



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

PETITION NO. E002 OF 2020

IN THE MATTER OF: ARTICLES 1,2,3,10,20,21,22,23,27,47,65,174,176,

AND 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: VIOLATION AND FURTHER CONTINUING

VIOLATION OF THE PETITIONERS' FUNDAMENTAL RIGHTS AND FREEDOMS;

AND

IN THE MATTER OF SECTION 9 AND 14 OF THE COUNTY GOVERNMENT CT NO.17 OF 2012

AND

IN THE MATTER OF: STANDING ORDERS OF KITUI COUNTY ASSEMBLY NOS 152, 154, 156 AND 179

BETWEEN

JOSEPHINE KAVIVI MUTIE & 13 OTHERS.....PETITIONERS

VERSUS

(1) COUNTY ASSEMBLY OF KITUI

(2) THE SPEAKER, COUNTY ASSEMBLY OF KITUI.....RESPONDENTS

R U L I N G

1. This court has considered the Notice of Motion dated 12th October, 2020, the grounds upon which it has been brought and the submissions filed. I have also considered the response made by **Respondents** through a Replying Affidavit sworn by Leader of Majority Kitui County Assembly, **Hon.Peter Mwikya Kilonzo** on **21st October, 2020**.

2. The **Applicants** are seeking conservatory orders to restrain the **Respondents** from implementing the Resolution of 1st Respondent (County Assembly of Kitui) made on 7th October 2020 constituting various House Committees in the County Assembly of Kitui. The Applicants are also seeking orders of status quo in the Kitui County Assembly Committees as constituted before 7th October, 2020.

3. This Court for reasons that had already been explained to both counsels, is constrained on time and has for the interest of justice decided to give its verdict based on what has been placed the court and reserve its detailed reasons to a later date. Towards that end this court has found no merit in the application dated 12th October, 2020. A brief summary of what has swayed the court's mind are as follows:

(i) The relief sought is an injunctive relief and the balance of convenience weighs or tilts in favour of allowing the County Assembly of Kitui to discharge its mandate/duties as provided for in the Constitution of Kenya 2010 rather than restraining them.

(ii) Any prejudice/damages, if any, suffered by the Applicants are mainly monetary and hence quantifiable which can easily be compensated by way of damages if they are successful in the petition pending in herein.

(iii) The application dated 12th October 2020 appears premature in the face of a letter dated 16th October 2020 exhibited by the Respondents addressed to the Minority Party Whip asking the said leader to forward the names of 24 Members of Kitui County Assembly to serve in 15 various committees.

In the end this court finds that granting conservatory orders in the manner sought by the Applicant has the prospect of causing a stand still in the County Assembly of Kitui by stopping them from discharging their mandate/duties to the detriment of “*wanjiku*”. The application dated 12th October 2020 is disallowed for want of merit. The reasoning of this court is reserved to the 19th of January 2021 as this court is proceeding for leave as from the 16th November, 2020 which means that today the 13th November, 2020 is actually the last day this term.

Dated, Signed and Delivered at Kitui this 13th day of November, 2020.

R. K. LIMO

JUDGE