



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CONSTITUTIONAL PETITION NO. E006 OF 2025

IN THE MATTER OF: ARTICLES 20, 21, 22, 23, 27, 28, 35, 41, 43, 47, 50,176, 185(3), 232,258(1) AND 259 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF: VIOLATION AND THREATENED VIOLATION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 1,2,6(2),10,11(1),19,20,21,22(1),47,50,174 AND 175 OF THE CONSTITUTION OF KENYA

IN THE MATTER OF: COUNTY GOVERNMENTS ACT NO. 17 OF 2012

IN THE MATTER OF: BARINGO COUNTY STANDING ORDERS, STANDING ORDER NUMBER ORDER NO. 37(2)

AND

IN THE MATTER OF: THE RIGHT TO FAIR ADMINISTRATIVE ACTION

-BETWEEN-

DR. JACOB KURUI CHEPKWONY.....PETITIONER

-VERSUS-

BARINGO COUNTY ASSEMBLY.....1ST RESPONDENT

THE CLERK, BARINGO COUNTY ASSEMBLY.....2ND RESPONDENT

THE SPEAKER, BARINGO COUNTY ASSEMBLY....3RD RESPONDENT

THE GOVERNOR, BARINGO COUNTY GOVERNMENT.....4TH
RESPONDENT

RULING

1. The petitioner filed an application dated 13th June 2025 seeking the following orders:-

- i. Spent
- ii. Spent
- iii. Spent
- iv. THAT pending the hearing and determination of the Petition, the Honorable Court be and is hereby pleased to issue a conservatory order restraining the 4th Respondent from acting on the letter dated 11th June, 2025.
- v. THAT pending inter-partes hearing and determination of the Petition, the Honorable Court be and is hereby pleased to issue an order directing the Respondents, their servants, agents or persons acting under their authority to maintain the status quo ante of the recommendations made by the AD-HOC Committee dated 11th June 2025.
- vi. THAT pending the hearing and determination. Petition, the Honourable Court be and is hereby pleased to issue a Conservatory order staying implementation of the

recommendations made by the AD-HOC Committee of the County Assembly of Baringo in the report dated 11th June, 2025.

vii. Costs shall be in the cause.

2. Grounds on the face of the application are that on 7th May, 2025 the 1st Respondent debated and passed a motion to form an AD-HOC Committee to delve into the issues revolving around the casual workers and employment malpractices in Baringo County.

PETITIONER'S CASE

3. The petition arises from a resolution passed by the Baringo County Assembly on 7th May 2025, constituting an Ad Hoc Committee to investigate issues relating to casual workers and alleged employment malpractices in Baringo County. The committee, composed of seven members, was mandated to inquire into the recruitment process of all casual workers in the county, their terms of engagement, reasons for unpaid salaries, inclusion of marginalized groups, and any malpractices in recruitment or management of the county workforce.

4. Upon completion of its work, the committee issued a report recommending investigation against the County Secretary who is the petitioner herein on various grounds, including the irregular and unprocedural secondment of one Faith Kipng'ok, irregular dismissal of staff, discriminatory contract extensions,

failure to authenticate the number of casual workers, and mismanagement of staff deployment. It also proposed that investigations be initiated into his conduct on grounds of gross misconduct, abuse of office, and incompetence.

5. The petitioner contends that the procedure leading to the adoption of the committee's report violated the County Assembly's Standing Order No. 37(2), which requires that reports be circulated to members at least twelve hours before debate. He states that the report was presented and adopted on 11th June 2025 contrary to the Speaker's directive that it be supplied to members by 6:00 p.m. on 10th June. He further argues that the committee exceeded its terms of reference by investigating matters outside its mandate, particularly those relating to him personally, without affording him a fair hearing as required under Articles 47 and 50 of the Constitution.
6. He maintains that he was only invited on 10th June 2025 to provide information on structured issues, not to defend himself against allegations of misconduct, yet the committee concluded that he was culpable. The petitioner asserts that he is not an accounting officer under the County Governments Act and therefore cannot be held responsible for payment of casual workers. He argues that the Ad Hoc Committee's findings were unsubstantiated, procedurally flawed, and based on matters outside its authority.

7. He avers that the recommendations of the committee were implemented immediately after adoption by the Assembly and forwarded to the Governor, despite the report not containing any findings of loss of public funds. He contends that the report was rushed, that members were denied sufficient time to interrogate it, and that the inclusion of a person who was not a committee member rendered the report null and void. The petitioner maintains that the committee acted as investigator, judge, and executor in violation of the principles of natural justice, and that only the Governor, as his appointing authority, could lawfully initiate any disciplinary process against him. Unless the court intervenes, he argues, the recommendations will be implemented to his detriment, causing reputational harm and violating his rights to fair administrative action and fair hearing.

1ST, 2ND, AND 3RD RESPONDNET'S CASE

8. The 1st, 2nd, and 3rd respondents, through a replying affidavit sworn by Hon. Vincent Kemboi on 11th June 2025, oppose the application. They argue that the petitioner has not demonstrated any violation or threat of violation of constitutional rights to justify the grant of conservatory orders and that the application fails to meet the established principles in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (2014) eKLR*. They contend that the application is misconceived, legally untenable, and aimed at defeating lawful oversight processes.

9. The respondents assert that the Ad Hoc Committee was lawfully constituted pursuant to Section 14(1)(b) of the County Governments Act and the County Assembly Standing Orders. They indicated that the committee made over forty recommendations, only a few of which concerned the petitioner, and that granting blanket status quo orders would halt all other lawful and unrelated recommendations, thereby disrupting county operations. They aver that the interim orders already issued by the court have impeded implementation of certain recommendations, including payment of arrears to vocational training centre managers, resulting in demonstrations and public unrest.
10. The respondents maintain that the petitioner was accorded a fair hearing. He was duly summoned under Article 195(1) of the Constitution, appeared before the committee on 10th June 2025, and responded to all issues under investigation. They produce a notice of appearance and Hansard record to confirm this. They therefore deny allegations of bias, ambush, or procedural impropriety, arguing that the process complied with Articles 47 and 50 of the Constitution and the Fair Administrative Action Act.
11. According to the respondents, the committee's findings revealed serious violations of Articles 10, 27, 41, and 232 of the Constitution. They accuse the petitioner of irregular secondment of an officer, failure to authenticate the number of

casual workers, and irregular dismissal of staff. They assert that his conduct amounted to administrative negligence, breach of duty under Section 44(3) of the County Governments Act, and disregard for public service principles of merit and accountability. They further explain that paragraph 43 of the committee report merely recommended further investigations into the petitioner's conduct, and thus the process had not concluded, rendering the application premature.

12. The respondents argue that the County Assembly acted within its constitutional oversight role under Article 185(3) and did not usurp any executive functions. They state that the Assembly is not subordinate to the Governor and that its mandate to oversee the executive is independent and constitutionally sanctioned. The committee's report, they assert, was properly compiled, tabled, debated, and adopted in accordance with the Standing Orders, and any claims of irregularity are unfounded.

13. They maintain that the recommendations were made in good faith and in response to legitimate concerns of maladministration in the county public service. The petitioner's actions, they contend, amounted to abuse of office, mismanagement of public resources, and conflict of interest, contrary to Chapter Six of the Constitution, the Leadership and Integrity Act, and the Public Officers Ethics Act. The respondents contend that the conservatory orders sought

would shield the petitioner from lawful accountability, contrary to public interest, and urge the court to dismiss the application with costs.

REJOINDER BY PETITIONER

14. In response, the petitioner filed a supplementary affidavit on 13th August 2025 reiterating that his constitutional rights under Articles 47 and 50 were violated and continue to be under imminent threat. He insists that he was condemned unheard and that the process leading to the committee's recommendations lacked both procedural and substantive fairness. He maintains that he has demonstrated a prima facie case with high chances of success and that the petition would be rendered nugatory if interim relief is not granted.
15. The petitioner disputes the legality of the Ad Hoc Committee, arguing that it was not properly constituted under Section 14(1) of the County Governments Act and acted *ultra vires* its mandate. He relies on Section 4 of the Fair Administrative Action Act, which requires prior notice, disclosure of evidence, and an opportunity to be heard before adverse decisions are made all of which, he contends, were ignored. He reiterates that neither the committee report nor the implementation letter of 11th June 2025 reflects any consideration of his views.
16. He further asserts that the committee lacked authority to conduct investigations and recommend implementation, as this

amounted to usurping roles reserved for other bodies and urged this court to prevent implementation of the report and its recommendations, noting that the interim status quo orders issued on 15th July 2025 preserved the impugned paragraphs of the report. He maintains that the respondents will suffer no prejudice if the orders remain in force pending determination of the petition, as his application was made in good faith to protect his constitutional rights.

PETITIONER'S SUBMISSIONS

17. The Petitioner submitted that the application dated 13th June 2025 seeks conservatory orders to restrain the Respondents from acting on the letter and Ad Hoc Committee report dated 11th June 2025 pending determination of the Petition. The Petitioner identified two issues for determination being whether conservatory orders should issue and who should bear the costs of the application.
18. Relying on *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR and *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] eKLR, the Petitioner reiterated that conservatory orders serve to uphold constitutional order and preserve the substratum of a suit. The Petitioner urged the Court to apply the established principle namely, demonstration of a prima facie case with a likelihood of success, risk of prejudice, the

need to enhance constitutional values, prevention of a matter being rendered nugatory, and consideration of public interest.

19. On whether a prima facie case has been established, the Petitioner cited *Kevin K Mwiti & others v Kenya School of Law & others* [2015] eKLR, submitting that the Ad Hoc Committee acted ultra vires and in violation of Articles 47 and 50 of the Constitution and Sections 4 and 7 of the Fair Administrative Action Act. The petitioner argued that the Committee acted as investigator, prosecutor, and judge, denying the Petitioner a fair hearing and further submit that under Section 44(2)(c) of the County Governments Act, disciplinary authority over a County Secretary lies with the Governor and not the County Assembly; and the process was therefore unconstitutional and procedurally flawed, particularly since the report was presented and adopted contrary to Standing Order No. 37(2) and without members' prior access or interrogation.
20. The Petitioner further submit that the grant of conservatory orders would enhance constitutional values by affirming adherence to due process, and that failure to grant them would render the petition nugatory since the implementation of the impugned report could lead to his dismissal and irreversible reputational harm. On public interest, it was contended that denial of the orders would sanction impunity and undermine constitutional safeguards. The Petitioner urged that costs follow

the event in accordance with Section 27 of the Civil Procedure Act.

1ST, 2ND AND 3RD RESPONDENT'S SUBMISSIONS

21. They submit that via letter dated 3rd June 2025, the applicant was invited to appear in person before the 7 member Ad hoc committee on 9th June 2025 to respond to queries concerning ongoing investigations and on the said date the hearing commenced and he was present alongside other senior officers and he was afforded an opportunity to be heard thus satisfying the requirement of article 50(I) of the constitution.
22. They submit that the applicant has not provided credible evidence to rebut their documentation and mere dissatisfaction with findings or recommendations of a statutory investigative body does not amount to a breach of due process and in the absence of evidence of procedural impropriety, bias, or violation of law, the application falls short of the threshold required to establish prima facie case.
23. On whether the applicant will suffer irreparable harm, they submit that irreparable loss refers to harm that cannot be adequately compensated by an award of damages but applicant has made broad and generalized claims without tendering any specific evidence of such harm. That the recommendations made are not punitive but are part of governance and internal mechanism within county Assembly

aimed at addressing administrative and procedural irregularities and implantation of such where the applicant has been heard and due process observed does not give rise to irreparable harm; that any adverse outcome that may arise may still be challenged. They cited *Gatiria v Kamunyu & 4 others* (constitutional petition No. E019 of 2024[2025] KEHC9619[KLR] (1 JULY2025) Ruling where the court held that the fact the particulars were supplied as per standing orders rules out likelihood of suffering irreparable loss and damage and the fact that the applicant herein was invited via letter dated 3rd June 2025 then the applicant is without recourse should action be taking against him in future.

24. On whether petition will be rendered nugatory, they submit that this principle should only be applied only where actions preceding the absence of conservatory orders would fundamentally alter or destroy the subject matter or facilitate unconstitutional outcomes and in this case, no terminal act has occurred, the recommendations of Ad hoc committee though adopted, remain subject to scrutiny and legal challenge and have not yet crystalized into outcomes that frustrate this court's ability to grant effective relief in the substantive petition.

25. Further, consideration of grant of conservatory orders must include public interest alongside other factors and cited supreme court case of *Gatirau Peter Munya v Dickson Mwenda*

Kithinji & 2 others [2014] eKLR where conservatory orders were characterized as mechanisms of public law intended to uphold orderly Governance and not merely to preempt procedural harm. They submit that the recommendations of the committee serve the broader interests of the people of Baringo.

26. In conclusion, they submit that in so far as the petition seeks judicial oversight of public processes, the lack of immediate interference does not erode the court's capacity to adjudicate; that permitting implementation of the recommendations does not foreclose effective relief as should substantive violations be established, this court retains full remedial powers.

27. In conclusion, they submit that the substratum of the petition remains intact and granting conservatory orders is not necessary to preserve its viability and the petition will not therefore be rendered nugatory.

4TH RESPONDENT'S SUBMISSIONS

28. The 4th Respondent opposed the application and submit that it arises from the Ad Hoc Committee's lawful inquiry into employment practices in Baringo County, culminating in recommendations now challenged for alleged procedural flaws and submit that the main issue for determination is whether the Petitioner has met the legal threshold for grant of conservatory orders. The 4th Respondent relied on the case of *Nkunja v Magistrates and Judges Vetting Board & another* [2016] eKLR and outlined the three guiding principles for grant

of conservatory orders being the establishment of a prima facie case with a likelihood of success, prevention of a petition being rendered nugatory, and consideration of public interest. They relied on *Board of Management, Ngara Girls High School v Erdemann Property Ltd & another; Ministry of Education (Interested Party)* [2025] KEELC 95 (KLR) to emphasize that a prima facie case must go beyond speculative arguability and demonstrate a likelihood of success.

29. While acknowledging that the Petitioner had raised serious constitutional questions warranting judicial scrutiny, the 4th Respondent submit that the petitioner has demonstrated an arguable prima facie case and potential prejudice arising from a flawed investigation that attributed liability to him for alleged violations of the Constitution, Public Service Acts, and Ethics laws and submit that failure to issue conservatory orders would render the petition nugatory and expose the Petitioner to further prejudice through implementation of the report's recommendations. Citing *Omondi & another v Attorney General & 2 others; Etheke & 6 others (Interested Parties)* [2025] KLR 7463, the 4th Respondent emphasized that the purpose of conservatory orders is to maintain the status quo pending judicial determination.

30. On public interest, the 4th Respondent argued that the Petitioner, being the County Secretary and Head of Public Service, performs key functions essential to county

governance, and halting his mandate would prejudice public administration. Citing *Gatirau Peter Munya* case cited above, the 4th Respondent submits that public interest would best be served by preserving institutional stability through conservatory relief. The 4th Respondent therefore supported the grant of conservatory orders to preserve the substratum of the petition.

SUPPLEMENTARY SUBMISSIONS BY THE PETITIONER

31. In supplementary submissions dated 13th August 2025, the Petitioner reiterated that he has demonstrated a prima facie case based on violation of Articles 47 and 50 of the Constitution, and that the Respondents' actions were both procedurally and substantively unfair.
32. On procedural unfairness, the Petitioner argued that Standing Order No. 37(2) was breached since the Ad Hoc Committee report was not circulated to members twelve hours before the sitting as directed by the Speaker. That he was summoned merely as an informant, never confronted with specific allegations, and condemned unheard contrary to the rules of natural justice. The Petitioner noted that even the 1st to 3rd Respondents conceded the process was incomplete, yet the Committee proceeded to make adverse findings against him.

33. On substantive unfairness, the petitioner submit that disciplinary authority over County Secretaries vests in the Governor under Section 44(3C) of the County Governments Act, and the Assembly's interference was unconstitutional and ultra vires. That the Ad Hoc Committee exceeded its mandate by investigating matters within the jurisdiction of the County Public Service Board. The Petitioner argued that the Committee's conclusions were unfounded and targeted him unlawfully.

34. He further contends that failure to grant conservatory orders would cause grave and irreparable prejudice, including reputational damage and possible removal from office; and denial of interim protection would render the petition nugatory. He relied on the case of *Law Society of Kenya v Office of the Attorney General & another; Judicial Service Commission (Interested Party)* [2020] KLR, and submit that he has satisfied all legal and constitutional thresholds for grant of conservatory orders.

ANALYSIS AND DETERMINATION

36. I have carefully considered the application dated 13th June 2025, the averments by parties herein together with the annexures thereto, the rival submissions by learned counsel for the parties, and the applicable constitutional and statutory provisions. The issue for determination is whether

the applicant has satisfied the threshold for grant of conservatory orders pending the hearing and determination of the petition.

37. The principles governing the grant of conservatory orders are well settled. The applicant must demonstrate the following:-

1. a prima facie case with a likelihood of success;
2. that unless the order is granted there is a real danger of prejudice that may render the petition nugatory; and
3. that the public interest would be served by the grant of the orders.

38. The above principles were restated in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR. The parties herein have rehearsed these principles in their submissions.

(i)Proof of prima facie case with a likelihood of success

39. On the first limb, whether a prima facie case with likelihood of success has been made out, the petitioner has raised arguable constitutional questions concerning procedural fairness and the scope of the committee's mandate. However, at this interlocutory stage, the court must refrain from making final determinations on contested facts. A prima facie case for conservatory relief requires

more than conjecture or a bare assertion of irregularity; it requires evidence that the contested acts were so clearly outside the scope of the body concerned or so tainted as to warrant immediate judicial intervention to preserve the subject matter of the dispute.

40. The material filed indicates that the petitioner was invited vide letter dated 3rd June 2025 and he appeared before the committee and he participated though he says he was asked to give information on structured issues but he was not given opportunity to defend himself. The petitioner's allegation that the report was not circulated twelve hours earlier as mandated by Standing Order No. 37(2) is significant and will be examined at the hearing, but standing alone and on the present record it does not demonstrate that the entire proceedings were a nullity or that the Assembly wholly lacked competence to inquire into the matters neither does it appear that any irreversible executive act (such as dismissal or removal) has already been taken against the petitioner as a direct consequence of the report. The committee's recommendations, on the material before the court, were directed to further investigation and administrative follow-up rather than immediate termination of employment.

(ii)Whether the petitioner will suffer prejudice and petition be rendered nugatory

41. On whether the petitioner will suffer prejudice if conservatory orders are not granted, it is noteworthy that the recommendations of the Ad Hoc Committee have not crystallized into disciplinary action. The respondents have explained that the report merely recommended further investigations. No termination, suspension, or sanction has been demonstrated. The harm alleged or loss of reputation and risk of removal from office in my view is speculative at this stage and can be remedied if the petition ultimately succeeds. As observed in the case of *Kevin K. Mwiti & Others v Kenya School of Law & Others* [2015] eKLR, conservatory relief is not meant to shield parties from lawful administrative or oversight processes.

42. Similarly, the argument that the petition would be rendered nugatory if conservatory orders are not issued is not supported by facts. The substratum of the petition namely, the legality and constitutionality of the Ad Hoc Committee's proceedings remain intact. The court retains full remedial powers to grant appropriate relief should it find that the petitioner's rights were violated.

(iii)whether public interest will be served

43. In respect to public interest, the court must strike a balance between protecting individual rights and safeguarding the public's entitlement to accountable governance. The County Assembly's oversight role is anchored in the Constitution and serves the broader public good. Granting blanket orders to suspend the implementation of all recommendations of the Ad Hoc Committee would unduly hinder that constitutional mandate and interfere with governance processes. In my view Public interest tilts against the grant of conservatory relief.

44. From the totality of the material presented before me, I am satisfied that the petitioner has not met the threshold for the grant of conservatory orders. The application does not disclose any imminent or irreparable harm that cannot be addressed at the hearing of the petition. The issues raised call be fully ventilated through hearing of the substantive petition.

45. From the foregoing, the Notice of Motion dated 13th June 2025 lacks merit and is hereby dismissed. The interim conservatory orders earlier issued are hereby vacated. Costs shall be in the cause.

46. **FINAL ORDERS:** -

a) Notice of motion dated 13th June 2025 is hereby dismissed.

- b) Conservatory orders earlier issued are hereby vacated.
- c) Costs in the cause.

Ruling delivered, dated and signed Virtually at Kabarnet this
29th Day of October, 2025.



.....
RACHEL NGETICH
JUDGE

In the presence of:-

- Mr. Kipkoech for Petitioner.
- Ms. Musando holding brief for 1st, 2nd & 3rd Respondent.
- Mr. Yegon for 4th Respondent absent.
- CA, Elvis/Momanyi.