



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CONSTITUTIONAL PETITION NO. 17 OF 2020

(FORMERLY MACHAKOS CONST. PET. NO. 9 OF 2020)

IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010 ARTICLES 1, 2,

3, 10, 20, 22, 35, 38, 47, 50, 165 (3) b, (d), 174, 178 (2) b, 181,196, 258

AND 259 OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF: ALLEGED VIOLATION AND CONTRAVENTION OF
ARTICLES 1,2, 47, 50 (B) (C), (F) and (K) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

IN THE MATTER OF: COUNTY GOVERNMENT ACT, 2012 SECTIONS 9 (4), 9(5) AND 11

AND

IN THE MATTER OF STANDING ORDER NO. 14(1), 14(4)

AND 14(5) OF THE KITUI COUNTY ASSEMBLY STANDING ORDERS

AND

IN THE MATTER OF: THE REMOVAL OF THE CHAIRPERSON OF COMMITTEES,

HON. EMERITUS KASEE MUSYA

BETWEEN

HON. EMERITUS KASEE MUSYA.....PETITIONER/APPLICANT

VERSUS

THE SPEAKER, COUNTY ASSEMBLY OF KITUI.....1ST RESPONDENT

THE COUNTY ASSEMBLY OF KITUI.....2ND RESPONDENT

J U D G E M E N T

1. **Hon. Emeritus Kasee Musya**, the Petitioner herein, has lodged this petition against the Speaker County Assembly of Kitui, and the County Assembly of Kitui (the 1st and 2nd Respondent respectively) to contest his removal as chair of committees in the County Assembly of Kitui. He challenges the manner in which he was removed from the post by his fellow members of Kitui County Assembly on the **30th of June 2020** and has come to this court seeking for the following reliefs namely: -

- a) A declaration be and is hereby issued that the process of removing the Petitioner as a chairperson of committees violated his rights as enshrined in **Article 32, 47, 50 (2) (b), 50(2) (c), (50) (2) K and 50 (2) of the constitution**.
- b) A declaration be and is hereby issued, that the process of removing the Chairperson of Committees, is similar to the process of removing the Speaker of the County Assembly.
- c) A declaration be and is hereby, issued that the process of removing the Petitioner did not meet the threshold provided under the Standing Orders of the 2nd Respondent.
- d) A declaration be and is hereby issued that the motion for removal of the Petitioner as Chairperson of Committees was moved and passed by the 2nd Respondent contrary to **Standing Order 26** of the **Assembly** and therefore null and void.
- e) An order of certiorari to quash the resolution made by the Respondents on **30th June 2020** removing the Petitioner as the Chairperson of committees.
- f) That the Petitioner herein, be reinstated as the Chairperson of committees of the County Assembly of Kitui unconditionally with full salary, benefits and allowances from 30th June, 2020.
- g) That the Hon. Court be pleased to order for compensation of the Petitioner by way of general damages for violation of the Petitioner's rights.
- h) Any other relief.
- i) Costs of this Petition.

2. The Petitioner's Case

The Petitioner avers in his pleadings, that he was removed from what he terms an “*impugned position*” for his stand in supporting the Governors nominees to the County Service Board. The reasons as to why he terms the position impugned is unclear, but he claims that the Respondent's action of removing him violated his freedom of conscience and opinion.

3. The Petitioner pleads that he was subjected to an un-procedural and unconstitutional action contrary to a fair administrative action.

4. He contends that, the election of a Chairperson of committees is similar to that of the Speaker and that the removal should be similar to that of a Speaker of County Assembly which requires that a motion of removal be supported by at least **75%** of the Members of County Assembly, after affording the Speaker a chance to be heard. He cites the provisions of **Section 11** of the **County Government Act** to support his proposition.

5. He submits that in light of the provisions of **Section 11** of the **County Government Act**, his removal was un-procedural, unconstitutional and illegal. He relies on the following grounds:-

- (i) *He states that the motion for removal presented before the Assembly was presented as an ordinary motion without endorsement of at least a third of the members of the Assembly.*
- (ii) *He claims that no notice was ever issued to him on the intention to remove him from his position.*
- (iii) *That he was not afforded a chance to defend himself on allegations raveled against him.*
- (iv) *That the motion to remove him, was passed through acclamation and as such the members who voted for it cannot be established, and that they were less than 75% of the members of the County Assembly which number was insufficient to remove him.*

6. The Petitioner states that the process to remove him was conducted in a clandestine manner which denied him an opportunity of being heard. He submits that, he was neither served with adequate notice nor furnished with particulars of the charges or allegations made against him. He contends that he was subjected to a trial by acclamation which amounted to “*trial or lynching by a mob*”. He cites the decision in **Attorney General and Hon. Peter Nyombi –versus- Uganda Law Society (proper citation not given)** in submitting that the process he underwent did not have any procedural safeguards.

7. He asserts that, a right to a fair trial by dint of **Article 25 (c) of the Constitution** cannot be limited adding that the Respondents breached that right.

8. He further contends that under **Article 50(2) (b) of the Constitution**, a person charged has a right to be informed of the charge with sufficient detail to answer to it. He claims that the Respondent caused to be published in a special Gazette Notice, the notice to remove him and that the same was placed on the order paper of the day which hardly afforded him sufficient time to make a response. He relies on the decision in **Samuel Tunoi –Versus- Speaker Nakuru County Assembly & 2 Others (2019) Eklr.**

9. The Petitioner faults the Respondents’ action of commencing the process of removal of the Petitioner, without inviting him to respond to the allegations and/or issuing him the allegations made. He submits that his rights under **Article 50(2) (b) of the Constitution** were violated.

He urges this court to be persuaded by the decision in **Cleophas Wakhungu Malala –Versus- Speaker Kakamega County Assembly and 3 Others (2017) eKLR**, where the court found that the removal of the Speaker of County Assembly was unlawful, illegal and un-procedural because the Petitioner had been ambushed with the removal motion without a chance to defend himself against allegation levelled against him. The Petitioner here submits that he was ambushed and given no time to defend himself and contends that his removal as such, was tainted with illegality, unlawfulness and procedural impropriety rendering it invalid, null and void in his view.

10. The Petitioner further claims that through a Gazette Notice dated 23rd June, 2020, a special sitting of the Assembly was called to commence on 29th June, 2020 to 2nd June (must be July) 2020 and that the business set out to be transacted was limited to the approval of the County budget, impeachment of the Governor and the State of County’s Security. He insists that the removal of the Petitioner was never one of the business set to be transacted during the said period as gazetted. He opines that, the motion to remove him was unlawfully tabled and debated contrary to the provisions of the Standing Orders.

11. He claims that, he is entitled to damages for the violations of his Constitutional rights, and relies on the decision in **Samuel Tunoi versus Speaker Nakuru County Assembly & 2 Others (2019) eKLR**, where the court awarded Kshs. 200,000 to the Petitioner for violations of his rights. He also relies on the case of **Amesa Zelemoi -versus- County Assembly of Baringo & Another (2020) eKLR**, where he states that the Petitioner was awarded Kshs. 500,000 because of being removed from office in great haste without affording him a reasonable opportunity to prepare his defence. He prays that he should also be awarded damages because his removal too was done in haste, without following the laid down procedures and in breach of his Constitutional rights.

12. He prays that, he should be reinstated to his position because he was unfairly removed through a flawed process so that he can be afforded a fresh chance to appear before the members of the County Assembly and be heard.

13. The Respondents’ Case

The Respondents have opposed this petition through a replying affidavits by George Mutua Ndoto sworn on 27th July, 2020, and 9th October, 2020. They also rely on their written submissions through counsel dated 1st February, 2021.

14. The Respondents aver that, the Petitioner is an elected member of County Assembly and was also elected as Chairperson of Committees when the Assembly convened after the last general elections. They claim that, by virtue of **Standing Order No. 191(1) of the Kitui County Assembly Standing Orders**, the Petitioner was also the Chairperson of the Liaison Committee.

15. They claim that the motion to remove the Petitioner was brought on 30th June, 2020 by Hon. Eliud Muteti Ndinguri through the Clerk of the County Assembly and that the same having been gazetted was approved and placed in the Order Paper for that day. They claim that the motion was debated and the majority of the members’ present approved the Petitioner’s removal.

16. The Respondents aver that, the Petitioner has failed to disclose that prior to the debate for his removal, there was a vote of no confidence passed against him by the Liaison Committee via a resolution dated 4th June, 2020 and that the Petitioner as the Chair of the committee knew well about the same. They claim that, the Liaison Committee followed laid down procedure in passing a resolution of no confidence by giving him Notice of the said motion and that a meeting was called by the Clerk at the expiry of three days, for the Petitioner to defend himself but chose not to defend himself leading to a passing of a vote of no confidence against him.

17. They deny accusations that they breached the rights of the Petitioner stating that he was removed by express provisions providing for his removal. They submit that, the motion of removal by the 2nd Respondent was based on the vote of no confidence passed by the Liaison Committee. They insist that, there was no infringements of his rights to a fair hearing or violation to any **provision of Article 47 of the Constitution of Kenya**, because the Liaison Committee accorded him a chance to be heard before a vote of no confidence was passed. They claim that the Petitioner chose not to appeal against that resolution by the Liaison Committee though he had the chance to do so.

18. The Respondents aver that, the removal of the Petitioner on 30th June, 2020, was a mere formality after the vote of no confidence was passed on 4th June, 2020.

19. It is the Respondents’ case that the position of chairperson of committees was unconstitutional as it was not provided in the Constitution. They further point out that the said position is also not provided for in County Government Act as at 30th June, 2020. They assert that the appointment and removal of the Petitioner could therefore be governed only through the County Assembly Standing Orders, which they claim do not provide for the removal from office of the Petitioner. They submit that the removal was based on Standing Order No. 1 which provide that, in absence of express provision, any procedural question shall be decided by the Speaker. They rely on **Nathaniel Nganga Rueben Versus Speaker Machakos County Assembly & Another (2016) eKLR and also Douglas Bundi Kirimi –Versus- Joseph Kaberia Arimba Speaker County Assembly of Meru and 3 Others (2018) eKLR.**

20. They submit that **Article 178 of the Constitution of Kenya 2010**, provides for the office of the Speaker and that **Section 9(4) of the County Government Act, 2012**, provides that when the Speaker is absent, members of a County Assembly can elect a member to act as the Speaker as contemplated under **Article 178 (2) of the Constitution of Kenya.**

21. The Respondents contest the Petitioner's contention that the removal of a Chairperson of committee is similar to that of a Speaker of a County Assembly. They rely on the decision in the case of **Zelemoi versus County Assembly of Baringo and Another (2020) eKLR** where the court observed as follows: -

“The central role of the Speaker as the soul of the Assembly may warrant the protection of the Speaker from removal not so to the Deputy Speaker who is really the chair of committees of the Assembly and when the role of Speaker may also be played by other members selected to the Speakers panel under Standing Order 15 of the Assembly. Conversely, there is no special procedure for the removal of a deputy speaker from office as there is prescribed for the speaker of the Assembly.”

22. The Respondents submit that because there was no express provision to remove the Chairperson of Committees from office, the removal of the Petitioner was dwelt with as provided under **Standing Order 1 of Kitui County Assembly Standing Orders**.

23. The Respondents submit that **Standing Order Number 173 of Kitui County Assembly Standing Orders**, provide for a vote of no confidence and there is no other procedure for removal of Chairperson of Committees. They aver that, under **Standing Order 191 of Kitui County Assembly Standing Orders**, there is a provision for a Select Committee known as Liaison Committee which is to be chaired by the Chairperson of Committees and that **Order 191** is couched in mandatory term “**shall**” which means the Chairperson of Committees must Chair the Liaison Committee. They contend the Petitioner had to be removed by the 1st Respondent on the basis that the Chairperson of Committees cannot be a Chairperson of Committees without chairing the Liaison Committee which has a key function of overseeing and supervising other Committees of the County Assembly. They claim that the mandatory nature of the wording in the Standing Order was essential that a Chairperson of Committees Chairs Liaison Committees otherwise the office loses its purpose.

24. The Respondents have further justified the action to remove the Petitioner from office stating that, having been removed from the Chair Liaison Committee he was removed thereafter from Chairperson of Committee by a simple majority as a formality pursuant to **Standing Order 65(1)**.

25. The Respondents further aver that the Petitioner cannot be reinstated to Chairperson of Committees because the position was found to be unconstitutional by competent court and as a result the office was replaced with the office of the Deputy Speaker through an **amendment No. 11 of 2020**.

26. The Respondent claim that, the Petitioner is the author of his own misfortune after choosing not to defend himself after Liaison Committee passed a vote to remove him. They contend that he has not demonstrated any aspect of legitimate expectation.

27. **Analysis and Determination.**

This court has considered this petition and the response made by the Respondents. The Petitioner as I have observed above, challenges his removal as the Chairperson of Committees which as conceded by both parties was a creature of Standing Orders of County Assembly of Kitui. There is only one main issue for determination in this petition which is:-

whether the removal of the Petitioner was lawful or whether it breached his constitutional rights as well as statutory obligations.

28. The Petitioner has urged this court to equate the removal of a Chairperson of Committees of a County Assembly to that of the Speaker in terms of adherence to the stipulated statutory procedures provided under **Section 11 of the County Government Act. Section 11(2) of the County Government Act, 2012** provides for the removal of a Speaker County Assembly in line with the provisions of **Article 178 (3) of the Constitution of Kenya Section 11** subsections **(3) (4) (5) (6) and (7)** of the **Statute** provides an elaborate procedure for the removal of the Speaker County Assembly. This shows the sense in which the Legislature found it fit in their wisdom, to provide protective mechanism to the person occupying that office.

29. Going through the same provisions above, it is apparent that the positions of various Committees and Chairs of those Committees of the County Assembly, are not covered by the said provisions. This court is not persuaded to make a presumption that the provisions of **Section 11 of the Act** was meant to cover the position occupied by the Petitioner herein prior to his removal. I am not persuaded for the following simple reasons: -

(i) For one, the various Committees of the County Assemblies are creatures of Standing Orders passed by respective County Assembly. The positions of Chairperson of various Committees including that of the Petitioner herein, are created/established by the **Standing Orders**. It follows therefore that their removal is guided by the same Standing Orders. It is of course a principle of law that the Standing Orders like any other regulations passed to guide Public bodies must always adhere and be consistent with the Constitution and other written law. Any standing order that is inconsistent with the Constitution, runs the risk of being voided by operation of **Article 2 (4) of the Constitution of Kenya 2010**. In this matter, the Petitioner for the record has impugned his position perhaps for good reasons (it is now none existed in the County Assembly of Kitui) but he has also impugned the procedures of his removal by the County Assembly..

(ii) Secondly, and more importantly, the position of Chairperson of Committees is down the pecking order as compared to the Constitutional office of a Speaker of County Assembly and apart from the fact that there is no specific provision in the statute providing for either its establishment or the procedure of removal of a person occupying it. One cannot be correct to claim that because the Constitution or Statute is silent in that regard, it should be assumed that the procedure for election and removal of the Chairperson of Committees applies **Mutatis Mutandis** to that of the Speaker. This court finds that such a proposition is unfounded. It would be stretching the provisions of **Section 11** too much to a territory that is only in the purview of the legislature. This court is not willing to go that far because I find no basis to do so.

30. In the absence of express Statutory provisions regarding chairs of various Committees, County Assemblies have pursuant to **Article 196 (1) and Section 14 (1)** of the **County Government Act** formulated Standing Orders to guide its operations and formation of various positions in the Assembly.

31. The formation or establishment of Chairperson of Committees of the County Assembly of Kitui can only be viewed in the above context. The Respondents for good measure have exhibited a copy of their Standing Orders to this court which I have perused. This court finds that the position of the Petitioner was indeed established under **Standing Order number 14** and the removal of the person is provided for under **Standing Order no. 173**.

32. The provisions of **Standing Order No. 173(1) of the County Assembly of Kitui** provides as follows: -

“A committee may, (by) a resolution supported by a majority of its members, resolve that it has no confidence in the Chairperson or Vice-chairperson and a member designated by the committee for that purpose shall thereupon report the resolution to the Liaison Committee which shall as soon as it is practicable. I direct the clerk to conduct an election for the Chairperson or Vice Chairperson, as the case may be in accordance with Standing Order 159 (conduct of elections)”.

33. The above provision on the Standing Order shows that a person occupying the position the Petitioner occupied, could indeed be removed from office through a motion of no confidence passed by a majority of members at the sitting of the Assembly on 30th June, 2020, who approved it by a vote of the majority of members sitting.

34. This court has looked at the copy of gazette notice, the order paper and resolution exhibited by the Respondents and what has got my eye is the manner in which the proceedings to remove the Petitioner were conducted at the County Assembly on 30th June 2020. The Respondents have termed the proceedings a mere formality in view of the fact that the Petitioner had been removed earlier on 4th of June, 2020 from Chair of Liaison Committee. I am not however, entirely convinced because looking at their own **Standing Order No. 173 (2)**, it is patently clear that, the Petitioner deserved some chance regardless of the fact that members of the County Assembly of Kitui appeared to have already made up their mind to kick him out. The provisions of subsection 2 states: -

*“The members desiring to make a resolution under paragraph (1) which is a vote of no confidence) shall serve the Chairperson... with a Written Notice of the intended vote of no confidence and may, if they constitute a majority, **request the clerk to call for a meeting at the expiry of 3 days after giving of such notice**”*. (emphasis added).

35. The Respondents have argued with facts that the Liaison Committee which is chaired by the Chairperson of Committees (in this case the Petitioner herein) met on 4th June, 2020, where a vote of no confidence was passed against the Petitioner herein as the Chair of Liaison Committee. They have sworn an affidavit stating that the Petitioner was given 3 days’ notice to defend himself but chose not to. This court however notes that, the Respondents have not tabled any document showing that the Petitioner as the Chair of Liaison Committee was served with any allegations/charges and given a chance to defend himself. There is no document but even if I was to assume that the facts made on oath are true because the Petitioner did not swear any affidavit to contest the same, I am still not persuaded that due process was followed in the removal of the Petitioner from his post of Chairperson of Committees. I say this because of the following reasons.

36. For one, the position of Chairperson of Committees is not the same position as the Chairperson of Liaison Committee because under **Standing Order 191 of Kitui County Assembly Standing Orders** a Liaison Committee comprises Chairperson of committees as the Chairperson, and the chairperson of all Committees of the County Assembly. On the other hand, the Chairperson of Committees under **Standing Order 14** provides for the establishment of the office of Chairperson of Committees and provides that the person occupying that seat shall be elected by members of County Assembly. For me, though the person occupying the two offices as per the Standing Orders of Kitui County Assembly is one and the same person, the offices are different and it would be irregular to say that because the Petitioner had been removed from the Chair of Liaison Committee, it automatically meant that there was no obligation to follow the laid down procedures in removing him from the Chairperson of Committee which for all purposes was indeed the main substantive office. The County Assembly should have moved to remove him from the substantive office (Chairperson of Committees) by following laid down procedures and by so doing, leave the operation of **Standing Orders No. 191** to take its course. But it would appear that in their haste to kick the Petitioner out, they took an un-procedural action which was akin to putting a cart before the horse. To be a Chairperson of Liaison Committee, as per the Standing Orders, one needed no election because, the Standing Order provided that the Chairperson of Committee is the automatic Chair of the Liaison Committee meaning that the substantive office holder of Chairperson of Committee was intended by County Assembly of Kitui to be a very important person playing a pivotal role in the affairs of the County Assembly. To remove such a person, called for strict adherence to procedures stipulated owing to massive interests that comes with that position.

37. Secondly, and more importantly it goes without saying every person in Kenya, whether in some important position such as the Petitioner herein or less important, is entitled to a fair Administrative action as clearly stipulated under **Article 47 of the Constitution of Kenya 2010**. The provisions of Article 47 of the Constitution of Kenya: -

“Every person has the right to administrative action that is expeditious, efficient, lawful and procedurally fair.” If you go to **sub-Article 2**, the Constitution further provides that *if an intended administrative action taken against a person is likely to adversely affect his right or fundamental freedom, the affected person has a right to be given written reasons for **the action***”.

Now let me turn back to the motion tabled on 30th June, 2020 to remove the Petitioner from his position of Chairperson of Committees of the County Assembly. That motion was gazetted on 29th June, 2020 as per the special issue of **Gazette Notice Number. Volume CXXII-Number 125** dated 29th June, 2020. For all practical purposes, the Petitioner is vindicated when he states that he was ambushed at the floor of the house, when he was confronted with the motion to remove him appearing on the Order Paper of the sitting of the Assembly on 30/06/2020.

38. This court finds that the Respondents breached the law when they purported to table a motion to remove the Petitioner, without affording him a reasonable opportunity to be heard. He was not served with any allegations levelled against him prior to his removal when the **Standing Orders (173)** cited above and the law provided that he was entitled to be subjected to a fair process as stipulated. The **Fair Administrative Actions Act, 2015** passed by Parliament in compliance with **Article 47 (3) of the Constitution of Kenya**, is quite elaborate on procedural requirements which must be followed when administrative actions are taken against any person. **Section 4 of the Fair Administrative Action Article** states; -

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

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons pursuant to [section 6](#);

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; or

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.”

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.

40. The Respondents have stated that, the position of Chairperson of Committees is now obsolete due to judicial pronouncements which found the office unconstitutional. The Respondents avers that; the defunct position is now occupied by the Deputy Speaker of County Assembly. This court finds that, the action to scrap the office of Chairperson of Committees was well intended and informed by the provisions of **Section 9A of the County Government Act 2012**. They cannot be faulted for scrapping an office which had no legal basis in the first place. However, the fact that there was an office established through their own standing orders means that an officer occupying that office could only be removed through a fair administrative action as observed above. And because the removal of the Petitioner was done contrary to all the levels of the law and the Standing Orders of the County Assembly, this court finds that since it is not legally viable to order for the reinstatement of the Applicant to a defunct office, it is only fair that he is compensated by way of damages. This court is persuaded by the decision of **AMEJA ZELEMROI (Supra)** where the court gave an award of damages of Kshs. 500,000 for a Petitioner who was also removed from office procedurally. This court finds that the Petitioner herein is entitled to an award of Kshs. 500,000 which I hereby award him.

In sum, this court finds merit in this petition which I allow on the following terms namely: -

a) A declaration is hereby issued that the process of removing the Petitioner as Chairperson of Committees violated the Standing Orders of Kitui County Assembly (No.173), Section 4 of the Fair Administrative Actions Act Number 4 of 2015, Articles 25 and 47 of the Constitution of Kenya 2010.

b) Since the remedies of certiorari and mandamus are no longer viable having been overtaken by events, the Petitioner is awarded

Kshs. 500,000 as general damages for unlawful removal.

c) The Petitioner shall also on top of that be paid, if he was not paid all his salary benefits from the time he was unlawfully dismissed to the time the post was scrapped assuming the office is now defunct.

d) Costs of this petition to be agreed or taxed but capped at Kshs. 500,000.

Dated, Signed and Delivered at Kitui this 26th day of April 2021.

HON. JUSTICE R. K. LIMO

JUDGE