



**Kibagendi v National Assembly & 2 others (Petition E113 of 2026)
[2026] KEHC 3974 (KLR) (Constitutional and Human Rights) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E113 OF 2026

B MWAMUYE, J

MARCH 19, 2026

**IN THE MATTER OF ARTICLES 1(1), 2(1), 2(2), 2(4), 3, 10, 19, 21, 22, 23, 24, 27, 33,
38, 47, 48, 50, 75, 80, 124, AND 258 OF THE CONSTITUTION OF KENYA, 2010;**

AND

**IN THE MATTER OF: VIOLATION AND/OR INFRINGEMENT OF
ARTICLE 24, 38, 47, AND 50 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS SECTION 4(3)(B), 5(2)(B) & (C),
7(1)(A) & (2), 9, 10, 11(1) OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF STANDING ORDERS 52, 108 AND 111 OF
THE NATIONAL ASSEMBLY STANDING ORDERS (6TH EDITION)**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, (PROTECTION OF RIGHTS
& FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

HON ANTONY KIBAGENDI PETITIONER

AND

THE NATIONAL ASSEMBLY 1ST RESPONDENT

THE SPEAKER OF THE NATIONAL ASSEMBLY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT



RULING

(Ruling on the Notice of Motion Application dated 20th February, 2026)

1. The Petitioner/Applicant, an elected Member of the National Assembly representing the people of Kitutu Chache South Constituency, has moved this Honourable Court under *the Constitution* and applicable statutory framework seeking urgent conservatory relief arising from the decision of the Respondents made on 17th February 2026, purporting to indefinitely suspend and/or exclude him from the proceedings and precincts of Parliament.
2. At the heart of the Petition lies a challenge to the constitutionality, legality, and procedural propriety of the impugned decision. The Petitioner contends that, while exercising his constitutionally guaranteed freedom of expression, he made certain remarks during a televised interview in his private capacity, which allegedly aggrieved the 2nd Respondent. On the basis of those utterances made outside the precincts of Parliament the Respondents proceeded to impose an indefinite exclusion, effectively barring him from discharging his parliamentary mandate.

Petitioner's Case

3. The Petitioner avers that the impugned decision is ultra vires, unlawful, and in blatant contravention of the Standing Orders governing parliamentary discipline. In particular, he asserts that no lawful disciplinary process was invoked: there was no substantive motion before the House, no finding of gross misconduct as contemplated under the Standing Orders and no legal basis for the imposition of an indefinite sanction, the maximum permissible period under the applicable framework being twenty-eight (28) days.
4. Further, the Petitioner contends that the decision was reached in egregious violation of his right to a fair hearing under Article 50 of *the Constitution*. He was neither notified of the allegations in any procedurally fair manner nor afforded an opportunity to respond thereto. Indeed, the 2nd Respondent expressly declined to accord him a hearing, thereby rendering the decision procedurally defective and constitutionally infirm. The Petitioner equally challenges the purported finding of contempt, asserting that his conduct did not meet the threshold prescribed under the relevant Standing Orders.
5. It is the Petitioner's case that the impugned actions are not merely unlawful but are actuated by bad faith and constitute part of a broader pattern of political persecution arising from his stance against the Government. He avers that this pattern has manifested in subsequent actions, including arrest and prosecution in circumstances he characterizes as irregular and oppressive.
6. The Petitioner further contends that the impugned exclusion has far-reaching constitutional implications. It not only curtails his individual rights but also subverts the sovereign will of the electorate of Kitutu Chache South Constituency by effectively denying them representation in the National Assembly. Additionally, he has been deprived of the privileges, functions, and emoluments attendant to his office.
7. In rebuttal to the Respondents' objections, the Petitioner firmly asserts that this Honourable Court is properly seized of jurisdiction. He submits that the doctrine of separation of powers does not shield unconstitutional conduct from judicial scrutiny. In this regard, he relies on the Supreme Court decision in *Speaker of the National Assembly v Attorney General & 3 others (2023) eKLR*, which



affirms the supremacy of *the Constitution* and the duty of courts to intervene where constitutional procedures are violated. He further relies on Council of Governors v Senate (Petition No. 413 of 2014) for the proposition that judicial intervention is warranted where actions of State organs threaten or violate *the Constitution*.

8. The Petitioner maintains that the Respondents themselves have admitted that the alleged misconduct occurred outside Parliament, thereby placing it beyond the regulatory scope of the Standing Orders and the Parliamentary Powers and Privileges regime. He further submits that the invocation of Standing Order 1(2) cannot serve as a carte blanche for arbitrary action and must, in all instances, be exercised within constitutional bounds.
9. He also points to glaring inconsistencies in the Respondents' case, noting that they simultaneously deny that he was suspended while at the same time invoking provisions applicable only to suspended members. Such mutually destructive positions, he argues, undermine the credibility and coherence of their defence.
10. On the issue of exhaustion of alternative remedies, the Petitioner submits that the doctrine is inapplicable in the circumstances. He relies on NGOs Co-ordination Board v EG & 4 others; Katiba Institute (Amicus Curiae) (2023) KESC 17 (KLR) and Anthony Miano & others v Attorney General & others (2021) eKLR to demonstrate that exceptions to the doctrine arise where alternative remedies are ineffective, futile, or where the matter raises substantial constitutional and public interest questions. He contends that no efficacious internal mechanism exists, particularly in light of the Respondents' contradictory posture and the 2nd Respondent's central role in the impugned process.
11. The Petitioner further anchors the Court's jurisdiction on Article 165(3)(d)(ii) of *the Constitution*, relying on Peter O. Ngoge v Francis Ole Kaparo & 4 others (2007) eKLR for the principle that all State organs are subordinate to *the Constitution* and subject to judicial oversight.
12. In urging the Court to grant conservatory orders, the Petitioner invokes the well-settled principles in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others (2014) KESC 30 (KLR), submitting that he has established a prima facie case raising serious constitutional issues, including violations of the rights to fair hearing, fair administrative action, and political representation. He distinguishes the Respondents' reliance on Dzila v Kwale County Assembly Service Board & 6 others (2025) KESC 33 (KLR), noting that, unlike in that case, he was denied any hearing whatsoever.
13. He further relies on Republic v Non-Governmental Organizations Co-ordination Board ex parte Kidero Foundation (2017) eKLR to underscore the Court's power to intervene where administrative action is ultra vires and procedurally unfair.
14. Crucially, the Petitioner raises a substantial constitutional concern regarding the operation of Article 103(1)(b) of *the Constitution*. He submits that his continued exclusion from Parliament amounts, in effect, to enforced absence without permission. In light of the Respondents' own indication that the provision may be invoked, he faces a real and imminent risk of losing his parliamentary seat upon accumulation of eight consecutive absences. The condition imposed requiring an apology as a precondition for return being itself unlawful, compounds this risk and creates a coercive and unconstitutional framework.
15. In support of the Court's intervention to forestall such prejudice, the Petitioner relies on James Opiyo Wandayi v Kenya National Assembly & 2 others [2016] KEHC 7850 (KLR), where conservatory relief was granted in analogous circumstances to preserve the substratum of the petition and safeguard public interest. He also relies on Ombongi & 9 others v County Assembly of Nyamira & another; IEBC



(Interested Party) (2025) KEHC 18355 (KLR), which illustrates the necessity of judicial intervention to prevent unlawful declarations affecting elective offices.

16. In sum, the Petitioner submits that the Application raises weighty constitutional questions, demonstrates a clear prima facie case, and discloses a real danger of irreparable prejudice both to himself and to the electorate he represents. Absent the grant of conservatory orders, the substratum of the Petition will be rendered nugatory, and the sovereignty of the people of Kitutu Chache South will stand imperilled.
17. Accordingly, the Petitioner urges this Honourable Court to grant the conservatory orders sought, so as to stay the implementation of the impugned decision, restrain further interference with his parliamentary functions, and preserve the constitutional order pending the hearing and determination of the Petition.

The Respondents' Case

1st Respondent's case

18. The 1st Respondent, through the Replying Affidavit sworn by Samuel Njoroge, CBS, and the accompanying Submissions, resists both the Petition and the Notice of Motion Application dated 20th February 2026, raising objections that are at once jurisdictional, procedural, and substantive.
19. At the threshold, the 1st Respondent challenges the jurisdiction of this Honourable Court, contending that the matters impugned fall squarely within the protected sphere of parliamentary privilege as guaranteed under Article 117 of *the Constitution* and Section 12 of the *Parliamentary Powers and Privileges Act*. It is urged that the conduct of the Speaker and Members of Parliament, undertaken in the discharge of their legislative mandate, is insulated from judicial interference. In this regard, reliance is placed on *Justus Kariuki Mate & another v Martin Nyaga Wambora & another* [2017] eKLR, for the settled proposition that courts ought not to intrude into the internal workings of legislative bodies where such actions are undertaken within their constitutional remit. The 1st Respondent further invokes the doctrine of separation of powers, submitting that the Petition impermissibly invites the Court to supervise and second-guess parliamentary procedure, contrary to Article 124 of *the Constitution* and the Standing Orders made thereunder.
20. The 1st Respondent equally raises a procedural bar grounded in the doctrine of exhaustion, asserting that the Petitioner has failed to invoke and exhaust the internal redress mechanisms provided under Standing Order 110B. On this basis, it is contended that the Petition is premature and incompetent. Further, the Respondent draws the Court's attention to the pendency of Nairobi High Court Petition No. E106 of 2026 *Rogers Monda v National Assembly*, which is said to raise substantially similar issues, and accordingly urges that the present proceedings be stayed and/or consolidated to avert the risk of duplicity and conflicting determinations.
21. On the factual plane, the 1st Respondent avers that the impugned directive arose from a televised interview conducted on 17th February 2026, during which the Petitioner allegedly made statements that gravely impugned the dignity, integrity, and institutional authority of the National Assembly and its leadership. It is deposed that, following a duly raised Point of Order on the floor of the House, Members deliberated on the gravity and public import of the utterances, expressing concern as to their potential to erode public confidence in Parliament.
22. Upon consideration of the matter, the Speaker is said to have issued a directive requiring the Petitioner to tender an apology to the House and, pending such apology, to withdraw from the precincts of Parliament. The 1st Respondent maintains that this directive was issued in the lawful exercise of the



- Speaker’s constitutional and statutory mandate to preserve order, decorum, and the institutional dignity of the House, as anchored in Articles 107 and 124 of *the Constitution*, Standing Orders 1 and 83, and Section 37 of the *Parliamentary Powers and Privileges Act*.
23. Central to the 1st Respondent’s case is the contention that the impugned directive does not amount to a “suspension” within the meaning of the Standing Orders. It is asserted that no formal disciplinary process was invoked, no motion for suspension was tabled, and the Petitioner was not “named” as required under the applicable Standing Orders. Rather, the directive is characterized as a conditional and remedial measure, the effect of which is entirely contingent upon the Petitioner’s compliance through the tendering of an apology, upon which the matter would stand resolved.
 24. The 1st Respondent further posits that the code of conduct applicable to Members of Parliament extends beyond the confines of the Chamber and encompasses conduct in public fora where such conduct bears upon the dignity and standing of Parliament. It is thus contended that the Petitioner’s public utterances were properly subject to parliamentary scrutiny and sanction.
 25. With respect to the alleged violation of constitutional rights, the 1st Respondent denies any infringement of Articles 47 and 50 of *the Constitution*. It is contended that the directive was issued in the course of live parliamentary proceedings and did not necessitate a prior hearing. In support of this position, reliance is placed on *Kwale County Assembly Service Board & 6 Others v Dzila* [2024] KECA 945 (KLR), for the proposition that not all decisions are amenable to, or require, a prior hearing. The Respondent further contends that the Petitioner’s refusal to comply with the directive by tendering an apology cannot be elevated into a constitutional violation.
 26. The 1st Respondent also rejects the assertion that the Petitioner’s constituents have been disenfranchised, maintaining that the Petitioner remains a duly elected Member of Parliament under Article 97 of *the Constitution*, has not been removed from office, and continues to enjoy all attendant rights, privileges, and remuneration. It is emphasized that the directive neither creates a vacancy nor interferes with the Petitioner’s tenure in office.
 27. Allegations of bad faith, political persecution, or extraneous influence are dismissed as unsubstantiated and wholly unrelated to the parliamentary proceedings culminating in the Speaker’s directive.
 28. Turning to the Application for conservatory orders, the 1st Respondent submits, at the outset, that the reliefs sought are final in nature and would, if granted, effectively dispose of the substantive Petition at an interlocutory stage. Reliance is placed on *Makaduol v President of the Republic of Kenya & 5 others* [2026] KEHC 1707 (KLR), *Muslims for Human Rights (MUHURI) & 2 others v Attorney General & 2 others* [2011] eKLR, and *Damour Florian Emmeric v Director of Immigration Services* [2022] eKLR, for the principle that conservatory orders must remain preservative and must not determine the merits of the dispute prematurely.
 29. On the applicable legal threshold, the 1st Respondent invokes *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, submitting that the Petitioner has failed to satisfy the requisite criteria for the grant of conservatory orders.
 30. First, on the existence of a prima facie case, it is contended that none has been established, as the impugned proceedings are shielded by parliamentary privilege, the Petition offends the doctrine of exhaustion, and, in any event, no formal suspension or disciplinary process cognizable in law has occurred.
 31. Second, on the nugatory aspect, the 1st Respondent submits that the Petition will not be rendered futile in the absence of conservatory orders. The Petitioner remains in office, retains his constitutional status, has not demonstrated any loss of remuneration, and may be adequately compensated by



damages. Moreover, this Court retains the power, at the substantive hearing, to grant appropriate relief, including quashing the impugned directive.

32. Third, on public interest, the 1st Respondent submits that it militates against the grant of the orders sought. It is urged that the Court ought to safeguard the institutional integrity, dignity, and orderly functioning of Parliament, and to refrain from premature interference with its internal processes. In this regard, reliance is placed on *Dock Workers Union & another v Portside Freight Terminals Limited & 10 others* [2024] KESC 35 (KLR), underscoring that the conditions for the grant of conservatory orders are cumulative and must all be satisfied.
33. In sum, the 1st Respondent's case is that the Petition is jurisdictionally barred, procedurally defective, and substantively devoid of merit that the impugned directive was lawful, proportionate, and constitutionally grounded; and that the Application fails to meet the threshold for conservatory relief. Accordingly, the Court is urged to dismiss both the Application and the Petition with costs

The 2nd Respondent's case

34. The 2nd Respondent, the Speaker of the National Assembly, opposes both the Petition and the interlocutory Application dated 20th February 2026 on jurisdictional, procedural, and substantive grounds, submitting that the Petitioner has failed to satisfy the threshold for judicial intervention. The 2nd Respondent contends that the Application does not meet the established test for the grant of conservatory orders as articulated by the Supreme Court in *Munya v Kithinji & 2 others* (Application 5 of 2014) [2014] KESC 30 (KLR). It is submitted that the Petitioner has failed to demonstrate a prima facie case, any real or imminent prejudice, or that the public interest favours the grant of the orders sought. Reliance is also placed on *Dock Workers Union & another v Portside Freight Terminals Limited & 10 others* [2024] KESC 35 (KLR), which underscores that all elements for the grant of conservatory orders must be satisfied cumulatively.
35. The 2nd Respondent invokes the presumption of constitutionality, submitting that all acts undertaken in the exercise of constitutional mandate are presumed lawful unless and until set aside on a substantive hearing. It is contended that the Petitioner improperly seeks to displace this presumption at an interlocutory stage. The impugned actions are further protected by parliamentary privilege and immunity under Article 117 of *the Constitution* and Section 12 of the *Parliamentary Powers and Privileges Act* (Cap. 6). The Petition, it is argued, invites unwarranted judicial scrutiny of matters within the exclusive domain of Parliament, contrary to the doctrine of separation of powers and the framework established under Article 124 of *the Constitution*.
36. The 2nd Respondent further contends that the Petition is premature and procedurally incompetent, having failed to exhaust internal dispute resolution mechanisms under the Standing Orders, particularly Standing Order 110B, which establishes a structured procedure for appeal or redress, and Standing Order 49(2)(a), which permits a Member, with leave of the Speaker, to move a motion for rescission of a decision of the House. Reliance is placed on *Commission for Human Rights & Justice (CHRJ) & Another v Chief Officer, Medical Services County Government of Mombasa & 3 Others* (Constitutional Petition E003 of 2022) [2022] KEHC 12994 (KLR).
37. The 2nd Respondent submits that the conservatory orders sought are, in effect, final in character, as they would determine the substantive issues in the Petition prior to a full hearing. In support, reliance is placed on *Muslims for Human Rights (MUHURI) & 2 others v Attorney General & 2 others* (Petition 7 of 2011) [2011] KEHC 4291 (KLR), which underscores that interim relief must not pre-empt substantive adjudication. The 2nd Respondent further contends that the Petitioner has failed to demonstrate any irreparable harm or prejudice, noting that the Petitioner remains a duly elected



Member of the National Assembly under Article 97 of *the Constitution*, has not lost remuneration or benefits, and in any event may seek damages for any alleged injury. The Court, it is submitted, retains full authority to grant appropriate relief, including quashing the impugned directive, upon final determination. Moreover, the substratum of the Petition will not be rendered nugatory absent conservatory orders, as the matters in dispute remain capable of full adjudication.

38. It is further submitted that the public interest militates against the grant of the orders sought. Judicial intervention at this stage would undermine the institutional integrity, dignity, and orderly functioning of Parliament. The Speaker's authority to maintain decorum and enforce internal discipline is essential to the effective discharge of Parliament's constitutional mandate.
39. The 2nd Respondent emphasizes that compliance with lawful directives issued by the Speaker does not constitute voluntary or unauthorized absenteeism. Article 103(1)(b) of *the Constitution* requires that a Member be absent without permission and fail to offer a satisfactory explanation before the Committee of Powers and Privileges; these cumulative conditions are absent in the present case. Standing Order 258 further operationalizes Article 103(1)(b) by prescribing referral to the Committee of Powers and Privileges, a process which has not been initiated.
40. Comparative jurisprudence supports this interpretation. In *Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha & Others* (2007) 3 SCC 184 and *Rama Chandra Hansdah v Republic of India* (2016), the courts recognized that absence arising from parliamentary authority or lawful processes does not constitute dereliction of duty. In accordance with Article 259 of *the Constitution*, a purposive interpretation confirms that Article 103(1)(b) is intended to address deliberate absenteeism, not compliance with lawful directives issued to maintain parliamentary order and decorum. Construing the Petitioner's sanctioned absence as triggering vacancy would lead to absurd and unjust outcomes.
41. It is the 2nd Respondent submission that both the Petition and the Application are procedurally defective, lack merit, fail to meet the legal threshold for conservatory relief, and improperly invite judicial interference in parliamentary affairs. The Court is urged to dismiss both with costs.

Analysis And Determination

42. The sole issue for determination is whether the Petitioner has made out a case for the grant of conservatory orders.
43. The Petitioner contends that the impugned decisions were ultra vires, procedurally defective, and constitutionally infirm. It is asserted that the alleged misconduct occurred outside the precincts of the National Assembly that no formal disciplinary process was invoked that no motion for suspension was tabled and that the Petitioner was not afforded a hearing in breach of Article 50 of *the Constitution*. The Petitioner further contends that the indefinite nature of the impugned directive, coupled with the requirement to tender an apology as a precondition to resumption of duties, creates a coercive framework which, if construed as voluntary absence, exposes him to the operation of Article 103(1)(b) of *the Constitution*, with the attendant risk of loss of his parliamentary seat.
44. The 2nd Respondent opposes the application, contending that this Court lacks jurisdiction to intervene in matters protected by parliamentary privilege under Article 117 of *the Constitution* and Section 12 of the *Parliamentary Powers and Privileges Act*. It is further argued that the Petition is premature for failure to exhaust internal remedies under Standing Orders 110B and 49(2)(a), and that the orders sought are final in nature and therefore inappropriate at the interlocutory stage.
45. At the centre of the present application lies the proper interpretation and potential application of Article 103(1)(b) of *the Constitution*. That provision contemplates vacancy of a parliamentary seat



where a Member is absent from eight sittings without the permission of the Speaker and without offering a satisfactory explanation to the Committee on Powers and Privileges. The Court is persuaded that the question whether the Petitioner's exclusion, if sustained, may trigger or contribute to the operation of Article 103(1)(b), constitutes a substantial and weighty question of constitutional law. It is not merely ancillary to the dispute but goes to the core of both the Petitioner's tenure and the representation of his constituents.

46. In the present case, the Petitioner's absence arises, not from voluntary non-attendance, but from compliance with a directive issued by the Speaker pending the tendering of an apology. On the material presently before the Court, the cumulative conditions required to trigger Article 103(1)(b) do not appear to have crystallised. The constitutional text contemplates absence that is both without permission and unexplained to the satisfaction of the Committee of Powers and Privileges. No material has been placed before this Court to demonstrate that the procedural pathway contemplated under Standing Order 258 particularly referral to, and determination by, the Committee has been invoked.
47. Kenyan jurisprudence has consistently underscored that provisions leading to the loss or vacation of an elective office must be interpreted strictly, purposively, and in a manner that safeguards, rather than undermines, the sovereign will of the electorate. In *Speaker of the Senate & another v Attorney-General & 4 others* [2013] eKLR, the Supreme Court emphasised that constitutional provisions must be interpreted holistically and purposively, with due regard to their consequences on democratic governance. Similarly, in *Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR, the Supreme Court affirmed that electoral representation is a core constitutional value that cannot be displaced except in strict conformity with *the Constitution* and the law.
48. Further, in *International Centre for Policy and Conflict & 5 others v Attorney General & 5 others* [2013] eKLR, the High Court cautioned that disqualification or removal from public office must be grounded on clear constitutional or statutory processes and cannot be inferred or presumed. The Court in *James Opiyo Wandayi v Kenya National Assembly & 2 others* [2016] eKLR similarly recognised that actions which impede a Member of Parliament from discharging legislative functions implicate not only individual rights but also the representational rights of constituents, thereby raising weighty constitutional concerns.
49. Against this jurisprudential backdrop, a purposive interpretation, as required under Article 259 of *the Constitution*, militates against construing the Petitioner's absence arising from compliance with a directive of the Speaker as deliberate or unauthorised absenteeism within the meaning of Article 103(1)(b). To hold otherwise would risk triggering a vacancy through a process that has neither complied with the prescribed constitutional safeguards nor exhausted the institutional mechanisms expressly provided for that purpose.
50. That said, the Court is equally cognisant that the impugned directive is expressed in indefinite terms, and its continued operation introduces an element of uncertainty as to the Petitioner's status. In those circumstances, it cannot be said with finality, at this interlocutory stage, whether the peril contemplated under Article 103(1)(b) is imminent, prospective, or in the process of crystallising. However, the existence of that uncertainty, when viewed against the constitutional consequences that may ensue, elevates the issue into one of both prima facie merit and significant public interest.
51. The principles governing the grant of conservatory orders are well settled. An applicant must demonstrate a prima facie case raising serious constitutional questions, a real danger that the Petition may be rendered nugatory absent the orders sought, and that the balance of convenience and public interest favour the grant of relief.



52. The Court is satisfied that the Petitioner has established a prima facie case. The indefinite exclusion imposed raises serious constitutional questions concerning compliance with Articles 50, 97, and 103 of *the Constitution*, as well as adherence to the procedural safeguards under the Standing Orders. The question of whether the impugned directive may, directly or indirectly, trigger the operation of Article 103(1)(b) reinforces the weight and urgency of those issues.
53. The Court is further satisfied that there exists a real risk of prejudice. The prejudice is not confined to the Petitioner personally but extends to the electorate of Kitutu Chache South, whose representation in the National Assembly stands materially impaired. In light of the indeterminate duration of the impugned directive, the risk cannot be dismissed as remote or speculative.
54. In considering the balance of convenience, proportionality, and public interest, the Court finds that these considerations tilt in favour of preserving the Petitioner's ability to discharge his parliamentary mandate pending the determination of the Petition. The public interest is not only in maintaining order and discipline within Parliament, but equally in safeguarding constitutional governance, representation, and the rule of law. The question surrounding the potential operation of Article 103(1)(b) underscores the broader public interest in ensuring that elective offices are not imperilled through processes that are alleged to be constitutionally infirm.
55. The Respondents' objections founded on jurisdiction, parliamentary privilege, and procedural doctrines do not, at this interlocutory stage, displace the Court's constitutional mandate. The doctrine of separation of powers does not operate as an ouster of jurisdiction. Courts must exercise restraint, but retain the authority to intervene where constitutional compliance is in question.
56. The limits of parliamentary privilege within Kenya's constitutional order are now well settled. In *Justus Kariuki Mate & another v Martin Nyaga Wambora & another* [2017] eKLR, the Supreme Court held that while courts must exercise restraint and accord deference to the internal processes of legislative bodies, such deference does not amount to abdication, and judicial intervention is warranted where there is a clear violation of *the Constitution*. The Court affirmed that the doctrine of separation of powers does not operate to shield unconstitutional conduct from judicial scrutiny.
57. In the same vein, the Supreme Court in *Speaker of the Senate & another v Attorney-General & 4 others* [2013] eKLR emphasised that all State organs, including Parliament, are bound by *the Constitution*, and that the courts retain the mandate to interpret and safeguard *the Constitution* where disputes arise. The High Court in *Council of Governors v Senate & another* [2014] eKLR likewise affirmed that courts will intervene where the actions of Parliament threaten constitutional structure or violate express constitutional provisions.
58. In the premises, the Court finds that the Petitioner has satisfied the threshold for the grant of conservatory orders. The issues raised, particularly concerning the possible application of Article 103(1)(b), are of such constitutional magnitude that they warrant preservation of the status quo pending full adjudication.

Conclusion

59. *The Constitution* of Kenya applies in every respect across the entirety of the Republic of Kenya. It is the supreme law of the land and no person, place, or institution that is subject to or under the law of Kenya is above *the Constitution* or outside its reach.
60. The doctrine of separation of powers and constitutional independence of branches of government only operates to require that the High Court exercises greater care and apply a higher standard when



it is called upon to inquire into the internal operations of the other branches of government not as an ouster of its jurisdiction.

61. In the present interlocutory application, the Petitioner has satisfied the applicable legal criteria and met the exceeded the high bar required for the grant of the conservatory orders sought. Conversely, the Respondents have not succeeded in persuading the Court that this Court lacks jurisdiction, or that the doctrines of constitutional avoidance and exhaustion should apply at this interlocutory stage, or that the Petitioner/Applicant has not established a prima facie case, that would be rendered nugatory if the orders sought were not granted.
62. The Applicant has shown to the required standard that the balance of convenience, weight of prejudice, proportionality, and the public interest all tilt in his favour. Critically, the possible peril faced by the Applicant pursuant to Article 103(1)(b), the indefinite period of the impugned Resolution and decisions, and the admissions by the 1st and 2nd Respondent make clear that the only possible outcome is for this Court to allow the Petitioner/Applicant's Notice of Motion Application dated 20th February, 2026.
63. Accordingly, and for the foregoing reasons, this Court issues the following orders:
 - a. Pending the hearing and determination of the Petition dated 20/02/2026 a conservatory order be and is hereby issued staying the effect and implementation of the Resolution and Decisions passed and adopted by the 1st and 2nd Respondents to the extent that the impugned Resolution and Decisions made on 17/02/2026 indefinitely suspend the Petitioner/Applicant from the ordinary and fully discharge of his duties as a Member of Parliament within the National Assembly;
 - b. Pending the hearing and determination of the Petition dated 20/02/2026, a mandatory order be and is hereby issued restoring the status quo ante as it obtained on immediately before the impugned Resolution and Decisions made on 17/02/2026 by the 1st and 2nd Respondents restoring the Petitioner/Applicant to the ordinary and full discharge of his duties as a Member of Parliament within the National Assembly;
 - c. Pending the hearing and determination of the Petition dated 20/02/2026, a conservatory order be and is hereby issued restraining the 1st and/or 2nd Respondents from taking any adverse actions or making any adverse decisions with respect to the Petitioner/Applicant with regard to any matter that is the subject matter of the Petition;
 - d. Costs of the Application shall be in the Cause.

Orders Accordingly. Directions on the expedited hearing and determination of the Petition to be issued separately.

DATED, SIGNED, AND DELIVERED VIRTUALLY ON THIS 19TH DAY OF MARCH, 2026.

BAHATI MWAMUYE MBS

JUDGE

In the presence of: -

Counsel for the Petitioner – Mr. Bounce and Mr. Ratemo

Counsel for the 1st Respondent -Mr. Kuyioni

Counsel for the 2nd Respondent – Mr. Kuyioni h/b Ms. Otieno



Counsel for the 3rd Respondent – Ms. Kiramana
Court Assistant - Ms. Lwambia

