

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT ELDORET**  
**PETITION NO. E010 OF 2024**

**IN THE MATTER OF: ENFORCEMENT OF THE BILL OF RIGHTS  
UNDER ARTICLE 19,20,21(1),22 & 165 OF THE  
CONSTITUTION OF KENYA.**

***AND***

**IN THE MATTER OF: VIOLATION OF FUNDAMENTAL RIGHTS  
& FREEDOMS UNDER ARTICLES 43 (1)(D) & 47 OF THE  
CONSTITUTION**

***AND***

**IN THE MATTER OF: INTERPRETATION & ENFORCEMENT OF  
ARTICLES 6 & 10 OF THE CONSTITUTION**

***AND***

**IN THE MATTER OF: DEVOLUTION OF POWERS AND  
FUNCTIONS UNDER ARTICLES 174,185 & 186 OF THE  
CONSTITUTION**

***AND***

**IN THE MATTER OF: THE WATER ACT, CAP 372**

***-BETWEEN-***

**PETER KIMANI WAWERU.....PETITIONER/APPLICANT**

***-VERSUS-***

**ELDORET WATER & SANITATION**

**COMPANY.....1<sup>ST</sup> RESPONDENT/RESPONDENT**

**WATER SERVICES REGULATORY**

**BOARD.....2<sup>ND</sup> RESPONDENT/RESPONDENT**

**THE HON.ATTORNEY**

**GENERAL.....3<sup>RD</sup> RESPONDENT/RESPONDENT**

R U L I N G

1. The Petitioner (hereinafter referred as **“the Applicant”**) did file a Notice of Motion Application dated 06.10.2025 (hereinafter referred to as **“the present Application”**) seeking the following Orders against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants (hereinafter referred to as **“the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents”**); -
  - a) **THAT the Application herein be certified urgent and service be dispensed with in the first instance. (SPENT)**
  - b) **THAT pending the hearing and determination of this Application, a Conservatory Order does issue forthwith to suspend the implementation of the directions contained in the Internal Memo dated 17.09.2025 issued by one DR. LAWRENCE TANUI, Managing Director of the 1<sup>st</sup> Respondent directing employees of the 1<sup>st</sup> Respondent to implement the water tariffs contained in Gazette Notice No. 12825 dated 04.10.2024. (SPENT)**
  - c) **THAT pending the conclusion of this Petition, a Conservatory Order does issue to suspend the implementation of the directions contained in the internal Memo dated 17.09.2025 issued by one DR. LAWRENCE TANUI, Managing Director of the 1<sup>st</sup> Respondent directing employees of the 1<sup>st</sup> Respondent to implement the water tariffs contained in Gazette Notice No. 12825 dated 04.10.2024.**
  - d) **THAT DR. LAWRENCE TANUI, PhD, Managing Director of the 1<sup>st</sup> Respondent be summoned to**

**appear before the Honourable Judge and show Cause why he should not be committed to Civil Jail for directing the disconnection of water supply to residents of Uasin Gishu in violation of Orders issued by this Court on the 25.03.2025.**

**e) THAT the Office of the Director of Public Prosecutions be mandated to undertake investigations against the said DR. LAWRENCE TANUI, PhD, Managing Director of the 1<sup>st</sup> Respondent for committing a crime under Section 29 of the Environment and Land Court Act with a view to pursuing a criminal prosecution.**

2. The prayers above are premised on the grounds adduced in the body of the present Application and the Supporting Affidavit sworn by the Applicant which are summarised as follows; -

i) This Court did deliver a Ruling on 25.03.2023 in which the application dated 20.12.2024 was allowed in the following terms:

(a) Pending the hearing and determination of the present Petition, a Conservatory Order do issue suspending and/or staying the Gazette Notice No. 12825 published by the 2<sup>nd</sup> Respondent on 4.10.2024.

(b) That the Petitioner and Interested Party will continue paying the old rates pending the hearing and determination of this Petition, and in the event any party fails to pay their bills based on the old rates, the 1<sup>st</sup> Respondent is at liberty to disconnect the metres.

ii) According to the Applicant, the Orders mentioned hereinabove were made in the presence of the 1<sup>st</sup>

Defendant's Counsel and were clear and unambiguous hence did not require any further interpretation.

- iii) However, on 17.09.2025, the 1<sup>st</sup> Respondent through its Managing Director did issue an internal memo stating as follows,
  - (a) That the 1<sup>st</sup> Respondent was now at liberty to implement the tariff contained in Gazette Notice No. 12825 dated 4.10.2024.
  - (b) That the 1<sup>st</sup> Respondent would proceed with the implementation in line with WASREB's guidelines and customer notification procedures.
  - (c) That the 1<sup>st</sup> Respondent's focus remained on providing service delivery, expanding access, and ensuring the sustainability of their operations.
- iv) Based on the above Internal Memo dated 17.09.2025, the employees of the 1<sup>st</sup> Respondent did descend on the residents of Uasin Gishu and begun disconnecting water meters for unpaid bills under the impugned tariffs.
- v) Further to that, the 1<sup>st</sup> Respondent begun issuing bills using the impugned water tariffs contained in Gazette Notice No. 12825 dated 4.10.2024.
- vi) The Applicant pleaded that the Managing Director of the 1<sup>st</sup> Respondent has vehemently refused to withdraw or rescind the Internal Memo dated 17.09.2025 despite interventions of the residents of Uasin Gishu.
- vii) Consequently, the Applicant averred that the Managing Director of the 1<sup>st</sup> Respondent is in contempt of the Orders issued on 25.03.2025 and should therefore be summoned to Court to Show Cause Why he should not be committed to civil jail.

- viii) The Applicant did state that this Court's Orders should not be issued in vain and so far, none of the Respondents has filed any appeal or obtained any stay orders against the decision of this Court made on 25.03.2025
3. The present application was duly served on the 1<sup>st</sup> - 3<sup>rd</sup> Respondents herein.
  4. The 1<sup>st</sup> Respondent did oppose the present Application through a Replying Affidavit dated 17.12.2025.
  5. In the Replying Affidavit dated 17.12.2025, the 1<sup>st</sup> Respondent did plead the following facts in opposition of the present Application; -
    - (i) The 1<sup>st</sup> Respondent did state that the legality of the Gazette Notice No.12825 increasing the Water Tariffs published by the 2<sup>nd</sup> Respondent was an issue of litigation on the proceeding known as ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024.
    - (ii) The proceeding known as ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024 was indeed heard on merit and the same dismissed thereof.
    - (iii) Currently, the Petitioners in the proceeding known as ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024 are pursuing an Appeal before the Water Appeals Tribunal which is yet to be determined.
    - (iv) As such, the 1<sup>st</sup> Respondent was of the considered view that the issues in this Petition which are similar to those in the proceeding known as ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024 cannot be re-litigated on in Petition.

- (v) The 1<sup>st</sup> Respondent did plead and submit that the present Application was pre-mature as the Order issued by the Applicants did not contain the mandatory Penal Notice.
  - (vi) Further to that, the Orders suspending the Gazette Notice No.12825 published by the 2<sup>nd</sup> Respondents had been overtaken by events keeping in mind that Judgement pronounced in ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024.
  - (vii) The 1<sup>st</sup> Respondent did challenge the manner in which the Applicants had obtained the Internal Memo dated 17.09.2025 which was not meant for public consumption.
  - (viii) As such, the Court was requested not to rely on the contents of the Internal Memo dated 17.09.2025 produced by the Applicants as the same had been obtained contrary to the provisions of the Access to Information Act.
  - (ix) In conclusion, the 1<sup>st</sup> Respondent sought this Court to dismiss the present Application.
6. The 2<sup>nd</sup> Respondent also did oppose the present Application by filing a Replying Affidavit dated 15.12.2025.
7. In the Replying Affidavit dated 15.12.2025, the 2<sup>nd</sup> Respondent did plead the following facts in opposition of the present Application; -
- (i) Based on the Judgement pronounced by this Court on the 16.10.2025 in the proceeding known as ELDORET CONSTITUTIONAL PETITION NO. E009 OF 2024, the 1<sup>st</sup> Respondent did seek an advisory opinion through a letter

dated 17.09.2025 on the way forward with the Gazette Notice No.12825 reviewing the water tariffs.

- (ii) On the 08.10.2025, the 2<sup>nd</sup> Respondent did render its advisory opinion to the 1<sup>st</sup> Respondent against the implementation of the new Tariffs contained in the Gazette Notice No. 12825 dated 04.10.2024 in view of the Conservatory Orders issued on the 25.03.2025.
  - (iii) The 2<sup>nd</sup> Respondent did state that notwithstanding the Advisory Opinion dated 08.10.2025, the 1<sup>st</sup> Respondent did proceed to implement the new Tariffs contained in the Gazette Notice No. 12825 dated 04.10.2024 with effect from October, 2025.
  - (iv) As such, the 2<sup>nd</sup> Respondent did plead that it had not participated in any disobedience of law Court Orders and was an institute that upholds the rule of law at all times.
8. The Court has indeed carefully perused the present Application, the Replies by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the submissions thereof and identifies the following issues for determination; -

**ISSUE NO. 1 - WHETHER OR NOT THE INTERNAL MEMO DATED 17.09.2025 IS IN CONTEMPT OF THE ORDERS ISSUED ON 25.03.2025?**

**ISSUE NO.2- WHETHER THE ACTIONS OF THE 1<sup>ST</sup> RESPONDENT IN THE DISCONNECTION OF WATER METERS OR BILLING OF WATER BASED ON THE TARRIFF CONTAINED IN GAZETTE NOTICE No. 12825 DATED 04.10.2024 AFTER THE INTERNAL MEMO OF**

**17.09.2025 WAS IN CONTEMPT OF ANY COURT ORDER?**

**ISSUE NO. 3 - IS THE PRESENT APPLICATION MERITED OR NOT?**

**ISSUE NO. 4 - WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**

9. The Court having identified the above-mentioned issues will now proceed to determine the same as provided below.

**ISSUE NO.1 -WHETHER OR NOT THE INTERNAL MEMO DATED 17.09.2025 IS IN CONTEMPT OF THE ORDERS ISSUED ON 25.03.2025?**

10. The first issue for determination is whether or not the Internal Memo dated 17.09.2025 was issued contrary to the Orders made on 25.03.2025.
11. The Applicant do plead and submit that this Court did issue a Conservatory Order prohibiting the implementation of the new tariffs published by the 2<sup>nd</sup> Respondent in Gazette Notice No. 12825 dated 4.10.2024.
12. The Conservatory Order made on 25.03.2025 was to subsist until determination of the present petition.
13. According to the Applicants, the present Petition is yet to be determined.
14. However, even before the determination of the present Petition, the 1<sup>st</sup> Respondent went ahead and did issue an Internal Memo dated 17.09.2025.

15. The intention and purpose of the Internal Memo dated 17.09.2025 by the 1<sup>st</sup> Respondent was to revise the water tariffs and apply the tariffs contained in the Gazette Notice No. 12825 issued by the 2<sup>nd</sup> Respondent.
16. According to the Applicant, this was contrary to the Conservatory Order issued on 25.03.2025.
17. The question that needs to be answered then is whether the Applicant's position is correct or not.
18. To begin with, it is true that this Court did issue a Conservatory Order prohibiting and/or Staying the implementation of the Gazette Notice No. 12825 dated 4.10.2024 by the 2<sup>nd</sup> Respondent.
19. However, there were two other matters namely ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 of 2024 and ELDORET ENVIRONMENT & LAND COURT PETITION NO. E001 OF 2024 all challenging the legality and constitutionality of the Gazette Notice No. 12825 dated 4.10.2024 published by the 2<sup>nd</sup> Respondent.
20. The Conservatory Order issued on 25.03.2025 in fact applied to the other two Petitions namely ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 of 2024 and ELDORET ENVIRONMENT & LAND COURT PETITION NO. E001 OF 2024 as well.
21. As fate would have it, this Court did indeed proceed with the hearing of ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 OF 2024 which had two Petitioners and the members of 64 Residents' Association which is a public body

with a substantive number of residents within Uasin Gishu County.

22. Upon hearing of ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 OF 2024 on its merits, the Court made the following determinations on 16.09.2025 in its Judgement; -

**(a) The Amended Petition dated 25.02.2025 is premature and in contravention of Section 119 and 121 of the Water Act, 2016 and therefore is struck out.**

**(b) The Interim Orders issued on 25.03.2025 Staying Gazette Notice No. 12825 dated 4.10.2024 be and are hereby discharged.**

**(c) The Petitioners will bear the costs of the present application as well as the application dated 4.11.2024.**

23. Looking at the above Orders made in the Judgment pronounced on the 16.09.2025 in ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 OF 2024, it is clear that the Conservatory Order issued on 25.03.2025 was set aside and/or vacated thereof.

24. The only issue is that the Orders made on the 16.09.2025 in the Judgement pronounced in ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 OF 2024 setting aside or vacating Conservatory Order issued on the 25.03.2025 have not been endorsed in this file.

25. Be as it may, this Court takes Judicial Notice that the Conservatory Order issued on 25.03.2025 in this matter and in the other two petitions namely ELDORET ENVIRONMENT &

LAND COURT PETITION NO. E009 of 2024 and ELDORET ENVIRONMENT & LAND COURT PETITION NO. E001 OF 2024 have since been vacated and set aside pursuant to the Judgement pronounced on the 16.09.2025 in ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 of 2024.

26. In essence therefore, the Internal Memo dated 17.09.2025 by the 1<sup>st</sup> Respondent was not in contempt of the Conservatory Order issued on 25.03.2025.

**ISSUE NO.2- WHETHER THE ACTIONS OF THE 1<sup>ST</sup> RESPONDENT IN THE DISCONNECTION OF WATER METERS OR BILLING OF WATER BASED ON THE TARRIFF CONTAINED IN GAZETTE NOTICE No. 12825 DATED 04.10.2024 AFTER THE INTERNAL MEMO OF 17.09.2025 WAS IN CONTEMPT OF ANY COURT ORDER?**

27. The second issue for determination is whether or not the 1<sup>st</sup> Respondent's actions of disconnecting water meters for none payment of bills that are based on the new tariffs contained in the Gazette Notice No. 12825 dated 04.10.2024 was in contempt of the Conservatory Order issued on the 25.03.2025.
28. The Applicant herein did plead that after the 1<sup>st</sup> Respondent did issue the Internal Memo dated 16.09.2025, its employees did proceed to disconnect the water meters of various consumers claiming none payment of bills that had been invoiced using the new tariffs contained in the Gazette Notice No. 12825 dated 04.10.2024.

29. The Court has taken time to go through the annexures contained in the supporting affidavit sworn by the Applicant.
30. However, the Applicant herein did not attach any Invoice generated by the 1<sup>st</sup> Respondent that demonstrates that it had applied the new tariffs contained in the Gazette Notice No. 12825 dated 04.10.2024.
31. The only things that the Applicant did annex in the Supporting Affidavit were three messages in the names of Purity, Alice and Mercy showing the balances due.
32. A closer look at the three messages shows that the message from Mercy and Alice relates to one Account No. 3001608-001 while the message from Purity is for Account No. 3046856-001.
33. Unfortunately, in both accounts, the Account Numbers indicated therein were in arrears of over Kenya Shillings 10,000/-.
34. Clearly therefore, the Applicant herein does not have any evidence that the 1<sup>st</sup> Respondent had generated a bill using the new tariffs on or before the 16.09.2025 when the Conservatory Order was set-aside and/or vacated by this Court.
35. In addition to this, the 1<sup>st</sup> Respondent was well within its statutory powers to disconnect any water meters and/or accounts that were in arrears including the ones mentioned hereinabove.
36. As such, this Court is of the considered view and finding that the 1<sup>st</sup> Respondent was not in contempt of the Conservatory Order issued on the 25.03.2025 in the Billing and

disconnection of the meters or accounts that were in arrears thereof.

**ISSUE No. 3 - IS THE PRESENT APPLICATION MERITED OR NOT?**

37. The third issue is whether or not the present Application is merited.
38. Based on the findings in Issue No. 1 and 2 hereinabove, this Court is of the finding that the present Application is not merited.

**ISSUE No. 4 - WHO BEARS THE COSTS OF THE PRESENT APPLICATION?**

39. On costs, the Applicant has not been successful in the present Application and is condemned to pay costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein.

**CONCLUSION**

40. In conclusion, this Court hereby makes the following Orders in determination of the present Application; -

**A. THE NOTICE OF MOTION APPLICATION DATED 06.10.2025 IS NOT MERITED AND THEREFORE DISMISSED.**

**B. THE APPLICANT IS CONDEMNED TO PAY COSTS OF THE PRESENT APPLICATION TO THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS HEREIN.**

**C. FOR AVOIDANCE OF DOUBT, THE CONSERVATORY ORDER ISSUED ON THE 25.03.2025 AGAINST THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS HEREIN BE AND IS HEREBY**

**VACATED AND/OR SET-ASIDE PURSUANT TO THE JUDGEMENT PRONOUNCED ON THE 16.09.2025 IN ELDORET ENVIRONMENT & LAND COURT PETITION NO. E009 OF 2024.**

**DATED, SIGNED and DELIVERED in ELDORET this 2<sup>ND</sup> DAY OF MARCH,2026.**

**EMMANUEL.M. WASHE  
JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Counsel for the Applicant: Mr. Oduor (N/A)

Counsel for the Respondent: Mr. Kibet holding brief for Ms. Chidzao for 2<sup>nd</sup> Respondent  
Mr. Kwame for 1<sup>st</sup> Respondent