



REPUBLIC OF KENYA



**KENYA LAW**  
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**National Assembly of Kenya v Njiru & 41 others (Civil Appeal (Application) E096, E098, E103, E105 & E109 of 2025 (Consolidated)) [2025] KECA 494 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KECA 494 (KLR)

**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT NAIROBI**  
**CIVIL APPEAL (APPLICATION) E096, E098, E103, E105 & E109 OF 2025 (CONSOLIDATED)**  
**DK MUSINGA, M NGUGI & F TUIYOTT, JJA**  
**MARCH 21, 2025**

**BETWEEN**

**THE NATIONAL ASSEMBLY OF KENYA ..... APPLICANT**

**AND**

**KENNETH NJAGI NJIRU ..... 1<sup>ST</sup> RESPONDENT**  
**MESHACK SUBA CHURCHILL ..... 2<sup>ND</sup> RESPONDENT**  
**LEMPAA SUYINKA ..... 3<sup>RD</sup> RESPONDENT**  
**TEDDY M MUTURI ..... 4<sup>TH</sup> RESPONDENT**  
**AMOS WANJALA ..... 5<sup>TH</sup> RESPONDENT**  
**STEVEN KIHONGE NDUNG’U ..... 6<sup>TH</sup> RESPONDENT**  
**SOPHIE DOLA ..... 7<sup>TH</sup> RESPONDENT**  
**WINNIE THUO ..... 8<sup>TH</sup> RESPONDENT**  
**ENG VICTOR NG’ANG’A ..... 9<sup>TH</sup> RESPONDENT**  
**SIMON LOKOMA ..... 10<sup>TH</sup> RESPONDENT**  
**CAROLINE MOGAKA ..... 11<sup>TH</sup> RESPONDENT**  
**FRANCIS KENYA MWANGI ..... 12<sup>TH</sup> RESPONDENT**  
**KENYA KWANZA COALITION ..... 13<sup>TH</sup> RESPONDENT**  
**SPEAKER OF THE NATIONAL ASSEMBLY ..... 14<sup>TH</sup> RESPONDENT**  
**HON MOSES M WETANGULA ..... 15<sup>TH</sup> RESPONDENT**  
**REGISTRAR OF POLITICAL PARTIES ..... 16<sup>TH</sup> RESPONDENT**  
**HON KIMANI ICHUNG’WA ..... 17<sup>TH</sup> RESPONDENT**



HON OWEN BAYA .....	18 <sup>TH</sup> RESPONDENT
HON SYLVANUS OSORO .....	19 <sup>TH</sup> RESPONDENT
HON NAOMI JILLO WAKO .....	20 <sup>TH</sup> RESPONDENT
SABINA CHEGE .....	21 <sup>ST</sup> RESPONDENT
INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC) .....	22 <sup>ND</sup> RESPONDENT
THE HON ATTORNEY GENERAL .....	23 <sup>RD</sup> RESPONDENT
KANINI KEGA .....	24 <sup>TH</sup> RESPONDENT
ANNE NDERITU .....	25 <sup>TH</sup> RESPONDENT
KENYA REVENUE AUTHORITY .....	26 <sup>TH</sup> RESPONDENT
CABINET SECRETARY THE NATIONAL TREASURY AND ECONOMIC PLANNING .....	27 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC ALLIANCE .....	28 <sup>TH</sup> RESPONDENT
AMANI NATIONAL CONGRESS .....	29 <sup>TH</sup> RESPONDENT
FORD KENYA .....	30 <sup>TH</sup> RESPONDENT
AZIMIO LA UMOJA ONE-KENYA COALITION .....	31 <sup>ST</sup> RESPONDENT
JUBILEE PARTY OF KENYA .....	32 <sup>ND</sup> RESPONDENT
LAW SOCIETY OF KENYA .....	33 <sup>RD</sup> RESPONDENT
HON OPIYO WANDAYI .....	34 <sup>TH</sup> RESPONDENT
HON ROBERT MBUI .....	35 <sup>TH</sup> RESPONDENT
HON JUNET MOHAMED .....	36 <sup>TH</sup> RESPONDENT
KATIBA INSTITUTE .....	37 <sup>TH</sup> RESPONDENT
MAENDELEO CHAP CHAP PARTY .....	38 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC MOVEMENT .....	39 <sup>TH</sup> RESPONDENT
MOVEMENT FOR DEMOCRACY AND GROWTH (MDG) PARTY .....	40 <sup>TH</sup> RESPONDENT
USAWA KWA WOTE PARTY .....	41 <sup>ST</sup> RESPONDENT
ROOTS PARTY .....	42 <sup>ND</sup> RESPONDENT

*(Being applications for conservatory orders and/or stay of execution pending the hearing and determination of the appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (Ngaah,, Chigiti, and L. Mugambi, JJ.) delivered at Nairobi on 7th February 2025 in Constitutional Petition No. E202 of 2023)*



## RULING

1. Before this Court are five (5) related applications, all emanating from the same decision of the High Court (Ngaah, Chigiti, & Mugambi, JJ.) delivered on 7<sup>th</sup> February 2025 in Nairobi High Court Constitutional Petition No. E202 of 2023. The details of each of the said applications are as provided hereunder:
  - i. Civil Appeal (Application) No. E096 of 2025- The National Assembly vs. Kenneth Njagi Njiru & 41 Others. The Notice of Motion is dated 11<sup>th</sup> February 2025;
  - ii. Civil Appeal (Application) No. E098 of 2025- Hon. Kimani Ichungw'a & 3 Others vs. Kenneth Njagi Njiru & 38 Others. The Notice of Motion is dated 11<sup>th</sup> February 2025;
  - iii. Civil Appeal (Application) No. E103 of 2025- Kenya Kwanza & Another vs. Kenneth Njagi Njiru & 40 Others. The Notice of Motion is dated 12<sup>th</sup> February 2025;
  - iv. Civil Appeal (Application) No. E105 of 2025- The Speaker of the National Assembly of Kenya & Another vs. Kenneth Njagi Njiru & 41 Others. The Notice of Motion is dated 14<sup>th</sup> February 2025;
  - v. Civil Appeal (Application) No. E109 of 2025- Maendeleo Chap Chap Party vs. Kenneth Njagi Njiru & 41 Others. The Notice of Motion is dated 11<sup>th</sup> February 2025.
2. All the applications are brought under the provisions of section 3 (1) of the Court of Appeal (Organization & Administration) Act, sections 3A & 3B of the *Appellate Jurisdiction Act*, and rules 1 (2), 5 (2) (b), 43 and 47 of the Rules of this Court. The main and cross-cutting orders sought in all the applications are:
  - i. Pending hearing and determination of the respective applications, this Court be pleased to issue conservatory orders and/or stay the execution of the judgment and decree of the High Court delivered at Nairobi on 7<sup>th</sup> February 2025 in Nairobi High Court Petition Number E202 of 2023;
  - ii. Pending hearing and determination of the respective appeals, this Court be pleased to issue conservatory orders and/or stay the execution of the judgment and decree of the High Court delivered at Nairobi on 7<sup>th</sup> February 2025 in Nairobi High Court Petition Number E202 of 2023;
  - iii. That the costs of and incidental to these applications abide the result of the respective appeals.
3. When the applications came up for hearing on 26<sup>th</sup> February 2025, with approval of all the parties, the Court consolidated all of them, and the proceedings were recorded in Civil Appeal (Application) No. E096 of 2025.
4. It is necessary that we lay down the background to the applications so as to put this ruling into context. In the run- up to the 2022 general election, the main protagonists for the various elective posts, including the election of the President, came together under the relevant provisions of the *Political Parties Act*, Cap 7D Laws of Kenya and formed various coalitions. The faction led by H. E. William Samoei Ruto, (then a candidate for election as President), to wit, the Kenya Kwanza Alliance (hereinafter referred to as “Kenya Kwanza”), initially had in its fold various political parties, including United Democratic Alliance (UDA) which was led by H. E. William Ruto; Amani National Congress



- (ANC) which was led by Hon. Musalia Mudavadi; Forum for the Restoration of Democracy– Kenya (FORD-Kenya) which was led by Hon. Moses Wetang’ula; Chama Cha Kazi (CCK) which was led by Hon. Moses Kuria; Democratic Party of Kenya (DP); The Service Party (TSP) which was led by Hon. Mwangi Kiunjuri; Farmers Party; Tujibebe Wakenya Party which was led by Hon. William Kabogo, among other parties.
5. The RT. Hon. Raila Amolo Odinga, who was a presidential aspirant, led the Azimio La Umoja One-Kenya Coalition (hereinafter referred to as “Azimio”), which had in its corner various parties, including the Orange Democratic Movement (ODM), which was led by Hon. Raila Odinga; Jubilee Party, which was led by the then President of the Republic of Kenya H. E. Uhuru Kenyatta; Wiper Democratic Movement, which was led by Hon. Kalonzo Musyoka; Kenya African National Union (KANU), which was led by Hon. Gideon Moi; Narc Kenya, which was led by Hon. Martha Karua; Democratic Action Party of Kenya (DAP-K); United Democratic Movement (UDM); Maendeleo Chap Chap Party (MCCP) which was led by Hon. Alfred Mutua; Pamoja African Alliance (PAA), which was led by Hon. Amason Kingi, among other political parties.
  6. After the general election which took place on 9<sup>th</sup> August 2022, the Independent Electoral and Boundaries Commission (hereinafter referred to as “the IEBC”) published the results of the members elected and nominated to the National Assembly vide Gazette notices nos. 105055 of 5<sup>th</sup> September 2022; 10537 of 7<sup>th</sup> September 2022 and 10710 of 9<sup>th</sup> September 2022. According to the published election results, 171 members of the National Assembly were elected on the tickets of political parties under the Azimio coalition, while 165 members of the National Assembly were elected on the Kenya Kwanza coalition parties’ tickets. Therefore, the results published by the IEBC revealed that Azimio had majority representation in the National Assembly.
  7. However, after the said general election, which saw H. E. William Samoei Ruto declared by the IEBC as President elect, and following the validation of his election by the Supreme Court of Kenya, various parties that were initially members of Azimio defected (or they purported to) to Kenya Kwanza. These parties included United Democratic Movement (UDM), Movement for Democracy and Growth (MDG), Maendeleo Chap Chap (MCCP) and PAA. In essence, therefore, the Members of Parliament elected under these parties were expected, upon the shift of political alliance, to support the Kenya Kwanza coalition led by H. E. William Samoei Ruto, and to support Kenya Kwanza’s sponsored business in the National Assembly.
  8. The gravamen of the dispute before the High Court as evinced in the Petition filed therein, to wit, Nairobi Constitutional Petition No. E202 of 2023: Kenneth Njagi Njiru & 11 Others vs Kenya Kwanza Coalition & 18 Others, emanated from the ruling and/or communication made by the Speaker of the National Assembly on 6<sup>th</sup> October 2022. In his communication to the house, the Speaker recognized Kenya Kwanza as the majority coalition in the National Assembly. This communication was made after the Speaker had received communication from the two coalitions, each appointing its preferred House leaders for the positions of leader of the majority party, deputy leader of the majority party, majority party chief whip and deputy majority party chief whip.
  9. The petitioners (the 1<sup>st</sup> to 12<sup>th</sup> respondents in each of the applications), argued that the composition of the National Assembly’s majority and minority parties had already been determined by the results of the 2022 general election as gazetted by the IEBC. They alleged that the Speaker’s ruling was part of a broader scheme by Kenya Kwanza to undermine Azimio by inducing defections from member parties, particularly Jubilee Party. It was also their contention that the Speaker’s decision violated various constitutional principles by disregarding the Registrar of Political Parties’ confirmation of Azimio’s numerical superiority in the National Assembly.



10. The petitioners also took issue with Hon. Moses Masika Wetangula’s (hereinafter referred to as “Hon. Wetangula”) dual role, being the Speaker of the National Assembly on the one hand, and on the other hand, being party leader of Ford-Kenya Party, which was a member of Kenya Kwanza coalition. They contended, inter alia, that Hon. Wetangula was conflicted to the extent that, going by his political inclination, he would be biased towards driving Kenya Kwanza’s political agenda in discharge of his functions as the Speaker of the National Assembly. In addition, they argued that the holding of two positions by Hon. Wetangula was untenable as it was contrary to the Constitution, which establishes a presidential form of government in which the three arms of the government are independent of each other.
11. Among the orders sought in the petition included:
  - a declaration that the question as to which party or coalition of parties is the majority in the National Assembly in the 13<sup>th</sup> Parliament was determined by the sovereign will of the Kenyan voters on 9<sup>th</sup> August 2022; a declaration that the decisions, actions and omission of Kenya Kwanza with the assistance, complicity, aid and abetment of Hon. Wetangula and the Registrar of Political Parties to destabilize Azimio as the popularly determined majority party in the National Assembly constitutes an attempt to overturn the will of the people expressed in the general election held on 9<sup>th</sup> August 2022 and establish the leadership of the National Assembly in the 13<sup>th</sup> Parliament contrary to and in a manner prohibited by Articles 1, 4, 38 and 103 of the Constitution; a declaration that Azimio is the majority coalition in the National Assembly of Kenya based on the outcome of the election of members of the National Assembly held on 9<sup>th</sup> August 2022; an order of certiorari be issued quashing the ruling of the Speaker of the National Assembly on the leadership of the National Assembly in the 13<sup>th</sup> Parliament contained in his communication from the chair made on 6<sup>th</sup> October 2022; a declaration that on account of the Hon. Wetangula’s position as the leader of the Ford-Kenya party, as a member of the party leaders forum of Kenya Kwanza alliance and an ex-officio member of coalition parliamentary group of Kenya Kwanza alliance, Hon. Wetangula was not eligible to be elected as the speaker of the National Assembly in the 13<sup>th</sup> Parliament; a declaration be issued to declare that by dint of Articles 50 (1) and 75 (1) of the Constitution and the doctrine of the separation of powers, Hon. Wetangula was not lawfully elected as or to continue serving as the speaker of the National Assembly of Kenya; and that an order of certiorari be issued to quash the election of Hon. Wetangula as the speaker of the National Assembly.
12. The respondents in the petition defended the ruling made by the Speaker on 6<sup>th</sup> October 2022, asserting that coalition agreements did not override the political realities in Parliament. They contended that individual members of Parliament had the right to realign politically, and the Speaker had acted within his jurisdiction to recognize the shifting political landscape. They further contended that the petition was politically motivated and that the courts should not interfere in parliamentary processes. It was their argument that political parties and coalitions were voluntary associations and that Members of Parliament (MPs) had constitutional right to switch alliances.
13. The High Court, vide its judgment dated 7<sup>th</sup> February 2025, held, inter alia, that as of 6<sup>th</sup> October 2022 when the Speaker made his ruling, there was no evidence placed before him from the Registrar of Political Parties showing that there existed any post-election coalition agreements involving the UDM, PAA, MCCC and MDG and Kenya Kwanza. Therefore, in the absence of these post-election coalition agreements, the Speaker had no basis to disregard and dismiss the Registrar of Political Parties’ information on the membership of Azimio and Kenya Kwanza coalitions. For the same reason, the



- Speaker had neither legal nor factual basis for declaring UDM, PAA, MCCC and MDG as having migrated from Azimio and joined Kenya Kwanza coalition.
14. The court therefore held that the Speaker's ruling made on 6<sup>th</sup> October 2022 declaring Kenya Kwanza as the majority coalition was unconstitutional and in violation of Article 108 of *the Constitution*. It further held that the majority coalition was determined by the election outcome and could not be altered by post-election defections.
  15. Regarding Hon. Wetangula's dual role as Speaker of the National Assembly and party leader of Ford-Kenya Party, the court was emphatic that the obtaining position reasonably evokes appearance of bias and undermines his required neutral role as the Speaker of the National Assembly and the independence of Parliament as the symbol of democracy, thereby negatively impacting on the country's democratic standards as envisaged by the rule of law principle under Article 10 (2) (a) of *the Constitution*. This dual role was therefore unlawful and unconstitutional.
  16. Lastly, the court held that upon his election as Speaker of the National Assembly, Hon. Wetangula's position as the leader of Ford-Kenya Party, or a leader of any other political party or organ, became untenable and that he has no capacity to serve as leader of a political party or a political organ.
  17. The dispositive orders issued by the court were:
    - i. A declaration that the question as to which party or coalition of parties is the majority in the National Assembly in the 13<sup>th</sup> Parliament was determined by the sovereign will of the Kenyan voters during the 9<sup>th</sup> August 2022 general Election;
    - ii. A declaration that the Honourable Speaker's ruling or determination contained in his communication from the chair made on 6<sup>th</sup> October 2022 on the Majority and Minority in the National Assembly violated Article 108 of *the Constitution* and, therefore, it is null and void;
    - iii. A declaration that the Honourable Speaker's ruling or determination from the chair on 6<sup>th</sup> October 2022 with respect to leadership of the National Assembly on account of his determination of the Majority Party and Minority Party in the National Assembly is contrary to and violated Article 108 of *the Constitution* and, to that extent, it is null and void;
    - iv. An order of certiorari quashing the Honourable Speaker's ruling or determination contained in his communication from the chair made on 6<sup>th</sup> October 2022 on the Majority and Minority in the National Assembly.
    - v. Parties will bear their respective costs.
  18. The applicants were dissatisfied with the decision of the High Court and preferred the five related appeals, which are pending hearing and determination before this Court. It is necessary for us to point out that each of the applications herein was filed within the respective main appeal files.
  19. The applications are supported by the grounds appearing on the face of each of the applications and the separate affidavits sworn in support thereof. In Civil Appeal (Application) No. E096 of 2025, the affidavit in support and the supplementary affidavit are sworn by Samuel Njoroge, Clerk of the National Assembly, while in Civil Appeal (Application) No. E098 of 2025, the affidavit in support is sworn by Hon. Kimani Ichung'wa, the M.P. for Kikuyu Constituency and the current Majority Leader in the National Assembly. In Civil Appeal (Application) No. E103 of 2025, the affidavit in support is sworn by Hon. Hassan Omar Hassan, the Secretary General of the United Democratic Alliance, while in Civil Appeal (Application) No. E105 of 2025, the affidavit in support is sworn by RT. Hon. (DR.) Moses Masika Wetangula, the Speaker of the National Assembly of Kenya. Lastly,



in Civil Appeal (Application) No. E109 of 2025, the affidavit in support is sworn by Wilfred Nyamu Mati, the Secretary General of the Maendeleo Chap Chap Party.

20. We have perused the applications as well as each of the appeals.

The applicants have raised inter-related grounds of appeal. The overarching contention by the appellants is that the learned judges of the High Court erred in law and in fact by: narrowly focusing on the legality of the Speaker's ruling, overlooking the fact that the Amended Petition contained multiple causes of action which the court failed to address in its entirety without providing any justification; not upholding the appellant's right to a fair trial by allowing the Petitioners to pursue unrelated claims; declining to determine objections on jurisdiction despite previously indicating they would be addressed at the hearing of the main petition; failing to rule on the National Assembly's application dated 3<sup>rd</sup> July 2023, contrary to prior court directions; sitting on appeal against the Speaker's ruling instead of assessing its compliance with Article 108 of *the Constitution*; making contradictory findings by holding on the one hand that the majority and minority party in the National Assembly is determined by making reference to the IEBC declared results and the Coalition Agreements, while on the other hand proceeded to make determinations as regards the majority party without making reference to the IEBC results and the Coalition Agreements; holding that the majority party is determined by the will of voters at the ballot, contradicting Article 108 of *the Constitution* and the *Political Parties Act*.

21. In addition to the above noted grounds, the learned judges are also faulted for: overlooking the doctrine of separation of powers and interfering with internal parliamentary affairs by reviewing the Speaker's ruling; declaring the Speaker's ruling unconstitutional without analyzing the evidence he relied upon; failing to adequately consider the inherent right of political parties to associate and align themselves with political coalitions of their choice, and the implications of such realignments on the composition of the majority and minority parties of the National Assembly; failing to demonstrate how the Speaker's conduct violated any constitutional or statutory provisions thereby failing to meet the threshold for judicial intervention in parliamentary affairs; failing to apply section 12 of the *Parliamentary Powers and Privileges Act* which protects MPs from legal action concerning parliamentary proceedings; making a finding that holding both the Speaker's office and a political party leadership position is unconstitutional despite there being no statutory or constitutional prohibition; stripping the Speaker of his right to political association by ruling against his ability to hold a party leadership position; and misinterpreting the law by holding that the Speaker is not exempt from restrictions on State Officers holding political party offices thereby contradicting Article 97 (1) of *the Constitution* and section 12 (2) of the *Political Parties Act*.
22. It is on the strength of the grounds highlighted hereinabove that the applicants contend that their appeals are not only arguable but that they also have overwhelming chances of success.
23. Regarding the nugatory aspect of the appeals if this Court does not grant the orders sought, the germane argument by the applicants is that there is a risk of legislative paralysis and governance instability. It is contended that the impugned judgment has disrupted operations in the National Assembly, particularly the formation of key committees such as the House Business Committee, which plays a crucial role in managing the legislative agenda and ensuring the smooth functioning of parliamentary business. It is further contended that without clarity on the Majority and Minority parties and their respective leadership, the formation of at least 17 key committees, including the Budget and Appropriations Committee and the Public Accounts Committee has become impossible. According to the applicants, this paralysis threatens critical legislative functions such as budget approvals, oversight on public debt, and allocation of funds to county governments. It is particularly



- contended that the inability to introduce the County Government Additional Allocation Bill could violate Article 202 (2) of *the Constitution*, affecting county government financing.
24. The applicants reiterate that the impugned judgment has occasioned confusion, uncertainty and stand-off in the National Assembly, which stand-off has irreversible consequences on the continued and uninterrupted business of the House. It is averred that proceedings of the National Assembly cannot be undone. Further, that the National Assembly operates through timelines set by the Standing Orders, Statutes, and *the Constitution* and most of the timelines, such as the budget cycle timelines and constitutional timelines are strict, and failure to adhere to them would bring about serious constitutional challenges.
  25. Further, the applicants contend that there is threat of contempt of court proceedings being instituted against the Speaker of the National Assembly following the High Court's finding that he cannot hold the dual positions of Speaker of the National Assembly and still be leader of Ford-Kenya party. In this regard, it is argued that the 1<sup>st</sup> to 12<sup>th</sup> respondents have already called for his resignation as FORD-Kenya Party leader by 14<sup>th</sup> February 2025, failing which legal action, including contempt proceedings, will be undertaken against him. The applicants argue that if this is allowed to take place, the Speaker of the National Assembly could be subjected to undue trauma, ridicule, and embarrassment, which could jeopardize the legitimacy of the proceedings in the National Assembly. In addition, that if the finding that the Speaker's leadership positions in both the National Assembly and a political party or coalition is unconstitutional is left to stand, it could trigger a wave of litigations against other office holders, including the Speaker of the Senate and Speakers of the 47 County Assemblies.
  26. In addition, the applicants rely on the public interest principle, contending that it favours granting of the orders sought in order to preserve legislative stability and to prevent a governance crisis. In any case, they argued, the 1<sup>st</sup> to 12<sup>th</sup> respondents will not suffer any prejudice if the orders sought are granted.
  27. For the above reasons and arguments, the applicants urge us to grant the orders sought.
  28. The consolidated applications are opposed primarily by the 1<sup>st</sup> to 12<sup>th</sup> respondents through a replying affidavit sworn by Kenneth Njagi Njiru (the 1<sup>st</sup> respondent), on his own behalf and on behalf of the 2<sup>nd</sup> to the 12<sup>th</sup> respondents.
  29. The 1<sup>st</sup> to 12<sup>th</sup> respondents aver that the filing of the application and the appeal by the National Assembly of Kenya has not been duly authorized by the House Business Committee of the National Assembly and as such, this application has been filed unlawfully, with the sole intention of aiding and abetting causes and interests of Kenya Kwanza, to the detriment of Azimio and the 1<sup>st</sup> to 12<sup>th</sup> respondents.
  30. As regards the merits of the application, it is averred that the applicants, and more specifically the National Assembly of Kenya, has not laid down any compelling grounds to warrant grant of the orders sought. Regarding the allegation that the impugned judgment has paralyzed operations in the National Assembly, the 1<sup>st</sup> to 12<sup>th</sup> respondents contend that this is not the correct position and that as per the supplementary affidavit sworn by the Clerk of the National Assembly, the Speaker of the National Assembly successfully reversed the judgment of the High Court and declared for a second time that Kenya Kwanza is still the majority coalition in the National Assembly. Consequently, the business of the National Assembly is progressing as though the High Court judgment never existed in the first place. Therefore, the applications have been overtaken by events on account of the ruling made by the Speaker on 12<sup>th</sup> February 2024.
  31. As regards the application by the Speaker of the National Assembly and Hon. Wetangula, the 1<sup>st</sup> to 12<sup>th</sup> respondents aver that none of the orders made by the High Court affected the two applicants, except



the order against the dual role played by the Speaker. Further, and in regard to the ruling made by the Speaker on 12<sup>th</sup> February 2025 post factum the delivery of the impugned judgment, it is averred that the said ruling amounted to an unlawful usurpation of the jurisdiction of this Court in violation of Article 159 (1) of *the Constitution*, and that the 1<sup>st</sup> to 12<sup>th</sup> respondents have already cited Hon. Wetangula for contempt of court vide a Notice of Motion dated 22<sup>nd</sup> February 2025, which is scheduled for directions on 28<sup>th</sup> February 2025, now past.

32. On their part, Azimio, Hon. Robert Mbui, & Hon. Junet Mohamed oppose the applications through a replying affidavit sworn by Hon. Junet Mohamed. They aver that the application is legally defective as the applicant had not served upon them a notice of appeal. They assert that the National Assembly and its Speaker have not come to court with clean hands as the Speaker disregarded and disobeyed the orders of the High Court when he delivered a ruling on 12<sup>th</sup> February 2025 declaring Kenya Kwanza the majority coalition in the National Assembly. They also aver that contrary to the assertions by the Clerk of the National Assembly and the Speaker, the impugned judgment has not, in any way, halted the operations of the National Assembly, which is still performing its constitutional and statutory duties.
33. When the consolidated applications came up for hearing, the representation of parties was as follows:

Mr. Ongoya together with Ms. Nganyi, Mr. Awadh, Mr. Ali and Mr. Sugo appeared for the National Assembly; Hon. Murugara appeared for Kenya Kwanza and United Democratic Alliance; Mr. Kibe Mungai and Ms. Lagat appeared for the 1<sup>st</sup> to the 12<sup>th</sup> respondents; Mr. Nyawa appeared for Katiba Institute and also held brief for Mr. Oginga for Azimio, Hon. Robert Mbui and Hon. Junet Mohamed; Ms. Guserwa appeared for the Speaker of the National Assembly and Hon. Wetangula; Mr. Millimo appeared together with Mr. Kiilu for Hon. Kimani Ichung'wa, Hon. Owen Baya, Hon. Sylvanus Osoro, and Hon. Naomi Jillo Wako; Mr. Omagwa held brief for Mr. Kibanga for the Registrar of Political Parties and Anne Nderitu; Ms. Miriam Rebecca appeared together with Dr. Jotham Arwa for the Law Society of Kenya; Mr. Ekisa appeared for Maendeleo Chap Chap Party; Ms. Wanja Wanjiru appeared for the Hon. Attorney General and the Cabinet Secretary, The National Treasury and Economic Planning; Mr. Ngethe appeared for Ford-Kenya; and Mr. Omingo appeared for United Democratic Movement.
34. Save for Mr. Omagwa who indicated that his clients would not be taking any position in the matter, the other counsel made brief oral submissions in support of their respective clients' written submissions as summarised herein above, and it is therefore not necessary that we rehash their oral highlights.
35. In sum, the applicants and the parties in support of the applications urged us to find that the twin principles on arguability of the appeals and nugatory aspect as set out in a plethora of decisions of this Court, including Stanley Kangethe Kinyanjui vs Tony Ketter and 5 Others [2013] eKLR have been satisfied, and that this Court should therefore allow the consolidated applications as prayed.
36. We have considered the application, the affidavits in response, the submissions, as well as the applicable law. It is trite law that in an application of this nature, an applicant must satisfy the Court that the appeal or the intended appeal is arguable, and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See Stanley Kangethe Kinyanjui vs Tony Ketter & 5 Others (supra). Even one arguable ground of appeal will suffice. See Damji Pragji Mandavia vs Sara Lee Household & Body Care (K) Ltd, Civil Application No. Nai 345 of 2004.
37. Counsel for the 1<sup>st</sup> to 12<sup>th</sup> respondents conceded, and in our view rightly so, that the appeals are arguable, but submitted that the second requirement had not been satisfied.



38. Having perused the grounds of appeal, we do not entertain any doubt that the appeals are arguable. The first requirement for grant of an order under rule 5 (2) (b) of this Court's Rules having been satisfied, we shall proceed to consider the second requirement, that is, whether the appeals, if successful, shall be rendered nugatory unless the orders sought are granted.
39. On that requirement, the germane argument was that the impugned judgment had caused confusion as to which coalition had majority representation in the National Assembly, with both Kenya Kwanza and Azimio claiming to be the majority coalition, and that this will disrupt the business of the National Assembly. According to the applicants, and more specifically the National Assembly and its Speaker, this confusion has greatly affected the constitution of not only the House Business Committee, but also 17 other key departmental committees such as the Budget and Appropriations Committee, thus greatly hampering the House business. It was argued that unless the orders sought are granted, the operations of the National Assembly may grind to a halt.
40. That contention was refuted by the 1<sup>st</sup> to 12<sup>th</sup> respondents, who submitted that despite their displeasure with the Speaker's ruling of 12<sup>th</sup> February 2025, there was no likelihood that the operations of the National Assembly were likely to grind to a halt. Its sittings are ongoing, and the only reason the applicants were pursuing the applications for stay of the High Court judgment was the orders that touched on the dual roles of the Speaker.
41. It is common ground that the Speaker of the National Assembly already made an interpretation of the judgment of the High Court vide his ruling of 12<sup>th</sup> February 2025 wherein he stated that Kenya Kwanza was still the majority coalition in the National Assembly. According to Mr. Ongoya, counsel for the National Assembly, and Ms. Guserwa, counsel for the Speaker and Hon. Wetangula, the Speaker had already, in fact, complied with the orders of the High Court. They asserted that there was no specific order directing Hon. Wetangula to step down as the leader of Ford Kenya.
42. If we were to assume that this was the correct position, then why would the Speaker approach this Court for conservatory orders and/or stay of execution of a judgment that, according to him, he has already complied with? We believe it is because of the pending contempt proceedings that have been instituted by the respondents. Mr. Ongoya strenuously submitted that the Speaker stands the risk of being punished by the trial court if found in contempt of court. At the very least, Mr. Ongoya argued, the Speaker may be summoned to take the dock to answer to the contempt of court proceedings, which would occasion him monumental embarrassment.
43. We agree with Mr. Ongoya that these two occurrences cannot be undone in the event the appeal by the Speaker succeeds. However, and without prejudice to the foregoing, we are cognizant of the Speaker's position that his ruling of 12<sup>th</sup> February 2025 was made in compliance with the orders of the High Court. If that is the true position in law, then the Speaker will no doubt be able to defend his position in the contempt of court proceedings, and the High Court will make a determination thereon. The likelihood of a party being summoned to court to respond to an allegation of contempt of court and the attendant inconvenience or embarrassment that may be so occasioned as a result is not sufficient reason to stay court proceedings.
44. Stay of proceedings is a serious and grave judicial intervention because it has the effect of suspending or delaying pending proceedings (see *M/s Karsan Ramji & Sons Limited vs Athumani & Another (Suing for and on behalf of the Wamwanyundo Clan & 6 Others (Civil Application No. E034 of 2023) [2024] KECA 563 (KLR)*). For that reason, the apprehension of the Speaker must be weighed against public policy that it is essential that conduct alleged to undermine the authority and dignity of the court must be interrogated and dealt with at once.



- 45. By granting the orders sought, this Court will have inadvertently endorsed the Speaker’s ruling of 12<sup>th</sup> February 2025, even before the High Court pronounces itself as to whether there was compliance with its judgment or not. In the circumstances of this case, we think that the proper forum for interrogating the Speaker’s compliance (or lack thereof) with the orders of the High Court lies before that court in the contempt of court proceedings. Those proceedings have just been instituted, and all the parties will have a fair opportunity to present their arguments by way of affidavits before a decision is arrived at, one way or the other.
- 46. Besides, the threshold for grant of conservatory orders (as sought by the applicants) in constitutional or public interest matters is much higher than in private party cases. We are not satisfied that it has been attained in these applications. In *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others* [2014] eKLR, the Supreme Court held:
 

“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 applicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merits of a case, bearing in mind, the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”
- 47. With regard to the argument that the High Court judgment has highly disrupted the work of the National Assembly, there is no sufficient evidence before us that the business of the National Assembly is likely to grind to a halt unless the orders sought are granted. Even after the contested Speaker’s ruling of 12<sup>th</sup> February 2025, the National Assembly has continued to discharge its duties, albeit with some acrimony.
- 48. Regarding Hon. Wetangula’s dual role as Speaker of the National Assembly and leader of Ford Kenya, it was submitted, and rightly so, that there was no dispositive order that was made by the High Court on the issue. In the circumstances, we cannot pronounce ourselves on the same in an application for stay of proceedings or execution as the one before us. We can only stay a positive order that was issued by the trial court.
- 49. The applicants have satisfied only one limb of the requirements under rule 5 (2) (b) of this Court’s Rules. As the applicants are required to satisfy both limbs of arguability of the appeals and the nugatory aspect, the consolidated applications must fail, and are hereby dismissed. The costs of these applications shall abide the outcome of the respective appeals.
- 50. We direct that the appeals be fast-tracked and heard on priority basis.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025.**

**D. K. MUSINGA, (PRESIDENT)**

.....  
**JUDGE OF APPEAL**  
**MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**



**E. TUIYOTT**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

