



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 83 OF 2014**

**IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 19, 22, 47, 48, 50, 159, 160,**

**165 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: SECTION 40 OF THE COUNTY GOVERNMENT ACT, 2012 LAWS OF  
KENYA**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 47,**

**50 AND 159 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ALLEGED REMOVAL OF SIX COUNTY EXECUTIVE  
COMMITTEE**

**MEMBERS DUE TO INCOMPETENCE AND ABUSE OF OFFICE**

**BETWEEN**

**1. HON. STEPHEN MRING'A MASAMO**

**2. HON. JOSEPH MBOGO**

**3. DR. VINCENT MASAWI**

**4. ENG. ELIJAH MWANDOE**

**5. HON. GIFTON MKAYA**

**6. HON. FLORA M. MTUWETA.....PETITIONERS**

**AND**

**1. THE COUNTY ASSEMBLY OF TAITA TAVETA**

## **2. THE SPEAKER OF THE COUNTY ASSEMBLY OF TAITA/TAVETA**

## **3. THE SELECT COMMITTEE OF THE**

## **COUNTY ASSEMBLY OF TAITA TAVETA.....RESPONDENTS**

### **JUDGMENT**

1. In the Ruling delivered on 7<sup>th</sup> July, 2015, this court stayed for a period of 21 days the Resolution of the County Assembly of Taita/Taveta removing the Petitioners pending the determination of the Petition herein.

2. I have had the benefit of hearing both the Petitioners' counsel as well as counsel for the Respondents. I have also had the benefit of reviewing in depth the submissions of counsel for both the Petitioners and the Respondents, and I am satisfied that the only viable ground of the Petition lies in the claim by the Petitioners that they were not heard which is a cardinal principle of the Constitution of Kenya 2010 and in particular Article 50 thereof, which in essence embodies the cardinal principle of the common law, European or African that no person may be condemned unheard or conversely no person may be a Judge in his own cause.

3. Thus in matters of criminal prosecution, the suspect or accused is a king or queen who has a heritage of rights which the accuser does not expressly have. However, in matters civil, which include Parliamentary processes at the national and county levels, both the National Assembly and the Senate, work through committees. The Committees do the leg or ground work, compile and make their reports to the National Assembly or the Senate which either adopts or rejects the Report of the respective Committees.

4. Likewise, at the County level, the County Assembly works through Committees. The Committees does the preparatory work, makes its report, and forwards it to the County Assembly which either adopts or rejects the Report of the respective Committee.

5. It is correct to say that members of the Committee are also members of the County Assembly. It is not however the Committee which decides that the Committee Report be adopted as a whole or adopted subject to amendment, or be rejected in its entirety.

6. In my humble view, where the National Assembly, or, as in this case, the County Assembly adopts the Report of its Committee, it is not the Committee, adopting its own Report, or being a Judge in its own house, but rather the County Assembly sitting in lawful session which deliberates and adopts the Report. In so doing, it is carrying out its mandate under Article 185(3) of the Constitution of Kenya 2010.

7. In the circumstances, I do not find that any rights of the Petitioners were breached. The Petition dated 31<sup>st</sup> December, 2014 is therefore dismissed with costs to the Respondents.

**Dated, Signed and Delivered in Mombasa this 10<sup>th</sup> day of December, 2015.**

**M. J. ANYARA EMUKULE**

**JUDGE**

In the presence of:

Mr. Bwire for the Petitioners

Mr. Otieno holding brief for Mr. Weda for the Respondents

Court Assistant Ms. Pamela Osodo