



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(CONSTITUTIONAL & HUMAN RIGHTS DIVISION)
CONSTITUTIONAL PETITION NO E259 OF 2026

IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF ARTICLES 1(1), 1(2), 1(3), 2(4), 10(1), 10(2), 23, 25(C), 47(1) 47(2), 50(1), 73, 94, 95, 96, 124, 127, 129, 165(3)(d), 258(2)(C) AND 259(1) OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 (MUTUNGA RULES)

AND

IN THE MATTER OF THE PARLIAMENTARY POWERS AND PRIVILEGES ACT, CAP.6 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE NATIONAL ASSEMBLY STANDING ORDERS

AND

IN THE MATTER OF THE DECISION OF THE SPEAKER, NATIONAL ASSEMBLY OF 22ND APRIL 2026 TO SUSPEND HON. WANAMI WAMBOKA, MP, FROM CHAIRING THE PUBLIC INVESTMENT COMMITTEE ON GOVERNANCE AND EDUCATION

BETWEEN

**THE HON JACK WANAMI WAMBOKA.....
PETITIONER/APPLICANT**

VERSUS

**THE SPEAKER, NATIONAL ASSEMBLY.....
1ST RESPONDENT**

**THE NATIONAL ASSEMBLY.....2ND
RESPONDENT**

R U L I N G

Introduction

- 1.** The petitioner is a Member of Parliament for the Bumula Constituency in Bungoma County. He is the suspended chairperson of the National Assembly's Public Investment Committee on Governance and Education.
- 2.** On **22nd April 2026**, the speaker of the National Assembly, after allowing the petitioner to comment on a complaint raised by the National Cohesion and Integration Commission, suspended him from chairing the said committee, pending the hearing and determination of the complaint by the House Committee of Powers and Privileges. The petitioner contends that the suspension was neither preceded by any investigation, nor grounded on any established findings of misconduct, nor anchored in any report of the Committee of

Powers and Privileges as contemplated by section 17(3) of the Parliamentary Powers and Privileges Act, 2017.

3. The Respondent contended that the conduct of the Speaker of the National Assembly violated Article 10 of the Constitution on good governance and the rule of law, Article 47(1) of the Constitution, insofar as he was suspended without substantiated reasons for his suspension, and Article 50(1) of the Constitution, as he was denied a fair hearing.
4. Being so aggrieved, the Petitioner filed the petition dated 22nd April 2026. Concomitantly with the said petition, the Petitioner filed the Notice of Motion dated 22nd April 2026 seeking conservatory reliefs, among which is the suspension of the impugned decision. The said application is supported by the affidavit of the Hon Jack Wanami Wamboka.
5. The application and the petition are opposed by the Speaker of the National Assembly and the National Assembly itself.

The Notice of Motion dated 22nd April 2026

6. The said motion seeks the following orders:-
 1. *This application be certified urgent, and service thereof be dispensed with in the first instance;*
 2. *Pending hearing and determination of this application interpartes, a conservatory order be*

*issued suspending the decision of the Speaker of the National Assembly of **22nd April 2020**, suspending the petitioner as the chairman of the Public Investment Committee on Governance and Education, during the enquiry by the Committee of Powers and Privileges;*

3. *Pending the hearing and determination of the substantive petition, a conservatory order be issued suspending the decision of the speaker of the National Assembly of **22nd April 2026**, suspending the petitioner as the chairperson of the Public Investment Committee on Governance and Education, during the pendency of the enquiry by the Committee of Powers and Privileges; and*

4. *Costs of the application be provided for.*

7. In the grounds in support of the petition, which were reiterated in the affidavit in support of the application, the petitioner stated that he had been the substantive chairperson of the Public Investment Committee on Governance and Education. The said committee was hived off from the Public Investment Committee during the review of the Standing Orders by the 12th Parliament and was intended to interrogate the reports and accounts of all public investments in the education, defence, governance, justice, and law and order sectors.

8. The petitioner deposed that the Speaker raised a matter of privilege arising from a complaint allegedly from the National Cohesion and Integration Commission. Following

what the petitioner regarded as hasty deliberations, the complaint was referred to the Committee of Powers and Privileges for formal investigation and evidentiary interrogation. The speaker also took the impugned step of suspending the petitioner, an action he avers was taken without affording him any meaningful opportunity to be heard. The petitioner contends that he was sanctioned on the basis of mere allegations, which, in his view, inverted the cardinal principle that liability must follow, not precede, due process. He stated that the speaker's actions were *ultra vires* the provisions of sections 15, 16 and 17 of the Parliamentary Powers and Privileges Act, Chapter 6 of the Laws of Kenya. He contended that the impugned suspension took effect immediately, even before there was a formal hearing.

9. The petitioner attached to the application the communication by the Speaker of the National Assembly on the complaint and her decision vide which, at paragraph 33(5)(a), the petitioner was suspended from chairing the Public Investment Committee on Governance and Education. The decision was signed by the Hon Gladys Boss, the Deputy Speaker of the National Assembly and was dated **22nd April 2026**.

Directions of the Court

- 10.** Upon considering the motion, *ex parte in the first instance, and noting the urgency of the matter*, this Court issued directions on service and hearing of the motion. The Court directed that the motion would be heard on **29th April 2026**. The parties were granted liberty to file skeleton submissions on or before 5 pm on **28th April 2026**.

The Response by the 1st Respondent

- 11.** The 1st respondent appointed **Mr. Mbarak Awadh Ahmed** as its advocate. The 1st respondent's counsel filed a replying affidavit, sworn by Mr **Samuel Njoroge**, the Clerk of the National Assembly, on **27th April 2026**, in which he responded to the application for conservatory orders. The deponent firstly contended that the High Court has no jurisdiction under Article 117 of the Constitution and Section 12(2) of the Parliamentary Powers and Privileges Act to hear and determine the application and the petition, on the ground that, under those provisions, the 2nd respondent has privileges, including the privilege to regulate its internal processes. Secondly, he contended that the petition was premature and non-justiciable, as it challenged ongoing proceedings before the 2nd respondent, in respect of which no decision or action had been taken.

- 12.** Mr Njoroge highlighted the importance of the Public Investment Committee, its timelines and stated that *“any limitation in the composition or integrity of the Committee had grave ramifications in the implementation of the constitutional accountability mechanisms regarding public finance.*
- 13.** Regarding the complaints, Mr Njoroge deposed that a formal complaint was made by Rev. Dr Samuel Kobia, CBS, Chairperson of the National Cohesion and Integration Commission. In the said complaint, the petitioner was accused of open hostility, harassment, demeaning treatment of the National Cohesion and Integration Commission members and staff, and demanding inducements as a precondition to granting an audience or favourable consideration during the committee proceedings. The complaint was received on **23rd July 2025**. Subsequently, the Hon Peter Kaluma, CBS, MP, sought to have the complaint investigated and addressed. Mr Njoroge deposed that, noting the importance of the committee, which examines the Auditor General's reports on the legality and prudence of public investments, it was necessary that the chairperson's integrity be beyond reproach.
- 14.** The deponent stated that the House's action was proportionate. He opined that, taking into account the

Committee's work, suspending the whole Committee or its members would have paralysed it. He deposed that the matter had been referred to the House Committee of Powers and Privileges. To facilitate the smooth deliberations of the said Committee, the chairman was suspended for 45 days.

- 15.** Mr Njoroge further deposed that the suspension of the petitioner was lawful, procedural and expressly sanctioned by statute and was undertaken to facilitate a fair, impartial and credible inquiry into the allegations raised. He denied that the suspensions breached Articles 10, 25(c), 47, and 50(1) of the Constitution, stating that the allegation to that effect was misconceived. He reiterated that the suspension was undertaken as a preliminary measure to facilitate investigations, among other things. He averred that the petitioner was a champion of accountability in public office, going by his previous public stance. Mr. Njoroge stated that suspension was not a removal from office, did not affect the petitioner position as a member of parliament and was consistent with supreme Court's judgment in **Dzila v Kwale County Assembly Service Board & 6 others [2025] KESC 33 (KLR)** where it was held that suspension, where undertaken as preliminary measure to facilitate investigations does not, in itself, violate constitutional rights, particularly where the substantive disciplinary process has

not yet been concluded. He stated that the petition offended the doctrine of separation of powers.

- 16.** Lastly, it was stated that the petitioner had not satisfied the threshold for the grant of conservatory orders and that the public interest weighed against any such decision. Mr Njoroge reckoned that the public interest favoured the continuance of the inquiry and that the issuance of a conservatory order would erode public confidence in the National Assembly's ability to regulate its own affairs and address allegations of misconduct by its members. He therefore prayed that the application and petition be disallowed so that the committee on powers and privileges could undertake its mandate timeously, in proceedings to which the petitioner would be entitled to attend.

The Preliminary Objection of the 2nd Respondent

- 17.** The 2nd Respondent raised a preliminary objection dated 24th April 2026, in which it challenged this Court's jurisdiction to hear and determine the petition. It was stated that the matter in dispute fell squarely within the National Assembly's constitutional mandate to discipline its own members under Articles 94, 95 and 124 of the Constitution and the Parliamentary Power and Privileges Act. Further, the petition offended the doctrine of separation of powers by

inviting this honourable Court to supervise and interfere with the National Assembly's internal disciplinary proceedings, contrary to Articles 1(3), 94 and 95 of the Constitution, and by inviting the Court to interfere with an ongoing legislative and statutory process that was yet to be concluded and whose outcome remains undetermined. The 2nd respondent also objected on the grounds that the petition was not justiciable, was premature, violated the doctrine of ripeness, and that internal processes had not been exhausted.

The Submissions of the Parties

- 18.** In the directions issued by this Court on **23rd April 2026**, the parties were granted leave to file and serve written skeleton submissions. The Court notes with gratitude that the parties complied. The submissions were highlighted on **29th April 2026**. I shall give a précis of the parties' submissions below.

Submissions of the Petitioner

- 19.** The petitioner's submissions are dated **28th April 2026**. In the said submissions, his counsel, **Nelson Havi, SC**, and **Brian Khaemba**, advocate, identified issues for determination as being:

- i. Whether this honourable Court has jurisdiction to hear and determine this petition and the application; and*
- ii. Whether the petitioner had met the threshold for the grant of conservatory orders.*

20. Counsel denied that the Court was being invited to supervise or interfere with the Respondent's internal process. It was urged that the Court was being asked to inquire whether the 1st respondent's suspension of the petitioner from his position as the chairman of the Public Investments Committee on Governance and Education, without any inquiry, investigation and/or opportunity to be heard, was constitutional and lawful, and whether it violated his fundamental rights and freedoms.

21. Mr Nelson Havi, SC, and Mr Brian Khaemba urged that under Article 2(1) of the Constitution, the Constitution of Kenya binds all persons and state organs, and that Article 165 confers jurisdiction on the High Court to determine whether a right or fundamental freedom has been infringed. They further urged that the petition was anchored in the Constitution. In support of their submissions, they relied on the decision of **Mwamuye, J**, in **Kibagendi v National Assembly & 2 others [2026] KEHC 3974 (KLR)**.

22. It was urged that the doctrine of exhaustion was inapplicable and that section 9(4) of the Fair Administration Action Act permitted exceptions to the doctrine. In support of this thesis, counsel for the petitioner relied on the case **Fleur Investments Limited v Commissioner of Domestic Taxes & another [2018] KECA 341 (KLR)**. They urged that only the High Court had jurisdiction to hear and determine whether constitutional rights had been violated. Regarding the doctrine of ripeness, they urged that it applied only where the approach to the Court was premature. In this case, however, the impugned actions had already been taken to the detriment of the petitioner, as he had already been suspended as the chairman of the committee.
23. On the merits of the application, it was urged that the petitioner had demonstrated an arguable case with a likelihood of success. The petitioners' counsel deprecated the manner in which the complaint was handled, noting that a considerable period elapsed between the complaint being raised and action being taken. They also stated that the complaint lacked specificity. They averred that no written reasons for the actions taken against him were ever provided to him, requiring him to respond. It was urged that this failure violated Article 47 of the Constitution.

24. Counsels submitted that the fact that the petitioner was suspended before he was heard violated sections 15, 16 and 17 of the Parliamentary Powers & Privileges Act, as a member could only be suspended after an enquiry had been completed. They urged that by suspending him, the speaker had already determined his guilt. They relied on the case of **Margaret Wanjiku Kiiru v Attorney General & 4 others [2017] KEHC 5556 (KLR)**, where the Court quoted with approval the case of **REPUBLIC VS NATIONAL ASSEMBLY COMMITTEE OF PRIVILEGES & 2 OTHERS EX-PARTE ABABU NAMWAMBA [2016] eKLR**, wherein it was the court held that stated:

“Failure to comply with the rules regulating the execution of business by a legislature will surely attract the court’s intervention. Parliament, like any other constitutional organ, must play by the rules set for it by the constitution. Where it has made rules to guide its operations, it ought to comply with such rules.”

25. It was urged that the grant of orders would enhance constitutional values and serve public interest. The petitioner’s counsel submitted that their client does not seek to curtail the inquiry into the complaints by the Committee of Powers and Privileges, but rather sought the suspension of the impugned decision, as he had been condemned unheard.

26. On the basis of the foregoing, the petitioner's counsel urged that the application be allowed as prayed.

Submissions of the 1st Respondent

27. The learned counsel for the 1st respondent filed written submissions dated 28th April 2026. Counsel set out what he considered to be the uncontested facts. Mr Mbarak submitted that the petitioner does not challenge the Committee of Powers and Privileges' mandate to conduct the inquiry or to prevent it from carrying out its work.
28. Regarding the preliminary objection raised by the 2nd Respondent, Mr Mbarak submitted that, as the matter was actively before the Committee of Powers and Privileges, the Court lacked jurisdiction under the doctrine of ripeness. In support of the said contention, counsel relied on one case of **Ferreiro v Levin No & others; Vrenhoek v Power & others 1996 (1) SA 984 (CC) at paragraph 199, Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] eKLR and Saggaf & 3 others v Departmental Committee & Lands & 2 others [2022] KEHC 10728 (KLR).**
29. Mr. Mbarak urged that under the doctrine of exclusive cognizance, each house of parliament had an exclusive right

to administer its internal affairs and regulate its proceedings without interference from the other house or from outside parliament. He urged that the doctrine was grounded in Article 117 of the Constitution, which provides for the powers and privileges of parliament, and in Article 124, which gives the National Assembly the power to make standing orders to control and regulate its business and internal affairs. He submitted that what the petitioner sought to do was to have the Court interfere with the business and internal proceedings of the National Assembly by reinstating the petitioner as the chairperson of the Public Investment Committee on Governance and Education.

- 30.** Regarding the merits of the application, Mr Mbarak urged that no conservatory orders ought to issue on six grounds, to wit, that the petitioner does not challenge the constitutionality of the inquiry before the Committee of Powers and Privileges; that the process before the said Committee had not been concluded; that the 45-day suspension was an interim measure permissible under section 42(7) of the Leadership & Integrity Act and was not prima facie unlawful, as recognised by the Supreme Court in **Dzila v Kwale County Assembly Service Board & 6 others [2025] KESC 33 (KLR)**; that before the impugned decision was made, the petitioner was heard; that suspension before a full enquiry was a norm in parliamentary systems and was similar to the practice in the judiciary,

where judges are suspended before a decision on removal is made; that the Public Investment Committee on Governance and Education was an important Committee with oversight rules; and that limitation on its composition or integrity would have grave limitations in the implementation of the constitutional accountability mechanism for public finance. Lastly, counsel stated that this Court should be slow to encroach upon the powers of another branch of government. In support of this contention, reliance was placed on a Supreme Court decision **In the Matter of the Speaker of the Senate & another [2013] KESC 7 (KLR)** and **Mate & another v Wambora & another [2017] KESC 1 (KLR)**. Counsel thus urged that the application be dismissed.

Submissions of the 2nd Respondent

31. Ms Sophie A Otieno, learned counsel for the 2nd Respondent, filed written submissions dated **27th April 2026** in support of the 2nd Respondent's preliminary objection dated **25th April 2026**. She contended that the petition is incompetent, premature, and non-justiciable, and that this honourable Court ought to decline jurisdiction at the threshold stage and dismiss the petition *in limine*.

32. Counsel identified issues for determination as being:-

1. *Whether the Court has jurisdiction to entertain the petition, having regard to Articles 117 and 124 of*

the Constitution of Kenya and the Parliamentary Powers and Privileges Act;

2. *Whether the petition offends the doctrine of separation of powers by improperly inviting the Court to supervise and interfere with the internal parliamentary disciplinary process;*
3. *Whether the petition offends the doctrine of ripeness as no hearing has been held, no finding made, and no determination capable of founding a constitutional cause of action has occurred; and*
4. *Whether the petitioner is barred by the doctrine of exhaustion of remedies, having not exhausted the statutory and Parliamentary process before approaching the Court.*

33. Regarding the first issue, it was urged that Article 117 of the Constitution, read with the Parliamentary Powers and Privileges Act, protects parliamentary proceedings. Ms Otieno submitted that the impugned proceedings arose from National Assembly proceedings concerning allegations against a serving committee member who was the Committee's chairperson. It was thus urged that this Court has no jurisdiction to consider the matter.

34. On separation of powers, Ms Otieno submitted that the doctrine compels restraint, even where jurisdiction might otherwise exist. She urged that the Constitution established a system of separate but interdependent arms of

government, each exercising a distinct constitutional mandate. Counsel relied on the Supreme Court decision in **Parliament of Kenya & another v Okioti & 2 others [2026] KESC 28 (KLR)**, which held that judicial intervention in the affairs of a coordinate branch of government was justified only in the clearest of cases; that unwarranted intrusion risks undermining democratic governance and institutional autonomy; and that Courts exercising review jurisdiction must observe restraint and avoid encroaching upon functions constitutionally reserved for the legislative arm of government.

35. Counsel also relied on decisions of the courts in **Speaker of the National Assembly v Karume [1992] KECA 42 (KLR)**, **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**, **In the Matter of the Speaker of the Senate & another [2013] KESC 7 (KLR)**, **Mate & another v Wambora & another [2017] KESC 1 (KLR)** and **Pevans East Africa Limited & another v Chairman Betting Control and Licensing Board & 7 others [2017] KEHC 9684 (KLR)**.

36. Ms Otieno submitted that the petition was premature, as the matter was before the Committee of Powers & Privileges, which had not yet heard or determined it. No final decision

had been made, and the matter was interlocutory. Counsel relied on the case of **Wanjiru Gikonyo & 2 others v National Assembly of Kenya & 4 others [2016] KEHC 5536 (KLR)** and two South African decisions, in which it was held that courts should ordinarily await finalisation of a matter unless there were exceptional circumstances. She urged that no exceptional circumstances existed in his matter to warrant interference.

- 37.** On the last issue, counsel submitted that where the Constitution or a statute established an internal mechanism for addressing a grievance, that mechanism must be pursued before recourse is had to the Courts. Counsel further submitted that the National Assembly had activated its internal processes, which were ongoing. She urged that the Courts should be the last resort, not the first port of call. She thus urged the Court to uphold the preliminary objection, dismiss the petition and the application with costs to the Respondent, and make such further orders as may be deemed fit and just.

Analysis and Determination

- 38.** In addition to the pleadings, responses, and written and oral submissions, the parties filed comprehensive lists and Bundles of authorities. I have considered all these

documents. In my view, the issues I am called upon to consider and determine are the following:

1. *Whether the High Court has jurisdiction to hear and determine disputes arising from the process and proceedings of a House of Parliament, where contravention of rights and fundamental freedoms is alleged; and*
2. *And if so, whether, in this particular case, the petitioner has satisfied the conditions for the grant of conservatory orders.*

On the Jurisdiction Question

- 39.** Both respondents contest this Court’s jurisdiction and have asked the Court to dismiss the petition and the application *in limine*. In its preliminary objection dated 24th March 2026, the National Assembly has raised 5 grounds, which I have already stated above. The grounds are weighty and, if upheld, will dispose of the petition and the application in their entirety (see **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696**).
- 40.** Since the objection raised contests the jurisdiction of this Court, I must consider it first. For if I am convinced that I have no jurisdiction, I shall have no choice but to lay down my tools. I am guided in this finding by the decision of the Court of Appeal in **Owners of the Motor Vessel “Lillian**

S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR), where Nyarangi, JA, expressed himself as follows:

“With that, I return to the issue of jurisdiction and to the words of Section 20 (2) (m) of the 1981 Act. I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction...”

41. In the case of **Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR)**, the Supreme Court of Kenya, in a similar vein, stated that:

“68. A Court’s jurisdiction flows from either the Constitution or legislation, or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...”

42. What emerges from the authorities I have cited is that an enquiry into jurisdiction must be made the moment a party

to litigation raises it, or when the Court itself apprehends that it may not have jurisdiction. The Court must satisfy itself that it is seized of jurisdiction before proceeding further. I will therefore consider the grounds of objection raised by the 2nd Respondent in turn.

Does the substratum of the petition fall exclusively within the constitutional mandate of the National Assembly under Articles 94, 95, 119 and 124 of the Constitution of Kenya and the Parliamentary Powers and Privileges Act?

43. The Respondents submit that the National Assembly has the constitutional mandate to regulate its proceedings and that what transpired falls within that mandate. By contrast, the Petitioner contends that his constitutional rights were breached because the decision to suspend him as chairman of the Public Investments Committee on Governance and Education was, in his view, made without any enquiry or investigation and without a hearing. He further contends that the said action was therefore unlawful and unconstitutional, and that it violated his rights.

44. Article 2(1) of the Constitution states that

“This Constitution is the Supreme law of the Republic and binds all persons and all state organs at both levels of government.”

This, in my view, means that Parliament, as a body created by the Constitution, is under the Constitution and is bound by it.

Article 165(3) of the Constitution of Kenya, 2010 grants the High Court the:

“jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.”

- 45.** The issues raised by the petitioner are in regard to alleged violation of the petitioner’s constitutional rights, that is to say, to fair administrative action and to be heard fairly before an adverse action is taken. With respect to the respondents, I do not think these matters are ones this Court should defer to Parliament's processes under the doctrine of exclusive cognizance. Thus, whereas Courts should be very reluctant to interfere with the internal processes of the elected branch, it would be remiss not to do so if a violation of the Constitution is alleged. Thus, it is my view that this Court has the jurisdiction to hear and determine the matters complained of.

Does the Petition Offend the Doctrine of Separation of Powers?

- 46.** The doctrine of separation of powers is grounded in the principle that government power should not be concentrated but should be dispersed among the three arms of government, each performing legislative, adjudicatory and executive functions. The three arms of government are conceptually and institutionally distinct, yet they perform their functions with due deference to one another. Further, they check on one another, even within the due deference framework, in what is known as a system of checks and balances.
- 47.** Although the 3 arms of government are distinct and independent, the Judiciary is not precluded from considering, hearing and determining matters arising out of alleged violation of the Constitution simply because they arose in the executive or legislative branches. In my recent case of **Kibagendi v National Assembly & 2 others [2026] KEHC 3974 (KLR)**, Mwamuye, J, rightly in my view, that:

“The Constitution of Kenya applies in every respect across the entirety of the Republic of Kenya. It is the Supreme Law of the land, and no person, place, or institution that is subject to or under the law of Kenya is above the Constitution or outside its reach. The doctrine of separation of powers and constitutional independence requires that the branches of government operate only to require that the High Court exercises greater care and apply a higher standard

when called upon to enquire into the internal operations of the other branches of government, not as an ouster of its jurisdiction.”

48. In the Kibagendi case, the learned Judge also held that:

“The limits of parliamentary privilege within Kenya’s constitutional order are now well settled. In Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR, the Supreme Court held that while courts must exercise restraint and accord deference to the internal processes of legislative bodies, such deference does not amount to abdication, and judicial intervention is warranted where there is a clear violation of the Constitution. The Court affirmed that the doctrine of separation of powers does not operate to shield unconstitutional conduct from judicial scrutiny.”

49. With respect to the respondents, for this Court to disavow jurisdiction on the grounds of separation of powers would be nothing short of dereliction of its constitutional mandate. This Court won’t do anything of the sort. Thus, I find and hold that consideration of the petition by this Court won't offend the doctrine of separation of powers.

Is the Dispute Ripe, or is it Prospective or Hypothetical?

50. Courts exist to solve real disputes, not to engage in hypothetical analysis. In **Wanjiru Gikonyo & 2 others v**

National Assembly of Kenya & 4 others [2016] eKLR,
the High Court stated that:

“The Court ought not to engage in premature adjudication of matters, through either the doctrine of ripeness or avoidance. It must not decide on what the future holds either.”

- 51.** It is contended that the dispute hasn’t crystallized or, to put it another way, “ripened” and that what the court is called upon to decide is a prospective or hypothetical matter. Is that the case? In my view, the petitioner has already been suspended and is now serving a 45-day suspension. He has alleged that he wasn’t heard prior to the impugned decision. He claims he wasn’t given written notification of the charge against him. Evidently, what is before the Court isn’t what the Committee of Powers and Privileges of the National Assembly may, or may not do, which at this point would be “prospective” and “hypothetical,” but what has already happened, *to wit*, the suspension of the petitioner. In that respect, this case is in all fours with what Angote, J, considered in **Kalima v Ngugi & 2 others [2025]KEELC 7273 (KLR)**. In the said case, the learned judge stated succinctly that “the doctrine of ripeness is to prevent a party from prematurely approaching a Court when a party has not been subjected to prejudice.”

52. My view is that the petitioner's grievance has ripened. The objection on that basis is thus without merit.

Should the Petitioner have exhausted available remedies under the doctrine of exhaustion?

53. As has been stated, the petitioner complains of alleged violations of his constitutional rights that led to his suspension as the chairman of the Public Investment Committee on Governance and Education. In my view, redress for alleged violations of fundamental rights and freedoms lies with the High Court, not with the Committee of Powers and Privileges. I am therefore of the view that the doctrine of exhaustion is inapplicable.

54. Even if I were wrong in my foregoing findings, section 9(4) of the Fair Administrative Action Act provides for situations where the doctrine is inapplicable. In the case of **Fleur Investments Limited v Commissioner of Domestic Taxes & another [2018] KECA 341 (KLR)**, the Court of Appeal held that:

"Whereas courts of Law are enjoined to defer to specialized Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislation

for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

- 55.** The net effect of the foregoing is that, in my view, the preliminary objection raised by the 2nd respondent is without merit. Accordingly, it is dismissed.
- 56.** Having dismissed the preliminary objection, I will now consider whether the petitioner/Applicant met the conditions for the grant of conservatory orders.
- 57.** The threshold for grant of conservatory orders was set by the Supreme Court of Kenya in the case **Munya v Kithinji & 2 others [2014] KESC 30 (KLR)**, in the following terms:

*“**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.”

- 58.** In **Law Society of Kenya v Attorney General & another; Judicial Service Commission (Interested Party) [2020] KEHC 10496 (KLR)** it was held that the applicant must demonstrate an arguable prima facie case with likelihood of success and show that in the absence of conservatory orders he/she is likely to suffer prejudice, that the grant or denial of conservatory orders will enhance constitutional values and objects of a specific right or freedom in the bill of rights, whether the petitioner or its substratum will be rendered nugatory and whether the public interest will be served or prejudicated by a decision to exercise discretion to grant or deny conservatory order.
- 59.** A “*prima facie*” case is not one that must necessarily succeed. In my view, it is one where, on the basis of the available material, there is a need for the respondent to rebut. The allegations levelled against the petitioner are indicated as having been raised on 23rd July 2025. They appear to have surfaced in April 2026 and were then apparently processed with surprising alacrity. The petitioner appears not to have been heard, nor was the Fair Administrative Action Act followed,

insofar as he may not have received written notification of the charges against him. In my view, the petitioner has demonstrated a prima facie case with a probability of success.

- 60.** If the conservatory orders are not issued, it is likely that the impugned decision will continue and be concluded. In my view, the petitioner is likely to suffer prejudice.
- 61.** My view is that the grant of conservatory orders will enhance constitutionalism and serve the public interest. I hold the view that decisions that emphasize adherence to the rule of law promote justice and serve the greater public good.
- 62.** Lastly, if the orders sought are not granted, the basis of the petition will be defeated, as by the time the decision on the petition is rendered, the petitioner will have served his suspension in full.
- 63.** I must comment on the issue of suspension of judges and whether it is analogous to what happened in this case. This formed the lynchpin of the argument made by the 1st respondent. In my view, the process used by the Judicial Service Commission is rigorous. Firstly, upon receipt of a complaint, a judicial officer must respond in writing. If the response is unsatisfactory, the Judicial Service Commission

holds a hearing. If the Commission finds that there is a cause for dismissal of a judge, a recommendation to that effect is made to the President of

the Republic. At that point, the judge is suspended, and a tribunal is formed. This process has safeguards that, in my view, are consistent with Articles 47 and 50 of the Constitution. The process not perfunctory.

64. The upshot of the foregoing is that it is my view that there is a case for the issuance of conservatory orders. Consequently, I order that:

1. Pending the hearing and determination of the substantive petition, a conservatory order is hereby issued suspending the decision of the Speaker of the National Assembly of 22nd April 2026, suspending the petitioner as the chairperson on the Public Investment Committee on Governance and Education, during the pendency of the inquiry by the Committee of Powers and Privileges;

65. As this is a constitutional petition on an issue of great public importance, I decline to make an order as to costs. The parties will bear their own costs of the application.

66. As this is a matter concerning the integrity of a Parliamentary committee and its chairperson, I direct that

the petition shall first be tracked, heard and determined within 120 days of today.

67. It is so ordered.

Dated and Delivered at Nairobi this 11th day of May 2026.

Gregory Mutai

JUDGE

In the presence of:

Messrs. **Nelson Havi, SC,** and **Paul Bulowa,** for the
Petitioner/Applicant;

Messrs. **Mbarak** and **Milimo,** for the **1st Respondent;**

Ms **Otieno,** for the **2nd Respondent;** and

Ms Lwambia - Court Assistant.