



REPUBLIC OF KENYA



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**Luseneka & another v County Assembly of Bungoma & another (Petition
E005 of 2025) [2025] KEHC 8669 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PETITION E005 OF 2025**

REA OUGO, J

JUNE 20, 2025

**IN THE MATTER OF ALLEGED VIOLATION OF VALUES AND PRINCIPLES
OF GOVERNANCE ENSHRINED IN THE CONSTITUTION AND THE LAW**

AND

**IN THE MATTER OF ARTICLES 1,2,3(1),10,19,20,22,27,
165(3)(B),174 ,258 (1), OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF RULES 4,10,11,13 AND 20 OF THE CONSTITUTION
OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF
FUNDAMENTAL RIGHTS AND FREEDOM) OF THE INDIVIDUAL,
HIGH COURT PRACTICE AND PROCEDURAL RULES, 2013**

AND

**IN THE MATTER OF SECTIONS 8, AND 14 OF THE COUNTY
GOVERNMENT ACT, ACT NO. 17 OF 2012 LAWS OF KENYA**

AND

**IN THE MATTER OF THE COUNTY ASSEMBLY OF BUNGOMA STANDING
ORDER S NO. 174(1), 176(4), 209(3), 210(1), (2) (4) AND 5, 216 (1), (2) & (3)**

BETWEEN

HON ANTHONY LUSENAKA 1ST PETITIONER

JACKSON WAMBULWA 2ND PETITIONER

AND

THE COUNTY ASSEMBLY OF BUNGOMA 1ST RESPONDENT

**THROUGH THE SPEAKER OF THE COUNTY ASSEMBLY OF
BUNGOMA 2ND RESPONDENT**



Computation of time of the terms of members of County Assembly committees

The petitioners, Members of the County Assembly of Bungoma, challenged the Speaker's April 2025 declaration that the Public Accounts and Investments Committee and the Budget and Appropriations Committee had lapsed, arguing their terms, commencing post-August 2022 elections, had not expired. The subsequent appointment of the Liaison Committee as a caretaker body lacked any Standing Order basis. The Court interpreted Standing Orders 209(1)–(3) and 210(1)–(5) in line with article 259(5)(c) of the Constitution, and held that the committees' terms had not lapsed and the caretaker committee appointment was ultra vires, illegal, and unconstitutional. The petitioners' rights to participate in oversight functions were upheld, and their continued tenure confirmed.

Reported by John Ribia

Statutes - interpretation of statutes - interpretation of County Assembly of Bungoma Standing Orders 209(1) to (3) and 210(1) to (5) - interpretation of the term calendar year - whether the term "calendar year" under County Assembly of Bungoma Standing Orders 209(1) to (3) and 210(1) to (5) should be computed in accordance with article 259(5)(c) of the Constitution.

Devolution - county assemblies - County Assembly of Bungoma - computation of time - meaning of calendar year - terms of service of County Assembly Committees - whether the terms of service of the County Assembly of Bungoma Public Accounts and Investments Committee and the Budget and Appropriations Committee had lapsed as of April 2025, taking into account that each committee was constituted immediately following the August 2022 General Elections for a fixed period of three calendar years - whether the appointment of the Liaison Committee as a caretaker body, in the absence of any provision for such a committee in the Bungoma County Assembly Standing Orders, was ultra vires, illegal, and unconstitutional - Constitution of Kenya article 259; County Governments Act (Cap 265) sections 8, 13, and 38; County Assembly of Bungoma Standing Orders sections 209(1) to (3) and 210(1) to (5).

Brief facts

The 1st and 2nd petitioners were Members of the County Assembly of Bungoma, serving as members of the Public Accounts and Investments Committee and the Budget and Appropriations Committee, respectively. On April 17, 2025, the Speaker declared that the committees' three-year terms had lapsed, despite the petitioners' contention that the terms, commencing after the August 2022 General Elections, had not expired. Following the Speaker's declaration, the Committee on Selection presented new nominations on April 23, 2025, which were rejected by the Assembly. The Speaker then appointed the Liaison Committee as a caretaker body for both committees. The petitioners challenged these actions, arguing they were contrary to County Assembly of Bungoma Standing Orders 209 and 210, which governed committee terms, and violated their rights as the minority party to participate in oversight functions under articles 10, 38(2), 174, and 201 of the Constitution, as well as section 8(1) of the County Governments Act. They contended that the caretaker committee was illegal, *ultra vires*, and unconstitutional.

Issues

- i. Whether the term calendar year under County Assembly of Bungoma Standing Orders 209(1) to (3) and 210(1) to (5) should be computed in accordance with article 259(5)(c) of the Constitution.
- ii. Whether the terms of service of the County Assembly of Bungoma Public Accounts and Investments Committee and the Budget and Appropriations Committee had lapsed as of April 2025, taking into account that each committee was constituted immediately following the August 2022 General Elections for a fixed period of three calendar years.
- iii. Whether the appointment of the Liaison Committee as a caretaker body, in the absence of any provision for such a committee in the Bungoma County Assembly Standing Orders, was *ultra vires*, illegal, and unconstitutional.



Held

1. A constitutional petition must clearly link alleged violations to specific provisions. The petitioners claimed that the Liaison Committee appointment violated articles 10, 174, 201, and 203, of the Constitution and principles of transparency and accountability. The petition could not be faulted on the ground of lack of particularity and precision.
2. Standing Orders 209(1)–(2) and 210(1), (5) of the County Assembly of Bungoma Standing Orders (Standing Orders) provided that each committee, constituted immediately after a general election, would serve for three calendar years, with subsequent committees serving the remainder of the Assembly term.
3. Section 2 of the *Standing Orders* (Second Edition) 2022 does not define the term “calendar year.” Article 259(5)(c) of the Constitution provided that a period expressed in years ends at the beginning of the corresponding date in the relevant year. Standing Orders 209(1) to (3), and 210(1), and (5) mandated that each committee, constituted immediately after the August 2022 General Elections, would serve for three years. Accordingly, the committees’ terms had not lapsed as of April 2025, contrary to the Speaker’s declaration.
4. The subsequent appointment of the Liaison Committee as a caretaker body was *ultra vires*, as no provision for a caretaker committee existed in the Standing Orders. The actions of the respondents also infringed the minority party’s right to participate in oversight functions, thereby violating articles 38(2) and 10 of the Constitution and section 8(1) of the County Governments Act.

Petition allowed.

Orders

- i. *Declaration made that the term of service of the Public Accounts and Investments Committee and Budget and Appropriation Committee had not lapsed and would lapse three years from the date each committee was constituted in accordance with article 259(5) of the Constitution and Bungoma County Standing Orders 209(2) and 210(5).*
- ii. *Declaration made that the appointment of the Liaison Committee as the caretaker committee for the Public Accounts and Investment Committee and Budget and Appropriation Committee was null and void ab initio, ultra vires, illegal, unlawful and unconstitutional.*
- iii. *The members of the Public Accounts and Investments Committee and the Budget and Appropriation Committee appointed in the first term shall continue to hold office until the expiry of their three-year term of service, respectively.*
- iv. *A declaration was made that the selection committee’s report dated April 23, 2025, nominating members to the Public Accounts and Investments Committee and tabled before the County Assembly for the adoption of new members of the Public Accounts and Investment Committees, was void ab initio and ultra vires.*
- v. *Declaration made that the appointment of the Liaison Committee as the caretaker committee of the Public Accounts and Investment Committees and Budget and Appropriations Committee of Bungoma County Assembly was in violation of Bungoma County Standing Orders No’s 176(4), 209(2), (3) (4), (5), 210(2), and 216 (1) to (5) and was, to that extent, illegal, null and void ab initio.*
- vi. *Order of Certiorari issued for the purpose of quashing the decisions of the 1st respondent made on April 17, 2025, which dissolved the Public Accounts and Investment Committees and the Budget and Appropriations Committee of the Bungoma County Assembly.*
- vii. *Order of Certiorari issued quashing the decisions of the 1st respondent regarding the preparation, tabling before the assembly, debating, and rejection of the nominations of the selection committee report for the membership of the Bungoma County Public Accounts and Investment Committee and the Budget and Appropriation Committee on April 24, 2025.*



- viii. *Order of Certiorari issued quashing the decisions of the 1st respondent regarding the appointment of the Liaison Committee as a caretaker committee for the Bungoma County Public Accounts and Investment Committee and the Budget and Appropriation Committee made on April 24, 2025.*

Citations

Cases

Kenya

1. *Anarita Karimi Njeru v Republic* Criminal Appeal 4 of 1979; [1979] KECA 12 (KLR); (1976-1980) KLR 1272 - (Explained)
2. *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* Petition 14, 14A, 14B & 14C of 2014 (Consolidated); [2014] KESC 53 (KLR) - (Mentioned)
3. *Council of County Governors v Lake Basin Development Authority, Kerio Valley Development Authority, Tana and Athi River Development Authority, Ewaso Ng'iro South River Basin Development Authority, Coast Development Authority, Ewaso Ng'iro North River Basin Development Authority & Attorney General* Petition 280 of 2017; [2017] KEHC 9634 (KLR) - (Mentioned)
4. *Kenyatta, Uhuru Muigana v Nairobi Star Publications Ltd* Petition 187 of 2012; [2013] KEHC 6084 (KLR) - (Mentioned)
5. *Kyalo, Kamina v Senate, Speaker of the Senate, Nairobi City County Assembly & Evans Kidero* Petition 334 of 2016; [2017] KEHC 9808 (KLR) - (Mentioned)
6. *Mike Sonko Mbuvi Gideon Kioko & Okiya Omtatah Okoiti v Clerk, Nairobi City County Assembly, Speaker, Nairobi City County Assembly, Nairobi City County Assembly, Clerk of The Senate, Speaker of the Senate of Kenya, Senate of Kenya, Attorney General, Independent Electoral and Boundaries Commission, Assumption of the Office of the County Governor Committee, Nairobi City County & Acting Governor, Nairobi City County* Petition E425 of 2020; [2021] KEHC 13091 (KLR) - (Explained)
7. *Mubayimana & another v Mwachughha & 2 others* Petition E002 of 2022; [2022] KEHC 475 (KLR) - (Mentioned)
8. *Mumo Matemu v Trusted Society of Human Rights Alliance, Attorney General, Minister of Justice & Constitutional Affairs, Director of Public Prosecutions, Kenyan Section of the International Commission of Jurists & Kenya Human Rights Commission* Civil Appeal 290 of 2012; [2013] KECA 445 (KLR) - (Mentioned)
9. *Nathanael Nganga Reuben v Speaker, Machakos County Assembly & Machakos County Assembly* Constitutional Petition 6 of 2016; [2016] KEHC 385 (KLR) - (Mentioned)
10. *Omweno & 3 others v Governor, County Government of Kakamega & 4 others; Wanyama & another (Interested Parties)* Petition E008 of 2023; [2024] KEELRC 463 (KLR) - (Mentioned)
11. *Revital Healthcare (Epz) Limited & Rajnikant C. Vora v Ministry of Health, Cabinet Secretary for The Ministry of Health, Public Service Commission, Pharmacy & Poisons Board, Dominic Mutie & Attorney General* Constitutional Petition 63 of 2013; [2015] KEHC 3843 (KLR) - (Mentioned)
12. *Sakwa, Michael Osundwa v Chief Justice and President of the Supreme Court of Kenya & Judicial Service Commission* Petition 167 of 2016; [2016] KEHC 7697 (KLR) - (Explained)

Texts

Garner, BA., Black, HC., (Ed) (2014), *Black's Law Dictionary* St Paul, Minnesota: Thomson Reuters 10th Edn

Statutes

Kenya

1. Constitution of Kenya articles 1; 2; 3(1); 10; 19; 20; 22; 27(1); 165(3); 165(3)(b); 165(3)(d)(iii); 174; 177; 185(3); 201; 258(1); 259(3); 259(5)(c) - (Interpreted)
2. County Governments Act (Cap 265) sections 8(1)(b); 8(1)(c); 8(1)(d); 8(1)(e); 8(1)(f)13; 38(2) - (Interpreted)



Advocates

Mr Ashioya b/b Ms Ashioya for Petitioners

Mr Bw' Onchiri for Respondents

JUDGMENT

1. The 1st petitioner is a Member of the County Assembly for Bukembe, a leader of the Minority coalition of Parties of the County Assembly of Bungoma and a member of the Public Accounts and Investment Committee, a select committee of the County Assembly of Bungoma. The 2nd petitioner is a member of the County Assembly of Bungoma for Timaeti Ward and the Chairman of the Budget and Appropriations Committee, a select committee of the County Assembly of Bungoma.
2. The 1st respondent is the County Assembly of Bungoma County, established under article 177 of the [Constitution of Kenya](#), 2010 . The 2nd respondent is the Clerk of the County Assembly of Bungoma, appointed pursuant to the provisions of section 13 of the [County Government Act](#) 2012. He is also the Chief Executive Officer of the Assembly. He is in charge of the nomination of the Select Committee pursuant to Bungoma County Standing Orders Number 180 and 181(2).
3. The background of this petition is as follows: on April 17, 2025, during the session, the Speaker of the County Assembly declared that the terms of office/service of the Public Accounts and Investments Committee and the Budget and Appropriations Committees of the County Assembly of Bungoma had lapsed, stating that they had served three calendar years, namely, the years 2022, 2023, and 2024. Subsequent to the above directions, the Committee on Selection presented the list of names of members to the Public Accounts and Investments Committee and Budget and Appropriation to the House on 23rd April 2025 for the reconstitution of the committees, but the names were rejected by the Members of the County Assembly who were present on that day. The Speaker of the day then proceeded to appoint the Liaison Committee as a caretaker committee for the Budget and Appropriations, Public Accounts, and Investment Committees, pending the reconstitution of the said committees. The petitioners are aggrieved by the respondents' decision and have, therefore, brought this petition before the court for determination.

The Petitioners' Case

4. The petitioners state in their petition that the Speaker of the County Assembly dissolved the Public Accounts and Investment Committee and the Budget and Appropriations Committee before completing three calendar years of service, in accordance with Standing Orders numbers 209(3) and 210(3), respectively. The subsequent nomination of members to these committees by the Selection Committee, together with the tabling of the report to the County Assembly, its debate, and eventual rejection, were not carried out in accordance with the Standing Orders. The Deputy Speaker's ruling that the Liaison Committee would serve as the caretaker committee for the two select committees does not conform to the Standing Orders or the law. The Liaison Committee is now an illegally appointed caretaker of the Public Accounts and Investment Committees, as well as the Budget and Appropriations Committee. It is scheduled to deliberate on the budget for the fiscal year 2025/2026 once the Assembly goes on recess on 1 May 2025, and will present its report to the County Assembly on 2 June 2025 when the Assembly resumes sittings for adoption. The petitioners who are members and the chairpersons of the Public Accounts and Investment Committee and the Budget and Appropriations Committee, respectively, are those nominated and approved by the County to serve in these committees for a term of three years from the date of their appointment. They are aggrieved by the respondents' decisions to dissolve the committees before their terms expire and to appoint an



illegitimate, unlawful, and unconstitutional caretaker committee to perform the functions of these committees. Consequently, this petition challenges the legality and constitutionality of these decisions and seeks legal interpretation on the following issues.

- a. The computation of the calendar year of a select committee of the County Assembly and whether the speaker,
 - b. Whether the Speaker of the County Assembly can dissolve the select committees out of his motion before the lapse of the time of service specified in the Standing Orders
 - c. Whether the selection Committee can nominate members to serve on a select committee and table it to the house for approval on the advice of the Speaker of the County Assembly and or the clerk of the assembly before the expiry of the three-year term of the select committee as provided in the Standing Orders.
 - d. whether the County Assembly can reject the report of the Selection committee based on a selection criterion that is not in the Standing Orders
 - e. Whether the Speaker of the County Assembly has jurisdiction to appoint a caretaker committee of the Public Accounts and Investment Committee and Budget and appropriations Committee and determine their roles and duration of service.
 - f. Whether the Liaison Committee can be made a caretaker committee of the Public Accounts and Investments Committee and Budget and Appropriation Committee.
 - g. Whether the Deputy Speaker of the County Assembly and Vice Deputy Speaker of the County Assembly can be the chairperson and vice chairperson of the Public Accounts and Investment and Budget and Appropriation Committees, respectively.
5. The petitioners further state that the provisions of article 10, when read alongside articles 174 and 201 of the *Constitution of Kenya*, 2010, have been violated, as the minority party has been denied its right to operate as an oversight body of the assembly, as these constitutional provisions envisage. The actions of the respondents breach section 8(1) of the *County Governments Act*, No 17 of 2012, which requires oversight of the County Assembly to be carried out through the noted Select Committees, usually chaired by the minority party or a coalition of parties. The respondents' actions infringe upon the rights of the minority coalition to participate in activities assigned to the party and their right to represent those who elected them to the county, contrary to article 38(2) of the *Constitution*. Such actions deny the minority party their right to participate in committees as law provides. The appointment of the Liaison Committee as the caretaker for the Public Accounts and Investment Committees and the Budget and Appropriation Committee violates Bungoma County Standing Order No 200(2), limits the scope of select committees to their outlined functions within the County Assembly and the *Constitution*. The appointment also conflicts with Bungoma County Standing Orders, numbers 176(4), 209, 210, and 216, enacted under the *County Governments Act*, No 17 of 2012, and the *Constitution*. This appointment effectively bars the minority party from serving as chairperson and vice- chairperson of the Public Accounts and Investment Committee, as the committee will be chaired by the Deputy Speaker, with the vice- chairperson being the first panellist from the speaker's panel, breaching Standing Order 176(4). Moreover, appointing the Liaison Committee as the caretaker committee for these bodies creates a membership structure comprising all committee chairpersons, violating Bungoma County Standing Orders 209(4) and 210(2). Furthermore, this appointment weakens the checks and balances within the County Assembly, as these committees are meant to audit the work of the Liaison Committee, which in turn audits all other committees. Members cannot serve simultaneously on the Public Accounts and Investment Committee and the Budget and



Appropriation Committee, as this would involve auditing their own decisions. Lastly, appointing the Liaison Committee as the caretaker committee contradicts the rulings and jurisprudence of the County Assembly of Bungoma regarding the leadership of the Public Accounts and Investment Committees, as well as the court orders concerning this leadership.

6. The petition is supported by the petitioners' affidavits, in which they reiterate what is deposed in their petition. Additionally, it is averred that the respondents' decision has violated and infringed upon their rights to be members of the committees and has arbitrarily shortened their term of service, thus violating the express provisions of the law. The said decisions deny them the right to act as oversight in the assembly; therefore, the governance of the County Assembly of Bungoma shall be conducted in a manner that is not accountable or transparent, as envisaged by the *Constitution of Kenya*, 2010 . All major operational decisions and budgetary allocations of the County Assembly are handled by the Liaison Committee, which comprises the deputy speaker as chairperson, the first panellist of the speaker's panel as deputy chairperson, and all chairpersons of the other committees, excluding ad hoc committees. If allowed to act as the Liaison Committee and deliberate on the budget for the fiscal year 2025/2026, the entire Budget for the County Assembly would be made illegally by a body lacking the legal mandate, and thus could be rejected by the national government. Consequently, the entire county faces the risk of delay in receiving funding for the fiscal year 2025/2026. The respondents' decisions have been made at a critical time when the budget and appropriations committee is due to deliberate on the County Assembly Budget for the fiscal year 2025/2026, leaving no room for a lacuna.
7. The petitioners are therefore seeking the following orders;
 - a. A declaration be and is hereby made that the term of service of the Public Accounts and Investments Committee and Budget and Appropriation Committee has not lapsed and will lapse on the October 30, 2026 and October 26, 2025 respectively in accordance with article 259(5) of the *Constitution* and Bungoma County Standing Order s 209(3) and 210(2).
 - b. A declaration that the appointment of the Liaison Committee as the caretaker committee for the Public Accounts and Investment Committee and Budget and Appropriation Committee is null and void *ab initio*, *ultra vires*, illegal, unlawful and unconstitutional.
 - c. An order that the members of the Public Accounts and Investments Committee and Budget and Appropriation Committee appointed in the first term continue to hold office until the expiry of their three years' service in office until the expiry of their term on October 30, 2026 and October 26, 2025 respectively.
 - d. A declaration that the selection committee's report dated 23rd 2025 nominating members to the Public Accounts and Investments Committee and tabled before the County Assembly for adoption of new members of the Public Accounts and Investment Committees was void *ab initio* and *ultra vires*.
 - e. A declaration be and hereby made that the appointment of the Liaison Committee as the caretaker committee of the Public Accounts and Investment Committees and Budget and Appropriations Committee of Bungoma County Assembly was in violation of articles 10, 27(1), 174, 201, of the *Constitution of Kenya*, 2010 as read together with section 8(1)(c), (d) and (e) of the *County Governments Act*, No 17 of 2012 and Bungoma County Standing Orders No's 176(4), 209(2), (3) (4), (5) 210(2), 216 (1) (2) (3) (4) and (5) and is to that extent, illegal, unconstitutional, null and void *ab initio*.
 - f. An Order of Certiorari be and is hereby issued by this Honourable Court for purposes of being quashed and quashing the decisions of the 1st respondent made on April 17, 2025 dissolving



the County Executive Committee Member for Finance and Economic Planning and the Clerk of the County Assembly are required to submit budget estimates and related documents for the County Government and County Assembly by 30th April each year, with these estimates deemed committed to the relevant Committee under Standing Order 232(3)(a). In compliance with Standing Order 232(1), the County Executive Committee Member for Finance and Economic Planning appeared before the Bungoma County Assembly to present the budget estimates for the 2025-2026 financial year. After the presentation, the Speaker issued directives on budget management, assigning it to the Liaison Committee. It was explained that the National Assembly, faced with a similar situation in 2016, saw then-Speaker Hon. Justin Muturi issuing comparable instructions. Additionally, on February 18, 2025, the National Assembly encountered a similar scenario, prompting Speaker Hon. Moses Wetangula to issue a similar ruling. In circumstances where explicit provisions are lacking, the County Assembly relies on precedents, customs, and parliamentary usage. After reviewing similar cases in the National Assembly, it was deemed prudent and appropriate to direct the Liaison Committee to assume the responsibilities of the Committees. Consequently, the decision by the Speaker was neither unlawful nor beyond authority, as there was a proper basis for the action. The established procedures were followed appropriately, considering the timeline of the budget process. The direction was also intended to prevent a legislative impasse and to ensure that the County Assembly functions lawfully and efficiently in executing its mandate, serving the best interests of Bungoma County's residents. The Liaison Committee comprises Chairs of Committees, including those of Sectoral Committees, who are well acquainted with the budget estimates submitted by each relevant County department. As per Standing Order 216(2), the Liaison Committee is fully entrusted with the authority to handle the matter in the absence of the substantive Committee on Budget and Appropriations as;

- (a) guide and co-ordinate the operations, policies and mandates of all Committees as per the *Constitution of Kenya*, other Relevant Statutes and these Standing Orders;
- (b) deliberate on and apportion the annual operating budget among the Committees depending on their Work Plans and Committee Budget ceilings;
- (c) consider and schedule the programmes of all Committees businesses;
- (d) ensure that Committees submit reports as required by these Standing Orders;
- (e) determine, whenever necessary, the Committee or committees to deliberate on any matter;
- (f) give such advice relating to the work and mandate of Select Committees as it may consider necessary.

10. It was further deposed that in October 2023, there was a change in the leadership of the Committee of Public Accounts and Investments from the independent group to the Minority Coalition, rather than a reconstitution of the committee. The orders sought aim to halt the budget-making process in the County and initiate a flurry of litigation that is likely to cripple financing of County operations in the new financial year, thus resulting in serious economic implications. There is a risk of disrupting medical services, early childhood education, water, roads, agriculture, trade, climate change, among other devolved functions essential to the residents of Bungoma County and the nation as a whole. It is imperative that the legislative functions of the County Assembly are carried out without interference from litigation, as this is likely to substantially prejudice the County's operations. The risk of losing public amenities far outweighs the rights of committee members executing a particular mandate, which could be fulfilled by others as well. The Liaison Committee duly met on 6th May 2025 and approved the programme for processing the annual budget estimates for the financial year 2025/2026, which they will present via a report that should be approved before the closure of the financial year on June 30, 2025.



11. It was further deposed that the petitioners have not clearly specified the prejudice they will suffer if the orders are not granted. Conversely, there is a significant risk of economic turmoil in Bungoma County should the orders be granted. The petitioners should have sought alternative forums to address the alleged grievances, and the court should dismiss the petition for breaching the doctrine of constitutional avoidance. The petition fails to articulate, with reasonable precision, the constitutional provisions infringed and the manner in which they are claimed to have been violated, thereby contravening the principles outlined in *Anarita Karimi Njeru v R* (1976-1980) KLR 1272.

petitioners Submissions

12. The petition was canvassed through written submissions. The petitioners have raised the following issues for determination;
1. Whether this court has jurisdiction to hear this case
 2. Whether the term of office of the select committees on Public Accounts and Investments and Budget and Appropriation lapsed on December 31, 2024 or whether the term of the said committees are to lapse on October 30, 2026 and October 26, 2025 respectively.
 3. Whether appointing the Liaison Committee as the caretaker committee for Public Accounts and investments and Budget and Appropriations committees is a violation of the *Constitution*, the *County governments Act* and the Standing Orders of the County Assembly of Bungoma.
 4. Whether the decision of the national assembly is binding on the County Assembly .
 5. Whether the petitioners can be granted the orders sought.
13. On the first issue, whether this court has the jurisdiction to hear this case, it is submitted that the petition is brought under articles 1,2,3(1),10,19,20,22,27,165(3), 20, 22(1), article 22(2), and article 165(3)(b), 174,258(1) of the *Constitution of Kenya* which grants this Honourable Court the power and jurisdiction to determine the question as to whether anything said to be done under the authority of the *Constitution* or any law is consistent with, or in contravention of, the *Constitution*. article 174(1) of the *Constitution* provides that one of the objects of the devolved government is to enhance checks and balances and the separation of powers. article 185(3) of the *Constitution* further provides that a County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs. The appointment of the Liaison Committee as a caretaker committee for Public Accounts and Investments, as well as Budget and Appropriations, was conducted in contravention of the constitutional principles of oversight, transparency, and accountability, giving this court the jurisdiction to hear and determine this petition. In *Council of County Governors v Lake Basin Development Authority & 6 others* [2017] eKLR, when dealing with a question on the jurisdiction of the High court, the court, while citing several authorities from the Supreme Court of South Africa stated:-

“On principle, it seems to me that, in general, a Court is bound to entertain proceedings that fall within its jurisdiction. Put differently, a court has no inherent jurisdiction to decline to entertain a matter within its jurisdiction. Jurisdiction is determined on the basis of pleadings and not the substantive merits of the case.



27. The South African Constitutional Court held in the matter between *Vuyile Jackson Gcaba v Minister for Safety and Security First & Others*[32] had this to say:-

“Jurisdiction is determined on the basis of the pleadings,[33]... and not the substantive merits of the case... In the event of the Court’s jurisdiction being challenged at the outset (in limine), the applicant’s pleadings are the determining factor... High Court would lack jurisdiction...”

That in determining what is a constitutional issue, the court went further to state that:-

30. The question of what constitutes a constitutional question was ably illuminated in the South African case of *Fredericks & others v MEC for Education and Training, Eastern Cape & others*[35] in which Justice O’Regan recalling the Constitutional Court’s observations in *S v Boesak*[36] notes that:-

“The Constitution provides no definition of “constitutional matter.” What is a constitutional matter must be gleaned from a reading of the Constitution itself: If regard is had to the provisions of the Constitution, constitutional matters must include disputes as to whether any law or conduct is inconsistent with the Constitution, as well as issues concerning the status, powers and functions of an organ of State....., the interpretation, application and upholding of the Constitution are also constitutional matters. So too,....., is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of the Constitution, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly an extensive jurisdiction.”[37]

31. Put simply, the following are examples of constituting constitutional issues; The constitutionality of provisions within an Act of Parliament; the interpretation of legislation, and the application of legislation.[38] At the heart of the cases within each type or classification is an analysis of the same thing – the constitutionally entrenched fundamental rights, values, principles and purposes. Therefore the classifications are not discreet and there are inevitably overlaps, but the classifications are nonetheless useful theoretical tools to organise an analysis of the nature of constitutional matters arising from the cases before the Court.
32. This Petition challenges constitutionality of provisions of several statutes on grounds that they offend the constitution. The provisions vest powers and functions to statutory bodies established under the various statutes which functions are said to be devolved functions under the Constitution.



Determining this question will no doubt require the interpretation of the Constitution, its principles, purposes and values. I have no doubt in my mind that is a constitutional issue so far as it touches on the constitutionality of the challenged provisions."

14. It is further submitted that the *ratio decidendi* of the above *dictum* applies to this case. This petition challenges the constitutionality and legality of appointing the Liaison Committee as a caretaker committee for the Budget and Appropriations Committee and the Public Accounts and Investments Committee. It also disputes the respondent's interpretation of the calculation of time in terms of the "calendar year," which the petitioners argue violates article 259(5)(c) of the Constitution. The petition is constitutional, and this court has jurisdiction to hear this case. The relevant sections of the Constitution have been cited, including instances of their alleged violation; thus, the petition meets the threshold set out in law for the filing of constitutional petitions.
15. It is argued that the respondents' assertion that the petitioners ought to have exhausted dispute resolution mechanisms in the assembly does not oust this court's jurisdiction. Citing the provisions of article 165(3)(d) of the Constitution, the petitioners argue that the County Assembly is a State Organ and is the subject of the jurisdiction of the High Court under article 165(3)(d)(i) and (iii). It is submitted that when the speaker of the day appointed the Liaison Committee as the caretaker committee and then commissioned the committee to discuss the budget for 2025/2026 fiscal year, without any further deliberation or consultations with the assembly, the doctrine of separation of powers does not preclude this court from setting aside the ruling and or decision of the speaker if such decision violates the Constitution or the Standing Orders of the County Assembly. It is argued that this court has the jurisdiction to interfere with parliamentary proceedings and decisions, reliance was made in the decision in the case of Omwenyo & 3 Others v Governor, County Government of Kakamega & 4 Others; Wanyama & another (Interested Parties) (Petition E008 of 2023) [2024] KLR.
16. On the question of whether the term of office of the select committees on Public Accounts and Investments and Budget and Appropriation lapsed on December 31, 2024 or whether the term of the said committees is to lapse on October 30, 2026 and October 26, 2025 respectively, it is submitted that Standing Orders numbers 209(2) and 210(5) provide that the term of the Public Accounts and Investments Committee and the Budget and Appropriations Committee shall be three calendar years, after which another committee is appointed with the approval of the Assembly to serve for the remainder of the term of the Assembly. The issue before the court is how the three calendar years are computed. The petitioners argue that the County Assembly is a constitutional institution and hence, the constitutional interpretation of the Standing Orders of a County Assembly must follow constitutional interpretation. article 259(5)(c) provides that:-

"In calculating time between two events for any purpose under this constitution, if the time is expressed in years, the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began".
17. According to the petitioners, the Constitution envisions a situation where not all events begin on 1 January and end on 31 December, as the respondents have interpreted time. The Constitution permits a flexible interpretation of time, ensuring that events within government bodies and institutions do not have to start and end simultaneously. If we were to accept the Black's Law Dictionary definition of "calendar year", which runs from 1 January to 31 December each year, it would lead to an absurdity. The constitutional interpretation of the computation of time prevails over the Black's Law Dictionary definition of calendar year relied upon by the respondents. Even the parliamentary term begins in August of the 5th year and concludes every August of the 5th year.



18. The petitioners further submit that in January 2022, the term of the Assembly had not commenced, and the Committee had not been established. The general elections were held on August 9, 2022, therefore the term of the Committees had not yet begun. The Constitution is the supreme law of the country (see article 2(1) of the Constitution), and consequently, the respondents are bound by its provisions.
19. It is also submitted that article 259(3) provides that every provision in the Constitution shall be construed according to the doctrine of interpretation that the law is always speaking; therefore: -
 - a. A function or power conferred by this Constitution on an office may be performed or exercised as occasion requires by the person holding the office.
20. It is further submitted that a reading of Standing Orders 209(2) and 210(5) reveals that the three-year terms of the committees should extend beyond the term of the second term committee, which will last for the remainder of the period. The reason the Standing Orders do not specify fixed dates for the three-year term, such as 1 January to 31 December, is that each assembly would approve members of the committee on different dates. Consequently, the term would commence from the dates the committees are approved and continue for three years; thereafter, the remainder of the term will be fulfilled by the reconstituted committee. Furthermore, the budget for the assembly's financial years consists of five periods: the 2023/2024 financial year, the 2024/2025 financial year, the 2025/2026 financial year, the 2026/2027 financial year, and the 2027/2028 financial year. Therefore, when the Standing Orders state that the committee shall be in office for a term of three calendar years, it should be interpreted to mean that the committees shall manage the budget for three fiscal years: 2023/2024, 2024/2025, and 2025/2026, while the second term of the committees will address the remaining two financial years, 2026/2027 and 2027/2028. The petitioners argue that if the committees were to serve only two terms, then if this were the intention of the legislature, it could have stated so in the Standing Orders.
21. The petitioners submit that the interpretation of the term "Calendar year" in the Standing Orders must be given a constitutional interpretation as per article 259(5)(c), which states that time starts running from the moment the committees were constituted. Reliance was made in the case of Kyalo Kamina v Senate & 3 others [2017] eKLR, where the court, when faced with the question of constitutional interpretation, authoritatively relied on other judicial decisions and held as follows:-

"[46] The Constitution itself therefore directs a purposive interpretation for the realization of its objects of the values and principles entrenched in it. The court's interpretation must in relation to this petition accordingly uphold the principles set out above....

The grammatical meaning of the words alone however is a strict construction which no longer finds favor with true construction of statutes. The literal method is now completely out of date and has been replaced by the approach described as the "purposive approach". In all cases now in the interpretation of statutes such a construction as will "promote the general legislative purpose" underlying the provision is to be adopted. It is no longer necessary for the judges to wring their hands and say, "There is nothing we can do about it". Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it by reading words in, if necessary so as to do what Parliament would have done, had they had the situation in mind." (emphasis is mine)".



22. The petitioners further rely on the decision in the case of *Mike Sonko Mbuvi Gideon Kioko & another v Clerk, Nairobi City County Assembly & 9 others* [2021] eKLR, where the court made reference to article 259 of the *Constitution* whilst interpreting the provisions of Standing Order 67 regarding the procedure for the removal of a Governor by impeachment. The court held as follows:

“Standing Order 67 is titled ‘Procedure for removal of Governor by impeachment’. This is the law that should guide the County Assembly when deliberating on an impeachment motion. The respondents have correctly pointed out that under Standing Order 49, an impeachment motion is a special motion which has to be disposed of by the Speaker within 7 days of notice from a member. We nevertheless observe that Standing Order 49(2) permits a lesser or longer period as specified by the *Constitution*, any written law or the Standing Orders. Standing Order No 67(4) provides that an impeachment motion shall only be placed on the order paper upon expiry of 7 days and that is the provision to be followed in the impeachment of a governor.

153. article 259 of the *Constitution* provides for the manner in which the *Constitution* should be interpreted. Of relevance to us are sub-articles (5) and (6). Sub-article (5)(a) states as follows: -

- (5) In calculating time between two events for any purpose under this Constitution, if the time is expressed—
 - (a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included;

154. On the other hand, sub-article (6) provides: -

- (6) If a period of time prescribed by this Constitution for any purpose is six days or less, Sundays and public holidays shall not count when calculating the time.

155. Applying article 259(6) to Standing Order 67(4), we find that the notice of 7 days required therein includes Sundays and public holidays. From the record, the motion by Hon. Ogada was presented to the Clerk on 25th November 2020 and approved by the Speaker on 26th November 2020. Under Order 67(3), upon approval of the motion by the Speaker, the mover shall give a 7 days’ notice calling for the impeachment of the governor. By virtue of article 259 (5)(a), 26th November 2020 is excluded from the 7 days’ period. However, the 3rd of December 2020 is included. We find that contrary to the petitioners’ averments, the 7 days’ period requirement was complied with”.

23. The petitioners have urged this court to find that the decision made by the respondents on April 17, 2025, declaring that the term of the committees lapsed on December 31, 2024, was unconstitutional and in violation of County Assembly Standing Orders numbers 209(2) and 2010(5), and therefore unlawful. The attempted reconstitution of the Public Accounts and Investments committees by the selection committee on April 23, 2025 was also unconstitutional and in violation of Standing Orders 209(2) and 2010(5), as the term of the committees had not yet lapsed. The appointment of the Liaison Committee as a caretaker committee is unlawful, unconstitutional, and null and void ab initio, and any actions undertaken by the Liaison Committee in the implementation of this decision are likewise null and void ab initio.



24. Finally, regarding this second issue, it was submitted that the term of the Public Accounts and Investments Committee commenced on 30th October 2023, when the committee was duly constituted in accordance with Standing Order 209(3). The committee adopted on 26th October 2022 did not have a chairman due to a court order issued via Bungoma High Court constitutional petition number 14 of 2022. A committee formed without full compliance with the law cannot be deemed to be the select committee envisaged by law. If the court determines that the term of the committee only began when the chairperson and deputy chairperson were approved by the County Assembly on 30th October 2023, then, based on article 259(5)(c) of the Constitution, the term of this committee should lapse on October 30, 2026.
25. On whether appointing the Liaison Committee as the caretaker committee for Public Accounts and investments and Budget and Appropriations committees is a violation of the Constitution, the County governments Act, and the Standing Orders of the County Assembly of Bungoma. It was submitted that the Public Accounts and Investment Committee and the Budget and Appropriations Committee conduct oversight of the county government's functions in compliance with the above-cited constitutional provisions. Bungoma County Government Standing Order (2nd Edition) number 209(5) provides that the functions of the Public Accounts and Investment Committee shall be:-
- (a) Pursuant to article 185(3) of the Constitution, to exercise oversight over the County Executive committee and any other County Executive organ.
 - (b) According to articles 229(7) and (8) of the Constitution, to examine the reports of the Auditor-General on the annual accounts of the County Government.
 - (c) To examine special reports, if any, or the Auditor General on County Government Funds.
 - (d) To examine the reports, if any, of the Auditor-General on the county public investments and to exercise oversight over County Public Accounts and Investments.
26. To exercise its oversight role over the County Government, the Bungoma County Government's Standing Orders(2nd Edition) number 209(3) details the leadership of the committee and states that:
- “The Chairperson of the Public Accounts and Investment Committee shall be a member of the party or coalition of parties other than the County Assembly Parties or coalition of parties forming the County Government and shall have a majority of one.”
27. It is submitted that the composition of the Liaison Committee differs in that the chairperson is the deputy speaker of the assembly, who is not a member of the party or coalition that has formed the government. Consequently, he is automatically disqualified from chairing this committee. Furthermore, most members of the Liaison Committee belong to the party or coalition that has formed the government. This undermines the minority party's right to establish the checks and balances envisioned under Standing Order 209(5), due to the composition of the Liaison Committee members, which includes all chairpersons of the assembly's committees. The reports from these committees are subject to scrutiny and audit by the Public Accounts and Investment Committee. Appointing this committee to act as the Public Accounts and Investment Committee is unconstitutional and violates the Standing Orders of the County Assembly. Standing Order number 209(4) states that the Public Accounts and Investment Committee shall consist of a chairperson and no more than ten members who are not chairpersons of any other committee. This provision ensures that chairpersons of other committees, who are also being audited by this committee, do not sit on it. The Liaison Committee, which comprises all chairpersons of the various committees, cannot supersede itself; such a decision contradicts the Standing Orders and the checks and balances established by the



Constitution. Additionally, similar provisions are found in Standing Order 210, which establishes the Select Committee on Budget and Appropriations. It is asserted that the membership of the Public Accounts and Investment Committee and that of the Budget and Appropriations Committee must not include chairpersons of any other committee. The decision by the speaker to appoint the Liaison Committee, whose membership consists of all chairpersons of all committees, is an affront to the Constitution and Standing Orders of the County Assembly and is indefensible. It implies that the committees now comprise members who are expressly prohibited by law from sitting in those committees.

28. Regarding the respondents' submission that the National Assembly had appointed the Liaison Committee to act in place of the Budget and Appropriation Committee, it is argued that this does not provide a sufficient reason to contravene the Constitution and the Standing Orders of the Assembly. The Bungoma County Assembly is bound by its Standing Orders and the Constitution. Furthermore, it should be noted that on the last page of the Hansard marked by the respondents as EMS-6, corresponding to page 20 of the Hansard and page 179 of the replying affidavit, the members of the National Assembly, particularly Hon Ny'ong'o and Hon Mbadi, opposed the Speaker's decision to hand over the budget-making process to the Jubilee side of the house, thereby favouring one side. This reflects the current scenario in this case. The mere fact that the members of the National Assembly did not challenge this decision in the High Court or have it quashed does not imply that it was the correct decision. Moreover, the Standing Orders of the National Assembly differ from those of the Bungoma County Assembly. The decision made by the National Assembly does not constrain this honourable court. It is a well-established principle of law that article 165(3) of the Constitution grants jurisdiction to interpret the Constitution to the High Court. Consequently, the decision made by the Speaker of the National Assembly does not bind the High Court. Furthermore, the respondents have not demonstrated in their affidavits that the provisions of the Standing Orders of the National Assembly are identical to those of the County Assembly of Bungoma. The Hansard of the National Assembly, without a comparison of the Standing Orders, does not provide this court with the relevant information necessary to compare the two decisions.
29. On the respondents' submission that the Assembly can use precedents and customs to make decisions where there is a lacuna in the law. It was submitted that there is no lacuna in the law; the Standing Orders are clear regarding the terms of the committees, as well as their composition. Had the Speaker then adhered to the letter and spirit of the Constitution in interpreting this so-called crisis, the appointment of the caretaker committee would not have occurred.
30. It is further submitted that the Standing Orders were carefully drafted to meet the requirements of transparency, accountability, checks and balances, and inclusivity as envisaged by article 10 of the Constitution. These principles cannot be suspended at any time. Allowing the Liaison Committee to take over the budget and appropriations committee, as well as the Public Accounts and Investments Committee, effectively excludes the minority party or coalition of parties and the groups listed in Standing Order 210(3) from participating in the budget and appropriations process for the fiscal year 2025/2026. Examining the functions of the budgetary committee, which oversees the budgetary policies and strategic papers of all the other select committees chaired by members of the Liaison Committee, it is practically impossible for the chairpersons of all the other committees to come and vet themselves.
31. It is submitted that section 8(b), (c), (d), (e) and (f) of the County Governments Act provide that the County Assembly shall: -
 - (a) ...



- (b) perform the roles set out under article 185 of the Constitution.
 - (c) approve the budget and expenditure of the county government in accordance with article 207 of the Constitution, and the legislation contemplated in articles 201 and 203 of the Constitution.
 - (d) Approve borrowing in accordance with the Constitution
 - (e) approve county development planning, and
 - (f) perform any other roles as may be set out under the Constitution or legislation.
32. It is explained that for the minority party to fulfil its oversight role as envisaged by the aforementioned legal provisions, it must be represented in the Liaison Committee established by Standing Order Number 216(1) of the Bungoma County Standing Orders(2nd Edition). The committee's membership includes the Deputy Speaker as the chairperson, the first panellist of the Speaker's Panel as the vice-chairperson, and the chairpersons of all committees of the County Assembly, excluding *ad hoc* committees. This indicates that the minority coalition of parties is not adequately represented, as currently, only the chairperson of the committee on implementation will sit on the Liaison Committee. The Committees for Budget and Appropriations, Public Accounts, and Investments do not currently have chairpersons and, therefore, are not represented in the Liaison Committee. The chairpersons of these committees also serve as chairpersons of the Liaison Committee, which contradicts the values and principles outlined in articles 10, 201, 203, and 207 of the Constitution, as well as Section 8 of the County Government Act and the Assembly's Standing Orders. The deputy speaker and the first panellist to the Speaker's Panel are independent members of the County Assembly and do not sit on select committees of the Assembly, except for the Liaison Committee. Appointing them as chairpersons of both the Public Accounts and Investments Committee and the Budget and Appropriation Committee constitutes a gross violation of the Standing Orders and the Constitution.
33. It is submitted that Bungoma County Standing Ordernumber 216
- (2) gives the functions of the Liaison Committee as follows: -
 - (a) guide and coordinate the operations, policies, and mandates of all committees as per the Constitution of Kenya , other relevant statutes, and these Standing Orders.
 - (b) Deliberate on and apportion the annual operating budget among the Committees depending on their work Plans and Committee Budget ceilings;
 - (c) consider and schedule programmes of all Committees' Business.
 - (d) ensure that Committees submit reports as required by these Standing Orders.
 - (e) determine, whenever necessary, the Committee or Committees to deliberate on any matter, and
 - (f) Give such advice relating to the work and mandate of Select Committees as it may consider necessary.
 - (3) The Liaison Committee shall consider reports from Committees that have not been deliberated by the House and shall report on the consideration of such reports.
34. It is further submitted that excluding the minority party from participating in the enumerated functions of the Liaison Committee contravenes the constitutional and statutory provisions that provide for oversight of the county government's operations. The Standing Order 209 legislation,



which vests the leadership of the Public Accounts and Investment Committee in the minority party and stipulates that their membership shall be the majority by one, was intended to ensure effective oversight. The appointment of the Liaison Committee as the caretaker committee for Public Accounts and Investments, as well as the Budget and Appropriation Committee, contravenes the Constitution, the Standing Orders, and the law.

35. Regarding the matter of whether the court can grant the orders sought, it is submitted that this court has the jurisdiction to do so. The court may quash the decisions made by the County Assembly if they contravene the Constitution and the law, and it can order that the *status quo ante* be maintained if it finds that the terms of the select committees have not lapsed. the Constitution sets out the role of the Senate and other bodies, establishing the separation of powers along with checks and balances. The Court of Appeal examined the doctrine of Separation of Powers in Mumo Matemu v Trusted Society of Human Rights Alliance and 5 Others, Civil Appeal No 290 of 2012, stating the following:

“It is not in doubt that the doctrine of separation of powers is a feature of our Constitutional design and a part of our Constitutional edifice. However, separation of power not only proscribe organs of Government from interfering with each other’s functions. It also entails empowering each organ of Government with countervailing powers, which provide checks and balances on actions taken by other organs of Government. Such powers are, however, not a license to take over functions vested elsewhere. There must be judicial, legislative and executive deference to the repository of the function. We therefore agree with the High Court’s dicta in the petition, the subject of this appeal, that: Separation of power means that the Courts must show deference to the independence of the Legislature as an important institution in the maintenance of our constitutional democracy, as well as accord the executive sufficient latitude to implement legislative intent. Yet as the respondents concede, the Courts have an interpretive role, including the last word in determining the Constitutionality of all Governmental actions.”

36. It is submitted that granting the orders sought by the petitioner will not compromise the budget for the fiscal year 2025/2026, as this will ensure that the process is constitutional and legal. The calendar prepared by the Liaison Committee for conducting the budget process was created by a committee lacking a legal mandate to do so; therefore, it is null and void *ab initio*. The court cannot shy away from upholding the principles of the Constitution, even if it results in a delay to the budget-making process.

respondents’ Submissions

37. The respondents in their submissions give a background of the petition and submit that the following issues are for determination;
- i. Whether the petition, as drafted, meets the threshold for a constitutional petition.
 - ii. Whether the petition violates the doctrine of constitutional avoidance
 - iii. Whether the court ought to exercise judicial restraint.
 - iv. Whether indeed the three-year term of the two committees had lapsed
 - v. Whether the decision to appoint the Liaison Committee as a caretaker committee is unlawful.
38. On the first issue, it is submitted that the petitioners must identify the constitutional entitlement that is threatened, infringed, or violated, and demonstrate the manner of the violation to enable the



respondent to mount a defence. Reliance was made on the case of Anarita Karimi Njeru v Republic [1979] eKLR where the court held that ;

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

39. It is submitted that the petitioners have failed to provide clear and elaborate evidence of how the respondents have violated their constitutional rights and what the effects of such violations would be on the general public. They must not only identify the constitutional provisions that warrant court intervention but also relate them to the factual matrix of the case. The petitioners have left it to the court to determine the alleged violations of constitutional, statutory, and Standing Order on a hypothetical basis; thus, the threshold set out in the Anarita Njeru (*supra*) case has not been met.

40. On whether the petition violates the doctrine of constitutional avoidance, it was submitted that where another course is available through which a matter can be properly decided, and which can provide the relief sought by the applicant, such a course should be pursued, and the constitutional court should decline to determine a constitutional issue in such a matter. Reliance was made in the case of Communication Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR, where the Supreme Court held as follows;

“The appellants in this case are seeking to invoke the “principle of avoidance”, also known as “constitutional avoidance”. The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis. In South Africa, in *S v. Mhlungu*, 1995 (3) SA 867 (CC) the Constitutional Court, Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

41. To further substantiate this argument, the respondents relied on the following cases: Uburu Muigai Kenyatta v Nairobi Star Publications Limited [2013] eKLR, Revital Healthcare (EPZ) Limited & Another v Ministry of Health & 5 others [2015] eKLR. It is submitted that the prayers sought by the petitioners are civil in nature, with civil remedies, including injunctions and declarations, readily available and could have been addressed in a civil court. The petitioners ought to have pursued their case through statutory means rather than the constitutional route. Reliance was placed on the case of Jean Bosco Mubayimana & Another v Jimmy Irengi aka Jimmy Mwachugha & others where Justice Mativo, as he then was, stated:

“The doctrine of avoidance is primarily viewed by courts from the position that although a court could take up a matter and hear it, it would still decline to do so if there is another mechanism through which the dispute could be resolved. In Kenya, the Supreme Court stated in *Communication Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* (at para 256) that the principle of avoidance means that a Court will not determine a constitutional issue when a matter may properly be decided on another basis. In the South African case of *S v Mhlungu* (*supra*) Kentridge AJ, stated in the dissenting opinion



respecting the principle of avoidance (at paragraph 59), that he would lay down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed. And in *Ashwander v Tennessee Valley Authority*⁴⁹ the US Supreme Court held that it would not decide a constitutional question which was properly before it if there was also some other basis upon which the case could have been disposed of. Currie and de Waal⁵⁰ opine that the principle of constitutional avoidance is of crucial importance in the application of the Bill of Rights.”

42. The respondents argue that prayers a, b, c, d, and e of the petition essentially seek the remedy of declaration, except for prayer ‘c’, which is a straightforward order available even through an ordinary suit. Prayers f, g, and h request an order of certiorari which, as drafted, can be substituted by an order declaring the alleged actions complained of illegal and unlawful in an ordinary suit based on statute. The respondents urged this court to find and hold that the petitioners’ claim is founded on their membership with the County Assembly of Bungoma and the Committees. This is a straightforward civil claim for which civil remedies are readily available, and the Petition is not properly laid before the Court as a constitutional issue.
43. Concerning whether the court should exercise judicial restraint, it is submitted that a decision on the application and interpretation of Standing Orders does not strictly fall within the purview of this Court. It is the role of the Speaker of a legislative assembly to interpret the rules governing procedures in that assembly and to establish a rule on matters where there is conflict or for which there is no provision in the current parliamentary rules. The petitioners ought to have raised their concerns in the County Assembly and sought a ruling on the same. Furthermore, it is submitted that the petitioners have misapprehended the respondents’ assertions of judicial restraint in dealing with matters in legislative bodies involving the invocation of Standing Orders, particularly where there are no clear-cut provisions on issues such as the failure of the motion by the selection committee to reconstitute the Budget and Appropriations Committee and the Public Investments and Accounts Committee. The Speaker, in this scenario, invoked Order No 1 to avoid a vacuum in the execution of the roles of the two committees and specifically for the purpose of facilitating the execution of business in the Assembly. Reliance was made on the case of *Nathanael Nganga Reuben v Speaker, Machakos County Assembly & Another* [2016] eKLR, where the court faced with a similar scenario observed that;

“Therefore this is one of the cases where the Court should exercise judicial restraint. The Supreme Court of Canada in this regard in the case of *Canada (House of Commons) v. Vaid* [2005] 1 SCR 667 provided a “doctrine of necessity” in explaining the areas where Courts should exercise restraint as regards parliamentary and County Assembly proceedings which are closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly’s work in holding the government to account.”

44. With regard to whether the three-year terms of the two committees have indeed lapsed, it was submitted that the definition of the phrase ‘Calendar year’ as per *Black’s Law Dictionary* means “the period beginning January 1st and ending on December 31st.” The membership of both the Public Accounts and Investment Committee and the Budget and Appropriations Committee was approved by the County Assembly on October 26, 2022, with the PAIC Committee required to change its leadership in 2023. The term of a committee appointed for three calendar years is not calculated from the date of approval by the County Assembly; rather, the calculation of one-year periods occurs between January 1 and December 31. This computation began in 2022, as the committees were constituted in October of that year, which marked the first calendar year. It is submitted that the Speaker referenced the decision made by the Speaker of the National Assembly in February 2025. The Hon Antony Lusena (the 1st



petitioner) himself seconded the committee's report on selection and acknowledged that the terms of the committees had lapsed; had the house adopted the report, the 1st petitioner would not have filed the instant petition.

45. Regarding the decision to appoint the Liaison Committee as a caretaker committee, it was submitted that the Speaker, in making his decision, referred to two precedents established by the National Assembly. It was argued that the respondents have not presented any reasonable defence to the assertion that the Liaison Committee is best suited for that role. The mandate of the Liaison Committee is outlined in Standing Order 216 (2), and by reading parts (a) and (b) of the mandate, nothing suggests that the Liaison Committee cannot discharge the responsibilities of the Budget and PAIC Committees in the circumstances that followed the failure of the motion.

Issues and Determination

46. I have read and carefully considered the pleadings and submissions made herein. The same raises the following issues for determination. The first is whether this petition, as drafted, meets the threshold for a constitutional petition; the second is whether the terms of office of the select committee on Public Accounts and Investment and Budget and Appropriations lapsed on December 31, 2024, or whether the terms of the said committees will lapse on October 30, 2026 and October 26, 2025, respectively; and the third is whether the decision to appoint the Liaison Committee as a caretaker committee is unlawful.
47. On the first issue of whether the petition, as drafted, meets the threshold for a constitutional petition, the respondent argues that the petitioners have failed to demonstrate the specific right that has been infringed. The respondent contends that they have sufficiently shown that their petition raises constitutional issues arising from the decision made by the speaker on 17 April 2025, as well as a subsequent direction from the speaker on 23 April 2025, which appointed the Liaison Committee as an overseer committee. Furthermore, the speaker allegedly failed to interpret their term of service as stated in the Standing Orders that constitute the two committees, among other issues. Courts have maintained that it is essential to establish a connection between the petition, the constitutional provisions that are purported to have been breached, and the demonstration of such contravention or violation. The petition is structured into four sections. The first part defines the parties to the suit. The second part outlines the jurisdiction and legal foundation of the petition. The third part presents the facts of the case. The fourth part details what the petitioners claim are the constitutional and legal contraventions.
48. article 165(3)(d)(ii) of the *Constitution of Kenya* stipulates that the High Court has jurisdiction to hear any question regarding the interpretation of the *Constitution*, including determining whether anything purportedly done under the *Constitution* or any law is inconsistent with or contravenes the *Constitution*. The respondents argue that the petitioners identified only the constitutional provisions warranting the court's intervention, but failed to connect them to the factual matrix of the case. I am guided by the decision in the case of *Anarita Karimi Njeru v Republic (supra)* that a person seeking redress from the High Court concerning a matter involving a reference to the *Constitution* should set out with a reasonable degree of precision what they complain of, the provisions alleged to be infringed, and the manner in which they are said to be violated. The petitioner has an issue with the appointment of the Liaison Committee as a caretaker committee, among other matters detailed in part four of their petition. It is averred that this appointment contravenes the provisions of Standing Order 1(2), as the speaker's decision is not grounded in the *Constitution of Kenya*, statute law, forms, precedents, customs, or procedures of the County Assembly or its standing orders. The petitioners further state that the appointment of the Liaison Committee as a caretaker committee violates the constitutional



principles of transparency and accountability under articles 10, 174, 201, and 203 of the *Constitution*. In the case of *Michael Osundwa Sakwa v Chief Justice and President of the Supreme Court of Kenya & another* [2016] KEHC 7697 (KLR), Justice Odunga, as he then was, while addressing the issue of lack of precision, stated as follows:

“It was further contended that the petition suffers from lack of precision. This argument has found favour with the decisions of *Anarita Karimi Njeru v The Republic* (1976-80) 1 KLR 1283 and *Mumo Matemu v. Trusted Society of Human Rights Alliance*, CANO 290/2012 [2013] eKLR, for the proposition that infringement of human right and fundamental freedoms must be stated with precision and not merely generalized devoid of proof thereof. On the issue whether this Court can determine the Constitutional issues raised without compliance with the requirements stipulated in *Anarita Karimi Njeru v Attorney General* (*supra*), it is my view that the said decision must now be read in light of the provisions of article 22(3)(b) and (d) of the *Constitution* under which the Chief Justice is enjoined to make rules providing for the court proceedings which satisfy the criteria that formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation and that the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities. Whereas it is prudent that the applicant ought to set out with reasonable degree of precision that of which he complains, the provision said to be infringed and the manner in which they are alleged to be infringed, to dismiss a petition merely because these requirements are not adhered to would in my view defeat the spirit of article 22(3)(b) under which proceedings may even be commenced on the basis of informal documentation. This is not to say that the Court ought to encourage and condone sloppy and carelessly drafted petitions. What it means is that:

“the initial approach of the courts must now not be to automatically strike out a pleading but to first examine whether the striking out will be in conformity with the overriding objectives set out in the legislation. If a way or ways alternative to striking out are available, the courts must consider those alternatives and see if they are more consonant with the overriding objective than a striking out. But the new approach is not to say that the new thinking totally uproots all well established principles or precedent in the exercise of the discretion of the court which is a judicial process devoid of whim and caprice.”

See *Deepak Chamanlal Kamani & another v Kenya Anti-Corruption Commission & 2 Others* Civil Appeal (Application) No. 152 of 2009.

64. It must similarly be remembered that a High Court is by virtue of the provisions of article 165 of the *Constitution* a Constitutional Court and therefore where a constitutional issue arises in any proceedings before the Court, it is enjoined to determine the same notwithstanding the procedure by which the proceedings were instituted” [Emphasis mine] .
49. I agree with Justice Odunga's position on the lack of precision. The Petition cannot be faulted on the ground of lack of particularity and precision. I find that the petition is appropriately presented.
50. Concerning whether the terms of office for the select committees on Public Accounts and Investment and Budget and Appropriations lapsed on December 31, 2024, or whether the terms of the committees above will lapse on October 30, 2026 and October 26, 2025, respectively. It is not disputed that



Standing Orders 209(2) and 210(5) stipulate the terms of service for the Public Accounts and Investment Committee and the Budget and Appropriations Committee (the two committees). Standing Orders 209(1) and (2) and 210(1) and (5) state as follows;

209.

- (1) There shall be a Select Committee to be designated the Public Accounts and Investments Committee.
- (2) The Public Accounts and Investments Committee shall be constituted immediately following the General Election and shall serve for a period of three Calendar years and that constituted thereafter shall serve for the remainder of the Assembly term.

210.

- (1) There shall be a Select Committee to be known as the County Budget and Appropriations Committee.
- (5) The County Budget and Appropriations Committee shall be constituted by the County Assembly immediately following the general election shall serve for a period of three calendar years and that constituted thereafter shall serve for the remainder of the County Assembly term.

51. An issue for determination is how the term “calendar year” should be computed. The petitioners contend that the County Assembly is a constitutional institution; therefore, adherence to the constitutional interpretation of the Standing Orders of the County Assembly is required, as stipulated in article 259(5)(2), which states the following:

- (5) In calculating time between two events for any purpose under this Constitution, if the time is expressed—
 - (c) as years, the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.

52. The respondent, conversely, contends that the calendar year, according to the *Black Law Dictionary*, means “the period beginning January 1st and ending on December 31st.” It is the respondent’s assertion that the computation term for the committee appointed for three calendar years is not calculated from the date of approval by the County Assembly, but rather from the number of one-year periods between January 1st and December 31st.

53. Section 2 of the Standing Orders(Second Edition) 2022 does not define the term “calendar year.” In the case of *Mike Sonko Mbuvi Gideon Mbuvi & Another v Clerk, Nairobi City Council Assembly & 9 others*, the court, when addressing the provisions of Standing Order 67 (4), which pertained to when an impeachment motion would be placed on the order paper upon the expiry of 7 days, stated as follows:

“Standing Order 67 is titled ‘Procedure for removal of Governor by impeachment’. This is the law that should guide the County Assembly when deliberating on an impeachment motion. The respondents have correctly pointed out that under Standing Order 49, an impeachment motion is a special motion which has to be disposed of by the Speaker within 7 days of notice from a member. We nevertheless observe that Standing Order 49(2) permits a lesser or longer period as specified by the *Constitution*, any written law or the Standing Orders. Standing Order No 67(4) provides that an impeachment motion shall only be placed on the order paper upon expiry of 7 days and that is the provision to be followed in the impeachment of a governor.



153. article 259 of the Constitution provides for the manner in which the Constitution should be interpreted. Of relevance to us are sub-articles (5) and (6). Sub-article (5)(a) states as follows: -

(5) In calculating time between two events for any purpose under this Constitution, if the time is expressed—

(a) as days, the day on which the first event occurs shall be excluded, and the day by which the last event may occur shall be included;

154. On the other hand, sub-article (6) provides: -

(6) If a period of time prescribed by this Constitution for any purpose is six days or less, Sundays and public holidays shall not count when calculating the time.

155. Applying article 259(6) to Standing Order 67(4), we find that the notice of 7 days required therein includes Sundays and public holidays.

54. article 259(5)(c) of the Constitution outlines the calculation of time between two events. It states that for years, the period concludes at the beginning of the relevant year's date corresponding to the start date of the period. Standing Orders 209(3) and 210(5) clearly define the duration of service for the Committees. The wording of each Standing Order specifies the period each committee is to serve. Each Committee is to be constituted immediately following the General Election and shall serve for a period of three years. General Elections in Kenya were held in August 2022. A County Assembly in Kenya is elected for a term of five years (see article 177 of the Constitution 2010). The two committees were to be constituted immediately after the General Elections, which mark the beginning of their terms. Arguing that the calendar year is computed from 1 January to 31 December does not align with the provisions of the Standing Orders, which mandate when the two Committees are to be constituted and the duration of their service. The calendar year under Standing Orders 209 (1) and 210 (5) differs from the calendar year as defined in Black's Law Dictionary. Even if I were to apply the respondent's argument regarding the calendar year, the terms of the two committees, after being constituted, would have begun in January 2023, not in 2022. Applying article 259(5)(c) of the Constitution to Standing Orders 209(1) and 210(5), I find that the term of the two committees has not lapsed, as declared by the Speaker on 17 April 2025. The term of each committee shall lapse as provided on the day it was constituted and not on the day a committee is reconstituted, in accordance with Standing Orders 209(1) and 210(5). The selection committee report dated 23rd April 2025, nominating new members to the two committees and tabled in the County Assembly, was therefore void *ab initio* and *ultra vires*. It is absurd that the Speaker would inform the House on 17 April 2025 if it were his understanding that the term of the two committees had lapsed in December 2024. In my view, the Speaker misled the House, as the provisions of the two Standing Orders are clearly stated and binding on the House. Where a Speaker makes an incorrect decision regarding the interpretation of a Standing Order, a concerned party can seek refuge in the court of law.

55. The petitioners have explained that, as the minority party, they have been denied their right to function as an oversight body of the assembly. It is argued that the actions of the respondents contravene Section 8(1) of the County Governments Act, No 17 of 2012, which stipulates that oversight of the County Assembly is to be conducted through the aforementioned Select Committees, traditionally chaired by the minority party or a coalition of parties. The actions of the respondents infringe upon the rights of the minority coalition of parties to engage in activities designated for the party and their right



to represent those who elected them as members of the county, in contravention of article 38(2) of the Constitution. These actions deny the minority party their right to participate in the committees as provided by law. The appointment of the Liaison Committee as the caretaker committee for the Public Accounts and Investment Committees and the Budget and Appropriation Committee violates Bungoma County Standing Order No 200(2), restricting the mandate of select committees to perform only the functions outlined within the mandate of the County Assembly and the Constitution. The appointment of the Liaison Committee as the caretaker committee for these committees contradicts Bungoma County Standing Orders, numbers 176(4), 209, 210, and 216, all of which have been enacted under the provisions of the County Governments Act, No 17 of 2012, and the Constitution. The respondents did not sufficiently rebut these allegations. The rulings made by the two speakers, on which the respondents rely, are not binding on this court. Furthermore, the circumstances that led to the rulings have not been clearly outlined by the respondents.

56. Based on the findings above, I conclude that the Speaker erred in appointing the Liaison Committee as a caretaker committee. There is no mention of a caretaker committee in the Standing Orders. There was no vacuum for the Speaker to appoint such a committee. The wording of these two Standing Orders is specific, precise, and mandatory. The petitioners have stated that the Public Accounts and Investment Committee and the Budget and Appropriation Committee conduct oversight of the county government's functions. Bungoma County is bound by its Standing Orders and the Constitution and must adhere to them.
57. With the above findings, I issue the following orders;
- i. A declaration be and is hereby made that the term of service of the Public Accounts and Investments Committee and Budget and Appropriation Committee has not lapsed and will lapse three years from the date each committee was constituted in accordance with article 259(5) of the Constitution and Bungoma County Standing Orders 209(2) and 210(5).
 - ii. A declaration is hereby made that the appointment of the Liaison Committee as the caretaker committee for the Public Accounts and Investment Committee and Budget and Appropriation Committee is null and void *ab initio*, *ultra vires*, illegal, unlawful and unconstitutional.
 - iii. The members of the Public Accounts and Investments Committee and the Budget and Appropriation Committee appointed in the first term shall continue to hold office until the expiry of their three-year term of service, respectively.
 - iv. A declaration is hereby made that the selection committee's report dated April 23, 2025, nominating members to the Public Accounts and Investments Committee and tabled before the County Assembly for the adoption of new members of the Public Accounts and Investment Committees, was void *ab initio* and *ultra vires*.
 - v. A declaration is hereby made that the appointment of the Liaison Committee as the caretaker committee of the Public Accounts and Investment Committees and Budget and Appropriations Committee of Bungoma County Assembly was in violation of Bungoma County Standing Orders No's 176(4), 209(2), (3)(4), (5), 210(2), 216(1)(2)(3)(4) and (5) and is, to that extent, illegal, null and void *ab initio*.
 - vi. An Order of Certiorari is hereby issued by this Honourable Court for the purpose of quashing the decisions of the 1st respondent made on April 17, 2025, which dissolved the Public Accounts and Investment Committees and the Budget and Appropriations Committee of the Bungoma County Assembly.



- vii. An Order of Certiorari is hereby issued by this Honourable Court for the purpose of quashing the decisions of the 1st respondent regarding the preparation, tabling before the assembly, debating, and rejection of the nominations of the selection committee report for the membership of the Bungoma County Public Accounts and Investment Committee and the Budget and Appropriation Committee on April 24, 2025.
- viii. An Order of Certiorari is hereby issued by this Honourable Court for the purpose of quashing the decisions of the 1st respondent regarding the appointment of the Liaison Committee as a caretaker committee for the Bungoma County Public Accounts and Investment Committee and the Budget and Appropriation Committee made on April 24, 2025.

58. Costs follow the event, but it is the discretion of the court, in my view, that each party shall bear its costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 20TH DAY OF JUNE 2025.

R.E.OUGO

JUDGE

In the presence of;

Mr Ashioya h/b Ms Ashioya -For the petitioners

Mr Bw' Onchiri -For the respondents

Wilkister C/A

