



**John Major Mukenya v Clerk County Assembly of Bungoma & another;  
Wekesa & 5 others (Interested Parties) (Constitutional Petition  
3 of 2020) [2025] KEHC 4721 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
CONSTITUTIONAL PETITION 3 OF 2020**

**REA OUGO, J**

**APRIL 10, 2025**

**IN THE MATTER OF ARTICLES 2 (1) ,3(1) & (2) ,10 (1) & (2), 19 , 20 (1) & (3), 21, 23, 35,  
174, 175, 176, 196, 200 (2) (D) , 232, & 258 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 3,8,& 14 OF THE COUNTY GOVERNMENT ACT**

**AND**

**IN THE MATTER OF STANDING ORDER NO. 24,25,26 36 OF  
COUNTY ASSEMBLY OF BUNGOMA STANDING ORDERS.**

**AND**

**IN THE MATTER OF CONTRAVENTION OF ARTICLES 2 (1) , 3 (1)  
& (2), 10 (1) & (2) , 21, 35, 174 , 175, 196 (1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF STANDING ORDER  
NO. 24, 25, 26 & 36 OF THE COUNTY ASSEMBLY OF BUNGOMA**

**AND**

**IN THE MATTER OF ILLEGAL SITTING BY THE COUNTY  
ASSEMBLY OF BUNGOMA ON THE 14TH MAY, 2020**

**BETWEEN**

**JOHN MAJOR MUKENYA ..... PETITIONER**

**AND**

**THE CLERK COUNTY ASSEMBLY OF BUNGOMA ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER COUNTY ASSEMBLY OF BUNGOMA ..... 2<sup>ND</sup> RESPONDENT**



## AND

|  |                         |
|--|-------------------------|
| <b>FLORENCE FULANO WEKESA .....</b>      | <b>INTERESTED PARTY</b> |
| <b>EVERLYNE NABELELEA MUTYEMBU .....</b> | <b>INTERESTED PARTY</b> |
| <b>LUKE OPWORA .....</b>                 | <b>INTERESTED PARTY</b> |
| <b>JOSEH NYONGESA JUMA .....</b>         | <b>INTERESTED PARTY</b> |
| <b>MESHACK SIMIYU WEKESA .....</b>       | <b>INTERESTED PARTY</b> |
| <b>JOSEPH MAGUDA .....</b>               | <b>INTERESTED PARTY</b> |

## RULING

1. John Major Mukenya, the applicant, seeks to have a certificate of order and a certificate of order for costs issued against the County Government of Bungoma. The application is supported by the affidavit of the applicant dated 8.7.2024. He avers that on the 30.7.2021 judgment was entered against the County Government of Bungoma and the court decreed that a declaration is given that the 3<sup>rd</sup> respondents sitting of 14<sup>th</sup> May 2020 was unconstitutional and contrary to the Bungoma County assembly standing orders for failure by the 2<sup>nd</sup> respondent to gazette the special sittings, that the purported changes of leadership of the county assembly is hereby quashed and the status quo obtaining before the 14<sup>th</sup> May 2020 regarding the 1<sup>st</sup> to the 3<sup>rd</sup> parties be maintained with costs. The costs were taxed at Kshs 180965/- vide a certificate of costs issued on 20.11.2023. The certificate of costs was duly issued against the County Government of Bungoma, which is not satisfied. He therefore seeks to be granted the orders sought in this application.
2. The application was opposed. The application was canvassed by way of oral submission.
3. Mr Wamalwa, for the applicant, reiterated the contents of the applicant's affidavit. The applicant relied on the following cases of Jamleck Waweru Karanja vs County Government of Nakuru Cause No 300 of 2015 eKLR and Judicial Review Case No E001 of 2021 R vs County Government of Bomet Exparte DKN (suing as the father and the next friend of the minor DK) eKLR.
4. The respondent opposed the application vide the grounds of opposition dated 18.10.2024. It was submitted that the provisions under which the application is brought Order 29 Rule 3 of the Civil Procedure Rules and section 21 of the *Government Proceedings Act* cannot substantiate the prayers sought and that they can only be attained in the proceedings which involve the National Government and not the County Government as sought in the application.
5. The application is brought under Order 23 Rule 3 of the Civil Procedure Rules 2010 and section 21 of the *Government Proceedings Act*. Order 29 of the Civil Procedure Rules provides proceedings by and or against the Government. The issues for determination are whether the applicant has sued the correct party, the County Government of Bungoma, and whether the sought orders can be granted. In the case of Republic vs A. G & Another Ex-parte Stephen Wanyee Roki ( 2016) eKLR Odunga J stated as follows:

Section 21(4) of the *Government Proceedings Act* provides:

Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by



the Government, or any Government department, or any officer of the Government as such, of any money or costs.

The question is whether this provision applies to County Governments or only to National Government. The above Act does not define the term “Government”. Nor does such definition appear in Article 258 of *the Constitution*. Section 2 of the *Interpretation and General Provisions Act*, Cap 2 Laws of Kenya on the other hand provides:

“the Government” means the Government of Kenya

Article 189(1)(a) of *the Constitution* provides that Government at either level shall perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level. In my view a holistic approach to this provision would lead to the conclusion that there is only one Government being exercised at two levels both levels complementing each other and operating in the spirit of co-operation and complementariness. It would follow that both levels subject to *the Constitution* exercise similar powers under *the Constitution*.

Although the provisions of the *Government Proceedings Act* do not expressly refer to County Governments, section 7 of the Sixth Schedule to *the Constitution* (Transitional And Consequential Provisions) provides that:

All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.

It follows that the provisions of the *Government Proceedings Act*, a legal instrument enacted before the effective date must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with *the Constitution*. One such construction would be the reality that Government is now at two levels and Article 189(1) (a) of *the Constitution* requires that the Constitutional status and institutions of government at both the National and County levels be respected. In my view such respect cannot be achieved unless both levels of Government are treated equally and one such area would be with respect to execution proceedings.

6. It is clear that the Government Proceeding Act does not define the term “ Government”. I agree with the finding of Justice Odunga that the Government is now at two levels, and Article 189 (a) of *the Constitution*, status and institutions of government at both the National and County levels, be respected, and that both levels of Government are treated equally even with respect to execution proceedings. It therefore follows that the *Government Proceedings Act* applies. The respondent’s counsel failed to demonstrate how Order 29 of the Civil Procedure ( Amendment) Rules does not apply to the County Government. Judgment was entered against the County Government of Bungoma on the 30.7.2021, and costs have been taxed. The proceedings against the County Government are proper. The applicant is granted orders as sought in the application dated 8.7.2024. The applicant is awarded costs.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 10<sup>TH</sup> DAY OF APRIL 2025.**

**R.E.OUGO**

**JUDGE**



In the presence of:

Applicant - Absent

Miss Wanyama -For the Respondent

Wilister - C/A

