



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CONSTITUTIONAL PETITION NO. 5B OF 2014

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 ARTICLES 1,2,19,27,28,50,73(1)
AND 73(2)

BETWEEN

CAROLINE MUNANIE MUSEE.....PETITIONER

VERSUS

THE MAKUENI COUNTY ASSEMBLY1ST RESPONDENT

THE CLERK, MAKUENI COUNTY ASSEMBLY.....2ND RESPONDENT

THE SPEAKER, MAKUENI COUNTY ASSEMBLY.....3RD RESPONDENT

JUDGMENT

1. The Petitioner herein filed an amended petition pursuant to the provisions of Articles 1, 2, 19, 27 and 33 of the Constitution of Kenya, 2010 and Section 19 of the Sixth Schedule of the Constitution of Kenya, 2010 as read with Rule 11 and 12 of the Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedures, Rules, 2006.
2. The Petitioner, an elected member of the County Assembly for **Kiima–Kiu Kalanzoni Ward** and **Deputy Speaker** of **Makueni County**, presented the petition on her own behalf and that of the Public Interest.
3. The petitioner averred that the respondents had violated her constitutional rights that are guaranteed by Article 1, 2, 10, 19 27, 28, 33, 50 and 73 of the Constitution.
4. The petitioner’s case is that on the **25th March, 2013**, she was served with two (2) motions that were to be tabled to the house for discussion on the **27th of March, 2013**. In the first motion she was accused of discussing the affairs of the assembly in the media hence bringing disrespect to the house. In the second motion, it was queried whether she was procedurally elected as Deputy Speaker.
5. In the result, her constitutional rights were violated. These included: the right to expression by virtue of responding to media, the right to equality and freedom from discrimination and especially so, being the only elected woman out of the 47 members of the County Assembly.
6. Further, she stated that the respondents breached the standing orders on the **27th March, 2014** as they took sides (*moved to different corners*) instead of carrying out secret ballot. They failed to appreciate the purpose of the Order Paper that was meant to guide the house on business to

- discuss. Consequently, they discussed the issue of a vote of no confidence that was not part of that business of the day.
7. The Petitioner was not allowed to defend herself as required by **Article 50** of the **Constitution**. The motions lacked grounds, details or particulars of the circumstances levelled against her. She was not given the required three (3) days' notice under the Standing Orders. Only movers of the motion discussed the motion, as members were denied the opportunity. The respondents misused their authority hence breaching **Article 73(1)** and **(2)** of the **Constitution**.
 8. The Petitioner therefore prays for:-
 - i. A declaration that the interference by the respondents and their motions to discuss her is unconstitutional.
 - ii. An order restraining the respondents from interfering with her freedom of expressions and the right to continue serving as a Deputy Speaker for **Makueni** County Assembly.
 9. The petition is supported by an affidavit deposed by the applicant whereby she basically reiterates what is averred in the petition.
 10. In a response thereto, the 2nd respondent with authority of the 1st and 3rd respondents deposes that the office of the Deputy Speaker is not provided for in the Constitution, in Statute or in the Standing Orders of the 1st respondent. That the petitioner being a member of the **County Assembly** (1st respondent) was elected by dint of **Article 178(2)** of the Constitution as read with **Section 9(4)** and **(5)** of the **County Governments Act** to preside over the sitting of the 1st respondent in the absence of the 3rd respondent.
 11. On the **25th March, 2013**, a notice of motion was given to discuss the petitioner's conduct as permitted under Standing Order 83 emanating from her discussion of the 1st respondent in media and thereby bringing it in disrepute. The requisite three (3) days' notice was given.
 12. On being presented to the Assembly on **27th March, 2014**, the motion was moved and seconded in accordance with **Order 50** of the Standing Orders. It was subjected to an amendment to incorporate lack of confidence in the petitioner and to remove her from office, a proposal that was endorsed. Pursuant to **Section 49(a)** of the **Standing Orders** of the 1st respondent, no further notice was required. Voting was done in accordance with **Section 69** of the Standing Orders. Voting was done in the presence of the petitioner and she participated. Having subjected herself to the process it was procedural.
 13. Further, it is stated that the purport of the motion was to establish that the petitioner had impersonated the speaker (3rd respondent) and insubordinated him by speaking through the media on behalf of the Assembly as he was in the county.
 14. The deputy speaker's office being a public one, members have a right to remove any holder thereof in public interest. Her individual rights and freedoms cannot be greater than the rights of the people of **Makueni County**. The Office of Deputy Speaker remaining vacant defeats public interest. There has been no infringement of the petitioner's rights.
 15. He called upon the court to find that conservatory orders could not be granted as the petition was incompetent and not supported by any affidavit. The petition had not been filed as at 26th March, 2014, therefore it could not be said to have been amended on the **28th March, 2014**.
 16. Responding to the replying affidavit, the petitioner in a further affidavit deposed that she was entitled to benefits including a car and security which she was denied contrary to **Article 27** of the **Constitution** without any explanation whatsoever. She was not given a three (3) days' notice as provided by **Order 83(1)**. **Order 63** of the **County Standing Orders** was not adhered to having been denied the right to be heard. The respondents had failed to show how what was discussed with the press was disrespectful. Some of her colleagues were victimized having been denied a chance of serving in most committees, an action that prompted most of them to file a petition in a Mombasa Court seeking restraining orders against the 1st respondent.
 17. In response, the respondents filed a supplementary affidavit where they stated that the three (3)

days' notice meant three (3) sittings. **Standing Order 63** was not applicable in the case. The procedure of removal of a Deputy Speaker having not been provided for, the procedure of removal of a speaker provided by **Order 58** was adopted. Allegations against the petitioner were disclosed to her in adherence of **Order 44**. **Order 104** was not applicable.

18. Further, that there was no violation of rights. The motions were not personal but meant to discuss the conduct of the petitioner in her capacity as a Deputy Speaker. Amendment for motions is allowed by **Order 45**.

19. The 2nd respondent received the amendments two (2) hours prior to introduction to the house in compliance with **Order 52**. Having been furnished with proceedings of both **25th and 27th March**, and notices, the petitioner could not allege that she was unaware of what she was being accused of. The basis of this petition is that the petitioner herein was an elected Deputy Speaker of the 1st respondent. She therefore performed her duties as Deputy to the 3rd respondent. On the **25th March, 2014**, the **Honourable Jane Ndila** gave notice of motion that stated thus:-

“... The Deputy speaker of this County has been discussing issues of the Assembly in the media thereby bringing into disrespect this Honourable House. I urge that this House discuss the conduct of the Honourable Caroline Munanie, the Deputy Speaker of the House”.

A request for directions was made by **Honourable Bensley Mathuku** on whether the Deputy Speaker had been elected in accordance with the Procedure of the Assembly and if found to have been un-procedurally done whether the seat could be declared vacant and fresh elections held.

20. On the **27th March, 2013**, prior to the motion being discussed, a proposal was made by the **Honourable Josiah Kavita** for amendment of the motion. He sought to insert words:-

“and resolves that it has no confidence in the Deputy Speaker and hereby removes her from office after the words “of this house.”

21. The proposed amendment was adopted. It is upon this background that the petitioner on being aggrieved seeks relief as presented.

22. It is argued by the respondents that it was erroneous for the petitioner to seek redress by way of a constitutional petition. This was founded on the argument that no breach of Constitutional right existed. What was open to her was to seek redress by way of judicial review. They stated that the motion had already been passed by members of the assembly who voted for the removal of the petitioner.

23. The petitioner was of the view that the proceedings of the assembly and the decision thereof were made against her in her individual capacity due to the nature of her gender and the constitutional right that she exercised.

24. A court being moved by way of judicial review issues prerogative orders in an administrative capacity reviewing lawfulness of a decision or action made by a public body. This would be an instance where the decision is made not where the rights and wrongs of conclusions reached are being challenged. Other than the requirement that the body under challenge must be a public body whose activities are subject to control by judicial review, the subject matter being challenged must involve a claim on public law principles and must not be a question of enforcement of private law rights. Ordinarily the orders would be directed against inferior tribunals.

25. This is a case where the petitioner avers that her rights have been breached. She has specified the provisions of the constitution that have been allegedly contravened in that respect. **Article 165 (3)** of the Constitution confers upon this court the jurisdiction to determine claims of infringement of individual's rights. Consequently, this court has the right to interrogate and establish whether a right has been threatened or infringed. Judicial review proceedings would therefore not deal with grievances of the petitioner. The petitioner, whose rights were stumbled on per her allegations, was aggrieved and rightfully chose to come to the Constitutional Court which should determine the issue.

26. Right at the outset, I should point out that this court as mandated by the law is not to enter by

stealth into the mandate and role of the County Assembly. Its duty would be merely to observe that the procedure of doing business is followed and does not contravene the constitution in any manner. This Court must only focus on the procedure adopted. Where the court finds that the assembly breaches the constitution the court must intervene to ensure the constitution is upheld. In the case of the *Speaker of the Senate and Another and the Attorney General and Others (Advisory Opinion No. 2 of 2013)* the Supreme Court observed thus:-

“We are persuaded by the reasoning in the cases we have referred to from other jurisdictions to the effect that Parliament must operate under the constitution which is the Supreme Law of the land. The English tradition of Parliamentary Supremacy does not commend itself to nascent democracies such as ours. Where the constitution decrees a specific procedure to be followed in the enactment of Legislation, both Houses of Parliament are bound to follow that procedure. If Parliament violates the procedural requirements of the Supreme law of the land, it is for the courts of law, not least the Supreme Court to assert the authority and supremacy of the constitution. It would be different if the procedure in question were not constitutionally mandated. This court would be averse to questioning parliamentary procedures that are formulated by the houses to regulate their internal workings as long as the same do not breach the constitution.”

27. One of the functions of the County Assembly is to remove the Deputy Speaker. The court would not interfere in such business unless there is a clear breach of fundamental rights. Where such breach is proved the court must involve its statutory duty by intervening.
28. It has been submitted by the respondents that the petitioner had deviated from the provisions of the law that she sought to rely upon at the inception of the petition. It was argued that reliance on the provisions of the law that had been “*sneaked into the petition*” would be a great injustice to the respondents.
29. Originally at the inception of the petition the petitioner cited **Articles 1, 2, 19, 27 and 33** of the **Constitution**. The petition was later amended. The amended petition was filed on the 28th March, 2014 in unclear circumstances. When the petition came up for determination, no issue was raised in that regard. In the amended petition, **Articles 28, 50, 73(1) and 73 (2)** of the **Constitution**; paragraph **15(1), 38, 47(3) 89 and 248** of the **Standing Orders of Parliament** were cited. Parties must be bound by their pleadings. This was well stated in the case of *Adetoun Oladeju (NIG) Ltd versus Nigeria Breweries PLC S.C 91 of 2002* where it was stated:-

“It is now very trite principle of law that parties are bound by their pleadings...”

30. The petition having outlined alleged breaches of **Articles 1, 2, 19, 27, 28, 33, 50, 73, (1) and 73(2)** of the **Constitution** and **Orders 15(1), 38, 47 (3) 89 and 248** of the **Standing Orders** of Parliament; these are the provisions of the law that this court will be confined to in determining issues raised.
31. It is the petitioner’s averment that her constitutional rights as provided by **Articles 27** of the **Constitution** were violated. She has stated that she has been denied her benefits and entitlement because she is a woman. She argues she is entitled to a car with a driver which she has been denied. This in her view is discrimination.
32. Discrimination was defined in the case of *Peter K. Waweru versus Republic*, by judges in reference to the “*Black’s Law Dictionary 11th Edition* which defines it as :-

“ in constitutional Law the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between them and those not favoured no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, sex, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.”

33. **Article 1** of the *Convention of the Elimination of All forms of Discrimination Against Women, [1979](CEDAW)* defines discrimination against women in the following terms:-

“Discrimination” against women shall mean any distinction, exclusion or restriction made on the basis of Sex which has the effect or purposes of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, or human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

34. The petitioner was bound to adduce evidence to prove that she had been subjected to discrimination. She was required to show that the respondent had denied her privileges which had been allocated to another person without any justification. She claimed that the benefits she was entitled to were being given to **Honourable Mutungi** by the Speaker. She however did not present any evidence to establish the allegations.

35. In the case of *Salem Ahmed Hassan Zaidi versus Faud Hussein Humeidon [1960] E.A. 92* the Court stated that:-

“... if a party neglects to produce evidence and to prove his claim as he is bound to do, the court can proceed to decide the suit on such materials as is actually before it, and that decision so pronounced shall have the force of a decree on the merits notwithstanding the defaults of a party.”

36. Without proof that the respondents did make budgetary allocations for what the petitioner was entitled to but having denied her on the basis of gender, there is no distinction, restriction or exclusion on the basis of sex advanced on the petitioner.

37. **Article 27,(3) (4)** of the **Constitution** stipulates thus:-

“3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

4. The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social organ, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”.

38. The petitioner was required to prove that as a woman, just like men, she had a right to equal treatment that was not accorded to her. What was not clarified was what benefits she was entitled to as a Deputy Speaker from the County Government. Without such proof there is no evidence of discrimination as alleged.

39. It is pleaded that the respondents violated the Petitioners dignity by planning and intimidating members of the 1st Respondent to act in fear and against their conscience. Article 28 of the Constitution states that:-

“Every person has inherent dignity and the right to have the dignity respected and protected.”

40. The Petitioner claims that her right to dignity was breached by the respondents planning and intimidating members of the 1st respondent to act against their conscience and in fear. A perusal of annexure “**MKN3**” the official report of **Makueni Assembly (Hansard)** shows that the procedure adopted for removal of the petitioner from office was done pursuant to **Standing Order No. 69** which provides thus:-

“1) When the speaker provides a roll call voting to be taken, the Division bell shall be rung for five minutes.

2). *The names of one teller for the ‘Ayes’ and one teller for the ‘Noes’ shall be submitted to the speaker and the speaker shall direct the teller to take seats at designated place.*

3). *At the end of ten minutes the speaker shall direct the door to be locked and the Bar drawn and no member shall thereafter enter or leave the county assembly until after the roll call vote has been taken.*

3). *When the doors are locked and the bar drawn and the names of the teller have been announced, the speaker shall put the question again and direct the clerk to call out the names of members in alphabetical order in the presence of the tellers.*

2). *When called out each member shall, thereupon rise in his or her place and declare assent or dissent to the question in the following manner “I vote Yes” or “I vote No” or “I abstain” or use appropriate Kenyan sign language.*

3). *After the clerk has read the last name in the division list, the tellers shall present the result of the roll call vote to the speaker who shall thereupon announce the result of the vote to the county assembly.”*

41. The spirit of the **Standing Order** was upheld. The procedure set out was followed to the letter. There was no breach whatsoever.

42. It is submitted by counsel for the Petitioner that the law implies that election and removal of the Speaker/Deputy Speaker ought to be by way of secret ballot as provided by **Standing Order No. 6** of the Interim County assembly Standing Orders.

43. **Standing Order No. 6** provides that:-

“i) The election of the Speaker shall be by secret ballot.

ii) The Clerk shall, at the commencement of each ballot, cause the ballot box, empty and unlocked, to be displayed to the County Assembly and shall, in the presence of the County Assembly, lock the box, which shall thereafter be kept in the full view of the County Assembly until the conclusion of the ballot

iii). the Clerk shall issue not more than one ballot paper to each member who comes to the table to obtain it and each member who wishes to vote shall proceed to a booth or designated area provided by the clerk for the purposes and located next to and within reasonable distance of the ballot box and all, while there, mark the ballot paper by placing a mark in the space opposite the name of the candidate for whom the member wishes to vote, fold the marked ballot paper before leaving the booth or area and place the folded ballot paper in the ballot box.

iv). A member who, before the conclusion of a ballot has marked a paper in error may, by returning it to the Clerk, obtain another in its place and the Clerk shall immediately cancel and destroy the paper so returned.

v). The Clerk shall make such arrangements as may be necessary to enable any members with disability to vote.

vi). When it appears to the Clerk that all members who are present and who wish to vote have placed their ballot papers in the ballot box, the Clerk shall unlock the box, examine the ballot papers and, having rejected those unmarked or spoiled, report the result of the ballot; and no member who has not already recorded his or her vote shall be entitled to do so as the clerk has unlocked the

ballot box.

vii). A ballot paper is spoiled if in the Clerk's opinion, it does not identify the candidate purported to be elected by the member voting".

44. It is clear that **Standing Order No, 6** provides specifically for elections of the Speaker into the office. The removal of the Speaker from office is provided for by Order 58. It states that;-

"i. The speaker may be removed from office by the Assembly through a resolution supported by not less than seventy five percent of all the members of the County Assembly.

ii. A notice of intention to move a motion for a resolution to remove the Speaker shall be given in writing to the Clerk of the County Assembly, signed by at least one third of the members of the County Assembly stating the grounds for removal.

iii. A motion for resolution to remove the speaker shall be presided over by a member of the County Assembly elected to act as Speaker as contemplated under Article 178 (2) (b) of the Constitution.

vi. Before the debate and voting on a motion under paragraph (3), the Speaker shall be accorded an opportunity to respond to the allegations on the floor of the assembly."

45. There is no provision stating that removal of a Speaker/Deputy Speaker from office shall be by secret ballot. The process adopted was voluntary. No evidence of coercion has been disclosed. The allegation that members of the House were intimidated has no basis.

46. In the premises, the Petitioner's rights were not infringed, and her dignity was not trampled upon.

47. It is stated that the 1st respondent cited the petitioner for exercising her freedom of speech. Freedom of speech is enshrined in **Article 33** of the Constitution.

48. **Article 33(1) (9)** of Constitution states thus-

"Every person has a right to freedom of expression, which includes –

Freedom to seek, receive or impart information or ideas."

49. Section 33(3) however, states:-

"In exercise of the right to freedom of expression, every person shall respect the rights and reputation of others".

50. The Petitioner who has sought a declaration that her rights in regard to her freedom of expression were infringed had a duty of establishing that she acted pursuant to the freedom enshrined in the Supreme law of the land and that she acted in utmost respect to other people's rights and reputation.

51. It is not denied that the petitioner told the media that it was the Speaker denying her security, driver and a car and all other, benefits she was entitled to. The reputation of the 3rd respondent was called into question. It needed some evaluation by the public. His integrity was at stake. Having failed to find better means of exercising the right to freedom without bringing into disrepute the right and reputation of others, the petitioner cannot be heard to allege that her own right was infringed.

52. It is averred that the petitioner was not accorded an opportunity of defending herself which was in breach of **Article 50** of the **Constitution**. The alluded to Article provides for fair trial in a Court of Law. **Article 50(2)** which the Petitioner has referred to provides that every accused person has the right to a fair trial which includes the right to be presumed innocent, to be informed of the charge with sufficient detail and to have adequate time to a defence.

53. As I have aforesaid, the article cited does provide for a hearing before a court or an equivalent body where the accused person has a right to be represented by an advocate and evidence being adduced.
54. That notwithstanding, a perusal of annexures “MKN 1b” and “MKN 3” (*official reports of Makueni County Assembly*), it is evident that the motion was brought to the House on the **25th March, 2014** and was discussed on the **27th March, 2014**. The Petitioner was aware of the motion brought against her, she was given time to respond. The motion was discussed and she was given time to defend herself. She stated this in her defence:-

“Thank you Mr. Speaker for giving me this opportunity to respond to the allegations. In the first place, Mr Speaker, this motion that has been brought to the House is not detailed so I was not sure of the allegations that I was going to talk about. Then on these other allegations, I doubt whether am in a position to defend myself against this. Mr. Speaker, you will notice that I am being singled out and am being denied an opportunity to speak which is a right. Let me rest my case”.

55. From the foregoing, it is apparent that the Petitioner was granted an opportunity to respond to the motion. She chose not to take advantage of the opportunity she was accorded of the right to express herself effectively.
56. Looking at the notice given by **Hon. Ndila**, the intended removal of the Petitioner was based on the fact that she addressed the media and had brought disrespect to the house. This means that what was being interrogated was her conduct. Facts were within her knowledge. However, she had an opportunity to request for further particulars in respect of the allegations to be able to defend herself appropriately. She however chose to close her case. This would amount to a fair hearing save that **Article 50(2)** of the Constitution refers to rights of a person who is accused and charged with an offence under the Criminal Law. The mandate of the 1st respondent to discuss motions is derived from **Order 44** of the **Standing Orders** which gives the Speaker the discretion to determine suitability of the motion prior to approving it for discussion.
57. The Petitioner also avers that the respondents breached **Article 73(1)** and **(2)** of the Constitution by refusing to carry out secret ballot, an action that was meant to intimidate members of the 1st respondent and victimize whoever did not support the 2nd and 3rd respondents. Further, she claims that the decisions were not impartial and were influenced by nepotism, favouritism, other improper motives or corrupt practises.
58. I wish to point out that in the petition; the petitioner has cited provisions of the National Assembly Standing Orders as being applicable to the 1st respondent. The **County Governments Act, 2012** has provided guidance in that regard. **Section 14(7) (8)** provide that:-

“7). Until a County Assembly makes its Standing Orders under Sub-section (1) the Standing Orders of the National Assembly shall, with the necessary modifications, apply to that County Assembly.

8) Without limiting the generality of subsection (1) the Standing Orders made under this Section shall provide for the modes specified in the Second Schedule.”

59. The respondents did provide Interim Standing Orders of the 1st Respondent. Their existence having not been disputed, these are the Standing Orders that are applicable. This was well stated in the case of *Frank Mulise Makola versus Felix G. Mbiuki & 4 Others [2013] eKLR* as follows:-

“... I reiterate what was stated in the case of Peter O. Ngoge versus Francis Ole Kaparo and 4 others; Justices Nyamu, Wendo and Dulu declared that,

“The invitation to the court to intervene in the matter of the election of Speaker

which is clearly regulated by the Standing Orders...” the doctrine of separation of powers as regards the internal arrangements of Parliament demands that we do not interfere with any such internal arrangements. The internal arrangements are normally regulated by the Standing Orders of the House...”

60. The National Assembly Standing Orders would only have been applicable to the 1st respondent if their standing orders were non-existent.
61. It is argued by the respondents that the office of the Deputy Speaker is non-existent and members of the 1st respondent wanted to come up with a procedure on election of the office bearers. **Article 178** of the Constitution only provides for election of the County Assembly Speaker from persons who are not members of the Assembly. **Article 178(2) (b)** provides for election of another member of the assembly by the Assembly itself to preside over a sitting of the **County Assembly** in the absence of the Speaker.
62. **Article 178 (3)** of the Constitution gives Parliament the mandate to enact legislation providing for the election and removal from the office of speakers. **Section 21(3) (4)** of the **Elections Act, 2011** provides:-

“(3) The Deputy Speaker of a County Assembly shall be elected from among persons who are members of that County Assembly.

(4) The First Schedule shall, with necessary modifications, apply to the Election of the Deputy Speaker after the first election under the Constitution”.

63. The intention to have a Deputy Speaker of a County Assembly is expressly provided for. The first Schedule to the election Act provides for the procedure of electing a Speaker. The only reasonable modification that can be applied is to adopt the procedure used in respect of the Speaker apply to the Deputy Speaker.
64. Section 14(8) of the County Government Act specifies that Standing Orders are required to provide for election of a member to deputize the Speaker. However, there is no provision followed in removal of the Deputy Speaker.
65. The function of the Deputy Speaker as provided by **Section 9(5)** of the **County Governments Act, 2012** is limited to presiding over the sittings of the Assembly in the absence of the Speaker. The said sub-section alludes to removal. It states thus:-

“unless otherwise removed...”

66. A situation where the Deputy Speaker is removed is contemplated. Therefore the Petitioner having addressed media on matters to do with the house business following her argument that she was being gagged in exercise of her rights was overstepping her mandate. The action taken by the respondents in the premises would be justified.
67. As I have stated, this court can only interfere with the process adopted in the house if the motions were in breach of constitutional rights of the petitioner. According to the **Hansards** dated **25th March, 2014** and **27th March, 2014**, annexed to the replying affidavit, the notice of motion for the unbecoming conduct of the Deputy Speaker was presented to the 1st respondent and was discussed on the **27th March, 2014**. **Hon. Kavita** proposed an amendment of the motion to include words to the effect that the house had no confidence in the Deputy Speaker and thereby remove her from office. **Hon. Nzioka** having seconded the motion, the amendment was effected. The motion was debated. The petitioner was accorded a chance to respond to the allegations. The voting was done as provided by **Order 69** of the **Standing Orders**.
68. Standing Orders provide for voting by Divisions. The Speaker is seized of the discretion to direct how the voting should be done for the convenience of the assembly. Having complied with the law the petitioner's ouster was procedural.
69. Discussion of the 2nd motion was inconclusive as a ruling was reserved for **2nd April, 2014**. During the intervening period this petition was instituted. The ruling of the Speaker on the question of whether the procedure of election of the Deputy Speaker had been followed remains

unanswered. There was division as to the question of divesting it from the current office holder. Whether or not any rights would be violated would have to await the ruling of the speaker.

70. It is argued by the petitioner that as a Deputy Speaker she should be the chairperson of all committees and should preside over all committees of the whole house as provided by paragraph 15(1) of the Parliamentary Standing Orders. The cited orders are inapplicable to the County Assembly. The operating Standing Orders provides:-

“As soon as practicable after the election of a speaker following a general election, a chairperson of committees shall be elected.” (See Order 14(1) of the interim, Makueni County Assembly Standing Orders).”

The Petitioner cannot purport to usurp powers that are not within her domain.

71. The Petitioner alluded to discrimination of some members of the 1st respondent in a suit filed in the Mombasa Law Courts without proof. If this is the case, the matter should be addressed by the Mombasa Court.

72. Finally, it is submitted that the Standing Order No. 83(1) of the Interim County Assembly Orders was violated. The said orders states:-

“Neither the personal conduct of... speaker... nor the conduct of the holder of the office whose removal from such office is dependent upon a decision of the county Assembly shall be referred to adversely, except upon a specific substantive motion of which at least three days’ notice has been given.”

73. The notice of motion was issued on the **25th March, 2014** a **Tuesday**. In the replying affidavit it is stated that per the usage and practise of the 1st respondent, Wednesdays’ sitting is taken to be two (2) sitting days because it is the only date in the calendar of the Assembly which has got both a morning sitting and an afternoon sitting with each sitting considered to be a day.

74. **Order 2** of the Interim County Assembly, Standing Orders of the **County of Makueni** interprets “**sitting day**” as:-

“Means any day on which the County Assembly sits.”

75. It is not disputed that as per the practice, the Assembly usually has two (2) sittings on Wednesdays that constitute two (2) days. In the premises, the time within which the motion was held was within stipulated limits as the notice given was sufficient. This means that due process was followed.

76. With regard to the amendment of the second motion, according to **Order 45**, the 3rd respondent has the discretion to permit an amendment if in his opinion it does not alter any principle embodied in the motion of which notice has been given. Further, according to **Order 49**, an amendment to a question that is already posed does not need a notice. This means that the respondents dealt with the amendment in accordance with the provisions of the Standing orders.

77. In the result, it is apparent that the constitutional rights of the petitioner as pleaded were not breached. Conservatory and Injunctive orders sought cannot issue. Accordingly, the Petition is dismissed.

78. The Petitioner shall pay the Respondents’ costs.

79. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 24th day of JULY, 2014.

L.N. MUTENDE

JUDGE

