



Kenya Teachers in Hardship and Arid Areas Welfare Association (KETHAWA) v Teachers Service Commission & 2 others (Employment and Labour Relations Appeal E113 of 2025) [2025] KEELRC 2996 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2996 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E113 OF 2025**

**HS WASILWA, J
OCTOBER 29, 2025**

BETWEEN

KENYA TEACHERS IN HARDSHIP AND ARID AREAS WELFARE ASSOCIATION (KETHAWA) PETITIONER

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

THE NATIONAL ASSEMBLY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 4th June 2025 seeking orders that: -
 1. spent
 2. pending the hearing and determination of this application and the petition, this Honourable Court be pleased to issue a conservatory order staying, annulling and/or suspending the implementation of the report titled Status Report on the Resolution of the Departmental Committee on Education Regarding Teachers' Promotions dated 22nd May 2025 by the 1st Respondent the Teachers Service Commission (TSC) which indicated that it has removed a total of One Thousand Eight Hundred and Sixty Four (1,864) teachers from hardship and arid areas from it's promotion list.
 3. pending the hearing and determination of the Petition, this Honourable Court be pleased to issue a temporary injunction and/or conservatory order restraining the Respondents, whether by themselves, their servants, agents or any other person acting on their behalf, from enforcing or acting upon the said Status Report or any decisions emanating therefrom including the



removing of One Thousand Eight Hundred and Sixty-Four (1,864) teachers from hardship and arid areas from the promotion list.

4. Pending the hearing and determination of this petition, this Honourable Court be pleased to issue an Order of Mandamus compelling the 1st Respondent to issue letters of promotion to One Thousand Eight Hundred and Sixty-Four (1,864) teachers who had been removed from the promotion list.
5. that the Honourable Court be pleased to issue any other or further orders as may be just and expedient in the interest of justice and constitutional protection.
6. that the costs of this application be provided for.

Petitioner/Applicant's Case

2. The Petitioner/Applicant avers that the 1st Respondent vide report titled Status Report on the Resolution of the Departmental Committee on Education Regarding Teachers' Promotions dated 22nd May 2025, indicated that it has removed a total of 1,864 teachers from hardship and arid areas from its promotion list. It is the Petitioner's case that this was conducted without meaningful stakeholders' involvement, public participation, contrary to Article 10 of *the Constitution*.
3. The Petitioner/Applicant avers that the said teachers had applied for promotions and they were shortlisted, interviewed, qualified and their names and TSC numbers published in the promotion list, however, they were not issued the promotion letters thus violating Articles 27, 41, 43, 47 and 56 of *the Constitution*.
4. It is the Petitioner/Applicant's case that the 1,864 teachers removed from the promotion list by the 1st Respondent work in hardship and arid areas from nine counties being; Samburu, Mandera, Garissa, Wajir, Lamu, Isiolo, Tana River, Turkana and Marsabit. This action will isolate and discriminate them from promotion resulting to the blatant violation of their constitutional rights.
5. The Petitioner/Applicant avers that it has a prima facie case with a likelihood of success, and unless this Court intervenes. There is real danger that the rights and legitimate expectations of affected teachers, students and communities from this hardship and arid areas will be irreparably violated.
6. The Petitioner/Applicant avers that the report lacks transparent criteria, scientific justification, or proper baseline data, and appears to be arbitrary and capricious.
7. It is the Petitioner/Applicant's case that as a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (ACHPR) and relevant ILO Conventions, Kenya has a duty not to undertake retrogressive measures that impair existing socio-economic protections.

Respondent's Case

8. In response to the Application, the 1st Respondent filed grounds of opposition dated 30th June 2025 on grounds that:
 1. The Petition is an abuse of the court process; devoid of merit, bad in law, misconceived, and ought to be struck out.
 2. The Petitioner has failed to adduce sufficient and compelling grounds to bring this matter within the realm of Articles 22 and 41 relating to the contravention of Fundamental Rights and Freedoms.



3. The Petition lacks specificity and particularity hence does not meet the test of constitutional pleadings espoused in the *Anarita Karimi vs. Republic (No.1) (1979) 1 KLR 15* and *Mumo Matemu vs. Trusted Society of Human Rights Alliance, Civil Appeal No.290 of 2012 (2013) eKLR* cases.
 4. The Petition has not raised any cause of action anchored in *the Constitution*; the subject matter pertains to ordinary contractual grievances within the ambit of statutory law (*Employment Act*) disguised as a constitutional Petition.
 5. The Petition is vague, ambiguous and lacks specificity and particulars hence a violation of the right to fair hearing enshrined in *the Constitution*.
 6. The Petition violates the principle of exhaustion and constitutional avoidance. The Petitioners have not sought to review of the Commission's decision as espoused under section 46 of *Teachers Service Commission Act*.
 7. As an independent constitutional organ the respondent has the authority to, where necessary, review its decisions when there are compelling, rational, objective and justifiable reasons to do so. Such authority is inherent in all decision-making organs and specifically under section 11 (g) of the TSC Act.
 8. The Commission has a legal duty to act fairly and accord its employees equal treatment as per the established policy or eligibility criteria. This legal duty includes the obligation to act on its own motion and correct any apparent error on the face of the record provided that principles of procedural fairness and natural justice are observed.
 9. The Court lacks jurisdiction to supervise internal management and administrative mandate, policy considerations and management prerogatives within the lawful mandate of the Commission under Article 237 of *the Constitution* and relevant policy instruments.
 10. The authority to promote teachers' promotions vests exclusively on the Commission under Article 237 of *the Constitution* and Section 11 of the TSC Act. Accordingly, the Court lacks the requisite power to issue orders whose effect is to promote teachers without regard to the established policy and regulatory frameworks
 11. The Petition is without merit, based on unsubstantiated claims, lacks evidentiary proof, and seeks to prevent a constitutionally established body from executing its mandate.
 12. The Petitioners have failed to provide cogent and compelling reasons to support the prayers sought. No evidence has been placed before Court to prove any of the allegations in the body of the Petition to warrant intervention by Court.
9. The 2nd Respondent filed grounds of opposition dated 16th June 2025 on grounds that:
1. The 2nd Respondent enjoys a presumption of constitutionality in respect of all its actions, which presumption the Petitioner has not rebutted.
 2. The presumption of constitutionality of all acts of the 2nd Respondent is only rebuttable upon a substantive hearing of the Petition and not at the interlocutory stage as sought in the application dated 4th June 2025.
 3. The Petition has not been pleaded with a specific degree of precision as required under Rule 10(2) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms and



Enforcement of *the Constitution*) Practice and Procedure Rules and as set out by the Court of Appeal in the case of Anarita Karimi Njeru v Republic (1979) eKLR.

4. The Petitioner has not exhausted alternative remedies under Article 119 of *the Constitution* before approaching this Honourable Court.
 5. The orders sought in the application dated 4th June 2025 are similar to the orders sought in the Petition and are thus final nature and cannot be issued at the interlocutory stage.
 6. The Petitioner has failed to meet the test for the grant of conservatory orders set out by the Supreme Court of Kenya in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR.
 7. The Petitioner has not sought any specific orders against the 2nd Respondent.
10. The 3rd Respondent filed grounds of opposition dated 3rd July 2025 on grounds that:
1. That the Petition does not in any manner whatsoever disclose with precision and particularity any constitutional or human rights violations, as is legally mandatory, and thus gravely offends the principles laid down in various judicial decisions and principally, in the matter of Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR.
 2. The Petitioner has not exhausted alternative remedies under Article 119 of *the Constitution* and also Section 46 of Teachers Service Act which provides mechanism for review of Commission's decision before approaching this Honourable Court.
 3. The Petitioner has not sought any specific orders against the 3rd Respondent.
 4. That the Petition herein has been filed in this Honorable Court in clear disregard of the law, is an abuse of the due process of court, hence cannot be countenanced and/or determined by this Honorable Court.

Petitioner/Applicant's Submissions

11. The Applicant submitted on three issues: whether the Petition meets the constitutional threshold and is properly before this Honourable Court; whether the impugned decision violated constitutional and statutory rights of the affected teachers; whether the Petitioner is entitled to the reliefs sought.
12. On the first issue, the Applicant submitted that the Respondents' argument that the petition lacks precision contrary to Anarita Karimi Njeru v Republic [1979] KLR 154; is misplaced. The Applicant avers that in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, the Court of Appeal clarified that:

“The principle in Anarita Karimi is not a technical doctrine of pleading, but a substantive one: the petitioner must set out with a reasonable degree of precision the right alleged to have been infringed and the manner of the infringement.”
13. The Applicant submitted that the Respondents invoke Article 119 of *the Constitution* and Section 46 of the TSC Act. Article 119 relates to petitions to Parliament and does not oust the jurisdiction of this Court. Section 46 of the TSC Act provides for individual review of administrative decisions, not for collective redress of systemic constitutional violations affecting over 1,800 teachers.



14. It is the Applicant’s submission that the Supreme Court in *Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* [2014] eKLR held:

“Where a remedy is not effective or available, a litigant is entitled to approach the courts directly.”

15. On the second issue, the Applicant submitted that the Respondents singled out teachers from nine hardship counties and removed them from a promotion list despite their merit-based selection; this is indirect discrimination based on place of work and residence. It cited *Law Society of Kenya v Kenya Revenue Authority & Another* [2017] eKLR, wherein the Court held:

“Where a policy is manifestly discriminatory, it is open to the Court to intervene.”

16. The Applicant submitted that by abruptly excluding teachers who had already qualified and been published in the promotion list, the Respondents undermined their right to fair labour practices and their economic rights under Article 43 of *the Constitution*.

17. The Applicant submitted that the affected teachers were never notified nor given reasons for their removal contrary to Article 47 of *the Constitution* that provides every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. It cited *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR, the Court of Appeal held fair administrative action entails the right to be heard and to be given reasons before adverse action is taken.

18. The Applicant submitted that by publishing the teachers’ names and TSC numbers in the promotion list, the Respondents created a legitimate expectation that could not be arbitrarily withdrawn. Reliance was placed in *Keroche Industries Limited v Kenya Revenue Authority & 5 others* [2007] eKLR, the High Court stated:

“A legitimate expectation arises where a public body, by representation or past practice, induces an expectation that is reasonable, lawful and logical.”

19. On the third issue, the Applicant submitted that it has annexed documentary evidence proving discrimination, violation of due process and disregard of constitutional values, thereby rebutting any presumption of regularity. The 1st Respondent argued that this is a contractual grievance, however, in *Okiya Omtatah Okoiti v Communication Authority of Kenya & 8 others* [2015] eKLR, the Court held:

“Where a petition raises issues of violation of constitutional rights, it cannot be dismissed as a mere employment dispute.”

20. It is the Applicant’s submission that the threshold for the grant of interim conservatory orders has been fully satisfied. It was guided by the principles for grant of such orders stated by the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, where the Court held that:

“Conservatory orders bear a more decided public-law connotation: they are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to private-party issues, but to the inherent merit of a case, bearing in mind the constitutional values.....Conservatory orders are meant



to preserve the subject matter and ensure that constitutional values are upheld pending determination.”

21. The Applicant placed reliance in Centre for Rights Education and Awareness (CREAW) & Another v Speaker of the National Assembly & 2 others [2017] eKLR, wherein the court:

“At this stage the court is not required to make any conclusive or definitive findings on the merits of the case but only satisfy itself that the Petition is not frivolous and that it discloses arguable constitutional issues.”

22. On prima facie case, the Applicant submitted that the Respondent's actions implicate Articles 27, 41, 43 and 47 of *the Constitution* on non-discrimination, fair labour practices, socio-economic rights and fair administrative action. The Petition therefore raises genuine and arguable constitutional questions. In Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR the court held;

“A prima facie case is not one that must succeed at the end of the day but one that is not frivolous and raises serious questions fit for investigation by the court.”

23. On irreparable damage, the Applicant submitted that if the impugned decision is implemented, the 1,864 teachers stand to suffer; loss of anticipated salary increments and benefits, stagnation in career progression, and demoralization and disruption of service delivery in already under-resourced hardship areas. These constitute a real and imminent danger that cannot be adequately compensated by damages. The Court of Appeal in Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] eKLR, affirmed:

“If damages recoverable in law is an adequate remedy and the defendant is capable of paying, no interlocutory injunction should normally be granted, however strong the applicant's claim may appear at that stage.”

24. It is the Applicant's submission that the damages are not adequate to cure the constitutional violations and career stagnation.

25. On the balance of convenience, the Applicant submitted that the balance of convenience tilts heavily in favour of preserving the status quo pending hearing. Granting the orders sought does not unduly prejudice the Respondents but instead ensures: That teachers continue serving with legitimate expectations intact; That constitutional values of equality and fair treatment are respected; and that public confidence in independent commissions and Parliament is upheld.

26. The Applicant submitted that the public interest lies in retaining experienced teachers in hardship areas to avoid disruption of education services in marginalized counties an objective recognized by Article 56 of *the Constitution* which mandates affirmative action for marginalized groups. It cited Muslim for Human Rights (MUHURI) & 2 others v Inspector General of Police & 4 others [2015] eKLR wherein the court emphasized:

“Where there is doubt, the court should lean towards protecting the rights and fundamental freedoms of citizens and allow the suit to be heard on merit.”

27. It is the Applicant's submission that without the conservatory orders sought, the Petition risks being rendered nugatory. By the time the Court determines the matter, the promotions would have been concluded and implemented, leaving the affected teachers without effective remedy as held in Judicial Service Commission v Speaker of the National Assembly & Another [2013] eKLR.



1st Respondent's Submissions

28. The 1st Respondent submitted on three issues: whether the conservatory orders sought is merited; whether the Petition is in blatant breach of the doctrines of exhaustion and constitutional avoidance; and whether the reliefs sought are merited.
29. On the first issue, the 1st Respondent submitted that the Petitioner has not presented a compelling case before the Court to meet the definition of a prima facie case. The petition is not backed by any factual evidence capable of sustaining a legitimate legal claim.
30. The 1st Respondent submitted that he who alleges must prove, however, the Petitioner has not attached any official documents to support the contention that teachers were arbitrarily removed. Neither has any promotion letter been brought before this court, no evidence has been annexed to the Petition, no name has been brought either but instead, the Petitioner has provided a list of teachers who were promoted.
31. It is the 1st Respondent's submission that the Petitioner has failed to place before the court any compelling material that would establish a prima facie case under Article 22 or Article 41. The Court cannot be called upon to speculate on facts not pleaded or substantiated. The maxim he who alleges must prove is a foundational rule of law and the Petitioners have failed to discharge this burden.
32. The 1st Respondent submitted that violations of Article 27 or Article 56 cannot be presumed merely because of geographical location or assumed impact. No data, analysis, or criteria for inclusion or exclusion have been presented to show deliberate discrimination or adverse targeting of any protected group. Without evidence, these remain unproven claims and fall far short of establishing the kind of injury that warrants constitutional intervention.
33. The 1st Respondent submitted that no particulars have been pleaded or proved to demonstrate what level of public participation was required, how it was denied, or how the process offends administrative justice principles. The Petitioners have failed to set out the nature of the policy, the alleged changes made to it, and the stage at which input was required. As such, no case has been made out under Article 47.
34. It is the 1st Respondent's submission that Petitioner has not demonstrated that they are suffering any irreparable harm as a result of the alleged implementation. If indeed certain teachers were wrongfully excluded from a promotion list, such decisions are reviewable under Section 46 of the TSC Act or appealable through internal mechanisms. The availability of these alternative avenues negates any claim of irreparable injury.
35. The 1st Respondent submitted that the petition lacks merit and subsequently, where a prima facie case is not established, there is no need to examine irreparable harm or the balance of convenience. The Court of Appeal at Nairobi in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) the court opined:

“If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a



prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”

36. On the second issue, the 1st Respondent submitted that the petition contravenes the doctrine of constitutional avoidance. The core issue being the promotion of teachers, arises from a contractual employment relationship and therefore falls squarely within the realm of private law. However, the matter has been framed as a constitutional petition in an attempt to circumvent the established statutory procedures, particularly the various employment laws, which would ordinarily govern such claims.
37. The Respondent submitted that the petition is vague, ambiguous and lacks specificity and particulars hence a violation of the right to fair hearing enshrined in *the Constitution*. It cited Anarita Karimi Njeru v Republic [1979] KECA 12 (KLR)1272 wherein the court stated that constitutional violations must be pleaded with a reasonable degree of precision.
38. The 1st Respondent submitted that the principle of constitutional avoidance requires courts to decline jurisdiction where the matter can be properly resolved through alternative statutory processes. The balance of prejudice tilts in favour of the 1st Respondent. Entertaining unverified constitutional petitions without evidence not only undermines internal dispute resolution structures but also burdens the court with matters that fall outside its constitutional jurisdiction.
39. On the third issue, the 1st Respondent submitted that the court has the inherent power to appraise the entire promotion process when it is complete and grant appropriate and effectual remedies at the conclusion of the process. The Court has jurisdiction to quash any appointment made without following the due process, thus, this in our view is the proper and effective manner of exercising judicial authority.

2nd Respondent’s Submissions

40. The 2nd Respondent submitted on two issues: whether the Petitioner exhausted remedies under Article 119 and Section 48 of the TSC Act; and whether the orders sought should be granted.
41. On first issue, the 2nd Respondent submitted that before approaching the court, the Petitioner ought to exhaust all remedies available to them under any other written law and if not, demonstrate the exceptional circumstances to warrant the court’s intervention.
42. It is the 2nd Respondent’s submission that Article 119(1) of *the Constitution* and Section 46 of the TSC Act are not a bar to approaching the Court, the Petitioner is under an obligation, pursuant to Section 9(2) of the FAA to explore all remedies available to them before approaching the Court and in the event that they do not, there must be shown to the court exceptional circumstances to warrant its intervention; these have not been demonstrated by the Petitioner.
43. The 2nd Respondent placed reliance in the Court of Appeal decision of Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR) that held:

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews.... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the courts...This accord



with article 159 of the Constitution which commands courts to encourage alternative means of dispute resolution."

44. On the second issue, the 2nd Respondent submitted that conservatory orders are not final orders but interim in nature; they are issued to preserve the status quo until the determination of a petition, as held by the Supreme Court, in the case of *Munya v Kithinji & 2 others* (Application 5 of 2014) [2014] KESC 30 (KLR) (2 April 2014) (Ruling).
45. The 2nd Respondent submitted that the purpose of conservatory orders is to preserve the substratum of the suit. We rely on the case of *Makumi & 4 others v Speaker County Assembly of Kitui & another* (Constitutional Petition E001 of 2024) [2024] KEHC 2812 (KLR) (19 March 2024) (Ruling) where the Court held that:

“A Conservatory order is a Judicial remedy sought or issued by a court to preserve a subject matter until the Suit/Petition is heard and determined. It is in other words an order of status quo ante so that the substratum of the suit/petition is preserved, or so that the same is not rendered an academic exercise.”
46. The 2nd Respondent submitted that Rule 5 (d) (i) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear just order that the name of any party improperly joined, be struck out. The Petitioner has not sought any specific orders against the National Assembly and no improper conduct has been imputed upon it, consequently, it should be struck out from the proceedings in line with the provisions of Rule 5(d)(i).

3rd Respondent's Submissions

47. The Respondent submitted four issues: whether the Petitioner is in breach of the doctrines of exhaustion and constitutional avoidance; whether the conservatory order sought is merited; whether the injunction sought is merited; whether the Petition discloses a violation of constitutional rights.
48. On the first issue, the 3rd Respondent submitted that the petition is fatally premature, procedurally irregular, and legally unsustainable on account of the Petitioner's willful failure to exhaust the mandatory statutory dispute resolution mechanisms set out in Section 46 of the Teachers Service Commission Act which provides that a person who is aggrieved by a decision of the Commission under this Act may apply to the Commission for review of that decision.
49. The 3rd Respondent submitted that the Petitioner has failed to lodge an appeal before the Teachers Service Commission as provided in the statute thus the petition is premature as it violates the doctrine of exhaustion.
50. It is the 3rd Respondent's submission that the Petitioner ought to have utilized the available internal dispute resolution mechanisms instead of burdening the court with matters that fall outside its constitutional jurisdiction. In the premises, the petition is premature, procedurally defective, and offends both the doctrine of exhaustion and the principle of constitutional avoidance, thus, this court lacks jurisdiction to entertain this petition until the statutory mechanisms have been fully exhausted.



51. On the second issue, the 3rd Respondent submitted that the Petitioner has not met the legal requirements for grant of conservatory orders as set out in *Nkunja v Magistrates and Judges Vetting Board & another* [2016] KEHC 7269 (KLR) as follows:
- “An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*; Whether if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and the public interest must be considered before grant of a conservatory order.”
52. The 3rd Respondent submitted that the conservatory orders to restrain the Respondents from implementing or acting on the 2nd Respondent’s report should not issue since the Petitioner has not demonstrated a prima facie case. It cited *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KECA 175 (KLR) in which the Court considered what constitutes a prima facie case and held:
- “In civil cases, a prima facie is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter; A prima facie case is more than an arguable case; It is not sufficient to raise issues but the evidence must show an infringement of a right and the probability of success of the Applicant’s case upon trial; That is clearly a standard which is higher than an arguable case.”
53. The 3rd Respondent submitted that the Petitioner has also failed to demonstrate that there is a real danger that it will suffer prejudice if the conservatory order sought is not granted and that failure to grant the order will render the petition nugatory. It placed reliance in the meaning of real danger enunciated in *Martin Nyaga Wambora v Speaker of The County of Assembly of Embu & 3 Others* [2014] eKLR as follows:
- “To those erudite words I would only highlight the importance of demonstration of “real danger”. The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court.”
54. On the third issue, it is the 3rd Respondent’s submission that the injunction sought lacks merit as the Petitioner has not demonstrated that it has a prima facie case. Secondly, the Petitioner has not proven it will suffer irreparable harm since the matter in dispute is reviewable under the *Teachers Service Commission Act* and Petitioner ought to seek recourse under the said internal mechanism. The availability of the internal avenue therefore negates any claim of irreparable harm.
55. On the final issue, the 3rd Respondent submitted that the petition does not disclose any specific, actionable or substantiated violation of constitutional rights. The decision to remove the teachers from the promotion list does not amount to a constitutional violation but pertains to ordinary contractual grievances within the ambit of statutory law. Additionally, the Petitioner has not shown how the process of removal of teachers from the promotion list violated specific constitutional rights.
56. It is the 3rd Respondent’s submission that the claim challenges administrative discretion which is subject to internal TSC mechanisms and not constitutional enforcement. The Petitioner has alleged violation of various provisions of *the constitution* without providing sufficient legal or factual basis to support the alleged violations.



57. The 3rd Respondent submitted that the Petitioner has failed to demonstrate that the teachers were discriminated against or treated unequally contrary to Article 27 of *the Constitution*. Further, there is no evidence tendered by the petitioner to prove that there was any discrimination of a minority or a marginalized group under Article 56.
58. The 3rd Respondent submitted that Article 41 of *the constitution* does not guarantee automatic promotion. Promotions done by the 1st Respondent are merit based and governed by internal regulations and availability of positions.
59. The 3rd Respondent submitted that fairness in administrative action does not equate entitlement to a particular result and the 1st Respondent followed due process in removing the teachers from the promotion list. Additionally, the Petitioner has not adduced any credible evidence to demonstrate that there was no public participation.
60. I have examined all the averments and submissions of the parties herein. I have looked at the prayers sought by the applicant in the application and in the petition herein. The prayers seem to be similar and resolving the application at this stage will render the entire petition nugatory.
61. I do not find it plausible to grant the interim orders sought at this point. I direct that the parties proceed and prosecute the entire petition. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF OCTOBER 2025.

HELLEN WASILWA
JUDGE

