



Bett v County Assembly of Kericho & 2 others (Petition E013 of 2024) [2025] KEHC 2769 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PETITION E013 OF 2024
JK SERGON, J
MARCH 13, 2025**

BETWEEN

HON ERIC BETT PETITIONER

AND

COUNTY ASSEMBLY OF KERICHO 1ST RESPONDENT

THE SPEAKER, COUNTY ASSEMBLY OF KERICHO 2ND RESPONDENT

HON HARON ROTICH 3RD RESPONDENT

RULING

1. This court has been called upon to determine two applications contemporaneously; a notice of motion dated 25th November, 2024 and a notice of motion dated 4th December, 2024.
2. In the notice of motion dated 25th November, 2025 the applicant is seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) Spent
 - (iv) Spent
 - (v) That pending the hearing and determination of the main Petition, this Honorable Court be pleased to issue orders to restrain the Speaker, County Assembly of Kericho /2nd Respondent from scheduling for an election of a new Deputy speaker and /or swearing in of the said new Deputy speaker.



- (vi) That pending the hearing and determination of this Petition, an order do issue for the Petitioner/Deputy Speaker to retain, hold, serve, and discharge all functions of the Deputy Speaker of the Kericho County Government.
 - (vii) That this Honorable Court be pleased to issue any other or further orders it may deem fit, fair, and just in the interest of justice.
 - (viii) THAT the costs of this Application be provided for.
3. The application is based on the grounds set out on the face of it and the facts depones in the supporting affidavit of Hon. Eric Bett the applicant and petitioner herein.
 4. He avers that by a notice and a proposed motion dated 11th November 2024, the Clerk of the 1st Respondent, presented to the 2nd Respondent with the motion for the Removal of the Petitioner as a Deputy Speaker, and subsequently the 2nd Respondent directed that the motion shall be tabled within seven days and consequently the said motion was tabled on the 20th day of November 2024.
 5. He avers that on 20th November 2024, the 3rd Respondent tabled Notice of Motion for the removal of the Petitioner as a Deputy Speaker and the County Assembly by a vote of 29 out of 47 MCA's approved the Motion.
 6. He avers that by a resolution passed on 25th November 2024, and a Special Sitting held by the Respondents on 25th November 2024, the County Assembly, through acclamation, resolved to remove the Petitioner on the following grounds:
 - (i) The Petitioner allegedly led and/or signed an affidavit sworn on 2nd October, 2024, together with sixteen (16) other MCAs. In the said affidavit, the 16 MCAs, alongside the Petitioner, notified the Speaker of their unanimous decision to remove the Governor in the County Assembly.
 - (ii) The Petitioner issued an internal memo dated 28th February 2023, which communicated His Excellency Governor's nominations of various individuals to specific positions within the County Assembly.
 7. He avers that the resolution to remove him is null and void. The allegations are empty, void, unfounded, and cannot warrant removal and as such the removal from office based on such grounds would violate his rights. He avers that the actions of the Respondents herein are purely meant to punish him for exercising his constitutional rights and freedoms of inter-alia associations and assembly.
 8. On the nullity of the resolution for removal, the Petitioner avers that the resolution garnered only twenty-nine (29) votes out of forty-seven (47) MCAs, falling short of the required two-thirds majority (32 votes) needed to validate such a motion on 20th November 2024 and allow for the constitution of a special committee to carry out investigations. Therefore the vote resolution of the 29 out of 47 Members of County Assembly fell short of the legally mandated two-thirds vote to make the removal process valid hence the removal resolution by the 1st, 2nd and 3rd Respondents is null, void and should be quashed.
 9. On the grounds for removal, on the allegation that the Petitioner signed and or led the signing of an affidavit sworn by 16 MCAS on 2nd October 2024, the Petitioner avers that he had the democratic right to decide whether to support or oppose the motion for removal of the Governor. There is therefore no basis to allege that the Petitioner led or influenced the 16 MCAs to vote against or abstain from voting on the Governor's impeachment, each of the 16 members has independent rights to decide how to cast their votes in any motions moved in the house. The Petitioner's decision not to vote for the



removal of the Governor cannot be construed as insubordination of the Speaker and /or Assembly, nor does it amount to gross misconduct nor does it amount to jeopardizing the discharge of the County Assembly's mandate as alleged or at all.

10. On the allegation of impropriety in signing the internal memo dated 28th February 2023, which communicated the Governor's nominations to various dockets, the Petitioner avers that the Speaker verbally requested the Petitioner to relay the communication. The Petitioner merely conveyed information without making or altering decisions. No prejudice resulted from the communication.
11. The Petitioner faulted the conduct of the speaker in the removal process, he refused to give the Petitioner the Hansard and the related materials used to support the motion for his removal on 20th November 2024 contrary to articles 47 and 50 of the Constitution and Rule 229 of the County Assembly of Kericho Standing Orders. 9.4. He further refused to acknowledge on record the position of 17 MCAs rejecting the removal motion of the Petitioner on 20th November 2024 but used it to deny them to contribute to the motion on the floor of the house on 25th November 2024.
12. The Petitioner avers that the grant of interim orders would sustain and preserve the Court's judicial mandate as well as ensure that the substratum of the Petition herein is not rendered nugatory.
13. The Petitioner avers that it would be just and in the interest of the rule of law, fairness, and public interest to grant conservatory orders prayed for to enable Court exercise its power to pronounce itself on the issues herein.
14. The Respondents filed a replying affidavit in response to and in opposition of the Petitioner's Notice of Motion Application dated 25th November, 2024 that was sworn by Dr. Patrick Mutai the 2nd Respondent herein and speaker of the 1st Respondent, therefore competent and authorised to swear the Affidavit.
15. He avers that the gravamen forming the dispute in this Application and the Petition arises from the proceedings before the County Assembly (1st Respondent) leading up to the removal and the eventual replacement of the Petitioner as the Deputy Speaker, County Assembly of Kericho.
16. He avers that vide a Notice of Proposed Motion dated 11th November, 2024, the 3rd Respondent herein, being a member of the County Assembly of Kericho and the Majority Whip, gave a notice of his intention to move a motion for the removal of the Petitioner as the Deputy Speaker for gross misconduct. He annexed a copy of the said Notice of Proposed Motion dated 11th November, 2024.
17. He avers that the said Notice of Proposed Motion was accompanied by the Notice of Motion detailing the grounds under which the 3rd Respondent sought the removal of the Petitioner and the Signatures of Members supporting the removal of the Petitioner. He annexed copies of the Notice of Motion and the List of Signatures of members supporting the Motion.
18. He avers that the Clerk approved the said Motion as meeting the requirements of Kericho County Assembly Standing Orders and forwarded it for his approval.
19. He further avers that vide a letter dated 12th November, 2024, the Clerk notified the Petitioner that the Notice of Motion for his removal was scheduled to be moved on 20th November, 2024 and invited him to respond to the Motion within 7 days setting out the grounds of opposition pursuant to Standing Order 13B(3) of Kericho County Assembly Standing Orders. He annexed a copy of the said letter dated 12th November, 2024.
20. He avers that the Motion was tabled by the 3rd Respondent on 20th November, 2024, debated and approved by the members of the Assembly. Following the approval of the motion for the removal of



the Petitioner as the Deputy Speaker, the Assembly voted to approve the appointment of 5 members of the Assembly to serve in the special committee formed to investigate the allegations highlighted in the Motion.

21. He avers that the special committee formed to investigate the allegations against the Petitioner sat from 21st November, 2024, invited the mover of the motion and the Clerk of the Assembly to attend before it and shed light on the allegations. Further that the Petitioner was invited and he appeared before the committee select committee to answer to the allegations.
22. He avers that in the report tabled before the County Assembly on 25th November, 2024, the select committee found the allegations against the Petitioner in the Motion brought by the 3rd Respondent to be substantiated and recommended the removal of the Petitioner as the Deputy Speaker, County Assembly of Kericho. He annexed a copy of the Report of the Select Committee tabled in the Assembly on 25th November, 2024.
23. He avers that the Report of the Select Committee was extensively debated by the members of the 1st Respondent Assembly and 32 members of the 1st Respondent Assembly voted in support of the Report, effectively removing the Petitioner as the Deputy Speaker of the 1st Respondent. He annexed a certified copy of the Hansard of the proceedings of the Assembly on 25th November, 2024.
24. He avers that it is not therefore true, as alleged by the Petitioner, that only 29 members of the 1st Respondent voted to support the motion. He stated that section 11 of the *County Governments Act* provides for a threshold of two thirds of the members to pass a resolution to remove the deputy speaker, which threshold, pursuant to Standing Order 13B of Kericho County Assembly Standing Orders is 31 members as the deputy speaker does not vote.
25. He avers that due process was followed in the removal of the Petitioner. He was given an opportunity to be heard on the allegations and the report of the select committee was processed procedurally and received a support of more than the number of members of the Assembly required under section 11 of the *County Governments Act*, 2012 and Standing Order No. 13B of the Kericho County Assembly Standing Orders.
26. He avers that the Petitioner, having been removed, was immediately replaced on 26th November, 2024 with Hon. Cheruiyot Bett who was the only member who had applied to fill the position. The replacement was done as per the Standing Orders of the 1st Respondent, therefore, the Petitioner's position having been effectively filled by Hon. Cheruiyot Bett, all the prayers urged in the Application have been overtaken by events.
27. He avers that he conscientiously believes that the members of the 1st Respondent exercised their powers as per the law in effecting the removal and replacement of the Petitioner as their deputy speaker.
28. He further avers that the orders sought in the Application, if granted, will result in confusion and might grind the administration of the 1st Respondent to a halt as majority of the members of the 1st Respondent have voted to remove the Petitioner.
29. In the notice of motion dated 4th December, 2024 filed jointly by the 1st, 2nd and 3rd respondents, they are seeking the following orders;
 - (i) Spent
 - (ii) Spent



- (iii) The Honourable Court be and is hereby pleased to discharge and/or vacate the ex-parte interlocutory orders issued in this matter on 25th November, 2024 in their entirety.
- (iv) The costs of the Application be provided for.
30. The application is based on the grounds set out on the face of it and the facts deponed in the supporting affidavit sworn by Dr. Patrick Mutai, the 2nd Respondent herein.
31. He further avers that he is the Speaker of the 1st Respondent and duly authorized by the 3rd Respondent to swear the affidavit on his behalf and in support of the Application.
32. He avers that the Petition, the Application, and the orders sought to be discharged and/or vacated vide this Application were animated by the removal of the Petitioner from the office of the Deputy Speaker, County Assembly of Kericho following a motion moved by the 3rd Respondent herein.
33. He avers that this Court granted the Petitioner the following orders; firstly, an order restraining the Speaker of the County Assembly, the 2nd Respondent herein from scheduling for an election of a new deputy speaker, and/or swearing in of the said new Deputy Speaker; secondly, an order restraining the speaker of the County Assembly of Kericho and the 3rd Respondent from acting on the resolutions of the special sitting held on 25th November, 2024, that purported to have removed the Deputy Speaker from office; and thirdly, an order for the Petitioner to retain, hold, serve and discharge all the functions of the Deputy Speaker of Kericho County Assembly.
34. He avers that at the time the said court orders were issued, 1st Respondent Assembly had sat and acted on the resolution of the assembly removing the Petitioner from office and elected a new deputy speaker who had also been sworn in. By virtue of that, the issues raised in the Application and the Petition had become moot and the orders had been overtaken by events. He annexed copies of the Order Paper and Hansard of 25th November, 2024.
35. He avers that the 1st, 2nd and 3rd Respondents have raised issues with the ex-parte interim orders issued by this Court and seeks to have them discharged and/or discharged for the reasons that they were issued prematurely and further that these orders were issued in total disregard of the fact the threshold was met, that the Petitioner had been afforded a chance to respond to the grounds for his removal from office, and in any case had been overtaken by events by the time they were served.
36. He avers that the members of the 1st Respondent had justifiable grounds explicitly provided for under the *County Governments Act*, and the Standing orders as being proper grounds for removal of a deputy speaker of the county assembly from office, backed by evidence, and the requisite threshold for removal from office of the deputy speaker was met. He annexed a copy of the motion moved by the 3rd Respondent as contained in the Assembly's Order Paper.
37. He avers that the principal allegations against the Petitioner in the Motion tabled by the 3rd Respondent were two, namely; that the Petitioner had insubordinated the Assembly by mobilizing 16 members to abscond the Assembly during the consideration of the motion for the impeachment of the Governor on 1st October, 2024; and making communications without his authority, a case in point being a communication made on 28th February, 2023 in which he communicated the list of nominees for appointments from the Governor without his prior approval.
38. He further avers that the allegations, according to the 3rd Respondent, evinced the blatant abuse of power by the Petitioner and collectively amounted to gross misconduct on the part of the Petitioner.



39. He avers that the due process was followed in the removal of the Petitioner. He was given an opportunity to be heard on the allegations and the report of the select committee was processed procedurally and received a support of more than the number of members of the Assembly required under Section 11 of the [County Governments Act](#), 2012 and Standing Order No. 13B of the Kericho County Assembly Standing Orders.
40. He avers that the orders issued by the Court are therefore irregular and improper and unless they are discharged and/ or vacated in the earliest time possible, they not only continue to place unnecessary impediments to the Respondent's discharge of their constitutional mandates but also embarrass the administration of justice.
41. He avers that in the present circumstances it is just, fair and expeditious to discharge and/or vacate the orders issued by the court 25th November, 2024.
42. The Petitioner filed a replying affidavit in response to the respondent application dated 4th December, 2024. He reiterated the chronology of events resulting in his removal from office.
43. The Petitioner avers that the court orders were obtained and served electronically and physically, he annexed a bundle of documents marked BE demonstrating the efforts to serve the respondents, the court orders dated 25th November 2024 were therefore known to the respondent's long before they purported sitting held to elect his replacement by acclamation, acting on a resolution of special sitting held on 25th November 2024, and swearing the purported deputy speaker. The Petitioner avers that these orders as issued are in the best interest of the administration of justice. They do not cause any embarrassment. They are not an impediment to discharge of the Respondent's functions. None of the Respondent's functions have been shown to have been impeded and that there is no conceivable sense which they could have been impeded.
44. There is an affidavit by 17 MCAs of the County Assembly in response to respondents application dated 4th December, 2024 they aver that they were familiar with the facts of this case.
45. They aver that on 11th November 2024, the 3rd Respondent issued a notice to remove the Petitioner from his position as a Deputy Speaker. That on 20th November 2024, a special session was held for consideration of a motion for removal of the Deputy Speaker, the Petitioner herein. The motion was tabled by the 3rd Respondent and was supposed to be supported by two thirds [2/3] of all Members of the County Assembly [MCA's] and that 2/3 of 47 MCA's in the Kericho County Assembly are supposed to be at least 32 MCA as per the Assembly's Standing Orders, order 13B Rule 7, 10, 11, 12 and 13.
46. They aver that on the said date, all the seventeen [17] who were opposed to the motion notified the speaker, through a joint affidavit sworn on 19th November 2024 of their opposition and non-attendance.
47. They aver that the county assembly session of 20th November 2024, which was presided over by the speaker could not pass the $\frac{2}{3}$ threshold as the Kericho County requires 32 MCAs to achieve a $\frac{2}{3}$ and this case, there were only 29 MCAs in session and even if all of them had voted for the motion it could not achieve $\frac{2}{3}$ votes.
48. They aver that another special session was convened on 25th November 2024 to receive the ad-hoc committee report recommending removal of the Petitioner as Deputy Speaker. The session went on from 9.30am to 10.30am and the 17 of them were not allowed to make any contributions to the floor of the house. The report was then adopted by acclamation. There was no voting process so as to establish that the required $\frac{2}{3}$ of the MCA's votes had been met, as required by Standing Orders.



49. They aver that the respondents purportedly scheduled elections of a new deputy speaker to be done on 26th November 2024 from 9.30am. On the said date, the 17 MCAs were at the County Assembly before 9.00 am but they were denied access by security. They were kept away from the assembly up to 10.30 am when the gates were opened by then Hon. Cheruiyot Bett had been sworn in as the Deputy Speaker.
50. They aver that they were aware of the court order, they had seen the court order of 25 November 2024 at the gate to the assembly. They were determined to observe the order at the assembly if they had not been obstructed.
51. They reiterated that the threshold of two-thirds [2/3] of all MCAs required for the motion to remove the Petitioner under Standing Orders was not achieved, in the sessions of 20th November 2024 for the motion to be moved, and of 25th November 2024, to receive ad-hoc report recommending removal, and therefore the motion for the removal of the Petitioner was not in compliance with the Law.
52. This court directed the parties to file their submissions in respect to the both applications.
53. The Petitioner in his submissions reiterated the sequence of events relating to the process for his removal. That the notice of motion for his removal was read on 12th November 2024. He was subsequently given a letter to respond to the allegations within 7 days, which he responded to. The motion was then moved at the Assembly by the 3rd Respondents and discussed on 20th November 2024. He was given a chance to defend himself before the motion was discussed. Which he did, plus presenting a list of 17 members who had sworn an affidavit to indicate that they are not supporting the motion of his removal. He was then told to step out of the Assembly. He later learned that the speaker had passed the motion unprocedurally without meeting the required threshold of two thirds. The threshold was not met because under the Standing Orders, providing for the removal of a Deputy Speaker. Standing Order 13 B, Order 7, 10, 11, 12 and 13 requires that the removal must muster 2/3 votes of all MCA's. In the Kericho County assembly there are 47 MCA's and therefore 2/3 votes are 32 MCA's. The MCA's at the County Assembly on that date were only 29 MCA's. Even if they all voted to support the motion they could not achieve the 2/3 threshold.
54. He submitted that he received a letter via email and WhatsApp inviting him to a select committee, to appear and defend himself the following day the 21st November 2024. He appeared before the select committee and pleaded his case and even challenged the process thus far. On Friday 22nd November 2024 he received an email report of the select committee resolving to recommend removing him from office. A special sitting was set for 25th November 2024 to receive the Ad-Hoc committee report to remove him. He appeared and challenged the report. After deliberation the speaker put the question for voting but did not conduct voting, instead the speaker used acclamation to pass the vote. This was instead of taking a vote to determine two thirds threshold as required in the Standing Order clause 13B subsection 12 and 13. Protestations raised at him were to no avail. The speaker ignored and closed the session.
55. The Petitioner submitted based on the facts, it is clear that long before the proceedings and processes for the Petitioner's removal and replacement before 9:30 am and 10:30 am on 26th November 2024 the court's order of 25th November 2023 had been served by e-mail on 25th November 2024 at 8:00 pm and served physically on 25th November 2024 and early morning of 26th November 2024 which was long before the purported election/acclamation and swearing-in of the purported Deputy speaker the next day on 26th November 2024.
56. The Petitioner contended that the orders made by court, on 25th November 2024 on the application by the Petitioner were well founded. There was a requirement for two thirds votes threshold in



Standing Orders of Kericho County Assembly Order 13 B, Orders 7, 10, 11, 12 and 13 for; (i) The motion to remove the Petitioner as Deputy Speaker in the session of 20th November 2024 when the motion was moved; and (ii) The receipt of Ad-Hoc committee's report and the resolution for removal in the session of 25th November 2024. Therefore based on these considerations it is well founded that conservatory orders of 25th November 2024 were to be issued pending substantive consideration of the application and petition.

57. The Petitioner submits that having served the Petitioner with the order using a known email address and through WhatsApp to last known e-mail address and telephone number the service is adequate and sufficient. He cited the case of *Real-Time Company Limited v Equity Group Foundation & another* (Civil Suit E175 of 2020) [2022] KEHC 15313 (KLR) (Civ) (10 November 2022) (Ruling), where the court stated;

“17. ..Admittedly, this suit was filed in 2020 at the onset of the COVID-19 Pandemic in Kenya. In February of 2020 vide [Legal Notice No 22 of 2022](#) the Civil Procedure Rules were amended to include the new Rules 22A, 22B & 22C to Order 5 of the CPR, thus introducing new modes of service. The relevant rule for purposes of this case Rule 22B which provides that; 1) "Summons sent by Electronic Mail Service shall be sent to the defendant's last confirmed and used E-mail address 2) Service shall be deemed to have been effected when the Sender receives a delivery receipt...

21 In any event for the alternate service to be proper, Order 5 Rule 22B Civil Procedure Rules requires the service to be effected upon the defendant's last confirmed and used email address and that service shall be deemed to have been effected when the sender receives a delivery receipt to be attached to the affidavit of service of the officer of the court duly authorized to effect service.”

58. Additionally, the Petitioner had the order served by pasting it at the speaker's door, and at the entry gate of the County Assembly, under the door at the Speakers door and on the County Clerk. The Petitioner submits that these are equally good service and notification of the orders and the respondents were therefore in contempt of court orders. He cited the Court Of Appeal at Nairobi Civil Application No. Nairobi 1 of 2017 (Ur 1/2018) *Fred Matiang'i The Cabinet Secretary, Ministry Of Interior And Coordination Of National Government v Miguna Miguna & 4 Others* [2018] Eklr the Court of Appeal held that; “When courts issue orders, they do so not as suggestions or pleas to the persons at whom they are directed. Court orders issued ex cathedra, are compulsive, peremptory and expressly binding. It is not for any party; be he high or low, weak or mighty and quite regardless of his status or standing in society, to decide whether or not to obey; to choose which to obey and which to ignore or to negotiate the manner of his compliance. This Court, as must all courts, will deal firmly and decisively with any party who deigns to disobey court orders and will do so not only to preserve its own authority and dignity but the more to ensure and demonstrate that the constitutional edicts of equality under the law, and the upholding of the rule of law are not mere platitudes but present realities.”

59. The Respondents filed joint submissions and reiterated that in their Replying Affidavit, they demonstrated that the process terminating on the removal of the Petitioner in the morning of 25th November, 2024 was above board. The Petitioner was accorded an opportunity to respond to the allegations against him, which allegations he admitted. The Report of the Select Committee was discussed on 25th November, 2024 and put to vote in which 32 members of the 1st Respondent voted in support of the Report as can be gleaned from the Hansard.



60. The Respondents argued that they further demonstrated that a schedule for the election of the new deputy speaker was done in the morning of 25th November, 2024 and Hon. Cheruiyot Bett was sworn in on the morning of 26th November, 2024. They further argued that time the new deputy speaker was sworn in, they were not aware of the existence of the orders of the Court issued in the evening of 25th November, 2024. The Petitioner having been removed from office on 25th November, 2024, the Respondents proceeded with the swearing in of Hon. Cheruiyot Bett on 26th November, 2024 as the new deputy speaker thus effectively rendering the interim orders issued by the Court on 25th November, 2024 otiose and overtaken by events. It is trite law that the court orders should not be issued in vain.
61. They submitted that the subsequent election, swearing in and assumption of office of the new deputy speaker fundamentally altered the substratum of the Petition and the application herein. Notably, the Petition does not challenge the election of the new deputy speaker. It merely challenges the removal of the Petitioner from office. Absent any contest on the election of Hon. Cheruiyot Bett from office, his tenure cannot be interfered with by grant of the orders urged in the present Application. They cited the case of Julius Mutiga & 16 others v Ministry of Agriculture & 3 others (2020) eKLR Korir, J (as he then was) relying on the Court of Appeal decision in Ernie Campbell & Co Ltd v National Housing Corporation (2019) eKLR held that where the substratum of the case had ceased to exist and/or had been overtaken by events such a case would no longer be fit for determination
62. They argued that the nature of the orders sought, being injunctive in nature, cannot issue at this stage as the Petitioner has not satisfied the threshold for the grant of the said orders as was established in the case of Giella v Cassman Brown & Co Ltd (1973) E A 358. No prima facie case with high probability of success has been demonstrated. The Petitioner has not demonstrated that he stands to suffer any irreparable harm that is incapable of compensation by way of damages, or that the balance of convenience lies in favour of the orders sought.
63. The Respondents contended the affidavit allegedly sworn by 17 MCA's deposing that they were not present and did not vote on the resolutions to remove the Petitioner. They contended that the said affidavit is defective for want of form having been sworn by multiple deponents contrary to Section 16 of the *Oaths and Statutory Declarations Act*, Cap 15 which requires as follows: "Every affirmation shall be as follows: "I, A.B., do solemnly, sincerely and truly declare and affirm," and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness."
64. The parties filed additional affidavits with leave of court.
65. There was a further affidavit dated 20th January, 2025 sworn by 15 MCAs with full knowledge of the events culminating in the removal of the Deputy Speaker/Petitioner, they aver that they were aware that a court order was served upon the Respondents on 25th November, 2024 and shared on various social media platforms of the Kericho County Assembly but the Respondents chose to ignore.
66. Dr. Patrick Mutai the 2nd Respondent filed a replying affidavit dated 22nd January, 2025 in which he avers that the Petitioner had failed to discharge the burden of proof to the required standard that he affected service of the court orders and that the 2nd Respondent's actions violated the said court orders.
67. Haron Rotich the 3rd Respondent filed a further affidavit in which he avers that the report by the select committee of the removal of the Petitioner as Deputy Speaker was extensively debated upon by the members of the Kericho County Assembly on 25th November, 2024 with 32 members voting in favour of the motion for removal, 13 members against the motion for removal and 1 abstention.



68. He avers that at the commencement of the sitting and during the sitting, he was not served with court orders barring the assembly from proceeding with the business of the day to wit; consideration of the removal motion of the Petitioner as the Deputy Speaker and the election and swearing in of a new Deputy Speaker.
69. He avers that the events that transpired in the Kericho County Assembly on 25th and 26 November, 2024 were captured on the Hansard.
70. This court having considered the pleadings, responses and submissions as filed by the parties finds that the issues for determination are as follows;
- (i) whether to discharge and/or vacate the ex-parte interlocutory orders issued in this matter on 25th November, 2024.
 - (ii) whether to restrain the election and/or swearing in of the said new deputy speaker pending the hearing and determination of the Petition.
 - (iii) whether to issue an order for the Petitioner to retain, hold, serve, and discharge all functions of the Deputy Speaker of the Kericho County Assembly, pending the hearing and determination of this Petition.
71. On the issue as to whether to discharge and/or vacate the ex parte interlocutory orders issued on 25th November, 2024, this court has considered the submissions by both parties. On one part, the applicant maintained that the court orders were obtained and served electronically and physically, the court orders dated 25th November 2024 were therefore known to the respondent's long before they purported to elect his replacement by acclamation, acting on a resolution of special sitting held on 25th November 2024, and swearing in the purported deputy speaker. On the other part, the respondents put in a three pronged argument. Firstly, that the orders were issued on the basis of misrepresentation of facts and without the Court's benefit of the Hansard of the proceedings. Secondly the Court was misdirected by the Petitioner on the nature of the allegations levelled against the Petitioner. Had the Court had the benefit of the Report of the Select Committee to see that the Petitioner had admitted the allegations, it may not have issued the orders sought to be discharged. Thirdly, what was sought to be restrained by the orders had been overtaken by events, rendering the orders moot, otiose and an academic exercise. By the time the orders were issued, the Petitioner's position had been declared vacant, one application received and Hon. Cheruiyot Bett was elected unopposed, and his swearing in had been scheduled for 26th November, 2024. Having considered the arguments and evidence adduced by both parties, it is clear to this court that the court orders dated 25th November, 2024 were served upon the respondents and the respondents. It is the finding of this Court that the exparte orders were issued before the decision or action sought to be restrained took place. It cannot therefore be said that the order was issued prematurely and in vain. In short, the orders were not issued post facto. There is absolutely no justification to set aside the exparte orders. Consequently, the motion dated 4th December, 2024 lacks merit, the same is dismissed.
72. On the issue as to whether to issue an order for the Petitioner to retain, hold, serve, and discharge all functions of the Deputy Speaker of the Kericho County Government, pending the hearing and determination of this Petition. This court has carefully analyzed the evidence on record on the process of removal of the deputy speaker. It has also carefully studied the motion passed on 20th November, 2024 which initiated the removal process. It is apparent that the motion seeking for the removal of the Deputy Speaker was moved and passed. The Deputy Speaker, the Petitioner herein, was consequently removed and a new Deputy Speaker was immediately sworn in quick succession.



73. The question as to whether that was done in contempt of Court Orders, will be answered when the Application dated 28th November, 2024 is heard and determined. It is therefore not possible at this stage to issue an order directing the Petitioner to retain, hold, serve and discharge all the functions of the Deputy Speaker since another person is already performing those functions.
74. The Petitioner can only be granted the orders sought if the current holder of the office is removed by Court through the instant Petition. In other words, the order sought is overtaken by events. Consequently, this Court declines to grant the orders.
75. On the issue as to whether to issue an order to halt the election and/or swearing in of the said new deputy speaker pending the hearing and determination of the petition, it is the finding of this court, that the decision or action sought to be injuncted has taken place. A new Deputy Speaker was sworn in.
76. The question as to whether the new Deputy Speaker was sworn in contempt of Court Orders will also be determined in the Application for Contempt dated 28th November, 2024. The prayer for injunction may not issue since it has also been overtaken by events.
77. In the end, the Application dated 4th December, 2024 is dismissed for lacking in merits. The motion dated 25th November, 2024 is found to be overtaken by events. The same is ordered struck out. Costs to abide the outcome of the Petition.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 13TH DAY OF *MARCH, 2025.

.....

J.K. SERGON

JUDGE

In the presence of:-

C/Assistant Rutoh

J. K. Mitei holding brief for Katwa Kigen for Petitioner

Kiplangat, Mibey, Cheronno for all the Respondents

