



REPUBLIC OF KENYA



**KENYA LAW**  
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**Koli v Clerk, Turkana County Assembly & another (Petition  
E002 of 2022) [2022] KEHC 13009 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13009 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT LODWAR  
PETITION E002 OF 2022  
JK SERGON, J  
SEPTEMBER 20, 2022**

**BETWEEN**

**DERICK EPAE KOLI ..... APPLICANT**

**AND**

**CLERK, TURKANA COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. Derick Epae Koli, the petitioner/applicant herein took out the motion dated September 14, 2022 in which he sought for the following orders:
  - i. That this application be certified as extremely urgent to be heard and determined ex parte and service be dispensed with in the first instance.
  - ii. Pending the full hearing and determination of this application an order be issued to the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein, the Clerk County Assembly of Turkana to clear the applicant to vie for the position of Speaker for Turkana County Assembly
  - iii. Pending the inter-partes hearing of this application a temporary injunction order do issue to restrain the 2<sup>nd</sup> respondent, whether by itself, its agents, employees, representatives, assignees, and/or servants from applying the provisions from denying the applicant a clearance certificate based on the provisions of section 43(5) of the *Elections Act*, 2011.
  - iv. Costs of this application be provided for.
2. The applicant filed an affidavit he swore in support of the motion. The applicant did not serve the petitioner and the motion upon the respondents hence the motion proceeded for hearing exparte due to its urgency.



3. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit. I have further considered the brief submissions of the petitioner’s counsel.
4. The main order sought by the applicant is an order of temporary injunction to restrain Independent Electoral and Boundaries Commission (IEBC), the 2<sup>nd</sup> respondent from applying the provisions of section 43(5) of the Elections Act, 2011 thus denying the applicant the clearance certificate to vie for the position of the speaker for Turkana County Assembly.
5. It is the submission of the petitioner that he has a legitimate expectation that the clerk of Turkana County Assembly will follow the already set precedents in the National Assembly and the Senate and allow him to vie for the position of the County Assembly Speaker having met all the statutory and constitutional requirements to be elected.
6. The applicant further argued that the current speaker of the National Assembly Hon Moses Wetangula only resigned from his senatorial position on the very day of his election as a speaker. It is also pointed out that the speaker for the senate Hon Amason Jeffer Kingi served his term as governor and was even present at the handover ceremony for the new governor of Kilifi County and that the issue of his resignation was raised and the Clerk of the Senate ruled that he had resigned at the appropriate time.
7. The applicant also stated that he is a citizen of good standing and meets all the statutory and constitutional provisions required for an aspirant of the speaker position in the County Assembly as per article 193 of the Constitution as read with section 7 of the County Governments (amendment) Act 2020 and sections 22 and 25 of the Elections Act, 2011.
8. He further averred that he has since resigned from his position as a public officer and that he is a registered voter in Turkana County.
9. After a careful consideration of the arguments put forward by the petitioner, it is clear in my mind that the petitioner is being speculative. There is no evidence to show that IEBC or any other body has threatened to bar the petitioner from vying for the position of Speaker County Assembly of Turkana. The order being sought is in anticipation of an action. The action anticipated has not accrued. It is premature to say the least.
10. The other fundamental issue which is apparent is that the applicant is seeking for an order to direct the respondents to act in a particular manner in exercise of their statutory and constitutional power. The law does not give the court the power to issue such orders since that is tantamount to directing the respondents to exercise their discretionary power in a particular way.
11. In the end, I find the motion dated September 14, 2022 to be premature and to be without merits. The same is ordered struck out and dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT LODWAR THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

.....

**JK SERGON**

**JUDGE**

**In the presence of:**

..... for the Petitioner

..... for the 1<sup>st</sup> Respondent



..... for the 2<sup>nd</sup> Respondent

