

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
PETITION NO. 5 OF 2021
IN THE MATTER OF: ARTICLES 1(1). (2). (3B) &(4A), 2(5) and (6).
10,19,20.21.22.23.73.75,159 and 165 OF THE CONSTITUTION OF
KENYA 2010
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLE
12,13,14,28,29.31,35.38.40,43,47 AND 50 OF THE CONSTITUTION OF
KENYA 2010 AND SECTIONS 5,8,9,11 OF THE REGISTRATION OF
PERSONS ACT CAP 107 OF THE LAWS OF KENYA
AND
IN THE MATTER OF KENYA NATIONAL IDENTITY CARD NO. 11304301
BETWEEN
UMMI NECHESA WANGA.....
PETITIONER
VERSUS
PRINCIPAL REGISTRAR OF
PERSONS.....1ST RESPONDENT
MELISA NECHESA OSANYA alias UMMI NECHESA WANGA.....2ND
RESPONDENT
THE ATTORNEY
GENERAL.....3RD
RESPONDENT

RULING

1. Before this Court is the Petitioner/Applicant’s Notice of Motion dated 25th July 2025, brought under Article 50(1) and (2)(g) of the Constitution, Sections 1A, 1B and 80 of the Civil Procedure Act, Order 9 Rule 9 and Order 45 Rule 1 of the Civil Procedure Rules, and all other enabling provisions of the law.
2. The application seeks the following orders:
 - a. THAT this application be certified urgent and be heard ex parte in the first instance.

- b. THAT leave be granted to the firm of Amasakha & Company Advocates to come on record for the Petitioner/Applicant in place of the firm of Omwando Mbaka & Company Advocates.
- c. THAT pending the hearing and determination of this application inter partes, this Honourable Court be pleased to issue a temporary order of injunction restraining the Principal and/or Director, Registrar of Persons, her agents, or any person acting under her authority, from issuing or continuing to process National Identity Card Number 11304301, or any identity card associated with the Petitioner's biometric data, to any third party other than the Petitioner and to involve the Petitioner directly.
- d. THAT this Honourable Court be pleased to summon the Principal and/or Director, Registrar of Persons to appear before it and explain the legal and factual basis upon which a new application for Identity Card Number 11304301 was initiated without consultation with the Petitioner and the reasons for inaction upon being served with a formal complaint and the judgment of this Court.
- e. THAT this Honorable Court be pleased to review and set aside its judgment delivered on 19th June 2025 and reinstate the petition herein for purposes of hearing and determination on merits.
- f. THAT this Honorable Court be pleased to take judicial notice of the findings and judgment of the Principal Magistrate's Court at

Butali in Criminal Case No. E846 of 2021, wherein the 2nd Respondent was found guilty of uttering a false document relating to the Petitioner's National Identity Card Number 11304301, and the Petitioner was declared the rightful holder of the said identity card.

- g. THAT the Petitioner be granted leave to amend her Petition to include a claim for exemplary and aggravated damages for violation of her constitutional rights.
 - h. THAT the annexed amended petition be deemed duly filed upon payment of the requisite court fees.
 - i. THAT costs of this application and the petition be awarded to the Petitioner.
 - j. THAT this Honorable Court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances.
3. The application is premised on the grounds set out on its face and in the supporting affidavit sworn by the Petitioner, Ummi Nechesa Wanga.

PETITIONER'S SUBMISSIONS

4. The Petitioner contends that this Court, in its judgment delivered on 19th June 2025, declined to conclusively determine the petition on the basis that the issue of ownership of National Identity Card No.

11304301 was pending before the Principal Magistrate's Court at Butali.

5. The said criminal case has since been fully heard and determined, resulting in the conviction of the 2nd Respondent for the offence of uttering a false document, and a finding that the Petitioner is the rightful holder of the identity card.
6. Despite that determination, the Registrar of Persons has allegedly continued to process or allow processing of an identity card based on the Petitioner's biometric data without her involvement.
7. The continued duplication and/or processing of her identity data violates her constitutional rights, including the right to dignity, privacy, and recognition as a citizen. The Petitioner continues to suffer prejudice, including risk of arrest, reputational harm, and denial of access to essential services.
8. The application is opposed by the 2nd Respondent, who filed a replying affidavit and written submissions.

2ND RESPONDENT'S SUBMISSIONS

9. The 2nd Respondent's position is that she lawfully applied for and was issued with the identity card by the Registrar of Persons. Her conviction for uttering a false document does not conclusively determine ownership of the identity card.

10. Evidence in the criminal proceedings indicated that the identity card originated from the Registrar of Persons
11. She has been using the identity card in various transactions, including a pending civil claim, and stands to suffer prejudice if the orders sought are granted and that the Petitioner has not satisfied the threshold for grant of an interlocutory injunction.
12. The 1st and 3rd Respondents did not file any responses or submissions.

ISSUES FOR DETERMINATION

1. The issues for determination are:
 - i. Whether the Applicant has satisfied the threshold for review;
 - ii. Whether the Applicant is entitled to a temporary injunction;
 - iii. Whether this Court should take judicial notice of the criminal proceedings;
 - iv. Costs.

ANALYSIS

i. Whether the threshold for review has been met

2. The law on review is settled under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.
3. The Court of Appeal ***in National Bank of Kenya Ltd v Ndungu Njau*** **held that: “A review may be granted whenever the court**

considers that it is necessary to correct an apparent error or omission... or where new and important evidence has been discovered.”

4. in **Benjoh Amalgamated Ltd v Kenya Commercial Bank Ltd**, ***the Court emphasized that review is available where new evidence emerges that was not available despite due diligence.***
5. In the present case, the earlier judgment of this Court expressly deferred determination pending the outcome of Butali Criminal Case No. E846 of 2021.
6. It is not disputed that the criminal case has since been concluded, resulting in a conviction of the 2nd Respondent for uttering a false document, and Findings touching on the identity card in issue.
7. This constitutes new and material evidence, which directly addresses the basis upon which this Court declined to determine the petition earlier.
8. Further, ***in Republic v Public Procurement Administrative Review Board & 2 Others ex parte Pelt Security Services Ltd, the Court held that review is justified where the substratum of the earlier decision has fundamentally changed.***
9. Accordingly, this Court finds that the threshold for review has been met.

ii. Whether the Applicant is entitled to a temporary injunction

10. The principles governing interlocutory injunctions are well settled, ***In Giella v Cassman Brown & Co. Ltd, the Court laid down the three-part test:***

1. Establishment of a prima facie case;

2. Likelihood of irreparable harm;

3. Balance of convenience.

11. These principles were restated and refined in ***Nguruman Limited v Jan Bonde Nielsen & 2 Others, where the Court emphasized that the three conditions are sequential and not discretionary alternatives.***

(a) Prima facie case

12. ***In Mrao Ltd v First American Bank of Kenya Ltd & 2 Others, a prima facie case was defined as: “A case which on the material presented... shows a right which has apparently been infringed.”***

13. The Petitioner relies on a criminal conviction for uttering a false document and forensic evidence linking her biometrics to the identity card.

14. While the 2nd Respondent argues that criminal findings are not conclusive Under Section 47A of the Evidence Act, a final criminal conviction is conclusive proof of guilt in subsequent civil proceedings relating to the same facts.
15. The Court therefore finds that the Petitioner has established a prima facie case with a probability of success.

(b) Irreparable harm

16. ***In Nguruman Limited v Jan Bonde Nielsen & 2 Others, the Court stated: “Speculative injury will not do; there must be actual, substantial injury that cannot be adequately compensated by damages.”***
17. The dispute herein concerns:
 - a. Legal identity;
 - b. Citizenship documentation;
 - c. Biometric data.
18. These implicate constitutional rights under Articles 28 (dignity), 29 (security), and 31 (privacy).
19. ***In Coalition for Reform and Democracy (CORD) v Republic of Kenya, the Court underscored the centrality of identity and personal data in constitutional protection.***
20. This Court is persuaded that wrongful duplication or use of identity data exposes the Petitioner to legal and administrative risks

and cannot be adequately remedied by damages. Thus, irreparable harm has been established.

(c) Balance of convenience

21. Where doubt exists, the Court considers the balance of convenience. ***In American Cyanamid Co v Ethicon Ltd, it was held that the Court should adopt the course that minimizes risk of injustice.***

22. Further, ***in Suleiman v Amboseli Resort Ltd, the Court emphasized that: "The court should take whichever course appears to carry the lower risk of injustice."***

23. In the present case the Petitioner risks continued violation of identity rights and the 2nd Respondent risks temporary inconvenience in use of the document.

24. Preserving the status quo in a manner that prevents further processing or duplication best safeguards the integrity of public records. The balance of convenience therefore tilts in favour of the Petitioner.

iii. Whether the court should take Judicial notice of criminal proceedings and judgment in Butali Criminal Case No.E846 of 2021.

25. Under Sections 59 and 60 of the Evidence Act, courts may take judicial notice of matters of public record.
26. ***In Kenya Revenue Authority v Menginya Salim Murgani, the Court affirmed that judicial notice may be taken of prior proceedings and determinations.***
27. Accordingly, this Court takes judicial notice of the judgment in Butali Criminal Case No. E846 of 2021, while noting that its full probative value will be assessed at trial.
28. In light of the foregoing, the Court makes the following orders:
- a) Leave is granted to Amasakha & Company Advocates to come on record for the Petitioner.
 - b) The judgment delivered on 19th June 2025 is hereby reviewed and set aside.
 - c) The petition is hereby reinstated for hearing on merits.
 - d) A temporary injunction is hereby issued restraining the Registrar of Persons from issuing, processing, or dealing with National Identity Card No. 11304301, or any ID linked to the Petitioner's biometric data, in favour of any third party pending hearing and determination of the petition.
 - e) The Petitioner is granted leave to amend the petition.
 - f) Costs shall abide the outcome of the petition.
 - g) Mention 24.9.2026 for further directions.

h) Right of Appeal 30 days explained.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18TH DAY OF
MARCH, 2026.**

S.N MBUNGI

JUDGE

In the Presence of:-

CA: Zilda/Velma

Ms. Were for the 2nd Respondents present online.

Mr. Masakha, Umami Nechesa a party present online.

1st and 3rd accused absent though aware of the ruling.