



Kassim v Governor, County Government of Garissa; County Service Public Board (Interested Party) (Employment and Labour Relations Petition E022 of 2022) [2022] KEELRC 13510 (KLR) (9 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13510 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E022 OF 2022
SC RUTTO, J
DECEMBER 9, 2022**

IN THE MATTER OF: CONTRAVENTION OF ARTICLES 10, 19(1) AND (2) 20(1), 23(1), 27, 47(1), 50(1), 73(1) AND (2) AND 235 OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF: DIRECTIONS ISSUED BY THE GOVERNOR, COUNTY GOVERNMENT OF GARISSA ON THE APPOINTMENT OF A TASK FORCE ON COUNTY STAFF AUDIT BY GARISSA COUNTY GOVERNMENT VIDE KENYA GAZETTE NOTICE NO.13821 DATED 2ND NOVEMBER, 2022

BETWEEN

HALIMA MOHAMED KASSIM PETITIONER

AND

THE GOVERNOR, COUNTY GOVERNMENT OF GARISSA RESPONDENT

AND

THE COUNTY SERVICE PUBLIC BOARD INTERESTED PARTY

RULING

1. The instant Notice of Motion Application which is dated November 14, 2022, is expressed to be brought under Articles 1,2,3,10,47,73,50(1),162(2) and (3), 23, 258 & 259 of the Constitution of Kenya (2010) and all enabling provisions of the law.
2. The Applicant seeks the following orders through the said Motion: -
 - a. Spent.
 - b. Spent.



- c. That pending the hearing and determination of this Petition herein, a Conservatory orders be issued to suspend the taskforce on the county staff audit by Garissa County Government appointed by the Respondent pursuant to Kenya Gazette Notice No 13821 dated November 8, 2022.
 - d. That this Honourable Court do issue such further orders and relief as it deems fit just and expeditious.
 - e. That costs and such other orders as this Honourable Court shall deem fit to grant.
3. The Application is supported by the grounds on its body and on the Affidavit sworn by Ms Halima Mohammed Kassim, the Applicant herein. Briefly, she avers that: -
- a. She is a resident of and registered voter at Modogashe Ward, Lagdera Constituency, Garissa County.
 - b. She has brought the Petition on her own behalf as a resident of Garissa County and on behalf of affected staff of Garissa county.
 - c. The Respondent appointed a Taskforce on the County Staff Audit pursuant to Kenya Gazette Notice No 13821 dated November 8, 2022.
 - d. The mandate of the Taskforce is to hear any concerns that may be raised by staff who may be affected by the recommendations of the Human Resource Audit of the County Government of Garissa.
 - e. The appointment of the Taskforce by the Respondent is tantamount to usurpation of the functions of the Interested Party under sections 59 and 75 of the County Governments Act No 17 of 2012 and the Respondent has acted ultra vires to his mandate by sidelining the Interested Party.
 - f. The appointment of the Taskforce and sidelining of the Interested Party by the Respondent is in contravention of Article 232 of the Constitution of Kenya on values and principles of public service including efficient, effective and economic use of resources.
 - g. The Taskforce will cost taxpayers at a time when the county staff have not been paid for over two months coupled with a devastating drought and famine situation across the county.
 - h. That Noor Dahir Yussuf, Abdirazack Said Aden and Mohamed Ibrahim Abdi, who are the members for the Taskforce previously served as members of the Interested Party and is headed by the County Secretary who is appointed of the Respondent therefore bringing into question the independence and impartiality of the Taskforce.
 - i. The establishment of the Taskforce is an afterthought whose sole purpose is to sanitise lack of regard to due administrative process after the unprocedural removal of over three thousand (3,000) staff of the County Government of Garissa from payroll and is misguided attempt not known to law to collect grievances after the fact contrary to principle of audi alteram.
 - j. To date the alleged audit report that informs the mandate of the Taskforce on County Staff Audit has not been released to the public.
 - k. The Respondent was the Governor for the County Government of Garissa between 2013 and 2017, and has now been re-elected to a second term as Governor for the County Government of Garissa from 2022 to 2027.



- l. The alleged 'Comprehensive HR Audit', if any, was nothing more than a witch-hunt to purge the ranks of the Garissa County Public Service of employees appointed when the Respondent was not in office and is therefore discriminatory and a violation of their right to work due to who was in office when they were employed.
- m. The mandate to regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices is vested in the County Public Service Board at Section 74 of the County Governments Act No 17 of 2012.
- n. The mandate to advise the county government on human resource management and development is vested in the County Public Service Board at Section 59(1)(c) of the County Governments Act No 17 of 2012 and any purported performance of this function by any other authority constitutes a violation of the law and an abuse of office.
- o. If any process or decision concerning the County Public Service may have occurred in an irregular or fraudulent manner then the County Public Service Board shall investigate the matter and make an appropriate decision including taking any corrective action including disciplinary action in accordance to Section 75 of the County Governments Act No 17 of 2012 and any purported performance of this function by any other authority that is not a judicial office constitutes a violation of the law and an abuse of office.
- p. The Taskforce does not enjoy the benefits of being an independent authority like the County Public Service Board and being largely comprised of former member of the Garissa County Public Service Board hired by the Respondent during his first term, and also campaigned for him in the August 2022 election is pretentious exercise timely constituted to rubber stamp the Governor's decision to remove almost all staff employed between 2017 and 2022.
- q. The existence of the Taskforce and the Report it purportedly seeks to implement, considering the functions of the County Public Service Board outlined as including exercising disciplinary control over, and removal of persons holding or acting in county offices, persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices is a nullity ab initio and should not be allowed to stand.
- r. It has been noted by the Ethics and Anti-Corruption Commission that some Governors have expressed unwillingness to work with certain members of staff who had been hired by the previous regimes and in some instances, such staff are being threatened with sacking, dismissals, or subjected to unwarranted, illegal, or unprocedural disciplinary procedures aimed at forcing their exit from office.

Responses

4. The Application was opposed by the Respondent through the Affidavit sworn on November 24, 2022 by Mr Nathif Jama Adam. Briefly, he avers that:
 - a. He is the Respondent and the Governor of Garissa County.
 - b. The Application herein is not only politically instigated but is also mala fide and is filled with unverifiable and unsubstantiated facts and ought to be dismissed with costs to the Respondent.
 - c. The Petition and Application as framed fails to disclose any reasonable cause of action and the Petitioner has failed to demonstrate particulars of the alleged violations of her constitutional rights as enshrined under the Constitution and neither has, she specified the cause of action as such has failed to bring her case within the confines of Article 22 of the Constitution of Kenya.



- d. The Petitioner/Applicant has no mandate or authority to purport to bring and file this Petition/Application on behalf of the affected staff of Garissa County, who currently stand unaffected, and are fully employed and earning their salaries.
- e. In furtherance to the above, the Petitioner/Applicant is neither an employee of the Interested Party herein nor the County Government of Garissa and stands unaffected by any actions of the Respondent.
- f. None of the alleged affected persons, County Government of Garissa employees, is party to this Petition and neither has the Petitioner/Applicant demonstrated how exactly her Statutory or Constitutional Rights have been affected.
- g. He has not usurped any functions and/or powers of the Interested Party herein within the meaning of Section 59 of the County Government Act.
- h. The allegation by the Petitioner that he is intent on discriminating against employees of the County Government of Garissa, employed between 2017 and 2022 is untrue and needs to be substantiated.
- i. The Comprehensive Audit was a noble exercise aimed at stopping pilferage and saving and redirecting County resources to better use where possible and necessary as opposed to the ill-advised position of the Petitioner that the same was an exercise meant to purge out employees employed by the previous administration.
- j. It is false and untrue that the salaries of over 3,000 county employees have been stopped by himself or the County Government of Garissa.
- k. It is an absurdity for the Petitioner/Applicant to allege that the appointment of the Taskforce and its role thereof, is for purposes of settling political scores, despite there being a political and democratic system being that of secret ballot.
- l. All persons appointed to be part of the Task force are competent and highly educated professionals in their relevant fields of studies.
- m. It is untrue that the Task force will spend a sum total of Kenya Shillings 1,800,000/= as no evidence has been tendered and that it was also quite unfortunate that the Petitioner is relying on false and unsubstantiated allegations as evidence before this Honourable Court.
- n. The audit seeks to serve a noble purpose, namely:
 - i. To enhance effectiveness of the County Government workforce.
 - ii. To verify compliance of appointments and promotions with the laid down public service laws and procedures.
 - iii. To conduct harmonization of job groups and rationalization of staff.
 - iv. To conduct verification of County human resource output and effectiveness of the workforce.
- o. A County Governor is responsible for exercising executive functions under Article 186 of the [Constitution](#) and Sections 5 and 30 of the County Government Act which he exercises through officers of the County Government.
- p. The Taskforce was appointed through exercise of his executive authority.



- q. He acted within the limits of Sections 30 (2) and 31 (d) of County Government Act and that members of the Taskforce are not county public officers under the meaning of the Constitution and County Government Act but are part of the policy formulation strategy and in this case the human resource one and thus their appointment conforms with the law.
5. The Respondent filed a Further Affidavit sworn on November 29, 2022, by Mr Mohamud Mursal who describes himself as the County Secretary of Garissa County and the Chairperson of the Taskforce. He avers that:
- a. He is a competent employee and professional and the same competency and professionalism informed his appointment to the position of County Secretary by the Respondent herein, as opposed to the averments of the Petitioner, labeling his appointment as purely political.
- b. To the best of his knowledge, the County Service Public Board has failed in its mandate as is required of it.
- c. On or about the May 17, 2022 the Controller of Budget wrote a letter dated the May 17, 2022, to the Garissa Chief Executive Officer, Finance, Revenue, Economic Planning and County Affairs concerning Draft budget estimates for the financial year 2022/23.
- d. According to the report, more than half of Garissa County's budget for the financial year 2022/2023, was going towards recurrent expenditure, with the upshot of that being that the County suffered several challenges including but not limited to inadequate health services demonstrated by shortage of drugs, ambulances and health equipments, inability to promote competent staff members including medics and engineers etc, and inability for the County to be able to focus on development projects such as building roads, hospitals, water facilities, and classrooms just but to mention a few.
- e. It is because of the above highlighted issues brought out by the report that on the September 23, 2022 the County Government of Garissa through the County Secretary wrote to the Interested Party herein requesting for provision of vital information for the period September 2017 - August 2022.
- f. The County Government of Garissa also wrote to the State Department of Public Service on the September 28, 2022 seeking technical assistance to undertake a Human Resource Audit and payroll analysis for the County Government of Garissa in order to address the concerns raised in the Audit Report.
- g. In response to the said request the State Department wrote a letter to the County Government of Garissa on the September 28, 2022, and appointed a team of officers to assist the County in undertaking the exercise with the below terms of reference:
- i. To undertake a Human Resource Audit for the Period 2017 to 2022 in order to streamline the ballooning wage bill; and
- ii. To analyse the payroll and make appropriate recommendations for implementations by the County Management.
- h. The report did raise relevant issues and set out proposed recommendations to help address the issues.
- i. In essence, the appointment of the Task force was a noble, Constitutional and Statutory process that sought to remedy an already existing problem within the County Government of



Garissa of a high wage bill that not only exceeds the Statutory limit of 35 percent as per the regulation 25 (1) (b) of the Public Finance Management for County Government Regulations 2015 on Wages and Benefits, but also takes up more than 50 percent of the County's Annual budget thus stifling other sectors from growth.

- j. It is thus unfortunate for the Petitioner to label the exercise as a 'political witch hunt' laced with discrimination, and other irregularities that serve to infringe on constitutional rights of the employees of Garissa County yet the process was initiated by the Controller of Budget and is being implemented to ease the burden on tax payers and to promote efficiency in County revenue allocation and spending.
6. On its part, the Interested Party responded to the Application through the Replying Affidavit sworn on 30th November, by Ms Ebla Sahal, who describes herself as the Chairperson of the Interested Party. She states that: -
- a. The Interested Party is the County Public Service Board, an entity established under Chapter 11 of the Constitution of Kenya, 2010 as read with sections 57 and 58 of the County Governments Act, No 17 of 2012.
 - b. The functions of the Interested Party are articulated in Section 59 of the County Governments Act, No 17 of 2012. The Interested Party is tasked with among other functions, to establish and abolish offices in the county public service, to appoint persons to hold or act in offices of the county public service and to confirm appoints and to exercise disciplinary control over, and remove persons acting in those offices. That further, the Interested Party is tasked with advising the county government on human resource management and development.
 - c. In performance of its functions, the Interested Party shall be independent and shall not be subject to the direction or control of any other person or authority and shall only adhere to the Constitution, the County Governments Act No 17 of 2012 and any other relevant law in line with section 59A of the County Governments Act.
 - d. There is a fully constituted and functional County Public Service Board in Garissa County. That none of the members of the Board have been removed from office for any reason. The Board is thereby in a position to undertake its functions in accordance with the Constitution, the County Governments Act and the relevant laws.
 - e. It is indeed true that the Respondent, has appointed a Special Taskforce relating to County Human Resource issues, pursuant to Kenya Gazette Notice No 13821 dated November 8, 2022.
 - f. The formation of the Special Taskforce by the Respondent, is not anchored on any provisions of the law and that the same is a bold attempt by the Respondent to usurp the powers of the Interested Party, as set out in Sections 39 and 75 of the County Governments Act No 17 of 2012.
 - g. She is aware that amongst the members of the impugned taskforce are Mohamed Mursal, the Chairperson who is the present holder of the office of the County Secretary for Garissa county and Noor Dahir Yusuf, Abdirazack Said Aden and Mohamed Ibrahim Abdi, who have previously served as members of the County Public Service Board, and whose appointment raises doubt over the impartiality and independence of the said Taskforce.
 - h. The Taskforce is obliged to compile and submit a comprehensive report with clear recommendations on actions to be taken by the County Government relating to concerns raised by the staff affected by the alleged Human Resource Audit.



- i. After conducting due diligence, she is aware that the Human Resource Audit which saw the removal of over 3000 staff of the County Government of Garissa from payroll, was never conducted by the State Department of Public Service, and can only be viewed as an effort by the Respondent to purge all employees who had been working under the Respondent's predecessor.
 - j. The Respondent's action of appointing a Taskforce to undertake a function that is well within the purview of the Interested Party's mandate and without consulting it, is a clear violation of abuse of office, a threat to the Constitution and to the law and places no regard to the legitimate expectation by the affected members of staff.
 - k. The appointment of the Taskforce duplicates and overlaps the role of the Interested Party hence contravenes Article 232 of the Constitution of Kenya on values and principles of public service especially efficient, effective and economic use resources.
 - l. If at any instance it comes to the attention of the Interested Party that there is reason to believe that any process or decision may have occurred in an irregular or fraudulent manner, it is the Interested Party's mandate to investigate the matter, and, if satisfied that the irregularity or fraud has occurred, to revoke the decision, and to direct the concerned head of department or lawful authority to commence the process afresh or take any corrective action including disciplinary action.
 - m. The Interested Party has had no reason to believe that any process or decision may have occurred in an irregular or fraudulent manner as to warrant it to undertake any investigation, revoke any decision, commence the process afresh or take any corrective action such as disciplinary action.
 - n. The Respondent has not sought any advice or opinion from the Interested Party on the county government's human resource management and development.
 - o. The Respondent has thus been acting unilaterally and has not been in consultation with the Interested Party on matters that are within the Interested Party's mandate as provided for in the Constitution and the County Governments Act.
 - p. Establishment and abolishment of county public offices and appointment of persons in the county public service is a very significant function of the County Public Service Board since it relates to the workforce of the county, the people, and the overall performance of the County.
 - q. The Respondent has thus overstepped his mandate, by arrogating to the Special Taskforce the powers of the Interested Party, to undertake roles which it is not Constitutionally mandated to undertake.
7. Worthy of mention, is that the Application initially came up on November 16, 2022 and the Court issued conservatory orders suspending the Taskforce pending the hearing and determination of the Application.
8. The Application came up for inter partes hearing on November 30, 2022 and was canvassed through both oral and written submissions.

Applicant's Submissions

- 9. It was argued on behalf of the Applicant that Article 22 of the Constitution allows any person to challenge violations of the Constitution. That as such, she has locus to bring the matter. That further,



the Applicant has a prima facie case, as the Respondent has admitted under paragraph 10 of its Further Affidavit that the intended county staff audit is targeting employees employed from 2017-2022. That this is discriminatory as it is not a wholesale audit. The Applicant further submitted that the Taskforce is not independent and impartial.

10. It was further argued that in the event conservatory orders are not issued, the Taskforce will carry on with the process and recommend the sacking of 3000 employees.
11. With regards to public interest, it was submitted that the Ethics and Anti-Corruption Commission had already taken interest in the matter as county governments had taken over roles of other entities like the Interested Party's.
12. It was further submitted on behalf of the Applicant that the Respondent's power under section 30(2) (d) of the County Government Act is limited to the appointment of the County Executive Committees in line with Article 179 (2) (d) of the Constitution.
13. It was urged on behalf of the Applicant, that the Court extends and confirms the conservatory orders issued on November 16, 2022.

Respondent's submissions

14. The Respondent submitted that the Petitioner has failed to tender evidence to show how it has breached Article 10 of the Constitution. That further, there was no evidence of violation of Article 27 of the Constitution. That in addition, there was no single document to indicate that specific employees have been targeted through the audit process.
15. That the Applicant was not honest as the process was initiated by the national government. That as per the Controller of Budget, the County's wage bill was 50.8% of the total budget for the 2022/2023 financial year. That it is on that account, that the State Department Ministry of Public Service made certain recommendations regarding the wage bill, which the Respondent found fit to address through the audit. That the audit report indicates that there was wage increase between 2017-2022. That further, despite the Interested Party being requested to provide information on human resource issues at the County, it had failed to respond to the said request.
16. It was further submitted by the Respondent that the Governor has powers under section 30 (2) (d) and 31(d) of the County Government Act, to appoint persons to assist in the running and management of the affairs of the County.
17. The Respondent further submitted that the audit is not discriminatory and is not a witch hunt. That the members of the taskforce are completely impartial and competent. It was further submitted that the Interested Party was guilty of breach and violation of Articles 232 and 235 of the Constitution. That the current state of the county of Garissa's wage bill warrants this Court not to issue conservatory orders. In support of its submissions, the Respondent invited the Court to consider the determination in the case of Peter Macithi Muigai vs County Public Service Board, Nyandarua County and 2 others (2021) eKLR.
18. Citing the case of Gatirau Munya vs Dickon Meanda Kitbinji & 2 others (2014) eKLR, the Respondent urged that it was in public interest for this Court to assist the people of Garissa reduce the inflated wage bill. The Respondent further submitted that the Petitioner has not established a prima facie case and neither has she satisfied the burden of proof. That further, denial of conservatory orders will not in any way prejudice the Applicant.



19. It was the Respondent's further submission that the county stands to suffer more harm if the conservatory orders are granted as it will be unable to address the inflated wage bill.
20. The Respondent urged the Court not to extend or grant conservatory orders as sought by the Applicant.

Interested Party's Submissions

21. The Interested Party submitted that it is established under section 57 and 58 of the County Government Act. That it had an identifiable stake in the matter as it is the body constitutionally mandated to handle the human resource of the County Government of Garissa. That the Taskforce formed by the Respondent to handle issues relating to the county's human resource is an attempt to usurp its powers. It further submitted that it was an independent entity and that as at now, it is fully constituted. That none of its members had been removed or was facing disciplinary action.
22. In further submission, the Interested Party urged that the creation of the Taskforce was not anchored on the law and that there was no public participation in the appointment of said Taskforce.
23. The Interested Party further submitted that conservatory orders sought are meant to keep the subject matter of the dispute in situ and to preserve the substratum of the matter pending the determination of the main issues in dispute.
24. That the Respondent has in plain sight subverted the role of the Interested Party in the guise of exercising its executive authority. That as such, it will suffer prejudice should the conservatory orders not issue.

Analysis and determination

25. Flowing from the Application herein and the responses thereto, as well as the submissions by the parties, I find the singular issue for determination at this juncture being, whether the Court should issue conservatory orders thereby suspending the Taskforce on the County Staff Audit by Garissa County Government, pending hearing and determination of the Petition.
26. The guiding principles in considering an application for conservatory orders within the framework of Article 23 of the Constitution are now fully settled and is backed by a plethora of authorities.
27. For starters, the Applicant must establish that it has a prima facie case. In this regard, I find it useful to refer to the determination in Centre For Rights Education and Awareness (CREAW) & 7 others vs Attorney General [2011] eKLR, where it was held that: -

' At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.'
28. It is worthy to note that a primafacie case is not a case which must succeed at the hearing of the main case. What the Applicant is required to demonstrate is that the case discloses serious and arguable constitutional issues to be tried or a case alleging violation of rights. This position was well amplified



in the case of *Kevin K. Mwiti & Others v Kenya School of Law & Others [2015] eKLR*, where it was held that: -

' The first issue for determination is whether the petitioner has established a prima facie case. A prima facie case, it has been held is not a case which must succeed at the hearing of the main case. However, it is not a case which discloses arguable issues and in this case arguable constitutional issues. It has been held that in considering an application for conservatory orders, the court is not called upon to make any definite finding either of fact or law as that is the province of the Court that will ultimately hear the petition. At this stage the applicant is only required to establish a prima facie case with a likelihood of success.'

29. Central to the issue at hand, is the formation of the Taskforce by the Respondent to undertake a county staff audit exercise. What has come to the fore is the mandate of the said taskforce vis a vis the functions of the Interested Party under section 59 of the County Government Act as read together with section 75 of the said Act. In this regard, the Applicant has cited the Respondent for violation of Articles 10, 27, 47 (1) and (2), 50(1), 73(1) and (2) and 232 of the Constitution.
30. From the Gazette Notice No 13821, which is the instrument appointing the Task Force, its mandate is as per its Terms of Reference thus:
 - a. To hear any concerns that may be raised by staff who may have been affected by the recommendations of the recent Human Resource Audit.
 - b. Compile and submit a comprehensive report with clear recommendations of actions to be taken by the county Government relating to issues that arise from point one above.
31. A careful consideration of the above Terms of Reference, raises several questions which cannot be answered at this point in time. First, in light of Article 235 of the Constitution as read together with sections 59, 31(d) and 75 of the County Government Act, does the Respondent have the mandate to establish the Taskforce to carry out the functions he has mandated it to? Second, was there need for public participation pursuant to Articles 10 (2) (a) and 232 (1) (d) of the Constitution, prior to establishment of the said Taskforce? Hence, was this kind of exercise one that required public participation?
32. Third, what is the scope of the Taskforce in light of Article 235 of the Constitution as read together with section 59 and 75 of the County Government Act and moreso, in light of all the issues raised in the report, for instance irregular promotions and irregular appointments? Connected to this, does the appointment of the Taskforce amount to usurpation of the Interested Party's mandate? Put another way, are the roles of the Taskforce overlapping with those of the County Public Service Board? Where do you draw the line?
33. That is not all. Further questions arise with respect to the communication dated November 13, 2022 to members of staff of the County and the public. The said communication is as follows:
 - a. The taskforce would commence its duties on November 14, 2022.
 - b. The taskforce will be operating from and houses at the FTC offices along the Garissa-Lamu Road.
 - c. That all affected officers are eligible to appear before the taskforce and present the merit of their cases. Officers are expected to pick their letters from their respective departments from Monday November 14, 2022 prior to appearing before the taskforce.



- d. The taskforce has developed a schedule and officers are expected to appear before the Taskforce on the scheduled department timelines. However, those who turn up on Monday and are willing will be offered an opportunity to be heard.
- e. That subsequent to communication to individual affected officers, you are reminded to provide copies of all relevant documents relating to their respective concerns including appointments, promotions and any other engagement with the County Government of Garissa.
34. Thus, had the concerned staff been personally notified of the manner in which the audit report had impacted them? That is to say, whether one fell under irregular appointments or irregular promotions or was serving beyond the mandatory age of 60 or 65, as the case may be. In addition, were the affected staff aware of the findings made in the report and the manner in which they had been personally impacted? This is further noting that the audit report made general observations and recommendations. Finally, had the Respondent shared the report with the affected staff?
35. In light of the above issues which will need to be resolved at the hearing of the Petition, and having noted the evidence presented by all parties in support of their respective positions at this interim stage, I find that the Applicant has satisfied that she has an arguable prima facie case.
36. Establishing a prima facie case is not an end in itself and cannot form sufficient basis to grant a conservatory order. Accordingly, the Court must undertake a further enquiry in order to determine whether the Applicant will suffer prejudice in the event the conservatory orders are not granted.
37. As was held in Centre for Rights Education and Awareness (CREAW) & 7 Others (supra) a party seeking a conservatory order only requires to demonstrate that unless the Court grants the conservatory order, there is real danger that he or she will suffer prejudice as a result of the violation or threatened violation of the Constitution.
38. This requires that an applicant demonstrates that if the application is not allowed, the substratum of the Petition will be lost and as such, will be rendered nugatory.
39. The threat must be imminent, evident, actual and deserving the Court's immediate remedial attention or redress. In other words, the danger must be more probable than possible.
40. The subject matter of the dispute in this case is the performance of the Taskforce's mandate in line with its Terms of Reference under Gazette Notice No 13821 dated November 8, 2022.
41. From the Gazette Notice appointing the Taskforce, it was expected to complete its work within 20 days. Therefore, given this short timeframe, it is more probable that if the substratum of the suit is not preserved, it may be eroded by the time the Petition is heard and determined. Too much water will have gone under the bridge and the Petition may be overtaken by events. There may be too little to salvage then, if at all.
42. Further, in the event the Taskforce proceeds and later the Court finds that the same had no legal mandate to act as it did, it may not be possible to undo the harm caused to the affected staff and indeed, it may be costly in the long run to do so.
43. However, in the event, the Taskforce is temporarily suspended to allow for interrogation of the issues giving raise to the Petition and ultimately, the Court determines that it was lawfully constituted, it will still have the opportunity to undertake its mandate.



44. That said, I now turn to determine whether public interest lies in granting the orders sought by the Applicant. According to *Black's Law Dictionary*, 'public interest' is defined as: -
- ' The general welfare of the public that warrants recognition and protection; or something in which the public as a whole has a stake especially an interest that justifies governmental regulation.'
45. Further, and drawing from the Supreme Court case of Gatirau Peter Munya vs Dickson Mwenda Kithinji and 2 others, Petition No 2 of 2014 (eKLR): '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.'
46. As stated herein, the crux of the Application and the Petition, is the mandate of the Respondent to establish the Taskforce to undertake a county staff audit.
47. Among the key issues to be determined in the Petition, is the mandate of the office of the Respondent vis a vis the mandate of the Interested Party. No doubt these are public offices whose holders are required to perform their duties within the confines of the *Constitution* and statutory law. Undeniably, these are matters of public interest.
48. It is also probable that the exercise by the Taskforce will require expenditure of funds, which will be drawn from the public coffers. This will definitely impact the public.
49. In light of the foregoing, I am satisfied that public interest lies in issuing the conservatory orders.
50. In light of the foregoing and in order to preserve the substratum of the Petition, I am persuaded that the lesser injustice would be to issue a conservatory order pending resolution of the issues giving rise the Petition.

Order

51. Against this background, the following orders issue:
- a. Pending hearing and determination of the Petition, a Conservatory order is hereby issued suspending the Taskforce on the county staff audit by Garissa County Government appointed by the Respondent pursuant to Kenya Gazette Notice No 13821 dated November 8, 2022.
 - b. Costs shall be in the Cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Mr. Obunde for the Petitioner/Applicant

Mr. Achola for the Respondent

Mr. Bashir for the Interested party

Court Assistant Abdimalik Hussein

ORDER



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

