



**Marango & 4 others v County Public Service Board - Bungoma County & 3 others
(Miscellaneous Application E006 of 2023) [2023] KEELRC 1630 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1630 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
MISCELLANEOUS APPLICATION E006 OF 2023**

JW KELI, J

JULY 6, 2023

**ON NOTICE OF PRELIMINARY OBJECTIONS DATED 4TH MAY 2023 BY 1ST,3RD
AND 4TH RESPONDENTS AND OF 19TH MAY 2023 BY THE 2ND RESPONDENT**

BETWEEN

**MAURICE WABWILE MARANGO 1ST APPLICANT
ABIDAN KIMKERICK KAPCHANGA 2ND APPLICANT
ARUPUT ISAAC JUMA 3RD APPLICANT
CHRISTOPHER NYONGESA SIMIYU 4TH APPLICANT
ISAAC MUKENYA WELIKHE 5TH APPLICANT**

AND

**COUNTY PUBLIC SERVICE BOARD - BUNGOMA COUNTY ... 1ST
RESPONDENT
COUNTY ASSEMBLY OF BUNGOMA 2ND RESPONDENT
ACTING COUNTY SECRETARY 3RD RESPONDENT
HE KENNETH MAKELO LUSAKA 4TH RESPONDENT**

RULING

1. The court on the 24th April 2023 having heard the parties on the Applicants’ Notice of Motion Application dated 20th April 2023, issued the interim conservatory orders stopping the 1st respondent from issuing appointment letters to any successful nominees for the position of chief officers for trade, energy and industrialization, chief officer for public service and management and chief officer agriculture, and directed the Respondents to file their responses within seven days thereof and a mention date was slated for 4th May 2023.



2. The 1st, 3rd & 4th Respondents aggrieved by the aforesaid temporary conservatory order issued, filed a Notice of Preliminary Objection dated 4th May 2023 and submissions of an even date, seeking to strike out the application therein on the following grounds :-
- i. That this court lacks jurisdiction to hear and determine the application and grant orders sought pursuant to section 88(4) of the *Public Service Commission Act*, 2017 which provides that despite the right of appeal or the right to apply for review in accordance with this part the implementation of the decision shall not be deferred or suspended pending the determination of the appeal or the application for review.
 - ii. That Regulation 13 of the Public Service Commission(county Appeals procedures) Regulations, 2022 divests this court from entertaining any interim application pending hearing and determination of the appeal before the Public Service Commission and the orders issued by this court are without force of law.
 - iii. That Section 87(2) of the Public Service Commission, 2017 precludes the applicants from filing any legal proceedings in any court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from County Government Public Service unless the procedure provided for under the law has been exhausted and this court is divested with jurisdiction to deal with any legal proceedings relating to matters within the jurisdiction of the Public Service Commission.
 - iv. That the court having found in its ruling of 23rd March 2023 that it does not have jurisdiction under Section 77 of the County Government Act, 2012 and sections 85, 86(1) and 87(2) of the Public Service Act, 2017, it cannot have jurisdiction to issue interim injunction orders sought herein as that would be tantamount to interfering with the jurisdiction of the Public Service Commission by finding that there is a prima facie case on a subject matter the court has no jurisdiction over which subject matter is pending before the Public Service Commission and cannot grant the orders sought herein.
 - v. That the proceedings herein are subjudice to the similar proceedings filed on 14th April 2023 by the applicants herein against the Respondents before the Public Service Commission and there is a statutory bar on this Court against continuation of the proceedings herein having been filed subsequent to those in the Public Service Commission.
 - vi. That the Notice of Motion herein is fatally defective for not being premised on any suit in this court.
 - vii. That this court lacks jurisdiction to exercise on matters specifically given to the Public Service Commission by law and;
 - viii. That it is meet and in furtherance of the overriding objective of Article 159(2) of *the Constitution* and the Rules made thereunder for the timely disposal of proceedings that this court peremptory strike out the Notice of Motion herein as an abuse of the process of the court with costs to the respondent.
3. The interim conservatory orders were extended on 4th May 2023 when the matter came up for mention, when the Applicant was allowed fourteen days to file its submissions to the Preliminary objection before the next slated mention date of 23rd May 2023.



4. On 19th May 2023, the 2nd Respondent herein also aggrieved by the aforesaid temporary conservatory order filed a Notice of Preliminary Objection of an even date seeking to strike out the application therein on the following grounds :-
 - i. The application is frivolous vexatious and is generally an abuse of the due process of this Honourable Court.
 - ii. The Honourable court lacks jurisdiction to hear and determine the application .
 - iii. The application is an end in itself , premature, speculative, built on conjecture and lacks in materials particulars.
 - iv. The application offends the spirit and letter of the principle of separation of powers as espoused by the Court of Appeal in County Assembly of Kisumu & 2 others v Kisumu County Assembly service Board and 6others 2015 eKLR and in Martin Nyaga Wambora & Others v Speaker of the Debate & others.
 - v. The application seeks to impede the 2nd Respondent execution of its lawful mandate under Article 185 of *the Constitution* of Kenya , 2010.
 - vi. The orders sought in the application are generally unavailable to the Applicants.
5. The Applicants filed their submissions on 23rd May 2023.
6. The court extended the interim conservatory orders and directed that the ruling on the 1st, 3rd and 4th Respondent's Preliminary Objection would apply to the 2nd Respondent's Preliminary Objection. The 2nd Respondent did not file its submissions but nevertheless the court will pronounce itself in this ruling on the Preliminary Objections on 6th July 2023 as directed.

Issues for determination.

7. The court discerned that the issues for determination under the Notices of Preliminary Objection are follows:-
 - a. Whether the court has first instance jurisdiction to entertain the Notice of motion application thereunder taking into consideration the provisions of section 77 of the county Government Act and sections 88(4), 85, 86(1) and 87(2) of the *Public Service Commission Act*.
 - b. Whether the Applicants' application is sub judice.
 - c. Whether there is a substantive action before the court to form a basis for the grant of orders sought
 - d. Whether the 2nd , 3rd and 4th Respondents are properly enjoined.
 - e. Whether the application dated 20th April 2023 was merited.

Whether the court has first instance jurisdiction to determine the Notice of Motion application thereunder taking into consideration the provisions of section 77 of the county Government Act and sections 88(4), 85, 86(1) and 87(2) of the *Public Service Commission Act*.

8. The 1st , 3rd and 4th Respondents relied on the Court of Appeal decision in Speaker of the national Assembly v James Njenga Karume(1992) eKLR to state this court had no jurisdiction under section 87(2) of the *Public Service Commission Act*, 2017 to entertain the Applicants' application where a clear procedure for redress is available before the Public Service Commission and the same should be strictly



followed. The court of Appeal held “ in our view , there is a considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

9. The 1st , 3rd and 4th Respondents submit that the court in its ruling of 23rd March 2023 having ruled that it lacked jurisdiction to entertain the Applicants’ substantive petition, it cannot therefore now in a turnaround have jurisdiction to determine the Applicants’ application for interim orders and relies on this court’s decision in *Oliver Mukhebi & 28 others v County Public Service Board of Bungoma & Another* (2022)eKLR where the court held “the court on finding it had no jurisdiction over the subject matter then it cannot have jurisdiction of the Public Service Commission by finding there is a prima facie case on a subject matter it had no jurisdiction over. In any event without jurisdiction the court acts in vain.” and subsequently in *Lakale Moses Sande v Governor , county of Kakakmega & 3 others* (2022)eKLR where this court held that:-“This court pronounced itself on a similar issue on jurisdiction over matters falling under Section 87 of the Public Service Commission and Section 77 of the County Government Act (2012) in its ruling dated 25th January 2022 in *Bungoma ELRC NO E012 OF 2021, Oliver Mukhebi and 28 Others -vs- County Public Service Board of Bungoma and Another* where the Petitioner sought conservatory orders pending hearing of his appeal by Public Service Commission. The court upholds its finding in that decision. The court in paragraph 13 of the said ruling of *Oliver Mukhebi case*(supra) found it had no jurisdiction over appeals for recruitments and appointments by the County Government. The Court then considered if it had jurisdiction consider and grant conservatory orders as sought in the instant case. The Court in paragraph 21 of its ruling found that, for the court to grant the temporary injunction sought it must first have jurisdiction over the subject matter being the appeal for the recruitment exercise. That the court will have to examine the merits of the dispute on prima facie basis to determine if the interim orders sought are justified.....

The court having considered the submissions by the parties and considering its decision in *Oliver Mukhebi case* holds it has no jurisdiction to grant the conservatory orders of temporary injunction as sought under the Application dated 30th November 2021.”

10. The 2nd Respondent contends that the Applicants’ application is contrary to the provisions of Section 77(1) and 2 of the County Government s Act, 2012; section 234(2)(1) of the Constitution of Kenya and Regulation 8(1) & (2) and Regulation 9of the Public Service Commission (County Appeals procedures)Regulations.

Response/Applicants’ Submissions.

11. The court considered the Applicants’ submissions to be that the court had jurisdiction to determine an application for interim or conservatory orders by dint of Article 23 of the Constitution as read with the provisions of Article 165 and Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules (“herein the Mutunga Rules”). Article 23 of the Constitution provides that –23. (1).The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. (3). In any proceedings brought under Article 22, a court may grant appropriate relief, including—
- (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;



- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review.

Rule 23 of the Mutunga Rules provides:-

1. Despite any provision to the contrary, a judge shall hear and determine an application for conservatory or interim order.
2. service of the application in sub rule (1) may be dispensed with , with leave of the court.
The Orders issued in sub rule (1) shall be personally served on the respondent or the advocate on record with leave of the court , by substituted service within such time as may be limited by the Court”
12. The Applicants relied on the decision in the European Court of Human Rights in *Shkalla Vs Albania* to stress that a party that alleges non-exhaustion must satisfy a court that a remedy is available in theory and in practice at the relevant time, in that it is accessible to an applicant and capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success. The Applicants argue that the Respondents have not demonstrated whether the Public Service Commission(Herein “the Commission”) can grant the conservatory orders sought by the Applicants, with the Commission having allegedly acquiesced to its inability to issue the said orders. The Applicants have alleged that the proper forum for the grant of conservatory orders would be this court which is empowered by *the constitution* and other relevant statutory provisions to so grant. It is the Applicants’ contention that it has complied with Regulation 13 of the Public Service Commission(County Appeals Procedures) Regulation 2022 and moved this court after the Commission’s alleged lack of power to grant the orders sought.
13. The Applicants contend that Section 87(2) of the *Public Service Commission Act*, 2017, provides for an exception for a person to invoke the Jurisdiction of this court once the procedural mechanisms provided by the Public Service Commission have been exhausted, in objection to the Respondents’ assertion that this court is precluded from hearing matters within the Commission’s jurisdiction.
14. The Applicants argue that the Respondents have misdirected themselves as to the nature of the Applicants’ application before this court, which they argue is not the same as that appeal before the Commission. The Applicants argue that their application before this court is only seeking conservatory orders which the Commission is allegedly unable to deal with, while the substantive issues are before the Commission for determination.
15. The Applicants submit that they agree with the doctrine of exhaustion in that where a dispute resolution mechanism exists outside court, the same must be exhausted before the court’s jurisdiction is invoked and to buttress this point have relied on the decisions in *Geoffrey Muthinji & Another v Samuel Henry &7 others* (2015) eKLR and *Republic v National Environment Management Authority Ex Parte Sound Equipment Ltd*(2011)eKLR.
16. The Applicants attempted to distinguish my decision in *Oliver Mukhebi & 28 others v County Public Service Board of Bungoma & Another* (2022)eKLR, where I departed from the decision in *Zena Achieng Mohammed vs County Public service Board of Kilifi and 6 others* (2021)eKLR, with their application before this court, to argue that in the *Oliver Mukhebi’s* case, this court lacked jurisdiction



to set aside employment contracts of successful ward administrators, unlike in the instant Applicants' case where the employment letters are yet to be issued and therefore this court has the jurisdiction to consider the application.

17. The Applicants contend that this court has jurisdiction to handle issues raised before the Commission, save that, the exhaustion doctrine must be complied with first. The Applicants direct this court to Section 12(5) of the *Employment and Labour Relations Court Act* which provides that: - 5).the court shall have jurisdiction to hear and determine appeals arising from-
 - (a) Decisions of the Registrar of Trade Unions; and
 - (b) Decisions of any other tribunal or commission as may be prescribed under any written law.
18. The Applicants argue that after this court's ruling of 23rd March 2023 rendering the Applicants' appeal before this court premature and the fact the same ought to have been filed before the Commission, the Applicants complied and filed their appeal before the commission, which application they argue is distinct from the current application which is only seeking conservatory orders.
19. The Applicants argue that the Respondents' Preliminary Objections are filed in an effort to forestall the Applicants from obtaining orders to stop the Respondents from unfairly replacing the Applicants from their jobs, and if the orders sought before this court are not granted the Respondents will confirm the appointment of the nominees to replace the applicants and the same will render the appeal before the commission nugatory and a pure academic exercise.

Decision on issue of jurisdiction

20. The question of jurisdiction of this court is the most important issue under the preliminary objection for without jurisdiction the court must down its tools and cannot take any further step in the proceedings. This position has been upheld by all superior courts with the landmark decision by Nyarangi JA (as he then was) in Owners of the Motor vessel "Lilian S" -vs Caltex Oil (Kenya) Ltd (1989) where the Judge held as follows:-

“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 or continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion it is without jurisdiction”.

21. What the Applicants' application requires of this court would be to determine whether the Applicants' have a prima facie case before the Commission; in that there are two possible scenarios that could emerge that this court has to consider, one, if the orders sought by the applicants before this court are not granted , the first is that the recruitment process will progress and once completed the Applicants' positions would be filled. If, for purposes of argument, the appeal before the Public Service Commission succeeds and the applicants' interdictions are lifted then it could be said that the appeal would have been rendered nugatory as the new office holders would have a legitimate expectation to be in employment and the applicants would also have no positions to occupy. Secondly, if the the recruitment process proceeded and the Applicants were to lose their positions, while the appeal eventually fails, the effect would be that the appeal would not have been rendered nugatory. This court cannot delve into these merits when the jurisdiction to determine the appeal is bestowed on the Commission and for this court to issue such orders it would be usurping the jurisdiction of the commission.



22. This court pronounced itself on a similar issue on jurisdiction over matters falling under Section 87 of the Public Service Commission and Section 77 of the County Government Act (2012) in its ruling of 10TH March, 2022 in *Lukale Moses Sande v Governor, County of Kakamega & 3 others* [2022] eKLR, Where it quoted with approval its decision in its ruling dated 25th January 2022 in “Bungoma ELRC NO E012 OF 2021, Oliver Mukhebi and 28 Others -vs- County Public Service Board of Bungoma and Another where the Petitioner sought conservatory orders pending hearing of his appeal by Public Service Commission”.The court upholds its finding in that decision to wit:-

“The court in paragraph 13 of the said ruling of Oliver Mukhebi case(supra) found it had no jurisdiction over appeals for recruitments and appointments by the County Government. The Court then considered if it had jurisdiction to consider and grant conservatory orders as sought in the instant case. The Court in paragraph 21 of its ruling found that, for the court to grant the temporary injunction sought it must first have jurisdiction over the subject matter being the appeal for the recruitment exercise. That the court will have to examine the merits of the dispute on prima facie basis to determine if the interim orders sought are justified.” The Court also stated that under Article 22 of *the Constitution* the subject matter of the infringement or violation of the Bill of rights by way of Petition should be before the court. There is no such Petition before the court in the instant case. The court also found that under Rule 17 (1) (5) and (6) of the Employment and *Labour Relations Act* (Procedure Rules) (2016) , it is envisaged there is a suit under which the temporary injunction order is sought . There is no suit before the court. The court findings in Oliver Mukhebi case were consistent with law on injunctions established in *Giella Cassman Brown Case* being that the court has to establish existence of a prima facie case. The Court then held that it can only establish a prima facie case if it has jurisdiction over the subject matter. The court upheld the decision in *Law Society of Kenya v Office of the Attorney General & Another, Judicial Service Commission (interested party) 2020 eKLR*, where in paragraph 24, it held that the Applicant has to demonstrate a prima facie case for grant of conservatory order.

23. The court in the Oliver Mukhebi case(supra) was further guided by court of Appeal in *Secretary County Public Service Board & Another -vs- Hulbahi Gedi Abdille* (2017) eKLR (Makhandia, Ouko & Minoti JJA) where the court held that Section 77 of the *County Governments Act* has placed no fetter to the jurisdiction of the Public Service Commission. The Court interpreted the Court of Appeal to be stating that the Public Service Commission in exercise of its unfettered jurisdiction may give any directions to the Respondents it deems fit and in any case if the appeal succeeded, the appointments will be null and void.

24. The court has not been persuaded to shift its position in the Oliver Mukhebi Case in the instant case. The Applicant has presented its case before Public Service Commission and sought similar order in that forum. The Public Service Commission is the forum with jurisdiction. There is no constitutional violation pleaded with precision outside the employment law process. The court has no basis of meddling with the jurisdiction of the Public Service Commission by issuing orders while it has no jurisdiction over the subject matter. To that extent the instant application is subjudice.”

25. In a recent development the Court of Appeal has held that where the nomination process is not complete there is no employment employer relationship between the employer and the nominees and consequently the court has no jurisdiction. This was the holding in case challenging vetting of county chief officers in Nakuru Civil Appeal No.’S E136 & E137 Of 2022[Coram: Sichale, Ochieng & Achode,Jj.A.] Civil Appeal No. E136 Of 2022 Between The Clerk, Nakuru County Assembly and 2 others versus Kenneth Odongo delivered on 14th April 2023(UR) where the court of Appeal



observed in part:- ‘We have carefully perused the impugned petition and note that the 1st respondent was challenging the process leading to the nomination of the interested parties therein as chief officers of the 3rd respondent. The said officers had not been appointed as the process was halted before they could be vetted. The appointment was to be done after one is successful in the vetting. By parity of reasoning, none of the Interested Parties had a contract, be it written or oral and as the process towards creating the relationship of an employer/employee were halted, S. 12 of the E&LRC Act was inapplicable..... Consequently, we find merit in this ground of appeal and hold and find that the E&LRC did not have the jurisdiction to handle the petition before it in light of the provisions of Article 162 (2) of *the Constitution* and Section 12 of the E&LRC Act.’”

26. This court is bound by the Court of Appeal holding in Nakuru Civil Appeal No.’S E136 & E137 Of 2022[Coram: Sichale, Ochieng & Achode,Jj.A.] Civil Appeal No. E136 Of 2022 Between The Clerk, Nakuru County Assembly And 2 Others Versus Kenneth Odongo Delivered on 14th April 2023(UR)(supra) to effect that it has no jurisdiction over county chief officer nominees who are yet to get appointment letters. Consequently, the court agrees with the objectors that it lacks jurisdictions to handle and determine the application.

Whether the Applicants’ application is sub judice?

27. From the onset at the point of issuing the interim conservatory orders on 24th April 2023, this court had no knowledge of the existence of a similar application for conservatory orders dated 12th April 2023 before the Public Service Commission, because the same was never disclosed. The new development only came to light and to the attention of this court, when the 1st, 3rd and 4th Respondents filed their Preliminary Objection and Grounds of Objections on 4th May 2023 and the same confirmed by the Applicants in their submissions on 23rd May 2023.
28. The doctrine of res sub-judice prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.
29. Suffice to say, the court having found that there being an appeal before the competent body of the Public Service Commission with jurisdiction drawn from *the Constitution* and statute, the instant application is subjudice.

Whether there is a substantive action before the court to form a basis for the grant of orders sought.

30. The court agrees with the 1st, 3rd and 4th Respondents assertion that the application ought to have been anchored on a substantive suit or Petition as temporary order sought under Application are usually interlocutory pending hearing of subject matter for final orders. The court upholds its decision in Lukale Moses Sande v Governor, County of Kakamega & 3 others [2022] eKLR where this court on Paragraph 27 held that : “the court agrees with the Respondent the application ought to have been anchored on a substantive suit or Petition as temporary order sought under Application are usually interlocutory pending hearing of subject matter for final orders. The court upholds the decision cited by the Respondent/Objector in Wilson Kaberia Nkunja -vs- The Magistrate and Judges Vetting Board & others (2016) eKLR and among other Principles of granting conservatory orders being “ whether, if the conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory”, and the authority in SFA -VS AOA (2021) eKLR where court held that, ‘to grant the orders in the manner sought will amount to granting substantive orders with finality in an application’”.The court finds that temporary injunction orders under Application cannot be granted in vacuum.” and the case of Scope Telematics International Sales Limited v Stoic Company Limited & another [2017] eKLR where justice K. M’INOTI held that “The 1st respondent did not



proffer any reason or excuse for its failure to premise its application upon a suit as was required by the rules. It however sought to rely on Article 159 of *the Constitution* for the proposition that justice is to be administered without undue regard to technicalities. That Article also provides that alternative forms of dispute resolution mechanisms like arbitration should be promoted by the courts. There are however many decided cases to the effect that Article 159 of *the Constitution* should not be seen as a panacea to cure all manner of indiscretions relating to procedure The manner of initiating a suit cannot be termed as a mere case of technicality. It is the basis of jurisdiction. Obviously, in overlooking a statutory imperative and the above authorities, the learned Judge cannot be said to have exercised his discretion properly..... For these reasons, we are in agreement with the submissions of the appellant that the application was fatally and incurably defective.”

Whether the 2nd , 3rd and 4th Respondents are properly enjoined.

31. The Applicants sued the 3rd and 4th Respondents being the Acting County Secretary and the Governor. I am in agreement with the 1st , 3rd and 4th Respondents that under the provisions of Section 133 of the County Government Act, 2012 officers of the County Government in discharging their duties are not to be sued in their personal capacity. Section 133 provides that: “ Protection against personal liability - (1) No act, matter or thing done or omitted to be done by— (a) any member of the county government or its administration board or committee; (b) any member of the county assembly; (c) any member of staff or other person in the service of the county government; or (d) any person acting under the direction of the county government, shall, if that act, matter or thing was done or omitted in good faith in the execution of a duty or under direction, render that member or person personally liable to any civil liability.....”. Additionally, the County Secretary is not liable to be sued on behalf of the County Public Service Board owing to the fact, they can only exercise delegated authority by the County Public service Board as per the provisions of Section 86 of the County Government Act, 2012 which provides that: - “The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or Municipal Manager And Town Administrators.” I Have Considered The Authorities relied on by the 1st , 3rd And 4th Respondents in John Mining Temoi & Another V Governor OF Bungoma & 17 Others(2014)Eklr And John Rimui Waweru & 3 Others V Githunguri Constituency Ranching Co Limited & 5 Other (2015)eKLR and find that the suit against the 3rd and 4th Respondent are improperly brought and hereby struck out.

Whether the application dated 20th April 2023 was merited.

32. The Respondents Preliminary Objections dated 4th May 2023 and 19th May 2023 sought to set aside the temporary conservatory orders by the court of 24th April 2023. The court having found it has no first instance jurisdiction then the conservatory order issued on 24th March 2023 is devoid of jurisdiction hence a nullity and is set aside.

Conclusion

33. In the upshot the Notice of Preliminary Objection dated 4th May 2023 by the 1st , 3rd and 4th respondents and the Notice of Preliminary Objection dated 19th May 2023 by the 2nd Respondent are upheld. The Notice of Motion application dated 20th April 2023 is hereby dismissed for lack of jurisdiction by the court. The interim conservatory orders of 24th April 2023 are set aside. Each party to bear own costs in the application.

34. It is so ordered.



DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 6TH DAY OF JULY 2023.

JEMIMAH KELI

JUDGE

IN THE PRESENCE OF :-

Court Assistant: Lucy Macheso

For Petitioner:- Mr. Muchela Advocate

For 1st, 3rd and 4th Respondents: Mr. Opwaka Advocate h/b Mr. Wesonga

