

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**

**ELRC PETITION NO. E195 OF 2025**

***(Before Hon. Lady Justice Hellen Wasilwa, J)***

**THE LAW SOCIETY OF KENYA**

**(Petitioning on behalf of 306 BSc**

**Nursing graduates).....**  
**.....PETITIONER**

**VS**

**MINISTRY OF HEALTH.....1<sup>ST</sup>**  
**RESPONDENT**

**CABINET SECRETARY FOR HEALTH.....2<sup>ND</sup>**  
**RESPONDENT**

**NURSING COUNCIL OF KENYA.....3<sup>RD</sup>**  
**RESPONDENT**

**HON. ATTORNEY GENERAL.....4<sup>TH</sup>**  
**RESPONDENT**

**AND**

**DR. LISTER ONSONGO.....INTERESTED**  
**PARTY**

**RULING**

1 The Petitioner/ Applicant filed a Notice of Motion dated 29<sup>th</sup> September 2025 seeking orders that: -

1. *Spent*
2. *pending the hearing and determination of this Application, this Honourable Court be pleased to issue a conservatory order suspending the revocation of internship placements of the 306 BSc*

*Nursing graduates effected by the 2<sup>nd</sup> Respondent on 30<sup>th</sup> July 2025 and confirmed by a letter dated 4<sup>th</sup> August 2025.*

- 3. pending the hearing and determination of the Petition, this Honourable Court be pleased to issue a conservatory order restraining the Respondents, their servants or agents, from proceeding with or enforcing any fresh internship postings marred with irregularities or denying the 306 graduates their internship opportunities.*
- 4. in the alternative and without prejudice to the foregoing, this Honourable Court be pleased to compel the Ministry of Health to place the 306 Petitioners on a priority list in the next immediate internship postings, with no further delays or exclusions.*
- 5. this Honourable Court be pleased to direct that the Petition be heard and determined on a priority basis given its urgency and the ongoing violation of the Petitioners' constitutional rights.*
- 6. the costs of this Application be provided for.*

2 The Petitioner further filed a notice of application dated 21<sup>st</sup> October 2025 seeking orders that:

- 1. spent*
- 2. pending the hearing of the Application inter-partes, a Conservatory Order do and is hereby issued suspending the decision of the 2<sup>nd</sup> Respondent contained in the letter dated 21<sup>st</sup> July, 2025 purporting to interdict Dr.*

*Lister Onsongo from the exercise of her duties as the Chief Executive Officer – Nursing Council of Kenya.*

- 3. pending the hearing and determination of the Application inter-partes, this honourable court be pleased to issue a temporary order suspending the implementation of the decision contained letter dated 21<sup>st</sup> July, 2025 by Hon. Aden Duale, EGH in toto interdicting, suspending and/or dismissing Dr. Lister Onsongo from the exercise of her duties as the Chief Executive Officer – Nursing Council of Kenya.*
- 4. pending the hearing and determination of the Application inter-partes this honourable court be pleased to issue a temporary order staying any further disciplinary proceedings as against the Petitioner as may be initiated by the Respondents.*
- 5. pending the hearing and determination of the Applicant’s Amended Petition a Conservatory Order do and is hereby issued suspending the decision of the 2<sup>nd</sup> Respondent contained in the letter dated 21<sup>st</sup> July, 2025 purporting to interdict Dr. Lister Onsongo from the exercise of her duties as the Chief Executive Officer – Nursing Council of Kenya.*
- 6. pending the hearing and determination of the Amended Petition this Honourable Court be pleased to issue a temporary injunction staying any or further and/or intended disciplinary proceedings commenced by the Respondents.*
- 7. pending the hearing and determination of the Amended Petition, to issue an order of mandamus compelling the Respondents to reinstate the Interested Party forthwith*

*to her position at the Nursing Council of Kenya with full pay, benefits, and privileges.*

*8. this Honourable Court be pleased to issue such further or other orders as may appear to it just and convenient.*

*9. the cost of this application be provided for.*

### **Petitioner's/Applicants' Case**

3 The Applicants aver that they are duly qualified BSc Nursing graduates, having completed their coursework and clinical rotations, and having been issued official completion letters by their respective universities, including Kirinyaga University, which letters constitute valid evidence of academic and professional readiness.

4 The Applicants aver that the Ministry of Health, acting with the Nursing Council of Kenya, initially issued internship postings to them across accredited facilities, and many Petitioners had already reported and been received as evidenced by arrival/reporting letters from institutions such as Kenyatta National Hospital.

5 The Applicants aver that on 30<sup>th</sup> July 2025, the 2<sup>nd</sup> Respondent arbitrarily revoked these postings through a public announcement on X (formerly Twitter), without notice, hearing, reasons, or consultation, later formalized in a revocation letter dated 4<sup>th</sup> August 2025.

6 It is the Applicants' case that the revocation was unlawful, procedurally unfair, and unconstitutional, violating Articles 27 (equality and freedom from discrimination), 28

(dignity), 41 (fair labour practices), 43(1)(f) (education), and 47 (fair administrative action) of the Constitution, as well as the Fair Administrative Action Act.

- 7 The Applicants aver that subsequent postings made by the Ministry of Health are marred with irregularities including: some interns being allocated to two internship centres simultaneously; some individuals who had already commenced internship in private facilities in prior years being posted again; and arbitrary and opaque re-allocations that undermine fairness, transparency, and accountability.
- 8 The Applicants aver that these irregular postings demonstrate administrative malaise, arbitrariness, and bad faith on the part of the Respondents, further exacerbating the prejudice already suffered by the 306 of them.
- 9 The Applicants aver that the revocation and irregular postings have subjected the Petitioners to grave and irreparable harm, including: delay in proceeding with internship required for professional licensure; loss of training time and career opportunities; financial losses and waste of resources incurred in relocation, preparation, and reporting to internship centers; and severe psychological distress, loss of dignity, and public humiliation caused by abrupt and arbitrary exclusion from internship.
- 10 It is the Applicants' case that they had a legitimate expectation based on law, practice, and the

communications from their universities and the Nursing Council of Kenya that they would proceed to internship once completion letters were issued.

- 11 The Applicants aver that Kirinyaga University and other institutions have formally confirmed that they are duly qualified, issuing clarifications that a completion letter is a valid academic certification, and appealing to the Ministry of Health to reinstate the graduates.
- 12 The Applicants aver that the balance of convenience favours them, as reinstating them or securing their immediate priority in the next posting protects their constitutional rights while causing no prejudice to the Respondents.
- 13 The Applicants aver that unless this court urgently intervenes, the Petitioners will continue to suffer irreparable prejudice, be denied entry into the nursing profession, and their constitutional rights will be permanently undermined.
- 14 The Applicants aver that it is in the public interest and the interests of justice that the court grants the orders sought, as the matter involves the training and deployment of nurses, a critical public health workforce.
- 15 The Applicants aver that the 2<sup>nd</sup> Respondent's unilateral suspension of Dr. Lister Onsongo was *ultra vires*, unlawful, and procedurally unfair.

- 16 The Applicants aver that the 2<sup>nd</sup> Respondent lacks disciplinary authority over public officers within the Nursing Council of Kenya under Section 65 of the Public Service Commission Act, 2017.
- 17 It is the Applicants' case that Section 71 allows suspension only pending an active disciplinary case and none exists in this matter. Whereas Section 72 obligates an authorized officer to keep suspended officers informed of their case progress upon request; the Respondents have ignored all requests for such updates.
- 18 The Applicants avers that the suspension violates Articles 41, 47, and 236 of the Constitution and Section 4(3) of the Fair Administrative Action Act, 2015. Thus, the continued suspension without lawful justification is oppressive, arbitrary, and unconstitutional.

### **1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents' Case**

- 19 In opposition to the application, the Respondents filed a replying affidavit dated 15<sup>th</sup> October 2025 and a further affidavit dated 1<sup>st</sup> December 2025, both sworn by the Director-General for Health at the Ministry of Health, DR Patrick Amoth.
- 20 The Respondents aver that the administration of internships within the public health sector is governed by the Public Service Commission (PSC) Internship Policy and Guidelines, 2016 and the Ministry of Health Internship Policy for Healthcare

Professionals, 2020, which provide a structured, transparent, and lawful framework for the recruitment, deployment, and management of interns in the public service, anchored on the principles of merit, transparency, accountability, and compliance with legal and regulatory requirements.

- 21 The Respondents aver that under the Ministry of Health Internship Policy, an intern is defined as a health professional graduate undergoing supervised practical training and mentorship in a recognized health institution for purposes of obtaining registration and a licence to practise, as prescribed by the relevant regulatory Board or Council.
- 22 They aver that under the PSC Internship Policy, an intern is defined as an unemployed person with relevant qualifications who enters into a contract with a government institution for a period of between three and twelve months to acquire work experience for professional registration and/or employability, while a graduate is one who has completed training and obtained a degree or diploma.
- 23 The Respondents aver that both the PSC and Ministry of Health policies expressly provide that internship placement is conditional upon meeting prescribed eligibility criteria, including possession of relevant academic qualifications, formal graduation from a recognized institution, and, for healthcare professionals, clearance or provisional registration by the relevant

professional regulatory body, including the Nursing Council of Kenya (NCK).

- 24 The Respondents aver that where internship offers are issued to persons who have not met these statutory and policy-based eligibility requirements, including those who have not formally graduated or obtained regulatory clearance, such offers are irregular and null ab initio. The Government is therefore lawfully entitled to revoke such offers in order to safeguard the integrity of the internship programme and ensure compliance with applicable law and policy.
- 25 The Respondents aver that the revocation of internship offers issued irregularly or contrary to established eligibility criteria does not amount to a violation of the right to fair administrative action under Article 47 of the Constitution, as such decisions are grounded in lawful authority, guided by due process, and undertaken for the legitimate purpose of enforcing compliance with governing policies and professional regulatory standards.
- 26 The Respondents aver that although Article 41(1) of the Constitution guarantees the right to fair labour practices, internship programmes under the PSC and Ministry of Health policies are primarily learning and training engagements intended to provide graduates with professional exposure and practical experience necessary for employability or professional registration. The PSC Internship Policy expressly clarifies that an internship does not constitute a contract of service and does not

guarantee employment in the public service upon completion.

- 27 The Respondents aver that the stipend paid to interns is a facilitative allowance and not a salary or wage, and that interns therefore do not enjoy the employment rights and protections accorded to employees under the Employment Act or Article 41 of the Constitution. Thus, revocation of an irregular internship offer cannot be equated to termination of employment or an unfair labour practice, as no employment relationship exists.
- 28 The Respondents aver that the Public Service Commission Act obligates public authorities to act lawfully, fairly, and in accordance with prescribed procedures when exercising administrative discretion, and that the Ministry of Health's verification exercise and subsequent revocation of irregular internship offers were undertaken pursuant to this lawful mandate and in line with the principles of merit, integrity, and accountability in public service administration.
- 29 The Respondents aver that the revocation constituted a legitimate administrative action undertaken to protect the integrity of the internship programme and ensure that only qualified and duly cleared candidates are accorded internship opportunities in accordance with the law. Therefore, the Ministry acted within its lawful mandate and did not act ultra vires, irrationally, or arbitrarily.
- 30 The Respondents aver that the doctrine of legitimate expectation cannot be invoked by individuals who had not

satisfied the prescribed eligibility requirements, as the internship offers were conditional and expressly subject to verification. Once the verification process established non-compliance, the revocation of the offers was legally justified and did not extinguish any vested right.

- 31 The Respondents aver that the verification and revocation process was guided by objective and verifiable criteria, namely confirmation of academic completion and formal graduation from a recognized university, and confirmation of regulatory clearance or eligibility by the relevant professional body, including the Nursing Council of Kenya.
- 32 The Respondents aver that the decision to revoke certain offers was not based on personal attributes or any prohibited ground of discrimination under Article 27(4) of the Constitution, but was applied uniformly to all candidates. Equality does not require identical treatment of persons in dissimilar circumstances, and that individuals who failed to meet legal and regulatory requirements could not lawfully be treated in the same manner as those who had complied.
- 33 The Respondents aver that their actions were consistent with the leadership and integrity principles under Article 73 of the Constitution, which require public officers to act lawfully, in good faith, and in a manner that promotes public confidence in public institutions.
- 34 They aver that allowing irregular internship placements to proceed despite identified non-compliance would have

undermined transparency, accountability, and the credibility of the internship system.

- 35 The Respondents aver that the internship offers in question were expressly conditional upon verification of academic completion and regulatory clearance, and that where verification established non-compliance, the Ministry of Health was legally obligated to correct the irregularity through revocation. No contractual or employment relationship had arisen capable of conferring enforceable rights.
- 36 The Respondents aver that under Section 11 of the Nurses and Midwives Act (Cap. 257), the appointment of the Registrar of the Nursing Council of Kenya requires the approval of the Cabinet Secretary for Health, and that such approval applies mutatis mutandis to the suspension of the Registrar.
- 37 They aver that at the time of the suspension of the Interested Party on 21<sup>st</sup> July 2025, the term of the NCK Board had expired, rendering it inoperative. A new Board was subsequently appointed on 31<sup>st</sup> October 2025 vide Gazette Notice No. 15738 of 31<sup>st</sup> October 2025.
- 38 The Respondents aver that the disciplinary procedure under the PSC Act applies only where no other statute provides for disciplinary mechanisms, and that in this instance the applicable statute was the Nurses and Midwives Act. Due to the absence of a duly constituted Board at the material time, disciplinary proceedings against the Interested Party could not be undertaken.

39 The Respondents aver that following the appointment of the new Board, disciplinary proceedings will now be undertaken in respect of the irregularities arising from the management of the subject internship process.

### **3<sup>rd</sup> Respondent's Case**

40 In opposition to the application dated 29<sup>th</sup> September 2025, the 3<sup>rd</sup> Respondent filed a replying affidavit dated 9<sup>th</sup> October 2025, sworn by its Acting Chief Executive Officer/Registrar, Anne Njeri Mukuna.

41 The 3<sup>rd</sup> Respondent avers that it is a statutory body established under the Nurses and Midwives Act, Cap 257 Laws of Kenya, mandated to regulate nursing and midwifery education, training, registration, and professional practice in Kenya.

42 It is the 3<sup>rd</sup> Respondent's case that in the discharge of its statutory mandate, it is responsible for verifying the academic eligibility of students, approving training institutions, indexing students, accrediting internship sites, and maintaining registers of duly qualified nursing practitioners.

43 The 3<sup>rd</sup> Respondent contends that in preparation for the national internship programme, it undertook a verification exercise of students submitted by training institutions to ensure that only those who had fully met the academic requirements were considered for internship placement, in accordance with the Public Service Commission Internship

Policy and Guidelines for the Public Service (2016) and the Ministry of Health Internship Policy for Healthcare Professionals (2020).

- 44 The 3<sup>rd</sup> Respondent avers that following the initial verification exercise, it conducted a second verification to confirm the academic status of students whose details had been submitted by training institutions, requiring additional information including dates of commencement and graduation, in order to ensure accuracy, fairness, and due diligence in the process.
- 45 The 3<sup>rd</sup> Respondent asserts that upon conclusion of the verification exercises, it was established that 306 Bachelor of Science in Nursing (BScN) students had not graduated at the time of consideration for internship placement, graduation being a mandatory prerequisite under the applicable internship policies.
- 46 The 3<sup>rd</sup> Respondent avers that its actions were undertaken strictly within its statutory mandate and in compliance with the applicable legal and regulatory frameworks, and that at all times it acted lawfully, reasonably, fairly, and in good faith.
- 47 The 3<sup>rd</sup> Respondent denies any allegations of discrimination, arbitrariness, procedural impropriety, or breach of legitimate expectation, and contends that its role was limited to verification of completion of academic requirements and ensuring compliance with statutory prerequisites prior to registration and entry into professional practice.

- 48 The 3<sup>rd</sup> Respondent avers that the orders sought against it are misconceived and untenable, as they relate to matters falling outside its statutory functions, and that no cause of action has been disclosed against it.
- 49 The 3<sup>rd</sup> Respondent contends, upon advice of Counsel which it verily believes to be true, that the Applicants have failed to establish a prima facie case warranting the grant of conservatory orders, as no cogent, credible, or verifiable evidence has been placed before the Court to substantiate allegations of irregularities in the internship process.
- 50 The 3<sup>rd</sup> Respondent avers that the allegations advanced by the Applicants are speculative and unsupported by affidavits from affected persons, official records, or documentary evidence capable of demonstrating a violation of constitutional rights or breach of procedure, and that mere dissatisfaction with administrative outcomes does not amount to a constitutional or legal violation.
- 51 The 3<sup>rd</sup> Respondent asserts that the subject matter of the Petition is incapable of preservation by conservatory orders, as granting the orders sought would have the effect of suspending the revocation of internship placements for the 306 BScN students who were found not to meet the requisite eligibility criteria.
- 52 The 3<sup>rd</sup> Respondent contends that issuing such orders would compel the Respondents to proceed with internship

placements in contravention of applicable statutory and policy frameworks, thereby exposing the public to unqualified or improperly vetted practitioners, an outcome that would gravely prejudice public interest.

53 The 3<sup>rd</sup> Respondent avers that restraining the Respondents from effecting or implementing fresh internship postings would unjustly prejudice other qualified BScN graduates who have met all requirements and are awaiting lawful placement, would disrupt the orderly and merit-based administration of internship programmes nationwide.

54 The 3<sup>rd</sup> Respondent asserts that the application is an attempt to obtain final relief at an interlocutory stage, as the orders sought would compel prioritisation and placement of the 306 BScN students without a full hearing on the merits.

55 It is the 3<sup>rd</sup> Respondent's case that the orders sought would not preserve the substratum of the petition but would instead preempt its determination, contrary to settled principles governing the grant of conservatory relief.

### **Petitioners/Applicants' Submissions**

56 The Applicants submitted on four issues: Whether the Applicants' constitutional rights were infringed by the Respondents' actions; Whether the suspension and/or interdiction of the Interested Party was lawful; What remedies are appropriate in the circumstances; Who should bear the costs of the Application.

- 57 On the first issue, The Applicants submitted that Article 47(1) and (2) of the Constitution guarantees every person the right to administrative action that is lawful, reasonable and procedurally fair, including the right to written reasons where such action adversely affects a person. These constitutional guarantees are given effect by Sections 4(1), 4(2) and 4(3) of the Fair Administrative Action Act, 2015, which obligate a public authority to give prior notice, an opportunity to be heard, reasons for the decision, and information on the right to review.
- 58 The Applicants submitted that the revocation of the internship placements for the 306 nursing graduates was done abruptly, publicly and without any prior notice, through social media communication, and without affording the affected graduates any opportunity to be heard or providing them with written or reasoned explanations. These omissions constitutes breaches of procedural fairness guaranteed under Article 47.
- 59 The Applicants further submitted that the interdiction of the Interested Party was imposed in a similar manner, without issuance of a show-cause notice, without disclosure of allegations, and without any formal disciplinary or hearing process, thereby offending both Article 47 of the Constitution and the Fair Administrative Action Act.
- 60 They placed reliance in ***Gregory Magara Magare v University of Nairobi & Another [2017] eKLR***, where the Court held that Article 47 has elevated procedural

fairness to a constitutional imperative and that administrative decisions taken without affording a hearing violate the Constitution. The Applicants submitted that the Respondents' actions fall squarely within the conduct condemned by that decision.

- 61 It is the Applicants' submission that the doctrine of legitimate expectation squarely arises in this matter and that the actions of the Respondents particularly the unilateral revocation of internship placements for the 306 BSc Nursing graduates amount to a direct violation of that doctrine as protected under Article 47 of the Constitution and the Fair Administrative Action Act.
- 62 The Applicants submitted that there is no dispute that the 306 nursing graduates had been formally posted to internship centers, accepted by their stations, and directed to report for duty. Having met all requisite qualifications, received official posting letters, and in many cases already commenced orientation, they had a legitimate expectation that their internships would proceed, and that expectation was both reasonable and constitutional.
- 63 The Applicants cited ***Kevin K Mwiti & Others v Kenya School of Law & 2 Others [2015] eKLR***, where the Court held that legitimate expectation is rooted in the rule of law and requires predictability, certainty, accountability and transparency in public administration, values now entrenched under Article 10 of the Constitution.

- 64 The Applicants submitted that intern doctors and intern clinical officers, who are governed by the same Public Service Commission Internship Policy and Guidelines, 2016, were posted prior to their graduation ceremonies, in accordance with long-standing and accepted practice in the health sector. This fact was not controverted by the Respondents, thus, the selective withdrawal of internship postings affecting only nursing graduates amounted to differential treatment without any reasonable or lawful justification.
- 65 It is the Applicants' submission that such conduct violated Article 27(1) and (4) of the Constitution on equality and freedom from discrimination, given that all health interns are processed under the same PSC Internship Policy framework and ought to be treated equally.
- 66 The Applicants submitted that Article 41 of the Constitution guarantees fair labour practices, which courts have interpreted to include fairness in recruitment, deployment, disciplinary processes and termination, while Article 236 protects public officers from victimisation, unfair disciplinary action, or removal from office without due process.
- 67 It was submitted that the interdiction of the Interested Party breached both Articles 41 and 236, as she was suspended without being informed of any charges, without any procedural safeguards, and by an authority lacking lawful disciplinary mandate.

- 68 The Applicants submitted that under the Public Service Commission Act, 2017, particularly Sections 57, 58, 62, 63, 70, 71, 72 and 75, disciplinary control over public officers in regulatory bodies is vested in the Public Service Commission, the relevant Board, or authorized officers, and not in a Cabinet Secretary. Any deviation from this statutory architecture renders the disciplinary action *ultra vires* and unlawful.
- 69 The Applicants submitted that the revocation of internship placements treated similarly qualified nursing graduates unequally, without a rational or disclosed basis, thereby violating Article 27 of the Constitution.
- 70 It was further submitted that the uncertainty, public embarrassment, professional stagnation and loss of opportunity occasioned by the Respondents' actions impaired the dignity of the affected graduates, contrary to Article 28 of the Constitution.
- 71 The Applicants submitted that Article 43(1)(f) of the Constitution protects the right to education, which in a professional context includes access to mandatory internship training required for licensure, and that the Respondents unlawfully interfered with this right without justification.
- 72 The Applicants submitted that the unilateral revocation of internship placements and interdiction of the Interested Party violated national values and principles of

governance under Article 10 of the Constitution, including transparency, accountability, integrity and the rule of law.

- 73 It was further submitted that the Respondents' conduct contravened public service values under Articles 73 and 232 of the Constitution, as it demonstrated disregard for due process, lawful authority, and good governance.
- 74 On the second issue, the Applicants submitted that the suspension and/or interdiction of the Interested Party was unlawful and *ab initio*, as the Cabinet Secretary lacked the legal authority to initiate or undertake disciplinary proceedings against the Chief Executive Officer of the Nursing Council of Kenya.
- 75 The Applicant submitted that under the Public Service Commission Act, 2017, disciplinary control over public officers in State corporations and regulatory bodies must be exercised strictly in accordance with the statutory framework, and any such process must emanate from the Board, not from a Cabinet Secretary. Sections 57, 58, 62, 63, 70, 71, 72 and 75 of the PSC Act vest disciplinary power either in the relevant Board, or in an authorized officer appointed by the Board, or in the Public Service Commission itself not in a Cabinet Secretary. They cited ***Kinyae v Public Service Commission & Others [2024] KEELRC 791 and Abdi v Governor, Kakamega County Government & Others [2023] KEELRC 433***, where the Court held that suspensions imposed without a hearing or proper disciplinary process violate Articles 27, 28, 41, 47 and 236 of the Constitution.

- 76 The Applicants submitted that suspension or interdiction is not penalty *ipso facto*, but it is an administrative measure that restrains the officer's participation in duty; nonetheless, it must comply with due process. The Public Service Commission Act, 2017, specifically in section 71, regulates suspension. Reliance was placed in ***Mukhwana v Kakamega County Public Service Board & Another [2022] KEELRC 1331*** the court held that when suspension exceeds a reasonable time (here, more than six months) without proper progression of disciplinary or investigative processes, the suspension may become arbitrary and unlawful.
- 77 On the third issue, it was submitted that the Court should issue declarations that the revocation of the 306 internship placements was unconstitutional, unlawful and void for violating Articles 47, 41, 27, 28 and 43 of the Constitution, and that the interdiction of the Interested Party was *ultra vires* the Public Service Commission Act, 2017 and violated Articles 41, 236 and 47 of the Constitution.
- 78 The Applicants further submitted that conservatory orders should issue reinstating the interns to their original placements, or in the alternative granting them priority in subsequent posting cycles, and staying the interdiction of the Interested Party pending the determination of the Petition.
- 79 It was further submitted that orders of mandamus should issue compelling the Respondents to comply with the

Constitution, the Fair Administrative Action Act, the Public Service Commission Act, and the PSC Internship Policy and Guidelines, 2016 in future postings and disciplinary processes.

- 80 On costs, the Applicants submitted that the matter raises substantial questions of public interest and that the Respondents' conduct amounted to egregious constitutional and statutory violations, warranting an award of costs against them as compensation and as a deterrent against future arbitrary exercise of public power.

### **1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondent's Submissions**

- 81 The Respondents submitted that upon posting the BScN nurse interns, it was discovered that the affected individuals were not qualified and as such should not have been posted as interns, this necessitated a recall of the posting after a verification exercise.
- 82 The Respondents submitted that the affected parties were aware that they were committing an irregularity by holding out to be qualified while they were not consequently the posting letters were withdrawn as it not only fraudulent to pose as a qualified person when you are not but such actions also pose a danger to the entire public health service when you have people who are not qualified posing as interns. Such a situation is against public interest and cannot be countenanced.

- 83 They submitted that both the PSC and Ministry of Health internship policies which clearly stipulate that internship offers are conditional upon meeting the prescribed eligibility criteria, including possession of relevant academic qualifications. formal graduation from a recognized university, and, for health professionals, clearance or provisional registration by the respective regulatory body such as the Nursing Council of Kenya (NCK).
- 84 It is the Respondents' submission that where internship offers are made to individuals who have not met these statutory and policy-based eligibility conditions' such as those who have not formally graduated or obtained the necessary regulatory clearance such offers are deemed irregular and null *ab initio*. Therefore, the Government has the authority to revoke such offers to safeguard the integrity of the internship process and ensure compliance with the law and policy.
- 85 The Respondents submitted that the revocation of internship offers issued in error or contrary to established eligibility criteria does not amount to a violation of the right to fair administrative action under Article 47 of the Constitution. The decision was grounded in lawful authority, guided by due process, and aimed at enforcing compliance with the governing internship policies and professional regulatory standards.
- 86 The Respondents submitted that the principles for granting conservatory orders are well established, in that

the applicants must establish that the petition raises a *prima facie* case with chances of success; demonstrate the prejudice they will suffer if the interlocutory orders are not granted and that the prejudice cannot be remedied by an award of costs or damages; demonstrate that the petition will be rendered nugatory if conservatory orders are not granted; and the court must take into consideration the public interest inherent as held in ***Munya v Kithinji & 2 others (Application 5 of 2014) [2014] KESC 30 (KLR) (2 April 2014) (Ruling)***.

87 The Respondents submitted that once the irregularities were discovered, a verification exercise was conducted and those found to lack the necessary qualifications had the posting letters revoked. They assert that the Applicants have not placed any materials on record to dispute this findings, and that it is common knowledge that the Applicants needed to meet certain qualifications to be placed as interns. Therefore, the Amended Petition as well as the Application do not establish any *prima facie* case and hence the conservatory orders ought should not be granted.

88 The Respondents submitted that the window of opportunity on the applicants to undertake their internship has not closed. This is because as and when they qualify, they will be considered. What they need to do is not to obtain conservatory orders from the court, but to go back to class and to obtain the necessary qualifications before they are considered.

- 89 It is the Respondents' submission that internship is a training program which is time bound with clear starting and end dates meaning that even if there was a reason to go back they have to await the next cohort, consequently, it is safe for the Court to maintain the status quo and expedite hearing of the petition instead of issuing order which cannot be implemented.
- 90 The Respondents submitted that the substratum of the petition will not dissipate if the interlocutory orders are not granted. The affected parties can in the meantime acquire the necessary qualification while the Government or the Ministry continues to investigate the irregularities with a view to taking disciplinary action against those concerned with causing the problem herein.
- 91 The Respondents submitted that it is against public interest to put unqualified people in public health institutions to work as interns. This then behooves upon the court to prevent a situation where such a scenario could occur as the consequences would be very devastating, irreversible and totally unacceptable.
- 92 The Respondents submitted that the application dated 21<sup>st</sup> October 2025 is based on inadmissible hearsay as the supporting affidavit is purportedly sworn by one Florence W Muturi and not the said Dr. Lister Onsongo. The said Florence W Muturi cannot be said to have any personal knowledge of the matters deponed therein and does not even bother to identify the sources of the said information leading one to wonder if Dr. Lister Onsongo was so

offended or dissatisfied by the disciplinary action allegedly taken against her why didn't she bother to file a petition in court herself.

- 93 They further submitted that granted that the Constitution of Kenya has lowered the locus for filing petitions under Article 22 and 258 of the Constitution, the said provisions state that anyone can file a petition on behalf of a person or on behalf of a person who cannot do so on her own behalf. In the instant case, there is no reasonable explanation why Dr Lister Onsongo cannot move the court on her own behalf, consequently, the affidavit sworn by Florence W Muturi offends the provisions of the Evidence Act, and the Oaths and Statutory Declarations Act as read with Order 19 of the Civil Procedure Rules. In the circumstances, the application is unsupported and without basis.

### **3<sup>rd</sup> Respondent's Submissions**

- 94 The 3<sup>rd</sup> Respondent submitted that Justice M.A Odeny crystallised the threshold to be met before conservatory order is issued as enunciated in the decision above, in her decision in ***Kimitei Samoei v Michael Ngige & 2 others [2021] KEELC 2180 (KLR)***, where she noted that the principles required to be satisfied before granting conservatory orders or interim conservatory orders comprises of the following:- *"i. First, an Applicant must demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he/she is likely to suffer*

*prejudice. ii. The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights. iii. Thirdly, the court should consider whether, if an interim conservatory order is not granted, the substratum of the matter will be rendered nugatory. iv. The final principle for consideration is whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.”*

- 95 The 3<sup>rd</sup> Respondent submitted that the Applicants have not demonstrated a *prima facie* case. It was submitted that a *prima facie* case is more than an arguable claim; it requires proof of a substantive right apparently infringed, requiring explanation or rebuttal. Reliance was placed on ***Mrao Limited v First American Bank, Abdul Zahir Sheikh & Another [2001] KEHC 591 (KLR)***, where it was held that the alleged right must be clearly threatened, the invasion material and substantive, and there must be urgency to prevent irreparable harm.
- 96 The 3<sup>rd</sup> Respondent submitted that the Court must not hold a mini-trial at the interlocutory stage, and the threshold is assessed on a balance of probabilities.
- 97 It was submitted that that the Applicants have failed to meet these eligibility requirements for internship in the public service is governed by Clause 2.3 of the Internship Policy and Guidelines for the Public Service (2016), which provides as follows:

*“The Internship programme is open to:*

- i. Unemployed Kenyan graduates from training institutions who have completed their degree courses and have not been exposed to work experience related to their area of study.*
- ii. Graduates of degree and diploma programmes, for whom internship is a requirement for registration by their respective professional bodies.*

*Eligibility will be based on the following criteria:*

- i. The internship shall be undertaken only once after graduating from a course; and*
- ii. The internship programme shall be for persons who have completed their training and graduated.”*

98 The 3<sup>rd</sup> Respondent submitted that Clause 1.3 of the Internship Policy for Health Care Professionals (2020) provides that the policy applies only to health professionals for whom internship is a legal requirement, and that graduates trained from recognized institutions within and outside Kenya are eligible for internship deployment only after clearance by the relevant regulatory body. It was emphasized that eligibility is contingent upon actual graduation from a recognized institution and regulatory clearance.

99 It is the 3<sup>rd</sup> Respondent’s submission that the foundational requirement for eligibility is actual graduation, evidenced by a duly issued Degree Certificate and not merely by a Letter of Completion. The Applicants’ reliance on Letters of

Completion is insufficient to establish eligibility. Consequently, no right arises, no material invasion exists, and the threshold of a *prima facie* case is not met.

100 The 3<sup>rd</sup> Respondent submitted that granting conservatory relief in the present circumstances would not enhance constitutional values or objects of the Bill of Rights, but would instead undermine them. It was submitted that conservatory relief is intended to preserve constitutional integrity, not to shield parties who fail to satisfy statutory or policy thresholds. Granting such orders would erode the principles of fairness, transparency, accountability, and merit, which are enshrined under Articles 10, 27, 24, and 232 of the Constitution of Kenya, 2010.

101 The 3<sup>rd</sup> Respondent submitted that granting the orders sought would reward non-compliance with eligibility criteria, contrary to the constitutional principles of equality, accountability, and merit. While Article 27 guarantees equality and protection of rights, it equally contemplates that public offices and benefits are to be accessed in accordance with lawful and objective criteria, consistent with the Public Service Internship Policy (2016) and the Health Professionals Internship Policy (2020).

102 The 3<sup>rd</sup> Respondent further submitted that under the principle of proportionality, any limitation on rights must be reasonable and justifiable in an open and democratic society. Granting the Applicants' request would impose disproportionate harm on the public, including qualified

graduates awaiting placement, and the wider citizenry dependent on the health sector's efficiency. The Constitution's requirement that State organs act transparently and fairly (Articles 10 and 232) supports denial of relief where eligibility is unverified.

103 It was submitted that denial of conservatory relief preserves administrative and constitutional integrity, ensuring that disputes are adjudicated on the merits, with proper evidence. Granting the orders prematurely would pre-empt substantive determination and could compromise public confidence in constitutional processes.

104 The 3<sup>rd</sup> Respondent submitted that the substratum of the Petition is better preserved by declining the Application. Granting the interim orders would, in effect, grant the Applicants the relief sought in the main Petition, rendering the substantive hearing futile. The Applicants seek mandatory orders directing the Ministry of Health to place 306 students on a priority list in the next internship posting, which is relief that can only be determined at the final hearing.

105 The 3<sup>rd</sup> Respondent submitted that conservatory or interlocutory reliefs are not intended to grant substantive remedies, as emphasized in ***Muslims for Human Rights (MUHURI) & 4 Others v Inspector General of Police & 2 Others [2014] KEHC 955 (KLR)***. The Applicants' prayers seek to conclusively determine the matter rather than preserve the subject matter.

106 The 3<sup>rd</sup> Respondent submitted that the prayer restraining the Respondents from proceeding with “fresh internship postings marred with irregularities” effectively presupposes that irregularities exist. This issue is contested and can only be properly adjudicated during the substantive hearing. Similarly, the prayer compelling priority placement constitutes a mandatory order, which can only be granted at the interlocutory stage in the clearest of cases involving blatant violation of rights and irreparable harm, a criteria the Applicants have not satisfied.

107 The 3<sup>rd</sup> Respondent further submitted that granting the orders would fundamentally alter the status quo, overriding structured policy frameworks for verification of eligibility, placement based on institutional capacity, and national distribution, as established under the Public Service Internship Policy (2016) and Health Professionals Internship Policy (2020).

108 The 3<sup>rd</sup> Respondent submitted that such orders would create irreversible consequences. Once internship spaces are allocated or priority listings effected, they cannot be undone without disrupting national programs affecting thousands of candidates. The relief sought is therefore final, not preservatory.

109 The 3<sup>rd</sup> Respondent submitted that granting the conservatory orders would not serve the public interest as restraining or compelling internship postings would

directly impair the operational capacity of the Health Sector, delaying essential services, disrupting patient care, and undermining national health priorities.

- 110 It was submitted that courts must weigh public interest alongside party rights when considering interim relief, as held in ***Wilson Kaberia Nkunja v Magistrates & Judges Vetting Board [2016] eKLR*** and ***Board of Management of Uhuru Secondary School v City County Director of Education [2015] eKLR***. Reliefs that interfere with essential services cannot be justified on speculative or unproven claims.
- 111 It was further submitted that the Applicants have not demonstrated urgent or irreparable harm that outweighs the severe prejudice to the public, as emphasized in ***Munya v Kithinji & 2 Others (Supra)***. Interim relief must not compromise essential state functions.
- 112 The 3<sup>rd</sup> Respondent submitted that the balance of convenience and public interest strongly favours denial of the Application. Granting the orders would set a dangerous precedent, enabling speculative claims to immobilize critical public-sector operations, contrary to constitutional obligations under Articles 10, 24, 27, and 232 and the broader public interest.
- 113 I have considered all the averments and submissions of the parties herein. The issue for this court's determination is whether condition for grant of interim conservatory orders have been met vis; there being a prima facie case

with a likelihood of success and whether the grant or denial of the orders sought will be prejudicial to the applicant and whether the conservatory orders if not granted will render the substratum of the petition nugatory.

114 In determining these issues, the applicant must demonstrate from the onset that they have an arguable case which will be prejudicial to them if orders are not granted. The applicants had been posted as interns which internship was revoked for want of certain eligibility criterion.

115 This court would in the circumstances look at whether the criterion in question was properly considered or not and determine the issue within this petition. If indeed the applicants were indiscriminately treated, they still have recourse within this petition to be reconsidered for the internship. There would be no prejudice suffered if the orders sought are not granted at this state.

116 I therefore find that the prayers sought are not tenable at the moment and can be granted if need be upon hearing the entire petition. I therefore decline to grant the said orders at this stage and direct the parties to proceed with the main petition.

**Dated, Signed and Delivered Virtually at Nairobi this 15<sup>th</sup> Day of January, 2026.**

**HELLEN WASILWA  
JUDGE**