



REPUBLIC OF KENYA



KENYA LAW
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**Rugutt v Miano & 2 others (Petition E017 of 2026)
[2026] KEELRC 939 (KLR) (20 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 939 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E017 OF 2026
NZIOKI WA MAKAU, J
APRIL 20, 2026**

**IN THE MATTER OF: ARTICLES 19(1) (2), 20 (1), (2), (3) & (4), 21(1), 22 (1)
(2), 23, 27(1) (2), 28, 35, 41, 47, 50 (1), 159, 258 & 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 19(1) (2), 20(1), (2), (3) & (4), 21(1), 22 (1)
(2), 23, 27(1), (2), 28, 35, 41, 47, 50(1), 159, 258 & 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF RULES 3, 4, 8, 10, 11, 13, 14, 15, 16, 20 AND 21 OF
THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT

BETWEEN

SIMEON KIPROTICH RUGUTT PETITIONER

AND

**FRANCIS MIANO, AG. GROUP CHIEF EXECUTIVE OFFICER KENYA TEA
DEVELOPMENT AGENCY HOLDINGS LIMITED 1ST RESPONDENT**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED 2ND
RESPONDENT**

**THE BOARD OF DIRECTORS OF KENYA TEA DEVELOPMENT AGENCY
HOLDINGS LIMITED 3RD RESPONDENT**



RULING

1. Before the Court are two applications: the Petitioner's application dated 8th February 2026 and the Respondents' application dated 10th February 2026. The background is largely uncontested. The Petitioner, who serves as the 2nd Respondent's Finance and Strategy Director, proceeded on routine annual leave on 22nd December 2025 and was due to resume duty on 26th January 2026. However, on 23rd January 2026 which was effectively the last day of his leave, he received an internal memo directing him to continue on leave in order to exhaust his accrued leave days, said to total 110 days. Following issuance of the memo, the Petitioner's official email and access to the Respondent's business systems, namely SAP, Chaiweb and Informix, were deactivated, and one Ms. Tarsila Wanja was appointed to act in his position. Aggrieved by these developments, the Petitioner instituted this Petition together with the application dated 8th February 2026 under certificate of urgency, seeking the following reliefs:
 1. Spent.
 2. That pending the inter-partes hearing of this application, this Honourable Court be pleased to issue interim conservatory orders staying/suspending the implementation of the Respondents' impugned board directive as communicated through the internal memo dated 23rd January 2026, placing the Petitioner on forced leave without notice, due process or valid reasons.
 3. That pending the inter-partes hearing of this application, this Honourable Court be pleased to issue an order directing the respondents to immediately and unconditionally, activate and/or reinstate the Petitioner/Applicant's work/office e-mail srugutt@ktdateas.com, business systems together all other access rights entitled to him under his employment contract.
 4. That pending the inter-partes hearing of this application, this Honourable Court be pleased to issue an interim injunction restraining the Respondents from deactivating the Petitioner/Applicant's work/office e-mail srugutt@ktdateas.com, business systems and all other access rights entitled to him under his employment contract.
 5. That pending the inter-partes hearing and determination of this application, this Honourable Court be pleased to issue an order of temporary injunction precluding the Respondents either by their servants, agents, contractors and or employees and all persons claiming under them from subjecting the Petitioner/Applicant to any disciplinary process and/or forensic audit or any other investigations contrary to Articles 41(1), (2), (3), 47(1) & (2) and 50(1) of *the Constitution*.
 6. That pending the inter-partes hearing of this application, this Honourable Court be pleased to issue interim conservatory orders restraining the Respondents, their agents, servants and/or anyone acting at their behest from harassing, intimidating, frustrating and/or interfering with the Petitioner/Applicant's duties, responsibilities and/or roles in discharging his lawful mandate at work.
 7. That upon grant of any of the prayers (1), (2), (3), (4), (5), (6) & (7) above, the Petitioner/Applicant be allowed to unconditionally report to work and equally attend board meetings.
 8. That pending the hearing and determination of this petition, this Honourable Court be pleased to issue interim conservatory orders staying/suspending the implementation of the Respondents' impugned board directive as communicated through the internal memo dated



23rd January 2026, placing the Petitioner on forced leave without notice, due process or valid reasons.

9. That pending the hearing and determination of this Petition, this Honourable Court be pleased to issue an order directing the Respondents to immediately and unconditionally, activate and/or reinstate the Petitioner/Applicant's work/office e-mail srugutt@ktdateas.com, business rights, together all other access rights entitled to him under his employment contract.
 10. That pending the hearing and determination of this petition, this Honourable Court be pleased to issue an order of temporary injunction precluding the Respondents either by their servants, agents, contractors and or employees and all persons claiming under them from subjecting the Petitioner/Applicant to any investigation/disciplinary process and/or forensic audit contrary to Articles 41(1),(2) & (3), 47(1) & (2) and 50(1) of *the Constitution*.
 11. That costs of the application be borne by the Respondents.
2. Upon ex parte consideration of the application on 9th February 2026, the Court granted prayers 2, 3 and 4 thereof and directed that the application be heard inter partes on 23rd February 2026.
 3. In response, the Respondents filed their own application dated 10th February 2026, likewise under certificate of urgency, seeking the following orders:
 1. Spent
 2. That this Honourable Court be pleased to set aside and/or vacate its Orders granted ex-parte in this matter on 9th February 2026 for reasons that the said Orders were obtained by material non-disclosure and deliberate misrepresentation of facts by the Petitioner/Respondent herein.
 3. That this Honourable Court be pleased to find and hold that the proceedings herein are sub-judice in that; there is a prior Petition involving the same parties herein filed at the Employment and Labour Relations Court at Nairobi being, ELRC Petition No. E036 of 2026 in which Case the Petitioner herein is the 2nd Interested Party, and in which similar Prayers were sought, for and on behalf of the Petitioner herein.
 4. That costs of the Application be provided for.
 4. At the inter partes hearing, the applications were argued in the sequence they were presented. Beginning with the Petitioner's application, it is supported by the grounds on its face and his supporting affidavit. He contends that the directive via the memo dated 23rd January 2026 placing him on "forced leave" was issued without notice, due process, or valid justification, thereby subjecting him to psychological distress and public ridicule. He further avers that the directive contradicts Circular No. 01/2026 dated 19th January 2026 as well as section 4 of the 2nd Respondent's Human Resource Policies and Procedures. The Petitioner also deposes that on 29th January 2026, at approximately 11:00a.m., he discovered that his work email had been deactivated, and upon inquiry, the ICT department could not provide an explanation. He asserts that this development impeded his access to information, particularly concerning his application for the position of the 2nd Respondent's Chief Executive Officer, for which he had been interviewed on 27th January 2026. He attributes the actions taken against him to unsubstantiated allegations that he had leaked board papers on 9th December 2025. He maintains that the impugned actions violate his right to fair administrative action under section 4(1) of the *Fair Administrative Action Act*.
 5. As indicated earlier the Respondents countered the application with their application dated 10th February 2026. Additionally, they also filed a replying affidavit sworn by the 1st Respondent on 12th



February 2026. Both the application and replying affidavit more or less mirror each other. Their primary position is that the present suit is sub judice, there being Nairobi ELRC Petition No. E036 of 2026 filed by one Javan Onyango, in which the Petitioner herein is named as the 2nd Interested Party and in which similar reliefs are sought. They contend that, having failed to obtain interim relief in Nairobi, the Petitioner engaged in forum shopping by instituting these proceedings in Kisumu despite both his residence and the Respondents' headquarters being in Nairobi. For this reason, the Respondents contend that the interim orders which have far reaching negative ramifications for their operations were obtained through material non-disclosure and forum shopping.

6. With regard to the allegations that the Petitioner had been sent on forced leave, the Respondents maintain that it is company policy and nothing untoward should be read about it. They highlight circular No. 01/2026, reminding all employers to take all their pending leave days and section 4.1 of the 2nd Respondent's Human Resource Policy Manual mandating all staff to expend all outstanding leave days. Furthermore, they assert that the Petitioner himself acknowledged having accumulated 100 leave days. For the foregoing reasons they maintain that the allegation of forced leave does not arise, and adherence to company policy cannot in any way occasion the alleged infringement of rights alluded to by the Petitioner.
7. With respect to the blocking of the Petitioner's email, they state that it was standard company procedure in order to allow for the employee standing in for a worker on leave to work seamlessly. Additionally, they contend that it is company policy for employees on leave to switch off their official work devices and leave them at the workplace. They also assert that use of the company's ICT infrastructure and business networks such as SAP, Chaiweb and Informix are at their sole discretion and they can activate or reactivate them at their whim.
8. Concerning the Petitioner's invitation to the Court to shield him from any prospective disciplinary action or audit, the Respondents label it as astonishing. They assert that all employees including top management are subject to internal audit and scrutiny on a day-to-day basis thus there is nothing special about the Petitioner.
9. In reply to the Petitioner's allegation that he had been constructively dismissed, the Respondents state that it was preposterous as he still enjoys benefits and salary to date. In view of the false allegations made by the Petitioner in obtaining the interim orders the Respondents urge the Court to vacate them as its operations have been crippled. Furthermore, they aver that the Petitioner failed to sort out the issues internally in line with company policy and is acting as if he has already been sacked. Consequently, they urge the Court to dismiss the application dated 8th February 2026 and allow their application dated 10th February 2026.
10. In rejoinder, the Petitioner filed a further affidavit sworn on 25th February 2026. He was adamant that the forced leave was malicious pointing to the fact that his replacement was appointed only four days to the end of his leave. In response to the petition being sub judice, the Petitioner countered that he was not the Petitioner in Nairobi ELRC Petition No. E036 of 2026, neither did he instruct the Petitioner Javan Onyango to file the petition. Moreover, he states that he is not the 2nd Interested Party in the Nairobi Petition and maintains that the substratum of this petition is different from the Nairobi petition. The Petitioner also avers that he only got to know of the petition in Nairobi through the Respondents herein.
11. With respect to jurisdiction, the Petitioner states that he lives in Kisumu as evinced by boarding passes to Kisumu annexed as "SKR 5 a-h." Moreover, he states that the 2nd Respondent operates countrywide with administrative offices in all the major towns including Kisumu. With respect to the Respondent's



- prayer to set aside the interim orders, the Petitioner states that no prejudice has been demonstrated to warrant the setting aside of those orders. He avers that he has even resumed duty.
12. With respect to allegations that he had over 100 pending leave days the Petitioner's answer is that the Respondents have not provided any proof. He further argues that he did not apply for leave extension and that the Respondents cannot dictate how he utilises his leave entitlement. He adds that other employees were not subjected to forced leave like him. In conclusion the Petitioner asserts that the Respondent is trying to play tricks on the Court by filing both an application and a replying affidavit. He urges the Court to strike out the replying affidavit dated 12th February 2026 for being an abuse of the court process.
 13. In response, the Respondents filed a further affidavit sworn on 23rd February 2026, reiterating their position that the Nairobi Petition was filed by the Petitioner through a proxy, one Javan Onyango. They further challenge the Petitioner's alleged residence in Kisumu, contending that boarding passes do not constitute proof of residence and noting that the Petitioner's own affidavit reflects a Nairobi postal address. The Respondents maintain that the requirement for the Petitioner to proceed on leave was consistent with company policy and is supported by his own admission in annexure "SKR-7" to his supporting affidavit that he had accrued 100 leave days. They argue that "forced leave" would only arise where no leave days are available. In conclusion, the Respondents aver that if the Petitioner truly did not want to be associated with the Petition filed in Nairobi, he would have taken steps to have his name removed therefrom.
 14. Both applications were ultimately canvassed by way of written submissions.

Petitioner's Submissions

15. The Petitioner identifies the following issues for determination:
 - i. Whether he is entitled to the injunctive and/or conservatory orders sought;
 - ii. Whether his petition and application are sub judice;
 - iii. Whether the Respondent's application dated 10th February is merited; and
 - iv. Whether the Petitioner is entitled to costs.
16. On the first issue the Petitioner submits that this court is empowered under Article 23(3) to grant the orders sought, where a right or fundamental freedom has been denied, violated or threatened. He references the principles governing grant of conservatory orders set out by the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, where the Court emphasized that conservatory orders are public law remedies granted on the basis of the inherent merit of the case, public interest, constitutional values and proportionality. The Petitioner also relies on *Nubian Rights Forum & 2 others v Attorney General & 6 others* [2019] eKLR, where the Court restated that an applicant must demonstrate; a prima facie case with a likelihood of success, the risk of prejudice if the orders are not granted, the possibility that the substratum of the petition may be rendered nugatory, and the need to consider public interest and constitutional values.
17. In addressing the existence of a prima facie case, the Petitioner submits that he has satisfactorily met this threshold. He contends that he has served in senior positions within the 2nd Respondent since 2011 and that he was compelled to proceed on leave without notice, due process, or lawful justification. He argues that the decision was unilateral, irregular, and contrary to section 28 of the *Employment Act*, which requires mutual agreement on the timing and utilization of annual leave. In support of this position, he cites *Kotuku v Toyota Tsusho East Africa Limited* [2024] KEELRC 1501 (KLR), where



the Court held that annual leave cannot be exercised unilaterally and must be mutually agreed upon. He further submits that the Respondents' Human Resource Policies do not provide for forced leave, rendering the impugned directive unlawful and without legal basis. He adds that the deactivation of his official email and the appointment of an acting officer to his position effectively excluded him from his role, thereby infringing his right to access information under Article 35 and his labour rights under Article 41 of *the Constitution*.

18. As to whether the Petition would be rendered nugatory, the Petitioner asserts that, absent the grant of conservatory orders, the substratum of the Petition would be irreparably compromised. He argues that the continued violation of his rights may lead to irreversible consequences, including loss of employment. Conversely, he maintains that granting the orders would uphold constitutional values and the rule of law, whereas declining them would sanction unconstitutional conduct. In support of his position, he cites the case of *Njoroge & 2 others v Kenya Medical Supplies Authority & 3 others* [2025] KEELRC 3037 (KLR), where the court held that compulsory leave imposed without due process violated Articles 27, 41, 47 and 50 of *the Constitution*. Reference is also made to *Wamukota v Kenya Electricity Transmission Company Limited & 2 others* [2025] KEELRC 3647 (KLR), in which the court declared compulsory leave imposed without justification to be illegal and unconstitutional. Additional reliance is also placed on *Mberia & 3 others v County Government of Meru & 2 others* [2024] KEELRC 1190 (KLR), where the Court found that sending employees on indefinite compulsory leave violated their constitutional rights, and *Wambui v Hallmark Marketing Limited* [2026] KEELRC 138 (KLR), where exclusion from workplace communication systems was found to amount to constructive dismissal. In view of the foregoing the Petitioner submits that he has satisfied all the requirements for the grant of conservatory and injunctive orders.
19. On the second issue, the Petitioner submits that the proceedings herein are not sub judice. He asserts that this petition is distinct from Nairobi ELRC Petition No. E036 of 2026 as the latter revolves around public interest not his forced leave and deactivation of his email. He further notes that he is not the principal petitioner in the Nairobi matter but merely an Interested Party, thereby underscoring the distinction between the two proceedings. To reinforce this position, he relies on *Trusted Society of Human Rights Alliance v Matemo & 5 others* (Petition 12 of 2013) [2014] KESC 32 (KLR), where the court defined an interested party as one who has a stake in proceedings but is not a principal party. He therefore maintains that the doctrine of sub judice is inapplicable in the present circumstances.
20. Turning to the third issue on the merits of the Respondent's application, the Petitioner submits that it is incompetent, misconceived and ought to be dismissed with costs. He asserts that it is premised on the erroneous contention that the present suit is sub judice, which he has demonstrated is not the case. He highlights the fact that the Respondents have filed both the application and a replying affidavit basically addressing the same issues, namely the setting aside of interim orders. The Petitioner maintains that this conduct amounts to forum shopping and misuse of judicial process, which this Court ought to discourage in order to safeguard the integrity of its proceedings.
21. On costs, the Petitioner submits that he is entitled to the same, having met the threshold for the grant of conservatory orders. Conversely, he maintains that the Respondents' application is unmeritorious and constitutes an abuse of process. In conclusion, the Petitioner urges the Court to allow his application and dismiss the Respondents' application, in keeping with its constitutional mandate to grant appropriate relief where rights are threatened or infringed.

Respondents' Submissions

22. The Respondents submit that their application dated 10th February 2026 is merited. They assert that the interim orders issued on 9th February 2026 were obtained through material non-disclosure,



in circumstances amounting to forum shopping, abuse of court process, and in contravention of the doctrine of sub judice. At the outset, the Respondents maintain that the dispute arises from administrative measures undertaken by the 2nd and 3rd Respondents in compliance with their internal Human Resource Policy Manual. They therefore assert that the extension of the Petitioner's leave was lawful and that he has failed to demonstrate any violation of Articles 27, 41, 47, or 50 of *the Constitution*. In any event, the Respondents argue that the Petitioner ought to have invoked the internal dispute resolution mechanism provided under section 6.6 of the Human Resource Policy Manual, particularly given his position as a senior officer.

23. On the issue of forum shopping, the Respondents contend that the present Petition is a clear manifestation of such conduct and should not be entertained. They refer to Nairobi ELRC Petition No. E036 of 2026, asserting that it raises substantially similar issues concerning the same administrative action and alleged constitutional violations. They further submit that the Petitioner instituted the present proceedings after failing to secure interim reliefs in Nairobi, thereby demonstrating an attempt to obtain favourable orders through multiple forums. The Respondents contend that the Petitioner's assertion that he resides in Kisumu is false and merely intended to justify filing the Petition in this Court. To buttress this position, they draw attention to the fact that the Petitioner's employment records indicate a Nairobi address and that in prior proceedings before the Court of Appeal via Nakuru Civil Application E108 of 2025 he had stated that his matrimonial home was in Kericho. To support their position the Respondents, rely on *Philip Mururi Ndaruga v Peter Ndegwa Theuri & others* [2025] eKLR, which cited *Parag Bhabwanjigi Savani v Jitu & 2 others* [2017] eKLR as follows:

“We have recently had occasion to decry the tendency of parties to engage in a game of gambling. And probably forum shopping by the filing of a duality or multiplicity of suits over the same subject matter in the hope of landing a successfully punch somewhere by a process of spreading their suits and hedging their bets.”

24. They also rely on the case of *Republic v Paul Kihara Kariuki & 3 others* [2020] KEHC 10142 (KLR), where the Court held that pursuing multiple proceedings over the same subject matter constitutes abuse of court process and amounts to a gamble to obtain favourable outcomes. Concerning sub judice, the Respondents emphasize that the suit falls squarely within the doctrine. They reiterate that Nairobi ELRC Petition No. E036 of 2026 involves the same subject matter, raises similar constitutional issues, and concerns the same administrative actions by the Respondents. They rely on *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR), where the Supreme Court defined sub judice as: “Before the Court or Judge for determination.” and set out the applicable criteria, namely: the existence of multiple suits; similarity of subject matter; pendency before courts of competent jurisdiction; and identity of parties or their representatives. They further submit that the element of sub judice has further been buttressed by the fact that Petitioner has not bothered to withdraw from the Petition in Nairobi. The Respondents also rely on *Thiba Min Hydro Co. Ltd v Josephat Karu Ndwiga* [2013] KEHC 2017 (KLR), where the Court held that the determination of sub judice depends on the substance of the suits rather than their form.
25. Concerning abuse of court process, the Respondents submit that the Petitioner has improperly invoked multiple court processes in respect of the same dispute, with the intention of obtaining favourable orders in one forum after failing in another. They assert that the differences between the present Petition and the Nairobi Petition are merely cosmetic and do not alter the substance of the dispute. They rely on *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others* [2009] KECA 453 (KLR), where the Court defined abuse of process as the improper use of judicial proceedings, including instituting multiple actions over the same subject matter or pursuing parallel



proceedings in different courts. It is their contention that this conduct undermines the administration of justice thus this court should decline jurisdiction in order to safeguard its integrity.

26. Accordingly, the Respondents urge the Court to allow the Notice of Motion dated 10th February 2026, set aside the interim orders issued on 9th February 2026, and dismiss the Petition dated 8th February 2026 with costs.

Disposition

27. What falls for determination is distilled to be the following:
- i. Whether this petition is sub judice;
 - ii. Whether the Respondent's application dated 10th February is merited;
 - iii. Whether the Petitioner is entitled to the injunctive and/or conservatory orders sought; and
 - iv. What orders lie on the issue of costs.
28. The Respondents assert the case herein is sub judice. It is asserted there are proceedings in Nairobi being Nairobi ELRC Petition No. E036 of 2026 filed by one Javan Onyango who sued the Board of Directors, Kenya Tea Development Agency Holdings, Chege Kirundi in his capacity as the Board Chairman KTDA Holdings Limited, Kenya Tea Development Holdings Limited, Cabinet Secretary Ministry of Agriculture and Livestock Development and the Hon. Attorney General. The interested parties are named as Wilson Muthaura, Simon Rugut and Eng. Francis Miano. As can be seen, the Petitioner herein is named as the 2nd Interested Party. The pleadings therein relate to some aspects that could be considered common. However, it seems the Petition therein was filed by a busybody who sued the Respondents herein and included the Petitioner as an interested party. It is not revealed to the Court what nexus Javan Onyango has with the Respondents or the Petitioner. In this present Petition, the Petitioner is articulating that his labour rights and constitutional rights were infringed. When a person is affected directly as the Petitioner herein, he has every right to present a case to court. In the case of *Trusted Society of Human Rights Alliance v Matemo & 5 others* (supra), where the Supreme Court defined an interested party as follows:
- “(17) Suffice it to say that while an interested party has a 'stake/interest' directly in the case, an amicus's interest is its 'fidelity' to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.
- (18) Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity.
29. The Court discerns that the Petitioner herein was joined to the Petition in Nairobi and no evidence was led that he participated in that suit let alone being the originator of the suit. The Respondent is the one who has a stake in those proceedings and is a principal party. The Petitioner herein is NOT a principal party and therefore the two suits cannot be said to involve the same parties. The interests of an interested party are peripheral to those of the main parties. The difference is that an interested party would be affected by the outcome of the suit. In my considered view, having had a look at the



information availed in this suit relating to the Petition in Nairobi which revolves around the public interest, I find that the present Petition which revolves around personal rights is not sub judice. This Petition is distinct from Nairobi ELRC Petition No. E036 of 2026. One distinct aspect of this Petition is that it relates to the Petitioner's forced leave and deactivation of his emails further underscoring the distinction between the two proceedings. On the first issue I find the issue of sub judice is not established.

30. The second issue is whether the Respondents' motion dated 10th February 2026 is merited. Granted the finding above, what is the provenance of the motion which was underpinned by assertions of the Petition herein being sub judice? The application dated 10th February 2026 and the replying affidavit sworn by the 1st Respondent on 12th February 2026 are mirrors of each other. Since both the application and replying affidavit more or less mirror each other, their primary position is that the present suit is sub judice and as such the motion is unmerited. A party filing a response in a suit is required to file a replying affidavit, which normally sets out the facts relied on in opposition to the motion, or grounds of opposition, which articulate points of law. In this case a replying affidavit would have sufficed. The sum total of the foregoing is that the motion is for dismissal, albeit with no order as to costs.
31. The final question is whether the Petitioner is entitled to the injunctive and/or conservatory orders sought. In the Petition, the Petitioner sought relief as he had been sent on compulsory leave. It is the firm view of Courts in this land that compulsory leave imposed without justification is illegal and unconstitutional. The Court references the cases of Njoroge & 2 others v Kenya Medical Supplies Authority & 3 others (supra), Wamukota v Kenya Electricity Transmission Company Limited & 2 others (supra), and Mberia & 3 others v County Government of Meru & 2 others (supra) and the Court holds that a continued violation of the Petitioner's rights may lead to irreversible consequences, including loss of employment while granting the orders sought will uphold constitutional values and the rule of law. Any refusal would sanction unconstitutional conduct and as such the Court finds there is merit to the grant of the following order:
 1. That pending the hearing and determination of this Petition, this Honourable Court hereby issues an order directing the Respondents to immediately and unconditionally, activate and/or reinstate the Petitioner/Applicant's work/office e-mail sbrugutt@ktdateas.com, business rights, together all other access rights entitled to him under his employment contract including permission to attend Board meetings as required of his position.
32. Before the Court pens off, there was an allusion to an issue which suggests forum shopping. When parties move the Court, the place of suing is where the employee resides and granted the Petitioner was stated to have declared his matrimonial home to be Kericho and given there is no present ELRC Court at Kericho, Kisumu is a rational choice of forum as would Kisii and Eldoret being the 3 Court stations served by a Judge within the reach of Kericho. Given the choice of forum is Kisumu that is within the purview of the Court as the Court exercises countrywide jurisdiction with the only caveat being avoiding inconvenience to the other side. The Respondent has offices countrywide and has the capacity to appear at Kisumu. The long and short of the foregoing is that there is no evidence of forum shopping as the Petition was filed in Kisumu and not before any other court before being repositioned here.
33. In the final analysis, the Petitioner having succeeded in the matter to this point is entitled to costs for the motion before the Court. Such costs be agreed failing which they will be taxed. There will be directions on disposal of the Petition immediately after this Ruling.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 20TH DAY OF APRIL 2026



NZIOKI wa MAKAU, MCI Arb.

JUDGE

