

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC LPET NO. E023 OF 2025

KELVIN MWALIMU.....

PETITIONER

VERSUS

COUNTY GOVERNMENT OF MOMBASA.....

RESPONDENT

RULING

1. By a notice of motion dated 28.10.2025 expressed to have been filed pursuant to *Articles 19(3), 20, 21, 22(2)(c), 22, 23, 28, 40, 46, 47, 48, 50 and 159 of the Constitution Rules 4(1) and 23, and 24 of the Constitution of Kenya of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and all enabling provisions of the law*, the petitioner sought a conservatory order to stop the enforcement of the *Mombasa County Water and Sewerages Service (Sanitation) Regulations 2025* and the *Mombasa County (Hazardous Waste) Management Regulations 2025* pending the hearing and determination of the petition.

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the petitioner on 27.10.2025. The petitioner pleaded the said regulations were promulgated without meaningful public participation in violation of the constitution. It was pleaded that the sanitation regulations imposed exorbitant fees, levies, charges and fines and that the hazardous waste regulations imposed excessive and duplicate fees, charges and measures. It was further pleaded that the sanitation regulations encroached on the mandate of the Waster Services Regulatory Board (WASREB) under the **Water Act 2016**. It was contended that both regulations created duplicate enforcement mechanisms at the county level which conflicted with already existing mechanisms at the national level.
3. The respondent filed a replying affidavit sworn by Jezian Faruk on 24.11.2025. He deposed that he was the County Secretary and Head of Public Service of the respondent. It was pleaded that extensive public participation and consultations were undertaken prior to the promulgation of the regulations. He exhibited copies of newspaper notices and letters to various stakeholders in that regard. It was denied that there was any

conflict between the impugned regulations and the **Water Act 2016**. It was also denied that there was any overlap of functions, fees, charges, or fines at the county and national levels of government.

4. The respondent contended that it applied for authority to review the impugned charges from the WASREB and upon obtaining such approval it conducted public consultations before reviewing its charges upwards. It was the respondent's case that the impugned regulations fully complied with the constitution and the laws of the Republic of Kenya hence the petitioner's application ought to be dismissed.
5. When the application came up for directions it was directed that it shall be canvassed through written submissions. The petitioner was also granted leave to file a further affidavit in response to the respondent's replying affidavit. However, by the time of preparation of the ruling none of the parties had filed submissions. The petitioner had also not filed a further affidavit.
6. The purpose of a conservatory order is to preserve the state of things in dispute pending the hearing and determination of a case. In the case of *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014] eKLR*. It was held; *inter alia*, that;

“86 Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes...”

7. The court has considered the notice of motion dated 28.10.2025, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main question for determination herein is whether or not the petitioner has made out a case for the grant of the conservatory order sought.
8. The court is aware that the main petition is yet to be heard hence it should refrain from delving too deeply into the issues in controversy or making any remarks on conclusions which may prejudice or embrace the fair trial of the petition. The court must bear in mind the nature of the impugned regulations and the

purpose they were intended to serve and especially the dangers they were intended to address.

9. It would appear that the impugned regulations are essentially intended to regulate waste management and the handling of hazardous waste within the county of Mombasa. It would further appear, on a prima facie basis, that there was some form of public consultation and stakeholder engagement prior to the promulgation of the impugned regulations. The adequacy or otherwise of those engagements shall be canvassed and determined at the trial.
10. On the basis of the material on record the court is not satisfied that the impugned regulations should be put on hold pending the hearing and determination of the petition. The court is not satisfied that the enforcement of the said regulations during the pendency of the petition shall result into substantial injury or chaos in public administration. The court is of the view that the precautionary principle of environmental protection should be applied in this instance since the petition may take a long period to be determined. The petitioner should set down the petition for hearing on merit so that all the issues in controversy may be conclusively resolved at the trial.

11. The upshot of the foregoing is that the court is not satisfied that the petitioner has made out a case for the grant of the conservatory order to suspend the implementation of the impugned regulations. As a consequence, the notice of motion dated 28.10.2025 is hereby dismissed. Costs of the application shall be in the cause.

Orders accordingly

Ruling dated and **signed** at **Mombasa** and **delivered** virtually via Microsoft Teams on this **23rd day** of April 2026 in the presence of the parties as indicated below.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Makau for respondent

No appearance for the petitioner