



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
Petition 175 of 2012

JAYNE MATI PETITIONER

AND

THE HON ATTORNEY GENERAL.....1ST RESPONDENT

SPEAKER OF THE NATIONAL ASSEMBLY.....2ND RESPONDENT

THE MINISTER FOR FINANCE.....3RD RESPONDENT

RULING

1. The matter before me today is a preliminary objection and the issue framed is whether the Speaker of the National Assembly is a proper party to these proceedings.
2. The amended petition filed in Court on 15th May 2012 has two key prayers for determination that is:
 - (1) *The Court be pleased to issue a declaration to issue that **sections 44 and 44A of the Finance Act, 2011** is ultra vires **Article 230** of the Constitution of the Republic of Kenya and are therefore null and void.*
 - (2) *The court be pleased to issue a declaration that it is unconstitutional for the National Assembly and/or any person, state organ and/or any state authority to review, increase or in any way deal with the salary and/or remuneration of any public officer without the recommendation and/or authority of the Salary and Remuneration Commission.*
3. I have heard the respective arguments by the parties and in my view the issue is whether there is a cause of action against the Speaker of the National Assembly.
4. What is challenged in these proceedings is an Act of Parliament and not anything said or done by the Speaker in the course of proceedings which may be a violation of fundamental rights and freedoms or of the Constitution itself, it is therefore unnecessary for me to decide whether in fact the Speaker can be sued

in proceedings generally.

5. The issue before the court is a preliminary objection and the court must consider the allegations stated therein as true and correct. The issue therefore is whether the Act sought to be impugned can be placed on the feet of the Speaker once the bill which was challenged becomes an Act of Parliament. Once the legislative act is manifested in an Act of Parliament it may be challenged without involving the Speaker of the National Assembly.

6. As the prayers in the amended petition show, it is the ***Finance Act, 2011*** that is challenged. The Bill once passed becomes an Act of Parliament and the Speaker cannot be held responsible for it, at least not in the manner suggested by the petitioner.

7. In the circumstances of this case, I do not think the Speaker of the National Assembly is a necessary party to these proceedings. The order then is that the Speaker of the National Assembly is struck out as a party to this suit with no order as to costs.

DATED and DELIVERED in NAIROBI this 18th day of September 2012

D.S. MAJANJA

JUDGE

Mr Kabugu instructed by Alex Karanja and Company Advocates for the petitioner

Mr Wamosta, Litigation Counsel, instructed by the State Law Office for the 1st and 3rd respondent

Mr A Njoroge, Advocate instructed by the Speaker of the National Assembly

Mr Mwenda, Advocate, instructed by the Parliamentary Service Commission

Mr Chigiti instructed by Chigiti and Chigiti Advocates for the amicus curiae, the Kenya National Human Rights Commission