



**Ogogoh v Coast Water Works Development Agency & 8 others;
Tsuma & 5 others (Interested Parties) (Constitutional Petition
E020 of 2025) [2025] KEELRC 2957 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2957 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CONSTITUTIONAL PETITION E020 OF 2025**

**M MBARŪ, J
OCTOBER 30, 2025**

BETWEEN

JULIUS OGOGOH PETITIONER

AND

COAST WATER WORKS DEVELOPMENT AGENCY 1ST RESPONDENT

KATANA DANIEL MWARINGA 2ND RESPONDENT

HAMID MBARAK 3RD RESPONDENT

MOHAMMED MASOUDI MWAHIMA 4TH RESPONDENT

JUDITH WABOSHA MWAMBURI 5TH RESPONDENT

GEORGE MAINA KARIUKI 6TH RESPONDENT

EDWIN MURIMI 7TH RESPONDENT

HAFSWA ABDALLA DELE 8TH RESPONDENT

STATE CORPORATION ADVISORY COMMITTEE 9TH RESPONDENT

AND

MARTIN TSUMA INTERESTED PARTY

SIMON MENZA CHARO INTERESTED PARTY

MARY OKIOMA INTERESTED PARTY

HAMADI MWANZITO INTERESTED PARTY

ZIRO LEWA INTERESTED PARTY

PUBLIC SERVICE COMMISSION INTERESTED PARTY



RULING

1. The petitioner filed an application dated 24 June 2025 under the provisions of rules 13, 19, and 23 of *the Constitution* of Kenya (Supervisory Jurisdiction and Protection of Fundamental Freedom and Rights of Individuals) High Court Practice and Procedure Rules 2013, seeking orders;
 1. Spent.
 2. Spent.
 3. pending hearing and determination of this petition, this Court be pleased to issue conservatory orders staying the payment of any salaries, allowances, benefits and stipends to the 1st, 2nd, 3rd and 4th interested parties in their capacities as the Deputy Director Human Resource & Administration, the Deputy Director Corporation Secretary and Legal Services and the Deputy Director Internal Audit within the Coast Water Works Development Agency; the 1st respondent herein
 4. The court be pleased to issue any other order this court may deem fit to grant to meet the ends of justice.
2. The application is based on the grounds that the respondents and the interested parties violated the principles set out in Article 10 of *the Constitution* by paying gratuity to the 1st to 4th interested parties and then converting their contractual terms to permanent and pensionable positions without following due process or undertaking a competitive recruitment process.
3. The 1st to 4th interested parties, who held senior positions at the Coast Water Works Development Agency (the 1st respondent), were paid gratuity on or about 22 November 2021, and the next day, 23 November 2021, their contracts were irregularly converted from contractual to permanent and pensionable terms.
4. These conversions and appointments were adopted by the 2nd to 8th respondents at a Board meeting on 10 December 2021, without advertisement, public participation, or a transparent recruitment process.
5. The actions of the respondents and the interested parties violated Articles 10, 201, and 234 of *the Constitution*, and the provisions of the *Public Finance Management Act* (PFMA) and the *Public Service Commission Act*, which require prudent use of public finances and proper approval by the Public Service Commission before implementing human resource instruments.
6. The petitioner argues that these acts amounted to financial impropriety, abuse of office, and dereliction of statutory duty. He maintains that the respondents failed to uphold transparency, accountability, and good governance, leading to unconstitutional and unlawful appointments.
7. The petitioner filed a supporting affidavit in which he reiterated that gratuity was paid to the 1st to 4th interested parties contrary to the law, and that, instead of retiring them upon payment, their contracts were unlawfully converted from contractual to permanent and pensionable terms without any competitive process or public participation.
8. Further, the petitioner argues that the conversion of terms and the revision of conditions of service were carried out without the approval of the Public Service Commission (PSC), in contravention of Article 234(2) and Sections 26, 27, 55, and 58(1) of the *Public Service Commission Act*.



9. The 1st to 5th interested parties opposed the application through the Replying Affidavit of Engineer Martin Tsuma Mwangi, the 1st interested party. He avers that the petitioner lacks locus standi under Article 22 of *the Constitution* and has not demonstrated a genuine public interest or authority to represent others. The pleadings also fail to meet the precision requirement under Anarita Karimi Njeru v Republic [1979] eKLR. The petitioner's claims of misappropriation are unsubstantiated, the conservatory orders sought would unlawfully infringe the interested parties' constitutional and labour rights, and that the Petition relies on privileged documents obtained unlawfully contrary to Article 35 of *the Constitution* and the *Access to Information Act*.
10. He further states that the Petition is vexatious, pointing out that the petitioner has repeatedly filed, withdrawn, and refiled similar suits through proxies and unregistered human rights bodies, including ELRC Petitions E002 of 2025, E009 of 2025, and E006 of 2024, all raising identical issues.
11. Engineer Mwangi avers that the transition from Coast Water Services Board to Coast Water Works Development Agency was lawfully effected through Legal Notice No. 28 of 26 April 2019 following the *Water Act*, 2016, and that all HR processes and staff translations were done in strict compliance with *the Constitution*, applicable circulars, and guidelines. The 1st to 5th interested parties were all lawfully employed, their contracts were renewed correctly, and gratuities were paid in accordance with their contractual terms.
12. Engineer Mwangi avers that the HR policy, job grading, and payment of gratuities followed approvals from the State Corporations Advisory Committee (SCAC), acting under delegated authority from the Public Service Commission (PSC) pursuant to Article 234(5) of *the Constitution* and the 2015 PSC Guidelines on Design of Organizational Structures. These approvals were further confirmed by correspondence between the Ministry of Water, SCAC, and the Salaries and Remuneration Commission (SRC).
13. The translation of staff from contract to permanent and pensionable terms was part of an Agency-wide restructuring that affected 182 employees, not just the four singled out by the petitioner. This process was consistent with the Public Service Human Resource Policies and Procedures Manual, 2016, which did not require new interviews for re-designation within the same job family. Gratuity payments were lawfully made on a pro rata basis, audited by the Auditor General, and found to be compliant.

Application dated 18 July 2025

14. The 1st to 5th interested parties filed the application dated 18 July 2025 under the provisions of Article 50(4) of *the Constitution* and Sections 35, 80, 81, and 83 of the *Evidence Act*, seeking orders;
 - 1) Spent.
 - 2) The Court be pleased to stay the proceedings in this matter pending the hearing and determination of this application.
 - 3) the Court be pleased to expunge from the petitioner's List of Documents, date 24th June, 2025 and Supporting Affidavit sworn on even date the following documents and/or annexures;-
 - a. A copy of the letter of Appointment dated 16th December, 2019 to the 2nd interested party.
 - b. A copy of the Letter dated 11th September, 2020 to the 2nd interested party.
 - c. A copy of the revised conditions of service dated 23rd November, 2021, to the 2nd interested party.



- d. A copy of the extract of minutes of the 1st respondent's full board meeting held on 10th December, 2021.
 - e. A copy of letter of Appointment dated 15th September, 2020 to the 3rd interested party.
 - f. A copy of the Letter dated 22nd September, 2021 from the 9th respondent to the Ag. CEO, the 1st interested party.
 - g. A copy of the letter dated 27th November, 2020 from the Salaries and Remuneration Commission to the CEO of Coast Water Works Development Agency.
 - h. A copy of the revised conditions of service dated 23rd November, 2021 to the 3rd interested party.
 - i. A copy of the letter of appointment dated 1st November, 2016 to the 4th interested party.
 - j. A copy of the Notice of Renewal to the 4th interested party dated 20th December, 2019.
 - k. A copy of the revised conditions of service dated 23rd November, 2021 to the 4th interested party.
- 4) The Court be pleased to grant a permanent injunction restraining the petitioner from using any information relating to the 1st, 2nd, 3rd, 4th and 5th interested parties which has been obtained illegally.
 - 5) The Court be pleased to remove the said documents from the physical court file and from the e-filing platform.
 - 6) The Court be pleased to make such other and further orders it may deem just and expedient in the circumstances of this case.
 - 7) The costs of this Application be borne by the petitioner.
15. The Application is based on the grounds that several of the impugned documents consist of personal employment contracts between the 2nd, 3rd, and 4th interested parties and the 1st respondent, containing privileged and confidential information. They assert that the petitioner failed to obtain certificates from the makers or disclose the lawful source of the documents as required under Sections 80 and 81 of the *Evidence Act*, rendering them inadmissible.
16. The interested parties argue that the petitioner should have lawfully sought the information from the relevant parties in accordance with Article 35 of *the Constitution*, rather than resorting to unorthodox means. They maintain that admitting such irregularly obtained documents would undermine the administration of justice and violate the principles set out in Article 50(4) of *the Constitution*. Consequently, they urge that the documents be expunged from the record in the interest of justice and fairness, emphasizing that every person is entitled to a fair trial under Article 50(2) and (4) of *the Constitution*.
17. The 1st and 5th interested parties filed a Supporting Affidavit by Engineer Martin Tsuma Mwangi, the 1st interested party and former Acting Chief Executive Officer of the Coast Water Works Development Agency. He reiterated that the petitioner's Notice of Motion and Petition dated 24 June 2025 rely



on documents that were illegally obtained in contravention of Article 50(4) of *the Constitution* and Sections 35, 80, and 83 of the *Evidence Act*, rendering them inadmissible.

18. The petitioner opposed the application dated 18 July 2025. The petitioner denies unlawfully obtaining the documents and contends that, even if the documents referred to were illegally obtained, such conduct would not justify the issuance of a permanent injunction. He maintains that the interested parties have failed to meet the threshold for such orders and that the documents in question are already in the public domain, having been annexed by the interested parties themselves in Petition No. E009 of 2025.
19. The petitioner, while relying on Article 50(4) of *the Constitution*, avers that only evidence obtained in violation of a fundamental right may be excluded, and that the admissibility of evidence is determined by its relevance to the issues at hand rather than the manner of its acquisition. He further argues that the interested parties have not demonstrated any prejudice or unfairness that would result from the admission of the impugned documents, which instead promote transparency and accountability in the operations of the 1st respondent, a public body. The petitioner thus urges the Court to admit the documents in the interest of justice.

Submissions

20. The respondents submitted that the threshold for granting conservatory orders had been met, and whether illegally obtained evidence was admissible is a question of fact for the court to determine. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others*, the court held that conservatory orders should issue only on the basis of inherent merit, public interest, constitutional values, and proportionality. The respondent also relied on *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] KEHC 2174 (KLR), where the court outlined the conditions for such orders, which are the need to show a prima facie case, enhancement of constitutional values, prevention of prejudice, and alignment with public interest.
21. In *Some & 4 others v Attorney General & 6 others (Anti-Corruption and Economic Crime Petition 7 of 2021)*, the respondent submitted that conservatory orders are meant to prevent imminent violations of *the Constitution* or rights, not to suspend public officers from performing essential functions. It was argued that halting the Coast Water Works Development Agency's operations would harm public service delivery, as the agency provides vital water and sanitation services to the Coast region. The multiplicity of similar petitions, including ELRC Petition E018 of 2025 and E009 of 2025, was viewed as an attempt to destabilize the institution.
22. In *Rights Education and Awareness (CREAW) & 7 others v Attorney General* [2011] eKLR, the respondent argued that the 1st to 5th interested parties failed to demonstrate any real prejudice that would arise if the conservatory orders were not granted. Applying the principle of proportionality, the court in *Jackline Okuta v Attorney General* [2017] eKLR held that section 3(1) of the *Employment and Labour Relations Court Act*, suspending key officers, would cause disproportionate harm to the institution and the public.
23. On admissibility of evidence, the respondents cited *Mue & another v Chairperson of the IEBC & 3 others (Presidential Election Petition 4 of 2017)*, where the Supreme Court held that information must be obtained through lawful means, particularly under the *Access to Information Act*. The respondent argued that the petitioner had not demonstrated lawful acquisition of the documents relied on, thereby violating the rights of the interested parties to privacy. Consequently, the respondent urged the court to expunge the illegally obtained evidence and reject the application as it undermines justice and the rule of law.



24. On the application dated 18 July 2025, the 1st to 5th interested parties submitted that the petitioner's documents contain privileged and confidential information which should be expunged. In the South African case of *Advtech Resourcing (Pty) Ltd v Kuhn* (2007) (4) ALL SA 1386, the court outlined the requirements for information to qualify as confidential. It must be helpful in trade or industry, not be public knowledge, and have economic value to the person seeking to protect it.
25. The interested parties argued that the petitioner disclosed employment contracts containing confidentiality clauses, thereby breaching the duty of confidentiality. They submitted that the petitioner obtained the documents without consent from either the 1st respondent (employer) or the 1st to 5th interested parties (employees), thus violating Article 35 of *the Constitution* of Kenya, 2010, Section 3 and 8 of the *Access to Information Act*, and Sections 80 and 81 of the *Evidence Act*.
26. According to Article 35 and the *Access to Information Act*, any person seeking information must apply in writing through the prescribed procedure within 21 days. In *Nathwani & another v Cabinet Secretary Ministry of Transport, Infrastructure, Housing and Urban Development & 4 others* (Environment & Land Petition 80 of 2019) [2025] KEELC 570 (KLR), the court held that parties must comply with Section 8 of the Act before obtaining information.
27. The 1st to 5th interested parties contended that the petitioner neither followed the prescribed legal procedure nor proved lawful acquisition of the documents, including uncertified payment schedules. Consequently, the petitioner violated the rights of the 1st to 5th interested parties to privacy and confidentiality.
28. As to whether the illegally obtained evidence is admissible, the interested parties invoked Article 50(4) of *the Constitution*, which prohibits the admission of evidence obtained in violation of fundamental rights if such admission would render the trial unfair or be detrimental to the administration of justice.
29. The interested parties also relied on Section 35(2) (b) of the *Evidence Act*, which permits admission of documentary evidence only when proper certification procedures are followed. The petitioner failed to show that the documents were lawfully obtained or that the 1st respondent or the interested parties gave their consent.
30. In *David Ogolla Okoth v Chief Magistrate Court, Kibera & 2 others* [2016] eKLR, the court held that evidence must be obtained in accordance with the law, and that seizing or using documents without a warrant violates the rights to property and privacy. The court emphasized that evidence obtained through such means should be excluded under Article 50(4) unless it is shown that its admission does not unfairly prejudice the trial.
31. Similarly, in *Njonjo Mue & another v Chairperson of the Independent Electoral and Boundaries Commission & 3 others* [2017] eKLR, the Supreme Court held that access to information must be balanced with the right to privacy and property, and that such access must follow the procedures under the IEBC Act and the *Access to Information Act*. The petitioner in that case failed to prove lawful access or necessity to protect their rights.
32. In *Baseline Architects Ltd & 2 others v National Hospital Insurance Fund Board Management* [2008] eKLR, the court held that it would be an abuse of confidence and contrary to fair play for a party to rely on documents improperly obtained from another, as doing so would unfairly prejudice the opposing party.



Determination

33. The two applications dated 24 June 2025 and 18 July 2025, the affidavits, submissions, and authorities cited by the parties, the following issues arise for determination:
- Whether the petitioner has met the threshold for the grant of conservatory orders pending the hearing and determination of the Petition.
- Whether the documents relied upon by the petitioner were unlawfully obtained and, if so, whether they should be expunged from the record.
34. The petitioner seeks conservatory orders to stay payment of salaries, allowances, and benefits to the 1st to 4th interested parties, alleging that their conversion from contractual to permanent and pensionable terms was irregular and unconstitutional.
35. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* (Supreme Court Application No. 5 of 2014), the Court held that conservatory orders are not granted as a matter of course but based on inherent merit, public interest, constitutional values, and proportionality. Similarly, in *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] KEHC 2174 (KLR), the court held that an applicant must demonstrate a prima facie case with a likelihood of success, that prejudice would be suffered if the orders are not granted, and that the orders enhance rather than hinder constitutional values.
36. The petitioner contends that the 1st to 4th interested parties' appointments were irregularly converted from contractual to permanent terms without competitive recruitment, thus violating Articles 10, 201, and 234 of *the Constitution*. However, the interested parties and the respondents stated that the conversion was part of a lawful, institution-wide restructuring process approved by the State Corporations Advisory Committee (SCAC) under delegated authority from the Public Service Commission (PSC), consistent with the Public Service Human Resource Policies and Procedures Manual, 2016.
37. These contestations then become crucial matters for the court to address by hearing the main petition on the merits. The application of the PSC or SRC guidelines by the 1st respondent becomes imperative to address.
38. Therefore, stopping the remuneration of the cited officers of the 1st respondent at this stage would not meet the ends of justice and operations of the Coast Water Works Development Agency. As held in *CREAW & 7 others v Attorney General* [2011] eKLR, conservatory orders must serve the public interest and prevent imminent violation of constitutional rights, not paralyze lawful institutional functions.
39. However, regard must be given to the wastage of public funds, and hence the court should hear the matter on a priority basis.
40. On whether the documents relied upon by the petitioner were unlawfully obtained and should be expunged, The 1st to 5th interested parties seek the expunging of documents from the record on the ground that they were illegally obtained, without consent or certification, contrary to Sections 80 and 81 of the *Evidence Act* and Articles 31 and 50(4) of *the Constitution*. The interested parties contend that these documents contain confidential information and that the petitioner neither disclosed the lawful source of the documents nor complied with the procedure under Article 35 of *the Constitution* and Sections 3 and 8 of the *Access to Information Act*.



41. Access to information must be obtained through lawful means. In *Njonjo Mue & another v Chairperson of the Independent Electoral and Boundaries Commission & 3 others* [2017] eKLR, the Supreme Court emphasized that access to information must be balanced with the right to privacy and property and that the proper procedure under the relevant statute must be followed. Similarly, in *David Ogolla Okoth v Chief Magistrate Court, Kibera & 2 others* [2016] eKLR, the Court excluded evidence obtained without lawful authority, finding that such evidence violated constitutional rights.
42. Article 50(4) of *the Constitution* provides that evidence obtained in a manner that violates any right or fundamental freedom shall be excluded if its admission would render the trial unfair or otherwise be detrimental to the administration of justice. The petition concerns the conversion of the employment terms of the 1st respondent employees, including the interested parties. The production of documents necessary in this regard does not justify the production of illegally obtained work records. In any event, under Article 41 of *the Constitution*, parties in an employment relationship are required to operate within the principles of fair labour practices. Under section 10(6) of the *Employment Act*, once an employer, such as the 1st respondent, is sued, the legal duty to produce work records is mandatory.
43. The 1st respondent in reply to the petition should address itself within the provisions of section 10(6) and (7) of the *Employment Act*. take note of findings in *Abigael Jepkosgei Yator & another v China Hanan International Co. Ltd* [2018] KEELRC 2541 (KLR) and *Rebecca N Nyangolo v Versusprashant Raval Cause NO. 2453 of 2016*, the court held that Section 10[6] and [7] of the *Employment Act* requires employers to keep records of their employees and produce them in court
44. Whenever there is controversy. The court emphasized that:
- ... an employer shall keep all work records for a period of 5 years even where employment has ceased as such records may become necessary and important particularly in proceedings such as these. Also, where legal proceedings are initiated by an employee, the law places the duty to produce the work records upon the employer.
- Where work records are not produced, any claim mated by an employee with regard to terms and conditions of employment must be taken as the truth. The employer therefore must serve justice and attend court and even where such attendance is not found necessary; the submission of work records is a legal requirement.
- The requirement to keep work records and produce them in court once a claim has been filed is given emphasis in the case of *Gilbert Kasumali Kithi versus Nyali Beach Holiday Resort* [2015] eKLR.....”
45. In this case, the fact that similar documents may have been produced in other proceedings does not sanitize their irregular acquisition. Admitting them would encourage unorthodox conduct in violation of Article 50(4) and undermine the administration of justice.
46. Accordingly, the impugned documents should be inadmissible. They are hereby expunged.
47. From the foregoing, the application dated 24 June 2025 is dismissed. The application dated 18 July 2025 is allowed. Costs to abide by the outcome of the petition.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Japhet

..... and

