



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CONSTITUTION AND HUMAN RIGHTS DIVISION
PETITION NO. E001 OF 2026

IN THE MATTER OF ILLEGAL, IRREGULAR & UNCONSTITUTIONAL ACQUISITION, ENGAGEMENT OF PRIVATE LEGAL ADVOCATES SERVICES DESPITE AVAILABILITY OF STATE COUNSELS, COUNTY LEGAL ATTORNEYS, SOLICITOR GENERAL AND OTHER LEGAL OFFICERS IN PUBLIC ENTITIES

AND

IN THE MATTER OF VIOLATION OF ARTICLES 1, 2 (1, 2 & 4), 3 (1), 10 (2), 27, 28, 41, 43, 73, 75, 201, 226 (5), 227 (1) & (2), 230, 232 (1) (E), 258 (1) & (2) (C) & 259 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE COUNTY ATTORNEY ACT CAP. 265E OF THE LAWS OF KENYA IN THE MATTER OF: COUNTY GOVERNMENT ACT NUMBER 17 OF 2012

AND

IN THE MATTER OF: THE ADVOCATES ACTS CAP 16 LAWS OF KENYA

AND

IN THE MATTER OF: PUBLIC FINANCE MANAGEMENT ACT (PFM) ACT 2012

AND

IN THE MATTER OF: RULE 4, 10, 11, 13 OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION & PROTECTION OF FUNDAMENTAL FREEDOMS) HIGH COURT PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF: THE DOCTRINES OF PRUDENT UTILISATION OF PUBLIC FINANCIAL RESOURCES, COST EFFECTIVE PROCUREMENT, FISCAL SUSTAINABILITY, NON-DISCRIMINATION, CONSTITUTIONAL RULE OF LAW AND LEGITIMATE EXPECTATIONS

BETWEEN

DR. MAGARE GIKENYI B..... 1ST PETITIONER
SHALUM KAKA NYAUNDI..... 2ND PETITIONER
OKIYA OMTATA OKOITI..... 3RD PETITIONER
LABAN OMUSUNDI 4TH
PETITIONER
PHILOMENA ABUGA NYAKUNDU 5TH
PETITIONER
DISHON KEROTI MOGIRE.....6TH
PETITIONER
DAVID NGATIA NJUGUNA7TH PETITIONER

-VERSUS-

COUNCIL OF GOVERNORS 1ST
RESPONDENT
HON. ATTORNEY GENERAL 2ND
RESPONDENT
LAW SOCIETY OF KENYA 3RD
RESPONDENT
THE SENATE 4TH RESPONDENT
CABINET SECRETARY, NATIONAL
TREASURY AND ECONOMIC PLANNING 5TH
RESPONDENT

NATIONAL ASSEMBLY	6TH
RESPONDENT	
KENYA LAW REFORM COMMISSION	7TH
RESPONDENT	
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS	8TH RESPONDENT
COUNTY ASSEMBLIES' FORUM	9TH
RESPONDENT	
PUBLIC SERVICE COMMISSION	10TH
RESPONDENT	
INDEPENDENT ELECTORAL BOUNDARIES COMMISSION	11TH
RESPONDENT	
KENYA NATIONAL HUMAN RIGHTS AND EQUALITY COMMISSION	12TH
RESPONDENT	
PARLIAMENTARY SERVICE COMMISSION	13TH
RESPONDENT	
TEACHERS SERVICE COMMISSION	14TH
RESPONDENT	
JUDICIAL SERVICE COMMISSION	15TH RESPONDENT
COMMISSION ON REVENUE ALLOCATION	16TH
RESPONDENT	
SALARIES AND REMUNERATION COMMISSION	17TH
RESPONDENT	
NATIONAL POLICE SERVICE COMMISSION	18TH
RESPONDENT	

NATIONAL LAND COMMISSION.....	19TH RESPONDENT
ETHICS AND ANTI-CORRUPTION COMMISSION.....	20TH RESPONDENT
MOMBASA COUNTY GOVERNMENT.....	21ST RESPONDENT
KWALE COUNTY GOVERNMENT.....	22ND RESPONDENT
KILIFI COUNTY GOVERNMENT.....	23RD RESPONDENT
TANA RIVER COUNTY GOVERNMENT.....	24TH RESPONDENT
LAMU COUNTY GOVERNMENT.....	25TH RESPONDENT
GARISSA COUNTY GOVERNMENT.....	26TH RESPONDENT
WAJIR COUNTY GOVERNMENT.....	27TH RESPONDENT
MANDERA COUNTY GOVERNMENT.....	28TH RESPONDENT
MARSABIT COUNTY GOVERNMENT.....	29TH RESPONDENT
ISIOLO COUNTY GOVERNMENT.....	30TH RESPONDENT
MERU COUNTY GOVERNMENT.....	31ST RESPONDENT
THARAKA-NITHI COUNTY.....	32ND RESPONDENT
EMBU COUNTY GOVERNMENT.....	33RD RESPONDENT
KITUI COUNTY GOVERNMENT.....	34TH RESPONDENT
MACHAKOS COUNTY GOVERNMENT.....	35TH RESPONDENT
MAKUENI COUNTY GOVERNMENT.....	36TH RESPONDENT

NYANDARUA	COUNTY	GOVERNMENT.....	37TH
RESPONDENT			
NYERI	COUNTY	GOVERNMENT.....	38TH
RESPONDENT			
KIRINYAGA	COUNTY	GOVERNMENT.....	39TH
RESPONDENT			
MURANG'A	COUNTY	GOVERNMENT.....	40TH
RESPONDENT			
KIAMBU COUNTY GOVERNMENT.....			41ST RESPONDENT
TURKANA COUNTY GOVERNMENT.....			42ND RESPONDENT
WEST POKOT COUNTY GOVERNMENT.....			43RD RESPONDENT
SAMBURU COUNTY GOVERNMENT.....			44TH RESPONDENT
TRANS NZOIA COUNTY GOVERNMENT.....			45TH RESPONDENT
UASIN GISHU COUNTY GOVERNMENT.....			46TH RESPONDENT
ELGEYO/MARAKWET COUNTY GOVERNMENT.....			47TH RESPONDENT
NANDI	COUNTY	GOVERNMENT.....	48TH
RESPONDENT			
BARINGO COUNTY GOVERNMENT.....			49TH RESPONDENT
LAIKIPIA COUNTY GOVERNMENT.....			50TH RESPONDENT
NAKURU COUNTY GOVERNMENT.....			51ST RESPONDENT
NAROK COUNTY GOVERNMENT.....			52ND RESPONDENT
KAJIADO	COUNTY	GOVERNMENT.....	53RD
RESPONDENT			
KERICHO	COUNTY	GOVERNMENT.....	54TH
RESPONDENT			
BOMET	COUNTY	GOVERNMENT.....	55TH
RESPONDENT			

KAKAMEGA COUNTY GOVERNMENT.....	56TH
RESPONDENT	
VIHIGA COUNTY GOVERNMENT.....	57TH
RESPONDENT	
BUNGOMA COUNTY GOVERNMENT.....	58TH
RESPONDENT	
BUSIA COUNTY GOVERNMENT.....	59TH RESPONDENT
SIAYA COUNTY GOVERNMENT.....	60TH RESPONDENT
KISUMU COUNTY GOVERNMENT.....	61ST
RESPONDENT	
HOMA BAY COUNTY GOVERNMENT.....	62ND RESPONDENT
MIGORI COUNTY GOVERNMENT.....	63RD RESPONDENT
KISII COUNTY GOVERNMENT.....	64TH RESPONDENT
NYAMIRA COUNTY GOVERNMENT.....	65TH RESPONDENT
NAIROBI CITY COUNTY GOVERNMENT.....	66TH
RESPONDENT	
KENYA AIRPORTS AUTHORITY.....	67TH
RESPONDENT	
TRIPLEOKLAW ADVOCATES.....	68TH RESPONDENT
DORCAS AGIK ODHONG ODUOR.....	69TH
RESPONDENT	

-AND-

OFFICE OF THE AUDITOR GENERAL.....	1ST INTERESTED
PARTY	
OFFICE OF THE CONTROLLER OF BUDGET...2ND	INTERESTED
PARTY	

KATIBA INSTITUTE3RD INTERESTED PARTY

RULING

1. The Petitioners contemporaneously with the filing of their Petition filed a Notice of Motion Application dated 1st January 2026. Upon consideration of the said Application, this Honourable Court on 12th January, 2026 issued the following orders: -
 - a) **This Application is hereby certified as urgent and deserving to be heard ex-parte in the first instance and its service is hereby dispensed-within the 1st instance.**
 - b) **The Application and Petition shall forthwith and not later than within the next three (3) days be served upon ALL Respondents and Interested Parties to be heard inter parte on merit.**
 - c) **That the Respondents and Interested parties shall file Responses within seven (7) days of receipt of service.**
 - d) **That the Petitioner shall file Rejoinder (if need be) within the next fourteen (14) days;**
 - e) **A conservatory order is hereby issued suspending the engagement, procuring, continuing to procure, pending payments, all engagements of private advocates/law firms by all public entities when there is already hired attorney general, state counsels, solicitor general, county attorneys, county legal counsels, legal officers & legal personnel of ALL public entities pending the hearing and determination of this Application and the petition.**

- f) A conservatory order is hereby issued directing the controller of budget and all public servants (whether state officer or public office(r) or any person Not to approve any vote/funds for acquisition of external legal services/advocates/firms for ALL Public entities, pending the hearing and determination of this Application and the petition.**
- g) The Application shall be mentioned inter-parte for further directions on 30th January 2026 at 11.30 am.**

2. The issuance of the aforesaid orders, particularly the conservatory orders **(e)** and **(f)** triggered filing of multiple applications under Certificate of Urgency from several Respondents as follows: -

- a) A Notice of Motion Application by the 3rd Respondent Supported by the Affidavit of **Florence Muturi** Advocate, all evenly dated 14th January 2025.
- b) Notice of Motion Application by the 1st Respondent dated 15th January, 2026, and the Supporting Affidavit of **Mary Mwiti EBS**,
- c) Notice of Motion Application by the 38th Respondent dated 16th January, 2026 and Supporting Affidavit by **Edward Irungu Mwangi** of the same date.
- d) A Notice of Motion Application by the 66th Respondent and Supporting Affidavit by **Christine Ileri** Advocate, all evenly dated 16th January 2026.
- e) A Notice of Motion by the 51st Respondent and the Supporting Affidavit by **Dr. Samwel Mwangi Mwaura**, all evenly dated 16th January 2026.

3. The common thread running through these five (5) Applications is the principal relief sought in all of them for this Honourable Court to set aside, vacate and/or vary the conservatory orders of 12th January, 2026 pending hearing and determination of the Application and the Petition.
4. In addition to the foregoing Applications, other Applications were filed in relation to the orders issued on 12th January, 2026 namely:-
 - a) A Notice of Motion Application and Supporting Affidavit of **Kipkoech B. Ngetich**, Advocate, both dated 14th January, 2026
 - b) A Notice of Motion Application dated 19th January, 2022 supported by an Affidavit of **John Diro** Advocate.
 - c) A Notice of Motion Application dated 20th January, 2026 filed by **GEMA Watho Association** a professional association whose membership comprises of advocates of the High Court of Kenya. The Application is Supported by the Affidavit of Wambugu Wanjohi sworn on even date.
5. The substance of the three (3) Applications is that, beyond seeking setting aside, vacating and or varying the orders of 12th January, 2026 they also seek the admission of the firms of **Gordon Ogolla, Kipkoech & Co. Advocates, GKL Advocates LLP, P. N. Khisa Advocates, Wachira, Wekhomba AIM & Associates, Diro Advocates LLP** and **GEMA Watho Association** as Proposed Interested parties.
6. The Applicants in the eight Applications have anchored their respective cases on the grounds set out on the face of the

Applications, together with the detailed depositions contained in the Supporting Affidavits and Further Affidavits by their respective deponents.

7. The Petitioners, for their part likewise tendered their responses and argued their cases, partly through oral submissions and partly by way of a Supporting Affidavit.

1st Respondent's Case

8. The 1st Respondent's contends that the orders of 12th January, 2026 crippled legal operations in County Governments and other public sectors. That at the time of issuance of the orders, there were active Court matters, several counties were at advanced stages procurement of external law firms and the orders have disrupted the proceedings. Additionally, some county governments are at different stages of processing payments to law firms that have completed legal work.
9. It is averred that the Court failed to consider the above circumstances as well as, capacity gaps both financial and human resource, the distinction between legal fees, satisfaction of awards and costs issued by various Courts as well as breach of contractual obligations between the various government agencies and external law firms.
10. That engagement of external legal counsel by public entities is authorized under statutes that remain valid and binding.
11. That unless the orders are set aside, county governments risk exposure to default judgments, adverse orders and unnecessary

escalations of legal disputes all of which would be against public interest. The orders have the effect of suspending the operations of valid statutes without a finding of unconstitutionality.

3rd Respondent's Case

12. The 3rd Respondent through its Secretary and Chief Executive Officer **Florence Muturi** in the Supporting Affidavit dated 15th January, 2026 averred that the *ex-parte* orders have a real likelihood of creating an unprecedented constitutional and legal operational crisis. She deposes that, the *ex-parte* orders are tainted with fundamental errors of the law apparent on the face of the record.
13. Further that the decision directly affects the Public Procurement Act with its enabling Regulations and other relevant statutory instruments which permit public entities to procure goods and services from private entities.
14. That the orders are legally untenable, arbitrary and discriminatory for public entities to discontinue the private sourcing of legal services while continuing to lawfully procure other essential services from private providers.
15. That the orders have given rise to a conflict of interest and judicial inconsistency as Courts of concurrent jurisdiction have issued valid binding and subsisting orders expressly authorizing payments of advocates for services rendered.

16. That the orders are adverse and ought not to have granted at the interim stage as they determine the rights of parties without affording them an opportunity to be heard on merit.
17. That the orders are not founded on factual legal basis as they offend the principle of privity of contracts as the Petitioners are not parties to the advocate-client contracts in question.
18. That public entities do not possess institutional technical or human resource capacity and have to undertake and execute all statutory and operational functions internally that may require outsourcing.

66th Respondent's Case

19. **Christine Ileri**, Ag. County Attorney, in her Affidavit sworn on 15th January 2026 in support of the 66th Respondent's Application, deposed that although framed as conservatory, they were final in nature. Their effect was to suspend all engagement of private advocates based on contested factual assertions.
20. That the Applicant has valid subsisting contractual engagements with external advocates who are acting based on existing statutory framework. Suspension of such engagements without notice undermines legitimate expectations.
21. That unless the orders set aside, the 66th Respondent faces risk of adverse Court Orders, dismissals and exposure to unnecessary financial loss arising from capacity constraints. That the Petitioners will not suffer any prejudice should the orders be set aside.

38th Respondent's Case

22. The 38th Respondent's Application is supported by the Affidavit of **Edward Irungu Mwangi**, County Secretary sworn on 16th January, 2026 deposes that the impugned orders have the effect of suspending the operation of valid statutes without due process.
23. That the prayers sought by the Petitioners bear significant ramifications warranting *inter-partes* hearing prior to their issuance.
24. That the effect of the orders is the suspension of operation of valid statutes without due process and violating the legitimate expectation of advocates to discharge instructions and be remunerated for services rendered.
25. That the orders infringe upon the consumer rights of public entities including the right to goods and services of reasonable quality.
26. That public entities are understaffed and the mere existence of state counsel within public entities should not preclude the engagement of private law firms.
27. It was further, averred that compliance with the orders may precipitate a juridical crisis leaving public entities stranded and without legal representation.
28. That the pending fees owed to advocates may have risen from valid Court Orders whether for payments of costs or settlement. Suspending such payments exposes public entities to losses accruing from interests and or execute proceedings.

29. Further suspension of payment in legal fees, would result in poor absorption of funds by the public entities leading to underutilization of their respective budgets.
30. That the Petitioners stand to suffer no prejudice that cannot adequately be compensated by an award of damages.

51st Respondent's Case

31. The 51st Respondent's Application is Supported by the Affidavit by **Dr. Samwel Mwangi Mwaura**, sworn on 16th January 2026 and the Further Affidavit sworn on 22nd January, 2026.
32. He deposes that the legal effect of the order of 12th January, 2026 was to impose a blanket suspension on engagement of external legal counsel and settlement of fees at an interlocutory stage interfering with access to justice and right to fair hearing under the constitution.
33. That the Constitution establishes the office of the Attorney General as the principle legal advisor without removing the autonomy of public bodies from procuring legal services. That the orders selectively target legal services while permitting continued procurement and payment of other professional bodies.
34. It is averred that the engagement of external Legal Counsel by public bodies is sanctioned by the Constitution, Office of the Attorney General Act and the County Attorney Act and therefore there're is no legal basis for subjecting the 51st Applicant to a blanket prohibition. That the orders amount to judicial suspension of statutory provisions.

35. That the Court cannot assume the role of a taxing officer or indirectly suspend the operations of the Advocates Act through interlocutory conservatory orders without violating the doctrine of separation of powers.
36. Further, that the orders have the effect of extending beyond the parties before this Court and impacting concluded litigation, settled contracts and accrued legal obligations not before this Court. The orders have the effect of suspending compliance with orders issued by Court thereby undermining the authority and dignity of finality of decisions.
37. That, the continued operation of the conservatory orders exposes the Applicants to contempt proceedings an exposure arising from legal impossibility created by the orders which effect will escalate public expenditure beating the objectives of fiscal prudence, they will cripple the legal capacity of County Governments an undermine sanctity of contracts.

Proposed Interested Parties' Case.

38. The arguments propounded by the Applications by the Proposed Interested Parties largely mirror those advanced by the 1st, 3rd 38th 51st and 66th Respondents save the fact that the subject advocates and the firms in question and GEMA Watho Association seek joinder as they maintain they have a direct legal interest in the subject matter.
39. The proposed Interested Parties main argument that the said Orders of 12th January, 2026 directly affect advocates with legitimate

contractual engagement mandated by various statutes. There are annexed letters of engagements by the 11th and 18th Respondents.

40. According to the proposed Interested Parties the Petitioners have not been forthcoming with the correct position which may have led to the issuance of the said orders.
41. They maintain that, their joinder is necessary to safeguard their rights, legitimate expectations, preserve judicial precedent and to ensure that the Court has the benefit of all perspectives from parties with a direct stake in the matter. That, the Court ought to avert the risk of creating a precedent that unjustly curtails the autonomy of public entities in engaging legal representation.

3rd Petitioner's Case

42. The 3rd Petitioner by way of Replying Affidavit sworn on 22nd January, 2026 opposed the Notice of Motion dated 14th January 2026 by the 3rd Respondent. He deposes that the orders of 12th January, 2026 were properly issued within the Court's constitutional mandate to preserve the *status quo* and prevent harm to the public interest. That the orders are not final in nature but are necessary to halt hemorrhaging of public funds and Violations of **Articles 1, 3, 10, 27, 201** and **227** of the Constitution.
43. That, the quashing of the July 2020 circular/directive issued by the then Attorney-General requiring prior written approval for the engagement of external/private advocates by state departments and public entities in **Judicial Review Application No. E010 of 2020:**

Republic v Hon Attorney General ex-parte Law Society of Kenya Nairobi Branch does not immunize or validate the ongoing systemic practice.

44. That, the Application meets the threshold for issuance of a conservatory order as it seeks safeguarding billions of taxpayer's funds outweighing any private interests. That the Petition presents is a *prima facie* case grounded on audit findings from the office of the Auditor General and Office of the Controller of Budget which establishes arguable violations of the Constitution and the doctrine of separation of powers.
45. The Orders are not discriminatory; they target a specific constitutional threat under **Articles 156(7), 227(1), and 230** neither do the orders violate **Article 50**; they are interim and apply prospectively, preserving rights for *inter-partes* hearing.
46. The Orders uphold separation of powers by enforcing constitutional limits on Executive procurement (**Article 165(3)(d)**). They do not usurp roles of the Controller of Budget or Auditor-General but complement them by halting threats identified in their reports. That Courts routinely grant conservatory relief in public interest litigation without encroachment.
47. It was averred further the contrary to what is stated by the 3rd Respondent, the order does not cause paralysis as public entities retain access to in-house counsel.

48. That lifting the orders means the Petitioners and the public stand to face prejudice from ongoing fiscal drains. That the harm to private advocates is speculative and self-inflicted by reliance on unconstitutional practices and as such public interest demand that the orders should be upheld.
49. It was his case further, that no material facts were suppressed, there is no judicial encroachment as the orders promote separation of powers not rules of natural justice were violated by issuance of the said orders.

Submissions

51st Respondent's Written Submissions

50. Through counsel the Respondent in the submissions dated 22nd January, 2022 submitted that the Orders of 12th January, 2026 are *contra statute* as they directly contravene **Section 22 (2)** of the **County Attorney Act** and **Section 25** of the **Office of the Attorney General Act** which permit public entities to procure the services of private firms.
51. It was submitted that this Court exercising jurisdiction under **Articles 22 and 23** of the **Constitution** lacks the jurisdiction to tax and or review legal fees payable to advocates and cited ***Wilfred N. Konosi & Co. Advocates v Flamco Limited [2017] eKLR.***
52. Counsel also argued that the Court lacks jurisdiction to address procurement issues in the first instance, that such matters fall within the exclusive the mandate of the Public Procurement and

Administrative Board enshrined **Section 28** of the **Public Procurement and Asset Disposal Act** and cited ***Odhiambo and another v National Police Service & 3 Others; CIC General Insurance Limited & 6 Others (Interested Parties)*** KEHC 719 (KLR).

53. The 51st Respondent Submitted that the orders violate the sanctity and privity of contracts. Reliance was placed in ***Morjaria v Patel [2025] KEHC (KLR)*** to submit that the orders purport to suspend the performance of contracts for provision of legal services without an inquiry, hearing or reference to the statutory mechanisms for fee regulation.
54. Refence was also made to ***Wambui v Wambui [2024] KECA 474 (KLR)*** to underscore the argument that the orders undermine finality of decisions as there exists active Court orders, decree, consent orders, orders of mandamus issued by Courts to settle legal fees.
55. Counsel argued that the orders violate **Article 27** of the **Constitution** as they single out legal practitioners while permitting other professionals to continue procurement and payment without restriction
56. Finally, that by virtue of **Article 48** and **50 (1)** of the Constitutional the orders deny public bodies their right to legal representation.

3rd Petitioner's Written Submissions

57. The 3rd Petitioner filed written submissions dated 22nd January, 2026 in opposition of the Notice of Motion application dated 14th January

2026 and the Replying Affidavit dated 15th January 2026, both filed by the 3rd Respondent.

58. The 3rd Petitioner submitted that the Petition meets the threshold settled by the Supreme Court in granting conservatory order in ***Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others*** [2014] eKLR.
59. On the issue of *prima facie* case, The Petitioners submitted that the Petitioner raises substantial constitutional questions under **Articles 201** and **227** of the **Constitution** with *prima facie* evidence, drawn from official Auditor-General and Controller of Budget reports.
60. The 3rd Petitioner submitted that the Court has inherent and constitutional authority to grant conservatory relief and granting the orders was procedurally sound and justified. That the argument that the orders "substantially determine the rights of the parties" and were improperly granted *ex parte* ignores the nature and purpose of conservatory orders in constitutional litigation and the proven urgency of this matter.
61. He cited ***Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & others*** [2015] eKLR to submit that the purpose of conservatory orders is to preserve the subject matter of the dispute and prevent the escalation of the alleged constitutional harm.
62. It was further contended that, the orders uphold the Public Procurement Legal Frameworks and the claim of discrimination is a

red-herring. That, the constitution and procurement laws create no right for any profession to have its services procured by the state. That there are internal capacities existing by law which are in the nature of the Office of the Attorney General and County Attorneys which are being sidelined.

63. It was the 3rd Petitioner's submission that public interest favours upholding the conservatory orders as affirmed in ***Republic v. Independent Electoral and Boundaries Commission Ex parte National Super Alliance Kenya [2017] eKLR*** and ***The National Assembly v Okiya Omtatah Okoiti & Others [2024] eKLR***.
64. It was also argued that all the allegations of procedural defects are unfounded and immaterial.
65. On the issue of *res judicata*, the case of ***Republic v Hon Attorney General ex-parte Law Society of Kenya Nairobi Branch [2020] eKLR*** dealt with a specific circular from the Attorney General. The present Petition challenges a nationwide pattern of expenditure and systemic constitutional violation.
66. Further on separation of powers, it is submitted that the Court is not acting as a "procurement regulator" but as a constitutional referee halting actions that arguably violate the Constitution, a core judicial function under **Article 165(3)(d)**.

Analysis and Determination

67. This Court had on the 20th January 2026, issued its interim directions varying the conservatory orders issued on the 12th January 2026.

68. This Court recalls the holding in the case of **Munya v Kithinji & 2 others (Application 5 of 2014) [2014] KESC 30 (KLR) (2 April 2014)** The Supreme Court held that;

86. “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.

69. The issue to consider at this juncture is whether the conservatory orders as issued were so broad as to affect the smooth administration of justice, hamper access to justice, affect service providers (Advocates) who are non-parties to the petition, affect pending payments subject to writ orders and generally prejudicing non-parties to the petition.

70. I am called upon to decide if there is basis for this Court to review, set-aside, vary or modify the conservatory orders issued on the 12th January 2026.

71. The said orders were issued on ex-parte basis.

72. **Rule 25** of the **Constitution of Kenya** (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (Mutunga Rules) bestows jurisdiction to review vary or set-aside Conservatory Orders and provides as follows:

“Setting aside, varying or discharge

An order issued under rule 22 may be discharged, varied or set aside by the Court either on its own motion or on application by a party dissatisfied with the order.”

73. It is common ground that the High Court has power to review its own decision. However, such power must be exercised within the framework of **Section 80** of Civil Procedure Act and **Order 45 Rule 1**.

74. **Section 80** of the **Civil Procedure Act** provides:

“80. Any person who considers himself aggrieved-

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of

judgement to the court, which passed the decree or

made the order, and the court may make such order thereon as it thinks fit.”

75. **Order 45 Rule 1** of the **Civil Procedure Rules, 2010** provides:

“45 Rule (1) Any person considering himself aggrieved-

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made the order without unreasonable delay.”

76. **Section 80** of the **Civil Procedure Act** bestows the jurisdiction to review while **Order 45** sets out the procedure applicable. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds:

“a) Discovery of new and important matter or evidence which after the exercise of due diligence,

was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;

b) On account of some mistake or error apparent on the face of the record, or

c) For any other sufficient reason and whatever the ground there is a requirement that the application has to be made without un reasonable delay.”

77. Let's call a spade what it is, a spade, this is a petition questioning the runaway public legal services bill and the imprudent use of public money by Public bodies and agencies at both the National Government and the County Governments continue to acquire, procure and use private legal advocates which gobble huge Kenyan tax-payer resources contrary to **Article 1,3,10,201(a) & (d) & 227(1)** of the constitution on prudent use of financial resources and cost effective services to the public.
78. The Court was waiting for the Respondents majorly the State and public officers to offer justification for the condition prevailing and assure Kenyans that all the decisions so far taken in the nature of instructions for provision of external legal representation are prudent, frugal and in public interest which silence has been telling.
79. While the Applicants put up a spirited fight, all grounds for variation save for the unforeseen prejudice upon non-parties have been unproven and the court has not been led to any specifics on the myriad of arguments advanced.

80. The Position of the 10th Respondent is that the conservatory orders should either be maintained as is or worst-case scenario be varied to allow a window grounded on justification for the instructions and the specialized undertaking absent within the public agency.
81. While most submission was made on allegations of there being existing contracts for provision of legal services in the counties, that the orders are creating undue hardship on advocates awaiting payments, that the orders creates prejudice upon non-parties to the petition, that the orders contravene the Advocates Act, the Public Procurement and Disposal of assets Act, that there exists Mandamus orders that are now unenforceable owing to the blanket orders and that the petitioners are guilty of material non-disclosure leading to the grant of the impugned orders. No evidence was led and show-cased.
82. While most advocates were of the view that the Conservatory Order as issued shall cause them undue hardships on pending payments and ongoing instructions, none of them laid any evidence and generalisations must be avoided at all times. As Justice (Rtd) Richard Kuloba warns,
- “generalisations create a single story, whose main shortcoming is that it creates stereotypes; and the problem with stereotypes is not that they are untrue, but that they are incomplete. Therefore, prudence demands that one ought to be deliberately specific about whatever claim they make, otherwise, it becomes a sweeping statement devoid of sense and justification”.***

83. The Public Service Commission rightfully sort solace in **Article 232 (1) (b)** on the predicate binding all state and public officers in the efficient, effective and economic use of public resources. That the commission is of the view that it is imprudent to engage external private counsel where the commission has made provision for additional recruitment of inhouse counsel. And where in-house counsel is unable to act then the fall back remains the Attorney General and that bodies falling under the PSC have no authority to instruct external counsel.
84. This Court finds that, the Conservatory Orders as issued would occasion prejudice against non-parties to the petition hence the need to vary and customize the orders to alleviate and mitigate any hardships that may be occasioned by the orders, there is need to modify and customize the order(s) to mitigate any unforeseen prejudice being occasioned upon any party or non-parties to the petition.
85. Accordingly, this Court allows the Applications on the basis of mistake giving rise to prejudice and hereby varies and modifies the Conservatory Orders issued herein on the 12th January 2026 as follows;

A. A conservatory order is hereby issued as from 12th January 2026, suspending the fresh engagement, procuring, continuing to procure, or engagements of private advocates/law firms by all public entities when there is

already hired attorney general, state counsels, solicitor general, county attorneys, county legal counsels, legal officers & legal personnel of ALL public entities pending the hearing and determination of this Application and Petition unless;

- i. The public bodies falling within the National Government and Public Service Commission has obtained the express and Formal Approval of the Hon. Attorney General for the specific engagement(s), procurement, continuing procurement, or engagement(s) of private advocates/law firms from the 12th January 2026 pending hearing and determination of the Application.**

- ii. The specific engagement, procurement, continuing (additional) procurement, or engagement(s) of private advocates/law firms has formal and express justification of the subject-matter, case file(s), period(s) taken to complete the case(s), fee note(s) and overall financial implications that such case(s) may have on the Agency, National Assembly, Senate, Independent Office or Commission, County Executive or County Assembly.**

- iii. The specific engagement, procurement, continuing procurement, or engagements of private advocates/law firms has formal justification by the procuring entity on the need for the specialization and assurance of prudent use of public resources.**

- iv. **A formal approval of the Speaker and Clerk for the National Assembly and/or Senate, respectively, indicating the want-for such a specified area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.**
- v. **A formal approval of the Commission and Secretary/CEO for the Independent offices or Commissions, indicating the want-for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.**
- vi. **A formal Approval from the County Executive Committee or recommendations from the County Attorney indicating the want-for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.**

B. A Conservatory Order is hereby issued, directing the Controller of Budget and all public servants (whether state officer or public officer(s) or any person authorized in this regard, Not to approve any vote/funds for acquisition of external legal services/advocates/firms from the 12th January 2026 for ALL Public entities pending the hearing and determination of this Application and Petition unless the following institutional-specific conditions are fully met and discharged.;

- i. An express and formal Approval of the Hon. Attorney General for the specific engagement(s), procurement, continuing procurement, or engagement(s) of private advocates/law firms from the 12th January 2026;**
- ii. A formal Approval from the County Executive Committee or recommendations from the County Attorney indicating the want for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources;**
- iii. The specific engagement, procurement, continuing procurement, or engagements of private advocates/law firms has formal justification on the need for the specialization and assurance of prudent use of public resources.**
- iv. A formal approval of the Speaker and Clerk for the National Assembly and/or Senate, indicating the want for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.**
- v. A formal approval of the Commission and Secretary/CEO for the Independent Commissions and Independent Offices, indicating the want-for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.**
- vi. A formal Approval from the County Executive Committee or recommendations from the County Attorney**

indicating the want for such an area for specialization and guaranteeing that the commitment is hinged on prudent use of public resources.

86. The Conservatory Orders herein shall not affect any procurement, instructions or undertakings for provision of external legal services to public bodies made prior to the 12th January 2026.

It is So Ordered.

Delivered at Nakuru on this 30th January 2026

Justice Mohochi S.M