



**Mogaru & another v Speaker, Nyamira County Assembly 1st
Respondent Nyamira County Assembly & 4 others (Constitutional
Petition E013 of 2024) [2026] KEHC 4455 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4455 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CONSTITUTIONAL PETITION E013 OF 2024**

**TW CHERERE, J
MARCH 5, 2026**

BETWEEN

LEONARD OKARI MOGARU 1ST PETITIONER

EDITH NYABOKE OMARI 2ND PETITIONER

AND

SPEAKER, NYAMIRA COUNTY ASSEMBLY 1ST RESPONDENT

NYAMIRA COUNTY ASSEMBLY 1ST RESPONDENT

NYAMIRA COUNTY ASSEMBLY 2ND RESPONDENT

DUKE SIMEON ONYARI 3RD RESPONDENT

AND

NYAMIRA COUNTY ASSEMBLY SERVICE BOARD .. 1ST INTERESTED PARTY

SILVANUS NYAMORA, AG. CLERK, COUNTY ASSEMBLY OF

NYAMIRA 2ND INTERESTED PARTY

RULING

1. Before Court is the Notice of Motion dated 13th February 2026 filed by the Respondents and the 1st Interested Party. The Application is expressed to be brought under Article 23(3) of *the Constitution* of Kenya, Rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, and all enabling provisions of the law.
2. The substantive prayer sought is for leave be granted to the Respondents and the 1st Interested Party to amend their Notice of Motion Application dated 16th December 2025 in terms of the draft annexed amended Notice of Motion.



3. The Application is supported by the Supporting Affidavit sworn on 13th February 2026 by Duke S. Onyari, an Advocate of the High Court of Kenya having conduct of the matter on behalf of the Respondents and the 1st Interested Party. He avers that the Petitioners commenced these proceedings vide a Petition dated 27th November 2024 and subsequently amended their Petition on 09th June 2025 and 02nd December 2025 without leave of the Court. He deposes that Rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules requires that amendments to pleadings be made only with leave of the Court. He further contends that the impugned amendments are highly prejudicial to the Respondents and the 1st Interested Party, particularly as they seek, inter alia, payment of public funds from December 2024 despite the Petitioners allegedly having rendered no services since October 2024. He states that it is in the interest of justice that leave be granted to amend the Notice of Motion dated 16th December 2025 so that all issues in controversy may be determined in one ruling, and annexes a draft amended Notice of Motion in support thereof.
4. The Petitioners opposed the Application on the ground that it does not comply with Order 8 Rule 2 of the Civil Procedure Rules which, in their view, requires such an application to be made within fourteen days of service. It was submitted that the Application was filed outside that period and is therefore incompetent.
5. The 2nd Interested Party similarly opposed the Application on the ground that it was brought over eight months after conservatory orders were issued in this matter and that the delay is inordinate and prejudicial.
6. In response, the Applicant's counsel submitted that these proceedings are governed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and not the Civil Procedure Rules, and that there is no provision under the Mutunga Rules requiring an application for amendment to be made within fourteen days.
7. Having considered the Application, the Supporting Affidavit, the annexures thereto and the rival submissions, the issues that arise for determination are:
 1. Whether Order 8 Rule 2 of the Civil Procedure Rules applies to constitutional petitions
 2. Whether the delay of approximately eight months following the issuance of conservatory orders is fatal
 3. Whether leave to amend should be granted.
8. Concerning the first issue, it is not disputed that this Petition is brought pursuant to Articles 22 and 23 of *the Constitution* and is governed by *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules). Rule 18 thereof permits a party to amend its pleadings at any stage of the proceedings with leave of the Court. The Rule does not prescribe a specific timeline within which such leave must be sought.
9. Constitutional litigation is sui generis, and its procedural framework is designed to facilitate substantive justice. The Civil Procedure Rules apply only to the extent that they are not inconsistent with *the Constitution* or the Mutunga Rules.
10. Order 8 Rule 2, which regulates amendments in ordinary civil proceedings and imposes specific timelines, cannot therefore be imported wholesale into constitutional proceedings where Rule 18 provides a distinct and flexible regime.
11. I therefore find that Order 8 Rule 2 does not strictly apply to proceedings under the Mutunga Rules.



12. On the second issue, the Petitioner and the 2nd Interested Party contend that the Application was brought more than eight months after conservatory orders were issued and that such delay is inordinate. Conservatory orders preserve the substratum of the Petition pending determination and do not operate to freeze pleadings or fetter the Court's discretion under Rule 18.
13. Concerning the issue of leave, the draft annexed indicates that the intended amendments principally respond to amendments already made to the Petition and raise issues including res judicata and the propriety of those amendments.
14. The overarching duty of this Court in constitutional matters is to determine disputes substantively and conclusively. Denying leave in the circumstances of this case would risk shutting out issues that may be central to the fair determination of the Petition.
15. Accordingly, I am satisfied that the Application is properly before the Court under Rule 18 of the Mutunga Rules and it is hereby ordered:
 1. Leave is therefore granted to the Respondents and the 1st Interested Party to amend the notice of motion dated 16th December 2025
 2. The amended notice of motion shall be filed and served within two (2) days from today's date
 3. The Petitioner and the 2nd Interested Party Applicant shall file and serve their responses within five (5) days of service.
 4. Thereafter, each party shall five (5) days from the close of pleadings to file and exchange written submissions starting with the Applicants
 5. Mention 19th March 2026 to confirm compliance and to take date for ruling

DELIVERED AT NYAMIRA THIS 05TH DAY OF MARCH 2026.

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Anita

For Petitioner - Omoke for Morara Omoke Advocates

For Respondents and 1st I.Party - Moku Ndubi & Co. Advocates

2nd Interested Party - Present in person

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