



Wanjiku v Deputy Speaker and Chairperson Liaison Committee , County Assembly of Kiambu & another (Petition E012 of 2023) [2024] KEHC 10655 (KLR) (16 August 2024) (Judgment)

Neutral citation: [2024] KEHC 10655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
PETITION E012 OF 2023
DO CHEPKWONY, J
AUGUST 16, 2024**

**IN THE MATTER OF THE PHYSICAL PLANNING MUNICIPAL ADMINISTRATION
AND URBAN DEVELOPMENT COMMITTEE OF THE KIAMBU COUNTY ASSEMBLY**

AND

**IN THE MATTER OF THE REMOVAL AND ELECTION OF THE CHAIRPERSON
PHYSICAL PLANNING MUNICIPAL ADMINISTRATION AND URBAN
DEVELOPMENT COMMITTEE OF THE KIAMBU COUNTY ASSEMBLY**

AND

**IN THE MATTER OF ARTICLES 2, 3, 10, 47, 50, 174
AND 175 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF CONTRAVENTION OF THE
KIAMBU COUNTY ASSEMBLY STANDING ORDERS**

BETWEEN

HON RUTH WAITHIRA WANJIKU PETITIONER

AND

**THE DEPUTY SPEAKER AND CHAIRPERSON LIAISON COMMITTEE ,
COUNTY ASSEMBLY OF KIAMBU 1ST RESPONDENT**

THE KIAMBU COUNTY ASSEMBLY 2ND RESPONDENT

JUDGMENT

1. The matter before the court for determination is the Petition dated 4th March, 2023 which is supported by the Affidavit of Ruth Waithira Wanjiku on the instant date and in which the petitioner seeks the following orders:



- a. A Declaration that the removal of the Petitioner as the Chairperson of The Physical Municipal Administration and Urban Development Committee of the Kiambu County Assembly was illegal, null and void for being in contravention of the provisions of *the Constitution* and the Standing orders of the county assembly of kiambu.
 - b. An order nullifying any subsequent election and re-instating the Petitioner to the office as the Chairperson of the Physical Planning Municipal Administration and Urban Development Committee of the 2nd Respondent.
 - c. An order directing the Respondents not to carry out any elections to replace the Petitioner as the Chairperson of the Physical Planning Municipal Administration and Urban Development Committee of the Kiambu County Assembly unless a fresh process to remove the Petitioner as such is instituted and concluded within the provisions of the standing orders of the 2nd Respondent.
 - d. Any other order that the court may deem fit to grant.
 - e. The Petitioner be granted costs of this suit.
2. According to the petitioner, she had been serving as the Chairperson of the Physical Planning Municipal Administration and Urban Development Committee of Kiambu County Assembly and on 24th February, 2023, some of the members of the committee served her with a notice of a vote of no confidence citing four (4) grounds. That upon receipt of the said notice and pursuant to Standing Order No. 194, the 1st Respondent called for a meeting which was held on 27th February, 2023 at the Assembly Chambers.
 3. The Petitioner states that at the meeting, she was given a chance to respond to the allegations raised and the subject committee of the 2nd Respondent proceeded to pass a vote of no confidence against her and thereafter on 1st March, 2023, fresh elections were held whereby she was still voted in as the Chairperson but immediately some members of the committee again raised another vote of no confidence against her.
 4. It is the Petitioner's contention that on the 2nd March, 2023, the Deputy Speaker and Chairperson of the Liaison Committee called for a meeting for the committee to deliberate on the issues of the removal of its Chairperson which meeting was slated for 3rd March, 2023. In receipt of this notice by the 1st Respondent, the Petitioner wrote to the 1st Respondent vide a letter dated 2nd March, 2023 requesting to be informed of the allegations against her since she had just been re-elected the previous day but this went without a response and the 2nd Respondent proceeded with the meeting where a vote of no confidence was again passed against her without being accorded an opportunity to be heard. That on the same date, a message was sent out to all members by the Clerk of the Committee notifying them of a new election which was scheduled for 6th March, 2023.
 5. It is the Petitioner's argument that the Respondents contravened her right to fair trial as envisaged under Article 47 of *the Constitution* since she was not given a chance to be heard or informed of the charges against her which is contrary to Article 50 of *the Constitution* and Standing Order No. 194 (1) (a) (k). In view of this, the Petitioner contends that the Respondents are in breach of her right to occupy the office which violates Article 38 (3) (c) of *the Constitution*.
 6. She also argues that the Respondents violated the National Values and Principles of Governance under Article 10 of *the Constitution* by conducting her removal from office in an opaque manner and with lack of integrity. Her further argument is that the Respondents' actions were marred with malice and



- without valid grounds given that she had just been re-elected and the failure to inform her of the allegations was undemocratic and in violation with Articles 174 and 175 of *the Constitution*.
7. The Petitioner holds that her being one of the few women elected as Chairperson of various committees, her removal was discriminative and an affront to women's leadership. The Petitioner takes offence in the manner which the presentation of the motion was made after her re-election as this was in contravening of Standing Order 69 of the Kiambu County Assembly.
 8. The Petitioner also holds that the legal basis of the Petition is found under Articles 1, 2, 3 (1), 10, 19, 20(1), 21(1), (3), 22(1), 23(3), 27, 38(3)(c), 47, 50 (2) (b), 174, 175, 258 (1) of *the Constitution* and Standing Order 69 and 194 of Kiambu County Assembly and therefore urges the court to allow the same as prayed.
 9. In response, the 1st and 2nd Respondents filed a Replying Affidavit sworn on 14th March, 2023 by John Njiru Njue, the Deputy Speaker and Chairperson, Liaison Committee on their behalf. It is the Respondents' case that the Petition is fatally defective, incompetent, bad in law and is premised on misrepresentation of material facts, law and relevant proceeding on business of the County Assembly hence misleading the court by advancing a false narrative of victimization and yet the Petitioner is the author of her misfortunes.
 10. According to the Respondents, through a letter dated 1st March, 2023 and pursuant to Standing Order 194 (1) (b) of the County Assembly of Kiambu, he received a notice of intended vote of no confidence against the Applicant from the members of the Physical Planning, Municipal Administration and Urban Development Committee and subsequently, he called for a meeting on the 3rd March, 2023 in the County Assembly, the 2nd Respondent herein pursuant to Standing Order 194 (b).
 11. The Respondents avers that contrary to her claim, the Petitioner was furnished with all the necessary documents required so that, if she was dissatisfied with the same, she ought to have gone back to the Committee, as the appropriate forum to raise any representations and concerns for her to be accorded an opportunity to be heard. But without reason or justification, the Petitioner failed to appear before the said Committee which could only be construed to mean that she had waived her right to be heard.
 12. It is the Respondents' contention that the Petition has already been overtaken by events for the reason that a new Chairperson was lawfully elected by majority vote so that if the orders sought are granted, they will have the effect of paralysing the business and operations of the Committee to the detriment of its members and the 2nd Respondent at large.
 13. Furthermore, the Respondent argue that the Petitioner has not provided any cogent evidence in support of her allegations and is therefore misleading the court so that she can get a favourable outcome from it. The Respondents has thus urged that the court dismisses the Petition with costs.
 14. The Respondents also filed a Supplementary Affidavit sworn by John Mwivithi Mutie on 20th March, 2023 whereupon they provided certified copies of the Notice under Standing Order, Agenda for the meeting, Minutes of the meeting, Memo dated 3rd March ,2023 and Memo dated 7th March, 2023.
 15. On 20th June, 2023, the court directed the Application to be dispensed with by way of written submissions and all parties complied.



Determination

16. Having read through the affidavits in support of and against the application dated 4th March, 2023, I have also read through the written submissions and cited authorities by all of them in consideration of the said application as filed and find that the main issues for determination in the Petition are as follows:
 - a. Whether the removal of the Petitioner as Chairperson of the Liaison Committee of the County Assembly of Kiambu County was done in accordance within the legally/lawfully provided procedure and or
 - b. Whether the Petitioner deserves the orders sought.
17. On the issue of Whether the removal of the Petitioner as the Chairperson of the Liaison Committee of the County Assembly of Kiambu was lawfully or procedurally done, it is the Petitioner's argument that the action of the Respondents in removing her as Chairperson was unlawful and unprocedural since the Respondents breached her right to fair trial as envisaged under Article 47 and 50 (2) (b) both of *the Constitution* and Standing Order 194 (1) (a) and her right to occupy office contrary to Article 38 (3)(c) of *the Constitution* of Kenya. The Petitioner's case is that she was not accorded fair trial or given an opportunity to be heard and neither was she informed of the charges against her. She goes on to argue that she was never issued with a written notice with substantive information on her removal and thus her right to be heard was totally disregarded by the Respondents, whose actions were totally in violation of the National Values and Principles of Governance as provided for under Article 10 of *the Constitution*, hence tainted with opaqueness and lack of integrity.
18. According to the Respondents, the Committee and the Deputy Speaker and Chairperson of the Liaison Committee followed the prescribed procedure under the Standing Order No. 194 of the County Assembly by giving notice and an opportunity to the Petitioner to be heard on the motion for a vote of no confidence to pass against her. The Respondents maintain that the Petition has been overtaken by events as the Committee has already elected new Chairperson and any orders issued as sought by the Petitioner will have the effect of paralysing the business and operations of the committee, as the proper procedure was followed and it would be a waste of court's time to entertain the Petition.
19. Under the Standing Orders of the County Assembly of Kiambu, the procedure of election of Chairperson, Vice Chairperson and members of various committees is outlined under Standing Order No. 194 as well as the procedure for removal of Chairperson or Vice Chairperson.
20. In this case, the Respondents stated that the position of a Chairperson is subject to oversight by Committee members who can elect him/her or remove him/her. It will be noted that the Standing Order No. 194 also allows for a vote of no confidence to be passed against the Chairperson or Vice Chairperson of a Committee and the procedure to be observed in such instances is clearly set out therein.
21. Under Article 38 of *the Constitution*, the law provides that:
 - “(1) Every citizen is free to make political choices, which includes the right--
 - (a) to form, or participate in forming, a political party; (b) to participate in the activities of, or recruit members for, a political party; or (c) to campaign for a political party or cause.
 - (2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for--



(a) any elective public body or office established under this Constitution; or (b) any office of any political party of which the citizen is a member.

(3) Every adult citizen has the right, without unreasonable restrictions, --

(a) to be registered as a voter; (b) to vote by secret ballot in any election or referendum; and (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

22. It is trite law that Article 47 of *the Constitution* provides for a right to fair administrative action. It states,

“ 47. Fair administrative action

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

b. promote efficient administration.”

23. It is also trite that every person has a right to a fair hearing under Article 50 (1) of *the Constitution* which states as follows:

“ 50. Fair hearing

1. Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”

24. The court finds that the procedure through which the Petitioner was removed from office was done in an un-procedural manner given that she was neither given a chance to a fair hearing nor given notice of her removal from office so that she could defend the allegations raised against her.

25. This court has carefully read through the pleadings herein and finds that on 1st March, 2023, few days prior to her removal, the Petitioner was served with a Notice of No Confidence where she defended herself and was re-elected to the same position of Chairperson. However, on the same day of her re-election another vote of no confidence was raised against her and on 2nd March, 2023, and the Deputy Speaker and Chairperson to the Committee called for a meeting to deliberate on the issue of her removal, which meeting was slated for 3rd March, 2023. The Petitioner then wrote back vide a letter dated on even date requesting to be informed of the allegations against her since she had been re-elected but this did not elicit any response. That instead, the 2nd Respondent proceeded to conduct the meeting



it had scheduled for 3rd March, 2023 and issued a Vote of No Confidence against her. According to the Petitioner, this was a clear show of malice and ill – will against her by the Respondents.

26. It is worth noting that apart from addressing the issue of the 1st March, 2023 meeting where a Vote of No Confidence was passed against the Petitioner, the Respondents had not responded to the issues raised by the Petitioner that after she defended herself successfully against the Vote of No Confidence on 27th February, 2023, she was re-elected as Chairperson. And despite her request vide a letter dated 2nd March, 2023, she was never furnished with the allegations against herself. In view of this, it is this court's finding that the Petitioner was neither accorded notice and reason for her removal from the office so she could defend herself against the allegations, hence was never given a chance to fair trial.
27. Therefore, this court finds that the Petitioner was removed from office in an uprocedural and unlawful manner contrary to the provisions of the law and it has not been rebutted that she wrote the Deputy Speaker requesting to be furnished with allegations against her after her second removal upon being re-elected but no response was sent to her. It is clear that she could not present herself to a meeting where she did not know what she was going to respond to without having been accorded an opportunity to prepare herself in defence of any allegation against her in her 2nd term of service.
28. To buttress this, this court relies in the case of County Assembly of Kisumu & 2 others vs. Kisumu County Assembly Public Service Board & 7 Others where the court held that:

“The person charged is entitled to what, in legal parlance is referred to as the right to “notice and hearing.” That means he must be given written notice which must contain substantial information with sufficient details to enable him ascertain the nature of the allegations against him. The notice must also allow sufficient time to interrogate the allegations and seek legal counsel where necessary.

29. Given that the Petitioner in this case was not accorded a right to be heard and information on allegations against her so she could interrogate the same and respond, which tenets are central and in conformity with the right to fair trial under *the Constitution*, it is a clear demonstration of an illegality, hence the need for court's intervention. This court is guided by the decision in the case of Emeritus Kasee Musya v Speaker, County Assembly of Kitui & Another [2021] Eklr, where the court held as follows:

“The central theme of the above provisions is the right to be heard. That right as stipulated under Article 25 (c) is a component of a fair trial which is a fundamental right and sacrosanct in *the Constitution* of Kenya 2010. It cannot be disregarded. It cannot be swept aside as a mere formality as contended by the Respondents. It is basic and a minimum requirement and the Respondents appears to have been well informed of this legal obligation because if they gave the Petitioner herein, a chance to be heard before removing him as the Chairperson of Liaison Committee, they were well aware of their Constitutional and Statutory obligations to subject the Petitioner to a fair and lawful process.

39. It is apparently clear, reading from the Standing Orders of County Assembly of Kitui, the Statute (Fair Administrative Actions Act), and *the Constitution* of Kenya that the removal of the Petitioner from his position was rather impulsive, irrational and was tainted with illegalities and procedural improprieties. The action evidently violated his Constitutional rights. The intervention of this court is necessary in the circumstances.”



30. In a nutshell, this court finds the Petitioner's removal as a Chairperson of the Liaison Committee as unconstitutional.
31. On the argument raised by the Respondents that the Petition has been overtaken by events since a new Chairperson has already been elected into the position and therefore, the operations of the committee would be paralyzed if the court were to declare the Petitioner's removal as Chairperson of the Liaison Committee null and void and proceed to reinstate the Petitioner with directions that no further election takes place, the court has considered the same and is guided by the decision in the case of Daniel Kaminja & 3 Others (Suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] eKLR, where the court on the said issue stated that:

“A matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact.”

And that,

“No court of law will knowingly act in vain. The general attitude of courts of law is that they are loathe in making pronouncements on academic or hypothetical issues as it does not serve any useful purpose. A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity.”

32. Replying on this decision, this court does not wish to issue orders in vain as it can neither nullify the election of the new Chairperson nor reinstate the Petitioner as the Chairperson as this is likely to create chaos in the 1st Respondents institution. Therefore, the court finds that it would be in the interest of justice to award the Petitioner damages for the unlawful removal from office, which has been found to have been clearly in breach of her right to fair hearing and administrative action.
33. Further, reading through the court record, the court finds that it erroneously delivered a Ruling on the Notice of Motion application dated 4th March, 2023 in place of a Judgment with respect to the Petition which as of now has since been delivered. The court proceeds to issue an apology in the matter and sets aside the said Ruling suo motto.
34. In the upshot, and for avoidance of doubt, the court allows the petition dated in the following terms:
- a. A declaration be and is hereby made of the violation of the Petitioner's rights to Fair Administrative Action and Fair hearing under Articles 47 and 50 of *the Constitution*, 2010 for a denial of reasonable opportunity to be heard and failure to be accorded reasonable time to prepare for her defence to the serious charges levelled against her.
 - b. In view of this, the Petitioner is awarded damages in the sum of Kshs. 500,000.00 payable by the 2nd Respondent herein.
 - c. The Petitioner to be paid costs of the Petition by the 2nd Respondent.

It is so ordered.

JUDGMENT DELIVERED, DATED AND SIGNED AT KIAMBU THIS 16TH DAY OF AUGUST, 2024.



D.O CHEPKWONY

JUDGE

In the presence of

Martin – Court Assistant

Mr. Njuguna Counsel or Petitioner

No appearance by and for Respondent

Page 17 of 17

