



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 89 OF 2020

HON. CHRISTOPHER MWAMBINU.....PETITIONER

VERSUS

HON. MESHACK MAGHANGA, SPEAKER,

COUNTY ASSEMBLY OF TAITA TAVETA.....RESPONDENT

JUDGMENT

1. The Petitioner is a nominated member of the Taita Taveta County Assembly representing the youth.
2. The Respondent is an ex-officio member and employee of the County Assembly of Taita Taveta, seized with the duty of presiding over the sittings of the County Assembly.

The Petition

3. The Petitioner filed a Petition dated 24/08/2020 stating that he has been serving as the Chairperson of the Public Accounts & Public Investment Committee (hereinafter referred to as “the Committee”) having been duly elected by a majority of members of the Committee under Standing Order No. 161 of the Taita Taveta County Assembly Standing Orders (herein after referred to as “The Standing Orders”). However, the Petitioner states that sometime in 30/07/2020, the Respondent herein contrary to the express provisions of the Standing Orders, presided over a sitting of the assembly that resolved to suspend the Petitioner for twenty eight (28) sitting days, whose effect was to bar the Petitioner from accessing the Assembly and from engaging in his duties as a Member of the County Assembly.

4. The Petitioner avers that prior to his illegal suspension, he was neither served with any notice or resolution of his purported suspension, nor was he given reasons or even heard before the suspension. The Petitioner only came to learn of his suspension after seeing a communication from the Assembly, and the Petitioner later learnt that there was a communication recommending his removal from the Public Accounts and Investment Committee. Therefore, in his view, the suspension violated his right to natural justice and was contrary to Section 15(1) of the County Assemblies Powers and Privileges Act 2017.

5. The Petitioner’s case is that he has not contravened any known provision of law, the Respondent’s orders and/or conducted himself in any manner intended or likely to reflect adversely on the dignity or integrity of the County Assembly or of the Members of the County Assembly, nor has he been even accused of any commission or omission that could amount to gross misconduct to warrant suspension. Therefore, the Respondent as a custodian of the Standing Orders and whose duty it is to ensure that the Standing Orders are complied with, then if at all the suspension was justified, under Standing Order No. 109, the Petitioner ought to have been suspended for a maximum of only four (4) sitting days since he was a first offender and not the maximum twenty eight (28) sitting days which is not only excessive but is without any justifiable cause whatsoever.

6. It is the Petitioner’s case that that his suspension from the Assembly has automatically denied him access to the County Assembly premises and denied him any opportunity to participate and discharge his duties as a Member of the County Assembly. Moreover, it is the Petitioner’s case that his removal from the Committee on Youth & Sports automatically cripples the discharge of his constitutional mandate contrary to the provisions of Article 177(1) (c) of the Constitution.

7. It is also the Petitioner’s case that the Respondent has commenced the process of electing a new Chairperson for the purposes of filling of the now vacant position despite the fact that the procedure for the removal of a Chairperson from Public Accounts & Public Investment Committee was not followed, since under Standing Order No. 176 , it is mandatory that a resolution by a majority of members of the committee be made that they have no confidence in the Chairperson, and the said resolution has to be served upon the Chairperson with a written notice of the intended vote of no confidence, and if the member constitute a majority, the clerk will be requested to call a meeting at the expiry of three(3) days after giving of the notice, and after the meeting, the members of the Committee shall report the resolutions to the

Liaison Committee, which shall as soon as practicable direct the clerk of the House to conduct an election for the vacant seat.

8. Being aggrieved by the action of the Respondent, the Petitioner filed this Petition seeking the following orders:

a) A DECLARATORY JUDGMENT that the motion/resolution passed on the 30th July 2020 Suspending the Petitioner herein is illegal, null and void.

b) A DECLARATORY JUDGMENT that the motion/resolution passed on 21st July 2020 removing the Petitioner as Chair of the Public Accounts & Public Investment Committee and removing the Petitioner's membership from Youth & Sports, Road, Transport, Public Works & Infrastructure, Environment Natural Resources Forestry & Mining, Lands, Housing & Human Wildlife Conflict Resolution Committees herein is illegal, null and void.

c) A PERMANENT INJUNCTION restraining the Respondent, whether by themselves or their servants or agents or otherwise howsoever, from illegally suspending, expelling and/or removing the Petitioner as a member of the County Assembly of Taita/Taveta.

d) A PERMANENT INJUNCTION restraining the Respondent, whether by themselves or their servants or agents or otherwise howsoever, from illegally removing the Petitioner as Chairperson of the Public Accounts and Investment Committee or a Member of Youth & Sports, Roads, Transport, Public Works & Infrastructure, Environment Natural Resources Forestry & Mining, Lands, Housing & Human Wildlife Conflict Resolution Committees or any other Committee on account of the same reasons.

e) General damages.

f) Costs of this Petition with interest thereon at such rate and for such period of time as this Honourable Court may deem fit and just to grant.

g) Any other or further relief the Honourable Court may deem just and appropriate.

9. The Petition is supported by the affidavit sworn on 24/08/2020 and a Further Affidavit sworn on 16/11/2020 by the Petitioner.

The Response

10. In response to the Petition, the Respondent filed a Replying Affidavit sworn on 13/10/2020 by the Respondent. It is the Respondent's case that his office is established under Article 178 (1) of the Constitution, and under Article 178(2) of the Constitution, his functions include presiding over the sittings of the County Assembly and since his election to that office, he has discharged his mandate in accordance to the Constitution, County Government Act, and the Standing Orders.

11. It is the Respondent's case that the suspension of the Petitioner and/or his removal from any committee of the House was a business before the house like any other, and under Standing Order 36 and 38, once tabled for consideration, unless for sufficient reasons, it is the Respondent's constitutional mandate to bring forth the business for consideration by the House. Therefore, the Respondent's role in the suspension was limited to receiving the Motion from members and tabling the question for consideration by the whole house pursuant to Standing Order 36 and 38.

12. The Respondent avers that pursuant to Standing Order 45, a motion for suspension of the Petitioner was moved by **Hon. Ancelim Chao Mwadime**, member for Mgange Ward, and passed to him by the Clerk of the Assembly. Once satisfied that the motion complied with the Standing Order 45(3) in terms of content, form, and substance, the Respondent proposed the question for consideration by the House, after which a resolution was passed by the majority as a decision of the whole House.

13. It is the Respondent's case that the legality of the County Assembly's Resolution culminating to the Petitioner's suspension and removal from various committees of the House cannot be sufficiently addressed without enjoining the Taita Taveta County Assembly, since the impugned decision was made by House and not in the Respondent's individual capacity, and therefore, as a matter of fact, pursuant to Standing Order 68(3), the Respondent has no voting rights on any question or decision on the floor of the House.

14. On the removal of the Petitioner from House Committees, it is the Respondent's case that under Standing Order 159(1) it is provided that the County Assembly Party that nominated a Member to a select committee may give notice in writing to the speaker, that the member is to be discharged from a select committee, and upon receipt of the notice contemplated under Standing Order 159(1), Standing Order 159(2) provides that the discharge of a member shall take effect upon receipt by the speaker of the notice from the County Assembly party and or coalition.

15. The Respondent avers that on 21/07/2020, he received communication under Standing Order 159 (1) from the NASA Coalition (hereinafter "the Coalition") accompanied with minutes discharging the Petitioner from the following committees, Public Accounts and Investment; Youth & Sports; County Roads, Transport, Public Works & Infrastructure; Environment Natural Resources Forestry & Mining; Lands and Housing & Human Wildlife Conflict Resolution Committees. The resolution to de-whip the Petitioner was arrived at by nineteen (19) members from the NASA Coalition. Copies of the Notice and Minutes were annexed and marked as exhibits 2 and 3.

16. The Respondent avers that immediately after receipt of the communication by the coalition, and in accordance to Standing Order 159(2), he communicated the aforementioned changes to the House committees. Therefore, the Respondent's role in that process was purely communicative and therefore, suing him in his personal capacity without enjoining the coalition was irregular.

17. The Respondent avers that the Petitioner being aggrieved by his discharge from the County Assembly sued the Respondent in **Voi CMCC NO. 85 OF 2020**, and the Petitioner was granted ex-parte orders on 22/07/2020 against the Respondent barring him from conducting any House business. However, the said orders were vacated and/or discharged after the Court found merit in the Respondent's Application dated 28/07/2020. Further, the Respondent avers that considering the pendency of Voi CMCC NO. 85 OF 2020, and the stayed orders of 24/08/2020 via an Order issued on 31/08/2020, in the circumstances, this Petition is *sub-judice* and is an attempt to forum shop by the Petitioner.

18. The Respondent avers that the Notice of Withdrawal of Voi CMCC NO. 85 of 2020 in the Petitioner's further Affidavit is an afterthought since the same was filed after the Respondent's Application dated 27/08/2020. Further, the said Notice of Withdrawal was never served upon the Respondent, no leave has been shown that the Court in Voi endorsed the alleged withdrawal of the former suit having been set down for hearing. Therefore, the withdrawal of the suit in Voi could only be legally tenable within the provisions of Order 25 Rule 2(2) of the Civil Procedure Rules, 2010.

19. It is the Respondent's case that this Court is not clothed with jurisdiction to hear and determine this Petition since Section 11 of the County Assemblies Powers and Privileges Act and Section 16 of the County Government Act provides that no civil suit or criminal proceedings shall/may be commenced against a member of the County Assembly for any act done or ordered by them in the discharge of the function of their office.

20. It is the Respondent's case that the Petition has not been pleaded with the requisite degree of precision, since it has not been demonstrated what constitutional rights the Respondent personally violated, the manner of the violation and to what extent.

21. The Respondent avers that the assertion that the Petitioner was never served with any notice or resolution suspending him from the assembly service is misleading, since the communication or resolution complained of were the County Assembly's business available in the Order Paper, and pursuant to Standing Order 36(2), the Order paper is published in the Assembly's website and made available to the members in the County Assembly precincts, at least twelve (12) hours before the meeting of the Assembly, and there is no requirement for the Respondent to supply the Order paper to every member in person prior to the Assembly meeting. A copy of the Order paper for 30/07/2020 was annexed and marked as exhibit 10.

22. The Respondent avers that what Section 15 of the County Assemblies Power and privileges Act speaks to, is not similar either in structure, composition or function to the Select Committee available under part XXII of the Standing Orders as alleged by the Petitioner and that in any event, the procedure of the Select Committees are a creation of, and are governed by the Standing Orders, while the Committee of powers and privileges is governed by the County Assemblies Power and Privileges Act, 2017.

The Rejoinder

23. In Rejoinder, the Petitioner vide Further Affidavit sworn on 16/11/2020 averred that the prayers sought in Voi CMCC NO. 85 of 2020 **Hon. Christopher Mwambingu v Meshack Maghanga Speaker of Taita Taveta County Assembly** are not uniform with the prayers sought in the current Petition since, at the time of filing the Voi suit, the Petitioner had only been removed from the select committees but not suspended. Nevertheless, the suit in Voi has since been withdrawn.

24. The Petitioner also averred that the defence of immunity is not available to the Respondent where there is violation of constitutional rights.

Submissions

25. When the Petition came up for hearing, the Court directed the same to be determined by way of written submissions and both the Petitioner and the Respondent have complied.

26. **Mr. Nyange** learned counsel for the Petitioner reiterated the content of the affidavits in support of the Petition. On the issue of jurisdiction of this Court raised by the Respondent, counsel submitted that this Court has the jurisdiction to intervene where there has been a failure to abide by Standing Orders, which have been given Constitutional underpinning under the said Article. In this regard, reliance was placed in the case of **Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2014] eKLR**.

27. On conflict of laws, counsel submitted that under Standing Order 159(2), the discharge of a member takes effect after of a notice under Standing Order 159(1) is received by the speaker, which is a violation of Articles 10, 47, and 50 of the Constitution since it denies the Petitioner the right to be heard. Counsel cited **Speaker of the Senate and Another v Attorney General & 3 Others, Supreme Court of Kenya Advisory Opinion No. 2 of 2013**, where the supreme Court held that County Assemblies are believed to operate under the Constitution and if they violate the procedural requirements of the supreme law, it is for the courts of law to assert the authority and supremacy of the Constitution.

28. On the Petitioner's suspension, counsel submitted that the Petitioner was suspended contrary to the powers and privileges Act 2017 and the right to be heard under Article 47 of the Constitution, and since, no allegation was made against the Petitioner that constitutes misconduct or disobedience; no committee was ever constituted; no inquiry was conducted and neither was there a report with findings and recommendations. Counsel submitted that Petitioner's removal was null and void and in violation of the principle of natural Justice since, there was no vote of no confidence in accordance with Standing Order 176(2) and the proceedings, information, resolutions were never served upon the Petitioner. Consequently, his removal was unlawful.

29. **Mr. Bwire** learned counsel for the Respondent reiterated the content of the Respondent's submissions and argued that the Petition had been overtaken by events, and should be dismissed since the substratum of the suit had long fizzled out and the Petitioner has resumed his duties. Further, counsel submitted that there has been a reshuffle of membership of committees of the House and the Petitioner has been

selected to other committees. Therefore, the orders made by this Court on the allegations by the Petitioner would be inconsequential. To fortify this contention, counsel sought refuge in the case of **Justus Nyaribo v Clerk to Nyamira County Assembly [2013] eKLR** where it was held that the Petition had been overtaken by events and to proceed with hearing of the same would be an exercise in futility.

30. On the instant Petition being *sub-judice*, counsel submitted that the issue in both **Voi CMCC No. 85 of 2020** and the instant Petition revolve around the Petitioner's suspension and removal from the County Assembly services and removal from various select committees of the House. Since no leave was sought from the court at Voi, and the parties never consented to the withdrawal of the suit, the same is still alive in Voi. Counsel cited **Beijing Industrial Designing & Researching Institute v Lagoon Development Limited [2015] eKLR** where the Court held that where a suit has been set down for hearing, and no consent on withdrawal is reached, the Plaintiff must obtain leave of Court to discontinue or withdraw the claim or any part thereof.

31. **Mr. Bwire** submitted that the Respondent under Standing Order No. 159(1) has a duty to relay the resolutions by the respective political parties, in this case being NASA Coalition, to the committee of the whole House. Consequently, the decision to remove the Petitioner from various select Committee of the Assembly was a decision of the County Assembly and not the Respondent's decision. Counsel further submitted that the Respondent's role is to preside over the business of the House. Therefore, this Court will be interfering with County Assembly's legislative jurisdiction pursuant to Section 11 of the County Assembly powers and privileges Act.

The Determination

32. I have considered the Petition herein, affidavit evidence in support and the response thereto. I have also taken into account rival submissions by both parties' advocates on record together with relevant applicable laws and precedents relied upon. Issues that inevitably arise for determination are,

a) Whether the Petition has been overtaken by events

b) Whether the Respondent can be sued in his capacity as the speaker

c) Whether the instant Petition is sub-judice

d) Whether the suspension of the Petitioner and removal from select committees violated his constitutional rights.

(a) Whether the Petition has been overtaken by events.

33. This Court has looked at the pleadings herein and confirms that most of the issues for determination are issues that touch on the jurisdiction of this Court to entertain the Petition against the Respondent save for the last issue for determination that deals with the issue of the right to be heard.

34. The Respondent argues that the instant Petition has been overtaken by events since there has been a reshuffle conducted in the County Assembly and the Petitioner has been moved to various select committees. In **Daniel Kaminja & 3 others (Suing as Westland Environmental Caretaker Group) v County Government of Nairobi [2019] eKLR**, Mativo, J. 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.”

35. Unfortunately, the Respondent in its Replying Affidavit dated 13/10/2020 never pleaded that the substratum of the suit had long fizzled since there had been reshuffle and the Petitioner has been moved to different select committees of the House. Parties are bound by their pleadings and any case constructed outside the pleadings cannot be the subject of the court's determination. The court in **Independent Electoral and Boundaries Commission & Anor v Stephen Mutinda Mule & 3 others (supra)** cited with approval the decision of the Supreme Court of Nigeria in **Adetoun Oladeji (NIG) Limited v Nigeria Breweries PLC SC 91/2002** where Pius Adereji, JSC expressed himself thus on the importance and place of pleadings:

“... it is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.”

36. In the same way herein, the parties are bound by their pleadings, and according to those pleadings there is no evidence that the petition herein has been overtaken by events.

(b) Whether the Respondent has been properly joined in this Petition.

37. The Respondent argues that its role is limited to presiding over the business of the House and therefore, the proper party to answer to the allegations raised by the Petitioner is the County Assembly, which the Petitioner has conveniently not enjoined. This court stands guided by the finding in **Judicial Service Commission v Speaker of the National Assembly & 8 others [2014] eKLR** where a five judge bench of this court held as follows:

“In addressing our minds to the question of joinder, we bear in mind the provisions of Rule 5 (b) and (c) of the Mutunga Rules which state as follows:

(b) A petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every proceeding deal with the matter in dispute.

(c) Where proceedings have been instituted in the name of the wrong person as Petitioner, or where it is doubtful whether it has been instituted in the name of the right Petitioner, the Court may at any stage of the proceedings, if satisfied that the proceedings have been instituted through a mistake made in good faith, and that it is necessary for the determination of the matter in dispute, order any other person to be substituted or added as Petitioner upon such terms as it thinks fit.”

38. In **Centre for Rights Education and Awareness & 2 others v Speaker the National Assembly & 6 others [2017] eKLR**, Mativo J held as follows:

“The position that the National Assembly is not a juristic person is to me unquestionably the correct interpretation of the law. It also happens to the position and practice in other jurisdictions where the Speaker is sued instead of suing Parliament. Examples:- South African cases of My Vote Counts NPC vs Speaker of the National Assembly and Others cited below, Economic Freedom Fighters vs Speaker of the National Assembly and Others[32] and Democratic Alliance vs Speaker of the National Assembly and Others[33] and the Lesotho case of All Basotho Convention & 2 Ors vs The Speaker of National Ass.[34]”

39. In my view, the argument of mis-joinder or non-joinder of parties raised by the Respondent has no merits or legal basis and the same fails.

(c) Whether the instant Petition is *sub-judice*

40. I now turn to the question of *sub judice*. The Petitioner argues that Voi CMCC NO. 85 of 2020 was withdrawn before the instant suit was instituted. Nevertheless, at the time of filing Voi CMCC NO.85 of 2020, the Petitioner had not been suspended from the Assembly. The Supreme Court of Kenya in **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) {2020} eKLR** had occasion to pronounce itself on the subject of *sub judice*. It aptly stated: -

“[67] The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

41. For the doctrine of *sub judice* to apply the following principles ought to be present: -

(a) There must exist two or more suits filed consecutively;

(b) The matter in issue in the suits or proceedings must be directly and substantially the same,

(c) The parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title,

(d) The suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed

...See *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR*.

42. Before this court determines the issue of sub-judice, it is noteworthy that the suit in Voi was filed in a subordinate court. **Article 165(3)** of the **Constitution** sets out the jurisdiction of the High Court. It provides thus:

“Subject to Clause (5), the High Court shall have:-

(a) Unlimited original jurisdiction in criminal and civil matters;

(b) Jurisdiction to determine the question whether a right or fundamental freedom has been denied, violated, infringed or threatened;

(c) ...

(d) **Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of –**

(i) the question of whether any law is inconsistent with or in contravention of the Constitution;

(ii) the question of whether anything said to be done under the authority of the Constitution or if any law is inconsistent with or in contravention of this Constitution;

(iii) ...

(iv) ...

(e) Any other jurisdiction, original or appellate conferred on it by legislation;”

43. **Article 165 (6)** provides that:

“The High Court has supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a Superior Court.”

In exercise of the above jurisdiction, the High Court may, under **Sub-Article 7;**

“ ... call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

44. From the foregoing, I find and hold that even though the issue of removal of the Petitioner in various select committees of the House is substantially the same in both the suit in Voi CMCC NO. 85 of 2020 and this instant Petition, it is only this Court that has the original jurisdiction to determine the question whether a right or fundamental freedom has been denied, violated, infringed, or threatened; it is only this court that has the jurisdiction to hear any question respecting the interpretation of the Constitution including the determination of the question of whether anything said to be done under the authority of the Constitution or if any law is inconsistent with or in contravention of the Constitution. Consequently, applying the principles of the application of *sub judice* and the jurisdiction of this Court discussed above and guided by the authorities cited, I find and hold that this suit does not offend the doctrine of *sub judice*.

(d) Whether the suspension of the Petitioner and removal from select committees violated his constitutional rights.

45. The aforementioned issue is two pronged as follows:

(1) Removal of the Respondent from various select committees

(2) Suspension of the Petitioner from the County Assembly for 28 days

(1) Removal of the Respondent from various select committees

46. The Petitioner argues that the procedure for the removal of a Chairperson from Public Accounts & Public Investment Committee under Standing Order No. 176 was not followed in removing him from the select committees. The Respondent on the other hand argues that pursuant to Standing Order 159(1), he received a notice from the party that nominated the Petitioner to the select committees informing him that they had discharged the Petitioner from the said committees. The said notice was accompanied with minutes from the Coalition discharging the Petitioner from the aforesaid committees. Therefore, pursuant to Standing Order 159(2), the Respondent performed his duty of informing the whole House of the decision by NASA Coalition to discharge the Petitioner from various select committees.

47. The County Assembly of Taita Taveta Standing Orders on the discharge of a member of a committee stipulates as follows:

159(1) The County Assembly Party that nominated a Member to a select Committee may give notice in writing to the speaker that the member is to be discharged from a select Committee.

(2) The discharge of a member shall take effect upon receipt by the speaker of a notice under paragraph (1).

48. In **Dominic Ndonge Maithya & 3 Others v Machakos County Assembly Speaker & 2 Others [2017] eKLR**, the court held as follows:

“In order to establish whether this court has no jurisdiction to entertain this Petition, it is necessary to have a look at some of the provisions which guide the activities of the Respondents as submitted by their learned counsel. They are as follows:

i. Article 196(3) constitution

“Parliament shall enact legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members.”

ii. Section 17 County Government Act 2012

“The National law regulating the powers and privileges to parliament shall, with the necessary modifications, apply to a County Assembly”.

iii. Section 12 of the Privileges’ Act provides: -

“No proceedings or decisions of the Assembly or the committee of Privileges acting in accordance with this Act shall be questioned in any court.”

iv Section 29 of the Privileges Act provides: -

“Neither the Speaker nor an officer of the Assembly shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or in speaker or such officers by or under this Act or the Standing Orders.”

v. Section 14 County Government Act provides: -

“County Assemblies to establish committees through the Assembly Standing Orders and constitute business transacted in the Assembly...”

“From the foregoing analysis and observations, it is the finding of this court that it has no jurisdiction to entertain the Petition as the Petitioner’s removal and or discharge from the committees were exclusively internal matters within the Machakos County Assembly. It is also the finding of this court that the removal of the Petitioners from the 1st Respondent’s committees did not amount to violation of their individual rights under the constitution because their membership to those committees was at the pleasure of their political parties through the leaders of majority and minority as well as the whip at the Machakos County Assembly.”

49. This Court is in consonance with the holding in **Dominic Ndonge Maithya & 3 others v Machakos County Assembly Speaker & 2 Others (Supra)** that the Respondent’s actions were as a result of an internal matter which does not warrant this Court’s interference. The dispute squarely falls within the Internal Political Parties Dispute Resolution Mechanisms and Political Parties Dispute Tribunal by virtue of **Section 40 (1) and (2) of the Political Parties Act**. Which provide as follows:

Section 40 of the **Political Parties Act No. 11 of 2011** provides that:

“(1) The Tribunal shall determine-

- (a) disputes between the members of a political party;
- (b) disputes between a member of a political party and a political party;
- (c) disputes between political parties;
- (d) disputes between an independent candidate and a political party;
- (e) disputes between coalition partners; and
- (f) ...

(2) goes further to say:

“Notwithstanding sub-section (1), the tribunal shall not hear or determine a dispute under paragraphs (a) (b) (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms”.

(2) Suspension of the Petitioner from the County Assembly for 28 days

50. The Petitioner argues that his suspension was un-procedural, illegal and null and void since he was suspended without any inquiry being conducted to ground the basis of his suspension, and that he was never afforded an opportunity to be heard or to present his case during the debate over his conduct in the Assembly. The Respondent on the other hand in their Replying Affidavit and further in the submissions, argued that it was clear that the motion for the Petitioner’s suspension was moved by **Hon. Ancelim Chao Mwadime** pursuant to Standing Order 45, and that on 30/07/2020 at 2:30 p.m., the said motion was given in the Order Paper. It is this Order Paper which the Respondent

avers that was published in the Assembly's website and made available to the members in the County Assembly precincts, at least twelve (12) hours before the sitting of the Assembly and therefore, the Petitioner mislead this court alleging that he was never served with any notice of his suspension. The Petitioner has not controverted the allegations that the order paper is published in the Assembly's website and that the said Order Paper is handed to members within the precinct of the County Assembly at least 12 hours before the sitting of the house.

51. In my view, however, as the motion was touching on one of the members of the Assembly (Petitioner), adequate time was required between the giving of the Order Paper and debating the same. This would have given the Petitioner sufficient time to prepare his defence. It would not make any sense as far as fair hearing was concerned to have the Petitioner getting the Order Paper on the day the motion was coming for debate. The rules of natural justice pursuant to article 50(2) (c) dictate adequate time and facilities to prepare a defence. This was a motion, which touched on the Petitioner's suspension from the service of the County Assembly for 28 sitting days. Therefore, more time than 12 hours was required for him to prepare to defend himself in the House, and which time could not be equated to a mere 12 hours. Consequently, I find and hold that twelve hours' notice was not adequate in the circumstances of the case. Further, a perusal of the aforesaid Order Paper clearly shows that the same only stated that the Petitioner was being suspended "... **due to his recent actions which seriously caused detriment to the dignity of the County Assembly, a gross disorderly conduct under Standing Order No. 106(1) (i).**" It is suspect that the Respondent has conveniently not furnished this Court with the County Assembly's Hansard for the 30/7/2020, yet the Hansard for the 21/7/2020 has been furnished to this Court. Consequently, this Court, based on the materials before it, finds that the Petitioner's right to be informed of the charge, with sufficient detail to answer it pursuant to Article 50(2) (b) of the constitution was violated and thereby violating the Petitioner's right to a fair trial.

52. In the end, I find and hold that the Petitioner has partly proved his petition, and that for the reasons that the decision by the Respondent was in violation of the Petitioner's right to a fair trial, and further violated his right to a fair administrative action, it follows that such a decision ought not to stand. The same ought to be quashed, as I hereby do.

53. Further orders are issued as follows:

a) That a declaration is hereby issued declaring that the motion/resolution passed on the 30th July 2020 Suspending the Petitioner herein is illegal, null and void.

b) That a permanent injunction is hereby issued restraining the Respondent, whether by themselves or their servants or agents or otherwise howsoever, from illegally suspending, expelling and/or removing the Petitioner as a member of the County Assembly of Taita/Taveta.

c) That the Respondent and/or the County Assembly of Taita-Taveta to pay the Petitioner all the financial benefits he was entitled to for the 28 days he was illegally suspended from the County Assembly.

d) The Respondent and/or the County Assembly of Taita Taveta shall shoulder the costs of the petition.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH DAY OF JUNE, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Mr. Gikandi holding brief for both parties

Ms. Peris Court Assistant