

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CONSTITUTIONAL PETITION NO E013 OF 2025**

IN THE MATTER OF: ARTICLES 2,3,10,19,20,22,23,47 AND 159 OF THE  
CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTIONS 3,4 AND 6 OF THE SUGAR ACT NO.11 OF  
2024

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE  
RULES 2013, RULE 3, 4,5,9 AND 10

BETWEEN

BONIFACE MASINDE-----  
PETITIONER

AND

HON. ATTORNEY GENERAL-----1<sup>ST</sup>  
RESPONDENT

CABINET SECRETARIES FOR AGRICULTURE & LIVESTOCK  
DEVELOPMENT-----2<sup>ND</sup> RESPONDENT

KENYA SUGAR BOARD-----1<sup>ST</sup> INTERESTED  
PARTY

AND

KABRAS WAKILI ASSOCIATE----- 2<sup>ND</sup> INTERESTED  
PARTY

AND

JULIUS KIPLIMO KETER AND STEPHEN WALUMBI (SUIING AS THE TRUSTEES  
OF THE KENYA NATIONAL FEDERATION OF SUGAR CANE  
FARMERS-----PROPOSED 3<sup>RD</sup> INTERESTED PARTY

**RULING**

1. The proposed 3<sup>rd</sup> interested party filed an application dated 8<sup>th</sup> December 2025, stating that the court would determine the matter without their input as an interested party and key stakeholders in the sugar sector.

2. They aver that the petitioner/ Applicant did not disclose vital information before the court granted orders of 26<sup>th</sup> November 2025, which they pray that the same be set aside and or varied.
3. The application is supported by the supporting affidavit of Julius Kiplimo Keter, a sugarcane farmer who averred that they are key stakeholders in the sugar industry and that the petitioner failed to disclose vital information to the court before obtaining the orders of 26<sup>th</sup> November 2025.
4. He denied the allegations that the purported numbers of farmers from Malava sub-county are small numbers compared to other sugarcane zone areas, and further that he does not deny there being any public participation, rather the numbers of the farmers who took part during the public participation and as such their interest ought to be considered and protected.
5. They pray that they be joined in the proceedings as key stakeholders to be able to address the concerns of their members effectively.
6. In reply to the application, the petitioner opposes the bid for joinder of the intended interested party, stating that they don't have an identifiable stake in the matter, as they did not attach a certificate of registration of the federation and further that the other respondent represents the interest of the stakeholders in the sugar industry.

7. On the claim that the orders issued on 26<sup>th</sup> November be set aside, they stated that the party had an option to appeal the ruling as the court cannot sit on appeal on its own ruling, and the issues raised by the interested party can be raised at the main appeal
8. The 2<sup>nd</sup> interested party's replying affidavit was sworn by Abigale Samin on behalf of the 2<sup>nd</sup> interested party. She stated that the application to set aside/ vary the interim orders issued by the Honourable court on 26<sup>th</sup> November 2025 was misconceived and an abuse of the court's process.
9. They aver that the applicant had not demonstrated any error, misrepresentation, or concealment of material facts to justify interference with the court's discretionary orders and that the allegation that the petitioner had failed to disclose material facts is misleading and unfounded, as it was set to protect the constitutional and economic rights of sugarcane farmers in Malava sub-county
10. They assert that the contention that the petitioner ought to prove he is a sugarcane farmer is misplaced, as he relied on Article 22 and 258 representing the interest of the public, and he did not need to show his occupation.
11. They opined that the applicant's assertion that the petitioner would suffer no loss if the interim orders are lifted ignored the wider prejudice to the thousands of sugar cane farmers whose political participation is being represented and further denied the allegations that the enumerators had already been paid and that it would be a

waste of public resources as they would resume their duties once the constitutionality question is addressed.

12. They denied the allegations that Kakamega and Malava sugarcane is on small scale asserting that sugarcane farming in the regions is significant in the areas hence the presence of multiple sugar milling factories hence the need to remain central to sugar sector governance and the applicant's assertion is discriminatory in nature.

13. They state that on the balance of convenience, public interest and the need to preserve the substratum of the petition, the status quo ought to be maintained pending hearing and determination of the petition, and further, the applicant will suffer no harm or prejudice if they await the final determination of the petition.

14. They pray that the application be dismissed for lack of merit and should be dismissed with costs

15. The application was canvassed by way of a written submission

### **Petitioner's submission**

16. In their submission dated 9<sup>th</sup> April 2026, the petitioner raised two issues for determination. On the first issue of whether the 3<sup>rd</sup> proposed interested party met the threshold to be enjoined as an interested party. They relied on the case of the ***Trusted Society of Human Rights Alliance vs. Mumo Matemu & 5 others SC petition*** and ***Francis Kariuki Muruatetu & another vs.***

**Republic 5 others on** what should be considered before a party is enjoined as an interested party.

17. He averred that the applicant had not demonstrated how their legal rights would be affected by the outcome of the petition, as they do not have a personal stake or legal interest, as the petition refers to the constitutionality of zoning under the Sugar Act.

18. He further states that they did not demonstrate the specific prejudice they will suffer if they are not enjoined, as the farmers' interests are being represented by the respondent.

19. On the issue of setting aside and or varying the orders of the court, they state that the court is already functus officio and cannot revisit the issue unless it is an appeal. They quoted the case of *JMk vs. MWM & another (2015) eKLR*. They submitted that the applicant had failed to demonstrate the reason why the court should join them as an interested party, and on the issue of setting aside averments, that the court is still functus officio

20. The 3<sup>rd</sup> intended interested party filed their submissions dated 6<sup>th</sup> March 2026 and raised three issues for determination on the first issue they raised grounds as to why they should be enjoined to the proceedings and quoted the case of *Pravin Bowry vs. John ward & another (2015) eKLR* and the supreme court in the case of *Deported Asians property custodian Board vs. Jaffer brothers Ltd (1991) 1 E.A 55* in support of his case for joinder.

21. They submitted that they represented the interests of over 6 million sugarcane farmers and were better placed to understand the

challenges faced by the farmers who form the organisation, hence the need to be enjoined as a party to the proceedings.

22. On whether the ruling dated 25<sup>th</sup> November should be reviewed, vacated or set aside on grounds that they were obtained through misrepresentation, they aver that the petition was based on the assertion that public participation did not take place with respect to zoning under the Sugar Act 2024. They aver that the applicant had not demonstrated that public participation did not take place, and in support, they made reference to the committee report showing that stakeholders were involved in the process. They aver that the assertion by the applicant was thus misleading and that the petitioner acted in bad faith and prays that the ruling be set aside to allow parties to present all the facts before the court.

23. They aver that the petitioner obtained orders on 26<sup>th</sup> November 2025 by materially omitting to disclose to the court that public participation did occur, and the issue on zoning was deliberated upon by various stakeholders in the sugar sector, hence the petitioner acted in bad faith, and the need to set aside the orders.

24. They submit that if the petitioners had informed the court that there was public participation and the stakeholders had a consultative meeting on the issue of catchment areas and zoning, the court would not have granted the conservatory orders, which were obtained through non-disclosure of material facts and hence the need to set aside the ruling of 25<sup>th</sup> November 2025

### **Analysis and determination**

25. Having considered the application on record, affidavits and the rival submissions by the parties, this court finds the issues that arise for determination as follows;

*i. Whether the proposed 3<sup>rd</sup> Interested Party meets the threshold for joinder.*

*ii. Whether this Court should set aside and/or vary the conservatory orders issued on 26th November 2025*

### **Whether the Applicants Meet the Threshold for Joinder**

26. The first issue for determination is whether the applicants/ 3<sup>rd</sup> intended proposed interested party should be enjoined in the petition. The Constitution of Kenya, 2010, under Article 22(2) and Article 258, read together with Rule 9 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, adopts a liberal and inclusive approach to participation in constitutional litigation

27. The Supreme Court in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others (2014) eKLR* held that an interested party is one who has a stake in the proceedings, though not a party *ab initio*, and whose presence is necessary for the complete determination of the issues before the Court.

28. Similarly, in *Francis Kariuki Muruatetu & Another v Republic & 5 Others (2016) eKLR*, the Court laid down the guiding principles that an Applicant must demonstrate:

*a) A personal stake or interest in the matter;*

*b) The prejudice to be suffered if not enjoined; and*

*c) The relevance of their intended submissions.*

29. In ***Pravin Bowry v John Ward & another [2015] eKLR***, the Court of Appeal, citing with approval ***Deported Asians Property Custodian Board v Jaffer Brothers Ltd [1991] 1 EA 55***, emphasised that a party whose presence is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved ought to be joined so as to avoid multiplicity of suits and ensure finality.

30. The Applicants have described themselves as trustees of a federation representing sugarcane farmers within the grassroots. They contend that the petition touches directly on zoning and governance of the sugar sector, matters that affect their members.

31. I have perused the records and note that the subject matter of the petition being the constitutionality of provisions of the Sugar Act relating to zoning, directly implicates the interests of sugarcane farmers. The applicants have demonstrated a proximate and identifiable stake in the petition.

32. The argument by the Petitioner that the interests of farmers are adequately represented by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents does not suffice to shut out the applicants.

33. I am satisfied that the Proposed 3<sup>rd</sup> Interested Party, through its trustees, represents the collective interests of thousands of sugarcane farmers nationwide, including those in the Western Kenya sugar belt. The Petition directly challenges the

constitutionality of the zoning framework under Sections 3, 4 and 6 of the Sugar Act, 2024, which affects catchment areas, milling zones and the economic rights of farmers. The averments in the supporting affidavit demonstrate a clear stake in the sector's governance. The interest of the farmers is not merely peripheral but central to the substratum of the Petition. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, while representing the State, cannot be said to represent the specific grassroots concerns of organized sugarcane farmers in the manner that the Federation does.

34. I therefore hold that the Proposed 3<sup>rd</sup> Interested Party has satisfied the threshold for joinder. The prayer for joinder is accordingly allowed

#### **ii. Whether the Conservatory Orders Should be Set Aside**

35. The Applicants seek to set aside the conservatory orders that were issued by this court on 25<sup>th</sup> November 2025 on the ground of alleged non-disclosure of material facts, particularly concerning public participation.

36. The power of the Court to set aside *ex parte* conservatory orders is expressly provided under Rule 25 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which permits the Court to discharge, vary or set aside such orders on application by a dissatisfied party. The principles were authoritatively stated in *Republic v Vice Chancellor, Moi University & 3 others Ex parte Benjamin J. Gikenyi*

*Magare [2018]* eKLR: setting aside is merited upon proof of (a) non-disclosure of material facts; (b) concealment of material documents; or (c) misrepresentation.

37. The Proposed 3<sup>rd</sup> Interested Party has demonstrated that the Petitioner omitted to disclose to the court that some public participation on the zoning provisions had in fact taken place, as evidenced by the committee reports placed before the court. The question whether the public participation was meaningful or not is a question of fact which can only be ascertained upon calling of evidence. More critically, the Petitioner failed to disclose the immediate and ongoing prejudice that the conservatory orders would cause to thousands of sugarcane farmers across the country who continue to supply cane to mills but are unable to receive payments due to the suspension of the zoning and catchment area mechanisms under the Sugar Act, 2024. This non-disclosure was material because it directly influenced the grant of the orders.

38. The court has further considered the balance of convenience and the public interest under Article 159(2)(d) of the Constitution. While the Applicants sought to protect the rights of farmers in Malava Sub-County, the conservatory orders have had the unintended but real effect of disadvantaging a far larger number of sugarcane farmers who are now supplying cane without corresponding payments.

39. This creates irreparable economic prejudice and threatens the stability of the entire sugar sector. Similar considerations of

prejudice to non-parties and undue hardship on payments have informed the discharge of conservatory orders in *Gikenyi B & 6 others v Council of Governors & 68 others [2026] eKLR* and *Chamao & 2 others v Cabinet Secretary, Information [2025] eKLR*, where material non-disclosure coupled with broader sectoral prejudice justified setting aside the orders.

40. The Court is not *functus officio* in respect of interlocutory conservatory orders; Rule 25 of the Mutunga Rules expressly allows variation or discharge at any stage where circumstances so warrant. The issues of adequacy of public participation and the constitutionality of zoning remain live for determination at the hearing of the Petition. However, the status quo created by the orders of 26<sup>th</sup> November 2025 can no longer be maintained without causing disproportionate harm to the very farmers the Petition purports to protect.

41. Additionally, the balance of convenience and public interest favour the preservation of the status quo pending the hearing and determination of the petition.

42. I therefore find sufficient basis to set aside the conservatory orders issued on 26<sup>th</sup> November 2025. The prayer to that effect is allowed.

43. The costs of the application shall be in the cause.

44. It is so ordered.

45. Right of appeal within 30 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA  
THIS 15<sup>TH</sup> DAY OF APRIL, 2026**

**S.N MBUNGI**

**JUDGE**

**In the Presence of:-**

**CA:** Miss Ang'onga/Velma

Miss Ogola for the third Respondent online.

Miss Muyoka for the Intended Interested Party online

Miss Makungu holding brief for Mr. Malenya for the Petitioner online.

Mr. Lucheli for the 2<sup>nd</sup> Interested party online.

Miss Awuor for Kenya Sugar Board present online.