



REPUBLIC OF KENYA



KENYA LAW

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**Mahasi v Vihiga County Assembly & 15 others; Ayiego & 3 others (Interested Parties)
(Constitutional Petition E006 of 2024) [2025] KEHC 10336 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10336 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CONSTITUTIONAL PETITION E006 OF 2024**

JN KAMAU, J

JULY 14, 2025

**IN THE MATTER OF ARTICLES 1, 2, 3, 19, 20,
21, 22, 23 OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 3013**

AND

**IN THE MATTER OF A PUBLIC-INTEREST LITIGATION MOUNTED FOR THE
GENERAL BENEFIT OF THE CITIZENS OF KENYA RESIDENT IN VIHIGA COUNTY**

AND

**IN THE MATTER OF THE LAWS GOVERNING DEVOLUTION
SPECIFICALLY THE COUNTY GOVERNMENT'S ACT**

BETWEEN

VINCENT ENDEKWA MAHASI PETITIONER

AND

VIHIGA COUNTY ASSEMBLY 1ST RESPONDENT

THE HON SPEAKER, VIHIGA COUNTY ASSEMBLY 2ND RESPONDENT

THE HON CLERK, VIHIGA COUNTY ASSEMBLY 3RD RESPONDENT

**THE VIHIGA COUNTY ASSEMBLY JUSTICE AND LEGAL AFFAIRS
COMMITTEE 4TH RESPONDENT**

HON FREDRICK MAVISI 5TH RESPONDENT

HON GLADYS YALWALA 6TH RESPONDENT

HON JOYCE MAYODI 7TH RESPONDENT

HON DANCUN AVUDI KU 8TH RESPONDENT



HON MANOAH MBOKU 9TH RESPONDENT
HON MITCHEL STIKA 10TH RESPONDENT
HON ZAKAYO MANYASA 11TH RESPONDENT
HON WIMSEY OSORE 12TH RESPONDENT
HON FLORENCE KEGODE 13TH RESPONDENT
HON HELLEN MWANIKA (BEING MEMBERS OF THE VIHIGA
COUNTY ASSEMBLY SECTORAL COMMITTEE ON HEALTH
SERVICES) 14TH RESPONDENT
HE THE GOVERNOR, COUNTY GOVERNMENT OF
VIHIGA 15TH RESPONDENT
VIHIGA COUNTY PUBLIC SERVICE BOARD 16TH RESPONDENT

AND

EZEKIEL AYIEGO INTERESTED PARTY
HON JULIUS KIBOEN MARUJA INTERESTED PARTY
DR MARY SUSAN ANYIENDA INTERESTED PARTY
HON COLLINS AYUGU INTERESTED PARTY

(IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 3013 AND IN THE MATTER OF A PUBLIC-INTEREST LITIGATION MOUNTED FOR THE GENERAL BENEFIT OF THE CITIZENS OF KENYA RESIDENT IN VIHIGA COUNTY AND IN THE MATTER OF THE LAWS GOVERNING DEVOLUTION SPECIFICALLY THE COUNTY GOVERNMENT’S ACT)

JUDGMENT

Introduction

1. In his Petition dated and filed on 31st May 2024, the Petitioner herein sought for orders that:-
 - a. A declaration do issue in terms that a County Assembly or a Committee of the County Assembly had no powers of determination of whether a person had violated a provision of *the Constitution* since such powers fell within the exclusive jurisdiction of the High Court under Article 165 of *the Constitution*.
 - b. A declaration do issue in terms that the oversight role of the County Assembly over the County Executive provided in Article 185(3) of *the Constitution* and Section 8 of the *County Governments Act* did not extend to nor permit the County Assembly to investigate, question, vary, revoke or in any manner interfere with the transfer of staff in the County Public Service or suspensions of staff undertaken by the officers or entities the county executive.



- c. A declaration do issue in terms that deployment of staff and/or their transfers within the County Public Service were matters governed by Section 72 of the [County Governments Act](#) and not amenable to any challenge before the County Assembly.
- d. A declaration do issue in terms that suspensions and other disciplinary actions against officers in the County Public Service were matters within the disciplinary control powers of the County Public Service Board and the authorised officers to whom such powers were delegated and that in exercising those powers, the County Public Service Board was not subject to the direction or control of the County Assembly.
- e. A declaration do issue to the effect that any challenge to a decision taken in exercise of disciplinary control within the County Public Service was only appealable to the Public Service Commission as provided in Article 234 of [the Constitution](#) and Section 77 of the [County Governments Act](#) and to the extent thereof, a County Assembly had no powers to entertain a Petition or complain on account of such a matter.
- f. A declaration to issue in terms that powers of re-assigning members of the County Executive Committee and County Chief Officers as provided in Sections 30 and 45 of the [County Governments Act](#) were exercisable by the Governor independently and free of any interference from the County Assembly or other person or authority and did not fall within the oversight role of the County Assembly.
- g. A declaration do issue in terms that a Committee of the County Assembly did not have power or lawful authority to direct another Committee of the Assembly or the Assembly itself to undertake investigations within certain timelines or at all of alleged wrongs by officers in the County Public Service for whatever purpose it may be.
- h. A declaration do issue in terms that by purporting to investigate the correctness of transfers and suspensions of staff serving in the County Department of Health in Vihiga County and giving directions in the recommendations for the reversal or other actions on the transfers and suspensions, the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th Respondents usurped the powers of the County Chief Officer, the Head County Public Service, the County Public Service Board and the Public Service Commission and in so doing violated Articles 10, 185(3), and 234 of [the Constitution](#) and Sections 9(2), 59(1), 72 and 77 of the County Governments.
- i. A declaration do issue declaring as null and void all amended recommendations and recommendations numbers 2-10 of the Report of the Committee on Health Services approved by the Vihiga County Assembly on 23rd March 2024.
- j. An order of permanent injunction do issue directed at the 4th, 15th and 16th Respondents restraining them from implementing or acting on the recommendations as directed to each of them in the report or conducting investigations or acting as recommended in the report.
- k. An order of compulsive injunction do issue compelling the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th to refund any money paid to them from public funds for involvement in and production of the report.
- l. Costs of the Petition be recovered from the 1st-14th Respondents or as may be directed by the court.



2. The Petitioner's Written Submissions were dated 10th February 2025 and filed on 11th February 2025 while those of the Respondents were dated and filed 27th February 2025. The 1st, 2nd, 3rd and 4th Interested Parties did not file any response and/or Written Submissions.
3. This Judgment herein was therefore based on the said Written Submissions which both parties relied on in their entirety.

The Petitioner's Case

4. The Petitioner swore a Verifying Affidavit in support of the said Petition on 31st May 2024. His case was that the 1st-14th Respondents had made drastic recommendations in a Report titled, "Report on Maladministration in the Department of Health," (hereinafter referred to as "the Report") in which they had directed the 15th and 16th Respondents to implement within fourteen (14) days from 23rd May 2024.
5. Among the recommendations were that for the 15th Respondent to transfer the County Executive Committee Member (CECM) and the County Chief Officer for Health Services and that the 16th Respondent initiates the process of removal from office of the County Chief Officer (CCO), Dr Mary Anyienda and for the commencement of impeachment against the CECM for Health Services department, Hon Julius Maruja.
6. The said Report further recommended investigations by the 1st Respondent, which action was to cost the public a lot of money after the Committee making the recommendations spent public funds in Bungoma County writing the Report and which grossly interfered with the executive functions of the County Government, which was unlawful.
7. It was his contention that the recommendations in the said Report represented the infringements by the 1st Respondent on the constitutional mandate of other bodies including the Public Service Commission, the 15th and 16th Respondents.

The Respondents' Case

8. In opposition to the said Petition, the 1st-14th Respondents filed Grounds of Opposition dated 23rd October 2024 on even date. It was their case that the Petitioner's Petition was misconceived, bad in law and an abuse of the process of the court and that it did not meet the mandatory requirements for granting the orders sought and was frivolous, vexatious, trivial in nature, incurably and fatally defective and should be dismissed with costs.

Legal Analysis

9. Having considered the Petition, the affidavit evidence and the Petitioner's and Respondent's Written Submissions, it appeared to this court that the issues that had been placed before it for determination were: -
 - a. Whether or not the Petitioner's constitutional rights had been infringed upon;
 - b. If so, what reliefs was he entitled to; and
 - c. Who was to bear the costs of this Petition
10. The court therefore deemed it prudent to address the aforesaid issues under the following distinct and separate heads.



I. Constitutional Rights & Fundamental Freedoms

11. The Petitioner submitted that the Respondents violated both *the Constitution* of Kenya, 2010 and other laws. He added that the recommendations to transfer the CECM for Health Services and the CCO, the impeachment proceedings against the CECM Department of Health Services and the investigations instituted by the 1st Respondent against the 1st Interested Party violated the principle of separation of powers.
12. He argued that the County Public Service Board (CPSB) was an independent body and not subject to the control of any person or authority. He invoked Article 2(1) and 3 of *the Constitution* of Kenya and asserted that all persons, including himself and the Respondents, had a duty to uphold and defend *the Constitution* of Kenya and that 1st-14th Respondents, sitting in as the legislative house ought to be at the fore front in defending *the Constitution* of Kenya and other laws.
13. He was emphatic that the objectives of *the Constitution* of Kenya could only be achieved through good governance as provided for under Article 10 of *the Constitution* of Kenya which requires the entities created by it, function within the limits and respects each other in order to avoid unnecessary disputes and conflicts that may jeopardize devolution.
14. He was categorical that all parties herein were beneficiaries of devolution under *the Constitution* of Kenya and other relevant laws and therefore it was expected that the objectives of the devolution should be achieved to the letter with a County Assembly that was clear on its oversight role. He pointed out that permitting the County Assembly to overturn transfer of officers meted in the course of disciplinary actions would be to politicise the public service against laws governing public service including *Leadership and Integrity Act*, *Public Officer Ethics Act* and *Public Service (Values and Principles) Act*. He contended that in the premises the County Executive shall lost the power to transfer or discipline its staff to the County Assembly.
15. He further submitted that the powers of interpretation of whether a person had violated *the Constitution* of Kenya or other laws was vested in the High Court by virtue of Article 165 of *the Constitution* of Kenya and that such powers could not be delegated to the Respondents. He pointed out that in the Report, the Committee had convicted the CECM and the Chief Officer for alleged violation of *the Constitution* and the law.
16. He contended that as the 5th-14th Respondents had violated *the Constitution* of Kenya they ought to refund back all the monies paid to them in terms of allowances for the entire production of the Report. He added that public funds could not be used to fund an activity that violated *the Constitution* more so within a legislative and an oversight arm of government.
17. He asserted that in a constitutional litigation between a private party and the State if the private party was successful, he/she should be paid by the State but where he/she was unsuccessful each party should bear their own costs as was held in the case of Kenya Human Rights Commission vs Communication Authority of Kenya & 4 Others [2018]eKLR.
18. He further relied on a South African Case of Biowatch Case cited as CCT 80/2008 or 2009 ZA CC 14 where it was held that as a general rule in constitutional litigation, an unsuccessful litigant in proceedings against the State ought not to be ordered to pay costs. He pointed out that during the doctors' strike he was treated at Jaramogi Odinga Teaching and Referral Hospital in a neighbouring County where the facility was functioning in normalcy unlike in his County, Vihiga. He blamed the representatives of the people at the County of Vihiga who had the authority to assess the situation



during the strike and make necessary measures to be implemented to alleviate the suffering of the people of Vihiga County but that they were busy violating *the Constitution* of Kenya.

19. He was emphatic that he stood to suffer substantial injustice because he believed in public interest litigation that was key to good governance and democracy. He argued that if the court did not intervene with speed, the public in general would suffer if the institutions engaged in power disputes due to failure to adhere to the principle of separation of powers. He added that the recommendations approved by the 1st-14th Respondents for implementing were a threat to the orderly functioning of the County Government of Vihiga and were in pursuit of individual interests and not the general interests of the people of Vihiga. He therefore urged the court to grant the reliefs sought pursuant to Article 259 of *the Constitution* of Kenya.
20. On their part, the Respondents invoked Article 185 of *the Constitution* of Kenya and Section 8 of the *County Governments Act* and submitted that the County Assembly worked through various Committees as provided for in the standing orders. They added that the Committees had membership drawn from the members of the County Assemblies and that they were aligned with the various Departments of the County Government in order to facilitate oversight of the said Departments.
21. In that regard, they placed reliance on the case of *Evans Kidero vs Speaker of Nairobi City Council Assembly & Another* [2018] KEHC 9256 (KLR) where it was held that a County Assembly could establish committees in such a manner and for such general or special purposes as it considered fit and that the committees performed specific roles on behalf of the Assembly and got their mandate and powers from the Assembly.
22. They contended that the committees enjoyed all the powers and privileges of the County Assembly among them, the power to summon anyone to appear before it, to enforce attendance of witnesses and compel production of documents.
23. They further submitted that the Committee of Health herein embarked on investigations in the Department of Health and summoned and interrogated the persons beneficial to the investigations where after it came up with a Report which included findings and recommendations. They pointed out that, in its investigations, the Committee established that there were some arbitrary decisions and excesses in the Department of Health and thought it fit to stand to its mandate and give out recommendations that would remedy the same.
24. They asserted that it was baffling to say the least, as the Petitioner on one side insinuated that he was agitating for the good of the people but on the other hand did not want the system to work for the people. They were emphatic that the Petitioner could not dictate the procedures of the County Assembly as it had its own rules of procedure to which neither the Judiciary nor the executive could use as a tool to interfere. They added that praying for a declaration that a Committee could not direct another Committee to undertake a matter was overstressing arguments.
25. They contended that in its investigations, the Committee ascertained that transfers were being done arbitrarily and illegally and the only logical recommendation was to try and cap the arbitral powers by suggesting a well-defined policy on the said transfers. They added that the Committee also recommended that the 15th Respondent do consider restructuring the leadership of the Department of Health. They averred that the Petitioner seemed to have sprung up to the defence of the Interested Parties without first internalising the said recommendations.
26. They were emphatic that the Committee did not confer coercion on the 15th Respondent in any way but that it was well within the mandate of the County Assembly to recommend the transfer or removal from office of any public servant as long as the same was done procedurally. They pointed out that it



- would interest the Petitioner that if the County Public Service Board was to undertake disciplinary procedures as against the Chief Officer, the process would be independent of the County Assembly and there was a procedure on how it would be done and the outcome would have been either in favour of or against the Chief Officer.
27. They were emphatic that the County Assembly was independent and had to be left to carry on its mandate without interference. It added that the making of the said Report did not violate the Constitution of Kenya.
28. Notably, Article 185 of the Constitution of Kenya provides as follows:-
1. The legislative authority of a county is vested in, and exercised by, its county assembly.
 2. A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.
 3. 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(emphasis court).
 4. A county assembly may receive and approve plans and policies for—
 - a. the management and exploitation of the county’s resources; and
 - b. the development and management of its infrastructure and institutions.”
29. Further, Section 8 of the County Governments Act Cap 265 (Laws of Kenya) provides that:-
- The county assembly shall—
- a. vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;
 - 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 Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution;
 - d. approve the borrowing by the county government in accordance with Article 212 of the Constitution;
 - e. approve county development planning; and
 - f. perform any other role as may be set out under the Constitution or legislation.
30. This court had due regard to the case of Michael Kojo Otieno & Another vs County Government of Homa Bay & 9 Others [2018] eKLR where it was held that Assembly Committee was a group of members of the Assembly designated to do the detailed work of the Assembly.
31. Section 14 (1)(b) of the County Governments Act provides that subject to the standing orders made under Section 14(1)(a) of the County Governments Act, a county assembly could establish committees in such a manner and for such general or special purposes as it considered fit, and regulate the procedure of any committee so established. Committees performed specific roles on behalf of the Assembly. Their mandate and powers were therefore given by the Assembly, through the Standing Orders (Rules of Procedure).



32. Committees were integral parts for the conduct of County Assembly business. An effective Committee system made the County Assembly to be more responsive to the needs of the electorate while making the role of the Members more relevant and the democratic process more representative of, and accountable to, the views of the electorate.
33. The Committees had the mandate to conduct detailed investigation into an issue which may not have been carried out efficiently and effectively by the whole County Assembly and therefore contributed to the attainment of democratic ideals especially transparency and accountability.
34. Article 185 (3) of *the Constitution* of Kenya provided that the County Assembly could exercise an oversight role over the County Executive Committee (CEC) and other executive organs while respecting the principle of the separation of powers. The 1st Respondent therefore carried out its oversight role through various means, one of which included use of its committees such as the Committee Health in this case. In so doing, the County Assembly did not in any way infringe on the mandate of other bodies as each body had its own separate and independent roles.
35. The recommendations by the Committees were for the purpose of good governance, exercising the oversight role and providing checks and balances over the management of various county affairs. They were simply recommendations which could be adopted or not by other independent bodies such as the Public Service Board. The recommendations did not confer coercion on the said bodies as the Respondents correctly argued.
36. The issue of competency of a constitutional petition was set out in the case of Anarita Karimi Njeru vs Republic [1976-80] KLR 1272 which laid out the principle that a person who alleged a violation of his constitutional rights and freedom must plead such allegation with a degree of precision.
37. Notably, the burden of proof herein rested with the person alleging unconstitutional exercise of the said oversight role. However, if sufficient evidence was adduced to establish a breach, the evidential burden would have shifted to the Respondents to justify their recommendations.
38. Indeed, Sections 107(1), (2) and 109 of the *Evidence Act* Cap 80 (Laws of Kenya) required that whoever desired any court to give judgment as to any legal right or liability and depended on the existence of facts, he or she had to prove that those facts existed.
39. The Petitioner submitted that the Respondents had violated *the Constitution* of Kenya in general. He was required to show how the Report made by the Respondents infringed on his rights. He was also required to set out in a clear manner the basis of each of his grievances and the loss he suffered but he did not do so.
40. He failed to demonstrate with specificity the actual Articles of *the Constitution* of Kenya that the Respondents had violated with regard to the Report that came up with the said recommendations.
41. In the circumstances foregoing, this court found that the Petitioner had failed to show how the recommendations by the Respondents were an abuse of the principle of separation of powers and/or how the same violated his rights or those of the people of Vihiga County to warrant the intervention of this court. He did not demonstrate any infringement, violation or contravention of *the Constitution* of Kenya or the loss that he or the people of the County of Vihiga suffered and was thus not entitled to any reliefs.



Ii. Costs

42. Awarding costs is a discretionary function of the court. Having analysed the evidence as above and as the Respondents herein were government entities this court deviated from the general rule that costs follow events.

Disposition

43. For the foregoing reasons, the upshot of this court's decision was that the Petitioners' Petition dated and filed on 31st May 2024 was not merited and the same be and is hereby dismissed. As it would be punitive to award costs to the government against its citizens, it is hereby directed that there will be no orders as to costs.

44. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 14TH DAY OF JULY 2024

J. KAMAU

JUDGE

