



REPUBLIC OF KENYA



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**Moenga & 2 others v Nyamora & 7 others; Nyabaro & another (Interested Parties)  
(Petition E004 of 2025) [2025] KEHC 7765 (KLR) (4 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7765 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BOMET**  
**PETITION E004 OF 2025**  
**JK NG'ARNG'AR, J**  
**JUNE 4, 2025**  
**IN THE MATTER OF:**  
**ARTICLES 20, 21, 22, 23 AND 165 (3) (B) & THE ALLEGED**  
**CONTRAVENTION OF ARTICLES 10 (2), 27, 33 (1) (A), 35,**  
**174, 186, 196 & 228 OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO.**  
**17 OF 2012**  
**AND**  
**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF**  
**SECTIONS 102, 117, 125 (2), 126, 128 (4), 129, 131 &**  
**137**  
**AND**  
**OF THE PUBLIC FINANCE MANAGEMENT ACT**  
**AND**  
**BOMET HIGH COURT PETITION NO. E004 OF 2025-JUDGEMENT 2**  
**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF**  
**SECTIONS 5, 6, 7, 8, 9, 10, 11 OF THE PUBLIC**  
**APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) ACT**  
**NO. 5 OF 2017 AND IN THE MATTER BETWEEN**  
  
**BETWEEN**  
**KEPHA NDEGE MOENGA ..... 1<sup>ST</sup> PETITIONER**



COUNTY ASSEMBLY OF NYAMIRA ..... 2<sup>ND</sup> PETITIONER  
EDWIN ONCHOKO ..... 3<sup>RD</sup> PETITIONER

AND

SILVANUS NDEMO NYAMORA ..... 1<sup>ST</sup> RESPONDENT  
JONES OMWENGA – EXECUTIVE COMMITTEE FINANCE  
ICT & ECONOMIC PLANNING, COUNTY GOVERNMENT OF  
NYAMIRA ..... 2<sup>ND</sup> RESPONDENT  
COUNTY TREASURY ..... 3<sup>RD</sup> RESPONDENT  
AMOS KIMWONI NYARIBO ..... 4<sup>TH</sup> RESPONDENT  
1ST NYAMIRA COUNTY ASSEMBLY ..... 5<sup>TH</sup> RESPONDENT  
DUKE ONYARI ..... 6<sup>TH</sup> RESPONDENT  
ENOCK OKERO OGORI ..... 7<sup>TH</sup> RESPONDENT  
DOMINIC BABU ..... 8<sup>TH</sup> RESPONDENT

AND

THADDEUS NYABARO ..... INTERESTED PARTY  
INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION . INTERESTED  
PARTY

### JUDGMENT

1. This is a consolidated matter comprising of two Petitions and a Judicial Review, all of which were originally filed in Nyamira High Court. They were Nyamira Petition Number E005 of 2025 (now Bomet Petition Number E004 of 2025), Nyamira Petition Number E001 of 2025 (now Bomet Petition Number E005 of 2025) and Nyamira Judicial Review Number E007 of 2024 (now Bomet Judicial Review Number E001 of 2025).
2. The court directed that the two Petitions (Nyamira Petition Number E005 of 2025 (now Bomet Petition Number E004 of 2025), Nyamira Petition Number E001 of 2025 (now Bomet Petition Number E005 of 2025) and Nyamira Judicial Review Number E007 of 2024 (now Bomet Judicial Review Number E001 of 2025) proceed to their substantive hearings with Nyamira Petition Number E005 of 2025 (now Bomet Petition Number E004 of 2025) being the lead file.
3. On the issue of representation, I deliberately decline to wade into it. It is an issue which the parties ought to sort out between themselves. Ultimately, all the filed pleadings will be considered.
4. In light of the above, all pending Applications in Nyamira Petition Number E005 of 2025 (now Bomet Petition Number E004 of 2025) and Nyamira Petition Number E001 of 2025 (now Bomet Petition Number E005 of 2025) are overtaken by events and marked as spent. For avoidance of doubt and clarity, in Nyamira Petition Number E001 of 2025 (now Bomet Petition Number E005 of 2025), the 1st Interested Party's Notice of Motion Application dated 19th February 2025 is marked as spent. In Nyamira Petition Number E005 of 2025 (now Bomet Petition Number E004 of 2025), the 1st and 2nd Petitioner's Notice of Motion Application dated 12th March 2025 and the 1st, 2nd, 3rd



and 4th Respondent's Preliminary Objection dated 25th March 2025 are marked as spent. The 8th Respondent's Notice of Preliminary Objection dated 24th March 2025 is also marked as spent.

5. It was further directed by this court that any preliminary issue would be considered alongside the consolidated Petition on merit.
6. I now proceed to summarize the two Petitions and the Judicial Review alongside the respective responses in the succeeding paragraphs.

#### **Bomet Petition Number E004 of 2025**

7. Through an undated Petition, Kepha Ndege Moenga (1st Petitioner) sought the following reliefs that: -
  - I. A Declaration be issued that the Daily Nation Newspaper advert published on 11th March 2025 – Public Participation on the Nyamira County Fiscal Strategy Paper 2025/2026 inviting members of the public and all stakeholders to a public participation forum and submissions of memoranda and the subsequent exercise is illegal, communicated by unauthorized officer of the Nyamira County Assembly thus null and void ab initio.
  - II. An order of Judicial Review by way of mandamus compelling the 2nd and 3rd Respondents to present and submit the County Fiscal Paper (CFSP) to the 2nd Petitioner through its bona-fide Clerk of the Nyamira County Assembly, Hon. Duke Onyari for purposes of making recommendations, consideration and approval of the County Fiscal Strategy Paper 2025/2026 as part of the budget making process.
  - III. An order of Judicial Review by way of certiorari, quashing the Gazette Notice 14230 on the appointment of the 1st Respondent as Clerk of the National Assembly.
  - IV. An order of Judicial Review by way of prohibition prohibiting the 3rd Respondent, its agent and/or any person acting and/or giving effect to the appointment and/or swearing in into the office of Keroka and Nyamira Municipality Board members; James Boera Onyancha, Becky Nyanchama Onyancha, Jackson Nyanumba Okero, Charles Ombati Nyamboga, Bonface Ombori Orina, Rebecca Moraa Onyinkwa, Linet Kwamboka Ayora, Michieka Barnabas Makario, Angela Cheroni Mulwet, John Mathias Mogere, Jane Kerubo Nyamongo, Shem Nyakundi, Naomi Nyaboke Mosomi and Dominic Aroko Babu.
  - V. An order of Judicial Review by way of certiorari quashing Gazette Notice Number 1965 which gave effect to the appointment of the Nyamira and Keroka Municipality Board Members.
8. Through the Supporting Affidavit dated 12th March 2025, the 1st Petitioner stated that Enock Okero Ogori (7th Respondent) was removed from the Office of Speaker of Nyamira County on 24th October 2024 by way of impeachment. That on 31st October 2024, the 7th Respondent while purporting to act as the Chair of the County Assembly Service Board together with his newly appointed board members, appointed Silvanus Ndemo Nyamora (1st Respondent) as the Clerk of the County Assembly with the approval of the parallel constituted County Assembly christened "Bunge Mashinani". The 1st Petitioner further stated that the appointment of the 1st Respondent as the acting Clerk of the County Assembly was improper and illegal.
9. It was the 1st Petitioner's case that on 19th November 2024, the 1st Respondent was suspended from the County Assembly of Nyamira pending the finalization of a disciplinary process. That Duke Onyari (6th Respondent) wrote to the County Assembly of Nyamira seeking for submission of the County Fiscal Strategy Paper to the County Assembly. It was the 1st Petitioner's further case that the County



- Assembly had not received the County Fiscal Strategy Paper and the Budget and Appropriation Committee formed as per the Standing Orders had not tabled its report to the County Assembly.
10. The 1st Petitioner stated that on 10th March 2025, the 1st Respondent published an advertisement in the Daily Nation Newspaper purporting that the County Assembly through its County Budget and Appropriation Committee had invited members of the public to a public participation forum of the County Fiscal Strategy Paper 2025/2026. That the County Treasury (3rd Respondent) did not present the County Fiscal Strategy Paper 2025/2026 to the County Assembly. The 1st Petitioner further stated that the Committee on Budget and Appropriation of the County Assembly had neither received any recommendation from the Sectoral Committee nor tabled its report with recommendation on the County Fiscal Strategy Paper to the County Assembly for consideration.
  11. It was the 1st Petitioner's case that the County Budget Appropriation Committee as constituted by the County Assembly immediately after the general election still existed and the purported County Budget Appropriation Committee referred to in the advertisement in the Daily Nation Newspaper was unlawfully structured. That the irregular advertisement in the Daily Nation newspaper discriminated against four sub-counties as the said counties had been intentionally sidelined.
  12. The 1st Petitioner stated that through the Gazette Notice Number 1965 dated 30th January 2025, Amos Kimwoni Nyaribo (4th Respondent) appointed Nyamira and Keroka Municipality Board Members without the involvement of the County Assembly and the said persons were not subjected to vetting by the County Assembly. That the process and procedure of the appointments was flawed.
  13. It was the 1st Petitioner's case that the activities performed by the 7th Respondent as the Chairperson of the County Assembly Service Board were unlawful and this court ought to suspend the same.
  14. In its Further Affidavit dated 6th May 2025, the 1st Petitioner stated that an illegitimate group led by the 7th Respondent held parallel sittings outside the designated buildings of Nyamira County Assembly and conducted the business of "Bunge Mashinani" vide Gazette Notice 14229 of 2024. That the 3rd and 4th Respondents collaborated with "Bunge Mashinani" and submitted the County Fiscal Strategy Paper 2025/2026 through the office of the 1st Respondent. The 1st Petitioner further stated that the County Fiscal Strategy Paper was not subjected to public participation by the County Assembly.
  15. It was the 1st Petitioner's case that the parallel constituted faction had separate ad hoc sittings from the County Assembly and conducted the business of the House and this created confusion and division in the County Assembly and compromised the objectives of devolution as envisaged by the Constitution. It was his further case that the 1st Respondent was not authorized to call for public participation by the County Assembly on the County Fiscal Strategy Paper.
  16. The 1st Petitioner stated that the 6th Respondent was confirmed as Clerk of the County Assembly. He further stated that his Petition raised constitutional violations on the role of the County Assembly in the budget making process and the public appointments made by the County as well as the aspect of public participation in the County legislative decisions.
  17. The 1st and 2nd Petitioners filed their written submissions dated 28th April 2025 and submitted that to date, the County Assembly of Nyamira had not received the County Fiscal Strategy Paper 2025/2026. That it was common knowledge that the "Bunge Mashinani" passed the supplementary budget and duplicated the County Assembly's official documents and that the 3rd Respondent submitted the County Fiscal Strategy Paper to "Bunge Mashinani".
  18. It was the 1st and 2nd Petitioners' submission that section 189(2)(c) of the Nyamira County Assembly Standing Orders provided that the Budget and Appropriation Committee shall examine the County



- Fiscal Strategy Paper presented to the County Assembly and that section 4 provided for the tenure of the County Budget and Appropriation Committee which was constituted by the County Assembly after the general elections and would serve for a period of three years. That the County Assembly's Budget and Appropriation Committee's tenure had not lapsed and that "Bunge Mashinani" had no legal backing to constitute a new Budget and Appropriation Committee. It was their further submission that the properly constituted Budget and Appropriation Committee had not examined the County Fiscal Strategy Paper 2025/2026 since the same had not been tabled before the County Assembly.
19. The 1st and 2nd Petitioners submitted that the County Assembly did not receive the approved County Fiscal Strategy Paper and had not approved any motion on the report by the Budget and Appropriations Committee. The 1st and 2nd Petitioner further submitted that Nyamira County had 5 sub counties and the 7th Respondent who was acting on his own interest misled the public that he was the acting Speaker and invited members of the public from one sub-county for public participation. They relied on Articles 10 and 201 of the [Constitution](#) of Kenya, sections 117 and 125(2) of the [Public Finance Management Act](#) and sections 87(b) and 91 of the [County Governments Act](#).
  20. It was the 1st and 2nd Petitioners' submission that the Respondents did not attach any evidence of public participation in regard to the County Fiscal Strategy Paper 2025/2026. That they deliberately flouted the mandatory provisions under the [Constitution](#) and the [Public Finance Management Act](#) by failing to submit the County Fiscal Strategy Paper to the County Assembly.
  21. The 1st and 2nd Petitioners submitted that Nyamira County had two factions of County Assemblies with each having parallel County Assembly sittings and each had separate leadership. That the business by "Bunge Mashinani" was conducted outside the gazetted Nyamira County Assembly buildings and involved MCAs who had decamped to the "Bunge Mashinani" faction.
  22. It was the 1st and 2nd Petitioners' submission that the 7th Respondent was impeached as the Speaker of Nyamira County Assembly. That prior to his impeachment, he had been suspended on 8th October 2024 and he filed Nyamira Petition Number E008 of 2024 challenging his suspension and was granted stay orders. That the 7th Respondent was present and participated in the impeachment process. It was the 1st and 2nd Petitioners' submission that on 25th October 2024, the 7th Respondent filed Kisii Petition Number E001 of 2024 challenging his impeachment. That no stay orders were granted in the Kisii Petition.
  23. The 1st and 2nd Petitioner submitted that the Petition was not based on the 7th Respondent's impeachment process but the activities carried out by the 7th Respondent post impeachment. That the activities carried out by "Bunge Mashinani" during their ad hoc sittings were discriminatory, biased, null and void and should be declared illegal for their violation of the [Constitution](#).
  24. It was the 1st and 2nd Petitioners' submission that the candidates for the Nyamira and Keroka Municipality were not subject to the appointment criteria and approval by the County Assembly. That the approval done on 19th November 2024 was conducted by "Bunge Mashinani" to the exclusion of the majority of the Members of the County Assembly hence the approval was illegal, null and void. They relied on section 4 of the Public Appointments (County Assemblies) Act and section 8 of the [County Governments Act](#).

## The Responses

25. The 1st Respondent filed his Replying Affidavit dated 27th April 2025. He stated that it was incorrect for the Petitioners to impugn his appointment and the purported impeachment of the 7th Respondent yet there were pending proceedings involving the same. That the conservatory orders in Nyamira



- HCCHRPET/E008/2024 allowed status quo and allowed the 7th Respondent to discharge his duties as Speaker. The 1st Respondent further stated that the Petitioners had failed to indicate that he had been suspended from the County Assembly.
26. It was the 1st Respondent's case that he had been duly appointed and gazetted as Clerk of the County Assembly. That the 6th Respondent was suspended from office by the County Assembly and had no authority to exercise powers on behalf of the Assembly and that the purported issue of the County Fiscal Strategy Paper not being received by the County Assembly was made from a point of ignorance.
  27. The 1st Respondent stated that the role of the 2nd Respondent was limited to receiving the County Fiscal Strategy Paper and approval within 14 days. That the Petitioners failed to attend the public participation despite it being advertised in a newspaper of national circulation.
  28. It was the 1st Respondent's case that there were no two County Assemblies and further there was no vacuum in the office of the Speaker.
  29. The 2nd, 3rd and 4th Respondents (hereinafter referred to as the Respondents) filed their Grounds of Opposition dated 17th March 2025. They stated that the Petition was incompetent and bad in law. That the Petition did not plead any particulars and manner of violation of any single constitutional provision that it listed.
  30. It was the Respondents' case that the matters concerning the removal of the 7th Respondent as the County Assembly Speaker were sub judice pending the hearing and determination of four cases. That the Petitioners had not tendered any evidence to show that the 7th Respondent was not the Speaker of the County Assembly and that the 7th Respondent remained the legitimate, lawful and bona fide Speaker of the County Assembly. It was the Respondents' case that any acts, functions and duties conducted by the 7th Respondent remained lawful until the ongoing judicial proceedings challenging his attempted removal are concluded.
  31. The Respondents stated that by purporting to argue that the 7th Respondent was removed from office as Speaker, the Petitioners were in contempt of the orders issued in Nyamira HCCHRPET/E008/2024.
  32. It was the Respondents' case that the appointment of the 1st Respondent as acting Clerk of the County Assembly was published in the Kenya Gazette and the Petitioners had not provided any evidence to show that such appointment was subject to any stay order. That even if the Petitioners had a problem with the appointment of the 1st Respondent as acting Clerk of the County Assembly, the same would constitute employment and labour issues and this court had no jurisdiction to determine the same.
  33. The Respondents stated that the 3rd Respondent in adherence with section 117 of the [Public Finance Management Act](#) submitted the approved Nyamira County Fiscal Strategy Paper 2025 to the County Assembly on 27th February 2025 and it was evident from the letters dated 27th February 2025 and 7th March 2025 that there was a stamp indicating that the Fiscal Paper was received. That the Petitioner did not provide evidence to controvert or discount the authenticity of the stamp.
  34. It was the Respondents' case that the appointment of persons to the Nyamira and Keroka Municipality Boards was contained in the Kenya Gazette Notice Number 1965 dated 30th January 2025. That the appointments were duly approved by the County Assembly on 19th November 2024.
  35. The 1st, 2nd, 3rd and 4th Respondents filed their written submissions dated 27th April 2025. They submitted that the Petition was defective as it breached the key principles with regard to pleading Constitutional Petitions and was thus an abuse of the court process. That the Petitioners had failed



- to provide a nexus between any of the provisions of the Constitution cited and how they had been violated. It was their submission that the Petition was vague.
36. It was their submission that according to section 125 (2) of the Public Finance Management Act and *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tabacco Kenya Limited (Affected Party)* [2019] KESC 15 (KLR), the 2nd Respondent was responsible for ensuring that there was public participation in the budget process. That it is after the approval of the County Fiscal Strategy Paper that the County Budget Estimates of Revenue and Expenditure are presented to the County Assembly by the County Executive Committee member for Finance by 30th April each year and approved by the County Assembly before 30th June each year. It was their further submission that the prayer seeking to compel the 2nd Respondent to resubmit the County Fiscal Strategy Paper had been overtaken by events since the statutory timelines had lapsed.
37. The Respondents submitted that the issue of the removal of the 7th Respondent as Speaker was sub judice as it could only be resolved in *Kisumu ELRCPET/E052/2024, Enock Okero Ogori & Anor vs Nyamira County Assembly and Clerk Nyamira County Assembly and 8 others*.
38. It was their submission that the issue relating to the appointment of Keroka Municipality Board members was an employment and labour issue. That there was conflict of interest as the Petitioner's counsel had participated in the nominations and vetting for the said posts. It was their further submission that the Petitioner's counsel was suitable as a witness rather than a counsel in this matter. They relied on *Ritesh Nandlal Pamnani & Another v Dhanwanti Hitendra Hirani & 2 Others* [2012] KEHC 3899 (KLR) et.al.
39. The Respondents submitted that the Petition was meant to settle political scores and had nothing to do with constitutional violations.

#### **Bomet Petition Number E005 of 2025**

40. Edwin Onchoko (3rd Petitioner) filed his Petition dated 20th January 2025. The Petition was founded on Articles 27, Article 1 (1) as read with Article 1 (3) (a), Articles, 2(3), 2(6), 3, 10, 22, 23, 159, 162(2), 193 (2) (a) of the Constitution of Kenya, section 14 of the County Governments Act, section 21 and the 4th Schedule to the Elections Act, section 19 of the Elections Act and section 14 of the Political Parties Act.
41. The 3rd Petitioner sought the following reliefs that: -
- I. A Declaration that the Respondents in purporting to elect the 1st Interested Party to office of the County Assembly Speaker in the manner pleaded herein acted in contravention of Articles 1(1), 3, 10, 178(1), 193(2) and 194 of the Constitution of Kenya and Standing Orders No. 4 of the Nyamira County Assembly Standing Orders.
  - II. A Declaration that actions by the Nyamira County Assembly on 19th December 2024 purporting to elect and ipso facto swear in the 1st Interested Party to the office of the County Assembly Speaker is unconstitutional, unlawful, null and void and thus of no consequence and the same be and is hereby quashed.
  - III. A Declaration that the purported election of the 1st Interested Party as Speaker of the 1st Respondent is unconstitutional, unlawful, null and void as there was no vacancy in that office.
42. Through his Supporting Affidavit dated 20th January 2024, the 3rd Petitioner stated that on 19th December 2024, the County Assembly of Nyamira unlawfully elected and swore in Thaddeus



- Nyabaro (1st Interested Party) as Speaker of the County Assembly in a manner that was unconstitutional and in direct disregard to Nyamira County Assembly Standing Orders. That there was no vacancy in the Office of the Speaker and that the 1st Interested Party was not qualified to contest for the position of Speaker pursuant to Article 178(1) of the Constitution of Kenya. The 3rd Petitioner further stated that Duke Onyari (6th Respondent) was bereft of presiding over the conduct of electing the Speaker as he had been suspended from office as Clerk of the County Assembly.
43. It was the 3rd Petitioner's case that contrary to Article 178(1) of the Constitution of Kenya, the 1st Interested Party was an active Member of the County Assembly and had not resigned prior to being elected Speaker. That by assuming the office as Speaker, the 1st Interested Party was in violation of Article 193(2) of the Constitution of Kenya. It was the 3rd Petitioner's further case that the election of the 1st Interested Party as Speaker was done in the absence of a Vacancy Notice from the Independent Electoral and Boundaries Commission (2nd Interested Party). That the 1st Interested Party continued to illegally benefit from the Office of Speaker and that of the Member of County Assembly.
  44. The 3rd Petitioner stated that there was no vacancy in the Office of Speaker as the 7th Respondent had obtained conservatory orders in Nyamira Petition Number E008 of 2024, now Kisumu ELRC Number E052 of 2024. That the conservatory orders stopped the interference of the discharge of the 7th Respondent's duties as Speaker and that those orders had not been vacated, set aside or appealed to date.
  45. It was the 3rd Petitioner's case that the Nyamira County Assembly and the 6th Respondent had overstepped their constitutional mandate by deliberately, illegally and unlawfully undertaking and performing their functions outside the parameters set out in the Constitution of Kenya and Statute.
  46. The 3rd Petitioner filed his submissions dated 5th May 2025. He submitted that the High Court in Nyamira gave conservatory orders preventing interference by any party that would prevent the discharge of duties as Speaker by the 7th Respondent. That the said orders were neither cast in stone nor were they academic. The 3rd Petitioner further submitted that no party had moved to set aside the conservatory orders and reliance was placed on *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others (2014) eKLR*.
  47. It was the 3rd Petitioner's submission that there was no vacancy to fill at the time of the impugned election. That any action that led to the election of the 1st Interested Party as Speaker was a nullity and incurably bad.
  48. The 3rd Petitioner submitted that the 7th Respondent never clarified whether he resigned as a Member of the County Assembly (MCA) so that his seat could be declared vacant. That the law was clear that one could not qualify to be a Speaker while one was still a Member of the County Assembly. He relied on *Douglas Bundi Kirimi v Joseph Kaberia Arimba Speaker County Assembly of Meru 3 others 2018 KEHC 4451 (KLR)*.
  49. It was the 3rd Petitioner's submission that the 6th Respondent had failed to demonstrate that he had been reinstated by the County Assembly as its Clerk. That any disciplinary action to be taken on the Clerk of the County Assembly was a preserve of the County Assembly Service Board under section 22 of the County Assembly Services Act. It was the 3rd Petitioner's further submission that it was the County Assembly Service Board that suspended the 6th Respondent and not the 7th Respondent.

## Response

50. Through his Replying Affidavit dated 15th May 2025, Thaddeus Nyabaro (1st Interested Party) stated that a vacancy in the Office of the Speaker of Nyamira County Assembly was declared and



duly gazetted. That normally, the election of a Speaker of a County Assembly is officially announced through a Gazette Notice following the completion of the election process and County Assembly Standing Orders and the Gazette Notice serve as the formal notification to the public about the elected Speaker and the official commencement of his duties. The 1st Interested Party further stated that the 3rd Petitioner should have exercised restraint until the process of his election as Speaker was formalized through a Gazette Notice then move the court appropriately to quash or annul the resultant gazettelement.

51. It was the 1st Interested Party's case that the court should act with restraint not to interfere with the County Assembly's privileges as accorded to it by Statute as it would impair its functions and operations.
52. The 1st Interested Party stated that this court had no jurisdiction to determine the question of his alleged non-resignation as it was a pre-election dispute which the 3rd Petitioner ought to have raised with the IEBC's (2nd Interested Party) Dispute Resolution Committee prior to filing the Petition and reliance was placed on *Mutabi v Thiriku & 4 others* [2022] KEHC 13678 (KLR) and Article 88(4) (e) of the Constitution of Kenya. That the 3rd Petitioner failed to exhaust the administrative remedies mandatorily provided for by the law, therefore this court's jurisdiction had not been properly invoked.
53. It was the 1st Interested Party's case that the conservatory orders that the 3rd Petitioner referred to were issued on 11th October 2024 after the 7th Respondent had already been suspended on 8th October 2024. That the 7th Respondent was impeached on 24th October 2024.
54. The 1st Interested Party stated that after his impeachment, the 7th Respondent filed Kisii Employment and Labour Relations Court Petition Number E001 of 2024 challenging his impeachment and had not obtained any order suspending his impeachment.
55. It was the 1st Interested Party's case that the 6th Respondent had the capacity to preside over the election of a new Speaker because the purported suspension of the 6th Respondent was done by the 7th Respondent.
56. The 1st Interested Party filed his submissions dated 15th May 2025 and submitted that the 3rd Petitioner did not tender evidence to demonstrate that he resigned as a Member of the County Assembly as required under Article 194(a) of the Constitution of Kenya. That it was only after presenting such evidence to the court that the evidentiary burden would shift to the 1st Interested Party requiring a rebuttal.
57. It was the 1st Interested Party's submission that the election of a Speaker was a political process anchored on the Constitution of Kenya, statutes and Standing Orders of the Assembly. That the 3rd Petitioner's assertion as to the 1st Interested Party's eligibility to be elected Speaker was a pre-election dispute that ought to be determined by the IEBC Dispute Resolution Committee. It was his further submission that this court lacked jurisdiction to determine the issue of his eligibility.
58. The 1st Interested Party submitted that the 3rd Petitioner had not presented evidence to show that the 1st Interested Party had been gazetted as the Speaker of the County Assembly of Nyamira. That it was only the Gazette Notice gazetted the 1st Interested Party as Speaker that was capable of being quashed by a court of law. The 1st Interested Party further submitted that in the absence of the Gazette Notice, the Petition was premature. He relied on *John Githigi Mugwe & 2 others v Clerk, Kiambu County Assembly & 4 others* [2018] KEELRC 1568 (KLR) and *Simwah & another v Kakamega County Assembly Service Board; Akosi (Interested Party)* [2023] KEELRC 888 (KLR).
59. It was the 1st Interested Party's submission that the conservatory orders issued in Kisii ELRC Pet/ E001/2024 were limited to the motion suspending the 7th Respondent as Speaker and the court did



not issue any orders against his impeachment. That the 3rd Petitioner had not challenged the Gazette Notice Number 14051 of 25th October 2024 that was issued by the County Assembly that convened a special sitting solely for the purpose of electing a Speaker.

60. The 1st Interested Party submitted that the 3rd Petitioner had not demonstrated how his constitutional rights had been violated.

**Bomet Judicial Review Number E001 of 2025.**

61. The County Assembly of Nyamira (2nd Petitioner) through its Notice of Motion dated 9th December 2024 sought an order of Certiorari to quash Gazette Notices Numbers 14229 of 2024, 14230 of 2024 and 14273 of 2024 dated 29th October 2024, 26th October 2024 and 30th October 2024 respectively. The 2nd Petitioner stated that the 7th Respondent was impeached on 24th October 2024 and ceased being Speaker of the County Assembly of Nyamira and he illegally placed the three Gazette Notices above.
62. It was the 2nd Petitioner's case that Gazette Notice Number 14229 of 2024 purported to gazette Masaba North Sub-County Office, Nyamira North Sub-County Office, Manga Sub-County Office and Borabu Sub-County Office as places where Nyamira County Assembly could sit. That Gazette Notice Number 14230 of 2024 purported to appoint Silvanus Ndemo Nyamora (1st Respondent) as the acting Clerk of the County Assembly of Nyamira. It was the 2nd Petitioner's further case that Gazette Notice Number 14273 of 2024 purported to form a new County Assembly Service Board.
63. In relation to Nyamira Judicial Review Number E007 of 2024 (now Bomet Judicial Review Number E001 of 2025), on 8th April 2025, in open court, parties proposed that the Judicial Review suit be withdrawn. Additionally, on 29th April 2025, Mr. Onger Advocate who appeared for the County Assembly (2nd Petitioner and Applicant in the Judicial Review Suit) informed the court that he wished to withdraw his Judicial Review Suit. The prayer for withdrawal was opposed by Mr. Mokuia Advocate on 29th April 2025 who indicated to the court that he had filed their submissions and served.
64. I have looked at the prayers contained in the Judicial Review Suit and they entail the placement of Gazette Notices by the 7th Respondent after his alleged impeachment. In my view, these are actions that the Petitioners wanted to be declared illegal and the actions alleged to have been performed by the 7th Respondent include the actions contained in Bomet Petition Number E004 of 2024. Consequently, the prayer for certiorari to quash Gazette Notices Numbers 14229 of 2024, 14230 of 2024 and 14273 of 2024 shall be considered alongside the prayers in Bomet Petition Number E004 of 2024.
65. Having carefully gone through the consolidated Petitions, their pleadings and respective written submissions, I sieve the following issues for my determination: -
- i. Whether the 7th Respondent ceased to hold office.
  - ii. What is the legal implication of the actions taken by the 7th Respondent post 24th October 2024?
  - iii. Whether it is the duty of this court to determine the Speaker of Nyamira County Assembly.
  - iv. Who bears the costs of this consolidated Petition?

**i. Whether the 7th Respondent ceased to hold office**

66. The 3rd Petitioner stated that on 19th December 2024, the County Assembly of Nyamira (2nd Petitioner) unlawfully elected and swore in Thaddeus Nyabaro (1st Interested Party) as its Speaker.



- That at the time of the 1st Interested Party's election as Speaker there was no vacancy in the Office of the Speaker as Enock Okero Ogori (7th Respondent) had obtained conservatory orders in Nyamira High Court Petition Number E008 of 2024 (now Kisumu ELRC Number E052 of 2024) stopping the interference of the discharge of the 7th Respondent's duties as Speaker. The 3rd Petitioner further stated that the said conservatory orders had not been vacated and were still valid.
67. On the other hand, the 1st Interested Party stated that the 7th Respondent had been suspended on 8th October 2024. That the 7th Respondent filed Nyamira High Court Petition Number E008 of 2024 (now Kisumu ELRC Number E052 of 2024) on 11th October 2024 challenging his suspension as the Speaker of Nyamira County Assembly. That the court granted the 7th Respondent Conservatory Orders which preserved the 7th Respondent status as Speaker but did not grant the 7th Respondent an order preventing his removal or replacement as Speaker. The 1st Interested Party stated that this paved way for the impeachment of the 7th Respondent on 24th October 2024.
68. From the onset, it was an undisputed fact that the 7th Respondent was impeached on 24th October 2024. The 3rd Petitioner's contention was that the impeached Speaker (7th Respondent) had obtained Conservatory Orders which in his view, stopped his impeachment.
69. I have carefully gone through the record and I have noted that the 3rd Petitioner attached orders from Nyamira High Court Petition Number E008 of 2024 that were issued on 11th October 2024 by Okwany J. For the purpose of clarity, I shall reproduce the orders as issued thus: -
1. That the Application be served on the Respondents and the Interested Party and be mentioned on 14th October 2024 for directions.
  2. That prayers No.2 and 3 of the said Application are hereby granted in order to preserve the substratum of the Application.
70. From the record, I have retrieved the Notice of Motion Application dated 10th October 2024 by the 7th Respondent that the above orders referred to. For clarity, I shall also reproduce orders 2 and 3 thus: -
2. That pending the hearing and determination of the Application herein, this Honourable Court be pleased to issue interim conservatory orders staying the effect and implementation of the purported resolution of the 1st Respondent passed on 8th October 2024 purporting to suspend the Petitioner/Applicant from discharging his functions and duties as Speaker of the 1st Respondent.
  3. That pending the hearing and determination of the Application herein, the Honourable Court be pleased to issue interim temporary injunctive orders restraining the Respondents and the Interested Party or any other person acting on their behalf or otherwise, from stopping, barring or otherwise interfering with the Petitioner/Applicant's discharge of his functions and duties as Speaker of the 1st Respondent.
71. From the above, it was evident that the 7th Respondent had been suspended by the County Assembly of Nyamira on 8th October 2024. This prompted the 7th Respondent to file Nyamira High Court Petition Number E008 of 2024 now Kisumu ELRC Number E052 of 2024. Of particular interest to this consolidated Petition was the 7th Respondent's Notice of Motion Application dated 10th October 2024 whose prayers and interim orders have been captured above.
72. This court's critical interpretation of Order number 2 issued on 11th October 2024 by Okwany J. was that she issued conservatory orders staying the suspension of the 7th Respondent as Speaker. This effectively meant that the 7th Respondent resumed his duties as Speaker of the County Assembly. In regards to Order number 3, the Judge issued conservatory orders that barred interference of the



duties of the 7th Respondent as Speaker. Order 3 as worded above, did not mention that the County Assembly of Nyamira was barred from impeaching the 7th Respondent or exercising its constitutional mandate. I am guided by the Court of Appeal in *Jihan Freighters Limited v Hardware & General Stores Limited* [2015] KECA 285 (KLR) where it held: -

“.....Once more, this appeal is a vivid demonstration of why court orders must be clear and unambiguous. See *AKHTAR BUTT & ANOTHER V. REGINE BUTT*, CA NO. 31 OF 2015, (MALINDI) and *Lucy Wangui Gachara V. Minudi Okemba Lore, CA NO 4 OF 2015*, (MALINDI). In the latter case, which raised a very similar issue to the one now before us, this Court stated as follows regarding clarity of court orders:

“Naturally whether the above order was merely a prohibitory order or a mandatory injunction for the eviction of the appellant from the suit property has taken centre stage in this appeal, underlining once again the supreme importance of a court of law to issue clear and precise orders that do not leave any doubt as to what a party is supposed to do or abstain from doing.” (Emphasis mine)

73. In furtherance to the above and as I will describe later on in this Judgement, the court cannot interfere with the performance or execution of any constitutional mandate of the County Assembly. The court only comes in when breach of the Constitution is demonstrated after the exercise of a constitutional mandate and not prior. It is also instructive to note that from the record, the 7th Respondent challenged his impeachment in the High Court in Kisii in Petition Number E001 of 2024
74. The sum total of the above is that this court finds that the 7th Respondent ceased to hold office on 24th October 2024.

## **ii. What is the legal implication of the actions taken by the 7th Respondent post 24th October 2024?**

75. The question that follows from the above finding was whether the actions conducted by the 7th Respondent post impeachment were invalid null and void. The 1st Petitioner stated that Enock Okero Ogori (7th Respondent) was removed from the Office of Speaker of Nyamira County on 24th October 2024 by way of impeachment. That on 31st October 2024, the 7th Respondent while purporting to act as the Chair of the County Assembly Service Board together with his newly appointed board members appointed Silvanus Ndemo Nyamora (1st Respondent) as the Clerk of the County Assembly with the approval of the parallel constituted County Assembly christened “Bunge Mashinani.”
76. The 1st Petitioner stated that an illegitimate group led by the 7th Respondent had held parallel sittings outside the designated buildings of Nyamira County Assembly and conducted the business of the house claiming legitimacy of the sittings “Bunge Mashinani” vide Gazette Notice 14229 of 2024. That the 3rd and 4th Respondents collaborated with “Bunge Mashinani” and submitted the County Fiscal Strategy Paper 2025/2026 through the office of the 1st Respondent.
77. The 1st Petitioner stated that with the blessings of the 7th Respondent, the 1st Respondent on 10th March 2025, published an advertisement in the Daily Nation Newspaper purporting that the County Assembly through its County Budget and Appropriation Committee had invited members of the public to a public participation forum of the County Fiscal Strategy Paper 2025/2026.
78. It was the 1st Petitioner’s case that the activities carried by the 7th Respondent were nugatory and illegal and all appointments done as the Chairperson of the County Assembly Service Board were unlawful and this court ought to suspend the same.



79. It was the 2nd Petitioner's case that the 7th Respondent placed Gazette Notice Number 14229 of 2024 on 29th October 2024 purporting to gazette Masaba North Sub-County Office, Nyamira North Sub-County Office, Manga Sub-County Office and Borabu Sub-County Office as places where Nyamira County Assembly could sit. That the 7th Respondent placed Gazette Notice Number 14230 of 2024 on 26th October 2024 purporting to appoint Silvanus Ndemo Nyamora (1st Respondent) as the acting Clerk of the County Assembly of Nyamira. It was the 2nd Petitioner's further case the 7th Respondent placed Gazette Notice Number 14273 of 2024 on 30th October 2024 purporting to form a new County Assembly Service Board.
80. On the other hand, the 1st Respondent stated that he had been duly appointed and gazetted as Clerk of the County Assembly. That the 6th Respondent was suspended from office by the County Assembly and had no authority to exercise powers on behalf of the Assembly.
81. The 1st Respondent stated that the role of the 2nd Respondent was limited to receiving the County Fiscal Strategy Paper and approval within 14 days.
82. It was the 1st Respondent's case that there were no two County Assemblies and further there was no vacuum in the office of the Speaker. That the Petitioners had not tendered any evidence to show that the 7th Respondent was not the Speaker of the County Assembly and that the 7th Respondent remained the legitimate, lawful and bona fide Speaker of the County Assembly. It was the Respondents' case that any acts, functions and duties conducted by the 7th Respondent remained lawful until the ongoing judicial proceedings challenging his attempted removal are concluded.
83. The 1st Respondent stated that by purporting to argue that the 7th Respondent was removed from office as Speaker, the Petitioners were in contempt of the orders issued in Nyamira High Court Petition Number E008/2024.
84. Additionally, the 2nd, 3rd and 4th Respondents stated that the 3rd Respondent in adherence with section 117 of the *Public Finance Management Act* submitted the approved Nyamira County Fiscal Strategy Paper 2025 to the County Assembly on 27th February 2025 and it was evident from the letters dated 27th February 2025 and 7th March 2025 that there was a stamp indicating that the Fiscal Paper was received. That the Petitioner did not provide evidence to controvert or discount the authenticity of the stamp.
85. As I have already found earlier in this Judgment, the 7th Respondent was impeached and ceased to hold office on 24th October 2024. This meant that the 7th Respondent ceased to perform the actions and duties of the Office of Speaker on 24th October 2024. It is my therefore my finding that any actions or duties performed by the 7th Respondent post impeachment (from 24th October 2024) were illegal, null and void as teh 7th Respondent neither had the power nor locus to do so. I shall make the necessary orders at the end of this Judgment.

**iii. Whether it is the duty of this court to determine the Speaker of Nyamira County Assembly.**

86. From the pleadings, it became clear to this court that Nyamira County had two County Assemblies contrary to the law. This court has already found that Enock Okero Ogori (7th Respondent) was impeached on 24th October 2024 and ceased to hold office. The Petition challenging his impeachment is before Kisii High Court in Kisii High Court Petition Number E001 of 2024 and not in this consolidated Petition.
87. The 3rd Petitioner had sought a declaration that this court finds the election of the 1st Interested Party as Speaker on 19th December 2024 as unconstitutional, null and void.



88. Impeachment is a constitutional matter and for this court to determine whether the election of the 1st Interested Party as Speaker was unconstitutional, null and void, the 3rd Petitioner had to demonstrate that there was breach in the process of electing the Speaker. The process of electing a Speaker is contained in the First Schedule of the [Elections Act](#), Cap 7 of the Laws of Kenya which provides: -

1. A speaker of a county assembly shall be elected when the county assembly first meets after a general election and before the county assembly proceeds with the dispatch of any other business.
2. If the office of speaker falls vacant at any time before the dissolution of the county assembly, another member of the assembly shall be elected to preside over the transaction of business until after the election of a new speaker.
3. The clerk of the county assembly shall preside over the election under paragraph (2).
4. The names of candidates for election to the office of speaker shall be entered upon nomination papers obtained from and handed to the clerk, at least forty-eight hours before the time appointed at which the county assembly is to meet to elect a speaker, and shall be accompanied in each case, by signatures of two members who support the candidate and a declaration by them that the candidate is willing to serve and that the candidate is qualified to be elected as a member of the county assembly under this Act.
5. The clerk shall maintain a register in which shall be shown the date and time when each candidate's nomination papers were received and shall ascertain that every such candidate for election to the office of speaker is qualified to be elected as such under this Act.
6. The election of the speaker shall be by secret ballot.
7. The clerk shall prepare, at least one hour before the meeting of the county assembly, ballot papers upon which shall be shown the names of all candidates validly nominated under paragraph (5) and shall issue not more than one such paper to each member who comes to the table to obtain it.
8. The clerk shall, at the commencement of each ballot, cause the ballot box, empty and unlocked, to be displayed to the county assembly and shall, in the presence of the county assembly, lock the box, which shall thereafter be kept in the full view of the county assembly until the conclusion of the ballot.
9. Each member of the county assembly who wishes to vote shall proceed to a booth or designated area provided by the clerk for that purpose and located next to and within reasonable distance of the ballot box and shall, whilst therein, mark the ballot paper by placing a mark in the space opposite the name of the candidate for whom the member wishes to vote, fold the marked ballot paper before leaving the booth or area and place the folded ballot paper in the ballot box:  

Provided that a member who, before the conclusion of a ballot has marked a paper in error may, by returning it to the clerk, obtain another in its place and the clerk shall immediately cancel and destroy the paper so returned.
10. The clerk shall make such arrangements as may be necessary to enable any member with disability to vote.
11. When it appears to the clerk that all members who are present and who wish to vote have placed their ballot papers in the ballot box, the clerk shall unlock the box, examine the ballot



papers and, having rejected those unmarked or spoiled, report the result of the ballot; and no member who has not already recorded his or her vote shall be entitled to do so after the clerk has unlocked the ballot box.

12. A person shall not be elected as speaker of a county assembly, unless supported by votes of two-thirds of all the members of the county assembly and if no candidate is supported by the votes of two-thirds of all the members, the candidate who in that ballot receives the highest number of votes and the candidate who in the ballot receives the next highest number shall alone stand for election in a further ballot and the candidate who receives the highest number of votes on the further ballot shall be elected speaker.
  13. A candidate may, by written notice to the clerk, withdraw his or her name before a ballot is started, and in the event of such withdrawal, the clerk shall cross the name of that candidate off any ballot papers issued for that or any subsequent ballot.
  14. Notwithstanding anything to the contrary in this schedule, if there is only one candidate who has been duly nominated, that candidate shall be declared forthwith to have been elected speaker, without any ballot or minimum vote being required.
89. I have gone through the 3rd Petitioner's pleadings and he has failed to demonstrate how the process shown above was breached when the 1st Interested Party was being elected as Speaker of the County Assembly. The 3rd Petitioner wholly relied on the illegality of the 7th Respondent's impeachment on account of the existence of conservatory orders, orders which this court has found did not touch on the 7th Respondent's impeachment.
90. The 3rd Petitioner also stated that the 1st Interested Party had violated Article 178(1) of the Constitution of Kenya which provided: -
- Each county assembly shall have a speaker elected by the county assembly from among persons who are not members of the assembly.
91. The 3rd Petitioner contended that the 1st Interested Party was elected as Speaker of the County Assembly whilst still an active Member of the County Assembly for Ekerenyo Ward. On the other hand, the 1st Interested Party stated that he had not been gazetted as the Speaker of the County Assembly. My understanding of the 1st Interested Party's contention was that he was elected not but not gazetted as Speaker of Nyamira County Assembly.
92. I have gone through the pleadings and I have noted that there was a resolution by the County Assembly to elect the 1st Interested Party as Speaker. However, as the 1st Interested Party alluded, there was no gazette notice buttressing his election as Speaker. The only evidence that the 3rd Petitioner produced showing that the 1st Interested Party was a Speaker and an active Member of County Assembly was an extract from the Nyamira County Assembly website.
93. It is my view that in the absence of a gazette notice, it was not clear to this court if the 1st Interested Party was the gazetted Speaker of Nyamira County. In my view, the extract from the Nyamira County Assembly website was insufficient evidence to conclude that the 1st Interested Party was the gazetted Speaker of the County.



94. From the above, this court questioned itself whether should determine the Speaker of the County of Nyamira. The court in *Simwah & another v Kakamega County Assembly Service Board; Akosi (Interested Party)* [2023] KEELRC 888 (KLR) held: -

“The Supreme Court has introduced the doctrine of Judicial restraint on matters of separation of power.....

.....The court cautioned against courts rushing to issue conservatory orders that hinder other arms of government from exercising their constitutional and statutory roles. The Supreme Court guided the courts to be restrained in interfering in ongoing process in the National and /county Assemblies and await the assemblies to make their decision then the court have authority to examine and review if seized of the matter.”

95. The Supreme Court in *Speaker of the Senate & another v Attorney-General & another; Law Society of Kenya & 2 others (Amicus Curiae)* [2013] KESC 7 (KLR) held: -

“.....This Court would be averse to questioning Parliamentary procedures that are formulated by the Houses to regulate their internal workings as long as the same do not breach the Constitution.....”

96. Further, the Supreme Court in *Mate & another v Wambora & another* [2017] KESC 1 (KLR) held: -

“From the course of reasoning emerging from such cases, it is possible to formulate certain principles, as follows:

- (a) each arm of Government has an obligation to recognize the independence of other arms of Government;
- (b) each arm of Government is under duty to refrain from directing another organ on how to exercise its mandate;
- (c) the courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;
- (d) for the due functioning of constitutional governance, the courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case;
- (e) in the performance of the respective functions, every arm of Government is subject to the law.”

97. Flowing from the above, it is quite clear that courts should exercise restraint when dealing with the operations of other organs of government and only interfere if a breach of the Constitution is exhibited. In the present Petition and from the evidence on record, it was evident that the 1st Interested Party was elected as Speaker but had yet to be gazetted. It was prudent for this court to allow the County Assembly to conclude its internal processes in terms of election of a Speaker. Flowing from the above, it is my finding that this court has no jurisdiction to determine the Speaker of the County Assembly.

#### **iv. Who bears the costs of this consolidated Petition**

98. Since this is a public interest matter, each party shall bear their own costs.



99. As I pen off, it is salient to state that all the issues raised by the respective advocates have been considered by the court in arriving at its decision. In the end, I make the following final orders in respect to all three matters as consolidated herein:-

- I. Bomet Petition Number E005 of 2025 is dismissed.
- II. A Declaration be and is hereby issued that the Daily Nation Newspaper advertisement published on 11th March 2025 – Public Participation On The Nyamira County Fiscal Strategy Paper 2025/2026 inviting members of the public and all stakeholders to a public participation forum and submission of memoranda and the subsequent exercise is illegal, null and void.
- III. An order of Judicial Review by way of mandamus to issue compelling the 2nd and 3rd Respondents to present and submit the County Fiscal Paper (CFSP) to the 2nd Petitioner through its bona-fide Clerk of the Nyamira County Assembly, Hon. Duke Onyari for purposes of making recommendations, consideration and approval of the COUNTY FISCAL STRATEGY PAPER 2025/2026 as part of the budget making process.
- IV. An order of Certiorari is granted quashing Gazette Notices Numbers 14229 of 2024, 14230 of 2024 and 14273 of 2024 dated 29th October 2024, 26th October 2024 and 30th October 2024 respectively.
- V. Each party to bear their own costs.

**JUDGEMENT READ, DELIVERED, DATED AND SIGNED VIRTUALLY THIS 4TH DAY OF JUNE, 2025.**

.....

**J.K.NG'ARNG'AR**

**JUDGE**

In the presence of:

Bochaberi for the 1st Petitioner

Mokua and Bochaberi for the 2nd Petitioner

Bonuke for the 3rd Petitioner

Bonuke for the 1st Respondent

Maronga and Bonuke for the 2nd Respondent

Maronga and Bonuke for the 3rd Respondent

Maronga and Bonuke for the 4th Respondent

Bogongo and Mokua for the 5th Respondent

Mokua for the 6th Respondent

Bonuke for the 7th Respondent

N/A for the 8th Respondent

Robert Ndubi for the 1st Interested Party

Bogongo for the 2nd Interested Party

Siele/Susan (Court Assistants)

