

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

PETITION NO. E210 OF 2026

JOSEPH KIMANI WACHIRA PETITIONER

VERSUS

RAPHAEL TUJU1ST RESPONDENT

ETHICS AND ANTI-CORRUPTION COMMISSION.....2ND RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. This matter came up yesterday 27th April 2026 for interpartes directions on the application dated 30th March 2026 filed under certificate of urgency seeking for conservatory orders to among others, restrain the EACC and ODPP from investigating and or charging and prosecuting the petitioner/applicant for the offence of bribery and or alleged corruption involving the 1st respondent as the complainant.
2. The petitioner claims that his fundamental rights and freedoms are being violated as there is absolutely no evidence of him having committed the alleged offence.

3. On 1/4/2026 when the matter was placed before me as the recess duty judge, I did not certify it as urgent. I issued specific directions for the petitioner to serve the respondents setting out timelines for compliance.
4. As at yesterday when the matter came up for interpartes directions to confirm compliance with the court's directions issued on 1/4/2026, only the 4th respondent had filed grounds of opposition and Mr. Weche counsel for the 4th respondent appeared. The petitioner had complied with the court's directions and served all the parties and filed his brief written submissions in support of the conservatory orders.
5. Before the Court could issue interpartes directions, Mr. Ndungu counsel for the petitioner implored the court to grant an interim conservatory order owing to the apprehension of the petitioner being apprehended by EACC as he was on cash bail until 27/4/2026. I therefore heard brief oral submissions on whether to grant an interim conservatory order and in the process, with the 4th respondent's counsel, Mr. Weche vehemently opposing any interim orders, disclosing that there is a similar matter arising from the same cause of action pending before the Anti-Corruption and Economic Crimes Division of the High Court, being, HCACEC E 012/2026, and that the said matter was due on 28/4/2026. according to Mr. Weche, this court could not restrain the 2nd and 3rd Respondents from undertaking their constitutional or statutory

mandate to investigate and or charge and prosecute the petitioner for criminal culpability.

6. I then requested for time to peruse HCACEC E 012/2026 to appraise myself of its contents, which file was expeditiously availed to me by the Deputy Registrars of the two Divisions and I am grateful for the quick action by both Judicial Officers.
7. I have now perused HCACEC E012/206 in which the petitioner is Dr. Kennedy Ngumbau Mulwa and the respondents are EACC, ODPP, Inspector General of Police and Raphael Tuju. All the respondents in that matter are also respondents in this petition and although the petitioners are different, the complainant is the same Raphael Tuju and the circumstances under which the petitioner herein and the petitioner in HCACEC E012/2026 was arrested are very similar, and at the same venue.
8. For the above reasons, I am persuaded that this matter is related to HCACEC E012/2026, and that the ACEC Division of the High Court is the appropriate court to handle this petition, noting that the said Division was established pursuant to the High Court Organization and Administration Act, and for purposes of promoting effectiveness and efficiency in the administration of justice and promoting judicial performance, to hear and determine matters related to anticorruption and economic crimes

9. That said, I note that in the HCACEC E012/2026, the court did grant temporary conservatory orders prohibiting arrest charging and or prosecution of the petitioner for 30 days. The court did not prohibit EACC from undertaking lawful investigations into alleged bribery claims.

10. For the above reasons, I make the following orders-

1) That this petition and any pending application are hereby transferred to the Anti-Corruption and Economic Crimes Division of the High Court to be heard together with HCACEC E012/2016. This is intended to avoid different courts of concurrent jurisdiction issuing inconsistent decisions in similar matters.

2) That having appreciated the constitutional and statutory mandates of the 1st, 2nd and 3rd respondents, I hereby grant a temporary conservatory order limited to only restraining the 1st, 2nd and 3rd respondents from arresting, charging and or prosecuting the petitioner herein Joseph Kimani Wachira with any offence related to the issue raised in this petition pending further directions as may be issued by the ACEC Division of the High Court.

3) That the restraining order stated in order 2 above does not suspend any lawful investigations into allegations of bribery or corruption,

being undertaken by the EACC which may in its discretion summon the petitioner for statement recording, considering such restraining order carries significant public interest ramification.

- 4) Aligning this order with the order issued in HCACEC PET E012/2016, the petitioner/applicant shall comply with any investigative directions given by the 2nd and 3rd respondents except appearing in court to answer to any charges related to the matters complained of in the petition, until further directions are given by the HCACEC Court.
- 5) This matter is placed before the presiding Judge of ACEC Division of the High Court to be considered alongside HCACEC E012/2026 forthwith.
- 6) Upon such transfer being effected, from this end, this matter is closed
- 7) I so direct.

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

**R.E. ABURILI
JUDGE**