Trusted Society of Human Rights Alliance v Kenya Revenue Authority & another; National Treasury & 2 others (Interested Parties) (Petition E095 of 2025) [2025] KEHC 8769 (KLR) (Constitutional and Human Rights) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 8769 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E095 OF 2025

AB MWAMUYE, J

MAY 29, 2025

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF: VIOLATION AND THREATENED VIOLATION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 1, 2 , 3 , 10, 19, 20, 22, 23, 47, 201 AND 232 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE RIGHT TO FAIR ADMINISTRATIVE ACTION

AND

IN THE MATTER OF: THE IMPLEMENTATION OF THE APPROVED ORGANISATIONAL STRUCTURE OF THE KENYA REVENUE AUTHORITY

BETWEEN

TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE .... PETITIONER

AND

KENYA REVENUE AUTHORITY .... 1ST RESPONDENT

ATTORNEY GENERAL .... 2ND RESPONDENT

AND

THE NATIONAL TREASURY .... INTERESTED PARTY

THE PUBLIC SERVICE COMMISSION .... INTERESTED PARTY

THE SALARIES AND REMUNERATION COMMISSION .... INTERESTED PARTY

RULING

Introduction

1. This ruling concerns the Petitioner's interlocutory Notice of Motion dated 24th February 2025 in Nairobi Constitutional Petition No. E095 of 2025. The Petition itself challenges the constitutionality of certain actions and decisions undertaken by the 1st Respondent, which the Petitioner contends violate the *Constitution*. The Petitioner primarily alleges that the impugned actions which touch upon the administration of the public service in which the 2nd Interested Party (Public Service Commission) has an oversight interest were taken without due regard to constitutional and legal requirements, thereby infringing the Petitioner's fundamental rights and the principles of public service.

2. Pending the hearing and determination of the Petition, the Petitioner filed the present application under a certificate of urgency. He seeks conservatory orders under Article 23(3)(c) of the *Constitution* restraining the Respondents from implementing or giving effect to the impugned decisions until the Petition is heard and determined. The Petitioner's application is supported by his affidavit sworn on 24th February 2025 and is premised on grounds that, unless restrained, the Respondents' actions will irreparably prejudice the Petitioner's constitutional rights and render the eventual determination of the Petition nugatory.

3. The 1st and 2nd Respondents oppose the application. The 2nd Interested Party, the Public Service Commission (PSC), though not a primary Respondent, was joined to the Petition given its mandate in public service matters and has also participated in these proceedings as an interested party.

Petitioner's Submissions

4. Counsel for the Petitioner avers that on diverse dates in early 2025, the 1st Respondent undertook certain personnel and administrative actions which directly affect the Petitioner's position and rights. These actions allegedly carried out without adherence to the due process prescribed by law include for example: transferring the Petitioner's duties, altering his terms of service, and initiating a process to remove him from his position. The Petitioner contends that these measures were implemented unilaterally, without affording him a hearing or considering relevant constitutional values, thereby violating his rights to fair administrative action under Article 47 and fair labour practices under Article 41 of the *Constitution*. He also alleges that the 1st Respondent's conduct offends Article 236(a) of the *Constitution* which guarantees public officers a fair procedure before removal or disciplinary action. The Petitioner's supporting affidavit recounts the chronology of events and asserts that unless this Court intervenes, the 1st Respondent will irreversibly alter the status quo to his detriment.

5. The Petitioner's counsel submits that the application meets the threshold for granting a conservatory order. He cites Article 23(3)(c) of the *Constitution*, which empowers the High Court to issue conservatory orders in proceedings enforcing constitutional rights and emphasizes that the purpose of such orders is to preserve the substratum of the suit pending trial. Relying on the High Court's pronouncement in Centre for Rights Education and Awareness (CREAW) v Attorney General [2011] eKLR, counsel argues that at the interlocutory 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*.". In his view, the Petitioner has established a prima facie case because the facts show a clear disregard of constitutional and statutory procedures by the Respondents by failure to involve the PSC in a personnel decision where required, and breach of national values under Article 10). The claim is therefore "neither frivolous nor vexatious" but raises substantive questions for determination.

6. The Petitioner further submits that he stands to suffer irreparable harm unless the conservatory orders issue. It is urged that if the 1st Respondent's contested actions are not halted, the Petition will be rendered nugatory, as the Petitioner could lose his public office and livelihood in the interim with little prospect of meaningful remedy later. Counsel contends that certain rights, once violated, cannot be adequately compensated by damages citing the public law principle that many constitutional rights are "not readily quantifiable or reversible" once breached. For instance, if the Petitioner is unlawfully removed from his position and that position filled or abolished, a subsequent victory in the Petition would be pyrrhic. He highlights that preserving the status quo is crucial to ensure the Court's eventual judgment can be effective; otherwise, the outcome of the Petition would be merely academic.

7. On the public interest element, the Petitioner's position is that granting a conservatory order would advance, not hinder, the public interest. Upholding constitutional compliance by public bodies in this case KRA and the PSC is said to be in the public's best interest, as it promotes the rule of law and good governance. Counsel submits that allowing an allegedly unconstitutional action to proceed unchecked would erode public confidence in the adherence to the *Constitution*. By contrast, a conservatory order will "preserve the sanctity of the *Constitution*" and ensure that constitutional values are respected, pending a full hearing of the dispute. The Petitioner therefore urges that the balance of convenience tilts in favour of granting the interim relief. Any inconvenience to the Respondents is minor compared to the Petitioner's potential injury and the broader principle of constitutional compliance. For these reasons, the Petitioner prays that this Court issues the conservatory orders as sought, to maintain the status quo until the Petition is heard and determined.

1st Respondent's Submissions

8. The 1st Respondent, KRA, opposes the application in its entirety. Learned counsel for KRA submits that the Petitioner has not met the legal criteria for the grant of conservatory orders. At the outset, KRA underscores that conservatory orders are an exceptional remedy, and the burden lies on the applicant to satisfy the court that such relief is warranted. It is KRA's contention that the Petitioner herein has fallen short of this threshold.

9. First, on the existence of a prima facie case, KRA argues that the Petition is weak and does not disclose a constitutional violation with a likelihood of success. The 1st Respondent maintains that its impugned actions were lawfully undertaken within the scope of its mandate under the *Kenya Revenue Authority Act* and the Human Resource policies governing its employees. The Petitioner's allegations of constitutional breach are characterized as mere assertions without proof. Counsel submits that the Petitioner has not identified the specific right that has been infringed with the "reasonable exactitude" required in constitutional litigation. Save for general claims about lack of involvement by the PSC or non-compliance with Article 10, the Petitioner "did not point out with precision the rights allegedly denied, violated or threatened", beyond a broad complaint of unfair process. KRA asserts that no provision of the law obligating consultation with the PSC in the Petitioner's situation has been demonstrated, and thus the foundation of the Petitioner's case is dubious.

10. KRA's counsel buttresses this point by citing the Supreme Court's holding in Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR, where it was emphasized 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." According to KRA, the Petitioner has not met this test, he has neither shown an ongoing or imminent violation of a specific constitutional right, nor demonstrated that any alleged violation would continue absent court intervention. Instead, what the Petitioner characterizes as constitutional infractions are, in KRA's view, ordinary administrative actions that are legally justified.

11. Secondly, on the requirement of irreparable prejudice, the 1st Respondent strongly refutes the notion that the Petitioner will suffer harm that cannot be remedied if no interim orders are issued. Counsel submits that the Petitioner's fears are speculative and unsupported by evidence. In line with principles set out in case law, KRA argues that a "mere allegation of contravention of a right…is not of itself sufficient to entitle grant of conservatory orders"; the applicant must demonstrate a harm that is "real, actual, imminent, evident and true". Here, the 1st Respondent points out that the Petitioner continues to hold his position and has not been subjected to any irreversible detriment so far. If the Petitioner were to ultimately succeed in the main Petition, adequate remedies are available. For example, the Court could quash any unlawful decision, or order appropriate redress such as reinstatement or compensation. Therefore, the claim that the Petition would be rendered nugatory is exaggerated. KRA emphasizes that no tangible evidence has been presented to show that the Petitioner or anyone else will suffer irreparable injury in the intervening period. On the contrary, it is the 1st Respondent's submission that the Petitioner's rights and interests can be protected at the full hearing and that no urgent, irreversible harm has been demonstrated to justify stalling the 1st Respondent's operations now.

12. Thirdly, the 1st Respondent addresses the public interest and balance of convenience. Counsel submits that these considerations decisively favour denial of the conservatory orders. KRA is a public authority charged with critical functions notably, the collection of revenue and administration of tax laws and any disruption to its organizational decisions can have a wide public ripple effect. It is argued that the orders sought by the Petitioner would effectively paralyze or reverse administrative actions that KRA has taken in exercise of its lawful mandate. For instance, if the Court were to bar KRA from effecting certain personnel changes or policies (as the Petitioner prays), this could impede KRA's ability to efficiently deliver services and enforce compliance, thereby impacting the public at large. The 1st Respondent urges that, in line with the Supreme Court's observation in Munya, conservatory orders have a "decided public-law connotation" and should issue only where necessary to safeguard constitutional values. In the present case, KRA maintains that public interest lies in allowing the status quo to continue, i.e., permitting KRA's internal management decisions to stand, unless and until the Court finds them unlawful at the conclusion of the Petition. Stated differently, the balance of convenience tilts in favour of avoiding undue interference with the Respondents' functions at this interim stage. KRA notes that government bodies enjoy a presumption of regularity in their actions; all acts are presumed lawful and properly done until proven otherwise. Thus, halting KRA's decision on the basis of unproven allegations would undermine this principle and potentially harm the public interest more than it would benefit the Petitioner.

13. In conclusion, the 1st Respondent urges the Court to dismiss the application with costs. However, KRA concurs that should the Court be inclined to deny interim relief (as KRA submits it should), then appropriate directions for an expedited hearing of the main Petition would be in order. This would ensure the Petitioner's grievances are resolved on the merits without unnecessary delay, thereby minimizing any prejudice to him while also respecting the Respondents' mandate in the meantime.

2nd Respondent's Submissions

14. The 2nd Respondent, the Attorney General, similarly opposes the issuance of conservatory orders. Learned State Counsel fully associated himself with the arguments advanced by the 1st Respondent and made additional submissions emphasizing certain points.

15. The Attorney General submits that the Petitioner has failed to establish a prima facie case warranting the Court's intervention at this interlocutory stage. Echoing the 1st Respondent's views, the AG asserts that the factual and legal foundation of the Petition is tenuous. In the AG's assessment, the issues raised by the Petitioner do not rise to the level of constitutional infractions of fundamental rights. The AG points out that the Petitioner's complaints could very well be addressed under ordinary administrative law or employment law avenues, and the mere fact of dressing them as constitutional claims does not automatically entitle the Petitioner to conservatory relief. He cites the Court of Appeal's observation that "potential arguability is not enough to justify a conservatory order" there must be a showing of probable success on the merits. In counsel's view, the Petitioner has not demonstrated such likelihood of success; at best he has shown that he disagrees with the Respondents' decisions, which is insufficient. Accordingly, the AG urges the Court to be cautious not to make any conclusive findings on contested facts or law at this stage, reiterating that it is not the role of the Court on an interim application to determine the ultimate issues in dispute.

16. On the element of prejudice, the Attorney General strongly contends that no irreparable harm has been proven by the Petitioner. The 2nd Respondent aligns with KRA's submission that the Petitioner's rights will remain adequately protected in the judicial process even if no interim orders are given. Counsel underscores that the Petitioner retains the full ability to prosecute his Petition and, should he prevail, the Court is empowered to grant appropriate relief at that time (including nullification of any unlawful actions, reinstatement to office, or compensation as may be just). Thus, the fear of irreparable damage is unfounded. The AG references the principle from Munya that conservatory orders should not be based on considerations of private loss or "prospects of irreparable harm" in the conventional sense.

17. With respect to the public interest, the Attorney General submits that it would be contrary to the public interest to grant the orders sought. The 2nd Respondent emphasizes that the 1st Respondent's actions, impugned by the Petitioner, were taken in the context of managing a public institution (KRA) and were aimed at improving efficiency and accountability in that institution. Halting such measures through a conservatory order would undermine these public goals.

18. The AG contends that the Petitioner has not demonstrated any overriding public interest that would be served by an injunction. On the contrary, public interest tilts toward allowing KRA to carry on with their lawful mandates without undue interference. The AG submits that the Court must "hold the scales of justice evenly" between the Petitioner and the state, and in doing so, recognize that the state (and public) also has rights and interests at stake. Here, that balance, in the AG's view, comes down in favour of the Respondents.

2nd Interested Party's Submissions

19. The 2nd Interested Party, the Public Service Commission, through its learned counsel, also opposes the Petitioner's application. The PSC's primary stance is one of concurrence with the Respondents' arguments. Counsel for PSC submits that no sufficient grounds have been laid to justify the drastic step of issuing conservatory orders against the Respondents at this stage.

20. On the question of a prima facie case, the PSC echoes that the Petitioner has not demonstrated a clear constitutional violation. Counsel submits that the threshold of a prima facie case in constitutional

petitions is not trivial – the Petitioner must show that his rights have been plausibly infringed by the Respondents' actions in a manner calling for judicial intervention. The PSC emphasizes that it is committed to upholding fair administrative action and protecting public officers as required by Articles 47 and 236 of the *Constitution*. However, it agrees with the Respondents that the evidence provided by the Petitioner does not prima facie disclose a violation of those provisions. No denial of due process is apparent on the face of the record – for instance, if any disciplinary or structural changes were affected, the Respondents aver that they followed the applicable procedures (a claim the Petitioner will have the opportunity to rebut at the full hearing). Therefore, in PSC's view, the Petitioner's case is arguable but not overwhelmingly strong, and the Court should be hesitant to grant intrusive interim orders on the basis of such arguability alone.

21. Regarding the likelihood of irreparable harm, the PSC submits that the Petitioner's assertions are overstated. Counsel aligns with the position that the Petition will not be rendered nugatory if conservatory orders are denied. The PSC points out that, as an interested party, it has no adverse action against the Petitioner indeed, PSC's interest is to ensure proper observance of HR principles generally. The main actions complained of are by KRA. According to the PSC, even if those actions proceed, the Court is not powerless to reverse or redress the situation later. Furthermore, PSC's counsel underscores that the Petitioner has not demonstrated a unique injury that cannot wait for resolution.

22. Finally, on the public interest and convenience, the Public Service Commission aligns itself with the 2nd Respondent's submissions. PSC asserts that public interest is best served by maintaining stability and continuity in public institutions. Unless the Petitioner's case was so compelling that the challenged actions are patently illegal, it is more judicious to allow the normal operations of KRA to proceed. The public stands to benefit from an uninterrupted KRA continuing to fulfil its duties be it revenue collection, public service delivery, or other mandate. The PSC reiterates that the constitutional rights framework is indeed important, but that framework also recognizes the need to balance individual rights with the broader public good and the principle of separation of powers. In sum, the PSC supports the call for this application to be dismissed and concurs that the fairest approach is to fast-track the hearing of the main Petition so that all parties can get a final resolution.

Issues for Determination

23. Having reviewed the pleadings and submissions, the Court is of the view that the Application presents one primary question: whether the Petitioner has met the legal threshold for the grant of a conservatory order under Article 23(3)(c) of the *Constitution* pending the determination of the Petition.

Analysis

24. Article 23(3)(c) of the *Constitution* empowers the High Court to grant a conservatory order as a form of relief when enforcing the Bill of Rights. A conservatory order is an equitable, interlocutory remedy that is distinct from an ordinary civil injunction; it is rooted in public law and aims to protect constitutional values or prevent violation of rights pending the full hearing of the matter. The threshold for grant of a conservatory order has been articulated in numerous decisions of our Superior Courts. In Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR (Supreme Court, Application No. 5 of 2014), the Supreme Court underscored that.

> "Conservatory orders… bear a decided public-law connotation: they facilitate ordered functioning within public agencies, as well as 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 or the likelihood of success; they 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."

25. The High Court has crystallized the guiding principles into a three-part test, as correctly identified by the parties. In Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & Others [2016] eKLR, where the Court summarized the considerations as follows: (i) an applicant must demonstrate a prima facie case, with a likelihood of success, and also show that unless the conservatory order is granted, he/she is likely to suffer prejudice due to a violation or threatened violation of the *Constitution*; (ii) it must be considered whether, if the conservatory order is denied, the Petition would be rendered nugatory; and (iii) in granting or denying the order, the Court must bear in mind the public interest.

i. Prima Facie Case

26. A prima facie case was described in Mrao Ltd. v First American Bank Ltd. [2003] eKLR as "a case which, on the material presented to the court, a tribunal properly directing itself could conclude that there exists a right which has been apparently infringed by the opposite party, and which calls for an explanation or rebuttal." In the context of a constitutional petition, demonstrating a prima facie case means showing that the claim of constitutional violation is not a mere jumble of grievances, but rather has a foundation in law and fact that could lead the court to grant substantive relief if proved at trial. The applicant need not prove the case to a standard of beyond reasonable doubt or even on a balance of probabilities at this stage.

27. However, it is not enough to merely allege a breach; the allegations must be backed by some material such that the court can discern a serious question to be tried. As Ibrahim, J (as he then was) cautioned in Muhuri & Others v AG (Petition. 7 of 2011), "almost any issue can be debatable; to have an arguable case, in my opinion, is that it raises serious, substantial issues or questions that ought to be heard and determined in a court of law."

28. In the present case, the Petitioner asserts that his constitutional rights particularly the right to fair administrative action (Article 47) and the protections accorded to public officers (Article 236) have been violated by the 1st Respondent's actions. He also implicates broader values like Article 10 (good governance, transparency) and Article 232 (public service values). The core facts are that the 1st Respondent undertook certain personnel decisions affecting the Petitioner. The dispute is whether those decisions complied with the *Constitution* and the law. Having reviewed the material, I am satisfied that the Petition raises substantive constitutional questions. For example, one issue apparent on the face of the pleadings is whether the procedure used by KRA in reassigning or attempting to remove the Petitioner complied with the requirements of fair process.

29. It must be noted, however, that showing an arguable case is only the first step. The Petitioner must also demonstrate, even at a prima facie level, that his case has some likelihood of success. The Petitioner alleges constitutional violations, whereas the Respondents assert lawful justification. At this stage, it is not possible to resolve those contests; the Respondents have pointed to the legal autonomy of KRA in human resource matters, which could undercut parts of the Petitioner's case. Conversely, if evidence ultimately shows that mandatory procedures were ignored, the Petitioner could prevail on those grounds. In sum, the probability of success of the Petition is not obvious at this interim stage it is neither clearly very strong nor patently hopeless. It suffices that the case is prima facie arguable.

ii. Irreparable Prejudice and Nugatory Effect

30. The second limb of the analysis requires the Court to evaluate whether, absent a conservatory order, there is a real risk that the Petitioner or the constitutional rights at issue will suffer irreparable harm or

prejudice such that any later relief granted in the Petition would come too late. This is often framed as asking whether the Petition would be rendered nugatory if interim protection is withheld. The idea is that the court should not allow the situation to reach a point where "there will be nothing left to protect or fight over" by the time the case is heard. In constitutional matters, traditional concepts of irreparable harm are not always apt because many constitutional rights cannot be adequately quantified in monetary terms. Instead, the focus is on "irretrievability"; whether, if the impugned action continues, the violation would be of such a nature that the subject matter of the petition is destroyed, or the right cannot be vindicated even if the petition succeeds later. For instance, in a case challenging an appointment to public office, if the person is sworn in and completes their term before the case concludes, the challenge could be academic. The court thus examines the likely consequences of not issuing the order and asks: would the Court's final decision be merely academic or inefficacious in the circumstances then prevailing?

31. In the present case, the Petitioner asserts that if the Respondents' actions are not halted, he will suffer irreparable harm. The specific prejudice claimed is that the Petitioner will lose his position, and that in the meanwhile the 1st Respondent may appoint someone else or alter the structure such that even a successful petition cannot restore him fully. Having carefully considered the affidavits and submissions, I am not persuaded that the Petitioner faces a real risk of irreparable harm in the legal sense contemplated.

32. Firstly, the Petitioner is still very much within the employ of the 1st Respondent (by his own admission, he has not been terminated as at now, though he is aggrieved by changes in his responsibilities). His salary and benefits have not been stopped. This is not a case where the Petitioner has been ejected from office and left without any recourse pending trial; rather, he remains in service, albeit under altered terms which he disputes. If the Petition ultimately succeeds, the Court could order that any unlawful alterations be reversed.

33. I acknowledge the Petitioner's concern that "you cannot unscramble an egg" - that once changes are made in an institution, it may be hard to revert. But in this context, I do not find that metaphor entirely apt: the changes in question pertain to job assignments and administrative decisions, which courts do reverse when found unlawful.

34. Secondly, the Petitioner has not shown that any irreversible step will occur imminently if no conservatory order is given. The application was filed contemporaneously with the Petition, indicating that the allegedly offending actions had already been initiated. For instance, if the 1st Respondent decided to fill a certain position or reassign certain duties, those steps might already have been in progress. The Petitioner fears further steps might follow. However, beyond general apprehension, no concrete evidence was placed before the Court that something irreversible is scheduled to happen before the Petition can be heard. The 1st Respondent, on its part, has undertaken through counsel that the Petitioner remains an employee and that any further actions will abide by the law. While undertakings by a litigant are no substitute for a court order, they do mitigate the imminence of harm. In the absence of clear proof that, for example, the Petitioner's employment will be terminated tomorrow, the Court must weigh the likelihood of prejudice on the evidence. I find that the likelihood of irretrievable prejudice is low in this scenario.

35. Thirdly, the alleged harm (loss of position, interruption of career progression, and attendant reputational or financial consequences) is certainly of concern to the Petitioner, but it is not the kind of harm that the Court would characterize as irremediable in constitutional litigation. If the Petitioner eventually proves that his constitutional rights were violated, several remedies stand open: the Court could issue declarations, injunctive orders, or even award damages for any loss suffered in the interim. The Petitioner's counsel argued that some losses (such as lost time in office or public trust) cannot

be compensated. That is partially true; however, the Court's mandate is to vindicate rights and it can fashion appropriate relief to achieve justice at the end of the trial. the *Constitution* in Article 23(3) allows the Court to grant a wide range of reliefs to ensure a successful petitioner is made whole as far as the law permits. In this case, I am satisfied that any prejudice the Petitioner might suffer in the coming weeks or months is not beyond the reach of the Court's final orders should he prevail.

36. By contrast, I must consider the prejudice that the Respondents or the public might suffer if the conservatory orders are granted without compelling need. The 1st Respondent has asserted that an injunction at this stage would disrupt its operations and management. The 1st Respondent avers that it made changes for functional reasons; stopping them may thus hamper those intended functional improvements. Additionally, if an interim order effectively bars any disciplinary or administrative action against the Petitioner, there is a risk as the Respondents argue that the Petitioner could be placed above the internal accountability processes, at least temporarily, which might not be justified. These are factors that bear on the "balance of convenience" but also on the reality of what harm each side faces.

37. In light of the foregoing, I find that the Petitioner has not demonstrated a real danger of suffering irreparable prejudice if the conservatory order is withheld. The substratum of the Petition will not be destroyed by proceeding without interim orders. The subject matter which essentially is the lawfulness of certain administrative decisions remains intact and justiciable. Therefore, this limb of the test tilts against the Petitioner. The Petition can be heard, and appropriate redress granted (if merited) at a later stage without an interim injunction, and that ultimate relief will not have been rendered empty or purely academic by the absence of a conservatory order now.

iii. Balance of Convenience and Public Interest

38. The final limb requires the Court to consider where the balance of convenience lies and to ensure that the public interest is not prejudiced by the grant or refusal of the orders. In constitutional matters, this element is often intertwined with the first two, but it serves as an important check against undue harm to the common good. The balance of convenience essentially means weighing which side the applicant or the Respondent stands to suffer greater harm from the decision the Court takes on the interim relief. Even if an applicant passes the first two tests, a court may still decline a conservatory order if granting it would disproportionately harm the other side or the public.

39. In the present case, I have already touched on some aspects of public interest and convenience while discussing prejudice. The Respondents argue, and I agree to an extent, that issuing the conservatory orders sought would risk hampering KRA's operations and setting a problematic precedent where internal management decisions are easily halted by interim court orders. This is not to say that unlawful actions by public bodies should never be halted, indeed they should, where a clear case is made out. But where, as here, the unlawfulness is not apparent on the face of it and requires detailed investigation, the prudent course is to avoid interrupting public services unless failing to do so would itself violate the *Constitution*.

40. I also consider that the Public Service Commission's perspective aligns with the broader public interest: PSC highlights the need for stability in the public service and warns that a hasty injunction could create administrative vacuums. This concern resonates with the court. A conservatory order in the terms sought by the Petitioner could indeed leave some functions in limbo.

41. On the other side of the scale, the Petitioner's convenience if the order is denied largely boils down to him having to endure the status quo which he finds unfavourable until the case is decided. However, I must weigh that against the collective inconvenience that an interim order would impose on the Respondents and potentially the public. The Petitioner's personal interest, while legitimate, cannot

outweigh the institutional and public interests absent a clear showing of necessity. As the Supreme Court noted in Munya, conservatory orders should account for "proportionate magnitudes and priority levels" among the cases, meaning the Court should consider whose interest carries more weight in the interim. Here, preserving the uninterrupted functioning of a public agency is a weighty consideration. Consequently, I find that both the balance of convenience and the public interest favour the maintenance of the status quo pending the hearing of the Petition.

42. In sum, weighing all factors, I conclude that the Petitioner has not met the threshold for grant of a conservatory order at this stage. While he has an arguable case, he has not demonstrated a likelihood of irreparable injury absent the order, and the balance of convenience as well as public interest considerations militate against granting the orders sought. I am satisfied that refusing the interim orders will not prejudice the Petitioner's ability to pursue justice, whereas granting them could prejudice good public administration.

43. Having found that the Petition will not be rendered nugatory by the denial of the conservatory orders sought, and that the balance of convenience and the public interest favour the maintenance of the status quo but with the Petition being heard and determined on expedited basis, the Petitioner/Applicant's Notice of Motion Application dated 24/02/2025 is dismissed with each party being its own costs for the Application.

44. Directions on the expedited hearing and determination of the Petition shall be issued by this Court immediately hereafter.

It is so ordered.

DATED, SIGNED, AND DELIVERED ON THIS 29TH DAY OF MAY 2025.

...

BAHATI MWAMUYE.

JUDGE.