



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA**

**AT KERICHO**

**PETITION CAUSE NO.E006 OF 2021**

**IN THE MATTER OF:- ARTICLES 10,19,20,21(1),22(1),23(1),(3),27,28,41,47,232,258, 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF:- ALLEGED AND/OR THREATENED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

**UNDER ARTICLES 27 AND 41 OF THE CONSTITUTION**

**IN THE MATTER OF:- FAIR ADMINISTRATIVE ACTION ACT CAP 4 OF 2015**

**IN THE MATTER OF:- GOVERNMENT PROCEEDINGS ACT CAP 40 (2012)**

**IN THE MATTER OF:- INTERPRETATION AND GENERAL PROVISIONS ACT**

**IN THE MATTER OF:- COUNTY ASSEMBLY OF KERICHO STANDING**

**ORDERS (2020)**

**BETWEEN**

**PAUL CHIRCHIR.....PETITIONER**

**VERSUS**

**HARON ROTICH .....1<sup>ST</sup> RESPONDENT**

**COLLINS BIEGON.....2<sup>ND</sup> RESPONDENT**

**ALBERT KIPKOECH.....3<sup>RD</sup> RESPONDENT**

**HEZRON NGETICH.....4<sup>TH</sup> RESPONDENT**

**GILBERT NGETICH.....5<sup>TH</sup> RESPONDENT**

**SAMMY RONO.....6<sup>TH</sup> RESPONDENT**

**PHILIP RONO.....7<sup>TH</sup> RESPONDENT**

**ERICK KORIR.....8<sup>TH</sup> RESPONDENT**

**THE SPEAKER, COUNTY ASSEMBLY OF KERICHO...9<sup>TH</sup> RESPONDENT**

JUDGMENT

1. The Petitioner herein, PAUL CHIRCHIR filed the Petition dated 9/11/2021 seeking the following prayers:-

i. THAT this Honorable Court be pleased to certify this matter urgent and direct that the same be heard ex-parte in the first instance. [SPENT].

ii. THAT pending the inter parties hearing of this application, this Honourable Court be pleased to issue conservatory orders by way of an injunction restraining the Respondents, whether by themselves, their servants, agents, and/or representatives from maliciously, illegally and unfairly removing the Petitioner from the position of chairmanship of the Public Works, Roads and Transport, County Assembly of Kericho.

iii. THAT pending the hearing and determination of the petition herein, this Honourable Court be pleased to order, restrain and prohibit the Respondents from conducting/implementing the vote of no confidence as against the Petitioner with intent to replace him as the Chairman of the Public Works, Roads and Transport in the County Assembly of Kericho.

iv. THAT the Honourable Court be pleased to declare that the Respondents violated the Petitioner's rights to fair administrative action by not complying with due process in their quest to cause the removal and replacement of the Petitioner as the Chairman of the Public Works, Roads and Transport in the County Assembly of Kericho.

v. THAT the Respondents to pay costs of the Petition.

2. The 1<sup>st</sup> to 8<sup>th</sup> Respondents are members of the County Assembly Kericho County and also members of the Public works, Roads and Transport Committee of Kericho County Assembly where the Petitioner was elected in the 2017 General Elections to serve as a member of the County Assembly by residents of Kapsoit Ward. The 9<sup>th</sup> Respondent is the speaker, County Assembly of Kericho while the 10<sup>th</sup> Respondent is the Clerk of the County Assembly.

3. The Petitioner avers in the Petition that while serving as a member of the County Assembly, he was nominated as a member of the Select Committee Public Works, Roads and Transport as provided by Section 168 of the Kericho County Assembly standing Orders.

4. The Petitioner was further elected the chairperson of the said Select Committee in accordance with Section 173 of Kericho County Assembly standing order.

5. The Petitioner further stated in his Petition that on 5/10/2021, the Respondents held a meeting at Masada Hotel in Naivasha to purportedly remove him from the Select Committee.

6. The Petitioner avers that the said meeting was unprocedural in that no Notice of the said Meeting was issued by the Clerk to the County Assembly as required by Section 176 of the Kericho County Assembly Standing Order.

7. He stated that his removal was therefore unlawful, unprocedural and politically instigated to settle political scores against him.

8. He further stated that it is a legal requirement that the sitting Select Committee should be held at a place and time to be determined by the Chairman of the Committee yet the said meeting was held without his knowledge as the Chairman and outside the precincts of the County Assembly and without the approval of the County Assembly Speaker as required by Section 177 of the County Assembly Standing Orders.

9. The Petitioner further avers that he was not notified in any form of the impugned meeting whose agenda was his removal and further that the said removal was in total disregard and against the embodiment of the Administrative Justice envisioned Under Article 47 of the Constitution of Kenya.

10. The Petitioner filed an Application by way of Notice of Motion also dated 9/11/2021 seeking the following prayers:-

a. A declaration that the actions of the Respondents in removing the Petitioner from the position of Chairmanship of the Public Works, Roads and Transport is malicious, illegal, unfair, unlawful and therefore null and void.

b. A declaration that the Petitioner is serving a 2-year term expiring in the year, 2022 having served for 3 years and is entitled to finishing his term of office unless due process as enshrined by law is followed in his removal.

c. An Order of to stop the implementation of the letter dated 1<sup>st</sup> October, 2021 and consequential proceedings of removal of the Petitioner through vote of no confidence, as infringing on the petitioner's right to fair hearing contrary to Article 47 (2) of the New Constitution 2010.

d. A declaration that the acts of the Respondents amounts to unfair administrative action contrary to Article 47 (2) of the Constitution of Kenya 2010.

e. An order of prohibition restraining the Respondents from discriminating against the Petitioner Contrary to Article 27 of the New

Constitution of Kenya 2010.

f. Costs of the Petition.

g. Any other order the Court may deem fit to grant.

11. The parties filed written submissions in the petition as follows: - The petitioner submitted that he was terminated as the chairman of the Public Works, roads and transport committee at the County Assembly of Kericho without being given a fair hearing and justifiable reason and as such he deserves an injunction reinstating him as the chairman of the said committee. He also submitted that he has proven his case on a balance of probabilities and he is therefore entitled to costs of the suit.

12. The 9<sup>th</sup> respondent on the other hand, submitted that the suit has been brought against him in bad faith, as he does not sit on any sectoral committee other than the committee on appointments and as such he does not participate or control the affairs of the committee on public works, roads and transport. It was further submitted that the petitioner has failed to prove the specific rights that have been violated by the 9<sup>th</sup> respondent and the manner in which the said rights have been violated. The 9<sup>th</sup> respondent also submitted that the petitioner has failed to prove a case against him and the petition should therefore be dismissed with costs to him.

13. The 10<sup>th</sup> respondent also submitted that the petition has been brought against him in bad faith, as he does not sit in any sectoral committee and he therefore does not participate and control the affairs of the committee on public works, roads and transport. It was also submitted by the 10<sup>th</sup> respondent that the petitioner has failed to demonstrate how he participated in his removal and which of his rights he violated and in which manner he violated these rights and as such the petition should be dismissed with costs to him.

14. The 9<sup>th</sup> Respondent and the 10<sup>th</sup> Respondent are the only Respondents who filed written submissions. They were sued in their capacities as Speaker and Clerk of the County Assembly of Kericho.

15. The role of the County Speaker are spelt out in section 177 of the County Assembly Standing Order as to approve meetings held outside the precincts of the County Assembly.

16. The 9<sup>th</sup> Respondent submitted that he approved the meeting and further that notices were issued and the Petitioner attended the said meeting.

17. The 10<sup>th</sup> Respondent also submitted that his role was to communicate committee meetings under the Assembly Standing Orders which he did after the 9<sup>th</sup> Respondent approved the meetings held at Masada Hotel in Naivasha and he further submitted that the Petitioner attended the meeting.

18. The issues for determination in this petition are as follows:-

**i. Whether the Petitioner is entitled to conservatory orders against the Respondents to restrain the Respondents from removing him from the position of Chairman of the Public Works, Roads and Transport Committee.**

**ii. Whether the Petitioner's constitutional rights were violated by the Respondents.**

**iii. Who pays the costs of the petition?**

19. On the issue as to whether the Petitioner is entitled to Conservatory orders against the Respondents to restrain them from removing him from the position of Chairman of the Public Works, Roads and Transport Committee, I find that there is evidence that the Petitioner has already been removed.

20. The said prayer has already been overtaken by events as the removal was done on 3/10/2021 at Masada Hotel in Naivasha.

21. The Petitioner moved to Court on 9/11/2021 after the event. The Petitioner in his Affidavit in Support of the Notice of Motion dated 9/11/2021 stated in Paragraph 10 that "Upon my inquiry into the circumstances and the procedure following my removal, I was issued with a letter dated 1/10/2021 purportedly informing me of intentions to remove me through a vote of no confidence"

22. I find that the Petitioner is attempting to stop an event that has already taken place and therefore his prayer for Conservatory Orders cannot issue under the circumstances.

23. On the issue as to whether the Petitioner's Constitutional Rights were violated, the 9<sup>th</sup> and the 10<sup>th</sup> Respondents submitted that notices were issued for the meeting held on 5/10/2021 at Masada Hotel.

24. The 9<sup>th</sup> Respondent submitted that he approved the meeting and the 10<sup>th</sup> Respondent sent notices for the meeting and the Petitioner attended the same.

25. I find that the Petitioner has not demonstrated how his rights have been violated. I find that the 9<sup>th</sup> and 10<sup>th</sup> Respondents were acting in accordance with the Standing Orders formulated by the County Government and it has not been demonstrated that the same breached the Constitution of Kenya.

26. I therefore find that the Petitioner has failed to prove that his constitutional rights were violated.

27. I find that the Petition herein lacks in merit and the same is dismissed.

28. On the issue as to who pays the costs of the Petition, I find that the Court has a discretion to determine who pays the costs. This discretion, has been provided for under **section 27** of the **Civil Procedure Act**, which states as follows:- “

**1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.**

29. I rule that each party bears its own costs of the Petition. The reason being that the Petitioner is still a member of the County Assembly.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 25<sup>TH</sup> DAY OF MARCH, 2022**

**A. N. ONGERI**

**JUDGE**