



**Mwangaza v Speaker of the Senate of Kenya; Council of Governors & 6
others (Interested Parties) (Petition E429 of 2024) [2025] KEHC 3069 (KLR)
(Constitutional and Human Rights) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3069 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

PETITION E429 OF 2024

AB MWAMUYE, J

MARCH 14, 2025

**IN THE MATTER OF: ARTICLES 1, 2, 3, 4, 10, 19, 20, 21, 22, 23, 24, 165, 174, 175, 176, 195,
258, AND 259 OF THE CONSTITUTION OF KENYA 2010;**

AND

**IN THE MATTER OF: VIOLATION OF ARTICLES
38, 47 & 48 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF: COUNTY GOVERNMENTS
ACT, NO 17 OF 2012 & SECTION 18 (1) OF**

THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT, 2017 (NO. 6 OF 2017);

AND

**IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS, PRACTISE AND PROCEDURES RULES 2013**

AND

**IN THE MATTER OF: UNPROCEDURAL, ILLEGAL
AND UNCONSTITUTIONAL REMOVAL FROM**

OFFICE OF

THE GOVERNOR

BETWEEN

HON. KAWIRA MWANGAZA PETITIONER

AND



SPEAKER OF THE SENATE OF KENYA RESPONDENT

AND

COUNCIL OF GOVERNORS INTERESTED PARTY

FIDA KENYA INTERESTED PARTY

JASON KATHURIMA RUKARIA INTERESTED PARTY

SPEAKER OF COUNTY ASSEMBLY OF MERU INTERESTED PARTY

THE COUNTY ASSEMBLY OF MERU INTERESTED PARTY

ZIPPORAH KINYA INTERESTED PARTY

NATIONAL GENDER & EQUALITY COMMISSION INTERESTED PARTY

JUDGMENT

Introduction

1. The Petitioner herein filed a Petition dated 21st August 2024 and thereafter with the leave of the Court an Amended Petition dated 23rd December 2024 seeking the following orders:

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- “a. A declaration that the refusal, failure and neglect of the Respondent to make a ruling on the question whether the Senate could debate and make a resolution on a motion involving matters actively pending before a Court of law including An Order halting the impeachment process of the Petitioner was arbitrary, highhanded, unlawful and a violation of the constitutional principles of constitutionalism and the rule of law.
- b. A declaration that Respondent’s conduct and management of the proceedings culminating into the resolution to remove the Petitioner from office by way of impeachment was in violation of the Petitioner’s right to fair hearing as guaranteed under Article 50(1) of the Constitution of Kenya by;
 - i. Denying the senators the right to debate and/or make any comments on the motion for impeachment that led to the removal of the petitioner from office prior to taking a vote on the said motion.
 - ii. By presiding over a chaotic and disorderly session of the Senate thereby leading to a flawed process of impeachment and subsequent removal of the Petitioner from office unprocedurally.
 - iii. By denying the Petitioner the right to be heard by the Senators in her closing remarks contrary to well established practice thus denying her the chance to address the senators on her innocence.
- c. A declaration that the actions of the Respondent to allow voting of the motion for the removal of the petitioner from office on 21/8/24, a day not gazetted as a sitting of the senate, contravenes its constitutional mandate, hence



the resultant resolution to remove the Petitioner by way of impeachment emanating from the proceedings of 21st August, 2024 is ultra vires in law thus null and void.

- d. A declaration that failure to conclude the business culminating into the resolution to remove the Petitioner from office as governor of Meru County on 20th August, 2024 as gazetted vide Gazette Notice number 10123 dated 15th August, 2024 and as indicated in the order paper of 20th August, 2024 renders the subsequent proceedings constitutionally invalid.
- e. A declaration that the Respondent's decision to uphold the resolution of the County Assembly of Meru leading to the removal of the Petitioner from office by way of impeachment was unconstitutional and a violation of the Petitioner's entitlement to the rule of law in light of the principles of sub-judice, double jeopardy and contempt of Court.
- f. A declaration that the Respondent's impugned resolution made on 21st August, 2024 was founded on grounds that lacked the legally established threshold for removal of a Governor by way of impeachment.
- g. A declaration that Section 33 (8) of the *County Governments Act* is unconstitutional in as far as it allows the re-introduction of the same charges which previously failed to result into the removal of a Governor after the expiry of three months in that the said proviso amounts to double jeopardy and is a clear contravention Article 50 (2) (o) of the *Constitution* which states that a person shall not be tried for an offence in respect of an act or omission for which the accused person has previously been acquitted or convicted.
- h. A declaration that the Senate in its evaluation of the impeachment proceedings before it, failed to properly assess each of the specified grounds and determine if they collectively or individually constituted gross violation of the *Constitution* warranting the removal from office by impeachment of the Governor, hence the resolution of 21st of August, 2024 does not meet the threshold for impeachment set out under Article 181(1) of the *Constitution*, hence the same be and is hereby set aside.
- i. An Order of Certiorari to remove into this Honourable Court and quash the decision and/or resolution of the Senate made on the 21st August, 2024, resolving to remove the petitioner from office by way of impeachment.
- j. An Order setting aside the Gazette Notice No 10351 vol. CXXVI-No 130 dated 20th August 2024 published on 21st August, 2024 communicating the decision and/or resolution of the Senate to remove the petitioner from office by way of impeachment.
- k. Costs of this Petition be provided for.

Background

2. Following the General Elections held on the 8th of August 2022, the Petitioner was duly elected and sworn-in as the Governor of Meru County. The Petitioner has faced a series of impeachment motions by the County Assembly of Meru, with a motion dated 31st July 2024 receiving an affirmative vote



- by the 5th Interested Party on 8th August 2024 which was forwarded the same to the Senate on the 9th August, 2024 pursuant to Article 181 of the Constitution, as read together with Section 33 of the County Governments Act.
3. The Respondent convened a Special Sitting of the Senate on 14th August 2024 to consider the Notice of Motion on the Establishment of a Special Committee to investigate the proposed removal of the Petitioner from Office by way of Impeachment. The Notice of Motion was not passed, and instead the Senate determined that the matter would be canvassed before the Committee of the Whole House, with the Senate sitting in plenary.
 4. On the 19th and 20th August 2024, the Senate heard the matter, with the County Assembly and the Governor presenting their respective cases. At the conclusion of hearing, the Senate voted on the matter, and it passed a Resolution affirming the decision of the County Assembly and removing the Petitioner from Office by way of impeachment.
 5. By way of a Gazette Notice dated 20th August 2024 and published on 21st August 2024; the Respondent, the Speaker of the Senate, gazetted the decision of the Senate to remove the Governor from office by way of impeachment pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, and Standing Order 80 of the Senate Standing Orders.
 6. On 21st August 2024, the Petitioner, being aggrieved by the decision of the Senate, approached the High Court through a Petition dated 21/08/2024 filed on 21/08/2024 and subsequently the Amended Petition dated 23/12/2024 which is the basis for consideration in this Judgment; on grounds that the senatorial process violated various constitutional provisions, including the right to a fair hearing (Article 50), public participation (Article 10), and the *sub judice* principle among other grounds. The Petitioner also sought interlocutory relief vide a Notice of Motion Application dated 21/08/2024 and filed on 21/08/2024 seeking the grant of *ex parte* and inter partes interim Conservatory Orders; which this Court granted on 21/08/2024 *ex parte* and confirmed inter partes pursuant to a Ruling dated 18/12/2024 pending the hearing and determination of the substantive petition.
 7. The Petitioner's primary arguments are that the impeachment did not meet the constitutional threshold, that it was conducted in defiance of a valid Court order, that it was based on matters already pending before the High Court in Meru, that the process violated the principle of public participation, and that she was denied a fair hearing.
 8. The Ruling of this Court dated and delivered on 18/12/2024 granted the interlocutory relief for a period of 120 days only, and on 20/12/2024 this Court issued comprehensive directions on the schedule for the hearing and determination of the matter, including the issuance of a judgment date being 14/03/2025 which fell within that 120-day period.
 9. The Petitioner, having been granted leave to file and serve an Amended Petition, and Interested Parties having been joined by the Court so as to give all concerned parties an opportunity to be heard, filed and served the same; and responses to the Amended Petition were also filed and exchanged by the Respondent and the Interested Parties.
 10. The matter was canvassed by way of written submissions, with the parties filing written submissions in support of or in opposition of the Petitioner's Amended Petition dated 23/12/2024 as follows:
 - a. Petitioner –Written Submissions dated 31/01/2025 and Supplementary Written Submissions dated 14/02/2025 in support of the Amended Petition.
 - b. Respondent - Written Submissions dated 11/02/2025 and Supplementary Written Submissions dated 25/02/2025 opposing the Amended Petition.



- c. 1st Interested Party - Written Submissions dated 4/02/2025 in support of the Amended Petition.
 - d. 2nd Interested Party –Written Submissions dated 18/02/2025 in support of the Amended Petition.
 - e. 3rd Interested Party - Written Submissions dated 17/02/2025 and Supplementary Written Submissions dated 25/02/2025 in opposition of the Amended Petition.
 - f. 4th Interested Party – Written Submissions dated 11/02/2025 and Further Written Submissions dated 25/02/2025 in opposition of the Amended Petition.
 - g. 5th Interested Party - Written Submissions dated 11/02/2025 in opposition of the Amended Petition.
 - h. 6th Interested Party - Written Submissions dated 10/02/2025 in opposition of the Amended Petition.
 - i. 7th Interested Party - Written Submissions dated 20/02/2025 in support of the Amended Petition.
11. Highlighting of Written Submissions was held on diverse dates as follows:
- a. Petitioner and those in Support of the Amended Petition – on 21/02/2025 and 24/02/2025.
 - b. Respondent and those Opposed to the Amended Petition – on 24/02/2025 and 26/02/2025.

Positions of the Parties

a. Petitioner

12. The Petitioner, Hon. Kawira Mwangaza, challenges the impeachment process before the Senate only within the Amended Petition dated 23/12/2024. The Petitioner has made clear that the ambit of the Amended Petition before this Court is limited to the actions and decisions of the Respondent and the Senate, with the substantive challenge to the actions and decisions of the County Assembly being a matter that is being canvassed in another petition filed before the High Court sitting in Meru in Meru High Court Constitutional and Human Rights Petition No E013 of 2024, which is still pending before that Court and is awaiting full hearing and determination. The Petitioner’s grievances before this Court and in this Amended Petition, are thus limited only to the actions, omissions, and decisions of the Senate in the Senate’s consideration and determination of the Motion received by the Senate from the County Assembly that culminated in the impugned vote and Resolution of the Senate made on 21/08/2024.
13. The Petitioner asserts that the impeachment was not only procedurally flawed but also unconstitutional. She contends that several breaches of her fundamental rights, as enshrined in the Constitution of Kenya, occurred throughout the impeachment process before the Senate. These breaches include violations of her right to fair hearing, the subversion of Court orders, and the illegal handling of *sub judice* matters. The Petitioner also argues that the actions taken by the Senate, in considering the Motion by the County Assembly, were in direct contravention of both national laws and judicial precedents that govern impeachment procedures. At the heart of the Amended Petition is the claim that her removal was tainted by legal irregularities, and thus, must be declared null and void.
14. The Petitioner asserts that the High Court has jurisdiction to hear this matter, based on Articles 165(3)(b) and (d) of the Constitution of Kenya. According to these provisions, the High Court has



the mandate to determine whether any action by a state organ, in this case, the Senate, is in violation of the Constitution. The Petitioner emphasizes that this case revolves around the interpretation and application of constitutional rights, such as the right to a fair hearing and the right to hold public office, which fall squarely within the High Court's jurisdiction. Additionally, she invokes Article 23(1), which grants the High Court authority to issue orders for the enforcement of the Bill of Rights. The Petitioner also argues that judicial review powers under Article 23(3)(f) provide the Court with the authority to quash any unconstitutional proceedings or decisions that infringe upon her rights as the Senate was acting as a quasi-judicial body and thus is amenable to the supervisory authority of the High Court pursuant to Article 165(6) of the Constitution.

15. The Petitioner further holds that the Respondent, the Speaker of the Senate, is a proper party capable of being sued in these proceedings. Referencing Martin Nyaga Wambora v Speaker of the Senate & 5 others [2014] eKLR where the Speaker of the Senate was deemed a proper party capable of being sued since the Speaker played a direct role in presiding over the impeachment process and was responsible for ensuring procedural compliance, the Petitioner underscores that the Respondent was capable of mounting and advancing a substantive defence on behalf of the Senate, as evidenced from the Respondent's filings in this matter; in addition to the Respondent having a direct role in the unconstitutionality and illegalities with which she is aggrieved.
16. The Petitioner emphasizes that the Speaker of the Senate permitted the introduction and continuation of the impeachment process before the Senate, which then proceeded to hear and determine the matter despite the issuance and pendency of conservatory orders by the High Court sitting at Meru. Those orders, which were granted in response to the Petitioner's application, ordered a halt to the impeachment process and thus the Speaker of the Senate and the Senate were in violation of a Court Order when the Senate heard and determined the Motion laid before the Senate. The Petitioner contends that this defiance of Court orders is not merely a procedural misstep but a direct violation of the rule of law and judicial authority. The fact that the Respondent, despite being aware of the Meru High Court's Ruling dated 27/06/2024 and the orders therein, chose to permit the Senate to proceed is in the mind of the Petitioner a clear and determinative violation of the Constitution which renders all subsequent actions and decisions of the Senate null and void.
17. To buttress this argument, the Petitioner has drawn the attention of this Court to the Meru High Court's Ruling in HCCHRPET/E013/2024 on Contempt of Court, which was delivered on 13th February 2025, and which confirmed that the County Assembly, its Speaker, and the mover of the Motion, were found to have acted in contempt of Court for having introduced a fresh impeachment motion; which is the impeachment motion that was heard and determined by the Senate.
18. Turning to the *sub judice* rule argument, the Petitioner argues that several issues that formed the basis of the impeachment charges, such as the employment disputes involving Virginia Kawira Miriti and Joseph Kithure Mberia, were already pending in Courts of competent jurisdiction. These issues were thus *sub judice* in the mind of the Petitioner, meaning they were under active judicial consideration, and thus their discussion in the Senate was unlawful. The Petitioner contends that both Standing Orders 90 of the County Assembly and Standing Order 103 of the Senate clearly prohibit such discussions, as they could potentially prejudice the fair determination of the cases before the Courts. Despite this, the Petitioner argues that the Senate proceeded to discuss and vote on matters that were legally restricted, thereby breaching the *sub judice* rule. The Petitioner argues that the Speaker of the Senate failed to make a ruling on the issue of *sub judice* when it was raised, which further compounded the violation of procedural fairness. This action, to the Petitioner's mind, is a gross violation of the constitutional doctrine of Separation of Powers, as the Senate was discussing and determining matters pending in Courts of law, thus usurping judicial authority from those Courts.



19. The Petitioner relies on several legal precedents to support her case. She cites the *Central Bank of Kenya v Raital Automobiles Ltd* [2006] and *Omega Enterprises v KTDC* [1993], which assert that actions taken in defiance of Court orders are null and void. These rulings reinforce the Petitioner's argument that the impeachment process, conducted in violation of Court orders, cannot stand. The petitioner also invokes the *Judicial Service Commission v Speaker of the National Assembly* [2013], which held that contemptuous actions, regardless of whether the contemnor was aware of the Court order, are automatically invalid. Based on these precedents, the Petitioner calls for the Court to declare the impeachment process a nullity, quash the Gazette Notice that formalized her removal, and declare the relevant provisions of the *County Governments Act* unconstitutional. The Petitioner also seeks a permanent injunction to prevent any further impeachment proceedings on the same grounds, arguing that such proceedings would be fundamentally flawed and illegal.
20. The Petitioner argues that the impeachment process itself violated her right to a fair hearing, as guaranteed by Article 50 of the *Constitution*. She asserts that the proceedings in the Senate were marred by chaos, disorder, and an overall lack of procedural fairness. The Petitioner describes how, during the Senate's impeachment debate on 20th August 2024, the proceedings were halted multiple times, and the live media coverage was abruptly stopped. Moreover, the Petitioner claims that the time allocated for debate was insufficient, with each Senator only given three minutes to present their views, which was grossly inadequate given the gravity of the matter. The Petitioner's closing remarks were also limited to only two minutes, during which she was not even able to give her statement due to the ongoing disruptions.
21. Furthermore, the Petitioner highlights that the impeachment motion was rushed, with crucial procedural steps ignored, such as adequate debate and an opportunity for questions and clarifications. These actions created an environment where the Petitioner could not adequately defend herself, thus breaching her constitutional right to be heard fairly. The Petitioner emphasizes that the conduct of the Senate on that night rendered the impeachment process a mockery of justice and were indicative of a preconceived decision, a violation of her right to a fair hearing before a fair and independent quasi-judicial body.
22. The Petitioner also argues that the impeachment process was fraught with procedural irregularities, which were acknowledged by some Senators after the fact. Several Senators, in media statements and parliamentary sessions, admitted that the impeachment was unfair, unprocedural, and invalid. The Petitioner argues that these admissions lay bare, by admission, the flawed nature of the process that unfolded before the Senate. The Petitioner points out that despite these admissions, no remedial actions were taken by the Senate or the Speaker to address the admitted mistakes. The Petitioner cites instances where Senators expressed regret over the process, including during the impeachment of the Deputy President on 9th October 2024, where the flaws in the Petitioner's impeachment were acknowledged and stated as lessons to be learnt for the Deputy Presidential Impeachment and also for future proceedings. Despite these acknowledgments, the Petitioner argues, having been admitted by members of the Senate can only lead this Court to a finding that indeed the process before the Senate with respect to her impeachment was unconstitutional.
23. The Petitioner has also attacked the canvassing of charges that had previously been determined in her favour by the Senate during previous impeachment proceedings against her before the Senate. In addition to arguing that this violates her constitutional protection against double jeopardy on a factual basis, the Petitioner also argues that Section 33(8) of the *County Governments Act* is unconstitutional because it violates the right against double jeopardy as provided under Article 50(2)(o) of the *Constitution*. The Petitioner asserts that this provision allows for the removal of a governor through impeachment based on issues that have already been adjudicated by the Senate or matters that had



formed the basis for previous impeachment motions by the Senate; and it violates the constitutional protection against both double jeopardy and also fair hearing.

24. In conclusion, the Petitioner argues that the impeachment process before the Senate was marred by a series of constitutional violations, procedural defects, and contempt of Court. The Petitioner asserts that the actions of the Senate and the County Assembly were not only unfair but also illegal, rendering the entire impeachment process null and void. She emphasizes that the conservatory orders, *sub judice* violations, and denial of fair hearing resulted in a miscarriage of justice. The Petitioner further contends that the Senate acted in bad faith by continuing with the impeachment despite clear judicial directives. Given these circumstances, the Petitioner urges this Court to quash the impeachment process, declare it unconstitutional, and uphold her constitutional rights to due process and a fair hearing. The Petitioner's position rested with a plea to this Court to uphold the letter and spirit of the Constitution and to find that the electoral mandate bestowed upon a Governor can only be extinguished through a Senate process that is free, fair, procedurally sound, and undertaken with utmost fidelity to the Constitution and the Rule of Law.

b. Respondent's Position

25. The Respondent argues that the Court's jurisdiction is limited when reviewing legislative actions unless a clear constitutional violation occurs. They reference Isaiah Biwott Kangwony v IEBC (2018), which reaffirmed the presumption of constitutionality for legislative actions.
26. The Respondent asserts that the impeachment process against the Governor of Meru was conducted in strict adherence to the law. Article 181 of the Constitution and Section 33 of the County Governments Act outline the grounds and procedure for impeachment; and the Respondent contends those provisions were strictly adhered to. The Senate, exercising its mandate under Article 96, followed the due process as prescribed, ensuring procedural compliance and constitutional validity.
27. Additionally, the Respondent argues that the Senate sufficiently evaluated the grounds presented and found them substantiated, citing specific instances of gross violation of the law, misconduct, and abuse of office. The Respondent submits that impeachment does not require proving every charge beyond a reasonable doubt, as it is a constitutional accountability mechanism, not a criminal trial. Referencing the Court of Appeal decision in Kioko v Clerk, Nairobi City County Assembly & 11 others (2022) where the appellate Court affirmed that a Governor can be impeached if at least one of the charges is sufficiently substantiated, the Respondent argues that the substance of the charges were proved and the Court should not interfere with the same.
28. The Respondent maintains that there was no valid Court order preventing the Senate from proceeding with the impeachment. The Respondent argues that the Ruling relied upon by the Petitioner related to a previous motion and not the motion that ultimately resulted in the Governor's removal. The Respondent clarifies that the Court order issued by the High Court sitting in Meru applied to an earlier impeachment motion dated 17th July 2024, while the impeachment proceedings in question were based on a subsequent motion dated 31st July 2024. As such, there was no valid Court order prohibiting the Senate's actions.
29. In buttressing this argument, the Respondent asserts that the Petitioner failed to raise a proper preliminary objection before the House on that point. This position was supported by Mike Sonko Mbuvi Gideon Kioko v Clerk, Nairobi City County Assembly & others (2021), where the Court ruled that procedural objections must be raised appropriately before legislative bodies, which the Respondent argues the Petitioner failed to do. Thus, the Respondent argues that neither the Speaker



- nor the House can be faulted on this limb as the Petitioner herself failed to appropriately move the Senate for it to determine the question.
30. The Respondent submits that the impeachment proceedings were conducted in accordance with the Standing Orders of the Senate. The Speaker provided necessary notifications and scheduled hearings, which allowed both the Governor and the County Assembly to participate in the process. The Governor was granted an opportunity to respond to allegations and was represented by legal counsel, negating claims of procedural unfairness.
 31. The Respondent insists that the Governor was accorded a fair hearing throughout the process. She was given an opportunity to respond to the allegations, was represented by legal counsel, and had the chance to cross-examine witnesses. The Respondent argues that the Governor was given an opportunity to make closing remarks but declined to do so. The argument that she was denied the right to be heard is therefore unfounded since she was fully represented by legal counsel who made statements on her behalf. The Respondent cited *Sonko v County Assembly of Nairobi City & 11 others* (2022), where the Supreme Court held that where the procedural requirements for impeachment were met, including proper notice, evidence presentation, and legal representation, the decision is sound.
 32. The Respondent justifies the decision to limit the debate on the impeachment motion to three minutes per senator by arguing that this limitation was approved by the Senate in accordance with its Standing Orders 111 of the Senate Standing Orders which allows the House to impose such limits and guides how impeachment trials are conducted. The Respondent adds that the motion to limit debate was duly voted upon and passed by a majority of 31 to 9, making it a legitimate procedural decision and did not violate any constitutional provisions and in accordance with established rules. The Speaker's decisions regarding procedural matters, including the limitation of debate, were legally sound. The Respondent references *Uzalendo Institute for Leadership and Democracy v Attorney General & another* (2021), where the Court upheld parliamentary autonomy in regulating its internal procedures, and argues that this Court cannot interfere with the internal regulation of the proceedings of the Senate. The Respondent also submits that the voting process in the Senate was conducted in strict compliance with Standing Orders. Senators voted electronically, with some manually casting their votes in accordance with procedural rules. The outcome of the vote reflected the will of the majority.
 33. The Respondent further contends that parliamentary proceedings are governed by established rules, and no evidence was adduced by the Petitioner to demonstrate that any disorder affected the validity of the vote. The Respondent justifies the Speaker's decision not to adjourn the impeachment proceedings despite alleged disorder on this basis. They cited *Erskine May's Treatise* (2011), which states that the Speaker has discretion to determine whether disorder warrants adjournment; and the Respondent argues that this is a matter over which the Court has no jurisdiction in determining.
 34. The Respondent opposes the Petitioner's claim that Section 33(8) of the *County Governments Act* contravenes Article 50(2)(o) of the *Constitution*, which prohibits double jeopardy. They state that impeachment is a political process separate from criminal proceedings, and thus Article 50(2)(o) does not apply since it governs criminal trials and not political accountability processes such as impeachment. That provision, to the Respondent's mind, is necessary to uphold governmental and leadership accountability, and the Respondent cites *Hastings v United States* (1992), where a judge was impeached despite prior acquittal in a criminal trial, and it was held that impeachment is a separate political process from criminal proceedings and does not fall within the ambit of double jeopardy protections.
 35. The Respondent highlights that laws enacted by Parliament enjoy a presumption of constitutionality. In *Isaiab Biwott Kangwony v IEBC & another* (2018), the Court held that Courts should only declare



- a law unconstitutional if it clearly contravenes express constitutional provisions, which is not the case with Section 33(8) of the *County Governments Act*.
36. The Respondent cites Article 117(1) of the *Constitution* and Section 12 of the *Parliamentary Powers and Privileges Act* to argue that legislative proceedings are protected from judicial interference. Referring to the case of *Apollo Mboya v Attorney General & others* (2018) where it was reaffirmed that parliamentary debates and resolutions cannot be challenged in Court unless there is clear evidence of unconstitutionality, the Respondent argues that no such basis has been laid in the present case.
 37. The Respondent also argues that the Doctrine of Separation of Power requires that Courts should not interfere in the internal workings of Parliament unless there is a clear violation of the *Constitution*, citing the Supreme Court in *Justus Kariuki Mate & another v Martin Nyaga Wambora & another* (2017) which emphasized that judicial restraint is necessary when dealing with matters constitutionally assigned to other arms of government.
 38. The Respondent challenges the probative value of the Petitioner's evidence, including social media posts and newspaper articles, arguing that they constituted hearsay and were thus inadmissible for failing to meet the requirements of the *Evidence Act*. The respondent, relying on *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others* (2017), submits that such materials constitute hearsay unless verified by their authors which the Respondent asserts was not done in this case. Additionally, Section 106B of the *Evidence Act* sets strict conditions for the admissibility of electronic evidence, which the Petitioner failed to meet, as per the Respondent.
 39. The Respondent argues that the impeachment decision was reached after full deliberation and was supported by evidence. The Respondent cites the *Sonko v County Assembly of Nairobi City & 11 others* (2022) case where it was established that where due process is followed, the Court should not overturn the Senate's decision simply because the impeached official disagrees with the outcome.
 40. The Respondent also argues that the Amended Petition is incurably defective due to the failure to enjoin the Senate as a party. The Respondent contends that the Speaker was not the proper party to sue, as he is an ex officio member of the House with no vote in any of the impugned matters. The Respondent points out that the impugned decision and Resolution were taken by the Senate, and not by the Speaker, and further that all the adverse prayers sought relate to actions and decisions of the Senate as a deliberative body exercising its voting discretion; and it is trite law that adverse orders cannot be sought against a party who has not been sued and is not participating in the proceedings. The Respondent further notes that the Petitioner had ample opportunity to cure this defect when granted leave to amend the petition, but she did not sue the Senate. Since the Senate as an institution made the decision to remove the Governor, it is the only body that could properly respond to the claims raised, and not its Speaker.
 41. The Respondent, in canvassing this limb of its defence, points out that in the Meru High Court Matter, Meru HCCHRPET No E013 of 2024, the County Assembly was sued by the Petitioner; a nod by the Petitioner that the legislative chamber must be sued in order for adverse orders to be sought against it.
 42. The Respondent asserts that the orders sought by the Petitioner, including the nullification of the impeachment, are untenable because the process followed the law strictly and the Petitioner is in essence raising minor procedural lapses that do not go to the root of the matter and the substantive finding by the Senate. Adding that the Petitioner cannot benefit from claims of procedural violations that she neither consented to or failed to challenge at the appropriate time, the Respondent contends that the Petitioner is clutching at straws in a feeble attempt at escaping the logical outcome of a just and fair constitutional process that found her liable for gross violations of both the *Constitution* and statute law.



43. Finally, the Respondent contended that the impeachment was not politically motivated or discriminatory, nor was it a preconceived decision. They argue that it followed established legal frameworks and cited *Bhavna Patel Mandaliya v Chetan Aroon Solanki* (2021), where the Court emphasized that evidentiary requirements must be met for claims of bias.
44. The Respondent concludes by urging this Court to dismiss the Amended Petition in its entirety, arguing that the impeachment process was lawful, that the Petitioner was accorded due process, and that the claims made in the Amended Petition are without merit. The Respondent urges the Court not to act in substantive merit review of whether the Senate ought to have affirmed or dismissed the charges against the Petitioner, but rather only limit itself to whether the law was followed in the process, which the Respondent emphatically affirms was the case. The Senate acted within its constitutional and legal mandate, the Petitioner was granted a fair hearing, and the impeachment process met the required legal standards. Therefore, the orders sought by the Petitioner should not be granted.

c. The 1st, 2nd and 7th Interested Parties – Supporting the Amended Petition

45. The 7th Interested Party's reply and written submissions were struck-out by the Court due to improper commissioning of the Replying Affidavit, which meant that there was no underlying foundation for the 7th Interested Party's written submissions. However, it fully supported those of the Petitioner and the 1st and 2nd Interested Parties in support.
46. The 1st, 2nd, and 7th Interested Parties fully associated themselves with the Petitioner's case and supported the Amended Petition wholeheartedly. In terms of fresh ground covered, the 1st Interested Party, the Council of Governors, argues that the Court should uphold the sanctity of impeachment and not affirm a process that was marred by irregularities. The Council of Governors' position was that the present case is indicative of a worrying trend in which impeachment has become watered-down and the bar for it has become too low. Additionally, the 1st Interested Party faulted the Senate for conducting the voting on a day that was not gazetted as an official sitting date, which renders the entire process unlawful in its eyes. To the Council's mind, the manner in which the impeachment was conducted raises fundamental questions about whether due process was followed, and if not rectified, it sets a dangerous precedent for future impeachments. The 1st Interested Party asserts that adherence to constitutional and statutory provisions is paramount in such a weighty matter that directly affects the sovereign right of Kenyans to elect and be served by a Governor of their choice.
47. The 2nd Interested Party, FIDA Kenya, highlights that the Petitioner's fundamental constitutional rights were violated throughout the impeachment process, and this was part of a larger challenge faced by women in political leadership positions. The 2nd Interested Party echoed the averments by the Petitioner in her Supporting Affidavit that she was subjected to gender discrimination contrary to Article 27 of the *Constitution* and the Petitioner's rights to equal treatment and equal protection of the law were manifestly violated by the Senate in its proceedings.
48. Article 50 of the *Constitution* guarantees every person the right to a fair hearing, yet the Petitioner was denied this right when she was not allowed to present closing arguments before the Senate. This deprivation goes against established legal practice and fairness standards, which require that an accused person must be given a final opportunity to respond before a decision is made. Additionally, the Senate's failure to respect existing conservatory orders from the Court, which had halted the impeachment proceedings, further compounds the constitutional breach. The Courts had intervened to preserve the rule of law, yet the Senate proceeded with the impeachment process in direct defiance of judicial authority. This disregard for Court orders not only undermines the rule of law but also sets a precedent where legislative bodies can act arbitrarily, disregarding fundamental legal principles. The



Petitioner's right to equal protection under the law, as enshrined in Article 27, was also violated as she was subjected to a process that ignored the safeguards provided by the Constitution.

49. One of the key constitutional requirements for impeachment is public participation, yet the process that led to the Petitioner's removal did not meet the standards required under the law. The 6th Interested Party, Zipporah Kinya's affidavit of reply asserts that public participation must be meaningful, structured, and allow citizens to make informed contributions. However, in this case, the forums held prior to the impeachment were not properly structured, and the public was not adequately informed about the grounds for impeachment. Instead of being a genuine engagement with the citizens, the sessions turned into platforms for political grievances against the petitioner's administration. The Supreme Court has previously outlined the necessary elements of public participation, including clarity of subject matter, inclusiveness, and genuine opportunity for feedback. None of these principles were observed in this case, making the impeachment proceedings constitutionally deficient. The failure to conduct substantive public participation means that the entire process lacked legitimacy and was merely a political manoeuvre rather than a lawful exercise in governance accountability.
50. The 2nd Interested Party, FIDA Kenya, raises serious concerns about gender discrimination in the impeachment process. The Petitioner, being a female governor in a society which both the Petitioner and the 2nd Interested Party stated has strong patriarchal structures, has been subjected to relentless political persecution. They observed that the impeachment marks the fifth attempt to remove the Petitioner from office, suggesting a pattern of targeted victimization rather than a genuine accountability process. FIDA Kenya argues that women in leadership positions, particularly in highly patriarchal communities like Meru, face undue scrutiny and hostility. The Petitioner's case is reminiscent of historical gender-based political exclusion, where women are not given equal opportunities to lead. The impeachment proceedings in the Senate, to their mind, were conducted in a manner that reinforces societal biases against female leadership, discouraging other women from pursuing political careers.
51. The 1st and 2nd Interested Parties argue that the charges against the Petitioner did not meet the legal threshold required for impeachment. Article 181 of the Constitution provides that a governor can only be removed for gross violation of the Constitution, serious crimes, abuse of office, or physical or mental incapacity. However, the allegations made against the Petitioner were largely administrative issues or political disputes, which do not constitute impeachable offenses. The Senate failed to conduct a rigorous analysis of the evidence to establish whether the allegations met the required threshold. Instead, the impeachment process was rushed and driven by political motivations rather than legal merit. The lack of substantive evidence supporting the charges suggests that the impeachment was more of a political vendetta than a constitutional process. If governors can be removed on such flimsy grounds, the 1st and 2nd Interested Party contend, it creates a dangerous precedent where elected leaders are at the mercy of political opponents rather than the electorate.
52. The 2nd Interested Party also highlights that the Petitioner has been subjected to multiple impeachment attempts based on the same set of allegations. Section 33(8) of the County Governments Act allows the reintroduction of failed impeachment motions after three months, which FIDA Kenya argues is unconstitutional. This provision effectively permits double jeopardy, where an individual is tried multiple times for the same charges. Adding that the Petitioner has had to constantly defend herself against politically motivated charges, which has created instability in her administration. The continuous impeachment attempts undermine democratic governance and waste public resources. They urged this Court to declare this provision unconstitutional and provide clear guidelines on how impeachment proceedings should be conducted to prevent abuse of process.



53. The 2nd Interested Party in particular proposes several legal remedies, including the nullification of the impeachment, An Order reinstating the Petitioner, and an injunction preventing further impeachment attempts on the same grounds. They also recommend legal reforms to protect governors from politically motivated impeachments. The Senate's role in impeachment should also be clearly defined to ensure impartiality and adherence to due process is enshrined. They urge this Court to be alive to the reality behind the impeachment of the Petitioner in the Senate, and establish through this Judgment a precedent that strengthens constitutional safeguards against abuse of the impeachment process and accords protections from discriminatory actions brought under the guise of legitimate impeachments.

d. The Positions of the 3rd, 4th, 5th, and 6th Interested Parties in Opposition of the Amended Petition.

54. In addition to trending the same ground as the Respondent and fully supporting the Respondent's opposition to the Amended Petition, the 3rd, 4th, 5th and 6th Interested Parties opposed to the Petitioner's case and assert that the Amended Petition dated 23/12/2024 fails to meet the constitutional standard of precision set out in *Anarita Karimi Njeru v Republic* (1979). According to the legal principle established in that seminal case, a constitutional petition must explicitly outline the specific rights alleged to have been violated and provide substantive evidence to support these claims. However, they claimed that the Petitioner has broadly referred to Articles 1, 93, and 38 of the *Constitution* without clearly demonstrating how these provisions have been contravened. Moreover, to their mind the Amended Petition makes sweeping allegations that entire Articles of the *Constitution* have been violated without detailing specific breaches.

55. The 5th Interested Party, in particular, argues that such vague pleadings hinder the ability of the Respondent and the Court to effectively address the legal issues at hand. The absence of precise allegations and supporting evidence also prevents the Court from making a reasoned determination, as it lacks clear parameters for assessing the alleged constitutional violations. This lack of specificity renders the Amended Petition fatally defective and unsuitable for judicial consideration, in their minds.

56. The 5th Interested Party refutes the Petitioner's argument that impeachment undermines the will of the electorate, stating that democratic governance is not just about elections but also about accountability throughout a leader's tenure. The constitutional framework ensures that an elected leader does not act with impunity simply because they were elected by the people. It argues that allowing a Governor to remain in office despite evidence of misconduct would be an affront to the principles of good governance and constitutionalism.

57. Additionally, the 5th Interested Party stresses that impeachment does not automatically translate to an unfair or politically motivated process, as the law provides clear guidelines for its execution. The removal of a leader through impeachment, therefore, serves as a corrective mechanism that protects public trust in governance and prevents abuse of power, and this Court should only intervene where there is a clear violation of the *Constitution*, which there is none to their minds in this case.

58. The 6th Interested Party contends that this Court should not rely on the Ruling dated and issued on 13th February 2025 in which the 6th Interested Party and others were found to be in contempt of Court for introducing the fresh impeachment motion that led to the Senate's impugned Resolution. The Interested Parties opposed urge that this Court finds that it is not bound by the Meru High Court's decision, and to independently analyse the question of whether there was a valid Court Order capable of barring the Senate from proceeding to hear and determine the Motion before it.

59. The 3rd Interested Party argues that the Petitioner has failed to demonstrate a commitment to accountability in governance, a fundamental principle of public service. It asserts that the Petitioner



has engaged in nepotism, biased appointments, and misuse of public resources, which justifies her removal from office; all of which were found to be true by the Senate in exercise of its constitutional authority. According to the 3rd Interested Party, allowing the Petitioner to remain in office despite allegations of misconduct would undermine the principles of transparency, accountability, and responsible leadership. the Constitution places a high burden of ethical conduct on public officials, and any breach of these expectations must be addressed through lawful mechanisms, including impeachment. The 3rd Interested Party emphasizes that public interest must take precedence over individual interests, especially where the actions of a leader affect service delivery and governance. It argues that the impeachment process was initiated following public complaints and concerns raised by elected representatives at the County Assembly level. The removal of a leader for failing to uphold ethical governance is not only constitutional but necessary to preserve the integrity of public office. The 3rd Interested Party further asserts that impeachment is a safeguard against abuse of power and that preventing it from taking effect would set a dangerous precedent where leaders can act with impunity.

60. The 6th Interested Party refutes claims that the Petitioner was denied a fair hearing during the impeachment proceedings before the Senate. It argues that the Petitioner was granted sufficient time and an adequate platform to defend herself against the charges. The impeachment process followed established legal procedures, with the Petitioner being given an opportunity to respond, present evidence, and cross-examine witnesses. The 6th Interested Party highlights that the Petitioner was represented by legal counsel at every stage of the proceedings, ensuring that her rights were protected throughout the process. It argues that the mere fact that the outcome was unfavourable to the Petitioner does not equate to a violation of her right to be heard. Furthermore, the Senate, acting as an impartial adjudicating body, conducted its proceedings in line with constitutional and legal requirements. The 6th Interested Party emphasizes that the Petitioner cannot claim procedural unfairness simply because the process did not result in her favour. Due process was adhered to, and the decision to remove her from office was reached through a fair and transparent procedure. The Court, therefore, should not entertain allegations of bias or procedural unfairness that lack factual basis.
61. The 4th and 6th Interested Parties challenge the Petitioner's assertion that there were valid conservatory orders stopping the impeachment process. They argue that even if such orders existed, they did not apply to the impeachment motion initiated on 31st July 2024, as it was a distinct process separate from the earlier motion. The 4th Interested Party asserts that judicial intervention in impeachment proceedings should be minimal to avoid encroaching on the legislative mandate of the County Assembly and Senate. The impeachment process is governed by specific constitutional provisions, and Court orders should not be used to shield public officials from accountability. The 6th Interested Party contends that Courts must balance their role in enforcing constitutional rights with the need to respect institutional independence and the separation of powers. It argues that the Petitioner has not provided sufficient evidence that any valid Court order explicitly barred the impeachment proceedings. In the absence of clear evidence that the process was legally halted, the removal of the Petitioner remains constitutionally valid. The Interested Parties opposed emphasize that Court interventions should not be used to subvert democratic processes and prevent elected representatives from carrying out their constitutional duties.
62. The 3rd and 4th Interested Parties argue that the present Petition is *sub judice* because similar issues are already pending before another High Court matter, namely Constitutional Petition No E013 of 2024 in the High Court at Meru. The *sub judice* doctrine, enshrined in Section 6 of the Civil Procedure Act, prohibits Courts from handling a matter that is already under adjudication in another competent Court. They state that the rationale behind this principle is to prevent the risk of conflicting judicial decisions and to ensure judicial economy by avoiding unnecessary duplication of proceedings.



63. The 3rd Interested Party contends that the Petitioner has deliberately filed multiple cases on the same issue in different Courts to create procedural confusion and delay the resolution of the dispute. Furthermore, the 4th Interested Party asserts that judicial comity requires that Courts respect ongoing proceedings in other Courts of concurrent jurisdiction. Since the issues raised in the instant Petition substantially mirror those pending before the High Court at Meru, the Court should decline to hear the matter to avoid the risk of issuing inconsistent rulings. The Interested Parties argue that if the Petitioner is dissatisfied with any ruling in the Meru case, the appropriate recourse is to pursue an appeal rather than initiating parallel proceedings in a different Court. Allowing the Petition to proceed despite the pending case in Meru would amount to forum shopping, which is an abuse of the judicial process.
64. The 4th and 6th Interested Parties reject the Petitioner's claim that her impeachment amounts to double jeopardy, which is prohibited under Article 50(2)(o) of the *Constitution*. Arguing that double jeopardy applies strictly within the criminal justice context, preventing a person from being tried twice for the same offense after either an acquittal or a conviction. However, the impeachment process is a constitutional accountability mechanism rather than a criminal trial, and therefore, the principle of double jeopardy does not apply. The 4th Interested Party argues that the impeachment process is not a punishment in the criminal law sense but rather a means of ensuring that elected officials meet the ethical and legal standards required for holding public office.
65. The 6th Interested Party further contends that the provision allowing the reintroduction of impeachment motions after three months, as stipulated in Section 33(8) of the *County Governments Act*, is constitutional and does not violate the principles of justice. This provision ensures that if new evidence of misconduct emerges, an elected official can still be held accountable rather than being permanently shielded from scrutiny due to the failure of a previous impeachment motion. If the principle of double jeopardy were to apply to impeachment, it would create an absurdity where governors or public officers could engage in misconduct with impunity, knowing that a failed impeachment attempt would permanently protect them from future accountability. Therefore, the Court should reject the Petitioner's attempt to misapply the double jeopardy principle in the context of her removal from office.
66. The 4th Interested Party strongly asserts that the impeachment process is a legislative function that falls within the mandate of the County Assembly and Senate, and the judiciary should exercise restraint in interfering with such proceedings. Article 1 of the *Constitution* vests sovereign power in the people, which is exercised through democratically elected representatives in the County Assemblies and the Senate. The impeachment process is a direct exercise of this sovereign power, ensuring that public officials remain accountable to the electorate and their representatives. The 4th Interested Party argues that excessive judicial intervention in impeachment matters undermines the principle of separation of powers by encroaching on the legislative branch's authority. The County Assembly and Senate have clear constitutional mandates to initiate and determine impeachment proceedings, and their decisions should only be reviewed by Courts in cases of blatant illegality or violation of constitutional rights. The 4th Interested Party emphasizes that Courts should respect the autonomy of political processes unless there is compelling evidence of constitutional violations. If Courts routinely interfere in impeachment proceedings, it would render the process ineffective and shield public officials from legitimate accountability measures. Therefore, the judiciary must strike a careful balance between upholding constitutional rights and allowing elected legislative bodies to perform their constitutional functions without undue interference.
67. The 6th Interested Party refutes the Petitioner's claim that her impeachment was influenced by gender bias or discrimination. The Petitioner has suggested that her removal from office was unfairly targeted



at her because she is a female leader. However, the 6th Interested Party argues that impeachment is a constitutional process that applies to all public officials regardless of gender, and the Petitioner's removal was based solely on the merits of the allegations against her. The 6th Interested Party emphasizes that the Senate has impeached male governors in the past under similar circumstances, proving that the process is not inherently discriminatory. Moreover, the evidence presented against the Petitioner, including allegations of abuse of office and mismanagement of public resources, is unrelated to her gender and should be assessed purely on legal grounds. Allowing the gender argument to be used as a shield against constitutional accountability would set a dangerous precedent where leaders avoid scrutiny by framing legitimate legal actions as acts of discrimination. The 6th Interested Party urges the Court to dismiss this argument as unfounded and to focus on the substantive legal issues surrounding the impeachment process.

68. The 5th and 6th Interested Parties argue that the impeachment process was conducted with adequate public participation, as required under Article 10 of the *Constitution*. They contend that the County Assembly engaged the public through various forums before proceeding with the impeachment motion, ensuring that the views of the electorate were considered. The argument that public participation was inadequate is therefore without merit. The impeachment process involved open debates in the County Assembly, where the representatives of the people articulated the concerns of their constituents regarding the Petitioner's conduct. Additionally, the Senate hearings provided another platform where the Petitioner was allowed to defend herself and the public had an opportunity to engage with the proceedings. The 6th Interested Party asserts that the Petitioner has failed to provide tangible evidence that public participation was lacking. Instead, she has relied on general claims without pointing to any specific procedural failures. In any case, impeachment proceedings are representative democracy mechanisms, meaning that elected officials, acting on behalf of the people, engage in decision-making. The 5th and 6th Interested Parties urge the Court to reject the Petitioner's claims and uphold the validity of the impeachment process as a product of a well-established democratic process.
69. The 4th and 6th Interested Parties argue that Section 33(8) of the *County Governments Act*, which allows for the re-introduction of impeachment motions after three months, is constitutional and does not violate the principles of justice. The Petitioner claims that this provision amounts to double jeopardy and violates Article 50(2)(o) of the *Constitution*, which prohibits a person from being tried for the same offense twice after acquittal or conviction. However, the Interested Parties contend that impeachment is not a criminal trial but a constitutional accountability mechanism, and as such, the double jeopardy principle does not apply. They emphasize that the provision exists to ensure that county governors can still be held accountable if new evidence emerges or if procedural flaws in a prior impeachment attempt prevented a fair determination of the allegations. Additionally, they argue that allowing a governor to be permanently shielded from impeachment simply because an earlier attempt failed would create an environment where public officials evade accountability through technicalities. Section 33(8) was enacted to balance the need for stability in governance with the necessity of holding elected officials accountable when they engage in misconduct. The Interested Parties assert that this provision aligns with international best practices on governance and accountability, ensuring that elected leaders remain answerable to the electorate throughout their tenure.
70. The 6th Interested Party cites various judicial precedents affirming that impeachment is a constitutional process designed to uphold the integrity of public office. In cases such as *Mwangaza v County Assembly of Meru & another* [2024] KEHC 9544 (KLR), the Courts have upheld the principle that elected officials are subject to removal when their conduct violates constitutional or legal standards. The 6th Interested Party emphasizes that judicial intervention in impeachment proceedings should be limited



to ensuring compliance with constitutional requirements but should not be used to block legitimate removal processes. The Courts have consistently held that the legislature has the primary responsibility for oversight over elected officials, and judicial interference should only occur in instances where gross violations of constitutional rights are evident. The 6th Interested Party further argues that impeachment serves a higher constitutional purpose, ensuring that public officeholders adhere to the principles of accountability, transparency, and integrity. The Interested Party warns that if the judiciary oversteps its role and unnecessarily interferes with impeachment proceedings, it risks eroding the effectiveness of constitutional mechanisms meant to check executive power at the county level. By citing past cases where Courts have upheld impeachment processes, the 6th Interested Party urges the Court to dismiss the Petitioner's claims and affirm the validity of the Senate's decision to remove her from office.

71. All four Interested Parties opposed to the Amended Petition—3rd, 4th, 5th, and 6th—conclude that the Petition lacks merit and is an abuse of the Court process. They collectively argue that the Petitioner has failed to demonstrate any substantial constitutional violation in the impeachment process. Instead, she has sought to use the Courts as a shield against a valid accountability mechanism prescribed by the Constitution. The Interested Parties contend that the impeachment process was conducted in accordance with the law, including public participation, due process, and fair hearing. Furthermore, they emphasize that the Petitioner's attempts to challenge the impeachment on procedural grounds are unfounded, as the impeachment followed the constitutional framework provided under Article 181 and the County Governments Act.
72. They warn that granting the Petitioner's prayers would set a dangerous precedent where public officials use the judiciary to obstruct legitimate governance accountability processes. They further assert that any alleged procedural irregularities in the impeachment process do not justify overturning the entire process, as long as the substantive grounds for removal were legally sound. The Court, they argue, must uphold the rule of law and ensure that democratic institutions can function without undue interference from the judiciary. The Interested Parties who oppose the Amended Petition, therefore, urge the Court to dismiss the Amended Petition with costs.

Issues for Determination

73. Having considered the Amended Petition, the responses thereto both in support and in opposition, the written submissions filed by the parties, and the Court has identified the following seven (7) issues for determination.
 - a. Whether the Respondent was a proper party and whether the orders sought against the Senate can issue.
 - b. Whether the Senate impeachment was invalid for being in defiance of a valid Court order.
 - c. Whether the impeachment was invalid for being predicated on matters *sub judice*.
 - d. Whether Section 33(8) of the County Governments Act contravenes Article 50(2)(o) of the Constitution and is therefore unconstitutional.
 - e. Whether the threshold for public participation in the impeachment process was met.
 - f. Whether the threshold for impeachment was met.
 - g. Whether the Senate impeachment was invalid due to a violation of the right to a fair hearing.



Whether the Respondent is a proper party and whether the orders sought against the Senate can issue

74. The questions of whether the Speaker of the Senate is the proper Respondent in this Petition and whether the Court can issue orders against the Senate are critical procedural questions that go to the root of the Amended Petition before this Court. The Speaker of the Senate was sued in his official capacity, meaning that he is not being held personally liable, but is representing the institution of the Senate. This distinction is crucial because under constitutional and parliamentary practice office holders such as the Speaker act as agents of the institutions they serve. The Speaker presided over the impeachment proceedings and played a fundamental role in guiding the Senate during the process, albeit a role that did not involve voting. The Speaker of the Senate did not personally vote or contribute to the impugned outcome; rather the Senate's decision was made collectively by Senators.
75. It is clear to my mind that the Speaker of the Senate, as a Respondent, understood the capacity in which he was sued in this matter. It is clear from the responses and the written submissions filed by the Respondent that the Speaker of the Senate was able to ably articulate a strong defence on behalf of the Senate. Further, the Speaker of the Senate's responses were in the form of Affidavits deposed by the Clerk of the Senate, a clear indication that the Respondent understood his role in this matter as well as the need to articulate a position on behalf of the Senate rather than one limited to its Speaker only.
76. The *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, commonly known as the Mutunga Rules, at Rule 5(d)(ii) provide that a constitutional petition shall not be defeated solely because of misjoinder or non-joinder of parties. That Rule operationalizes the constitutional edict contained in Article 159(2)(d) of the which directs that Courts shall administer justice without undue regard to procedural technicalities. Even if it were argued that the Senate should have been named directly instead of the Speaker, the fact remains that the Speaker advanced a strong defence for the Senate, meaning that no injustice or unfairness arises from this procedural issue. Courts have ruled in previous cases such as *Trusted Society of Human Rights Alliance v AG & others* [2012] eKLR, that a petition should not be dismissed simply because of a misdescription of parties, as long as the correct institution has been represented and has had the opportunity to respond.
77. Additionally, Courts in Kenya have consistently emphasized the importance of focusing on substantive justice rather than dismissing cases based on minor procedural lapses. In *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, the Court of Appeal upheld the principle that Courts should avoid dismissing petitions based on technicalities, especially where fundamental constitutional questions are raised. Similarly, in *Mwangi Stephen Muriithi v Attorney General* [1985] KLR, the Court stressed that procedural defects should not override the core objective of determining whether a party's rights have been violated. If the Court were to find that the impeachment of the Petitioner was unconstitutional, it would not be logical to refuse to issue the necessary remedies simply because of a misdescription of the Respondent. The Speaker has fully and ably articulated the defense of the Senate, meaning that the Senate has had its day in Court, and the issuance of orders against the Speaker would have the same legal effect as orders against the Senate itself.
78. Flowing on from this, I am satisfied that the Amended Petition can properly seek adverse orders against the Senate since the Speaker of the Senate is the Respondent in this matter. Our constitutional order has long since abandoned the obsession with procedure and technicalities that bedeviled constitutional litigation in former times. The Senate was ably represented and suffered no prejudice from its non-joinder as the Speaker of the Senate was the Respondent herein, and the orders sought against the Senate were vehemently opposed by its Speaker on behalf of that August House.



79. Consequently, it is the finding of this Court that the Speaker of the Senate was a proper party in these proceedings, and that Office's joinder as a Respondent, within the context of the Amended Petition before this Court, nevertheless enabled the Senate to raise and argue a strong defence, and the adverse orders sought against the Senate can properly lie against the Senate despite its direct non-joinder; if the Amended Petition were to succeed.

Whether the Senate impeachment was invalid for being in defiance of a valid Court order

80. Court Orders are not whimsical suggestions feebly whispered by judicial bodies in the vain hope that there will be compliance. On the contrary, Court Orders are the thunderous roar of the People of Kenya, giving voice to and in full exercise of their sovereign majesty, demanding obedience with Constitution and the other laws that they, the People of Kenya, have crafted and agreed to be bound by and to bind all others within the jurisdiction. In that regard, violation of a Court Order is an extremely serious issue that goes to heart of judicial authority and the vibrancy of our constitutional order.

81. This Court must tread carefully as the Order that the Speaker of the Senate and the Senate as a whole are alleged to have violated is An Order of the High Court of Kenya sitting at Meru, in a matter that is still pending before that Court. That Meru High Court matter is between the Petitioner herein as the Petitioner therein and almost all of the Interested Parties opposed to the Amended Petition, and it concerns the actions, omissions, and decisions of the County Assembly of Meru County with regard to the impeachment motions dated or filed against the Petitioner in the month of July 2024, and in particular one motion which gave rise to the impugned Senate Resolution that is the subject of these proceedings.

82. There are many elements to this issue for determination, all of which but one are either still pending before the High Court sitting at Meru or are the subject of ongoing proceedings before the Court of Appeal. The sole element that this Court can safely carve out from the rest is the question of whether the Speaker of the Senate and the Senate, not being parties in those Meru High Court proceedings, could have reasonably been expected to understand the Meru High Court's stated intention that the Orders in the Ruling dated 24/07/2024 by Kassan J applied to any future motions by the County Assembly, such as the one dated 31/07/2024 which was the subject of the Senate's consideration and impugned decision, in addition to the one referenced in the Ruling being the Motion dated 15/07/2024. That position was articulated clearly by the High Court sitting in Meru in its Contempt of Court Ruling dated 13/02/2025; but that Ruling came long after the Senate's impugned actions and decisions. Looking at the Ruling and the Orders therein, it would be reasonable to conclude that the Senate and its Speaker may not have immediately discerned that meaning from the wording of the Ruling.

83. Without being a party to those proceedings, I am satisfied that the Speaker and the Senate could not have been reasonably expected to appreciate the intention of the Meru High Court, and thus they cannot be faulted for proceeding as they did. I am equally satisfied that the Petitioner herein failed to properly advance the issue of the Court Order before the Senate. I agree with the Respondent that a letter to the Speaker of the Senate is not the proper way to raise such a Preliminary Objection as per the Senate's internal rules any more than a letter to a judicial officer would be a proper way to raise a Preliminary Objection before a Court of Law.

84. While it could be argued that the Senate should have sought judicial clarification before proceeding with impeachment, I find that it would have been better for the Petitioner, a party in those Meru High Court proceedings, to have been proactive and placed that material clarification before the Senate, in addition to properly moving the Senate as per its internal rules.



85. The Petitioner ought to have extracted the Order from the Ruling of Kassan J and formally placed it before the Senate, or filed the necessary process before the High Court sitting in Meru to create an express situation where the Senate could not have proceeded without expressly violating a Court Order of which they had direct knowledge. By not doing so, the Petitioner created a gap in which the benefit of doubt must favour the Respondent and the Senate.
86. Additionally, this Court notes that the Court of Appeal at Nyeri in a Ruling dated 5th March 2025 in Civil Application No E020 of 2025 consolidated with Civil Application No E021 of 2025 ordered as follows:

“Order of the Court

When this motion was called out for hearing today it was pointed out to counsel appearing for the parties – Mr Alex Mbaya for the applicants, Mr Elas Mutuma for the 1st respondent and Mr. Erick Muriuki or the 2nd respondent that it was directly related to Nyeri Civil Application No E021 of 2025. Upon application by learned counsel for the applicants with no objection by the respondent this Motion and the Motion in E021 of 2023 be and are hereby consolidated to be in this file. Further Order of the Court Ruling on these consolidated Motions to be delivered on 4th July, 2025. Pending the said ruling there will be a stay of execution of the ruling of the High Court delivered on 13th February, 2025 in respect of the consolidated Motions.”

87. The Court of Appeal is now seized with the wider question of whether there was a valid Meru High Court order capable of being violated and resulting in contempt of court. All this Court can safely determine is that the Senate’s Resolution cannot be justly quashed on the basis of an alleged violation of the Meru High Court’s orders in circumstances where the Ruling and Orders dated and issued on 24/07/2024 by the High Court sitting in Meru were likely unclear to persons not being parties to those proceedings such as the Respondent herein, and whose interpretation may be successfully challenged in the Court of Appeal, and whose interpretation and application in August of 2024 is still the subject of court proceedings in other fora in March of 2025. On that basis, the Respondent and the Senate should be and are given the benefit of the doubt; and I find that Petitioner has not established to the required legal standard that the Respondent and the Senate violated a valid court order for the purposes of these proceedings.
88. That being said, it would be remiss of this Court not to speak plainly on what would have been the outcome had the Petitioner laid that basis. Simply, the Amended Petition would have succeeded on that ground alone. If it was bindingly settled by another Court, or open to be settled by this Court, that the impeachment motion before and by the 5th Interested Party that gave rise to the impugned Senate Resolution was undertaken in violation of a Court Order, this Court would have had no hesitation in quashing the Senate Resolution on the basis that its substratum, the County Assembly’s motion, was invalid on account of having been undertaken in defiance of a Court Order. Even a good faith action by the Respondent and the Senate is liable to be quashed if the underlying and preceding actions by a County Assembly are found to have been illegal and thus invalid.

Whether the Senate Impeachment Was Invalid for Being Predicated on Matters *sub judice*

89. The doctrine of *sub judice* is an important legal principle that prevents Courts and other adjudicatory bodies from deliberating on matters that are actively pending before another Court of law or adjudicatory body. The Petitioner argues that the Senate’s impeachment process was invalid because it was based on matters that were already pending before the High Court in Meru and other Courts,



thus violating this rule. The purpose of *sub judice* is to ensure that judicial decisions are made without interference or parallel proceedings that could lead to conflicting judgments.

90. The *sub judice* principle is well established in Kenyan law and is expressly recognized under Standing Order 92 of the Senate's Standing Orders. Standing Order 92 states that Senators shall not refer to matters that are pending in Court if doing so would prejudice the fair determination of the case. However, the Standing Order also includes an exception, allowing the Senate to proceed if the Speaker determines that the matter is of overriding public interest. This means that while the doctrine of *sub judice* generally applies in the Senate, it is not absolute, particularly in cases where the Senate is exercising its constitutional oversight functions.
91. Courts have also provided guidance on the application of *sub judice*. In [Kenya National Commission on Human Rights v Attorney General](#) [2020] eKLR, the Court stated that the *sub judice* rule is meant to protect judicial proceedings from undue influence and ensure that Courts, rather than legislative bodies, are the final arbiters of legal disputes. However, in [Republic v Chief Magistrate Milimani & 2 others ex parte Tusker Mattresses Ltd & 3 others](#) [2013] eKLR, the Court clarified that *sub judice* applies only when the matters being adjudicated are substantially similar and the second forum's decision could prejudice the ongoing Court case. Therefore, the critical question is whether the Senate's deliberations were substantially the same as the issues pending in the High Court in Meru and other Courts, and whether the impeachment proceedings prejudiced or would likely prejudice the fair adjudication of the pending cases.
92. Despite the Petitioner's reliance on the *sub judice* rule, the Senate was not necessarily barred from proceeding with the impeachment. The Respondent argues that the Senate Speaker was within his powers to allow the process to continue under the public interest exception in Standing Order 92. Furthermore, Courts have consistently ruled that Parliamentary proceedings, including impeachment, should not be halted simply because there is a pending Court case unless there is a direct risk of judicial interference. In [Moses Kiarie Kuria v Attorney General & 2 others](#) [2021] eKLR, the Court ruled that *sub judice* does not automatically prevent a constitutional body from executing its legal functions, particularly where it is exercising an oversight mandate such as impeachment. Similarly, in [Kalonzo Musyoka v National Assembly & another](#) [2018] eKLR, the Court held that Parliamentary proceedings should not be stopped solely on the grounds of *sub judice* unless there is a real risk that the deliberations will interfere with an ongoing Court case.
93. Neither the Petitioner nor any of the Interested Parties supporting the Amended Petition have been able to demonstrate a sufficient likelihood that there would be or there would likely be a significant negative effect from the Senate having considered matters that were the subject of pending court cases.
94. A Senate Resolution that touches in whole or in part on a subject matter(s) that are pending in courts of law is, of course, not binding on those courts. They are free to independently arrive at the same or an opposite finding. To successfully invoke *sub judice*, a Petitioner must show more than the concurrent consideration of the same subject matter; rather, the Petitioner must show a real current or likely or future threat to his/her rights and/or the rule of law and the proper administration of justice by that concurrent consideration of the same subject matter.
95. To hold otherwise as a general rule would be to subordinate the Senate's exercise of its constitutional mandate with regard to impeachment to judicial processes, whose progression and timelines may be uncertain. The Doctrine of Separation of Powers must be a two-way street. Unless in clear cases where there is an identifiable threat to the constitutional rights, the rule of law, and/or the proper administration of justice, coupled with a significant harm or the likelihood of significant harm,



Parliament's discussion of a matter pending before a Court of Law should not result in the invalidation of any consequent action it takes.

96. Parliament should, of course, exercise great restraint in deliberating matters that are pending before the Courts; and should do so in a limited manner and should do so very rarely and only in the most pressing of instances. Parliament is not just any other body; it is a collection of elected and nominated representatives of the People of Kenya sitting in two Houses that are deliberative chambers with immense gravitas and the ability to shape and sway public opinion.
97. I note that the Petitioner has articulated a similar *sub judice* challenge in the Meru High Court matter directed at the proceedings before and by the County Assembly. This Court's findings on *sub judice* are limited to the four corners of this Amended Petition and the impugned proceedings and resolution of the Senate; and this Court makes no finding on that *sub judice* element as it applied to the County Assembly's proceedings.
98. In conclusion under this limb, it is the finding of this Court that the Amended Petition has not successfully laid the required basis for interference by this Court with the Resolution of the Senate on the ground of *sub judice*.

Whether Section 33(8) of the County Governments Act Contravenes Article 50(2)(o) and is therefore Unconstitutional

99. At this juncture, it is proper that this Court comments on the Petitioner's choice of filing and arguing two distinct High Court constitutional petitions concurrently, one in Meru against the County Assembly's actions and another in Milimani Nairobi against the Senate's impeachment process. The Respondent and the Interested Parties who oppose the Amended Petition have unsuccessfully argued that the present proceedings are *sub judice* those pending before the Meru High Court; and they are unsuccessful in that regard because even from their own filings it is clear that they appreciated the distinction between the two cases.
100. With regard to Section 33(8) of the County Governments Act and its alleged unconstitutionality, the Petitioner has conceded that an identical prayer has been advanced in the Petition pending before the High Court sitting at Meru. Given that the Meru Matter was filed first in time, it is fit and proper that it be the one to determine this issue, notwithstanding that the parties herein all extensively submitted on this limb of the Amended Petition.
101. By filing two distinct petitions in two different stations, the Petitioner has created an uncomfortable situation where in essence there is a possibility of the Petitioner enjoying two bites at the cherry as it were. Perhaps more importantly, the Petitioner's choice of crafting two distinct petitions with minimal overlap such that consolidation would not be automatic has had the consequence of denying a single court a bird's eye view of the entirety of the process from the inception at the County Assembly to the Senate Resolution, and thus forcing two High Court stations to tread carefully so as to not stray into the other's case.
102. To be clear, this was not forum shopping but rather it was 'clever lawyering' whereby the Petitioner's Counsel identified a loophole that they could use to the benefit of their client. By drafting and filing a Petition before this Court in which all the allegations were limited to the Senate stage, and by only suing the Senate's Speaker perhaps fully aware that the County Assembly and its Officers would be forced to join the proceedings through applications for joinder, the Petitioner has created a situation where she now has two opportunities for success rather than just one. As discussed earlier under the limb of the court order and whether it was violated, this Court is limited by the Amended Petition to



only the Senate-stage aspect of that limb, with the Petitioner still having another opportunity in the County Assembly-stage challenge of the same limb which is pending before the High Court in Meru.

103. As we continue to fine-tune the practice and process of litigation in the High Court on the subject matter of gubernatorial impeachments, this is certainly a loophole that must be firmly closed by the Courts in future impeachments, if a similar situation were to arise. This would not only make adjudication of the dispute more wholesome and comprehensive but it would also ensure that all the particular petitioner's grievances are laid before a single court, which would be able to take a holistic view of the matter rather than being constrained to a more limited view.
104. Therefore, while the constitutional validity of Section 33(8) of the County Governments Act poses legitimate legal questions both in favour of and in opposition of its constitutionality, this Court declines to determine the same within this judgment as the same is pending before the Meru High Court in a related matter which was filed earlier in time.

Whether the threshold for Public Participation was met in the Impeachment Process

105. The issue of whether the threshold for public participation was met in the impeachment process is central to the Petitioner's argument that the impeachment proceedings were unlawful. Public participation is a constitutional requirement under Article 10(2)(a) and Article 196(1)(b) of the Constitution of Kenya, 2010, which mandate inclusive and meaningful citizen engagement in government decision-making, including legislative processes such as impeachment. However, public participation in impeachment proceedings primarily occurs at the County Assembly level rather than at the Senate level, since the County Assembly is the initiating body that formulates and debates the impeachment motion before transmitting it to the Senate for final determination. The Petitioner contends that the public participation process was inadequate or manipulated, thereby rendering the entire impeachment invalid. However, the Respondent and Interested Parties who support the Respondent maintain that public participation was conducted in compliance with legal requirements, and any challenge to its adequacy should be directed at the County Assembly rather than the Senate.
106. Once more, this Court in trending delicately so as not to stray into the province of a petition that is pending before the High Court in another station, refrains from an in-depth analysis and determination of this issue, despite the parties all having canvassed it at great length. This situation, as stated earlier, is a direct consequence of the drafting and filing choices made by the Petitioner; which resulted in two live but distinct petitions pending before the High Court sitting at Meru and sitting at Milimani Nairobi.
107. Given that the Petitioner has not sought adverse orders against the County Assembly, the Court finds it procedurally improper to determine this issue in the present petition, as it is already being addressed in a separate case before the Meru High Court in which the matter of public participation is at the core of the Petitioner's grievances against the County Assembly.
108. For the purposes of this Amended Petition, it is the finding of this Court that the Amended Petition has not shown a correlation between its allegations on public participation and justiciable grounds against the Respondent and the Senate within the four corners of the Amended Petition that is before this Court.

***Whether the Threshold for the Impeachment of the Petitioner Was Met**

109. The question of whether the threshold for impeachment was met revolves around two key legal considerations: whether the charges against the Petitioner constituted valid grounds for removal under the Constitution and whether the High Court should conduct a merit review or a process review of



the impeachment decision. The Petitioner and the Interested Parties who support of the Amended Petition contend that the allegations against her did not amount to "gross misconduct," "abuse of office," or "gross violation of the *Constitution*" as required under Article 181(1) of the *Constitution*. On the other hand, the Respondent and Interested Parties who oppose the Amended Petition argue that the charges presented before the Senate were serious and substantiated, thus meeting the legal standard for impeachment.

110. the *Constitution* of Kenya, 2010, under Article 181(1), states that a governor may be removed from office for: (1) gross violation of the *Constitution* or any other law; (2) there being serious reasons to believe the governor has committed a crime under national or international law; (3) abuse of office or gross misconduct; or (4) physical or mental incapacity to perform the functions of the office.
111. These requirements are mirrored in Section 33 of the *County Governments Act*, which outlines the procedure for impeachment, requiring an initial resolution by the County Assembly followed by a Senate hearing and vote. The Senate is tasked with evaluating the sufficiency of the charges and determining whether the evidence meets the constitutional threshold. Courts have consistently ruled that impeachment is not a purely political process but one that requires objective and verifiable evidence of wrongdoing.
112. Several landmark cases have clarified the legal threshold for impeachment, reinforcing the principle that impeachment must be based on substantial proof of serious wrongdoing. In *Martin Nyaga Wambora v Speaker of the Senate & others* [2014] eKLR, the Court of Appeal held that impeachment must be based on evidence of gross violations of the law, not on minor procedural errors or political differences. The decision emphasized that governance mistakes or administrative inefficiencies do not automatically amount to gross misconduct warranting removal from office. Similarly, in *Governor Ferdinand Waititu v County Assembly of Kiambu & Senate* [2020] eKLR, the High Court ruled that impeachment should not be misused as a tool for political maneuvering but must be based on serious and substantiated allegations. In another seminal case, *Mike Sonko v County Assembly of Nairobi & Senate* [2021] eKLR, the Supreme Court clarified that the threshold for impeachment requires proof of gross misconduct and significant breaches of the law.
113. In the current case, the Senate reviewed the allegations against the Petitioner and found that they met the threshold of gross misconduct under Article 181(1), meaning that the charges were serious enough to warrant removal. Applying this principle, if the Senate found the allegations against the Petitioner to be serious, backed by evidence, and meeting the constitutional standard, the impeachment should stand.
114. A crucial legal question in this case is whether the High Court should conduct a "merit review", re-assessing the correctness of the charges and the evidence, or a "process review", assessing whether due process was followed. Courts have consistently ruled that judicial review of impeachment should focus on ensuring procedural compliance rather than reassessing the merits of the charges. In the Supreme Court case of *Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, the Apex Court emphasized that judicial intervention in constitutional processes should be limited and should focus on procedural fairness rather than the correctness of legislative decisions. Similarly, in *Wambora v Speaker of the Senate & others* [2017] eKLR, the Court of Appeal held that the High Court's role in impeachment cases is to ensure that the process followed legal and constitutional requirements rather than substituting its own judgment on the allegations. The Supreme Court further reinforced this position in *Sonko v County Assembly of Nairobi & Senate* [2021] eKLR, where it ruled that the Senate and County Assembly have the constitutional authority to determine impeachment matters, and Courts should only intervene where there are clear violations of due process. Applying these principles to the present case, the High Court is not required to assess whether the Senate made the



"right" decision but should only determine whether the procedure followed was fair and constitutional. A proper reading of those decisions in light of the *Constitution* requires that this Court can only engage in a merit review of the decision of the Senate if the decision of the Senate on the applicable law and/or evidence was so profoundly incorrect that no reasonable quasi-judicial body properly applying its mind to the law and the facts would have arrived at that conclusion; notwithstanding the procedural compliance of the processes.

115. This Court is satisfied that the charges laid before the Senate and which were considered by the chamber in favour of impeachment were of a nature that meets the requirements of Article 181(1) of the *Constitution*; and the Petitioner has not shown that the Senate's analysis of the applicable law and evidence was incorrect at all, and certainly not to the required of being so profoundly incorrect that no reasonable quasi-judicial body properly applying its mind to the law and the facts would have arrived at that conclusion; and thus warranting interference by this Court.
116. With regard to the procedural and due process probity of the Senate's processes, this Court notes that the unique circumstances of this Case and the manner in which the parties canvassed the question of fair hearing require that the same be analyzed separately and not as part of an omnibus procedural and due process examination. In that regard, while the Court finds that the procedural and due process boxes were ticked in the Senate, the question of whether there was substantive fair hearing in the Senate shall be dealt with separately and below.

Whether the Senate Impeachment of the Petitioner Was Invalid Due to Violation of Fair Hearing

117. The right to a fair hearing is a fundamental constitutional guarantee enshrined under Article 50 of the *Constitution* of Kenya, 2010. The Petitioner claims that her impeachment was invalid due to the alleged violation of her right to a fair hearing during the Senate proceedings, a position supported by the 1st, 2nd and 7th Interested Parties but strenuously opposed by the Respondent and the 3rd, 4th, 5th and 6th Interested Parties.
118. The relative positions of each of the parties on this issue was extensively set out earlier in this Judgment, and thus there is no need to repeat them here. From those extensive articulations of their relative positions, it is clear that the issue of fair hearing has six (6) distinct sub issues, being:
 - a. Whether the Petitioner was afforded sufficient opportunity to present her case;
 - b. Whether the Senators were given adequate time and opportunity to consider the matter;
 - c. What is the probative value of the statements both during and after the fact by a section of Senators;
 - d. Whether there were disruptions or disorder of a nature as to deny the Petitioner a fair hearing;
 - e. Whether in the Senate proceedings the Petitioner was subjected to discriminatory or unfair treatment; and
 - f. Whether there is evidence that there was a preconceived outcome and thus the hearing before the Senate was a sham.
119. The question of whether the Petitioner was afforded a sufficient opportunity to present her case requires an examination of both the individual milestones in the hearing process as well as an overall view of the entire Senate process. In both aspects, the Petitioner has provided evidence in the form of the Hansard that shows that the procedural milestones were met and they were of a sufficiently proper nature as to insulate them from an adverse finding by this Court. The Petitioner may disagree with the



overall outcome of those steps and how they connected as a whole, but the Petitioner has not shown a deficiency in each or in all as a collective that would require this Court's interference.

120. another aspect of the Petitioner's argument is that she was only given two minutes to make a personal statement at the conclusion of the proceedings and that she did not get the chance to deliver it. However, the Court's review of the Hansard and video recordings indicates that the Speaker of the Senate granted her the opportunity to speak. The uncertainty regarding whether she remained silent by choice or whether there was a technical issue with her microphone does not alter the fact that she was given the opportunity to address the Senate. Moreover, her legal counsel did not raise any objections during the proceedings, either regarding the time allocation or any technical difficulties. Courts have previously held that a party who fails to object to a procedural issue at the appropriate stage cannot later claim to have been denied a fair hearing. In *Republic v Public Procurement Administrative Review Board & another ex parte Gibb Africa Ltd & another* [2012] eKLR, the Court ruled that "A party who fails to raise an objection at the appropriate stage of proceedings cannot later claim to have been denied a fair hearing." Since the Petitioner did not object at the time, and there is no evidence that she was prevented from speaking, the claim that her right to a personal statement was violated lacks merit.
121. Similarly, the Petitioner has failed to show that the Senators did not have sufficient time and opportunity to consider the matter. The Respondents and the Interested Parties who oppose the Amended Petition are correct in stating that it is not for this Court to impose its own view on how much time should have been allocated or how the matters should have been laid before the Senators, but rather to see if they met the basic requirements of a fair hearing.
122. I note that the impugned Resolution process commenced substantively with the Senate's decision not to have a Special Committee hear the matter and prepare a report which would be voted on by the House, but rather have the entire Senate sit as a Committee of the Whole House and vote as the special constitutional procedures applicable. This, to my mind, meant that each Senator who participated had sufficient time and opportunity to consider the matter.
123. One of the Petitioner's key complaints is that Senators were only allocated three minutes each to debate the impeachment motion, which she argues was an insufficient amount of time. The Petitioner has presented signing-in forms suggesting that some Senators may have objected to the short debate time, as well as statements made thereafter about an alleged admission of insufficient time and opportunity by some of the Senators. However, for such an argument to hold legal weight, the Petitioner should have ensured that the Senators who felt constrained by the debate time had sworn affidavits confirming that they were unable to effectively express their views and consider the matter, and file them in these proceedings. Courts have consistently held that procedural fairness should be analyzed holistically rather than focusing on isolated aspects of a process. In *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR, the Court of Appeal emphasized that "fair hearing must be determined based on the totality of the proceedings and not by isolating individual elements."
124. Applying this principle, this Court finds that the limited debate time did not compromise the fairness of the proceedings, as the impeachment process did not involve a committee report requiring lengthy deliberations. Additionally, senators had access to the impeachment report beforehand and were given an opportunity to ask questions and deliberate during the proceedings. Therefore, the claim that the short debate time rendered the hearing unfair is not substantiated.
125. The Petitioner also argues that the impeachment proceedings were chaotic and disruptive, thereby affecting the fairness of the process. However, an examination of the Petitioner's own video evidence, as well as the official Hansard, does not support the claim that the chaos was of such a nature that it negatively impacted the fairness of the hearing. Courts have previously ruled that not every procedural



irregularity renders a process unfair—only those that materially affect the fairness of the proceedings are considered grounds for judicial intervention. In *Dry Associates Limited v Capital Markets Authority & another* [2012] eKLR, the Court held that “Not every procedural irregularity is fatal; only those that cause substantial prejudice to a party’s rights will justify the setting aside of a decision.” In this case, the Court has determined that while the proceedings may have been politically charged, there was no significant disruption that prevented the Petitioner from presenting her case effectively. Therefore, the argument that procedural chaos rendered the hearing unfair is not supported by sufficient evidence.

126. On the penultimate sub-issue, the question of gender discrimination and denial of equal treatment under the law, there can be no denying that zooming out from the present case we remain a nation that regrettably has not made the strides towards gender equality and promotion of the participation of women in governance that a nation of our democratic credentials should have made. There can be no denying the fact that despite all our other successes in constitutional implementation and deepening our democracy, the area of fostering inclusivity and diversity in political representation remains one in which we need to do much better as a country.
127. It is difficult for women to successfully demonstrate gender bias and denial of equal protection of the law in the governance arena because more often than not these biases and discriminatory treatments are not brought out starkly by those who perpetrate them but rather, they are subtle yet significant actions, decisions, and omissions that create an unequal playing field for women.
128. That being said, the Petitioner and the 2nd Interested Party have not particularized this complaint with specific reference to the Senate’s proceedings or shown an aspect or element of the proceedings before the Senate that show gender bias against the Petitioner. Perhaps this is because, while we have a wider problem with gender bias, the Senate conducted its proceedings strictly without any form of gender bias against the Petitioner. Had the contrary been demonstrated to the required standard, then on this sub-issue of seven main issues this Court would have had no hesitation in quashing the Senate’s Resolution.
129. The final claims raised by the Petitioner relate to the dating of the Gazette Notice and the Clerk of the Senate’s letter, as well as the speed with which the Senate conducted the impeachment vote.
130. The Petitioner contends that the Gazette Notice and the Clerk’s letter were both dated 20th August 2024, despite the vote taking place on 21st August 2024, which she argues is proof of a pre-determined decision. Under Section 107 of the *Evidence Act*, the burden of proof is on the Petitioner to establish that these documents indicate a premeditated decision rather than being the result of a typographical or clerical error, or even a good faith mistake. The Petitioner failed to provide evidence to refute the simpler explanation that the date discrepancy was a minor administrative oversight rather than the much more serious claim of proof of a rigged or pre-determined process.
131. Similarly, the claim that the Senate rushed to conclude the impeachment and/or sat on a non-gazetted day has not met the required threshold, as there is no requirement that impeachment proceedings must last a specific duration and the sitting on a non-gazetted day cannot be a successful ground for invalidation unless it is coupled with another proven ground such as malice or bias, and then a prejudice to the Petitioner. This Court also notes that the internal calendar and proceedings of Parliament should not ordinarily be interfered with by the Courts, unless a sufficient basis has been laid in which the Petitioner has not met in the present case. Courts have previously held that an expedited process is not inherently unconstitutional unless it is demonstrated that it deprived a party of an opportunity to be heard. In *Republic v Speaker of Nairobi City County Assembly & another ex parte Evans Kidero* [2017] eKLR, the Court held that “an expedited process is not inherently unconstitutional unless it is shown that it deprived a party of an opportunity to be heard.” The Petitioner has not demonstrated how the



Senate's action of expediting the hearing and determination of the matter before it deprived her of an opportunity to be heard, or was indicative of a preconceived outcome.

132. An analysis of all the available evidence demonstrates that the Petitioner was accorded all procedural safeguards necessary for a fair hearing, including the opportunity to present evidence, respond to both allegations as well as questions from the Senators, oppose the County Assembly's position, and make a final statement. The Senate proceedings followed standard parliamentary procedure, incorporating an opening statement, presentation of evidence, an opportunity for senators to ask questions, and a closing statement. The Court has assessed the totality of the impeachment process and found that the Petitioner was given ample opportunity to present her case and respond to allegations leveled against her. While the Petitioner has pointed out certain aspects of the proceedings that she considers unfair—such as the limited debate time, the opportunity to make a personal statement, the alleged chaotic nature of the proceedings, the timing of official communications, and the perceived haste in concluding the impeachment—none of these claims have been substantiated sufficiently to warrant a finding that her fair hearing rights were violated. Therefore, the Senate's impeachment process was procedurally sound and does not warrant judicial intervention on grounds of unfair hearing.

Conclusion

133. Gubernatorial Impeachment is an invaluable safeguard against impunity and abuse of office that must be jealously protected. It must not be allowed to become an avenue for fighting political proxy-wars or resurrecting the ballot box contestations that were determined by the electorate when it chose a particular candidate to hold the Office of Governor. In that regard, the Senate, as a national legislative body that is able to rise above the din of the county-level gladiatorial arena, is uniquely placed to safeguard the sanctity, probity, and vitality of this very important accountability measure.
134. Watering-down impeachment, lowering its bar too low, or allowing it to become a facade that masks hidden political interests runs the risk of Kenyans losing confidence in the process. Intervention by the Courts comes far down the impeachment path, and thus it is the duty of the primary duty-bearers, the concerned County Assembly and thereafter the Senate, to ensure that impeachment remains as constitutionally envisaged.
135. Turning back to the present case, and in light of the foregoing, the inescapable conclusion is that the Amended Petition dated 23/12/2024 has not met the required legal threshold for success. As outlined above, certain aspects of what was laid before this Court and submitted on extensively by the parties has been reserved for determination in other fora; a situation occasioned by the Petitioner's choice to split her grievances into two petitions pending before two different High Court stations. What this Court could safely determine without falling into *sub judice* was insufficiently articulated, proved, and substantiated for a finding in favour of the Petitioner.
136. While ordinarily costs would follow the event, in the circumstances of this matter I am satisfied that it is fit, just, and proper that each Party bears its own costs.
137. Before I rest my quill by penning the disposition and final orders, I must thank the Learned Counsel for the Parties in this matter for their industry, adherence to strict and short timelines, and the professional courtesy they extended each other. The breadth of their written submissions and the manner in which the ably highlighted those submissions orally made this Court's task of judgment writing a lot easier. I would also like to thank the parties for maintaining decorum while attending court sessions, despite this being a highly emotive and charged matter.



Disposition and Final Orders

138. Consequently, and for the foregoing reasons, this Court finds and determines that:

- a. The Amended Petition dated 23rd December, 2024 which is the subject of the proceedings herein is found to be without merit and is dismissed accordingly;
- b. The Gazette Notice No 10351 vol. CXXVI-No 130 dated 20th August 2024 published on 21st August, 2024 and issued by the Respondent communicating the decision and/or Resolution of the Senate to remove the Petitioner from Office as the Governor of Meru County by way of impeachment is affirmed for the purposes of these proceedings;
- c. Consequent to (a) and (b) above, the subsequent constitutional and statutory actions are free to take place as per the applicable timelines; and
- d. Each party shall bear its/their own costs.

DATED, SIGNED, AND DELIVERED IN OPEN COURT ON THIS 14TH DAY OF MARCH, 2025.

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BAHATI MWAMUYE

JUDGE

In the presence of:

Counsel for the Petitioner – Mr Elius Mutuma , Mr Elisha Ongoya , Mr Robert Mutemebi and Ms Bridah Kimathi

Counsel for the Respondent – Ms. Thanji

Counsel for the 1st Interested Party – Mr Lawi , Ms Wahu Ngata

Counsel for the 2nd Interested Party – Ms Omnoni , Ms Kirui h/b for Ms. Eunice Lumallas

Counsel for the 3rd Interested Party – Mr Kirimi

Counsel for the 4th Interested Party – Mr Benson Kinyua

Counsel for the 5th Interested Party – Mr Kirimi

Counsel for the 6th Interested Party – Mr Eric Mwirugi

Counsel for the 7th Interested Party – Mr Desire Nyamwea

Court Assistant – Ms. Neema

