

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**PETITION NO. E009 OF 2025**

**HASSAN BONAYA.....**  
**PETITIONER/APPLICANT**

**VERSUS**

**THE CLERK,**

**COUNTY ASSEMBLY OF ISIOLO.....1<sup>ST</sup>**  
**RESPONDENT**

**ATTORNEY-  
GENERAL.....2<sup>ND</sup>**  
**RESPONDENT**

**THE GOVERNMENT PRINTER.....3<sup>RD</sup>**  
**RESPONDENT**

**RULING**

1. What is coming up for determination is the Petitioner's Notice of Motion dated 19<sup>th</sup> August 2025 seeking for the following orders;
  - a) *(spent)*
  - b) *( spent).*
  - c) *(spent)*
  - d) *That pending the hearing and determination of the Petition, this Honourable Court be pleased to issue conservatory orders preserving the validity and effect of Gazette Notice No.11384 dated 6<sup>th</sup>*

*August 2025 and published on 11<sup>th</sup> August 2025 and allowing the ongoing renovations to proceed without interference.*

*e) That the costs of this Application be borne by the Respondents.*

*f) Any other or further Orders that this Honourable Court may deem fit and just to grant.*

## **The Applicant's Case**

2. On 19<sup>th</sup> August 2025 the Petitioner( Applicant), moved this Court seeking *inter alia* a conservatory relief following what he termed an unlawful fabrication in the form of Gazette Notice No. 11451, which seeks to reverse an earlier gazette Notice authorizing the temporary relocation of the sittings of the county Assembly of Isiolo from its usual Assembly chambers to oldonyiro town hall
3. He contends that the initial temporary relocation of Assembly sittings to Oldonyiro under Gazette Notice No. 11384 was a lawful and necessary administrative act. The Petitioner avers that this decision was sanctioned by a resolution of the County Assembly Service Board on 15<sup>th</sup> July 2025, and subsequently adopted by the full Assembly on 16<sup>th</sup> July 2025, to facilitate urgent renovations of the main chambers following political disturbances in June 2025.
4. He states that he is aggrieved by the fact that the purported revocation of the relocation notice was published by the Government Printer without any supporting resolution from the Board or the Assembly.
5. The Applicant argues that this action violated Article 47 of the Constitution by failing to provide notice,

- reasons, or a hearing to affected stakeholders, and Article 10 due to a total lack of public participation
6. Further, he asserts that Gazette Notice No. 11384 created a legitimate expectation that sittings would remain at Oldonyiro for a fixed period of five months, a right he claims is at risk of being arbitrarily defeated
  7. He maintains that unless the Court stays the revocation, the ongoing renovations will stall, triggering a governance paralysis that will render his Petition nugatory

### **The Respondents' Case**

8. The response from the 1st Respondent's office is split by an internal leadership dispute. Salad Boru Guracha asserting his status as the substantive Clerk and Accounting Officer protected by existing court orders, filed a Replying Affidavit supporting the Petitioner's case
9. He confirms that the Board resolved on 22<sup>nd</sup> August 2025 to robustly defend the Petition because the revocation notice was unauthorized, procedural, and issued without the requisite approval or payment from his office as the Accounting Officer. He maintains that the original relocation was procedural and approved by the presiding Deputy Speaker in the absence of the Speake
10. The matter proceeded by way of written submissions

### **The Petitioner's Submissions**

11. It is the Petitioner's submission that a prima facie case with a high likelihood of success has been

established. It is contended that the impugned revocation was a unilateral act that violated the principles of public participation, fair administrative action, and good governance as anchored in Articles 10 and 47 of the Constitution.

12. Citing the authority of **Keroche Industries Ltd v Kenya Revenue Authority (2007) eKLR**, the Petitioner submits that Gazette Notice No. 11384 created a clear expectation that the Assembly would operate from Oldonyiro for five months to facilitate necessary renovations. The Petitioner asserts that the abrupt revocation of this notice, without lawful justification, arbitrarily defeats that expectation.
13. On the issue of the nugatory effect, the Petitioner submits that renovations of the Isiolo County Assembly Chambers are currently ongoing. It is argued that any revocation of the relocation notice will immediately halt these works, disorganize Assembly sittings, and result in governance paralysis. Consequently, the Petitioner maintains that the substratum of the Petition would be destroyed if conservatory orders are not granted, as the damage to legislative operations would be irreversible by the time the matter is determined.
14. Regarding the balance of convenience and public interest, the Petitioner contends that the Respondents will suffer no prejudice if the status quo is maintained pending the hearing of the Petition. Conversely, it is submitted that the public interest tilts heavily in favor of granting the orders to ensure that state actions comply with constitutional dictates and that the rule of law is upheld against arbitrary administrative whims.

15. The Petitioner anchors the Court's jurisdiction on Articles 22, 23, and 165(3) of the Constitution, asserting the Court's mandate to intervene where fundamental rights are threatened by state action. Reliance was also placed on **Centre for Rights Education and Awareness (CREAW) v Speaker of the National Assembly(2013)eKLR**

### **The 1<sup>st</sup> Respondent Submissions.**

16. The 1<sup>st</sup> Respondent's Submissions, dated 22<sup>nd</sup> January 2026, is in support of the Notice of Motion. The 1<sup>st</sup> Respondent, identifies himself as the substantive Clerk of the Isiolo County Assembly since 2014, and asserts that the purported revocation of the Assembly's relocation was a brazen attempt to subvert the Assembly's independence.

17. It is the 1<sup>st</sup> Respondent's case that Gazette Notice No. 11451, which purports to revoke the relocation of sittings to Oldonyiro, is an unlawful fabrication.

18. He submits that the notice was procured through an abuse of office because, there was no resolution by the County Assembly Service Board or the Assembly itself to rescind the original relocation decision; That the revocation notice was never signed or approved by the Office of the Speaker or Deputy Speaker; The 1<sup>st</sup> Respondent, in his capacity as the Accounting Officer, never authorized nor made payment to the Government Printer for the publication of the said revocation,.

19. The 1<sup>st</sup> Respondent further submits that the Petitioner has established a prima facie case with a high likelihood of success. He contends that the publication of the revocation notice without public

participation or notice to affected stakeholders constitutes a gross violation of Articles 10 and 47 of the Constitution. He argues that administrative action taken without procedural fairness is unconstitutional and void, citing the rule in **Dry Associates Ltd v Capital Markets Authority(2012) eKLR**.

20. On the issue of the nugatory effect, the 1<sup>st</sup> Respondent submits that a refusal to grant conservatory orders would jeopardize ongoing renovations of the Assembly precincts and stall legislative proceedings. He asserts that the prejudice is real and not imagined, and that the public stands to suffer irreparable harm if the lawful relocation under Gazette Notice No. 11384 is not preserved,.
21. Regarding public interest, the 1<sup>st</sup> Respondent maintains that the public interest tilts heavily toward the court exercising its discretion to grant conservatory relief. He submits that it is in the interest of the residents of Isiolo that state actions comply with the rule of law and that any attempt to disrupt the operations of the Assembly without following laid-down procedures be halted.
22. The other respondents did not file submissions .

### **Analysis and Determination**

23. The only issue for determination is whether the application meets the threshold for the grant of conservatory orders. the threshold for granting conservatory orders is well-settled. In **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (2014)eKLR**, the Supreme Court held that such orders are granted on the inherent merit of a case,

bearing in mind the public interest and constitutional values. An applicant must demonstrate:

- a. A prima facie case with a likelihood of success.
  - b. A real danger that the Petition will be rendered nugatory if the orders are withheld.
  - c. That the public interest tilts in favor of the grant.
24. Further, as summarized in **Board of Management of Uhuru Secondary School v City County Director of Education (2015) eKLR**, a prima facie case is not one that must necessarily succeed, but one that is not frivolous and raises arguable constitutional issues. While the Applicant points to procedural frailties in the revocation notice under Article 47 and the rule in **Dry Associates Ltd v Capital Markets Authority (2012) eKLR**, the opposing side raises a significant challenge to the validity of the initial relocation itself. However the initial relocation is outside the scope of this Application.
25. Nevertheless, this Court must consider the utility of the orders sought. The relocation sanctioned by Gazette Notice No. 11384 was explicitly limited to a period of five months, running from 19<sup>th</sup> August 2025 to 11<sup>th</sup> December 2025. That period has since lapsed. It is expected that upon expiry of the period stipulated in the gazette Notice, sittings would have resumed or ought to have resumed at its original physical address.
26. If this Court was to grant the conservatory orders sought, it would be granting orders that have been overtaken by events. The substratum for which these orders were sought; to allow sittings at Oldonyiro during a specific five-month renovation window has ended

27. I find that the application no longer meets the threshold for conservatory relief as any order issued on this issue would be purely academic. In the circumstances the Application is struck off.

Dated, signed and delivered at Isiolo this 19<sup>th</sup> March 2026.

S.Chirchir

Judge.

ORIGINAL