



**Shimekha v Council of Kaimosi Friends University & 6 others; Public Service Commission & another (Interested Parties); Nandi & another (Intended Interested Party) (Constitutional Petition E004 of 2025) [2025] KEHC 14746 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14746 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CONSTITUTIONAL PETITION E004 OF 2025**

**AC BETT, J**

**OCTOBER 16, 2025**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010**

**AND IN THE MATTER OF ARTICLES**

**1,2,3,10,19,20,21,22,23,41,47,48,50,73,74,75,77,78,79,80,232,233,234,258,259  
& 260 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE LEADERSHIP & INTEGRITY UNDER CHAPTER SIX OF THE  
CONSTITUTION OF KENYA, 2010 & THE LEADERSHIP AND INTEGRITY ACT, 2012**

**AND**

**IN THE MATTER OF THE CONSTITUTIONAL PRINCIPLES OF INTEGRITY,  
ACCOUNTABILITY & TRANSPARENCY UNDER THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT,  
2017 & THE PUBLIC SERVICE (VALUES & PRINCIPLES) ACT, 2015**

**AND**

**IN THE MATTER OF ELRC PETITION NO. E014 OF 2024 PROF.  
MANYASA J.O NANDI AND EZEKIEL MACHOGU & 3 OTHERS**

**AND**

**IN THE MATTER OF THE UNIVERSITIES ACT, 2012**

**BETWEEN**



MR. SIMON INDASI SHIMEKHA ..... PETITIONER

AND

COUNCIL OF KAIMOSI FRIENDS UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT

DR. BERNADETTE MUNGAI ..... 2<sup>ND</sup> RESPONDENT

DR. RODNEY O. OLUOCH ..... 3<sup>RD</sup> RESPONDENT

DR. FRANCIS BWIRE ..... 4<sup>TH</sup> RESPONDENT

DR. FAUZIYA B KARAMA ..... 5<sup>TH</sup> RESPONDENT

MR. PAUL WANDERI ..... 6<sup>TH</sup> RESPONDENT

MS. JOSEPHINE W. M KANYI ..... 7<sup>TH</sup> RESPONDENT

AND

PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY

THE ATTORNEY GENERAL ..... INTERESTED PARTY

AND

PROF. MANYASA J.O NANDI ..... INTENDED INTERESTED PARTY

SIMON INDASI SHIMEKHA ..... INTENDED INTERESTED PARTY

## RULING

### Introduction

1. There are two applications before this Honourable Court for determination.

### The First Application

2. The first application is a Chamber Summons application dated 14<sup>th</sup> February 2025, filed by Prof. Manyasa J. O. Nandi pursuant to the provisions of Order 1 Rules 10(2), 14, and 25 of the Civil Procedure Rules, 2010, and Sections 1A and 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya. The applicant seeks the following orders:
  - a. That Prof. Manyasa J. O. Nandi, the applicant herein, be joined in this suit as an interested party.
  - b. That this application be heard on a priority basis, in view of the conservatory orders issued by this Honourable Court on 6<sup>th</sup> February 2025, suspending the implementation of the judgment delivered in the applicant's favour on 19<sup>th</sup> December 2024 in Nairobi ELRC Petition No. E014 of 2024 (Prof. Manyasa J. O. Nandi v Ezekiel Machogu & 3 Others).
  - c. That this application be heard on a priority basis, in light of the orders of stay of execution issued by this Honourable Court on 6<sup>th</sup> February 2025 in respect of the judgment delivered on 19<sup>th</sup> December 2024 in Nairobi ELRC Petition No. E014 of 2024 (Prof. Manyasa J. O. Nandi v Ezekiel Machogu & 3 Others).
  - d. That the costs of this application be provided for.



3. The application is supported by the grounds set out on its face and by the supporting affidavit of Dr. Martin Oloo, sworn on the same date in his capacity as counsel on record for the applicant. Dr. Oloo deposes that the subject matter of this suit seeks to quash the judgment issued in Nairobi ELRC Petition No. E014 of 2024 (Prof. Manyasa J. O. Nandi v Ezekiel Machogu & 3 Others), which directed the respondents to appoint the applicant as the Vice Chancellor of Kaimosi Friends University.
4. He further explains that the present petition raises questions regarding the integrity and suitability of the applicant's appointment as Vice Chancellor, which matters directly affect the applicant. Accordingly, he contends that the presence of the applicant before this Honourable Court is necessary to enable the Court to effectively and conclusively adjudicate upon the issues in dispute.

### **The Second Application**

5. The second application is a Notice of Motion undated and filed on 17<sup>th</sup> February 2025 by Stephen Chahasi Lumwaji, brought pursuant to Articles 47 and 50 of *the Constitution*, Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and Orders 45 and 51 Rule 3 of a statute not disclosed. The application seeks the following orders:
  - a. The Applicant, Stephen Chahasi Lumwaji, be joined to the Constitutional petition herein as an interested party.
  - b. The execution of the orders of the High Court dated 6<sup>th</sup> February, 2025 by A.C. Bett J be vacated pending the hearing and determination of this notice of motion.
  - c. There be stay of proceedings and/or further proceedings and/or hearing and/or any action pending the hearing and determination of Appeal No. Nairobi Civil Application No. E010 of 2025 filed on 8<sup>th</sup> January, 2025.
  - d. The petition herein is sub judice.
  - e. The costs of the application be borne by the petitioner,
  - f. Any other order that the court deems fit to be just in the circumstances.
6. The application is supported by the grounds appearing on its face and by the supporting affidavit of Stephen Chahasi Lumwaji, sworn on 17<sup>th</sup> February 2025. In his affidavit, the applicant describes himself as an accredited community paralegal, a human rights defender, the Secretary of the Vihiga County Civil Society Organization and a public interest litigator.
7. He avers that he has been a resident of Vihiga County since the establishment of Kaimosi Friends University and is therefore well conversant with the issues affecting the county. He further deposes that he was actively involved in public participation during the recruitment process for the Vice Chancellor's position, which is the subject of dispute in the present petition.
8. The applicant contends that the present petition is founded on falsehoods and raises issues that are identical to those pending before the Court of Appeal in Nairobi Civil Application No. E010 of 2025, filed on 8<sup>th</sup> January 2025. He asserts that the petitioner ought to have sought relief before the Employment and Labour Relations Court in Vihiga, rather than filing in Kakamega, and that this constitutes forum shopping.
9. There is also a Notice of Preliminary Objection filed by the petitioner in opposition to the application dated 14<sup>th</sup> February 2025. The objection is premised on the following grounds:



- a. That this Honourable Court is functus officio on the issue of jurisdiction, having delivered its ruling on 6<sup>th</sup> February 2025 addressing both the question of jurisdiction and the issuance of conservatory orders;
- b. That consequently, the Court lacks jurisdiction to entertain the present application, which ought therefore to be struck out with costs to the interested party; and
- c. That the application is grossly incompetent, incurably defective, frivolous, vexatious, and an abuse of the court process, and should accordingly be struck out in limine.

### **Response to the Applications**

10. The applications dated 14<sup>th</sup> February 2025 and 17<sup>th</sup> February 2025 were duly opposed through a replying affidavit sworn by the petitioner, Simon Shimekha, on 14<sup>th</sup> March 2025. In his affidavit, the petitioner recalls that on 27<sup>th</sup> February 2025, this Honourable Court directed all parties to first address the issue of joinder of interested parties before the Court could proceed to consider the other substantive prayers appearing on record.
11. The petitioner avers that the application dated 14<sup>th</sup> February 2025 is, in substance, a disguised attempt to seek a review of this Court's ruling delivered on 6<sup>th</sup> February 2025 on the question of jurisdiction. He contends that the issue of jurisdiction was fully canvassed before the Court, deliberated upon, and conclusively determined, and therefore cannot be reopened through the present application. He further argues that the intended participation of Prof. Manyasa J. O. Nandi in these proceedings would unduly divert the focus of the Court from the core dispute to matters touching on his personal interests, thereby diluting and overshadowing the roles of the primary parties namely, the respondents and the Public Service Commission, who bear the statutory mandate in the vetting process under challenge.
12. The petitioner equally objects to the intended joinder of Stephen Chahasi Lumwaji, asserting that the applicant has not satisfactorily demonstrated any identifiable or legitimate interest in the subject matter of the petition, nor shown the manner in which he stands to be prejudiced should he not be joined. He further maintains that the said applicant has failed to articulate with clarity the nature or relevance of his proposed submissions, particularly in relation to Chapter Six of *the Constitution*, and consequently does not meet the established legal threshold for joinder as an interested party.

### **Response to the Preliminary Objection**

13. The petitioner's preliminary objection is opposed through an affidavit sworn by Prof. Manyasa J. O. Nandi on 9<sup>th</sup> June 2025, in which he asserts that this Honourable Court cannot be deemed functus officio on the question of jurisdiction, as the matter remains sub judice, being presently before the Nairobi Employment and Labour Relations Court. He deposes that when this Court rendered its ruling on jurisdiction and conservatory orders, it did so under circumstances where the petitioner had allegedly concealed material facts, notably that there existed a similar application pending before the Nairobi ELRC in Petition No. E014 of 2024 (Prof. Manyasa Nandi v Cabinet Secretary for Education & 3 others). Prof. Manyasa contends that such concealment justifies invocation of this Court's inherent jurisdiction to set aside its earlier ruling.
14. He further avers that the circumstances surrounding the procurement of the said ruling were irregular and suspicious, noting in particular that the petitioner has persistently failed and/or declined to serve him with both the petition and the application, despite express court orders directing service.



15. On 27<sup>th</sup> February 2025, this Court issued directions requiring all parties to file their respective responses and written submissions in respect of the applications before the Court. It is, however, necessary to disclose that as at the time of writing this ruling, only the petitioner and the 1<sup>st</sup> intended interested party had complied with those directions by filing their written submissions.

### **The 1<sup>st</sup> Intended Interested Party's Submissions**

16. The 1<sup>st</sup> intended interested party has advanced submissions anchored on three principal issues. The first issue is whether the petitioner's preliminary objection is defective and ought to be dismissed with costs. On this issue, the 1<sup>st</sup> intended interested party submits in the affirmative. He begins by defining the doctrine of *functus officio* as articulated by the Court of Appeal in *Telkom Kenya Limited v John Ochanda* (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] KECA 600 (KLR), which held that a court is said to be *functus officio* when it has performed all its duties in a particular case and that the doctrine does not bar a court from correcting clerical or arithmetical errors, nor does it preclude a judicial change of mind before a decision has been formally communicated to the parties.
17. To fortify this argument, he further relies on the Supreme Court's decision in *Outa v Okello & 3 others* (Petition No. 6 of 2014) [2017] KESC 25 (KLR), where the Court outlined exceptions to the *functus officio* doctrine, one of which arises where a judgment, ruling, or order has been obtained through fraud or deceit. In this regard, the 1<sup>st</sup> intended interested party contends that the petitioner's concealment of material facts specifically, the existence of a similar and pending application before the Employment and Labour Relations Court at Nairobi, as well as the failure to disclose that the subject matter is also pending before the Court of Appeal, constitutes fraudulent concealment. Consequently, they argue that this conduct falls squarely within the recognized exceptions to the *functus officio* principle.
18. The second issue for determination, as raised by the 1<sup>st</sup> intended interested party, is whether he has met the legal threshold for joinder in this constitutional petition. On this point, he submits that he has indeed met the required threshold, as set out by the Supreme Court in *Francis Karioko Muruatetu and Another v Republic*, Petition No. 15 of 2016, where the Court held as follows:

“From the foregoing legal provisions, and from case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: one must move the Court by way of a formal application, and enjoinder is not as of right but at the discretion of the Court. Sufficient grounds must be established based on the following: the personal interest or stake that the party has in the matter must be clearly identifiable and proximate enough to distinguish it from anything merely peripheral; the prejudice likely to be suffered in the event of non-joinder must be clearly demonstrated; and finally, the intended interested party must set out the case or submissions they intend to make before the Court and show their relevance, ensuring they are not merely duplicative of what other parties will present.”
19. In applying the above test, the 1<sup>st</sup> intended interested party submits that he stands to suffer substantial prejudice should he not be enjoined in these proceedings, as the outcome of this petition directly impacts the judgment and orders issued in his favour on 19<sup>th</sup> December 2024. He therefore contends that his participation is necessary to safeguard his legal interests and ensure that the Court has the benefit of all relevant perspectives before rendering its determination.



20. The third issue addressed in his submissions is whether the ruling delivered on 6<sup>th</sup> February 2025, together with its consequential orders, ought to be vacated, reviewed, and/or set aside. The 1<sup>st</sup> intended interested party submits in the affirmative, asserting that the petitioner failed to disclose that they had filed a similar application on 30<sup>th</sup> December 2024 in Nairobi ELRC Petition No. E014 of 2024 (Prof. Manyasa Nandi v Cabinet Secretary for Education & 3 others).
21. Moreover, it is submitted that the 2<sup>nd</sup> intended interested party subsequently filed an application for stay of execution before the Court of Appeal at Nairobi being Civil Application No. E010 of 2025 (Cabinet Secretary for Education v Prof. Manyasa Nandi & another), which the petitioner was fully aware of. He contends that the petitioner’s conduct in filing multiple applications over the same subject matter amounts to forum shopping, thereby rendering the present petition sub judice and an abuse of the court process.

### **Petitioner’s Submissions**

22. In his submissions, the petitioner identifies two key issues for determination by this Honourable Court. The first issue is whether this Court has jurisdiction to hear and determine the present petition. On this issue, he submits that *the Constitution* and Human Rights Division of the High Court possesses exclusive jurisdiction to deal with matters concerning the violation of fundamental rights and freedoms, as provided under Articles 23 and 165 of *the Constitution* of Kenya, 2010. He contends that the actions and omissions of the respondents, particularly the nomination of Prof. Manyasa J.O. Nandi without conducting due investigations despite public complaints, are in flagrant violation of Article 19, Chapter Six of *the Constitution* and the provisions of the *Leadership and Integrity Act*.
23. The petitioner further argues that Section 12(1) of the *Employment and Labour Relations Court Act* grants that Court exclusive jurisdiction to hear and determine disputes strictly arising from employment and labour relations, which presupposes the existence of an employer–employee relationship. In the present case, he asserts that no such relationship exists between the petitioner and the respondents, thereby placing this matter outside the purview of the Employment and Labour Relations Court. Instead, he submits that this petition properly lies before this Court pursuant to Article 22(1) of *the Constitution*, which empowers any person to institute court proceedings where a right or fundamental freedom in the Bill of Rights is alleged to have been denied, violated, infringed, or threatened.
24. In support of this position, the petitioner cites the decision in *Protus Buliba Shikuku v Attorney General* [2012] eKLR, where the Court addressed the issue of jurisdiction of the High Court to entertain a matter involving allegations of constitutional violations, even where the impugned decision emanated from the Court of Appeal. The Court in that case observed:

“In a unique way, the superior court is being asked to interfere with a decision of the Court of Appeal. We are in agreement that Article 23 of the 2010 Constitution, as read with Article 165(3)(a)(b)(d)(i)(ii), donates the same mandate without exception to this superior court, and for this reason, we are properly seized of the petitioner’s complaints arising from alleged acts or omissions by the courts within this jurisdiction.”
25. The petitioner thus maintains that ordering the University Council to proceed and appoint the petitioner as directed in the impugned judgment would effectively bypass the consultation process with the Cabinet Secretary for Education, which is mandatory under Section 35(1)(a)(v) of the *Universities Act*, 2024. Consequently, he argues, the implementation of that judgment would, in effect, amend the law, thereby contravening the statutory framework governing university appointments.



26. To further buttress his argument that this Court retains exclusive jurisdiction over matters involving the violation of fundamental rights and freedoms, the petitioner relies on the decision of the Supreme Court of Kenya in *Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai Estate & 4 Others* [2013] eKLR, where the Court affirmed that:

“The Kenyan Constitution has given the High Court exclusive jurisdiction to deal with matters of violation of fundamental rights (Article 23 as read with Article 165 of *the Constitution*). The High Court, on this point, has correctly pronounced itself in the judgment of Justices Nambuye and Aroni in *Protus Buliba Shikuku v R*, Constitutional Reference No. 3 of 2011 [2012] eKLR.”

27. Although this Honourable Court had earlier directed that the applications for joinder be addressed and determined followed by the application to set aside the courts earlier orders, I am nonetheless persuaded to consider and pronounce myself on all the issues raised in the respective applications. This approach is informed by the fact that the parties have, in their submissions and affidavits, comprehensively canvassed all the substantive questions, and it would therefore serve the interests of justice and judicial economy to determine the applications together.

### **Issues for determination**

28. Having carefully considered the applications, affidavits, and submissions placed before this Honourable Court by the respective parties, the Court is of the considered view that the following issues arise for determination:

- I. Whether the preliminary objection dated 17<sup>th</sup> March 2025 is merited.
- II. Whether the intended interested parties, Prof. Manyasa J.O. Nandi and Stephen Chahasi Lumwaji, have satisfied the legal threshold for joinder as interested parties in this constitutional petition.

### **Analysis**

#### **Whether the preliminary objection dated 17<sup>th</sup> March, 2025 is merited**

29. The Preliminary Objection before this Court is anchored on the contention that the Court is functus officio in relation to the issues of jurisdiction and conservatory orders, having already rendered a ruling on the same on 6<sup>th</sup> February 2025.

30. The doctrine of functus officio is a well-settled principle which dictates that once a court has discharged its mandate and delivered a final decision, it becomes divested of jurisdiction to reopen or vary that decision, except for limited purposes such as correcting clerical or arithmetical errors or issuing clarifications. The doctrine underpins the need for finality in judicial decisions and prevents the mischief of repetitive litigation.

31. The 1<sup>st</sup> intended interested party, Prof. Manyasa J.O. Nandi, contends that this Court is not functus officio, asserting that the ruling of 6<sup>th</sup> February 2025 was obtained through concealment of material facts by the petitioner. It is asserted that the petitioner failed to disclose the existence of a similar petition pending before the Nairobi Employment and Labour Relations Court (ELRC), as well as proceedings before the Court of Appeal, both concerning the same subject matter, thereby rendering this petition sub judice.



32. Conversely, the petitioner, Mr. Simon Indasi Shimekha, maintains that the Court is functus officio, contending that the issues of jurisdiction and conservatory relief were fully canvassed and conclusively determined in the earlier ruling. He submits that the applicants' attempt to reopen the matter amounts to re-litigation and constitutes an abuse of the court process.
33. It is trite that a court may set aside its orders at any time if it is demonstrated that they were obtained through fraud, deceit, or misrepresentation. In *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702, Lord Denning LJ observed that; "No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." Likewise, in *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485, the Court of Appeal held that a judgment which is tainted with fraud or collusion is a nullity and may be set aside *ex debito justitiae*.
34. The same principle was affirmed in *Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 Others* [2017] eKLR where the Court stated that:
- "The court may set aside an order at any time if the order was obtained by fraud or misrepresentation because such an order is tainted and vitiated throughout. If the fraud is clearly proved, the party defrauded is entitled to have the order set aside. The jurisdiction to impeach orders for misrepresentation has its origins in equity."
35. In the same case, the Court outlined the principles for setting aside an order on account of misrepresentation, namely that:
- a. The particulars of misrepresentation must be precisely pleaded and strictly proved;
  - b. New and material facts must be shown, either independently or with previously known facts, to justify the setting aside;
  - c. Mere suspicion is insufficient; such facts must be so material that it is reasonably probable the claim will succeed;
  - d. Bare allegations do not attract the exceptional remedy of setting aside;
  - e. It must be shown by admissible evidence that the successful party was responsible for the misrepresentation; and
  - f. The burden of proof lies on the party challenging the order, who must clearly establish the alleged misrepresentation.
36. The 1<sup>st</sup> intended interested party contends that the orders of 6<sup>th</sup> February 2025 were obtained through concealment of material facts, including the existence of Nairobi ELRC Petition No. E014 of 2024 (*Prof. Manyasa J.O. Nandi & Ezekiel Machogu & 3 Others*), in which the petitioner was an interested party and sought similar reliefs, as well as Civil Application No. E010 of 2025 (*CS of Education vs Prof. Manyasa J.O. Nandi & Another*) pending before the Court of Appeal. These assertions have not been controverted by the petitioner.
37. While the petitioner addressed other issues raised by the intended interested parties, he conspicuously failed to respond to the allegations of concealment of material facts.
38. Upon careful consideration, the Court finds that when the petitioner sought and obtained the orders of 6<sup>th</sup> February 2025, he failed to disclose the existence and status of related proceedings before both the ELRC and in particular, the Court of Appeal, where similar applications for stay were pending. The



non-disclosure was material, deliberate and intended to mislead the Court. The petitioner has failed to rebut these allegations despite being afforded an opportunity to do so.

39. In light of the foregoing and guided by the cited authorities, the Court finds that the orders of 6<sup>th</sup> February 2025 were obtained through concealment and misrepresentation of material facts, rendering them tainted and vitiated from the outset. Accordingly, and in exercise of its inherent and equitable jurisdiction to prevent abuse of the judicial process and uphold the integrity of its proceedings, the Court is inclined to vacate the orders of 6<sup>th</sup> February 2025.

Whether the intended interested parties, Prof. Manyasa J.O. Nandi and Stephen Chahasi Lumwaji, have met the legal threshold for joinder as interested parties in this constitutional petition

40. The question of joinder of interested parties in constitutional petitions is governed by Rule 7(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (commonly referred to as the Mutunga Rules). The Rule provides that:

“A person, with leave of the Court, may make an oral or written application to be joined as an interested party.”

41. The purpose of joinder is to enable the Court to effectually and completely adjudicate upon all matters in controversy. It ensures that all persons who stand to be directly affected by the outcome of a case are given an opportunity to be heard, thereby preventing multiplicity of proceedings and ensuring fairness in the administration of justice. The party seeking joinder must, therefore, demonstrate a direct, identifiable and legal interest in the subject matter, as opposed to a general or remote concern.

42. The leading authority on the principles governing joinder of interested parties is the Supreme Court decision in Francis Kariuki Muruatetu & Another v Republic [2016] eKLR, where the Court established the following guiding principles:

- a. The applicant must demonstrate a personal interest or stake in the matter that is clearly identifiable and proximate to the subject matter;
- b. The applicant must show the prejudice they are likely to suffer if not joined as a party; and
- c. The applicant must set out the specific submissions or perspective they intend to advance, which should be distinct and not merely duplicative of what the existing parties will present.

43. In respect to Prof. Manyasa J.O. Nandi, it is not disputed that he was the beneficiary of the judgment in ELRC Petition No. E014 of 2024, wherein the Employment and Labour Relations Court directed that he be appointed as the Vice Chancellor of Kaimosi Friends University. The instant petition raises serious questions touching on his integrity and suitability under Chapter Six of *the Constitution*, directly challenging the propriety of his appointment.

44. The outcome of this petition will, therefore, have a direct and substantial bearing on Prof. Manyasa’s legal rights, reputation and status as Vice Chancellor. The implementation, suspension, or nullification of the prior judgment in his favour would determine whether he continues to hold office or not. His interest is, therefore, not remote or theoretical, but immediate, personal and proximate to the subject matter of this petition. He would undoubtedly suffer prejudice if the orders in his favour were set aside without being afforded a hearing. Needless to say, the “audi alteram partem” principle dictates that he be heard for it is a fundamental legal principle that each party is entitled to an opportunity to be heard before adverse orders affecting him are issued as no party should be condemned unheard.

45. In view of the foregoing, I am satisfied that Prof. Manyasa J.O. Nandi has met the legal threshold for joinder as an interested party as set out in the Muruatetu decision. His participation will assist the



Court in reaching a fair and comprehensive determination of the issues before it. The right to be heard is embedded in Article 50(1) of *the Constitution* which provides that:-

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.” .

46. Turning to the application by Mr. Stephen Chahasi Lumwaji, he describes himself as a community paralegal, human rights defender, and Secretary of the Vihiga County Civil Society Organizations Network.
47. Mr. Lumwaji contends that he has a legitimate interest in these proceedings, having participated in the public consultations undertaken during the recruitment process for the Vice Chancellor’s position, and as a resident of the locality in which the university is situated.
48. While the Court acknowledges and commends his civic involvement and contribution to public affairs, the nature of his interest remains predominantly public and advocacy-oriented. It does not translate into a direct, personal, or legally enforceable right capable of being affected by the outcome of this petition.
49. Consequently, Mr. Lumwaji has not demonstrated any specific prejudice that he would personally suffer if excluded from these proceedings, nor has he shown that his intended participation would add a distinct or indispensable perspective beyond what the existing parties can competently advance. His interest, though bona fide, is too remote to satisfy the Muruatetu threshold for joinder. In any event, Mr. Lumwaji has instituted a separate petition being Petition No E004 of 2025 which the court has since ordered should be heard together with the present one, thereby consolidating the two petitions and affording him an adequate avenue to ventilate his concerns.
50. In light of the foregoing analysis, the Court makes the following orders:
  - a. Prof. Manyasa J.O. Nandi is hereby joined to these proceedings as the 3<sup>rd</sup> Interested Party and is granted thirty (30) days from the date hereof to file and serve his response to the petition.
  - b. The application by Mr. Stephen Chahasi Lumwaji for joinder is declined.
  - c. The orders issued on 6<sup>th</sup> February 2025 are hereby vacated in their entirety.
  - d. The costs of the applications shall abide the outcome of the Petition.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for the Petitioner

No appearance for the Respondents

No appearance for the Interested Parties

Ms. Kihara holding brief for Dr. Oloo for 1<sup>st</sup> Intended Interested Party

Court Assistant: Polycap

