



**Nyabuto v County Assembly of Nairobi City County & 2 others; Commission
on Revenue Allocation (Interested Party) (Petition E040 of 2025)
[2025] KEHC 7941 (KLR) (Constitutional and Human Rights) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 7941 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E040 OF 2025

AB MWAMUYE, J

MARCH 27, 2025

**IN THE MATTER OF ARTICLES 1,2,3,10,174,201,209,210
AND 216 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 102,104,105,107,125,131,132 AND
161 OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012**

AND

**IN THE MATTER OF THE FINANCE ACT OF NAIROBI
CITY COUNTY GOVERNMENT, 2023/2024/2025**

BETWEEN

JARED NGISA NYABUTO PETITIONER

AND

THE COUNTY ASSEMBLY OF NAIROBI CITY COUNTY 1ST RESPONDENT

**THE SPEAKER OF THE COUNTY ASSEMBLY, COUNTY GOVERNMENT OF
NAIROBI CITY 2ND RESPONDENT**

THE COUNTY GOVERNMENT OF NAIROBI CITY 3RD RESPONDENT

AND

THE COMMISSION ON REVENUE ALLOCATION INTERESTED PARTY

(On the Petitioner's Notice of Motion Application dated 28th January 2025)



RULING

Introduction & Background

1. The Petitioner/ Applicant, Jared Ngisa Nyabuto, has filed the present Application together with a substantive Petition challenging the constitutionality and legality of the Nairobi City County Finance Act, 2023 (hereinafter “the impugned Finance Act”) and the Nairobi City County Appropriation Act, 2024 (hereinafter “the Appropriation Act”), for alleged violations of Articles 10, 174, 185, 201, 209 and 210 of *the Constitution*, the *County Governments Act*, 2012 and the *Public Finance Management Act*, 2012.
2. In the Notice of Motion dated 28th January 2025 and supporting affidavit sworn by the petitioner, the Petitioner contends that the gravamen of the challenge is that the impugned Finance Act is imposing tax and licensing fees, waiving, and varying fees contrary to dictates of *the Constitution*. Further, Respondents have enacted and implemented revenue raising measures involving taxes, levies, fees, and charges without developing or adopting a tariff and pricing policy in accordance with Section 120 of the *County Governments Act*. The Petitioner maintains that by failing to enact and adopt a tariffs and pricing policy, the Respondents have deprived citizens of a clear and transparent basis for determining how taxes, fees, and charges are levied. Further, the Petitioner asserts there was inadequate public participation, contrary to the constitutional imperatives under Articles 10, 174, 196, and 201 of *the Constitution*.
3. The Petitioner prays for conservatory orders to halt the continued implementation of the impugned Finance Act and the Appropriation Act, as well as any corresponding expenditure or collection of revenue, pending the hearing and determination of the Petition. The Petitioner highlights the urgency of the matter on grounds that continued collection and expenditure of revenue under the impugned laws threatens the constitutional principles of public finance, transparency, and accountability, and may cause irreparable harm to taxpayers.
4. The record shows that the Respondents were duly served with the Application and Petition in the filed affidavit of service dated 4th February 2025. However, no appearance has been entered and no responses or affidavits in reply have been filed by the Respondents. This court, is therefore, compelled to consider the Application on its merits based on the uncontroverted evidence and submissions on record.

Petitioner’s Case

5. The Petitioner contends that on 4th April 2023, the Commission on Revenue Allocation herein the Interested Party, issued an advisory to all counties, reminding them to comply fully with *the Constitution* regarding enactment of Finance Act and advised Counties to enact revenue raising legislation.
6. The Respondents allegedly disregarded this advisory and enacted the Finance Act, 2023, imposing a multitude of fees, levies, and charges contrary to constitutional principles on public finance and *Public Finance Management Act*.
7. The Petitioner argues that Section 120 of the *County Governments Act* expressly mandates a county government to develop and implement a tariffs and pricing policy prior to levying fees, charges, and taxes. Without such a policy, there is no transparent or rational method to determine the correctness or proportionality of the charges.



8. The Petitioner contends that Articles 10, 201, and 209 of *the Constitution* require all public finance measures to be guided by transparency, accountability, openness, and strict adherence to constitutional and statutory provisions. The Petitioner maintains that the impugned Finance Act seeks to impose multiple taxes and levies for which there is no appropriate supporting legislation or policy framework, and the absence of a lawful policy framework purportedly infringes these provisions.
9. According to the Petitioner, public participation under Articles 10, 174(c), and 196 of *the Constitution* must be effective, meaningful, and based on adequate disclosure of relevant information. Because no tariffs and pricing policy was presented, the public lacked a proper understanding of how new or revised fees would be set, undermining meaningful engagement.
10. The Petitioner avers that the impugned Finance Act, 2023, is already being implemented and the Appropriation Act, 2024, is anchored in that unconstitutional framework. Consequently, taxpayers are presently subjected to unlawful levies, while the County continues to spend funds derived therefrom. The Petitioner avers that, if unchecked, the 3rd Respondent will continue to collect and expend public funds in a manner that contravenes constitutional and statutory mandates. The Petitioner therefore urges this Court to stay the implementation of the impugned legislation to prevent irreparable harm to residents, taxpayers, and the broader public interest.
11. Considering these concerns, the Petitioner prays for Interim Conservatory orders to restrain the 3rd Respondent, their agents or anyone authorized by the 3rd Respondent or acting under the directions of the 3rd Respondent from collecting or appropriating public funds under the impugned legislation.
12. The Respondents and the Interested Party have not entered appearance or filed any documents thus far.

Petitioner's Submissions

13. In his written submissions dated 3rd March 2025, the Petitioner submits that conservatory orders are constitutionally sanctioned interim measures aimed at preserving the subject matter of a dispute pending a final determination. The Applicant highlights the role of Article 23(3) of *the Constitution*, which empowers the High Court to grant conservatory orders in constitutional litigation. The Petitioner placed reliance on the Supreme Court decision in *Gatirau Peter Munya v Dickson Mwendwa Kithinji & 2 Others* [2014] eKLR.
14. The Petitioner relies on the principle that a party seeking conservatory orders must show that the underlying claim is neither frivolous nor vexatious and raises arguable constitutional questions that require judicial consideration.
15. The Petitioner also relies on the High Court's decisions on public participation, citing among others the case of *Republic v County Government of Kiambu & Another Ex parte Robert Gakuru & Another* [2016] eKLR.
16. Further, the Petitioner invokes Article 209(5) of *the Constitution*, emphasizing that any levy or tax at the county level must not prejudice national economic policies or the mobility of goods, services, capital, or labor. Imposing fees or taxes without the requisite statutory or policy framework, argues the Petitioner, offends both the letter and spirit of this Article.
17. The Petitioner further urges that once revenues are collected and spent under an unconstitutional regime, it becomes nearly impossible to refund taxpayers or reverse the budgetary commitments. Thus, a prompt conservatory order is necessary to prevent further constitutional violations.



18. Finally, the Petitioner submits that the balance of convenience and public interest heavily favor granting the injunction. The Petitioner submits that constitutional supremacy and proper public finance management dictate that the Court favor halting the impugned Acts' implementation until their constitutionality is determined. The argument is that the greater public interest lies in preventing further possible constitutional violations, as opposed to allowing potentially flawed statutory provisions to remain operational.
19. On the Respondents' failure to file any response, the Petitioner places reliance on the proposition that the Court may proceed to hear and determine the matter on its merits, guided by the uncontroverted material on record.

Analysis And Issues For Determination

20. It is trite that an application that is not opposed need not automatically succeed. The applicant has a duty to prove his case and the court will determine the same on merit. See *Sitelu Konchellah vs Julius Lekakeny Ole Sunkuli & Sunkuli & 2 others* (2018) eKLR.
21. Having carefully considered the Application, the Supporting Affidavit, the Petition, and the Petitioner's submissions, it is my view that the primary issues for determination are:
 - i. Whether this Court has jurisdiction to grant the conservatory orders sought.
 - ii. Whether the threshold for the grant of conservatory orders has been met.

Whether this Court Has Jurisdiction to Grant the Conservatory Orders Sought

22. Article 23 (3) of *the Constitution* basically affords a party to proceedings brought pursuant to Article 22, asserting violation or threat of violation of any Constitutional right or fundamental freedom, to prompt the court for any relief, including temporary reliefs. The said Article 23 provides as follows:

“ 23 (1) ...

23.

2) ...

23

- (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.” (emphasis)



23. I state without vacillation that the path to be followed by a court seized with an application under Article 23 (3) (d) is now relatively clear.
24. Article 165(3)(d) of *the Constitution* empowers the High Court to determine the constitutionality of any law or the conduct of any person or entity in purported exercise of constitutional power. Furthermore, under Article 23(3), the High Court may grant appropriate reliefs, including conservatory orders, in proceedings brought under Article 22. It is therefore incontestable that this Court has the jurisdiction to adjudicate on the present dispute and grant interim measures for the protection of constitutional rights and values.

Whether the Threshold for the Grant of Conservatory Orders Has Been Met

25. The Petitioner alleges contravention of Articles 10 with regard to public participation and accountability, 201 on principles of public finance, 209 and 210 on imposition of taxes and charges, and Section 120 of the *County Governments Act*.
26. At this interlocutory stage, the Court is not required to make final determinations on constitutionality. The question is whether there is an arguable case that the impugned Finance Act, 2023 and the Appropriation Act, 2024 may have been enacted or are being implemented in violation of constitutional and statutory requirements. The Petitioner's uncontroverted evidence that the 3rd Respondent is imposing several unauthorized fees, charges, and taxes without a "tariffs and pricing policy", which do not comply with constitutional principles and *Public Finance Management Act*, and that public participation was, at best, superficial, raises significant constitutional questions.
27. In *Judicial Service Commission v. Speaker of the National Assembly & Another* [2013] eKLR the Court expressed itself as follows:

"Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under *the Constitution*, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person."
28. A conservatory order is in its very nature, a temporary relief issued by a court of law to stop a certain act from happening or continuing to happen pending issuance of a substantive order or declaration. In the case of *Invesco Assurance Co. Ltd vs MW (minor suing thro' next friend and mother (HW))* (2016) eKLR, the court held as follows: -

"A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter".
29. The threshold for grant of conservatory orders was established by the Supreme Court in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [supra] where the apex court held that; -

“(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 applicant’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).

30. In the case of Wilson Kaberia Nkunja –vs- The Magistrates and Judges Vetting Board & Others, Nairobi High Court Constitutional Petition No.154 of 2016[2016] eKLR, the court set out three main principles for consideration on whether or not to grant conservatory orders as follows: -
- a. An Applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
 - b. Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
 - c. The public interests must be considered before grant of a conservatory order.
31. From this authoritative statement, the Petitioner must demonstrate
- (a) a prima facie case disclosing arguable issues of constitutional violation,
 - (b) the likelihood of prejudice or threat to constitutional values, and
 - (c) that the public interest and balance of convenience support such interim relief.

Existence of a Prima Facie Case

32. The first discernible principle is that the applicant ought to demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the conservatory order, he is likely to suffer prejudice. This position was well articulated in the case of Centre for rights education and awareness (CREAW) and 7 others vs Attorney General (2011) eKLR.
33. A prima facie case in the context of constitutional litigation means that the allegations presented are not frivolous and raise a genuinely arguable case of constitutional infringement. In *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, the Court of Appeal defined a prima facie case as one that, on the face of it, raises serious questions of law or fact capable of judicial consideration, and is not frivolous. The court stated thus:
- “A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
34. Similarly in *Kevin K. Mwititi Others v Kenya School of Law & Others*, it was held that:
- “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 is frivolous. In other words, the Petitioner has to show that he or she has 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."

35. It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis. In these respects, I would quickly refer to M. Ibrahim J (as he then was) in the case of Muslims for Human Rights [MUHURI] & Others –v- Attorney General & Others CP No. 7 of 2011, who whilst agreeing with Musunga J's statement in Centre for Rights Education and Awareness [CREAW] and 7 Others –v- The Attorney General stated as follows: -

"I would agree with my brother that an applicant seeking conservatory orders in a Constitutional case must demonstrate that he has a prima facie case with a likelihood of success" (emphasis).

36. It is trite that when a court is called upon to determine whether a prima facie case has been established, it should not delve into a detailed analysis of the facts and law but should focus on determining whether the applicant has put forward a case that is arguable and not frivolous.
37. The Petitioner challenges the constitutionality of the impugned Finance Act and the Appropriation Act on grounds that: the 3rd Respondent is imposing unauthorized taxes, fees and charges under the impugned Finance Act without a "tariffs and pricing policy"; public participation was inadequate since the public lacked critical information to enable them to question, debate, or meaningfully propose amendments to the proposed levies, charges, and taxes; and the impugned Finance Act contravenes Articles 209 and 210 of *the Constitution*, which require that revenue-raising measures be anchored in proper legislation and must not violate constitutional limits.
38. The Petitioner's argument that the Respondents did not enact or adopt a tariffs and pricing policy as required by Section 120 of the *County Governments Act* raises substantial questions. Section 120(1) of that Act provides:
- "A county government or any agency delivering services in the county shall adopt and implement a tariffs and pricing policy for the provision of public services."
39. Failure to comply with this provision could render any subsequent Finance Act vulnerable to a constitutional challenge, especially under Articles 10, 174, and 201 of *the Constitution*.
40. Additionally, the Petitioner contends that the impugned Finance Act was enacted without meaningful public participation. Article 10 of *the Constitution* obligates public entities to observe participation, good governance, and transparency in legislative processes. In *Doctors for Life International v Speaker of the National Assembly & Others* (CCT12/05) [2006] ZACC 11, the court stated:

"The phrase "facilitate public involvement" is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this phrase are "facilitate" and "involvement". To "facilitate" means to "make easy or easier", "promote" or "help forward". The phrase "public involvement" is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of "involve" includes to "bring a person into a matter" while participation is defined as "[a] taking part with others (in an action or matter); . . . the active involvement of members of a community or organization in decisions which affect them". According to their plain and ordinary meaning, the words public involvement or public participation



refer to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process. That is the plain meaning of section 72(1)(a). This construction of section 72(1)(a) is consistent with the participative nature of our democracy. As this Court held in *New Clicks*, “[t]he Constitution calls for open and transparent government and requires public participation in the making of laws by Parliament and deliberative legislative assemblies.” The democratic government that is contemplated in *the Constitution* is thus a representative and participatory democracy which is accountable, responsive, and transparent and which makes provision for the public to participate in the law-making process.”

41. Accordingly, imposing unauthorized taxes, fees and charges, the lack of a tariffs and pricing policy and alleged inadequate public participation are not trivial or peripheral questions as they go to the root of the legislative process. On the face of these allegations, this Court is satisfied that the Petitioner has presented a cogent case raising serious constitutional and statutory questions. The Petitioner’s claim is neither trivial nor spurious, thus constituting a prima facie case that warrants judicial scrutiny.

Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory.

42. The second principle is that 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. The critical consideration is the question whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.
43. This limb requires the Petitioner to show the prejudice that he and other citizens are likely to suffer which cannot be compensated by damages or other ordinary legal redress if interim relief is not granted with respect to the alleged constitutional violations. In *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal affirmed that if the Applicant fails to show a likelihood of irreparable harm, an interlocutory injunction or conservatory order should generally not issue. The court thus stated that:

“If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leapfrogging” by the applicant to injunction directly without crossing the other hurdles in between.”

44. In *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR irreparable harm was defined as:

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

45. The Petitioner argues that the continued enforcement of the impugned Finance Act and the corresponding appropriation and expenditure of public funds pose multiple dangers being that the public may be compelled to pay illegal or unconstitutional charges, fees, and taxes; and that once collected, the funds could be expended, making reimbursement or rectification practically unworkable if the Act is ultimately declared unconstitutional.



46. It is plain from the Applicant that the fees and charges is premised on the impugned Finance Act, 2023 that anchors the Appropriation Act, 2024 which violates constitutional principles. Since statutes enjoy the presumption of constitutionality, it has to be a very strong case in which the Court would intervene by way of issuing a conservatory order. Hence, I subscribe to the view expressed in Mombasa High Court Petition No. 669 of 2009 Bishop Joseph Kimani & others v Attorney General & others that: -

“It is a very serious legal and Constitutional step to suspend the operation of statutes and statutory provisions. The courts must wade with care, prudence, and judicious wisdom. For the High Court to grant interim orders in this regard, I think one must at the interlocutory stage actually show that the operation of the legislative provision is a danger to life and limb at that very moment...It is my view the principle of presumption of Constitutionality of Legislation in (sic) imperative for any state that believes in democracy, the separation of powers and the Rule of Law in general. Further the courts to be able to suspend legislation during peace times where there is no national disaster or war, would in my view be interfering with the independence and supremacy of Parliament in its Constitutional duty of legislating law. I think that I shall hold the said views and that legislation should only be impugned in any manner only where it has been proven to be unconstitutional, null and void. Conservancy orders to suspend operation of statutes, statutory provisions or even Regulations should be wholly avoided except where the national interest demand and the situation is certain...I am still of the view that “there is no place for conservatory or interim order in petitions, which seek to nullify or declare legislation/statutes unconstitutional, null and void.” It is even more premature at this stage where the application has not been heard or is not being heard to seek such conservatory orders. The applications must be heard first.”

47. The Petitioner/Applicant’s case here is that the 3rd Respondent is already enforcing the impugned Finance Act and collecting fees, taxes, and charges from the public. It is apparent that at interlocutory stage, the Applicant ought to show that there is a harm that cannot be compensated by refunds or credits if interim orders are not issued, and the Petition eventually succeeds. On the other hand, it is imminent that once the reliefs being sought are granted, the entire County’s operation will halt hence affecting millions of people and effective service delivery thereby occasioning prejudice to the County Government.
48. While the Petitioner has shown arguably serious questions about the legislation’s compliance with certain constitutional and statutory provisions, there is insufficient demonstration of harm so imminent and irreparable that it merits halting all operations of the county’s revenue raising framework at this interlocutory stage.

Balancing the Public Interest and Convenience of the Parties

49. The final consideration is the balance of convenience and public interest. The Court must consider the competing claims of the Petitioner and the Respondents, as well as the public interest. Conservatory orders have a strong public-law connotation and must align with public interest considerations.
50. It is trite law that in matters involving public finance, the Court must calibrate the interests of the county in collecting revenue to fund public services against the constitutional imperative that such revenue be collected only under a valid, transparent legal framework. Courts have recognized that halting revenue collection can affect service delivery.
51. The County Government’s revenue streams, budgeting, and appropriation processes are at the heart of devolved governance. By asking this Court to suspend the Finance Act, 2023 in toto, the Petitioner



risks crippling key county level services that daily affect the welfare of millions of residents. Stopping the collection or appropriation of county revenue for an extended period may create a vacuum in essential public services, result in service delivery backlogs, and contravene the socio-economic rights guaranteed by Article 43 of *the Constitution*.

52. As was noted by the Court of Appeal in *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR, courts are called upon to strike a delicate balance where the public stands to be greatly affected by the orders sought. This Court must therefore be astute to the potential adverse impact on the public if the impugned Finance Act and the Appropriation Act, are suspended outright.
53. In *County Assemblies' Forum v Attorney General & others; Council of Governors & 54 others (Interested Parties)* [2025] KEHC 3282 (KLR), the court underscored that: -

“Further, the court has taken note of the arguments that the conservatory orders have effectively resulted into financial paralysis, thus preventing County Governments from accessing their equitable share of revenue. This has in turn disrupted operations and delivery of essential services by County Governments, which includes, but not limited to healthcare, education, infrastructure, road works and county administration, thereby violating the socio-economic rights guaranteed under Article 43 of *the Constitution*. It is therefore imperative that smooth fiscal operations are assured.

19. In the case of *Gatarau Peter Munya –vs- Dickson Mwenda Kithinji & 2 Others* [2014] eKLR, the Supreme Court emphasized that conservatory orders should only be granted where the court is convinced that the public interest will not be prejudiced. In this case, it is beyond peradventure that the continued operation of the conservatory orders has and is highly likely to lead to a financial crisis at county level, hence threaten the stability of devolved governance. In such circumstances, the court must therefore be called upon to exercise its discretion in a manner that safeguards public welfare and interest as it addresses the questions of whether suspending the operation of the County Allocation of Revenue Act, 2024 will prejudice either parties operations and duties and whether the budgetary allocation was constitutionally, fairly and equitably distributed or considered and to what extent have the parties been affected by the said allocation.
 20. This Court is further persuaded by the South African case of *Economic Freedom Fighters –vs- Speaker of the National Assembly and Others* [2016] ZACC 11, where the Court underscored that in cases where judicial intervention affects budgetary allocations, courts must exercise extreme caution to prevent unintended financial and governance crises. Thus, it is urged that Courts should only intervene in exceptional circumstances where there is clear and manifest constitutional violation. Such was also the view in the case of *Speaker of the Senate & Another –vs- Attorney General & 4 Others* [2013] eKLR, where the Supreme Court held that courts should be reluctant to interfere with the budget-making process unless there is an outright contravention of constitutional provisions.”
54. Nothing presented so far demonstrates that the immediate and total suspension of the Respondents’ revenue-raising framework is indispensable or proportionate to any threatened harm. Instead, the public interest, at this juncture, appears to weigh against issuing such sweeping interim orders before a full hearing on the merits. Should the Petitioner ultimately succeed in proving unconstitutionality,



appropriate remedies including nullification of specific sections, structured refunds, or orders for policy compliance can be fashioned at the final determination.

55. In *Susan Wambui Kaguru & 4 others v Attorney General & another* [2012] eKLR the view taken was as hereunder: -

“The question for the court is to consider whether these laws are within the four corners of *the Constitution*. No doubt serious and weighty arguments have been advanced, and I think any answer to them must await full argument and consideration by the court. I cannot at this stage make an interim declaration which would effectively undo the legislative will unless there are strong and cogent reasons to do so.”

56. The public interest here, therefore, tilts in favour of not granting interlocutory orders sought in order to preserve the status quo until the constitutionality of the impugned Finance Act is ascertained thereby preserving constitutional governance and protecting the citizens from having shortage or lack of effective service delivery from the County government.

57. It should be noted that not granting the said conservatory orders should not be taken to mean that the Petitioner’s concerns as raised in the Petition will not be addressed. If the Petition succeeds, the court reserves the liberty to issue appropriate reliefs to remedy any constitutional violations, including compensatory measures or issuance of credit to those who pay taxes and levies while those who do not pay cannot be forced to pay. Therefore, the Court finds that the Petitioner and the taxpayers are unlikely to suffer irreparable harm that cannot be addressed through a substantive hearing and appropriate and or deserving remedy provided.

58. In reaching this conclusion, this Court is influenced by the decision in the case of *Judicial Service Commission –vs- Speaker of the National Assembly & Another* [2013] eKLR (supra), in which the Court determined that temporary relief should not hinder government operations unless there is a significant justification for doing so. In the current situation, the public interest and welfare necessitate not granting of the conservatory orders to allow the County Government to operate efficiently.

59. Taking into account the above analysis, the Court is satisfied that the Petitioner raises serious justiciable issues regarding the constitutionality of the Nairobi City County Finance Act, 2023 and the subsequent Appropriation Act, 2024.

60. However, the Petitioner has not demonstrated irreparable injury that cannot be remedied if these laws were to be invalidated at the final stage. The Court is satisfied that any potential overpayment or mis collection of fees, levies, or taxes can be addressed through refunds, accounting adjustments, or other remedial orders should the Petition ultimately succeed.

61. The public interest at this interlocutory stage favors the continuation of revenue collection so that critical county services do not grind to a halt. A blanket suspension of the entire Finance Act and Appropriation Act could lead to administrative and budgetary paralysis, adversely affecting residents more severely in the interim.

62. In the upshot, and for the reasons stated herein above, this court makes the following orders: -

- a. The prayers sought in the Notice of Motion dated 28th January 2025 are hereby declined. The Petitioner’s Notice of Motion application dated 28th January 2025 for interim conservatory orders is dismissed.
- b. The Petition shall proceed to full hearing on a priority basis for a final determination on the merits, directions to be issued separately.



c. Costs of the Application shall abide the outcome of the Petition.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MARCH 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner – Mr. Ongiti

Court Assistant – Ms. Neema

