Constitution* has not been properly invoked.
 - b. In *Justus Kariuki Mate & Another –vs- Martin Nyaga Wambora & Another* [2017] eKLR, the Supreme Court addressed the issue of conservatory orders against legislative bodies, particularly in impeachment proceedings, and concluded that courts should avoid issuing orders that would impede the legislature's ability to fulfil its constitutional responsibilities.
 - c. In *Nyeri Civil Application No. E093 of 2023; Hon. Kawira Mwangaza vs County Assembly of Meru and Another*, the Court of Appeal determined that it lacked jurisdiction to interfere with impeachment proceedings before the County Assembly of Meru, stating that judicial intervention could only occur after both the County Assembly and Senate had completed their processes.
 - d. The current Petition is sub judice, as the Petitioner has raised similar issues in High Court Petition E522 of 2024; *Rigathi Gachagua vs The Speaker of the National Assembly & Others*. That case, which challenges the ongoing process in Parliament concerning the removal of the Deputy President, has been certified as raising a substantial question of law and is awaiting a hearing before a bench of this Honourable Court.
 - e. The process of removing a Deputy President is subject to constitutionally defined timelines, and granting the orders sought in this case would result in a violation of *the Constitution*.
 - f. Article 165(3)[c] of *the Constitution* provides that the High Court has no jurisdiction to hear or determine a dispute relating to the removal of the President or the Deputy President from office on grounds of incapacity. By implication and for the same reasons, the High Court has no jurisdiction to determine the removal of the Deputy President by way of impeachment under Article 150 of *the Constitution*.
7. In the Notice of Preliminary Objection by the 2nd Respondent the following grounds were raised:-
 - a. The Petition violates the well-established doctrine of separation of powers by prematurely inviting the Honourable Court to interfere in matters that are constitutionally within the mandate of Parliament despite the generally accepted position and widely applied ratio by the courts:
 - i. In *Justus Kariuki Mate & Another v. Martin Nyaga Wambora & Another*, SC Petition No. 32 of 2014; [2017] eKLR, the Supreme Court reiterated that the Judiciary should refrain from intervening in the internal workings of Parliament, especially in cases where Parliament is exercising its constitutional duties. The current Petition violates this principle by seeking to halt a process that is well within Parliament's remit.



- ii. Similarly, the Supreme Court in *Sonko v. County Assembly of Nairobi City & 11 Others* (Petition 11 (E008) of 2022) [2022] KESC 76 (KLR), emphasized that courts must be slow to interfere where *the Constitution* assigns a matter to Parliament. The present Petition improperly invites this Honourable Court to encroach upon the legislative arm's constitutional functions.
 - b. The Petition offends the doctrine of ripeness by prematurely seeking to halt Parliament's constitutional role in the impeachment process. The impeachment motion has already been properly initiated and debated in the National Assembly. At this stage, judicial interference is unwarranted, as the process is still unfolding within the constitutional and legal framework governing such proceedings.
 - c. The Petition is non-justiciable before as it pertains to matters squarely within the constitutional mandate of Parliament under Articles 145 and 150 of *the Constitution*.
 - d. The Petitioner lacks locus standi and has failed to properly invoke the jurisdiction of this Honourable Court.
8. The 3rd and 4th Respondents on the other hand raised the following grounds in objection to the Application/Petition:-
- a. At this juncture, this Honourable Court lacks jurisdiction to hear this Petition seeking to restrain Parliament from discharging a constitutional function and therefore Article 165 of *the Constitution* is not properly invoked.
 - b. The Supreme Court in *Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another* [2017] eKLR has considered the issue of conservatory orders against a legislative body and specifically against impeachment proceedings and held that the courts should refrain from issuing orders whose effect is to hamstring the due performance of the constitutional functions of a legislature.
 - c. In *Nyeri Civil Application No. E093 of 2023; Hon. Kawira Mwangaza vs County Assembly of Meru and Another*, the Court of Appeal held that it lacked jurisdiction to interfere with the impeachment proceedings pending before the County Assembly of Meru and found that the court could only intervene after the County Assembly and the Senate had concluded their processes.
 - d. The Petition herein is sub judice as there are multiple suits raising similar issues, based on similar facts challenging the current process of removal of the Deputy President pending in Parliament and in High Court Petition E522 of 2024; *Rigathi Gachagua vs The Speaker of the National Assembly, The National Assembly, The Speaker of the Senate and The Senate*, the Petition has been certified as raising a substantial question of law to be heard by a bench of this Honourable Court.
 - e. Parliament cannot be restrained from performing its constitutional mandate under Article 145 of *the Constitution*.
 - f. Removal of a Deputy President from office is a process with constitutionally bound timelines, which must therefore be adhered to and the orders sought herein, if granted, would result in violations of *the Constitution*.



- g. The instant Petition is an abuse of court process having been filed during the pendency of the following multiple suits and the existence of these suits is a matter within the Petitioner's knowledge:
1. High Court Petition E506 of 2024; Caroline Wambui Mwangi v The National Assembly & Others
 2. High Court Petition E507 of 2024; Hon. Cleophas Wakhungu Malalah v The National Assembly & Others
 3. High Court Petition E509 of 2024; Kennedy Kariithi Gachege v The National Assembly & Others
 4. High Court Petition E516 of 2024; Jeremiah Gitari Njagi v The National Assembly & Others
 5. High Court Petition E521 of 2024; Nicholas Mweu and Hezron v The National Assembly & Others
 6. High Court Petition E526 of 2024; Joseph Kariuki Njenga v State Law Office & Others
 7. High Court Petition E527 of 2024; Andrew Njoroge and Miruru Waweru and 1 Other vs Speaker of the National Assembly and Speaker of the Senate
 - 8) High Court Petition E528 of 2024 (Formerly Chuka Pet. No.E018 of 2024); John Mugo Kiragu vs The National Assembly & Others
 - 9) High Court Petition E535 of 2024; Dension Ngala & Sharon Khasiya Masakhwi vs The Speaker of the National Assembly & Others
 10. High Court Petition E537 of 2024 (Formerly Nyahururu High Court Petition E006 of 2024); GEMA Watho Association vs Senate and National Assembly and 4 Others
 11. Kerugoya High Court Petition E014 of 2024; Hon. Jane Njeri Maina v The National Assembly & Others
 12. Nairobi HC Petition E550 of 2024; Hon. Rigathi Gachagua v The National Assembly & Others
 13. Eldoret High Court Petition E027 of 2024; Morara Omoke vs State Law Office and Senate and 3 Others
 14. Kiambu High Court Petition E039 of 2024; Bernard Wangombe Kirungumi vs Senate and National Assembly and 3 Others
9. There is also a Notice of Motion application dated 13th October, 2024, which seeks to consolidate this matter with other similar suits previously filed before other courts.
10. When the matter was placed before this court under Certificate of Urgency on 11th October, 2024, this Court upon taking into consideration of the nature of prayers sought, issued directions that the parties serve each other with their respective pleadings and then appear before it today for interparties hearing of the application.



11. Today, Mr. Mugane appeared for the Applicant/Petitioner while the Respondents were represented by Mr. Sore and Mr. Mbaya who was holding brief for Mr. Eric Gumbo and Mr. Paul Nyamodi. The parties proceeded by way of oral submissions.
12. Having carefully listened to all counsel in their respective oral submissions with regard to the prayers sought in the application dated 11th October, 2024 and the Notice of Motion application dated 13th October, 2024, this court finds the three issues arising for determination being:-
 - a. Whether the matter should be consolidated with the other single suits filed before other courts.
 - b. Whether the matter should be referred to Honourable Chief Justice for empanelment of an uneven number of Judges to hear and determine the Petition.
 - c. Whether the court should grant the conservatory orders restraining the Senate from investigating, debating, hearing, processing, passing or making any resolution concerning the Special Motion for the impeachment of the Deputy President following the resolution by the National Assembly on 8th October, 2024.
13. With regard to the 1st and 2nd issues for determination, it is important to note that from their respective submissions, counsel for the parties herein have reached a consensus that this matter should be referred to the Hon. Chief Justice for the empanelment of an uneven number of Judges to hear and determine the Petition. Given the gravity of the constitutional questions and the broader implications for the rule of law on the issues that have been raised by the parties in their respective pleadings, the matter requires careful deliberation, hence the justification for a bench of Judges to be empanelled to hear and determine the same.
14. The third issue for determination arises out of prayer No.4 of the Notice of Motion application dated 11th October, 2024 which seeks for interim orders to restrain the Senate from investigating, debating, hearing, processing, passing or making any resolution concerning the Special Motion for the impeachment of the Deputy President following the National Assembly's resolution on the 8th October, 2024.
15. Mr. Mugane, learned counsel for the Applicant submitted that while willing to concede on the issue of the empanelment of a bench of Judges of uneven number by the Honourable Chief Justice, as sought for under prayer No.(3) of his application, the sensitivity of the application is that the court is then called upon to issue conservatory orders sought for under prayer No.(4) of the application for the reason that if the same are not issued, the Petition will be rendered moot, because the 4th Respondent is set to debate on the Special Motion for impeachment of the 1st Interested Party on 16th October, 2024.
16. He urged that if the court were to find it warranting for an empanelment of a bench of uneven number of Judges by the Chief Justice, the same cannot be done before 16th October, 2024. He urged the court to preserve the subject matter and stand with the people of Kenya in upholding the rule of law and ensuring that the proper constitutional processes are followed by issuing the order sought for under prayer No.(4) on conservatory orders pending the hearing and determination of all other issues by the proposed bench of Judges. Counsel had contended that no prejudice will be suffered or visited on the Respondents.
17. Mr. Sore, learned counsel for the 1st and 2nd Respondents opposed the application for grant of conservatory orders and gave three reasons in support thereof. Firstly, a jurisdictional objection has been raised on the ground that the impugned process was still actual progress raised, hence the court has no jurisdiction to intervene or supervise the Senate on the same. He cited the case of Justus Kaiuki Matu (NPO).



18. Secondly, on the argument by the Applicant/Petitioner that the Petition will be rendered moot if the conservatory orders do not issue at this stage, counsel submitted that the court retains the jurisdiction to determine validity of the process once the same is concluded, which then means that the court can actually overturn any consequential decision that would be taken after the process if found wanting in terms of the constitutional and legally provided for processes.
19. Thirdly, counsel for the 1st and 2nd Respondents has argued that the Respondents are likely to suffer serious prejudice since they have put in place a programme because the impeachment process is a time-bound process and issuance of conservatory orders will throw the Respondents into disarray.
20. Mr. Sore concluded by saying that what is to be heard and considered before Senate will include the process that was before the National Assembly so that conservatory orders issuing at this stage will amount to the court supervising the entity of Parliament which is contrary to the doctrine of Separation of Powers. He urged the court to retain its ultimate jurisdiction to determine the constitutionality of the process once the same has been concluded.
21. The 2nd and 3rd Respondents, through their counsel, Mr. Mbaya also opposed the grant of conservatory orders since the same is what has been sought for in the other applications and Petition filed before the other courts across the country. He stated that the other courts have declined to grant the said orders because allowing the same would throw the country into a constitutional crisis for the reason that the impeachment process of the Deputy President is time-bound by *the Constitution* and Standing Orders of Parliament. Mr. Mbaya also submitted that the grant of conservatory orders sought would amount a violation of the doctrine of Separation of Powers as this would be an interference by the courts in matters that are constitutionally within the mandate of Parliament. On this argument, Mr. Mbaya relied on the Supreme Court decisions in the cases of Sonko –vs- County Assembly of Nairobi and 11 Others [2022]KLR and Justus Kariuki Matu & Another –vs- Martin Wambura & Another[2017]KLR, where it was held that “the Judiciary should refrain from intervening in the internal workings of Parliament especially in cases where Parliament is exercising its constitutional duties”.
22. He also argued that under Article 145 and 150 of *the Constitution*, the impeachment process is a matter that squarely falls within the mandate of Parliament. He emphasized that once an impeachment process has been filed before Parliament, it has the effect that constitutional timelines are actions that must be undertaken and cannot be stopped until the same comes to an end. And once the process is over, only then can the alleged irregularities or illegalities be contested before the Honourable Court.
23. In rejoinder, Mr. Mugane argued that the Respondents have treated us to double-speak because at one time they argue that the court has no jurisdiction and yet on the other hand, they have filed a matter for this court’s determination. He has also pointed out that the same Respondents have sought that the court grants an order forwarding the matter to the Chief Justice and yet they do not want the court to issue conservatory orders. His argument is that if the court has no jurisdiction to hear and determine the matter then it ought to stop here.
24. And on the issue that the Judges in the 23 matters already filed across the courts having declined to issue conservatory orders in similar applications, counsel for 3rd and 4th Respondents is of the view that the 23 Petitions are not before this courts and there is even no evidence to confirm that such orders were declined by the other courts.
25. With regard to the issue of contravening the well settled principle of Separation of Powers, it is counsels argument that what is before court is whether the process culminating into the impeachment process was followed and not whether or not His Excellency, Rigathi Gachagua should be impeached. His



position throughout the hearing of the Petition, is that the Respondents will have an opportunity to prove whether or not the process taken in the impeachment of the 1st Interested Party met the constitutional threshold.

26. Ultimately, both counsel for the Respondents are of the view that should the impeachment be confirmed by Senate. The application is not without remedy as he can challenge the constitutionality of any resultant decision by Senate after the process is concluded.
27. After carefully reviewing the submissions by all counsel for the parties herein on the prayer No.(4) of the application, the court finds the key issues for its determination are:
- a. Whether the courts has jurisdiction to issue conservatory orders against Senate concerning its constitutional mandate;
 - b. Whether the Applicant has demonstrated a prima facie case to warrant the grant of conservatory orders as sought.
28. It is essential to recognize and acknowledge that jurisdiction is the foundation upon which a court's authority rests. As was held in the case of Owners of Motor Vessel 'Lilian S' –vs- Caltex Oil (Kenya) Ltd [1989]KLR:-

“Jurisdiction is everything and without it, a court must down its tools”

29. In the instant case, the Respondents have raised the issue of whether this court has the authority to restrain or stop Senate from investigating, debating, hearing, processing, passing or making any resolution concerning the Special Motion for the impeachment of the Deputy President. The Respondents have urged the court, as one of the Arms of Government, to respect the doctrine of Separation of Powers, which is a cardinal principle of governance as enshrined and affirmed in *the Constitution* of Kenya, 2010, under Article 1(3) as follows:-

“Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—

- a. Parliament and the legislative assemblies in the County Governments;
 - b. the national executive and the executive structures in the County Governments; and
 - c. the Judiciary and independent tribunals.
30. This doctrine ensures that the Executive, the Legislative and the Judiciary operate within the spheres of authority, with checks and balances to prevent overreach of either of them.
31. The Legislature, as an Arm of Government is governed by the provisions under Chapter Eight of *the Constitution*. Article 93(1) provides for the Establishment of Parliament as follows:-
- (1) There is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate.
Sub Article (2) provides that:-
 - (2) The National Assembly and the Senate shall perform their respective functions in accordance with this Constitution.



32. The same Constitution under Article 94 provides for the power of Parliament and from where it emanates in the following manner:-

Sub Article (1);

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

Sub Article (2);

“Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.

Sub Article (4);

“Parliament shall protect this Constitution and promote the democratic governance of the Republic.”

33. From the provisions, it is clear that Senate is a constituent of Parliament whose power is derived from the will of the people who elected the members thereof and thus exercises their sovereignty.

34. The role of Senate is provided for under Article 96 of *the Constitution* and specifically under Article 96(4), Senate is granted the constitutional mandate to hear and determine charges against either the President or the Deputy President as follows:-

[4]. The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.

35. Article 145 of *the Constitution* goes on to outline the impeachment process in the following manner:

- (1) A member of the National Assembly, supported by at least a third of all the members, may move a motion for the impeachment of the President—
 - a. on the ground of a gross violation of a provision of Constitution or of any other law;
 - b. where there are serious reasons for believing that the President has committed a crime under national or international law; or
 - (c) for gross misconduct.
- (2) If a motion under clause (1) is supported by at least two-thirds of all the members of the National Assembly—
 - a. the Speaker shall inform the Speaker of the Senate of that resolution within two days; and
 - b. the President shall continue to perform the functions of the office pending the outcome of the proceedings required by this Article.
- (3) Within seven days after receiving notice of a resolution from the Speaker of the National Assembly—
 - a. the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the President; and



- b. the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.
 - (4) A special committee appointed under clause (3) (b) shall— (a) investigate the matter; and
 - (b) report to the Senate within ten days whether it finds the particulars of the allegations against the President to have been substantiated.
 - 5. The President shall have the right to appear and be represented before the special committee during its investigations.
 - 5. If the special committee reports that the particulars of any allegation against the President—
 - a. have not been substantiated, further proceedings shall not be taken under this Article in respect of that allegation; or
 - b. have been substantiated, the Senate shall, after according the President an opportunity to be heard, vote on the impeachment charges.
 - (7) If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.
- 36. Clearly, a reading of these provisions presents a role that is time-bound and essential for a democratic process as envisaged under Article 94(3) of *the Constitution*.
- 37. In the case of *Sonko –vs- County Assembly of Nairobi County and 11 Others [2022]eKLR*, the Supreme Court provided critical guidance on issues similar to those before this court by stating:-

“Courts must avoid overstepping their mandate by intruding into areas reserved for other Arms of Government. The principle of Separation of Powers demand that judicial intervention be reserved for instances of clear constitutional violations”.
- 38. In the same vein, the court in the case of *Speaker of the Senate & Another –vs- Attorney General & Others [2013]eKLR*, held that:

“courts should avoid interfering with the function of Parliament or the Senate unless there is a demonstrable breach of *the Constitution* or gross violation of fundamental rights”.
- 39. This principle has been reinforced by persuasive authorities from other jurisdictions such as the case of *Doctors for Life International –vs- Speaker of the National Assembly & Others [2006] ZACC, 11*, where the South African Constitutional Court held thus:-

“Courts muse exercise great caution in intervening in the legislative process and must ensure that their actions do not frustrate the will of the people as expressed through their elected representatives”.
- 40. This finding is a clear import of the provision of Articles 1(1) and (2), both of the Kenya Constitution which provides:-



Article 1(1);

1. All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

Sub Article (2) states:-

- (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

Article 94(1) and (2) go on to state that:-

Sub Article (1)

- (1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.

Sub Article (2);

- (2). Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.

41. From the provisions of *the Constitution* and as established in the above cited cases, impeachment is a tool which the legislative bodies (the National Assembly and Senate) are required to use in making their oversight function effectively and therefore the impeachment process falls squarely within the domain of the Legislature. For this reason, the same is non-justiciable, in which case, courts are precluded from interfering with its functions of roles or mandate as one of the Arms of the Government unless there is a clear demonstration of constitutional violation or breach of the law.
42. Furthermore, Article 2(3) of *the Constitution* provides that:-
 - (3) The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.
43. In view of the foregoing, this court is called upon to exercise caution when faced with matters that involve constitutional processes or functions of other Arms of Government, as is the case herein, lest it finds itself accused of interference or in conflict with the principles of Separation of Powers.
44. The Applicants argument as submitted by his counsel, Mr. Mugane is that without conservatory orders, the impeachment process will proceed and thus render the application and Petition herein nugatory or moot. However, this Court finds the argument has not demonstrated what harm or damage he Applicant and or Interested Party are likely to suffer if the impeachment process continues before the Senate as scheduled and or whether the same cannot be addressed through judicial intervention. As pointed out by Mr. Sore in his submissions and rightly so, should Senate reach an adverse decision, the Applicant retain the right to challenge the decision through Judicial Review or a Constitutional Petition as was recognized in the case of Re: The matter of Interim Independent Electoral Commission [2011] eKLR.
45. Mr. Mugane also submitted that by issuing the conservatory orders, this Court will be standing with the people of Kenya and upholding the rule of law. Further, he has urged that no prejudice will be suffered by the Respondents. It is this Court's view that in conducting the impeachment of the 1st Interested Party, herein read as the Deputy President, the Respondents (that members of Parliament are carrying out their constitutional role on behalf of their constituents who are the people of Kenya (see Articles 1, 2 and 94(2) of *the Constitution* of Kenya, 2010).



46. And on whether or not the Respondents will suffer prejudice, the process from Parliament to Senate are time-bounds. There is no provision on how either of the houses can recover time lost if conservatory orders were to be issued. Clearly, the convenience lies with the legislative (Senate).
47. Having failed to adduce cogent evidence of a violation or breach of constitutional or legal process, and having failed to demonstrate what prejudice the Applicant and the Interested party are likely to suffer, this Court is persuaded that a prima-facie case has not been demonstrated to warrant the issuance of conservatory orders to restrain, prevent, stop or make Senate from discharging its constitutional role at this stage. If conservatory orders as sought were to issue at this stage, the same would amount to interference with the legislative said mandate hence disrupt the legislative process that is continuous and time-bound as between the two Houses of Parliament and undermine the doctrine of Separation of Powers. It is this Court's belief that if any violations exist or arise in the impeachment process, the same can properly be considered by the bench intended to be empanelled by the Chief Justice.
48. By virtue of the doctrine of Separation of Powers, this Court lacks jurisdiction to interfere with Parliament's (read Senate) constitutional mandate at this stage.
49. In the resultant, the Notice of Motion application dated 11th October, 2024 and Notice of Motion application dated 13th October, 2024 be and are hereby allowed on the following terms:-
- a. In aligning itself to the legal requirement for matters involving weighty and significant constitutional issues, this matter be and is hereby referred to the Hon. Chief Justice of the Republic of Kenya for the empanelment of an uneven number of Judges to hear and determine the Petition.
 - b. The request for the issuance of conservatory orders is hereby declined.
 - c. This court declines the prayer for conservatory orders restraining the Senate of the Republic the Kenya (hereinafter the Senate) from investigating, debating, hearing, processing, passing and/or making any resolution concerning the Special Motion dated 26th September 2024 for removal of the Deputy President of the Republic of Kenya, Hon. Rigathi Gachagua (hereinafter the Deputy President) by impeachment (hereinafter the Special Motion) following the resolution of the National Assembly of the Republic of Kenya (hereinafter the National Assembly) made on 8th October 2024 to remove from office the Deputy President by impeachment.
 - d. Costs to be in the cause.

It is hereby ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 14th DAY OF OCTOBER, 2024.

D. O. CHEPKWONY

JUDGE

