



**Karani v Cheluget & 3 others; United Democratic Alliance Party &  
another (Interested Parties) (Constitutional Petition E346 of 2024)  
[2025] KEHC 5579 (KLR) (Constitutional and Human Rights) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5579 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E346 OF 2024**

**AB MWAMUYE, J**

**APRIL 30, 2025**

**BETWEEN**

**GEORGE WASHINGTON KARANI ..... PETITIONER**

**AND**

**BOAZ KIPROP CHELUGET ..... 1<sup>ST</sup> RESPONDENT**

**NELSON OTIENO & ASSOCIATES ADVOCATES ..... 2<sup>ND</sup> RESPONDENT**

**MAMALO AUCTIONEERS ..... 3<sup>RD</sup> RESPONDENT**

**AUCTIONEERS BOARD OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**UNITED DEMOCRATIC ALLIANCE PARTY ..... INTERESTED PARTY**

**UDA NATIONAL ELECTIONS BOARD ..... INTERESTED PARTY**

**RULING**

**Introduction**

1. The Petitioner/Applicant, George Washington Karani, moves this Court by way of a Notice of Motion Application dated 15<sup>th</sup> July 2024, seeking conservatory orders staying the execution of the Ruling/ Order of the Political Parties Tribunal delivered on 25<sup>th</sup> January 2024 in Complaint Number E056 of 2022, together with all consequential actions taken by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents. The Applicant asserts that the execution of the Tribunal's decision is not only irregular but also unconstitutional, as it constitutes an unlawful deprivation of property under Article 40 of *the Constitution* of Kenya, 2010.



2. The Respondents, in their Replying Affidavits and Written Submissions, argue that the execution process was lawfully undertaken following the due process prescribed by the *Political Parties Act* and the Civil Procedure Rules. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents contend that the Applicant's Petition amounts to forum shopping and an attempt to evade legally imposed costs.

## Background

3. The genesis of this dispute lies in the aftermath of a political contest within the United Democratic Alliance (UDA) Party. Both the Petitioner, George Washington Karani, and the 1<sup>st</sup> Respondent, Boaz Kiprop Chelagat, participated in the party's primaries for the Ruaraka Constituency parliamentary seat. Following the nomination process, the party issued a certificate in favour of the Petitioner. Dissatisfied with the outcome, the 1<sup>st</sup> Respondent lodged Complaint No. E056 of 2022 before the Political Parties Disputes Tribunal (PPDT), challenging the process and results.
4. On 12<sup>th</sup> May 2022, the Tribunal rendered judgment in favour of the 1<sup>st</sup> Respondent and awarded costs against the Respondents in that complaint, which included the Petitioner herein. A Certificate of Taxation dated 25<sup>th</sup> January 2024 followed, indicating a total sum of Kshs.446,995 payable as costs to the 1<sup>st</sup> Respondent. The Petitioner contends that the 2<sup>nd</sup> Respondent, acting as counsel for the 1<sup>st</sup> Respondent, initiated execution proceedings without applying to adopt the certificate as a judgment or decree of the Court.
5. The events that ensued on 20<sup>th</sup> March 2024 are central to the present Application. The Petitioner alleges that on that morning, while preparing to attend a business meeting, a group of unidentified men accompanied by police officers accosted him at his residence. He was allegedly manhandled and compelled to surrender his car keys, whereupon his Toyota Land Cruiser registration number KDM 553Z, valued at Kshs.12 million and jointly owned with Sidian Bank, was driven away. The Petitioner further claims he was forced to accompany the agents to the offices of Mamalo Auctioneers and was later denied access to view his vehicle at their yard in Utawala.
6. According to the Petitioner, no proclamation notices or proper valuation of the vehicle was served prior to the seizure. He contends that the entire process was conducted without notice, without a search to establish ownership, and in disregard of Section 15 of the Auctioneers Rules. The 3<sup>rd</sup> Respondent allegedly attempted to coerce him into signing a notice of sale of movable property dated 6<sup>th</sup> March 2024. The Petitioner refused and sought legal redress.
7. Subsequently, on 30<sup>th</sup> May 2024, the PPDT issued a ruling in a related matter brought by Sidian Bank, confirming that the vehicle could not be attached as it was jointly owned and under finance. Despite this, on 9<sup>th</sup> July 2024, a fresh proclamation notice was allegedly forced into the Petitioner's premises listing various household items, many of which the Petitioner claims he does not own. He asserts that this notice was fabricated in a further unlawful attempt to recover costs that had neither been transformed into a judgment nor subjected to proper execution proceedings.
8. In response, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents have maintained that they followed all legal procedures. The 1<sup>st</sup> Respondent avers that the costs were lawfully taxed and all parties served through the correct channels, including email addresses used throughout the PPDT proceedings. The 3<sup>rd</sup> Respondent asserts that the attachment and subsequent advertisement of the vehicle for sale were executed with full compliance to law, including involvement of police for security. They deny any coercion, violence, or irregularity, stating that the Petitioner willingly surrendered the vehicle and even consented to a partial payment of Kshs.190,000 toward the judgment debt.



9. The Petitioner now seeks conservatory relief from this Court, contending that his constitutional rights to property under Article 40, dignity under Article 28, and security under Article 29 were violated. He also challenges the auction process as unconstitutional and illegal for failure to adhere to procedural safeguards, including the necessity of adopting the certificate of costs as a court judgment before execution can ensue. He argues further that the actions of the Respondents represent not just private wrongdoing but a broader systemic issue under the watch of the 4<sup>th</sup> Respondent, the Auctioneers Board of Kenya, which has allegedly failed to restrain alleged unlawful auctioneering.
10. The Court directed that the application be canvassed by way of written submissions and in compliance the Petitioner filed his written submissions dated 27<sup>th</sup> September, 2024 while the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed their written submissions dated 22<sup>nd</sup> November, 2024.

### **Petitioner's Submissions**

11. The Petitioner argues violations of Articles 28, 29, 39, and 40 of *the Constitution*. These violations arose from the illegal and forceful attachment of his jointly-owned motor vehicle, physical manhandling, and fabricated execution procedures lacking legal backing. The Petitioner emphasizes that threats alone justify court intervention, referencing the Centre for Rights Education & Awareness (CREAW) v Attorney General & Another [2015] e KLR that affirms proactive judicial protection against constitutional infringements.
12. The Petitioner strongly asserts that the Respondents illegally proceeded to execute based solely on a certificate of costs, which is non-executable without being first adopted by a court as a judgment. Reliance was placed on Rubo Kimnetich Arap Cheruiyot v Peter Kiprop Rotich to demonstrate the invalidity of execution premised on a mere certificate of costs.
13. The Applicant seeks for conservatory orders to preserve constitutional rights, emphasizing public interest in upholding rule of law per Article 10 of *the Constitution*. Reliance was placed on Kenya Transport Association Limited v Cabinet Secretary for Transport and Infrastructure and Ors., Mombasa HC Petition No. 16 of 2014, which highlights requirements for conservatory orders: an arguable case, irreparable harm, and public interest considerations. The Petitioner contends these criteria have been clearly satisfied.
14. Relying on Section 27 of the *Civil Procedure Act* and Rule 26 of the Mutunga Rules, the Petitioner asserts costs should follow the event, thereby requesting the Respondents to bear the costs.
15. The Applicant urges this court to grant the sought conservatory orders, emphasizing their essential nature for protecting constitutional rights until the petition is determined.

### **Respondents' Submissions**

16. The Respondents argue the Petitioner's application is procedurally flawed and substantively misplaced. According to Section 41(3) of the *Political Parties Act*, Tribunal decisions are enforceable as magistrates' court decisions. They argue the Applicant should have appealed the Tribunal's ruling or filed an objection directly within Tribunal procedures, not through a separate constitutional petition.
17. The Respondents highlight that conservatory orders, as distinguished from ordinary injunctions, carry a significant public-law dimension meant to ensure public interest and proper governmental functioning, placing reliance on Gatirau Peter Munya v Dickson Mwenda Kithinji, Independent Electoral and Boundaries Commission & Fredrick Njeru Kamundi County Returning Officer, Meru County [2014] KESC 49 (KLR). They emphasize that the Petitioner's current grievances are purely



private, individual disputes lacking any demonstrated public interest or substantial constitutional issues warranting such relief.

18. It is asserted that no appeal has been lodged against the Tribunal's decision nor any objection raised against the taxed costs. Therefore, the Respondents maintain the Petitioner misused constitutional provisions intended for genuine violations of rights or freedoms to circumvent proper legal channels and evade lawful execution.
19. The Respondents urges this Court to dismiss the application with costs as the same is legally untenable, procedurally defective, unjustified, lacks merit and has inappropriately invoked constitutional mechanisms.

### **Issues for Determination**

20. Having considered the pleadings, affidavits, and submissions of the parties, the key issues for determination are as follows:
  - a. Whether this Court has jurisdiction; and
  - b. Whether the Applicant has established a prima facie case warranting the grant of conservatory orders;  

Whether this Court has jurisdiction
21. The heart of the question of whether this Court has jurisdiction to hear and determine the Application, and by extension the Petition, rests in whether the Petitioner ought to have moved on appeal rather than filing a constitutional petition.
22. The Petition complains not just of issue specific impugned actions but also raises broader questions on the constitutionality and legality of the alleged actions of the Respondents that transcend the regular ambit of appellate proceedings. At this interlocutory stage, it would not be proper for this Court to engage in a detailed analysis of those claims, which have been articulated elsewhere above. It is sufficient for the Court to be satisfied, which it is, that the allegations raised in the Petition are of a nature that require hearing and determination by this Court as they transcend the regular ambit of appellate proceedings.
23. Consequently, I find that this Court has jurisdiction to hear and determine the matter.

### **Whether the Applicant has established a Prima Facie Case**

24. 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 In any proceedings brought under Article 22, a court may grant appropriate relief, including-

(3)

- 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)

25. I affirm unequivocally that the direction a Court should take when handling a request under Article 23 (3) is now quite evident. In that regard, under Article 23 (3) of *the Constitution* an appropriate relief to be granted for breach of or threat of breach of fundamental rights and freedoms may include a conservatory order.

26. What then is a conservatory order? In the Privy council case of Attorney General vs. Sumair Bansraj (1985) 38 WIR 286, Braithwaite J.A. expressed himself follows:

“Now to the formula. Both remedies of an interim injunction and an Interim declaration order are excluded by the State Liability and Proceedings Act, as applied by Section 14 (2) and (3) of *the Constitution* and also by high judicial authority. The only judicial remedy is that of what has become to be known as the “Conservatory Order” in the strictest sense of that term. The order would direct both parties to undertake that no action of any kind to enforce their respective right will be taken until the substantive originating motion has been determined; that the status quo of the subject matter will remain intact. The order would not then be in the nature of an injunction, ... but on the other hand it would be well within the competence and jurisdiction of the High Court to “give such directions as it may consider appropriate for the purpose of securing the enforcement of ... the provisions” of *the Constitution*...In the exercise of its discretion given under Section 14(2) of *the Constitution* the High Court would be required to deal expeditiously, with the application, inter partes, and not ex parte and to set down the substantive motion for hearing within a week at most of the interim Conservatory Order. The substantive motion must be heard forthwith and the rights of the parties determined. In the event of an appeal priority must be given to the hearing of the appeal. I have suggested this formula because in my opinion the interpretation of the word in Section 14 (2) “subject to subsection (3) and the enactment of Section 14(3) in the 1976 Constitution must have...the effect without a doubt of taking away from the individual the redress of injunction which was open to him under the 1962 Constitution. On the other hand, however, the state has its rights too...The critical factor in cases of this kind is the exercise of the discretion of the judge who must “hold the scales of justice evenly not only between man and man but also between man and state.” (Emphasis added)

27. To warrant the issuance of conservatory orders, the Applicant must demonstrate an arguable case with a likelihood of success, as was enunciated in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR. The test is whether there exists a serious constitutional question that requires the intervention of the Court. In the above stated case, the court was of the opinion that;

“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.”

28. In my opinion, establishing only a prima facie case and demonstrating that it is possibly arguable is insufficient. A mere potential for argument does not justify a conservatory order; there must also be a clear indication of a likelihood of success. The prima facie case should not rest on a speculative foundation. In this context, I will briefly reference M. Ibrahim J (as he was then) in the case of Muslims for Human Rights [MUHURI] & Others –v- Attorney General & Others CP No. 7 of 2011, who, while agreeing with Musinga J’s assertion in Centre for Rights Education and Awareness [CREAW] and 7 Others –v- The Attorney General [HCCP No. 16 of 2011] stated the following:

“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).

29. After the applicant has sufficiently demonstrated to the court a prima facie case with a probable chance of success, the court must then determine whether the approval or rejection of the conservatory relief will further the Constitutional values and objectives of the specific right or freedom outlined in the Bill of Rights. (See Patrick Musimba –v- The National Land Commission & 4 Others HCCP 613 of 2014 (No. 1) [2015] eKLR).

30. Thirdly, stemming from the first two principles, is the question of whether failing to grant an interim Conservatory order will make the petition or its foundation ineffective. It is indeed the responsibility of the court to ensure that any transitional motions presented do not undermine the ultimate goal of justice as much as possible. (See Martin Nyaga Wambora –v- Speaker of the County Assembly of Embu & 3 Others CP No. 7 of 2014).

31. The fourth principle that arises from the various cases, and is aptly articulated by the Supreme Court of Kenya in the case of Gatirau Peter Munya –v- Dickson Mwenda Githinji & 2 Others [2014] eKLR(supra), is that the court must take into account conservatory orders while also considering the public interest perspective. Ultimately, the court is tasked with exercising its discretion in determining whether to grant or reject a conservatory order. In doing so, the court must evaluate all pertinent factual material and steer clear of irrelevant matters. The court will assess the credentials of the applicant, the prima facie validity of the presented information, whether the concerns raised are authentic, legitimate, and warranting consideration, and finally, if the issues and claims are serious and significant or merely vague and reckless. (See Suleiman v Amboseli Resort Ltd [2004] 2 KLR 589).

32. Based on the principles established in the above decisions, and upon analysis of the facts laid before this Court, I am satisfied that the Applicant has established a prima facie case with a likelihood of success, which is deserving of the grant of interim conservatory relief to safeguard the vitality of the Petition and prevent it from being rendered nugatory, and which is also in the public interest.

33. In light of the foregoing, this Court finds that the Applicant has established a case warranting the issuance of conservatory orders.

34. Accordingly, the Court makes the following orders:

- a. A Conservatory Order is hereby issued staying the execution of the Ruling/Order of the Political Parties Tribunal delivered on 25<sup>th</sup> January 2024 in Complaint Number E056 of 2022, together with all consequential actions, pending the hearing and determination of the main Petition.



- b. The Respondents are restrained from taking any further steps towards executing the impugned orders until the matter is fully heard and determined.
- c. Costs shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**BAHATI MWAMUYE**

**JUDGE**

