

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E214 OF 2026

FRANCIS KALIU MALOMBE.....1ST PETITIONER
GACHARA GITAU.....2ND PETITIONER

VERSUS

NAIROBI CITY COUNTY GOVERNMENT.....1ST RESPONDENT
SCRAP METAL COUNCIL.....2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT
CHIEF MAGISTRATE’S COURT AT MAKADARA...4TH RESPONDENT
INSPECTOR GENERAL OF POLICE.....5TH RESPONDENT
JOSHUA CHACHA.....6TH RESPONDENT
ATTORNEY GENERAL.....7TH RESPONDENT
**KENYA IRON AND SCRAP METAL ASSOCIATION,
KISMA.....INTERESTED PARTY**

RULING

1. The 1st Petitioner/ Applicant is a proprietor of scrap metal business. He claims in his petition and application for conservatory orders, that the respondents arbitrarily and unlawfully revoked his business license and permit which action has effectively shut down his business operations and deprived him and the many employees, of their livelihood.
2. That he was served with a notice to show cause for revocation of his scrap metal license by the 2nd respondent at the instigation of the 6th respondent.

3. That the 2nd petitioner is facing criminal charges of stealing and handling stolen property which include rail steel bar, the property of Kenya Railways Corporation, assorted Kenya Power and Lightning metals and high mast galvanized street pole belonging to Nairobi City County Government. The charges are allegedly fabricated thereby exposing him to unlawful deprivation of liberty and wrongful conviction.
4. The petitioners claim that the respondents are using the police to extort money from them in the name of carrying out an anti-vandalism exercise and raiding the 1st petitioners' premises without notice, which conduct is said to be intrusive and amounts to disruptive search.
5. The petitioners claim that the respondents' actions amount to violation of the petitioners' fundamental rights and freedoms. The petition seeks several reliefs including mandamus to restore the licenses revoked, declarations of unconstitutionality of the respondents' actions, certiorari to quash the decisions taken by the respondents and prohibition of the respondents from maintaining criminal proceedings against the 2nd petitioner. The petitioners also seek for damages for loss of business as well as exemplary and aggravated damages and compensation among other reliefs.
6. Pending the interpartes hearing of the application for conservatory orders, the petitioner number 1 seeks for a conservatory order for the restoration of the revoked and cancelled licences.

7. The interested party supports that position asserting that the members of the interested party are suffering due to loss of employment and that the police were harassing and extorting from the petitioners and members of the interested party, including coercion of the petitioners to withdraw this petition.
8. Mr. Otieno counsel for the petitioners prayed for order 2 of the application dated 31st March 2026 seeking conservatory orders, pending interpartes hearing arguing that the petitioner will operate within the law.
9. The respondents' counsel opposed any interim conservatory orders and urged this court to decline the invitation to grant such orders until the hearing of the application for conservatory orders.
10. I have considered the application for interim conservatory orders restoring cancelled licenses for the 1st petitioner.
11. Rule 23 of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013** provides for conservatory or interim orders as follows:

23. Conservatory or interim orders

(1) Despite any provision to the contrary, a Judge before whom a petition under rule 4 is presented shall hear and determine an application for conservatory or interim orders.

(2) Service of the application in sub rule (1) may be dispensed with, with leave of the Court.

(3) The orders issued in sub-rule (1) shall be personally served on the respondent or the advocate on record or with leave of the Court, by substituted service within such time as may be limited by the Court.

12. In this case, the court did not grant any ex parte orders sought by the petitioners when the matter came up ex parte in the first instance, under certificate of urgency. The court directed the petitioners to serve the respondents for inter partes directions on 27th April 2026 and when the matter came up yesterday, I heard the parties' respective positions on the matter. I already notified the parties that the application for conservatory orders would be heard orally once directions for filing of responses are given.

13. The petitioner's counsel sought for restoration of the revoked and cancelled licenses of the 1st petitioner.

14. It must be noted that a conservatory order restoring the revoked or cancelled licenses is a mandatory order whose effect will, in the present circumstances, reverse the Respondent's decision at the interlocutory stage. Therefore, the threshold for the issuance of a mandatory order is quite high, and it demands the presence of an exceptionally clear case.

15. In this case, it may be that the issues brought by the Applicant are arguable. However, this Court does not find the alleged illegalities to be so obvious as to warrant a mandatory order at this stage of proceedings before hearing the substantive motion for conservatory orders.

16.I am conscious of the fact that the subject-matter of the dispute is related to a regulated activity, and thus hence, questions of alleged violation of the law as per the documents annexed to the petition and supporting affidavit including the notification dated 18th March, 2026 need to be taken into consideration and interrogated at the substantive hearing. In this regard, the Court must ensure that orders which may affect the regulatory scheme of things are not made until all issues are ventilated.

17.Accordingly, the mandatory conservatory order sought will not be granted at this juncture.

18.The court will nonetheless fast track the hearing of the motion for conservatory orders. Directions to follow in the physical file.

19.I so order.

Dated, Signed and delivered at Nairobi virtually this 28th Day of April, 2026

**R.E. ABURILI
JUDGE**