

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CONSTITUTIONAL PETITION NO. E006 OF 2026
IN THE MATTER OF ARTICLES 1,2,3.10.22.23,33.35.4773,15. AND
165 OF THE CONSTITUTION OF KENYA. 2010

AND

IN THE MATTER OF; FAIR ADMINISTRATIVE ACTION ACT 2015

AND

IN THE MATTER OF; SECTION 35 AND 36 OF THE COPYRIGHT ACT
2001.

HON JONATHAN BII CHELILIM.....
PETITIONER

VERSUS

KENYA COPYRIGHT BOARD.....1ST
RESPONDENT

HARON SITIENEI.....2ND
RESPONDENT

THE OFFICE OF ATTONEY GENERAL.....3RD RESPONDENT

Coram: Before Justice R. Nyakundi
M/s Ruto Chepchirchir & Co. Advocates
Mr. Kenei & Co. Advocates
ANO ADVOCATES LLP
M/S Alex Nyabwengi & Co Advocates

RULING

1. By way of a Notice of Motion Application dated 13th February 2026, the Petitioner/Applicant seeks the following orders;

1) *Spent*

2) *That this Honourable Court be pleased to order the 1st Defendant to specifically perform its statutory and constitutional duty by forthwith producing and availing to the Plaintiff:*

a) The original complaint lodged by the 2nd Defendant with their office;

b) All documents, evidence, expert reports, and ownership records relied upon;

c) Internal correspondence, minutes, or deliberations leading to the impugned decision.

3) *That pending the hearing and determination of this Petition, this Honourable Court be pleased to issue a conservatory order suspending and/or staying any decision, directive, enforcement action, or interference by the 1st Respondent arising from the complaint lodged by the 2nd Respondent.*

4) *That pending the hearing and determination of this Petition and Application, this Honourable Court be pleased to restrain the Respondents, whether by themselves, agents, or servants, from issuing further threats, takedown demands, or enforcement measures against the Petitioner in relation to the alleged work.*

5) *That the costs of this Application be provided for.*

2. The application is premised on the grounds on the face of it and the averments of the Petitioner in support of the Application.

3. In his affidavit, the deponent averred that on or about 16th July 2025, the 2nd Respondent issued a demand letter alleging infringement of a purported copyright over a document titled “Nguzo Kumi Manifesto”, a copy of which he annexed and marked as JBC-1. Further, that the letter made sweeping and coercive demands including immediate takedown of County publications, admission of liability, public apology, and compensation, without demonstrating originality, protectable expression, or substantial similarity. He urged that the alleged work complained of comprises general political ideas, development themes,

and policy priorities which are not capable of copyright protection under the Copyright Act, the same being ideas and concepts rather than original expression.

- 4.** The deponent averred that following the said demand, the 2nd Respondent lodged a complaint with the 1st Respondent and summoned him to their offices annexing a copy of summons marked as JBC-2. He deponed that the 2nd Respondent proceeded to act on the said complaint without furnishing him with the complaint, evidence, expert opinions, or any analysis relied upon, and without according him a fair hearing. He stated that at no time did the 1st Respondent establish authorship, originality, or substantial similarity between any County publications and the alleged copyrighted work. He stated that the actions and omissions of the Respondents have caused disruption to County administration, exposed the County to reputational harm, and undermined public confidence in his office. Additionally, that unless this Court intervenes, the Respondents' actions will continue to occasion grave injustice, violate my constitutional rights under Articles 33 and 47, and impair the execution of public duties.
- 5.** The deponent averred that the issues raised herein touch on constitutional governance and public interest and therefore warrant urgent intervention by this Court. Further, that unless conservatory orders are granted urgently, he stands to suffer ongoing constitutional injury.
- 6.** The 1st Respondent filed an Affidavit dated 23rd February 2026 sworn by Kennedy Kitui Nalika. He deponed that he is empowered under section 39(1), 40 and 41 of the copyright act No. 12 of 2001 to investigate all matters of copyright infringement and take necessary legal action against any person who is in violation of the Copyright Act, No. 12 of 2001. He deponed that the Application is misconceived, premature, and an abuse of the court process intended to forestall lawful investigations and prosecution. On 8th September 2025, the 1st Respondent received a complaint from the 2nd Respondent through his lawyer that his NGUZO KUMi MANIFESTO literary work registration number RZ50092 was being

used illegally by the Applicant, who without having a valid authorization from him as the Author contrary to the provisions of the copyright act no 12 of 2001 Laws of Kenya. Upon receipt of the complaint, he was assigned the case as the investigating officer together with his colleague, Ms. Emily Cheruiyot, a Senior Copyright Inspector and he commenced investigations in accordance with the mandate conferred upon the 1st Respondent under the Copyright Act.

- 7.** The deponent averred that on 3rd October 2025, the Applicant was invited to respond to the complaint via his official email and annexed and marked as E3 a copy of a letter notifying the Applicant of the complaint and inviting him to respond. The applicant ignored the request and did not respond. A letter was delivered to the petitioner by the 1st Respondent on 2nd December 2025 summoning him to appear at their offices in Nairobi which he equally ignored. He deponed that further, on 23rd January 2026, the Applicant was again summoned to appear before the 1st Respondent for purposes of recording a statement and responding to the allegations. He urged that the applicant ignored the summons.
- 8.** The deponent averred that the Applicant was furnished with the relevant complaint, supporting documents, and evidence forming the basis of the intended criminal charges. In any event, disclosure of evidence is governed by the applicable criminal procedure framework and cannot be used as a basis to stall lawful enforcement action. He stated that on 7th and 8th October 2025, they proceeded to Eldoret from Nairobi with a view of recording a statement from the Applicant who kept them for two days without availing himself for it. He urged that the matter is still in its investigative stages awaiting ODPP communication on decision to charge having received the said file on 11th February 2026 after the investigation process was completed and file forwarded for perusal and advice. He annexed and Marked as E6 is a copy of the letter forwarding the duplicate file.
- 9.** The deponent averred that by filing a constitutional petition at this stage, the petitioner is simply shielding himself from obvious criminal responsibility in a matter that is still pending under investigation and

advancing hypothesis that are not supported by any law. He stated that there is nothing under the copyright law called political ideas or concepts exempted from copyright protection or registration as literary copyright works. Further, that the said infringement of the said manifesto has been ably demonstrated evidentially by the complainant with no contestation to its paternity and further justified by a copyright registration certificate in the name of the second respondent. He further deponed that the allegation that the Applicant was not supplied with the original complaint and supporting documentation is false, misleading, and made in bad faith. He maintained that the principles for grant of conservatory orders are well settled and require an applicant to demonstrate a prima facie case with a likelihood of success, real danger of prejudice, and that public interest tilts in favour of the grant of the orders sought. The Applicant has failed to demonstrate any prima facie violation of constitutional rights, or any imminent or irreparable harm that cannot be addressed within the ordinary criminal justice process. He prayed that the Application be dismissed with costs.

10.The 2nd respondent filed an affidavit and he urged that the Application is a non-starter to the extent that it seeks to challenge exercise of a statutory mandate by the 1st Respondent and further, that the Application is frivolous to the extent it seeks to invite this Court to offer a shield to a perpetrator of infringement of a copyright. He urged that the Petitioner/Applicant has not demonstrated any irreparable harm that he will suffer if he was to appear before the Board and record his statement. That the Application is vexatious to the extent it seeks to disparage the 2nd Respondent and pass thinly veiled threats directed at his employment.

11.The deponent urged the court to take cognizance of the fact that the Kenya Copyright Board is a statutory body duly constituted and mandated to administer and enforce all matters of copyright and related rights in Kenya. Further, that the instant Motion is seeking to have this Court stop the Kenya Copyright Board from undertaking its statutory mandate. He deponed that it is not disputed that the 2nd Respondent holds a copyright over a development Blue Print known as

'Nguzo Kumi Manifesto' which he annexed and marked as ' HS 1 and 2 ' true copies of the Manifesto and the Certificate of Registration. Further, that there is sufficient evidence to prove that indeed the 2nd Respondent is the originator and owner of the subject Literary Works. He Annexed and marked as 'HK 3 ' Statements from Witnesses. The Petitioner infringed the subject copyright by passing the Literary Works as his Development Agenda and the 2nd Respondent was aggrieved.

12.He urged that the court should take cognizance that the Demand Notice issued to the Petitioner was explicit on the nature of the grievance against the Petitioner and he cannot feign ignorance of the complaint. Further, that the 2nd Respondent proceeded to lodge a Complaint with the Kenya Copyright Board on 9th September , 2025 as envisaged under the Copyright Act and the Constitution of Kenya, annexing and marking as 'HS 5 ' a copy of the Complaint. He further deponed that the Petitioner/Applicant was invited severally to appear before the Board so that he could respond to the Complaint but out of impunity he chose to ignore the invitations. He stated that investigators took the trouble to visit the Petitioner/Respondent at his office for the purpose of recording a Statement but he declined to see them. Further, that the Board issued a Summon to the Petitioner/Applicant to appear at the office for the purpose of recording a Statement but again he chose to ignore the Summons.

13.The deponent averred that it is clear that the Board has taken the necessary steps to ensure that the Petitioner/ Applicant is accorded an opportunity to give his version of the facts with respect to the complaint but he has chosen to squander it. Additionally, that it is important to note that the Board is yet to make a decision with respect to the complaint and is only engaged on investigations that will aid in making the decision hence the Petitioner/Applicant is being dishonest to claim that a decision has been made without according him a chance to be heard. It is misleading for the Petitioner/Applicant to claim that he has not been supplied with information to inform him sufficiently of the complaint and enable him defend himself. He reiterated that the Petitioner/Applicant is fully aware of the complaint by the 2nd

Respondent as can be gleaned from his own admissions in the Supporting Affidavit hence cannot be allowed to approbate and reprobate at the same time.

14.The deponent averred that the Petitioner /Applicant has had more than 7 months to seek redress before the Copyright Tribunal and cannot be allowed to turn up at the eleventh hour to frustrate investigations noting that this Honourable Court is bound not to aid the indolent. Further, that the Petitioner has approached this Honourable Court with unclean hands noting his infringement of a copyright and deliberate failure to assist in investigations hence this Honourable Court should not lend his tools to him. He urged the court to dismiss the application with costs.

Analysis & Determination

15.The issues that arise for determination are;

- i) Whether the court has jurisdiction to direct the 1st defendant to perform its statutory obligation and constitutional duty as prayed.*
- ii) Whether the court should issue conservatory orders against the Respondents.*
- iii) Whether the court should issue orders restraining the Respondents from exercising its enforcement mandate*

Whether the court has jurisdiction to direct the 1st defendant to perform its statutory obligation and constitutional duty as prayed

16.On jurisdiction, **Nyarangi J A** in the case **of Owners Of Motor Vessel "Lilian S" Vs Caltex Oil (K) Ltd [1989] KLR 1** that: -

"Jurisdiction is everything without which a court of law has no power to make one more step where a court of law has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter the moment it holds the opinion that it is without jurisdiction."

17.The Applicant seeks to have this court order the 1st Respondent perform what he terms a statutory duty and constitutional duty by producing

documents pertaining to the complaints made by the 2nd Respondent before the 1st Respondent. The Applicant does not state which provisions these alleged duties arise to begin with. Additionally, it is not clear which jurisdiction of this court he intends to invoke in order for the said orders to be granted.

18. Under **Article 159(5)** of the Constitution, it is provided as follows;

High Court shall have--

- a) unlimited original jurisdiction in criminal and civil matters;*
- b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;*
- c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;*
- d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of--*
 - i. the question whether any law is inconsistent with or in contravention of this Constitution;*
 - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;*
 - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and*
 - iv. a question relating to conflict of laws under Article 191; and*
- e) any other jurisdiction, original or appellate, conferred on it by legislation.*

19. By seeking to have the court compel the 1st respondent supply the original complaint, documents, evidence and reports pertaining to the

complaints by the 2nd Respondent, the applicant seeks to have this court exercise supervisory jurisdiction in a manner that is not provided for in law. Additionally, the Applicant speaks of an impugned decision yet the matter is still in its investigative stages and the decision to charge is yet to be remitted to the 1st Respondent. This then begs the question as to which decision the Applicant seeks to have the court compel the Respondent to produce in court. Additionally, the Applicant is basically seeking mandamus orders through the back door, instead of using the proper channels which would require the institution of Judicial Review Proceedings. That notwithstanding, even in Judicial review proceedings, there must exist a process that has been completed and a decision rendered before the court is prompted to exercise jurisdiction under judicial review. To exercise such powers at this juncture would be in contravention of the doctrine of exhaustion.

20. The doctrine of exhaustion is defined in Black's Law Dictionary 10th Edition as follows:

"The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine's purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary."

21. The Court of Appeal considered the doctrine of exhaustion in the case of **Geoffrey Muthinja & another v Samuel Muguna Henry & 1756 others [2015] KECA 304 (KLR)**, cited in the submissions by the 1st Defendant, where that Court pronounced itself in the following manner:

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

in place for resolution outside of courts. This accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.

We find and hold that the exhaustion doctrine applies even where, as was argued by the appellants herein, what is sought to be challenged is the very authority of the organs before whom the dispute was to be placed. We think there were sufficient safeguards in place for a valid determination of the various plaintiffs' disputes had they filed them within the church set up. And there was always the right, acknowledged by the learned Judge, of approaching the courts after exhaustion of the church mechanisms. By failing to do so, and quite apart from the force of their apprehensions, the appellants effectively failed to exhaust their remedies and essentially short-circuited the process by filing suits prematurely."

22. Section 3 of the Copyright Act establishes the 1st Respondent as follows;

There is established a Board to be known as the Kenya Copyright Board which shall be a body corporate with perpetual succession and a common seal and which shall be capable, in its corporate name of—

(a) suing and being sued;

(b) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing and lending money; and

(d) doing or performing all such other things or acts as may be necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

23. Section 5(g) of the act provides as follows;

The functions of the Board shall be to—

(g) administer and enforce all matters of copyright and related rights in Kenya as provided for under this Act and to deal with ancillary matters connected with its functions under this Act.

24.The 2nd respondent filed a complaint against the Applicant pertaining to the manifesto, alleging that the Applicant infringed on his rights with regards to the literary works therein. The Applicant was evidently invited to respond to the complaint via his official email which was annexed as annexure E4 with another letter followed up on 5th January 2026, summoning him once more for purposes of recording a statement and responding to the allegations. The applicant, having been emailed the summons to attend the 1st Respondents' office for purposes of responding to the allegations, cannot now come to the court seeking to be supplied with documents pertaining to the process he has ignored. The same would be an affront to the doctrine of equity as he has come before the court with unclean hands.

25.The process before the 1st Respondent has not proceeded past the investigation stage yet and given that the board is a state corporation with an enforcement mandate, where the process is clearly spelt out in law, the Applicant cannot leapfrog the process under the guise of constitutional violations, while at the same time refusing to comply with the rules of natural justice. From the demand notice, the Applicant is well aware of the subject of the proceedings before the 1st Respondent and therefore, cannot feign ignorance and seek orders to have this court compel the Respondents to avail the documents sought. I reiterate that some of the orders sought are moot as the applicant is seeking documents pertaining to a decision that is yet to be made by the 1st Respondent.

Whether the court should issue conservatory orders against the Respondents

26.The applicant has sought conservatory orders against any action arising from the complaint lodged by the 2nd Respondent. The principles for granting conservatory orders were stated in the case of **Board of Management of Uhuru Secondary School -vs- City County**

Director of Education and 2 Others (2015) eKLR where the court summarized the principles for the grant of conservatory orders and stated as follows:

“(i) The needs for the applicant to demonstrate an arguable prima facie case with likely hood of success and to show that in the absence of the conservatory orders he is likely to suffer prejudice.

(ii) The secondary principal in whether the denial of the conservatory order will enhance the constitutional values and objects of the specific right or freedom in the bill of rights.

(iii) The court should consider whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.

(iv) Whether the public interest would be prejudiced by a decision to exercise discretion to grant or deny conservatory order.”

27.The applicant has not demonstrated the existence of an arguable case with the likelihood of success and neither has he shown that in the absence of the conservatory orders he is likely to suffer prejudice. The petition is premature as the 2nd Respondent is yet to commence any prosecution proceedings arising from the complaint. Additionally, it shall not be in the interest of the public to grant the conservatory orders in the circumstances as it creates a precedent where parties summoned by the Copyright Board in relation to complaints on copyright infringement can easily ignore summons and seek refuge in the High Court, which would be contrary to the doctrine of exhaustion.

28.There is a very clear distinction in law between temporary injunction under Order 40 Rule 1 & 2 of the Civil Procedure Rules and the interim interdict in the form of conservatory orders. **The Gitaru Peter Munya -v- Disckson Mwenda Kihinji & 2 Others (2014) eKLR** illuminates the guiding principles on this subject matter. *“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 Applicant'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 courses"

29. In the overall evaluation of the Notice of Motion and the affidavit in support of the petitioner together with documentary evidential material annexed to averments originally filed and further fillings done in the entirety of the interlocking issues together with the rejoinder replying affidavits by the 1st Respondents and further the concerns raised by the 2nd Respondent for leave to be granted to have the petitioner cross-examined, all these relate to investigations initiated by the 1st Respondent as against the Petitioner. Without venturing into the merits of the petition, suffice to say the constitution and the enabling statutes has decentralised investigative powers to various organs such as the National Police Service in Article 244, 245, the Ethics and Anticorruption Commission in Article 79 of the constitution. In so far as this petition is concerned, the grievances surrounding the entire fundamental rights and freedoms is on the mandate accorded the 1st Respondent on matters arising under copyright law. On the face of it, the KENYA COPYRIGHT BOARD functions are well spelt out in the enabling legislation. In its answer to the Notice of Motion, the 1st Respondent has put forward some evidential material which avers that the given mandate was the basis of the issues being raised by the petition. Therefore, from its perspective, the threshold of an arguable prima-facie case with high chances of success to warrant grant of conservatory orders has not been met by the petitioner. It is now trite that at the stage of the conservatory orders, this court is not required to delve into a deeper analysis of the facts and the law but to weigh on the scale of justice whether from the facts the petitioner has raised the bar that what is in the petition has accompanied with the Notice of Motion

there is an arguable prima facie case and if orders are not issued there is a likelihood of him or her suffering prejudice or injustice. In **Nubian Rights Forum & 2 Others V Attorney -General & 6 Others, child Welfare Society & Others (Interested Parties), Centre for Intellectual Property & Information Technology (Proposed Amicus Curiae) (2019) eKLR** the court remarked inter-alia that in considering conservative orders it is incumbent upon the session judge to decide whether a grant or denial of the conservatory relief would enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights and whether if an Interim Conservative Order is not granted, the petition or its substratum will be rendered nugatory. The court further should also consider the public interest and relevant material facts in exercising its discretion whether to grant or deny a conservatory order as applied by the petition.

30. This Notice of Motion remedies as framed by the petitioner, is seeking to invoke the powers of this court to ensure meaningful remedies and accountability from the 1st Respondent in carrying out its nonstationary mandated functions especially regarding the complaint which may have been lodged by the 2nd Respondent, which by law established is to be addressed by the 1st Respondent. This court by the dictates of the constitution under Article 23 has the discretion to grant the relief sought at the interlocutory stage if it is necessary to ensure accountability. Essentially, it is for the court to order the violator to comply. The conservatory orders in this petition are seeking stay of proceedings before the 1st Respondent and this being extra-ordinary and equitable remedy aimed at preserving the res of a petition pending a final determination its threshold is much higher than a temporary injunction under Article 40 Rule 1 & 2 of the Civil Procedure Rules.

31. Conservatory orders are not granted as a matter of course. In terms of Section 107 (1) 108 & 109 of the Evidence Act, an Applicant or Petitioner must demonstrate, unique, special, and exceptional circumstances that justify the intervention of the court. It is my very considered view that it matters not whether the Applicant or Petitioner has moved the court under the clusters of Articles

1,2,3,10,22,23,33,35,47,50,73,159 and 165 of the Constitution of Kenya 2010, if granting the conservatory orders is directed to the subject matter which is not in danger of disappearing or being destroyed or rendered useless any such discretion should be exercised to decline or refusal of the orders. The constitutional courts in Kenya are also bound by Article 2(1) of the constitution which reads as follows: “ *This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government*”. Therefore, courts should be reluctant in their mandate to exercise jurisdiction to issue orders that paralyse the operations of Public Bodies unless a very strong case of constitutional violation has been demonstrated by the Applicant/Petitioner. The challenge I have with this Notice of Motion is the fact that conservatory orders sought are not clear and precise. The orders seem to dissipate and destroy the entire ongoing mandate of the 1st Respondent in taking steps to carry out proper investigations which may have been raised by the 2nd Respondent.

32.It follows that prayers 2 and 3 of the application cannot be granted in the circumstances as the documents sought therein have not been shown to be in existence and further, they are part of a process prescribed in law that the Applicant has clearly neglected to participate in, despite being summoned and issued with a demand notice. As a whole, the principles in

Giella vs. Cassman Brown (1973) EA 358 and **Nguruman Limited vs. Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR** considering the standard of discretion did directly impact scope of the decision taken by this court to decline grant of conservatory orders. Some of the issues raised in the Notice of Motion as accompanied with the affidavits by the Petitioner and responded to by the 1st & 2nd Respondent in legal context if granted will be *shutting the stable door after the horse has bolted*” See also **Oketch & Another v Mwenda & Another (2025) KEHC 14365, Stephen Kipkebut T/A Riverside Lodge and Rooms & Another V (2013) KECA 532.**

33.The entire spectrum of the Notice of Motion at hand is whether Judicial discretion can be exercised at this stage to grant the far reaching

orders as premised by the Petitioner touching on various aspects of the statutory mandate accorded to the 1st Respondent. I take Judicial Notice that this constitutional court is clothed with wide powers to exercise discretion which is the right to make official decisions using reason and judgement to choose from among acceptable alternatives. This is a very broad concept because of the different kinds of decisions which Judges must make within the same given circumstances. It is pertinent to mention that in this regard of the Notice of Motion as a forerunner of the petition the court granting the orders must and ought to exercise its discretion in a judicious manner more so when the issues being raised for determination at the interlocutory stage are not as a matter of course as they transcend the functions of other constitutional organs charged with certain critical mandate and their interference is a decision of last resort.

34.It has also to be kept in mind that for the purpose of granting conservatory orders and other ancillary orders the jurisprudential binder has used the words like reasonable grounds, prima facie case, dissipation, wastage, or rendering the matter at hand nugatory. Which means the court dealing with the grant of conservatory orders or any such orders like notifying the adverse party evidential material can only do so if it satisfies itself but there is a genuine case but the investigation of it is marred with malice. It is not expected at this stage by the court to go for a deeper analysis of the evidence establishing the guilt of a petition or Applicant for that matter. This is not the province of a constitutional court at this stage.

35.For those reasons, keeping in view the recognised principles and factors on grant of conservatory orders as discussed above, this court exercises its power to issue such orders judiciously and only when necessity exists. My view is, injunctive or conservative reliefs are remedies not liberally granted and therefore a court will always consider any hardship that may be occasioned by either of the parties by conducting a balancing act to either sustain or refuse such orders as prayed for by the Petitioner. True being a matter of discretion having appreciated the facts and applied those facts to the principles if this court was to

exercise discretion it would not be in furtherance of Justice for the parties to this petition. This Notice of Motion dated 13.2.2026 is lost hence paving way for the parties to fast track the hearing and determination of the substantive petition. In terms of this decision the application and notice to cross examine the petitioner is moot. The costs of this application be in the cause.

36.Leave to apply granted and Status Conference on 26.3.2026 for further orders.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 5TH DAY OF
MARCH 2026**

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**R. NYAKUNDI
HIGH COURT JUDGE**