

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC CIVIL APPLICATION NO.E164 OF 2022

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF BILL OF RIGHTS
AND FUNDAMENTAL HUMAN RIGHTS UNDER CHAPTER FOUR ARTICLES
19,20,21,22,29,39&49 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF AN APPLICATION BY JEREMIAH EKAMAI
LOMORUKAI NAPOTIKAN FOR AN ORDER OF ANTICIPATORY BAIL OR
BAIL PENDING ARREST AND/OR CHARGE

AND

IN THE MATTER OF SECTIONS 69 AND 123(1) OF THE CRIMINAL PROCEDURE
CODE CAP 75 LAWS OF KENYA AND GENERAL PRINCIPLES OF NATURAL
JUSTICE AND THE RULE OF LAW

BETWEEN

JEREMIAH EKAMAI LOMORUKAI NAPOTIKAN.....APPLICANT

VERSUS

ETHICS AND ANTICORRUPTION COMMISSION.....1ST RESPONDENT
DIRECTOR OF PUBLIC PROSECUTOR.....2ND RESPONDENT
INSPECTION GENERAL OF POLICE.....3RD RESPONDENT

ORDER

UPON THIS MATTER coming up under Certificate of urgency before Hon. Justice E. Ogola on 14/10/2022 ETHICS & ANTI CORRUPTION COMMISSION
RECEIVED
LEGAL DEPARTMENT

IT IS HEREBY ORDERED THAT:-

1. The Notice of Motion dated 11/10/2022 be and is hereby certified urgent.
2. The applicant is hereby admitted to anticipatory bail pending of Shs 20,000= cash.
3. The Application to be served for hearing inter partes on 27/10/2022.

GIVEN under my **HAND** and **SEAL** of this Honourable Court on 13th day of October 2022.

HON. JUSTICE E.OGOLA
HIGH COURT OF KENYA-ELDORET.

ISSUED at ELDORET this14/4/2022 day of April 2022.

.....

DEPUTY REGISTRAR,
HIGH COURT OF KENYA - ELDORET.

PENAL NOTICE: -“This is a valid court order and anyone disobeying the same shall be liable for contempt of court with penal consequences for any disobedience.

Hcmisc NO E164 of 2022

CHECKED BY WK

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC. APPLICATION NO. *E/164* OF 2022

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF BILL OF RIGHTS AND FUNDAMENTAL HUMAN RIGHTS UNDER CHAPTER FOUR ARTICLES 19, 20, 21, 22, 29, 39 & 49 OF THE CONSTITUTION OF KENYA 2010 AND THE INHERENT POWERS OF THE HIGH COURT UNDER ARTICLES 258 AND 259(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN FOR AN ORDER OF ANTICIPATORY BAIL OR BAIL PENDING ARREST AND/OR CHARGE

AND

IN THE MATTER OF SECTIONS 69 AND 123(1) OF THE CRIMINAL PROCEDURE CODE CAP 75 LAWS OF KENYA AND GENERAL PRINCIPLES OF NATURAL JUSTICE AND THE RULE OF LAW

BETWEEN

JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN.....APPLICANT

AND

ETHICS AND ANTICORRUPTION COMMISSION.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT



CERTIFICATE OF URGENCY

I, PROFESSOR TOM OJIENDA, SC who has the conduct of this matter on behalf of the Applicant do certify that the matter is extremely urgent requiring to be placed before the Honourable Judge and be heard expeditiously for the following reasons:

1. The Applicant is facing an imminent arrest by the officers from the 1st Respondent based on the communication by their CEO Twalib Mbarak issued on the Thursday 22nd September 2022 while addressing the induction of Members of Parliament at the Safari Park Hotel.
2. The Applicant is apprehensive that he is likely to be arrested after the 1st Respondent shared his name to the leading National Television Channels for the news bulletin on Friday 23rd September 2022 at 7pm and 9 pm broadcasting that his arrest was impending. However, there was no any formal communication to the Applicant to present himself to any police station which means that the Respondents are planning an ambush on the Applicant.
3. The 1st Respondent through its CEO communicated to the News Channels across the nation that had got an approval to go ahead and arrest the Applicant from the 2nd Respondent based on charges that were only known to them.
4. The Applicant has been on the end of continued harassment from 1st Respondent police officers attached at Eldoret calling to appear at the station without any justification whatsoever.
5. The subject matter of the alleged impending arrest is being canvassed in the High Court Constitutional Petition Number E288 of 2022 before Lady Justice Hedwig

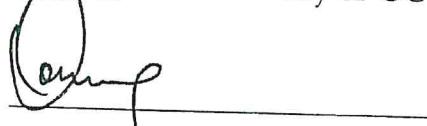
Ongudi in which there are straightforward orders that the University had not revoked any educational papers belonging to the Applicant.

6. The orders were issued by the Honourable Lady Justice on Constitutional Petition was filed on 12th June 2022 in the High Court by the Applicant when he was notified of a circular from the IEBC that he was among some of the candidates that would be barred from contesting the 9th August General Elections in which he was vying for the post of Governor for Turkana County.
7. The Petition E288 of 2022 was canvassed by both parties before the Honourable Judge who after listening to submissions by both parties issued an order on 16th June Honorable Court in Petition NO. E288 of 2022 Jeremiah Ekamais Lomorukai V Kenya Methodist University (KEMU) the court gave the following orders: -
 1. THAT since the Respondents has not revoked the Petitioner applicant's degree and it is still carrying out its internal investigations there is nothing to stop this court from granting the Prayers sought.
 2. THAT therefore prayer No. 2 is granted of the Notice of Motion dated 12/06/2022 pending the hearing and determination of the said application. To wit- A conservatory order is hereby issued staying the unilateral decision of Kenya Methodist University Senate to revoke the Degree Certificate issued to Jeremiah Ekamais Lomorukai issued on the 23rd July 2016 pending the hearing and determination of this Application”
8. It is in the premise of the above orders that the IEBC cleared the Applicant herein to vie for the Gubernatorial position for Turkana County under the ODM Party a position which he went on to win.
9. The Applicant is therefore surprised and stays apprehensive that the Respondents are acting upon an incomplete investigation to issue orders of his arrest and do so

in all the national print and visual media without any formal communication to him.

10. Following the media release of his impending arrest, the Applicant through his legal representatives sent a letter dated 24th September 2022 to both the 1st and 2nd Respondents explaining the position of the case but that has not stopped the constant calls and threats from the police officers of the 1st Respondent about his impending arrest.
11. The Applicant being the governor of a county has not been settled to conduct his mandate that was given to him by the Turkana County electorate due to the constant fear and apprehension of the impending illegal arrest which will be without any viable cause.
12. The Applicant is entitled to protection of his fundamental rights as enshrined in the constitution and be free from harassment and threats of arrest while performing his duties as a governor.
13. Unless the orders sought in this application are granted, the ends of justice will be defeated to the detriment of the Applicant.

DATED at NAIROBI this 11TH day of OCTOBER 2022.



PROF. TOM OJIENDA AND ASSOCIATES.

ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:

PROF. TOM OJIENDA & ASSOCIATES,
GOLF VIEW OFFICE SUITES,
4TH OPP. MUTHAIGA GOLF CLUB
P.O. BOX 14246-00400
NAIROBI
TEL; 0736735514
Email:info@proftomojiendaandassociates.com

TO BE SERVED UPON

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
ODPP House, Ragati Road, Upper Hill
P.O. Box 30701-00100.
Nairobi, Kenya
Tel: 020 273 2090/020 273 2240/020 271 5833
Mobile: 0787880580
Fax: +254 2 2243524/2251808
Email: info@odpp.go.ke

EACC

Integrity Centre, Jakaya Kikwete/Valley Road Junction
Tel: (020) 4997000 Mobile: 0709 781 000; 0730 997 000 Toll Free : 1551
Email address: eacc@integrity.go.ke

NOTICE OF MOTION

(Under Sections 1A, 1B and 3A of the Civil Procedure Act, Cap. 21 Laws of Kenya, Order 9 Rule 9 of the Civil Procedure Rules, and any other enabling statutory provisions)

TAKE NOTICE THAT this Honourable Court shall be moved on the day of 2022 at 9.00 O'clock in the forenoon or soon thereafter for the hearing of an application by the counsel of the Applicant for Orders: -

1. **THAT** this matter be certified as urgent and heard ex-parte in the first instance.
2. **THAT** this Honourable Court be pleased to admit the applicant to anticipatory bail pending arrest or charge on any bailable offence consequent to or arising from an alleged complaint from the 1st Respondent through its CEO Twalib Mbarak.
3. **THAT** this Honourable Court do issue orders restraining to the Respondents by themselves, agents or servants from arresting or pressing charges against the applicant and continuing the investigation into the Applicant during the pendency of High Court Constitutional Petition Number E288 of 2022 before Lady Justice Hedwig Ongudi with regards to matters forming the subject matter herein.
4. **THAT** costs of this application be provided for.

WHICH APPLICATION is based on the grounds **THAT**: -

5. The Applicant is facing an imminent arrest by the officers from the 1st Respondent based on the communication by their CEO Twalib Mbarak issued on the Thursday

22nd September 2022 while addressing the induction of Members of Parliament at the Safari Park Hotel.

6. The Applicant is apprehensive that he is likely to be arrested after the 1st Respondent shared his name to the leading National Television Channels for the news bulletin on Friday 23rd September 2022 at 7pm and 9 pm broadcasting that his arrest was impending. However, there was no any formal communication to the Applicant to present himself to any police station which means that the Respondents are planning an ambush on the Applicant.
7. The 1st Respondent through its CEO communicated to the News Channels across the nation that had got an approval to go ahead and arrest the Applicant from the 2nd Respondent based on charges that were only known to them.
8. The Applicant has been on the end of continued harassment from 1st Respondent police officers attached at Eldoret calling to appear at the station without any justification whatsoever.
9. The subject matter of the alleged impending arrest is being canvassed in the High Court Constitutional Petition Number E288 of 2022 before Lady Justice Hedwig Ongudi in which there are straightforward orders that the University had not revoked any educational papers belonging to the Applicant.
10. The orders were issued by the Honourable Lady Justice on Constitutional Petition was filed on 12th June 2022 in the High Court by the Applicant when he was notified of a circular from the IEBC that he was among some of the candidates that

would be barred from contesting the 9th August General Elections in which he was vying for the post of Governor for Turkana County.

11. The Petition E288 of 2022 was canvassed by both parties before the Honourable Judge who after listening to submissions by both parties issued an order on 16th June Honorable Court in Petition NO. E288 of 2022 Jeremiah Ekamais Lomorukai V Kenya Methodist University (KEMU) the court gave the following orders: -

3. THAT since the Respondents has not revoked the Petitioner applicant's degree and it is still carrying out its internal investigations there is nothing to stop this court from granting the Prayers sought.
4. THAT therefore prayer No. 2 is granted of the Notice of Motion dated 12/06/2922 pending the hearing and determination of the said application. To wit- A conservatory order is hereby issued staying the unilateral decision of Kenya Methodist University Senate to revoke the Degree Certificate issued to Jeremiah Ekamais Lomorukai issued on the 23rd July 2016 pending the hearing and determination of this Application”

12. It is in the premise of the above orders that the IEBC cleared the Applicant herein to vie for the Gubernatorial position for Turkana County under the ODM Party a position which he went on to win.

13. The Applicant is therefore surprised and stays apprehensive that the Respondents are acting upon an incomplete investigation to issue orders of his arrest and do so in all the national print and visual media without any formal communication to him.

14. Following the media release of his impending arrest, the Applicant through his legal representatives sent a letter dated 24th September 2022 to both the 1st and 2nd Respondents explaining the position of the case but that has not stopped the

constant calls and threats from the police officers of the 1st Respondent about his impending arrest.

15. The Applicant being the governor of a county has not been settled to conduct his mandate that was given to him by the Turkana County electorate due to the constant fear and apprehension of the impending illegal arrest which will be without any viable cause.
16. The Applicant is entitled to protection of his fundamental rights as enshrined in the constitution and be free from harassment and threats of arrest while performing his duties as a governor.
17. Unless the orders sought in this application are granted, the ends of justice will be defeated to the detriment of the Applicant.

WHICH APPLICATION is further supported by the annexed Affidavit sworn by JEREMIAH EKAMAIIS LOMORUKAI NAPOTIKAN, the Applicant and on such other or further grounds as may be adduced at the hearing hereof.

DATED at NAIROBI this 11TH day of October 2022

PROF TOM OJIENDA & ASSOCIATES

ADVOCATE FOR THE APPLICANT

DRAWN & FILED BY:

PROF. TOM OJIENDA & ASSOCIATES,
GOLF VIEW OFFICE SUITES,
4TH OPP. MUTHAIGA GOLF CLUB
P.O. BOX 14246-00400

NAIROBI

TEL; 0736735514

Email:info@proftomojiendaandassociates.com

TO BE SERVED UPON

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
ODPP House, Ragati Road, Upper Hill
P.O. Box 30701-00100.

Nairobi, Kenya

Tel: 020 273 2090/020 273 2240/020 271 5833

Mobile: 0787880580

Fax: +254 2 2243524/2251808

Email: info@odpp.go.ke

EACC

Integrity Centre, Jakaya Kikwete/Valley Road Junction

Tel: (020) 4997000 Mobile: 0709 781 000; 0730 997 000 Toll Free: 1551

Email address: eacc@integrity.go.ke

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC. APPLICATION NO. OF 2022

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF BILL OF
RIGHTS AND FUNDAMENTAL HUMAN RIGHTS UNDER CHAPTER FOUR
ARTICLES 19, 20, 21, 22, 29, 39 & 49 OF THE CONSTITUTION OF KENYA 2010 AND
THE INHERENT POWERS OF THE HIGH COURT UNDER ARTICLES 258 AND
259(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF AN APPLICATION BY JEREMIAH EKAMAIS LOMORUKAI
NAPOTIKAN FOR AN ORDER OF ANTICIPATORY BAIL OR BAIL PENDING
ARREST AND/OR CHARGE

AND

IN THE MATTER OF SECTIONS 69 AND 123(1) OF THE CRIMINAL PROCEDURE
CODE CAP 75 LAWS OF KENYA AND GENERAL PRINCIPLES OF NATURAL
JUSTICE AND THE RULE OF LAW

BETWEEN

JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN.....APPLICANT

AND

ETHICS AND ANTICORRUPTION COMMISSION.....1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

INSPECTOR GENERAL OF POLICE.....3RD RESPONDENT

SUPPORTING AFFIDAVIT

I, JEREMIAH EKAMAIIS LOMORUKAI residing in Nairobi within the Republic of Kenya and under care of P.O Box 74871-00200 Nairobi during the pendency of this suit do make oath and state as follows:

1. THAT I am an adult male of sound mind and the Applicant herein hence competent to swear this affidavit.
2. THAT I am the current governor for the county of Turkana duly elected by the electorate on the 9th of August 2022.
3. THAT I know from watching the television and reading the print media that the CEO for EACC who are the 1st Respondent herein gave an address on the 22nd September 2022 to the newly elected members of National Assembly indicating that they were to arrest a sitting governor. (*Attached herein and marked JELN-1 is a copy said publication in the print media*).
4. THAT I know from the news on all leading television channels in the country that the following day on the 23rd September 2022 the 1st Respondent leaked the said information to the media mentioning my name as the said governor that was facing arrest. (*Attached herein and marked JELN-1 is a copy said publication in the print media*). Link: <https://www.k24tv.co.ke/news/turkana-governor-faces-arrest-80329/>
5. THAT I know that the information given to both the members of national assembly and print and visual media were made by the CEO of the 1st Respondent herein in clear violation of the orders granted in a case I had earlier filed before the constitutional court touching on the same issues that were the

basis of arrest. (*Attached herein and marked JELN-2 is a copy the said case filed before the constitutional division court in Milimani Nairobi.*)

6. THAT I filed the Petition before the constitutional court through my legal representatives on the back of a media release by IEBC on 4th June 2022 which purported to block my gubernatorial candidature based on the report from the 1st Respondent that the KEMU University had revoked my Degree Certificate. (*Attached herein and marked JELN-2 is a copy said Petition.*)
7. THAT the subject matter of the alleged impending arrest is being canvassed in the High Court Constitutional Petition Number E288 of 2022 before Lady Justice Hedwig Ongudi in which there are straightforward orders that the University had not revoked any educational papers belonging to the Applicant.
8. THAT the orders were issued by the Honourable Lady Justice on Constitutional Petition was filed on 12th June 2022 in the High Court by the Applicant when he was notified of a circular from the IEBC that he was among some of the candidates that would be barred from contesting the 9th August General Elections in which he was vying for the post of Governor for Turkana County.
9. THAT the Petition E288 of 2022 was canvassed by both parties before the Honourable Judge who after listening to submissions by both parties issued an order on 16th June Honorable Court in Petition NO. E288 of 2022 Jeremiah Ekamais Lomorukai V Kenya Methodist University (KEMU) the court gave the following orders: -
 1. THAT since the Respondents has not revoked the Petitioner applicant's degree and it is still carrying out its internal investigations there is nothing to stop this court from granting the Prayers sought.

2. THAT therefore prayer No. 2 is granted of the Notice of Motion dated 12/06/2922 pending the hearing and determination of the said application. To wit- A conservatory order is hereby issued staying the unilateral decision of Kenya Methodist University Senate to revoke the Degree Certificate issued to Jeremiah Ekamais Lomorukai issued on the 23rd July 2016 pending the hearing and determination of this Application”
(Attached herein and marked JELN-3 is a copy said certified Order issued by Lady Justice H. Ongudi on the 16th June 2022).

10. THAT it is in the premise of the above orders that the IEBC cleared me to vie for the Gubernatorial position for Turkana County under the ODM Party a position which he went on to win.

11. THAT I am surprised and apprehensive that the Respondents are acting upon an incomplete investigation to issue orders of my arrest and do so in all the national print and visual media without any prior formal communication to me.

12. THAT following the media release of my impending arrest, through his legal representatives I sent a letter dated 24th September 2022 to both the 1st and 2nd Respondents explaining the position of the case but that has not stopped the constant calls and threats from the police officers of the 1st Respondent about his impending arrest. *(Attached herein and marked JELN-4 is a copy said Letter to the Respondents).*

13. THAT I am the governor of a county but I have not been settled to conduct the mandate that was given to me by the Turkana County electorate due to the constant fear and apprehension of the impending illegal arrest which will be without any viable cause.

14. THAT I am advised by my advocates which advise I believed to premised on the provisions of law that I am entitled to protection of my fundamental rights as enshrined in the constitution and be free from harassment and threats of arrest while performing my duties as a governor.

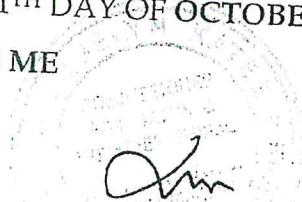
15. THAT Unless the orders sought in this application are granted, the ends of justice will be defeated to my detriment.

16. THAT I swear this Affidavit in support of the Application dated 11th October 2022 and pray for it to be allowed with costs.

17. THAT what I depone to herein is true to the best of my knowledge, save as to what I deposed to on information and belief sources whereof I have disclosed.

SWORN AT NAIROBI BY THE SAID
JEREMIAH EKAMAIIS LOMORUKAI

THIS 11TH DAY OF OCTOBER 2022
BEFORE ME



COMMISSIONER FOR OATHS

DRAWN AND FILED BY:

PROF. TOM OJIENDA & ASSOCIATES,
GOLF VIEW OFFICE SUITES,
OPP. MUTHAIGA GOLF CLUB,

] 9/2022

] DEPONENT

]

]

]

]

4TH FLOOR, SUITE NO. A4 (I),
P.O. BOX 14246-00400, MUTHAIGA,
NAIROBI

TO BE SERVED UPON

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
ODPP House, Ragati Road, Upper Hill
P.O. Box 30701-00100.
Nairobi, Kenya
Tel: 020 273 2090/020 273 2240/020 271 5833
Mobile: 0787880580
Fax: +254 2 2243524/2251808
Email: info@odpp.go.ke

EACC

Integrity Centre, Jakaya Kikwete/Valley Road Junction
Tel: (020) 4997000 Mobile: 0709 781 000; 0730 997 000 Toll Free: 1551
Email address: eacc@integrity.go.ke