



**Rotich & 3 others v Cabinet Secretary Ministry of Education & 2 others;  
Kabarnet University College & another (Interested Parties) (Constitutional  
Petition E010 of 2025) [2025] KEHC 15543 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15543 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CONSTITUTIONAL PETITION E010 OF 2025**

**RB NGETICH, J**

**OCTOBER 29, 2025**

**IN THE MATTER OF VIOLATION AND THREATENED  
VIOLATION OF CONSTITUTIONAL RIGHTS UNDER ARTICLES  
1,2,10,19,22,23,35,43,47,53,232 AND 259 THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER THE BILL OF RIGHTS**

**AND**

**IN THE MATTER OF ESTABLISHMENT OF KABARNET UNIVERSITY  
COLLEGE UNDER LEGAL NOTICE NO.109 OF 2025 AND UNPROCEDURAL  
RELOCATION FROM MOI SERETUNIN TEACHERS COLLEGE-BARINGO**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OR  
THREATENED CONTRAVENTION OF BASIC EDUCATION ACT**

**AND**

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**RULING PET NO.E010 OF 2025**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT,2015**

**BETWEEN**

**GEOFFREY ROTICH ..... 1<sup>ST</sup> PETITIONER  
KAPLELACH LAVENDER JELAGAT ..... 2<sup>ND</sup> PETITIONER  
KIPYEGON KIGEN GIDEON ..... 3<sup>RD</sup> PETITIONER  
CHESANG FLORENCE ..... 4<sup>TH</sup> PETITIONER**



**AND**

**CABINET SECRETARY MINISTRY OF EDUCATION ..... 1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER FOR UNIVERSITY EDUCATION .... 2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**KABARNET UNIVERSITY COLLEGE ..... INTERESTED PARTY**

**KEVIN KIPKEMBOI ..... INTERESTED PARTY**

**RULING**

1. This is a ruling on application dated 2<sup>nd</sup> September 2025 filed by the intended 1<sup>st</sup> and 2<sup>nd</sup> interested parties seeking to be enjoined as interested parties and for review, vacate and /or set aside orders issued on 22<sup>nd</sup> August 2025 pending hearing and determination of the petition and to be allowed to file substantive pleadings in response to the petition.
2. Grounds on the face of the application are that the legal notice number 109, the kabarnet university college was established on 13<sup>th</sup> June 2025 at Baringo county and upon establishment of the university, the 1<sup>st</sup> interested party has been in operation from June and through Kenya universities and colleges central placement service (KUCCPS), the 1<sup>st</sup> interested party has admitted a total of six hundred and thirty-three (633) students who are yet to report on 8<sup>th</sup> September 2025.
3. That on 4<sup>th</sup> August 2025, the petitioners filed a notice of motion seeking conservatory orders staying the implementation of legal Notice number 109 of 2025. That the petitioner sued the 3 respondents and failed to involve Kabarnet University as respondents or interested party.
4. That on 22<sup>nd</sup> August 2025, this court made a ruling issuing conservatory orders to the effect that the legal notice no.109 of 2025 of 13<sup>th</sup> June 2025 be stayed to the extent that it mandates relocation of students from Baringo Teachers Training College to Talai secondary school pending hearing and determination of this petition.
5. That the conservatory orders are adverse to the 1<sup>st</sup> interested party which was not given opportunity to be heard as provided in the Fair Administration Rules and constitution of Kenya whereas the subject herein is establishment of 1<sup>st</sup> interested party and the 1<sup>st</sup> intended interested party is therefore crucial party that needed to be enjoined in the suit.
6. Further that the conservatory orders are greatly prejudicial to 2<sup>nd</sup> interested party and the 633 students who were to join kabarnet university college on 8<sup>th</sup> September 2025 and their constitutional right to education is infringed by the stay of implementation of legal notice no.109 of 2025 and it is prudent to have kabarnet university college and Kevin Kipkemboi Korir be enjoined as interested parties to assist and enable the court effectually and effectively adjudicate all issues involved in this petition and that petitioners/respondents will not suffer any prejudice if this application is allowed.
7. The 1<sup>st</sup> respondent filed replying affidavit in support of the application arguing that there is no valid reason to oppose the application; that the joinder of the intended interested parties to this petition is not only justified but also imperative in the furtherance of the interest of justice and fairness. The 1<sup>st</sup> respondent argue that the issuance of conservatory orders vide ruling delivered on 22<sup>nd</sup> August 2025



was on account omission of material facts, misrepresentation and procedural irregularities resulting to an error in the court record.

8. That the conservatory orders were issued on a misrepresentation of legal notice no.109 of 2025 indicating that it intended to relocate students from Baringo teachers training college (Seretunin) to Talai secondary school, which is false as the notice is only exclusive to the institutionalization of kabarnet university college and it does not in any way expound on issue of students' relocation.
9. That as a result of misrepresentation, the impugned ruling and consequential orders were issued wherein the key affected parties are the intended interested parties but were not given a right to be heard and the orders have grounded educational activities of the 1<sup>st</sup> intended interested party which was instituted after a lawful, constitutional, inclusive and participatory process and as a result, the intended interested parties ought to be granted leave to be enjoined as their proprietary and legal interests are substantially engaged and materially at stake in this petition.
10. The 1<sup>st</sup> respondent also support the 1<sup>st</sup> interested party's prayer for review of the ruling delivered on 22<sup>nd</sup> August 2025 as they were issued notwithstanding exclusion of the interested parties.

### **Response**

11. In response, the petitioner filed replying affidavit sworn on 15<sup>th</sup> September 2025 opposing the application while the 3<sup>rd</sup> respondent did not oppose the application.
12. The 1<sup>st</sup> respondent filed a further affidavit sworn by AMB. (PROF) Julius Bitok, ph. D., CBS, MBS in support of application dated 2<sup>nd</sup> September 2025 filed by the intended interested parties. He averred that from the onset, the Petitioners have not addressed the Legitimacy of the Legal Notice No. 109 of 2025 which forms the bedrock of their entire Suit and reiterated that Court's Ruling of 22 August, 2025 was delivered based on a misrepresentation of Legal Notice No. 109 of 2025, particularly, that this Notice effected the relocation of students from Baringo Teachers Training College (Seretunin) to Talai High School.
13. He averred that the said Legal Notice was only meant to legally operationalize Kabarnet University College (hereinafter "the University"), which was already in existence after a proper legal and constitutional process.
14. That curiously, the Petitioners deliberately failed, refused and/or neglected to annex or otherwise produce the said Legal Notice and the alleged directive issued on 31<sup>st</sup> July, 2025 so as to push for their false agenda. That the deliberate failure to produce the Legal Notice and alleged directive issued by either of the Respondents imputing the relocation of the students renders the Petition and the Application dated 4<sup>th</sup> August, 2025 baseless and amounting to mere allegations.
15. He averred that the Legal Notice directly affects the operationalization of the University, as well as the rights of its students but the Petitioners failed, refused and/or neglected to join the University in this Suit, contrary to its right to be heard.
16. And since the Legal Notice does not, either expressly or by necessary implication, address or govern the matters related to the relocation of students from Baringo Teachers Training College (Seretunin) to Talai High School as Ordered by the Court, the same renders the Conservatory Orders founded on this Notice inherently misconceived and unsustainable in law.
17. That contrary to the Petitioners' averments in Paragraph 7 of their Replying Affidavit, the 1<sup>st</sup> Respondent did not illegally relocate the Students of Baringo Teachers College.



18. That the averments made by the Petitioners' in Paragraph 9 of their Replying Affidavit, regarding the procedural approach to this Honourable Court for the setting aside, vacation or lifting of Court Orders, are unduly confined and limited solely to the provisions of Order 45 of the Civil Procedure Rules.
19. He averred that setting aside of Court Orders can only be conducted once this Honourable Court comprehensively undertakes a review of its own Orders as per the tenets of Order 45 of the Civil Procedure Rules. As such, the Petitioners cannot decimate the procedural set up of the 1<sup>st</sup> Respondent's Application by claiming that it is not an Application for Review.
20. That in any case, this Honourable Court, pursuant to Section 3A of the Civil Procedure Act, possesses the inherent Jurisdiction to hear, determine, and adjudicate upon this matter. Moreover, the Jurisdiction of this Court is further entrenched and reinforced under the provisions of Order 40, Rule 7 of the Civil Procedure Rules, which expressly empowers this Court to hear, determine and make final orders on any application seeking the discharge, variation or setting aside of an order for injunction or interlocutory Orders made by the Court.
21. He further avers that the Petitioners aver, in Paragraph 12 of their Replying Affidavit, that they are dominus litis in this matter and accordingly possess full and unfettered control over the determination of parties to be joined in the suit and state that this contention represents a narrow and restrictive construing of the Constitution which in its letter and spirit, provides for the protection and enforcement of the rights and interests of all persons and entities affected by the matters under consideration and not exclusively the will or preference of the Petitioners alone.
22. That Constitutional Petitions are sacrosanct as they endeavor to protect the rights and/or interests of each and every person and unlike normal Civil Suits, the ambit of Constitutional Petitions is widened under Articles 22 and 258 of the Constitution. Further, as construed under Article 259 of the Constitution, a Constitutional Petition can only be instituted in a manner that advances the rule of Law and the human Rights.
23. And in view of the above, it is irrational to claim that a litigant is dominus litis to determine who to join as a Party in a Suit and going further to segregate out on those whose interests are at stake and whose rights are infringed. Such averments violate the principle enshrined under Article 259 of the Constitution of Kenya and further expound on the nature of the Petitioners herein as litigants who have approached this Honourable Court of justice with unclean hands and ill motives in ensuring the Conservatory Orders are punitive as against Kabarnet University College.
24. Further that in Constitutional matters, the principle of dominus litis must be balanced against the broader constitutional imperatives of justice, fairness, and inclusivity, which require that all persons with a substantial interest or whose rights may be affected be duly joined in appropriate proceedings. This ensures that the administration of justice is comprehensive, equitable, and reflective of the fundamental rights enshrined in the Bill of Rights under Chapter Four of the Constitution.
25. That the Petitioners have, in Paragraph 27 (i) of their Replying Affidavit, asserted that during the hearing of their Application, the 1<sup>st</sup> Respondent failed to reveal the extent of displacement and disruption caused to teachers, learners and parents and aver that these assertions are foreign to the 1<sup>st</sup> Respondent as there was a laid procedure on the relocation of students and the creation of the University and in fact it is Petitioners' actions which has greatly affected the Parents, teachers and students of the University and Talai High School.



26. That for the avoidance of doubt, the Conservatory Orders issued have stalled preparations for Talai High School students who were to be hosted in neighboring alternative schools from the beginning of third term of the 2025 academic year. This has resulted in an indefensible postponement of the scheduled opening dates for Moi Teachers College from the initially date of the 3rd September, 2025 to 22 September, 2025, thereby occasioning significant disruption and prejudice to the academic calendar and associated preparatory arrangements and annexed Memo from Moi Teachers College Baringo to its Students marked JKB-1.
27. That a meeting between the representatives of the Parents Association and the Executive Board of Management of Talai High School was held on 19th July, 2025 to discuss the way forward regarding the placement of students of Talai High School and a resolution passed regarding the same (Reference is made to Annexure JKB-7 in the 1 Respondent's Supporting Affidavit of its Application dated 29th August, 2025.)
28. Further that once the resolution was passed, the communication was made to all the parents and students through the Parents' representatives, who then made requisite preparations to ensure the students report to the respective schools and the students who had already received communication and prepared to report to school have now been left confused and disadvantaged.
29. That in any instance, the fundamental duty to disclose material facts, whether in civil or constitutional proceedings, is predominantly incumbent upon the party instituting the Suit or Petition. Additionally, the evidential burden and responsibility to disclosure rest squarely on the Petitioners from the outset.
30. That in response to Paragraph 27(ii) of their Replying Affidavit, the 1<sup>a</sup> Respondent reiterates that the establishment of Kabarnet University College was done procedurally as required by *the Constitution* of Kenya, 2010 and the relevant legislations and referred to Paragraph 21 of the 1<sup>st</sup> Respondent's Supporting Affidavit to its Application of 29th August, 2025.
31. That the People of Baringo through its County Government, wrote a Letter dated 18<sup>th</sup> October, 2022 to Moi University seeking partnership in establishing a University College in Baringo which request was confirmed vide a Letter from Moi University of 28 October, 2022. Moi University ultimately acceded to the request to have the University registered as its constituent and as a result made an application of the establishment of the University to the 1 Respondent and referred to annexures JKB-3 & 4 to 1st Respondent's Supporting Affidavit to its Application of 29th August, 2025.
32. That Taskforce Reports as well as public participation amongst various stakeholders including the community members were done and all agreed to have the University located at the present Moi Teachers Training College were conducted and as such, a report of the Senate Ad hoc for the establishment of the University was prepared to have it as a constituent college of Moi University and referred to Annexure JKB-1 attached to 1<sup>st</sup> Respondent's Supporting Affidavit to its Application of 29th August, 2025.
33. Further that upon ascertaining compliance of all the Statutory requirements, the University was considered and gazetted under a Special Issue, Kenya Gazette Supplement No. 85 as University in accordance with its operationalization being conveyed through Legal Notice No. 109 of 2025 under the *Universities Act*.
34. That the foregoing thereby dismantles the assertion made by the Petitioners that there was no public interest of the community members at the heart of the construction of the University considering 1<sup>st</sup> respondent has established that the foundation of the University emanated from the members of the public who though the County government and the public fora raised their issues on the same.



35. That it is quite ironical and absurd that the Petitioners purport that the 1<sup>st</sup> Respondent is trying to relitigate the Application dated 4th August, 2025 whereas they have proceeded with the trial by ambush method of introducing new parties under Paragraph 27 (xi) and (xii) of the Replying Affidavit who are neither Respondents in this Suit nor have they been expounded about in the previous documents filed in this Honourable Court.
36. That the contents of Paragraph 31 and 32 of the Replying Affidavit of the Petitioners are shocking as the Petitioners all through this suit have considered themselves venerable litigants who are after protecting the interest of the Public yet they have engaged in derogation of the rights of the students of the University, Moi Teachers Training College and Talai High School.
37. That aside from affecting the Six Hundred and Thirteen Students due to be admitted to the University, the Conservatory Orders also impede the functionality of the education of the students of Talai High School because as a result of the Ruling and the Consequential Orders issued on 22nd August, 2025, the transfer of students from Tala High School to the various schools proposed has since been halted thereby affecting their studies and annexed the list of replacement of students to various alternative schools marked JKB-2.
38. That the veracity of the Conservatory Orders are quite hefty on the general public as compared to their absence. As illustrated, the Orders prejudice to students' parents, the community and the public following the stalling of an already advanced a beneficial process aimed at progressively realizing the right to education provided for in *the Constitution* of Kenya and in view of the foregoing, the Petitioners Replying Affidavit is one marred with lies that seek to further extend the Conservatory Orders that are quite punitive to the Students, Parents, Teachers and the Community members of Baringo County; and urged this court to rise to its highest calling and set aside the Conservatory Orders issued on 22<sup>nd</sup> August, 2025 for the reasons highlighted in the foregoing and in the Application dated 29 August, 2025.

### **Applicants' Submissions**

39. The intended interested party submit that vide Legal Notice No.109 dated 13th June 2025, Kabarnet University Interested party/Applicant was established and restated the averments in support of the application and submit that the issue for determination is whether the Application dated 2 September 2025 meets the legal threshold for enjoinder as interested parties. They submit that threshold applicable where a party seeks to be enjoined as interested party was clearly outlined in the case of Francis Muruatetu & Ano. Vs R & 5 Others No.16 of 2013 (2026) eKLR to include: -
  - i. That the personal interest or stake that the party has set out in the application.
  - ii. The prejudice to be suffered by the intended interested for non-joinder must be demonstrated.
40. And submit that the stake that 1<sup>st</sup> interested party has been that the establishing its existence and implementation was being challenged and if the Petition is merited, then the 1st Interested party shall not exist and the interested party is crucial to assist the court to effectually and completely adjudicate the issues involved in the petition.
41. Further that through the application for enjoinder, the intended interested parties/demonstrated how Kabarnet University College was established by Legal Notice No. 109 dated 13th June 2025. The 1st Interested party affidavit in paragraphs 2,3, 7, 8, 9, 10,11,12,13, 19 & 20 and the annex DCR-2,3,4,5,6,7,8,9,10,12 & 13' clearly indicate that the establishment of interested party was a process commencing from a presidential directive, participations with all stakeholders including the management of Baringo Teachers Training College, Talai Secondary school, government entities and



the general public and that the intended interested parties stand to be prejudiced if not enjoined as they are subject of petition and are well versed with relevant information for complete adjudication. That the 2<sup>nd</sup> interested party is a student joining kabarnet university and will act on his behalf and on behalf of other 600 students to join the university.

42. On prayer for review of conservatory orders, the intended interested parties argue that the orders were issued without their input yet they have great interest in the matter and cited the case of Leonard Kimeu vs Rukaria, Nathaniel & 4 others (Intended interested parties)[2021] eKLR (Ruling 17<sup>th</sup> February 2021) where the court stated that a party to be enjoined must have interest in the pending litigation.

## **PETITIONER'S/RESPONDENT'S SUBMISSIONS**

43. On whether the Intended Interested Parties have satisfied the constitutional and legal threshold for joinder as Interested Parties in this Petition, the petitioner submits that the law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of Francis K. Muruatetu and another v. Republic & 5 others; Ktiba institute & 5 others (Amicus Curiae) (2016)eKLR, where the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

- a) The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.
- b) The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.
- c) Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court."

44. The petitioner submits that Premised on court's holding in the above case, the Applicants have not met the constitutional and legal threshold for joinder as Interested Parties in this Petition.
45. The petitioner argue that the Applicants claim that Kabarnet University College has a direct stake since it was established under Legal Notice No. 109 of 2025. However, this stake is entirely dependent on the impugned Legal Notice which is the subject of challenge and the Cabinet Secretary for Education, the Attorney General, and the Commission for University Education already have the mandate to defend its legality.
46. They submit that the Applicants have not demonstrated any prejudice that they would suffer in the event of non-joinder. That the conservatory orders issued on 22nd August 2025 were directed at halting the implementation of the Legal Notice, not against Kabarnet University College as an institution, nor against any individual students. That the alleged prejudice to 633 students is speculative, as no accrued rights had vested at the time of the orders as they had not reported to the institution. Further, that the right to education under Article 43 remains intact since the affected students retain eligibility for placement in other accredited universities.
47. The petitioner further submit that the Applicants have not disclosed any unique submissions they intend to advance before this Court. Their intended arguments, particularly regarding alleged public participation, are issues squarely within the mandate of the Respondents already on record. As



emphasized in *Muruatetu (supra)*, an Interested Party must show that its participation will add value distinct from that of the existing parties; in the present case, the Applicants have not satisfied this burden.

48. Based on the above averments, they submit that the Applicants have not met the legal threshold to be enjoined as interested parties in this matter.
49. On whether the Intended Interested Parties have shown any basis to review, vary or set aside the conservatory orders issued on 22nd August 2025, they submit it is trite that conservatory orders are intended to preserve the status quo pending the determination of substantive issues before the Court. The Court in *Nairobi Civil Appeal 151 of 2011 Invesco Assurance Co. Ltd v MW (Minor suing through next friend and mother (HW))* [2016] eKLR defined conservatory orders as follows: -

“ A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter.”
50. On argument that the conservatory orders unduly prejudice Kabarnet University College and its students by preventing implementation of Legal Notice No. 109 of 2025, the petitioner argue that this argument is unfounded as the orders granted were interlocutory in nature and intended to preserve the subject matter of the dispute namely, the legality of Legal Notice No. 109 until full determination of the Petition. They were not intended to permanently deny the Applicants' interests, but to maintain the status quo pending resolution of the core constitutional questions.
51. Furthermore, at the time the conservatory orders were issued, the students of Kabarnet University College had not yet reported and therefore no vested rights had accrued. The alleged prejudice is speculative and cannot outweigh the need to preserve the legal position pending the hearing and determination of the Petition.
52. And submit that the Applicants have not satisfied the legal threshold to review, vary or set aside the conservatory orders, and their application in this regard ought to be dismissed with costs.

### **Analysis and Determination**

53. I have carefully considered the Notice of Motion dated 2nd September 2025, the affidavits and annexures on record, the rival submissions by counsel, and the applicable law. The following issues arise for determination:-
  - a. Whether the intended interested parties have met the legal threshold for joinder;
  - b. Whether the conservatory orders issued on 22nd August 2025 should be reviewed or varied to afford them a hearing.

#### **(i) Joinder as Interested Parties**

54. The governing principles on joinder were set out by the supreme court in the case of *Francis Karioko Muruatetu & Another v Republic & 5 Others* [2016] eKLR, where the court held that an applicant must demonstrate:-
  - a) a clearly identifiable and proximate personal interest or stake in the matter;
  - b) prejudice likely to be suffered if not joined; and



- c) a distinct or unique contribution to the issues in dispute that will assist the court in determining the matter.
55. The 1<sup>st</sup> intended interested party, Kabarnet University College, contends that it was established under Legal Notice No. 109 of 2025, whose validity is directly impugned in this petition. It asserts that the conservatory orders issued on 22<sup>nd</sup> August 2025 effectively halted its operationalization, thereby affecting students who had already received admission letters and disrupting academic planning.
56. The petitioners, on their part, maintain that the respondents, the Cabinet Secretary for Education and the Commission for University Education are competent to defend the impugned Legal Notice. They argue that the 1<sup>st</sup> intended interested party's participation would only duplicate the respondents' role and unnecessarily expand the proceedings.
57. There is no dispute that the subject of this petition is the legality of the Legal Notice no.109 of 2025 through which the 1<sup>st</sup> applicant came into existence. Its continued existence and operations are, therefore, directly dependent on the outcome of this petition. The respondents' statutory mandate to defend the Legal Notice in my view does not extinguish the institution's own factual and operational interest, nor the unique perspective it can provide on the process of establishment, stakeholder engagement, and logistical implications. In my view, the 1<sup>st</sup> applicant has demonstrated a direct and substantial stake in the matter which cannot be said to be peripheral.
58. The 2<sup>nd</sup> applicant, on the other hand, is a prospective student whose interest, though genuine, is derivative and sufficiently represented by the 1<sup>st</sup> applicant. I am of the view that joinder of the 2<sup>nd</sup> applicant would not add distinct value to the proceedings. From the foregoing, I find that the 1<sup>st</sup> intended interested party meets the Muruatetu (*supra*) threshold for joinder as an interested party, while the 2<sup>nd</sup> does not.

**(ii) Whether the Court Should Review or Vary the Conservatory Orders**

59. The applicants also seek review or setting aside of the conservatory orders issued on 22<sup>nd</sup> August 2025 on the ground that the same were made without their participation and have occasioned prejudice to the 1<sup>st</sup> intended interested party.
60. The principles governing review are set out under Order 45 Rule 1 of the Civil Procedure Rules and are applicable, with necessary adaptation, to constitutional proceedings. Review may be granted on discovery of new and important evidence, on account of an error apparent on the face of the record, or for any other sufficient reason. See *Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd* [2014] eKLR and *Board of Trustees of the National Social Security Fund v Michael Mwalo* [2015] eKLR.
61. The record shows that the conservatory orders were granted before the 1<sup>st</sup> intended interested party was joined in these proceedings yet the orders directly affect its existence and operations. Although the orders were properly issued based on the material before the Court then, the absence of a party whose legal status and operations are directly implicated constitutes, in my view, "sufficient reason" for the Court to revisit the orders not to invalidate them, but to ensure that the affected party is heard before their continuation or variation. The principle of *audi alteram partem* and Article 50(1) of [\*the Constitution\*](#) guarantee every affected party the right to be heard before adverse orders are made.
62. I further take note of the fact that the orders were issued before the scheduled opening of Kabarnet University College, Baringo Teachers College, and surrounding institutions, and the factual circumstances may have since evolved. It is therefore prudent to preserve the prevailing status quo while



granting the newly enjoined party an opportunity to respond to the conservatory application before further directions are issued.

63. Disposition

- a. The 1st intended interested party, Kabarnet University College, is hereby enjoined in these proceedings as Interested Party.
- b. The 2<sup>nd</sup> intended interested party's application for joinder is declined.
- c. The conservatory orders issued on 22<sup>nd</sup> August 2025 are hereby varied to the extent necessary to allow the newly enjoined 1<sup>st</sup> Interested Party to be heard *inter partes* on their issuance and continuance.
- d. The status quo as presently obtaining shall be maintained pending hearing and further directions of the Court.
- e. Costs of this application shall be in the cause.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....

**RACHEL NGETICH**

**JUDGE**

In the presence of:-

- Mr Lagat holding brief for Mr Omiti for 1<sup>st</sup> Respondent.
- Mr. Ruto for Petitioners.
- Ms Mengich for the Interested Party.
- CA, Elvis/Momanyi.

