



REPUBLIC OF KENYA

IN THE COURT OF KENYA AT NAIROBI

CONSTITUTIONAL & HUMAN RIGHTS DIVISION

PETITION NO. 203 OF 2020

IN THE MATTER OF: ARTICLES 2(4), 3, 10, 129(1) & (2), 156, 159, 160, 171, 172, 173, 248, 249(1) 7 (2), 250, 251, 252, 253, 254 & 255 OF THE CONSTITUTION 2010

AND

IN THE MATTER OF EXECUTIVE ORDER NUMBER NO.1 OF 2020 BY THE PRESIDENT OF THE REPUBLIC OF KENYA;

AND

IN THE MATTER OF SECTION 4 OF THE LAW SOCIETY OF KENYA (ACT NO. 21 OF 2014

AND

IN THE MATTER OF THE ENFORCEMENT AND INTERPRETATION OF THE CONSTITUTION UNDER ARTICLES 258, 259 AND 260 OF THE CONSTITUTION OF KENYA 2010

AND

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

AND

IN THE MATTER OF THE JUDICIAL SERVICE COMMISSION ACT; THE JUDICATURE ACT; AND ALL SUCH OTHER RELEVANT AND RELATED LEGISLATION

AND

IN THE MATTER OF ARTICLES 26 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS; AND PRINCIPLE 12 OF THE UNITED NATIONS BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY AND ALL SUCH OTHER RELEVANT INTERNATIONAL LAWS AND PRINCIPLES.

BETWEEN

LAW SOCIETY OF KENYA.....PETITIONER/APPLICANT

VERSUS

THE OFFICER OF THE ATTORNEY GENERAL.....1ST RESPONDENT

DR. JOSEPH KINYUA,

HEAD OF PUBLIC SERVICE2ND RESPONDENT

THE JUDICIAL SERVICE COMMISSION.....INTERESTED PARTY

RULING

1. The Petitioner through a Petition dated 17th June 2020 prays for various reliefs being as follows:-

a) A declaration that the executive Order, Number 1 of 2020, issued on 14th January, 2020 (Revised) purporting to organize the government and set out the Judiciary and its tribunals, Commissions and Independent offices as institutions under the functions of ministries and government departments and other constitutional bodies, specifically, PAARAGRAPHS (1), (3), (5), (7), (10), (11), (16), (18), (21), (22), (27) AND (28) are unconstitutional, null and void and contrary to Articles 10, 27(1), 47, 159, 160, 161, 169, 171, 172, 173 and 249 of the Constitution of Kenya, 2010.

b) An order of Judicial Review by way of an ORDER OF CERTIORARI pursuant to Article 3(23) (f) to remove into the court for purposes of quashing portions of the Executive Order Number 1 of 2020 issued on 14th January, 2020 (Revised) May 2020 that purports to organize the government and set out the Judiciary, and its tribunals, Commissions and Independent offices as institutions under the functions of ministries and government departments and other constitutional bodies, specifically, PARAGRAPHS (1), (3), (5), (7), (10), (11), (16), (18), (21), (22), (27) and (28).

c) An Order awarding costs of the Petition to the Petitioner.

d) Any other or further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the petitioners fundamental rights and freedoms; the enforcement and defence of the Constitution pursuant to Article 23(3) of the Constitution.

2. The Petitioner simultaneously filed a Notice of Motion of the even date seeking the following orders:

a) That this Application and Petition be certificate urgent and service of the same be dispensed with in the first instance.

b) That the Honourable Court be pleased to issue conservatory and/or interim orders ex parte in the first instance, staying and/or halting the further and continued implementation of the Executive Order No. 1 of 2020 dated 11th May, 2020 in respect of the Judiciary and the following independent institutions;- The Public Service Commission, Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption Commission; Commission on Administrative Justice; The National Land Commission; The Officer of Controller of Budget; Commission on Revenue Allocation, Salaries and Remuneration Commission; Kenya National Commission on Human Rights and National Gender and Equality Commission, more specifically;- PARAGRAPHS (1), (3), (5), (7), (10), (11), (16), (18), (21), (22), (27) and (28) pending the hearing and determination of this Application inter-partes.

c) That the Honorable Court be pleased to issue conservatory and/or interim orders staying and/or suspending and/or halting the further and continued implementation of the Executive Order No. 1 of 2020 dated 11th May, 2020 in respect of the Judiciary and the following independent institutions;- The Public Service Commission, Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption Commission; Commission on Administrative Justice; The National Land Commission; The Officer of Controller of Budget; Commission on Revenue Allocation, Salaries and Remuneration Commission; Kenya National Commission on Human Rights and National Gender and Equality Commission, more specifically;- PARAGRAPHS (1), (3), (5), (7), (10), (11), (16), (18), (21), (22), (27) and (28) pending the hearing and determination and final disposal of the Petition.

d) That the Honorable Court pursuant to Article 23(3) Rules 4 and (23) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 be pleased to grant any other appropriate interim reliefs.

e) That the costs of this application be borne by the Respondent.

3. The application is premised on the grounds running from numbers (a) – (z) on the face of the application. It is further based on the affidavit of support by Mercy K. Wambua sworn on 17th June 2020 and further affidavit by Mercy K. Wambua sworn on 16th July 2020.

4. The Respondents are opposed to the Petitioner's application and in doing so filed a Replying Affidavit by Kennedy Ogeto; the solicitor General, sworn on 13th July 2020. The Respondents also filed grounds of opposition dated 7th July 2020 setting out 8 main grounds of opposition.

5. The Interested Party's Counsel informed the Court that the Interested Party intended not to file any response or submissions and opted to leave the matter for court's determination.

PETITIONER'S CASE

6. The Petitioners' case is that the President of the Republic of Kenya on 11th May 2020, issued Executive Order No. 1 of 2020 (Revised) whose effect is to alter and/or modify and/or restructure and/or reorganize the Government of the Republic of Kenya. The effect of the aforesaid order is thus:-

i) That the Government shall be reorganized as set out in the order.

ii) That the order contain portfolio responsibility and changes made in the structure of Government.

iii) That the order assigns functions and institutions among ministers and state Departments and

iv) That the order supersedes Executive order No. 1 of 2018 (Revised) issued in July 2018.

7. The Petitioner position is that the effect of the order is that various changes have been introduced to the structure of the Executive and further changes have been introduced in the structure of the Judiciary; an arm of the Government.

8. The Petition further state the effect of the Executive order is that the President has purported to place various Tribunals and Constitutional Commissions and Independent Bodies under various Government departments; making them to be under the control and direction of the respective departments and ministries. The Petitioner urge that there is eminent and apparent danger that the Tribunal Commissions and Independent offices shall loose their independence and be subjected to respective departments and Ministries unless the orders sought are granted.

9. The Petitioner further states by virtue of placing the Tribunals and Constitutional Independent offices under various departments and ministries, it implies that the said officers shall operate and shall be overrun by the respective Ministries or Departments in charge and all such budgetary allocations and financial decisions among others shall be done pursuant to and in line with the directions sand criteria to be set by the respective ministries and Departments involved.

10. In view of the aforesaid the Petitioner urge the impugned Executive Order as made pursuant to the Constitution; is only limited to Ministries and Government Departments as contemplated under **Article 132 (3)(b) of the Constitution** and not to the other arms of the government, including the Judiciary, the legislation or any such independent constitutional commission and offices.

11. It is further argued by the Petitioner that by purporting to restructure and/or organize and/or transfer functions and/or direct and or coordinate the function of the Judiciary, the Executive Order is unconstitutional, null and void and contrary to **Articles, 10, 27(1); 47, 160, 171, 172, 173 and 249 of the Constitution of Kenya, 2010.**

12. It is further contended that the Judiciary and Judicial Service are not assigned to them by either the President or the Executive branch of the Government.

RESPONDENTS RESPONSE

13. The Respondents are opposed to the Petitioner's Notice of Motion dated 17th June 2020 and rely on the grounds of opposition inter alia; that:-

a) That the provisions of Article 23(3) of the Constitution provides that it is in proceedings brought under Article 22 that a Court may grant appropriate relief, including a conservatory order, therefore, to the extent that the present petition is not premised on any allegation of denial, violation or threatened violation of the bill of rights there is no basis for issuance of the conservatory order sought.

b) That the Petitioner has not demonstrated any prejudice that it will suffer if the orders sought are not granted.

c) That the executive order in issue enjoys the presumption of legality and constitutionality.

d) That the Petitioner has not demonstrated a prima facie case with any likelihood of success.

e) That the substratum of the Petition will not be rendered nugatory if the conservatory orders sought are not granted.

f) That there is no evidence that the grant of the conservatory orders sought would enhance constitutional values and objects specific to the rights and freedoms in the Bill of rights.

g) There is no allegation that pervious executive orders have been the basis for usurpation of constitutional roles or functions or independent offices, constitutional commissions, tribunals and other arms of government.

h) That the application is at best speculative, moot and bad in law.

INTERESTED PARTY RESPONSE

14. Interested party opted not to participate in these proceedings indicating it shall not file any response nor submissions in this Petition.

ANALYSIS AND DETERMINATION

15. I have very carefully considered the Petitioner's Notice of Motion dated 17th June 2020, the supporting affidavit and further affidavit, the Respondents' grounds of opposition and Replying Affidavit, parties rival submissions and from the above only one single issue arises form determination namely:-

a) Whether the Petitioner/Applicant has made out a case to warrant the grant of interim orders pending the hearing and determination of the petition herein?

16. The law on conservatory orders is now well settled in this jurisdiction and is backed by myriads of authorities for instance, in **Centre for Rights Education and Awareness (CREAW) & another v Speaker of the National Assembly & 2 others (2017) eKLR** the Court was emphatic that:-

“A party who moves the court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under threat of violation; are being violated or will be violated and that such violation, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending case or Petition.”

17. The Respondent contend that the provisions of **Article 23(3) of the Constitution** are explicit in that they clearly indicate that “in any proceedings brought under **Article 22**; **“a Court may grant appropriate relief; including (c) a conservatory Order.** It is further their contention that the provisions of Article 22(1) of the Constitution are equally explicit in that they provide that **“Every person has a right to institute Court proceedings claiming that a right or fundamental freedom in the Bill has been denied, violated or infringed or is threatened.”**

18. The Respondents sought reliance in the case of **Simeon Kioko Kitheka & 18 others vs. County Government of Machakos & 2 others (2018) eKLR** where Hon. Justice Odunga held thus:-

“46. Article 23 of the Constitution does not expressly bar the Court from granting conservatory orders where a challenge is taken on the constitutionality of legislation. The only rider is that the case must be one which falls under Article 22 of the Constitution.

47. This however does not mean that Courts ought to readily suspend legislation simply because a challenge has been made to a statute. I agree that power ought to be exercised very sparingly where the Court is satisfied that it ought to be exercised. However, it can be exercised. Therefore whereas I agree that there is a presumption of Constitutionality of Statute that is a rebuttable principle. This was clearly appreciated in *Ndanabo vs. Attorney General [2001] 2 EA 485* where it was held inter alia that in interpreting the Constitution, the Court would be guided by the general principles that there is a rebuttable presumption that legislation is constitutional hence the onus of rebutting the presumption rests on those who challenge that legislation’s status save that, where those who support a restriction on a fundamental right rely on a claw back or exclusion clause, the onus is on them to justify the restriction.

60.Having passed the first hurdle the second issue is whether the Petitioner has satisfied the provision of Article 23(3) (c) of the Constitution.

61. Article 23(3) (c) of the Constitution provides that in any proceedings brought under Article 22, a court may grant appropriate relief, including a conservatory order.

62. Proceedings under Article 22 of the Constitution deal with the enforcement of the Bill of Rights. Therefore a strict interpretation of Article 23(3)(c) shows that the reliefs specified thereunder are only available where a party is alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. In my view, an applicant for conservatory order under Article 23(2) (c) of the Constitution ought to bring himself or herself within the provisions of Article 22 of the Constitution by pleading and establishing on a prima facie basis that his or her right or fundamental freedom in the Bill of Rights or those of other persons have been denied, violated or infringed, or is threatened. However Article 19(3) (a) and (b) of the Constitution provides that:

The rights and fundamental freedoms in the Bill of Rights-

a) Belong to each individual and are not granted by the State;

b) Do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized (or conferred by law, except to the extent that they are inconsistent with this Chapter.

63. Therefore rights and fundamental freedoms are not restricted to those expressly set out in the Bill of Rights. It is my view and I hold that there is a right for the public to participate either individually or collectively on the process of legislative enactment and the denial of this opportunity may well result in the violation of rights.

64. However whereas under Article 258(1) of the Constitution, every person has the right to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention, the mere fact that a person is entitled to bring such proceedings does not automatically entitle such a person to grant of conservatory orders. The person is enjoined to go further and show how the refusal to grant the said orders is likely to be prejudicial to him or her.” (Emphasis mine).

19. The Respondents therefore contend that conservatory orders may be issued in matters wherein a claim for enforcement of Bill of rights in the Constitution is being made. The Respondents claim, that in the present Petition the Petitioner has neither alleged nor by way of adducing evidence remotely suggested infringement of either it or any persons’ infringement of the right set out in the bill of rights and to, that extent, it is urged the Petitioner has no basis for seeking conservatory orders in the present petition. It is urged the petitioner is a corporate entity and

it has not demonstrated in what manner it will be affected if conservatory orders sought are not issued.

20. **Article 23 of the Constitution of Kenya** 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, 2013**, (otherwise referred to as “the Mutunga Rules”) clearly grants this Honorable Court powers to hear and determine an application for conservatory order or interim orders in order to secure the subject matter in dispute. **Rule 23 of the Mutunga Rules** provides:-

“1) Despite any provision to the contrary, a Judge before whom a petition under rule 4 is presented 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.

3) 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.”

21. The principles in regard to the granting of interim or conservatory orders were outlined by the Supreme Court in the case of **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others, Supreme Court Application NO. 5 of 2014 (2014) eKLR**, where the Court held that:-

[85] These are issues to be resolved on the basis of recognizable concept. The domain of interlocutory orders is somewhat ruffled, being characterized by injunctions, orders of stay, conservatory orders and yet others. Injunctions, in a proper sense, belong to the sphere of civil claims, and are issued essentially on the basis of convenience as between the parties, and of balances of probabilities. The concept of “stay orders” is more general, and merely denotes that no party nor interested individual or entity is to take action until the Court has given the green light.

[86] “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.” (Emphasis added).

22. The principles in regard to thought of Interim conservatory orders were reiterated in the case of **Nubian Rights Forum & 2 others vs. Attorney General & 6 others; Child Welfare Society & 8 others (Interested Parties); Centre for Intellectual Property & Information Technology (Proposed Amicus Curiae) Petition Nos. 56, 58 & 59 of 2019 [2019] eKLR**, the Court reinstated principles in regard to the grant of interim conservatory Orders. The court observed that:-

[91] This Court is granted powers to issue conservatory orders in constitutional petition under Article 23(3) (c) of the Constitution and Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules 2013.

[92] The applicable principles for the grant of conservatory orders were detailed by Onguto J. in Board of Management of Uhuru Secondary School v. City County Director of Education & 2 Others [2015] eKLR. In summary, the principles are that the Applicant ought to demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. Further, the Court should decide whether a grant or a denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights, and whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. Lastly, that the Court should consider the public interest and relevant material facts in exercising its discretion whether, to grant or deny a conservatory order.

[93] We are also guided by the principle that in determining whether or not to grant conservatory orders, the Court must bear in mind that it is not required to enter into a detailed analysis of the facts and the law. As Musinga, J (as he then was) observed in High Court Petition No.16 of 2011, Nairobi – Centre for Rights Education and awareness (CREAW) & 7 others” “...It is important to point out that the arguments that were advanced by Counsel and that I will take into account in this ruling relate to the prayer for a Conservatory order in terms of prayer 3 of the Petitioner’s Application and not the Petition. I will therefore not delve into a detailed analysis of facts and law. 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.”

[105] We have already found that the Petitioners have established, and the Respondent have conceded that there is a risk of prejudice being caused to members of the public and their right to privacy by the disclosure of certain types of personal information in the absence of proposals on how that data will be protected. As regards where the public interest falls in light of the respective prejudices that will be caused if the implementation of NIIMS is stayed, we are persuaded by the definition of public interest by the Indian Supreme Court in the case of Dattraj Nathuji Thaware v State of Maharashtra, Indian & Others [2004] INSC 755 S.C 755 of 2004 which adopted the meaning of public interest as set out in Stround’s Judicial Dictionary Vol. 4 (v Ed) as: “A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

[106] We take the view that it is in the public interest to have an efficient and organized system of registration of persons, and the responsible use of resources in the process, in light of the socio-economic gains of the system that have been illustrated by the Respondents. There is, however, also a public interest in ensuring that the said system does not infringe on fundamental rights and freedoms. There is thus a need for a balancing of the competing public interest rights while the consolidated Petitions are heard, so as to safeguard rights and resources, and ensure that the Petitions are not rendered nugatory.” (Emphasis Added).

23. The Respondents have taken issue with the Petitioner’s status as a corporate entity. This is however not supported by **Article 260 of the Constitution** which provides that in the Constitution, unless the context requires otherwise “person” includes a company, association, or other body of persons whether incorporated or unincorporated.

24. From various authorities of the Courts the principles required to be satisfied before granting conservatory orders or interim conservatory orders comprises of the following:-

a) First, an Applicant must demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he/she is likely to suffer prejudice.

b) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.

c) Thirdly, the court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.

d) The final principle for consideration is whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

25. Applying the above mentioned principles and considering the facts of the subject matter; it is apparently that it is possible that the President has invoked his powers wrongfully and used administrative process to purport to restructure and re-organize independent Constitutional offices. It has been shown that various independent offices including the Judiciary and some of its Tribunals have now been placed under various State Departments and Ministries, which amounts to direct contravention of the Constitutional principles and values on Judicial Independence; the rule of law; transparency and accountability amongst others. At this stage I am alive to the fact, that the Court is not supposed to examine the merits of the Petition but has to consider whether the Petitioner, has established a prima facie case to warrant interim orders of Protection, in order to secure the substratum of the suit and not to render the petition herein nugatory and become a mere academic exercise.

26. The Executive Order is already in force. It is clear that the Applicant timorously moved this court for appropriate orders to prevent any further implementations. I find in absence of the orders sought; thus interim conservatory orders of protection, the instant petition shall be rendered nugatory as various key irreversible decisions shall be made including the following:-

a) Budgetary allocations for the various Ministries and Departments under which the Tribunals and various Independent Offices have been placed by virtue of the Executive Order and budgetary estimates have also been given and/or are likely to be given and budgetary estimates decisions are likely to be made and the Court shall not be in a position to reverse the same upon hearing the Petition.

b) Various appointments and changes are likely to be made by the various Departments and Ministries involved and as such the Court shall not address such issues at the hearing of the Petition herein and or be in a position to reverse the same.

c) Various appointments to the Tribunals and Independent Offices are likely to be made among others.

d) Various Ministries and Departments Manuals and polices stand to be affected accordingly to the new changes and as such, the Court shall not be in a position to reverse the same upon hearing and determining the Petition, in the event that the interim orders sought herein are not granted.

27. On the issue of public interest; public interest lies in favour of preserving and protecting values and interest. I find this is a suitable suit in which, court ought to intervene by exercising its checks and balances against, the excesses of the Executive, which it has purported to use administrative process to extend its powers. I find that public interest would thus be greatly jeopardized and compromised should the court decline to grant the interim orders preserving the substratum of the suit herein.

28. From the facts and submissions as submitted before me, I find that failure to grant the orders sought in the instant application, will cause irreparable harm to the public and, that it is in the public interest, the irreparable harm, that may result by declining to grant the orders sought, be averted by issuance of the Interim or conservatory reliefs, sought in the application for the following reasons:-

a) The Petitioner is aggrieved that the executive arm of government has given itself powers and a mandate unknown in law by purporting to restructure institutions that are outside its control and/or that cannot be categorized as Ministries or government departments.

b) The executive, and any arm of the Government must be conscious of the vital limits on its authority and the Constitution’s design to respect the independence of other branches of government. They too must observe the Constitutional limits of their authority. This means that the executive should not interfere in the processes of other branches of government or purport to direct the other branches on how to conduct themselves unless to do so is mandated by the Constitution.

c) The importance of the independence of the Judiciary, commissions and independent bodies is to shield against influence or interference from external forces, including the government, political and or commercial interests. The said bodies must be seen to be carrying out their functions free of orders, instructions or any other intrusion.

d) The import of Article 249(2) is to the effect that constitutional commission are independent in the execution of their mandate and should not take directions from any person or autotomy. That is; they are neither under the control of any person or authority in the performance of their duties and discharge of their functions nor should they receive direction in the performance of their duties. The President's executive order is therefore irrational and lacks bona fide but files in the face of the Constitution and the law.

e) That the balance of convenience leis in granting of the orders sought as its failure will result in great prejudice to the public and public interest.

29. The Constitution is the Supreme Law as provided under **Article 2(1) of the Constitution of Kenya, 2010** which provides:-

“2. Supremacy of this Constitution

(1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.

(2) No person may claim or exercise State authority except as authorised under this Constitution.”

30. From the above-quoted provisions of the Constitution, it is clear that every member of the public whether individually or collectively is enjoined to respect, uphold and defend the Constitution and any alleged violation of the Constitution by any individual is a very serious matter and an affront to the Constitutionalism, and sets a dangerous precedent in the violation of the constitution; which can, if not checked, result in serious harm to the country and every citizen. It is therefore proper and prudent for the Courts to act in public interest and consider granting the appropriate reliefs in the circumstances where such orders are deserved.

31. In the instant application and applying the principles, that an Applicant seeking conservatory orders or interim orders is required to satisfy before grant of interim orders; as I have set them out herein above, I find, that the Applicant has satisfied the aforesaid principles in regard to the granting of interim or conservatory orders. The Applicant has demonstrated an arguable prima facie case with likelihood of success and shown in absence of the conservatory orders he/she is likely to suffer prejudice; the Applicant has further met the second principle that grant or denial of conservatory relief will enhance the Constitutional values and objectives of a specific right or freedom in the Bill of Rights; thirdly the Applicant has demonstrated, if interim orders or conservatory orders are not granted, the petition or its substratum will be rendered nugatory and finally has demonstrated that public interest will be prejudiced by a decision not to grant conservatory orders.

32. The upshot is that the Petitioner's application dated 17th June 2020 is meritorious. I proceed to grant the following orders:

a) Conservatory order staying and/or suspending and/or halting the further and continued implementation of the Executive Order No. 1 of 2020 dated 11th May 2020 in respect of the Judiciary and the following independent institutions;- The Public Service Commission, Teachers Service Commission; The National Police Service Commission; Parliamentary Service Commission; Judicial Service Commission; Independent Boundaries and electoral Commission; Office of the Director of Public Prosecution; Ethics and Anti-corruption Commission; Commission on Administrative Justice; The National Land Commission; The Officer of Controller of Budget; Commission on Revenue Allocation, Salaries and Remuneration Commission; Kenya National Commission on Human Rights and National Gender and Equality Commission, more specifically;- PARAGRAPHS (1), (3), (5), (7), (10), (11), (16), (18), (21), (22), (27) and (28) BE AND IS HEREBY granted pending the hearing and determination and final disposal of the Petition.

b) Costs of the application be in cause.

Dated, Signed and Delivered at Nairobi on this 3rd day of August, 2020.

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J. A. MAKAU

JUDGE