



**Kiusya v County Assembly of Machakos & 36 others (Constitutional
Petition E015 of 2025) [2025] KEHC 9134 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CONSTITUTIONAL PETITION E015 OF 2025**

RC RUTTO, J

JUNE 19, 2025

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 20, 22, 27,
35, 47, 48, 50, 165, 174, 175, 178, 196, 258 & 259 OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 8, 9(A), 10, 11 & 12 OF
THE COUNTY GOVERNMENTS ACT (NO. 17 OF 2012)**

AND

**IN THE MATTER OF SECTIONS 3, 4, 6, 11 & 12 OF THE
FAIR ADMINISTRATIVE ACTION ACT (NO. 4 OF 2015)**

AND

**IN THE MATTER OF REMOVAL FROM OFFICE AS SPEAKER
OF THE COUNTY OF MACHAKOS AND MACHAKOS COUNTY
ASSEMBLY STANDING ORDERS NOS. 43, 43A, 44 & 58**

AND

IN THE MATTER OF PRINCIPLES OF NATURAL JUSTICE

BETWEEN

HON. ANNE MWIKALI KIUSYA PETITIONER

AND

THE COUNTY ASSEMBLY OF MACHAKOS 1ST RESPONDENT

THE CLERK, COUNTY ASSEMBLY OF MACHAKOS 2ND RESPONDENT

**HON. STEPHEN MWANTHI, DEPUTY SPEAKER, COUNTY ASSEMBLY OF
MACHAKOS 3RD RESPONDENT**



HON. LUCKY RAPHAEL NZAU	4 TH RESPONDENT
HON. NICHOLAS NZIOKA	5 TH RESPONDENT
HON. HELLEN NDETI	6 TH RESPONDENT
HON. CONSTANCE MBULA	7 TH RESPONDENT
HON. CHARLES MBUVA	8 TH RESPONDENT
HON. DANIEL MUINDI	9 TH RESPONDENT
HON. IRENE MBITHE	10 TH RESPONDENT
HON. DOMINIC NDAMBUKI	11 TH RESPONDENT
HON. JEREMIAH KALOI	12 TH RESPONDENT
HON. MUOKI MUSILA	13 TH RESPONDENT
HON. FREDRICK KITETU	14 TH RESPONDENT
HON. DANIEL NDWIKI	15 TH RESPONDENT
HON. CATHERINE KYEE	16 TH RESPONDENT
HON. JACKSON NDAKA	17 TH RESPONDENT
HON. MATHIAS MUSYA	18 TH RESPONDENT
HON. JOSEPH MUTUKU	19 TH RESPONDENT
HON. FRANCIS KITAKA	20 TH RESPONDENT
HON. BENJAMIN KINYUNGU	21 ST RESPONDENT
HON. FELIX NGUI	22 ND RESPONDENT
HON. MUTUA LOYD	23 RD RESPONDENT
HON. PHOEBE KOKI	24 TH RESPONDENT
HON. MERCY NJAGI	25 TH RESPONDENT
HON. RUTH WANJIRU	26 TH RESPONDENT
HON. MWANZIA MULI	27 TH RESPONDENT
HON. ANASTACIA MUTEVU	28 TH RESPONDENT
HON. MARY KITUKU	29 TH RESPONDENT
HON. CATHERINE MUIA	30 TH RESPONDENT
HON. ROSINA KANINI	31 ST RESPONDENT
HON. FARHIYA HAJI ABDI	32 ND RESPONDENT
HON. PENINA KISANGAI	33 RD RESPONDENT
HON. DEE KIVUVA	34 TH RESPONDENT
HON. ANNA NDILO	35 TH RESPONDENT



HON. ERIC MUSEMBI 36TH RESPONDENT

HON. JUDAS M. NDAWA 37TH RESPONDENT

RULING

1. The Petitioner instituted the instant suit by way of a Petition and contemporaneously filed an application under certificate of urgency dated 29th April 2025. She is hereunder referred to as the Applicant.

A. The application

2. By a Notice of Motion application dated 29th April 2025, the Applicant has invoked the provisions under Articles 22, 23, 159, 165 & 259 of *the Constitution* of Kenya, Rules 4, 13, 19 & 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013) and all other enabling provisions of the law seeking orders pending determination of the application as well as pending determination of the Petition. The orders pending determination of the Petition include inter alia,
 - i. conservatory orders restraining the Respondents from processing and debating the impeachment motion dated 8th April 2025 and any other similar motions seeking to remove her from the office of the Speaker of the 1st Respondent,
 - ii. conservatory orders restraining the Respondents from processing, listing in the order paper, scheduling, moving, debating and voting on the motion dated 8th April, 2025 and any other similar motion for the removal of Petitioner/Applicant from the office of the Speaker of the 1st Respondent
 - iii. conservatory order restraining the 3rd Respondent from assuming the powers under Standing Order 58(3) of the 1st Respondent's Standing Orders which allows him to preside and/or chair the debate and voting of any motion for removal of the Petitioner/Applicant from office of the Speaker of the 1st Respondent.
 - iv. an order of injunction restraining the Respondents from interfering with the Petitioner/Applicant's exercise and/or discharge of her legal duties, powers, responsibilities and/or mandate and enjoyment of her legal rights as the Speaker of the 1st Respondent and the OCS Machakos Police Station be ordered to enforce this order.
 - v. a conservatory order restraining the Respondents from assaulting, restraining, imprisoning and verbally insulting the Petitioner/Applicant.
 - vi. a conservatory order restraining the Respondents from commenting, debating and discussing the person of the Speaker of the 1st Respondent and the impugned impeachment process of the Petitioner/Applicant herein either in the media and/or in any public gathering.
 - vii. an injunction restraining the 4th Respondent from moving, tabling, and/or proposing the motion for removal of Petitioner/Applicant from the office of the Speaker of the 1st Respondent.
 - viii. a conservatory order suspending the application of timelines prescribed under section 11(5)(c) and 11 (8) of the *County Governments Act*, 2012.



- ix. Costs of this Application be borne by the Respondents
3. The application is anchored on grounds in the body of the application and supported by an affidavit sworn by the Applicant dated 29th April 2025. It is the Applicant's case that the 4th Respondent has resubmitted a motion of a resolution to remove her from office as the Speaker of the 1st Respondent, a position she has held since 20th September 2022.
 4. The Applicant depones that the motion is an exact replica of another motion dated 17th March 2025 whose processing, debate and voting was suspended by this Court when it issued conservatory orders in both HCCRPET E012 of 2025 and HCCRPET E010 of 2025 barring the 1st, 2nd and 3rd Respondents from processing, listing in the order paper, scheduling, debating and voting on the motion seeking to remove the Applicant from the office of the Speaker of the 1st Respondent.
 5. She avers that the impugned motion has been re-submitted by the 4th Respondent and received and processed by the 2nd Respondent in blatant disregard and contempt of the orders of this Court issued on 27th March 2025 in HCCRPET E010 of 2025 and on 2nd April, 2025 in HCCRPET/E012 of 2025.
 6. She depones that the impugned motion was not submitted through the proper channels as prescribed in both Standing Order 58(2) of the 1st Respondent's Standing Orders and section 11(3) of the County Governments Act, 2012. That these glaring legal and procedural lapses should first be addressed before the motion is tabled, debated and voted on the floor of the 1st Respondent if she is to get any fair hearing.
 7. She depones further that there is real imminent risk and/or danger that if the ex-parte orders sought are not granted, the members of the 1st Respondent will proceed to debate and vote on, and for, the illegal, unlawful and defective motion on the floor of the 1st Respondent under the stewardship of a biased umpire, the 3rd Respondent, and this will grossly violate her right to a fair hearing and right to fair administrative action as enshrined in the Constitution of Kenya 2010 and other laws.

B. Respondents' Response

8. The application is opposed by the Respondents through the 1st and 2nd Respondents' replying affidavit and that of the 4th Respondent both dated 8th May 2025.
9. The 1st and 2nd Respondents' affidavit is sworn by the 2nd Respondent in his capacity as the Clerk to the 1st Respondent. He depones that he complied with the conservatory orders obtained by the Applicant on the 27th March 2025 in Petition E010 of 2025 restraining inter alia the 1st and 2nd Respondents from processing, tabling, scheduling, listing in the order paper, debating and voting on the motion for her removal from office. He avers that the 1st Respondent has therefore not taken any steps in furtherance of the motion.
10. He avers that a fresh Notice of Intention to move a Motion for the intended Impeachment of the Applicant dated 8th April 2025 was submitted to him by the 4th Respondent herein, which motion is not a resubmission of the Motion dated 17th March 2025. He further depones that there are no glaring legal and/or constitutional infractions to warrant the intervention of this Court at this stage of the process. He avers that the effect of the conservative orders sought by the Applicant would be to emasculate the 1st Respondent from performing its constitutional functions thus running afoul of the principle of checks and balances.
11. Further, that the process leading to the impeachment of a Speaker of a County Assembly is a time bound proceeding with strict timelines and therefore this Court ought to allow the process to run its course in accordance with the principles of judicial restraint, comity and separation of powers.



12. He avers that the public interest lies with allowing the 1st Respondent to carry out its constitutional mandate of upholding accountability through such processes as impeachment, with the Court retaining its supervisory role upon conclusion of the said process.
13. The 4th Respondent swore his replying affidavit in his capacity as the Majority Whip in the County Assembly of Machakos. He depones that in the present proceedings, he is the mover of the motion seeking to remove the Applicant from office by way of impeachment. He depones that it is a settled principle of law that courts should not interfere with deliberative stages of an Assembly and should only exercise a review mandate over the decisions of the Assembly once the final decision has been made. He thus avers that the present proceedings are premature since they have been lodged before the Assembly has made a final determination in respect to the proceedings before it.
14. He further depones that the written notice of intention to move a motion for the removal of the Speaker complied with section 11(5)(b) of the County Governments Act and Standing Order 58(2), which provisions are time-bound and ought to be dispensed of by the Speaker within seven (7) days of the Speaker receiving the notice of the motion, and by the Assembly within fourteen (14) days of the Assembly being notified of the motion.
15. The 4th Respondents avers that while it is true that the Applicant obtained court orders suspending the tabling, debating and voting on a motion dated 27th March 2025 seeking to impeach her in HCCRPET E010 of 2025 and HCCRPET E012 of 2025, the said court orders did not injunct him or any other member of the County Assembly from tabling afresh a motion seeking to impeach the Applicant and therefore, he has not blatantly disregarded the orders of this Court as alleged.
16. It is deponed that the notice of intention to move a motion for the removal of Speaker has been conducted lawfully and procedurally, that no prejudice will be occasioned to the Applicant thus this Court ought to exercise restraint and allow the Assembly to carry out this constitutional function to its conclusion as mandated by law.
17. This application was canvassed through written submission. The Appellant's written submissions are dated 23rd May 2025, the 1st and 2nd Respondents' written submissions in opposition are dated 17th May 2025, and the 4th-37th Respondents' submissions in rebuttal are dated 19th May 2025.

C. Applicant's Submissions

18. In her submissions, the Applicant proposes five issues for determination namely: i) whether this Court has the jurisdiction to intervene in the affairs of the 1st Respondent; ii) whether the Applicant has demonstrated a prima facie case with a likelihood of success; iii) whether the Applicant is likely to suffer prejudice or irreparable harm if the orders sought are not granted; iv) whether the petition would be rendered nugatory in the absence of the conservatory orders; and v) whether the public interest test supports the issuance of the conservatory orders.
19. On the first issue, it is submitted that courts have the jurisdiction to intervene in actions of other arms of government where it is alleged or demonstrated that the Constitution has either been violated or threatened with violation. The decisions in *Huka & 2 others v County Assembly of Isiolo & another; Kenya Kwanza Coalition & 2 others (Interested Parties) [2023] KEHC 18212 (KLR)* and *Gachagua & 40 others v Speaker, National Assembly & 15 others; Law Society of Kenya & 7 others (Interested Parties) [2024] KEHC 13473 (KLR)* are relied on to buttress this assertion.
20. It is submitted that the Respondents have acted in contempt of the court orders issued in HCCRPET E010/2025 and HCCRPET E012/2025 giving this Court the authority to intervene



based on the blatant disregard of court orders. The decision in *Mwangaza v County Assembly of Meru* [2025] KEHC 2059 (KLR), is relied on in this regard.

21. On the second issue, the Applicant refers this Court to the Supreme Court decision in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR, paragraph 86 where the Court discussed the nature of conservatory orders. It is urged that for a court of law to grant or issue conservatory orders, an applicant ought to meet the required threshold further summarized by the principles established in the decisions in *Board of Management of Uhuru Secondary School v City County Director of Education & 2 others* [2015] KEHC 2174 (KLR) and *Centre for Rights Education and Awareness (CREAW) & Others v AG* [2011] eKLR.
22. It is submitted that an applicant has to demonstrate that there is a probability of the applicant succeeding when the case goes for trial. The Court of Appeal decisions in *Mrao vs First American Bank of Kenya Ltd & 2 others* (2003) eKLR, *Nguruman Limited vs Jan Bonde Nelsen & 2 others* (C. A. No.77 of 2012), [2014] eKLR and *Oriental Commercial Bank (formerly Delphis Bank Limited) v Rajni K Somaia* [2015] KEHC 2693 (KLR) are relied on to illustrate what a prima facie case entails.
23. It is the Applicant's case that the right to a fair administration action, fair hearing, and right to access of information have been infringed and there is an imminent threat for continued violation if the 3rd Respondent is allowed to preside over the debate and voting of the motion due to the bias and confliction he has demonstrated. It is submitted that the re-submission of the motion was done in contempt of this court's orders and this greatly offends the rule against double jeopardy.
24. The Applicant argues that she has presented a strong arguable case demonstrating the violations and threatened constitutional violations by the Respondents and has established a prima facie case as the Respondents threaten her right to access to information, right to a fair administrative action, access to justice and fair hearing by tabling, scheduling for debating the illegal motion for her removal from the Office of the Speaker of the 1st Respondent without due process.
25. On the third issue, it is submitted that if the threatened action to illegally and forcefully remove the Applicant from office without according her a fair administrative action that is effective, expedient and just and a fair hearing proceeds, she will suffer irreparable harm that cannot be adequately compensated by damages or reversed through a final judgment. The decisions in *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) and *Bryan Chebii Kipkoech v Barnabas Tuitoek Bargaroria & another* [2019] KEELC 3435 (KLR) are relied on to reinforce this assertion.
26. On the fourth issue, the Applicant submits that if her removal proceeds while this petition is pending, the entire juristic essence and substratum of this petition will be defeated and the Court will be deprived of an opportunity to adjudicate on the legality of the impugned actions. She therefore submits that the issuance of the conservatory orders sought is crucial as it is aimed at preserving the substratum of the matter pending the hearing and determination of the main constitutional issues in the Petition. For this assertion, she relies on the decisions in *Judicial Service Commission vs. Speaker of the National Assembly & another* [2013] eKLR and *Kamau & 35 others v Commissioner General, Kenya Revenue Authority & another* [2022] KEHC 10284 (KLR).
27. On the last issue, it is the Applicant's case that public interest lies in upholding the rule of law, institutional stability, and the integrity of judicial proceedings and the Respondents' contemptuous actions undermine not just the Applicant's rights, but also public confidence in constitutional governance. It is thus urged that it is in the interest of justice and efficient administration for the people of Machakos if the conservatory orders sought are granted to ensure seamless running of affairs in the precincts of the County pending the hearing and determination of this petition. The decision in



Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR is relied on to buttress this assertion.

D. Respondents' Submissions

28. The 1st and 2nd Respondents submit that the principles to be considered by this Court in an application for conservatory orders were well captured in the case of Wilson Kaberia Nkunja v Magistrates and Judges Vetting Board & another [2016] eKLR. They distill three issues for determination, namely:
- i) whether the Applicant has made out a prima facie case with a likelihood of success;
 - ii) whether there is real danger that the Applicant will suffer prejudice and its case rendered nugatory unless the conservatory orders are granted and;
 - iii) whether the public interest is in grant/denial of the conservatory orders.
29. On the first issue, it is submitted that the case of Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] eKLR enunciated what constitutes a prima facie. It is urged that the question of whether or not the motion by the 4th Respondent is in breach of conservatory orders subsisting in E010 and E012 of 2025 are matters solely reserved for determination by the courts seized of the said Petitions and which issued the said orders. It is submitted that the Petitioner/Applicant has filed contempt proceedings in respect of Petition E010 of 2025 wherein she is the Petitioner, while there are also live contempt proceedings in E012 of 2025 in which she is an Interested Party.
30. It is submitted that the argument of double jeopardy is at odds with the now established principle that impeachment proceedings, being tools for political accountability are not subject to the double jeopardy principle and public officers are enjoined to be accountable to the sovereign at all times. It is submitted that where neither conviction nor acquittal has taken place, double jeopardy should not attach. *Mwangaza v County Assembly of Meru (Petition E013 of 2024) [2024] KEHC 10991 (KLR) (19 September 2024) (Ruling)* is relied on in this regard.
31. It is urged that the issues raised by the Applicant in this petition are similar to the matters substantially in issue in previously instituted proceedings being Petition E010 of 2025 and Petition E012 of 2025. Therefore, by dint of the instant petition having been filed later than the other petitions, this matter offends the subjudice rule and for that reason, the conservatory orders herein ought not to be granted.
32. It is submitted that in light of the doctrine of separation of powers, this Court should exercise restraint in questioning Parliamentary Procedures, especially in respect of matters that are live before the legislative bodies as was held by the Supreme Court in *Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae) (Advisory Opinion Reference 2 of 2013) [2013] KESC 7 (KLR)*.
33. It is further urged that the grounds raised in support of the application are matters best raised by the Petitioner during the substantive consideration of the motion by the 1st Respondent and not this Court at first instance. The decision in *Mike Sonko Mbuvi Gideon Kioko v Clerk, Nairobi City County Assembly & Others (2021)* is relied on in this regard. It is urged 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. The decision in *Dry Associates Limited v Capital Markets Authority & Another [2012] eKLR* is relied on to buttress this assertion.
34. It is thus submitted that the Applicant has not set out a prima facie case with a likelihood of success and therefore the Court should not issue the interlocutory orders as prayed. The Court is urged to



- uphold the Court of Appeal's dicta in Nairobi Civil Appeal No. 44 of 2014 Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another (2015) eKLR.
35. On the second issue, it is urged that impeachment procedures, as outlined in the County Government Act and the 1st Respondent's standing orders include specific steps to ensure a fair and impartial process thus no prejudice will be occasioned to her. The decision in Gachagua & 40 others v Speaker, National Assembly & 15 others; Law Society of Kenya & 7 others is relied on in this regard.
 36. It is submitted that the question of the substratum being rendered nugatory does not arise because the court upon reviewing the entire impeachment process, retains the jurisdiction to order appropriate reliefs, including nullification of the process where necessary, reinstatement and/or compensation and therefore the Petitioner stands to suffer no prejudice in allowing the 1st Respondent to undertake the constitutional process and later seeking the aid of this Court in the event of violation of her rights. The decision in Charity Kaluki Ngilu v County Assembly of Kitui & 2 others [2020] eKLR is cited to reinforce this assertion.
 37. On the third issue, it is submitted that the public interest heavily leans towards this Court allowing the 1st Respondent to execute its constitutionally assigned role of undertaking political accountability processes being impeachment proceedings.
 38. It is further urged that while this Court retains the jurisdiction to interrogate whether anything done or said to be done under *the Constitution* is valid, including quasi-judicial proceedings such as impeachment processes, the Court, in keeping with the doctrine of separation of powers and institutional comity is equally enjoined to exercise restraint in allowing the constitutionally ordained process to proceed to their logical end before interrogating the process. The decisions in Justus Kariuki Mate & Another –vs- Martin Nyaga Wambora & Another [2017] eKLR, Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR, Nyeri Civil Application No. E093 of 2023; Hon. Kawira Mwangaza vs County Assembly of Meru and Another, Sonko v. County Assembly of Nairobi City & 11 Others (Petition 11 (E008) of 2022) [2022] KESC 76 (KLR), Charity Kaluki Ngilu v County Assembly of Kitui & 2 others [2020] eKLR, Gachagua v The Speaker of the National Assembly & 3 others (Petition E550 of 2024) [2024] KEHC 12876 (KLR), and Martin Nyaga Wambora v Speaker of the Senate & Others (2014) eKLR, are relied on to buttress this assertion.
 39. The 4th -37th Respondents submit that the application lacks merit, is based on unfounded allegations, and does not meet the threshold for the grant of conservatory orders as sought. They urge that their actions have been within the confines of the law and the Standing Orders of the 1st Respondent, and are aimed at ensuring the proper functioning and integrity of the County Assembly.
 40. It is submitted that the present proceedings are premature and the Applicant is merely attempting, through a frivolous application, to enjoin the Court in her quest to stop the County Assembly proceedings, a function that is a legitimate process of accountability contemplated in and permitted by law.
 41. It is contended that this application does not meet the threshold as enunciated in the case of Anarita Karimi Njeru v Republic (No. 1) (1978) KLR 154 (and as emphasised in Mumo matemu v Trusted Society for Human Rights Alliance & Others (2013) eKLR) because it does not raise or state with any reasonable degree of precision the specific provisions of *the Constitution* of Kenya, 2010 which are alleged to be violated or threatened, neither does it provide sufficient detail of the manner of alleged violations or threatened violations.
 42. They submit that there are only five issues for determination, namely:



- a) whether the present application meets the threshold for grant of the orders sought;
 - b) whether the notice of intention to move a motion for the removal of the Speaker and the intended motion are legible and clearly disclose the grounds for removal;
 - c) whether this Court has jurisdiction to review a decision made by a County Assembly and whether such a review violates the doctrine of separation of powers;
 - d) whether the Respondents have failed to provide the Applicant with necessary information and documents, thereby violating her right to a fair hearing and;
 - e) whether the actions of the Applicant have unlawfully paralyzed the operations of the Respondents or obstructed in the discharge of duties.
43. On the first issue, it is submitted that the Supreme Court outlined the principles governing the granting of conservatory orders in *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others*. It is urged that what constitutes a prima facie case was discussed in *Mrao vs. First American Bank of Kenya Limited & 2 Others* (2003) KLR 125. It is submitted that it matters not whether the suit in question will at the end be successful as was stated in *David Ndii & others vs. Attorney General & others* [2021] eKLR.
44. It is contended that the court's counsel and jurisdiction should only be invoked once the organ whose decision is challenged has made a decision. It is thus submitted that this application is premature at this stage since the County Assembly is yet to make a determination on the motion of impeachment lodged before it. They urge that the issues raised by the Applicant herein can be canvassed on the floor of the Assembly at the point of debating her impeachment motion, after which, such deliberations would inform the decision that the Assembly will make in regard to the motion that is pending before it.
45. It is the 4th -37th Respondents' case that it is a settled principle of law that court should not interfere with deliberative stages of an Assembly and only exercise a review mandate over the decisions of the Assembly once the final decision has been made contrary to what the Petitioner is urging this Court to do.
46. It is submitted that no prejudice will be caused to the Applicant if the orders are not granted since impeachment is a lawful mandate of the County Assembly, that there is no property in the public political office of the Speaker over which the Applicant can be said to have a right and this Court's intervention will still be available at the conclusion of the process should the Applicant need redress.
47. It is contended that the wide-ranging conservatory orders sought by the Applicant are unnecessary, disproportionate, and would unduly interfere with the lawful functions of the 1st Respondent.
48. On the second issue, it is urged that the facts constituting the grounds for removal from office meet the requirements of section 11(3)(c) and (4) of the [County Governments Act](#) and the written notice complied with section 11(5)(b) of the [County Governments Act](#) and Standing Order 58(2). That it is evident that the process commenced by way of the notice of intention to move a motion for the impeachment of the Applicant, and has, thus far, been conducted lawfully and procedurally, and this Court ought therefore to exercise restraint and allow the Assembly to carry out this constitutional function to its conclusion as mandated by law.
49. On the third issue, it is submitted that that an impeachment process is quasi-judicial in nature and courts can be called upon to confirm the legality of the procedures. However, it is contended that the present application and petition before this honorable Court is premature as the process of impeachment has not been finalized yet but is being curtailed and frustrated by the Applicant. The



decision in *Martin Nyaga Wambora vs. Speaker of Senate and 6 Others* [2014] eKLR is relied on in this regard.

50. It is further urged that the Applicant is abusing the court process by lodging the instant Petition and application for ulterior motives with the intention of disrupting statutory timelines and the discharge of functions by the County Assembly.
51. On the fourth issue, it is submitted that the Applicant's constitutional right to be heard and allowed to defend herself has not been violated in any way as procedural law was strictly adhered to and a notice of intention to move a motion for the impeachment of the Applicant was issued by the 4th Respondent, and further pursuant to section 3(a) of the *County Governments Act* and Standing Orders 58(2), a notice of intention to move a motion for a resolution to remove the Speaker was submitted to the Clerk by the intended mover, which is ordinarily done by serving a written notice to the physical office of the Clerk where it is received by the Clerk or the administrative staff such as clerks and secretaries in line with the ordinary administrative arrangements of the office.
52. On the fifth issue, it is urged that these proceedings are premature, violate the principles and doctrines of separation of powers and this Court should dismiss the application and Petition and allow the Assembly process to run its natural course before any intervention is sought by the parties. The decisions in *Mumo Matemu vs. Trusted Society of Human Rights Alliance & 2 Others*, Civil Appeal No 290 of 2012, [2013] eKLR, *Kirera v Senate & 8 others (Petition 4 of 2024)* [2024] KEHC 7490 (KLR) (13 June 2024) (Ruling), *Speaker of the Senate & Another vs. Attorney General & 4 Others*, Reference No. 2 of 2013; [2013] eKLR, *Mate & another vs. Wambora & another (Petition 32 of 2014)* [2017] KESC 1 (KLR) (Civ) (15 December 2017), and *Sumo –vs- Clerk County Assembly of Nairobi & 11 Others* are relied on to buttress this assertion.
53. It is their case that their actions have been guided by their constitutional and legal duties and responsibilities. They deny all allegations of contempt of court, procedural irregularities, bias, abuse of process, and the other grounds raised by the Applicant for the reason that the substantive and procedural law governing the removal of a Speaker of the County Assembly has, thus far, been strictly adhered to.
54. It is submitted that while it is true that the Applicant obtained court orders suspending the tabling, debating and voting on a motion dated 27th March 2025 seeking to impeach her in HCCRPET E010 of 2025 and HCCRPET E012 of 2025, the said court orders did not injunct the mover of the motion or any other member of the county assembly for that matter from tabling a fresh a motion seeking to impeach the Applicant.

E. Analysis and Determination

55. After a perusal of the pleadings and written submissions from the rival parties, the issue that emerges for determination is whether this application meets the threshold to warrant grant of the conservatory orders sought.
56. The Supreme Court in *Munya v Kithinji & 2 others* [2014] KESC 30 (KLR) stated at paragraph 86, thus

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the



supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

57. It went on at paragraphs 87 & 88, thus

“before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

- (i) the appeal or intended appeal is arguable and not frivolous; and that
- (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.

88. These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:

- (iii) that it is in the public interest that the order of stay be granted.”

58. This Court's jurisdiction has been contested by the Respondents. However, I note that the Applicant alleges violation of Article 27, 35, 47, 48 and 50 of the Constitution, which allegations of violations are within the jurisdictional purview of this Court under Article 165 of the Constitution. This view is informed by the Court of Appeal decision in *Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others* [2014] eKLR which stated as follows in paragraph 52:

“52. In our view, in addition to the supervisory jurisdiction of the High Court under Article 165 (6) of the Constitution, the High Court has a specific constitutional jurisdiction under Article 165 (3) (d) (ii) and (iii) of the Constitution. These paragraphs vest upon the High Court jurisdiction to hear any question on whether anything said to be done under the authority of the Constitution or any law is inconsistent with or in contravention of this Constitution; and to hear and determine any matter relating to constitutional powers of state organs in respect of county government.”

59. In my view therefore, it is imperative to interrogate whether the alleged rights have been violated and therefore the balance of convenience tilts in favour of preserving the status quo and ensuring the full hearing of the Petition is not rendered nugatory. It is also my considered view that public interest lies in upholding the rule of law and the integrity of judicial proceedings. In the same breath, I note that this Court is currently seized of Petitions E010 and E012 of 2025, which petitions seeks to address similar matters as the instant petition.

60. This has been pleaded by the Applicant and not disputed by the Respondents. Indeed, the 1st and 2nd Respondents state in their submissions. “It is important to point out that the issues raised by the Petitioner in this petition are similar to the matters substantially in issue in previously instituted proceedings being Petition E010 of 2025 and Petition E012 of 2025. By dint of the instant petition having been filed later than the other petitions, this matter offends the subjudice rule and for that reason, the conservatory orders herein ought not to be granted.

61. The 4th Respondent in his replying affidavit dated 8th May 2025 deponed; “32. THAT while it is true that the Applicant obtained court orders suspending the tabling, debating and voting on a motion



- dated 27th March 2025 seeking to impeach her in HCCRPET E010 of 2025 and HCCRPET E012 of 2025, the said court orders did not injunct me or any other member of the county assembly for that matter from tabling a fresh a motion seeking to impeach the Applicant and therefore I have not blatantly disregarded the orders of this Honourable Court as alleged.”
62. The 4th -37th Respondents on their part submitted that, “42. While it is true that the Applicant obtained court orders suspending the tabling, debating and voting on a motion dated 27th March 2025 seeking to impeach her in HCCRPET E010 of 2025 and HCCRPET E012 of 2025, the said court orders did not injunct the mover of the motion or any other member of the county assembly for that matter from tabling a fresh a motion seeking to impeach the Applicant.”
63. This Court on 27th March 2025, in HCCHRPET/E010/2025 ordered that:
2. That pending the hearing and determination of this Application, this Honorable Court do issue conservatory orders restraining the 1st Respondent from processing, debating and voting on the motion for the removal of Petitioner/Applicant from the office of the Speaker of the 1st Respondent.
 3. That pending the hearing and determination of this Application, this Honorable Court do issue a conservatory order restraining the 2nd Respondent from assuming the powers under Standing Order 58(3) of the 1st Respondents Standing Orders which allows him to preside and/or chair the motion for removal of the Petitioner/Applicant from office of the Speaker of the 1st Respondent.
 4. That pending the hearing and determination of this Application, this Honorable Court do issue an order of injunction restraining the 3rd Respondent from scheduling, tabling before the 1st Respondent, listing in the order paper and/or processing, the motion for removal of Petitioner/Applicant from the office of the Speaker of the 1st Respondent.
64. I must state categorically that these orders did not have the effect of extinguishing or withdrawing the motion dated 17th March 2025 by the Respondents, but only suspended its processing in the interim pending the hearing and determination of the petitions before me. The question that then follows, which this Court cannot answer at this interim stage is whether the Respondents, particularly, 1st to 3rd Respondents can legally proceed to consider another motion seeking impeachment of a speaker, while there exists an earlier motion seeking the same impeachment? This is a prima facie question that needs substantive determination.
65. I am also alive to the fact that there are contempt proceedings in respect of Petition E010 of 2025 wherein the Applicant in the instant application is the Petitioner. I note that the court’s orders, as issued on 27th March 2025 and 2nd April 2025 were clear, halting in any way the impeachment process against the applicant pending the court’s delivery of its substantive judgment. The orders, as issued on 27th March 2025 and 2nd April 2025 are still in existence and have not been vacated by the Court on application by either party to the suit.
66. It is therefore necessary, to avoid an instance of abuse of this Court’s processes. The upshot is that, the Notice of Motion Application dated 29th April 2025 is allowed and I grant orders the following orders ii, iii and iv set out in paragraph 2 herein above. For the avoidance of doubt the orders are as follows;
- a. A conservatory order is issued restraining the Respondents from processing, listing in the order paper, scheduling, moving, debating and voting on the motion dated 8th April, 2025 and any other similar motion for the removal of Petitioner/Applicant from the office of the Speaker of the 1st Respondent pending hearing and determination of this Petition.



- b. A conservatory order is issued restraining the 3rd Respondent from assuming the powers under Standing Order 58(3) of the 1st Respondent's Standing Orders which allows him to preside and/or chair the debate and voting of any motion for removal of the Petitioner/Applicant from office of the Speaker of the 1st Respondent pending hearing and determination of this Petition.
- c. An injunction is issued restraining the Respondents from interfering with the Petitioner/Applicant's exercise and/or discharge of her legal duties, powers, responsibilities and/or mandate and enjoyment of her legal rights as the Speaker of the 1st Respondent pending hearing and determination of the Petition.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF JUNE 2025.

RHODA RUTTO

JUDGE

In the presence of;

..... Applicant

..... Respondent

Sam, Court Assistant

