



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Georgiadis v Odinga & 3 others (Constitutional Petition E012 of 2023)  
[2023] KEHC 22004 (KLR) (4 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CONSTITUTIONAL PETITION E012 OF 2023  
RN NYAKUNDI, J  
SEPTEMBER 4, 2023**

**BETWEEN**

**MAJIMBO GEORGIADIS ..... PETITIONER**

**AND**

**RAILA AMOLO ODINGA ..... 1<sup>ST</sup> RESPONDENT**

**ORANGE DEMOCRATIC MOVEMENT ..... 2<sup>ND</sup> RESPONDENT**

**AZIMIO LA UMOJA ONE KENYA COALITION ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant approached this court vide an application dated July 27, 2023 seeking the following orders;
  1. Spent
  2. An order be and is hereby made that the petition herein dated July 27, 2023 raises substantial questions of law under clauses 3(b) and (d) of article 165 of the *Constitution of Kenya*.
  3. The petition herein dated July 27, 2023 be and is hereby referred to the Chief Justice for assignment of an uneven number of judges, being not less than five to hear it.
  4. Pending the hearing and determination of this petition, a conservatory order be and is hereby issued restraining the 1<sup>st</sup> to 3<sup>rd</sup> respondents from mobilizing persons by themselves, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and members of County Assembly or unelected persons associated with the 1<sup>st</sup> respondent, his political party and political coalition aforesaid for civil disobedience on the questions of the validity of the election of William Samoei Ruto as president, the exercise



of executive authority by William Samoei Ruto as president, the recruitment of Chairperson of the IEBC, the constitutionality of the Finance Act No 4 of 2023, and the cost of living.

5. The costs of the application be provided for.
2. The application is premised on the grounds set out therein and the contents of the supporting affidavit sworn by the Petitioner.
3. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed a notice of objection to the hearing forum wherein they stated that the place of residence of the Respondents should be used as a determinant of forum since the alleged constitutional violations have taken place in various parts of the country. They urged that the 1<sup>st</sup> Respondent resides in and conducts business in Nairobi whereas the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are headquartered in Nairobi. They stated that it is expedient within the circumstances, that the Application and Petition dated July 27, 2023 be heard and determined in Nairobi. They contended that the Petitioner's actions of pursuing this matter all the way in Eldoret is a case of forum shopping.
4. The Respondents opposed the application vide a grounds of opposition and a replying affidavit. It is the respondents' case that the substratum of the application before the Honourable Court is substantially similar to the issues raised in Nairobi Constitutional Petition E058 of 2023: *Kenya Against Violence v Wiper Democratic Movement - Kenya & Others* and Nairobi Constitutional Petition E263 of 2023: *Martin Gitau v Hon Raila Odinga & Others*, annexed by the 1<sup>st</sup> Respondent and 2<sup>nd</sup> Respondent and their Supporting Affidavit dated August 15, 2023. Further, that these petitions are in the public domain and the Petitioners are aware of that the substance of the triable issues raised are substantially similar, and are pending hearing and determination hence sub judice in accordance with section 6 of the *Civil Procedure Rules*.
5. The respondents urged that it is expedient to transfer this case to a Court of equivalent jurisdiction within local jurisdictional limits of the parties in the interest of justice. Further, that the Respondents in these two petitions before Courts of concurrent jurisdiction are primarily situated, working and based in Nairobi, and the place of transaction of the Advocates on record including their registered offices are based in Nairobi. The Inspector-General (IG) of the National Police Service, the Attorney-General and other officers who are Interested Parties in the Nairobi suits are also necessary parties in the present suit and they are based in Nairobi.
6. The respondents stated that the doctrine of forum non conveniens denotes that a Court may have the substantive jurisdiction to take up a matter but refuse to do so because the matter would be most conveniently and fairly adjudicated elsewhere. Further, that the Petitioner will suffer no prejudice or hardship in case the instant petition is transferred to Nairobi since the application is still at interlocutory stage, and it will be affordable to all parties to litigate the matter in Nairobi. There is no explanation on record why the Petitioner opted to file this matter in Eldoret and not any other Court in accordance with his obligation as an officer of the Court to promote the Court's role in ensuring expedient, efficient and just disposal of matters before it.
7. The 2<sup>nd</sup> respondent maintained that the application for conservatory orders that seek to limit the enjoyment of Kenyan citizens of Kenya from enjoying the right to demonstrate, picket and petition under Article 37 of the *Constitution of Kenya, 2010* as read with Article 38 fails the threshold under Article 24(a), (c), (d) and (e) of the *Constitution of Kenya 2010*. He urged that Article 24(3) of the Constitution directs that a Petitioner bears the burden of demonstrating how the said limitation satisfies the test under Article 24. That the Petitioner has failed to specify the urgency, limits and justification of the far-reaching conservatory orders sought against the enjoyment of the stated constitutional rights and how the granting of such orders would in effect not violate the right of



millions of citizens who have the inherent and sovereign will and right to criticize public policy directly under Article 37 with or without alleged mobilization by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, or indirectly.

### **Analysis & Determination**

8. The background of this application is that the petitioner has filed a petition dated July 27, 2023 seeking the following declaratory orders against the respondents;
  - a. A declaration be and is hereby made that the 1st to 3rd Respondents' mobilization of persons by themselves, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1st Respondent, his political party and political coalition aforesaid for purposes of causing civil disobedience, interference with the right to life, right to human dignity, right to freedom and security, freedom of movement and security, and right to protection of property by the Petitioner and/or any other person in Kenya contravenes and violates Articles 1, 2,3,10,19,24, 26,28, 29, 37, 39, 40, 42 and 43 of The [Constitution of Kenya](#).
  - b. A declaration be and is hereby made that the questions of the validity of the election of William Samoei Ruto as President of the Republic of Kenya and his authority to act as Head of Government are matters that are not subject to the exercise of the right to assemble and demonstration under Article 37 of The [Constitution of Kenya](#) by the 1st to 3rd Respondents, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1st Respondent.
  - c. A declaration be and is hereby made that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents' mobilization of persons by themselves, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1st Respondent, his political party and political coalition aforesaid in civil disobedience for purposes of influencing the constitution of the Selection Panel for the recruitment of nominees for appointment as Chairperson and members of IEBC does not amount to the exercise of the right to assemble, demonstrate, picket and petition under Article 37 of The [Constitution of Kenya](#).
  - d. A declaration be and is hereby made that the 1st to 3rd Respondents' mobilization of persons by themselves, their agents and/or otherwise howsoever through persons as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1<sup>st</sup> Respondent, his political party and political coalition for purposes of influencing the constitution of the selection panel for the recruitment of nominees for appointment as chairperson and members of the IEBC does not amount to the exercise of the right to assemble, demonstrate, picket and petition under Article 37 of The [Constitution of Kenya](#).
  - e. A declaration be and is hereby made that the 1st to 3rd Respondents' mobilization of persons by themselves, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1st Respondent, his political party and political coalition aforesaid in civil disobedience for purposes of securing the repeal of the Finance Act No 4 of 2023 does not amount to the exercise of the right to assemble, demonstrate, picket and petition under Article 37 of The [Constitution of Kenya](#).



- f. A declaration be and is hereby made that any mobilization of persons and engagement in civil obedience in respect to any matter for which The Constitution of Kenya or Legislation has provided an avenue for redress does not amount to the exercise of the right to assemble, demonstrate, picket and petition under Article 37 of The *Constitution of Kenya*.
  - g. An order be and is hereby made directing the 4th Respondent to pursue the enactment of Legislation and/or Regulations to regulate the exercise of the right to assemble, demonstrate, picket and petition in order to effectuate the provisions of Articles 24 and 37 of The *Constitution of Kenya*.
  - h. An order of prohibition be and is hereby issued restraining the 1st to 3rd Respondents from mobilizing persons by themselves, their agents and/or otherwise howsoever through persons elected as Governors, Senators, Members of National Assembly and Members of County Assembly or unelected persons associated with the 1st Respondent, his political party and political coalition aforesaid for civil disobedience on the questions of the validity of the election of William Samoei Ruto as President, the exercise of executive authority by William Samoei Ruto as President, the recruitment of Chairperson and members of the IEBC, the constitutionality of the Finance Act, No 4 of 2023, and the cost of living.
  - i. Any other relief and/or orders the Honourable court deems appropriate, just and/or fit to grant.
  - j. The costs of this petition be provided for.
9. The petitioner then filed the present application dated July 27, 2023 seeking, in a nutshell, constitution of a five-judge bench to determine the petition, conservatory orders and costs. The same have been stated in detail at the start of the ruling and therefore there is no need to reproduce the same here.
10. I have perused the annexures to the replying affidavit dated August 15, 2023 and it is evident that the issues raised in the present petition are substantively similar to the issues raised Nairobi Constitutional Petition E058 of 2023: Kenya Against Violence v. Wiper Democratic Movement - Kenya & Others and Nairobi Constitutional Petition E263 of 2023: Martin Gitau v. Hon Raila Odinga & Others. The petitions are centred around the alleged violations of articles 1,2,3,10,19,24,26,28,29,39,40,42 and 43 of the *Constitution of Kenya*. Further, the respondents herein are also the respondents in the other petitions. It is my considered view that in the fair administration of justice, this court cannot constitute a bench to hear the present petition on its own. It is in the interest of justice to have the present petition consolidated with Nairobi Constitutional Petition E058 of 2023: Kenya Against Violence v. Wiper Democratic Movement - Kenya & Others and Nairobi Constitutional Petition E263 of 2023: Martin Gitau v. Hon Raila Odinga & Others.. Further, I note that the parties in this matter are primarily situated, working and based in Nairobi and the advocates on record, including their registered offices are based in Nairobi and therefore, it would be more convenient to have the matters determined in Nairobi. There is no reason given by the petitioners as to why the Petition must be determined in Eldoret.
11. Therefore, I hereby direct as follows;
1. This petition be transferred to the High Court of Kenya at Nairobi – Milimani Commercial Courts and be placed before the principal judge of the High Court for a mention for directions on September 20, 2023.
  2. Reasonably enough the issues of empanelling an even bench of judges to hear and determine the formulated substantive constitutional issues be determined at that consolidated forum.



3. Costs to the respondents.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 4<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**R. NYAKUNDI**

**JUDGE**

