



Ali & 2 others v Speaker County Assembly of Garissa & another (Constitutional Petition E019 of 2023) [2024] KEHC 2633 (KLR) (8 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2633 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CONSTITUTIONAL PETITION E019 OF 2023**

JN ONYIEGO, J

MARCH 8, 2024

BETWEEN

HON ABDIRAHMAN MOHAMED ALI 1ST APPLICANT

HON OMAR ABDI HASSAN 2ND APPLICANT

AND

HON ABUBAKAR MOHAMMED KHALIF PETITIONER

AND

THE SPEAKER COUNTY ASSEMBLY OF GARISSA 1ST RESPONDENT

THE COUNTY ASSEMBLY OF GARISSA 2ND RESPONDENT

JUDGMENT

1. The origin of the petition herein is the suspension of the petitioners by the 1st respondent from the remainder of the Garissa County Assembly Second Session. Previously, the 1st respondent had ordered for the removal and /or ouster of the petitioners from being holders of various positions within the County Assembly of Garissa County allegedly on instructions from their party.
2. Aggrieved by the said changes, the applicants moved this court vide Garissa High Court Judicial Review Case No. E008 of 2023 dated 14.09.2023 and filed on 15.09.2023 seeking orders inter alia; a declaration that their a foresaid ouster and or removal was unconstitutional hence sought immediate reinstatement pending hearing and determination of the pending substantive motion.
3. Upon considering the application ex parte, Chigiti J granted the orders thus reinstating and allowing the applicants/petitioners to continue holding their previous positions pending the hearing and determination of their application/petition.



4. Despite being served with Justice Chigiti's orders, the 1st respondent declined to act on the same thus prompting the petitioners to file an application dated 21.09.2023 under the said JR file citing the 1st and 2nd respondents for contempt of court orders.
5. Upon attending Assembly sessions on 25.10.2023, the 1st respondent made a ruling suspending the petitioners from the remainder of the Garissa County Assembly Second Session pursuant to alleged gross misconduct during the County Assembly proceedings the previous week.
6. It is the said ruling that precipitated the filing of the petitioners' petition filed contemporaneously with an application dated 30.11.2023 through the firm of Nelly Njenga & Co. Advocates seeking the following orders:
 - i. A declaration that the 1st respondent's ruling made on 25.10.2023 suspending the 1st, 2nd and 3rd petitioners for the remainder of the Garissa County Assembly Second Session violates articles 47 and 50 of [the constitution](#) of Kenya and is therefore illegal, null and void ab initio.
 - ii. Order of permanent injunction be issued to restrain the respondent whether by themselves or their servants from illegally suspending, expelling and/or removing the 1st, 2nd and 3rd petitioners from the remainder of the Garissa County Assembly Second Session.
 - iii. General damages.
 - iv. Costs of this petition with interest thereon.

Petitioners' case

7. The petitioners' petition is anchored on the grounds set out on the face of it and further supported by the supporting affidavit of Omar Abdi Hassan the second petitioner herein sworn on 30.11.2023 on his own behalf and that of the 1st and 3rd petitioners. It was averred that on 25th October 2023, the 1st respondent without any color of right suspended the three of them from the remainder of the County Assembly second session. That as a consequence, they were denied their allowances and right of representation of their electorate as MCAs until 13th February 2024.
8. It was deposed that by suspending them, they stood to miss crucial debates affecting their wards in the wake of heavy floods and insecurity which was affecting their wards. That their suspension was malicious and vindictive with the sole purpose of silencing them from exercising their oversight role seeking accountability from the 1st respondent's office.
9. It was further deposed that the 1st respondent's act was in excess of his powers and authority hence unconstitutional and a violation of their legitimate expectation on the right to fair administrative action. Lastly, he averred that the suspension was not only in contravention of Section 15 of the County Assembly powers and Privileges Act, but also, the Garissa County Assembly standing orders.

Respondents' response

10. In response, the respondents filed a replying affidavit sworn on 15.12.2023 deposed by Hon. Abdi Idle Gure, the 1st respondent herein together with a preliminary objection dated 15.12.2023 citing the following grounds:
 - i. This Honourable Court lacks jurisdiction to hear and determine this matter in view of the provisions of article 196(3) of [the constitution](#) of Kenya as read with sections 10 and 11(2) of the [County Assemblies Powers and Privileges Act](#) No. 6 of 2017.



- ii. The proceedings herein offend the doctrine of separation of powers as envisaged under article 175(a) of *the constitution* as the orders sought by the petitioners seek this Honourable Court to interfere with the internal operations and management of the County Assembly.
 - iii. For the following reasons, the petitioners' petition and application is incompetent and legally untenable and ought to be struck out with costs.
11. In their replying affidavit, the 1st respondent reiterated the content of the said preliminary objection. He averred that on 19.10.2023 at around 11.40 a.m., as he was chairing a meeting of the County Assembly Business Committee with the petitioners in attendance, they violently disrupted the sitting of the committee by spraying pepper in the chamber and thereafter, assaulting other members. That in the process of the said chaos, the petitioners extensively damaged the properties of the Assembly including tables, chairs, and microphones and as if that was not enough, followed him to his chambers with the intention to attack him.
 12. It was further deposed that, the petitioners proceeded to park their vehicles at the entrance of the House such that no member or staff could access the chambers. That the matter was reported to police via O.B No. 41/19/10/2023 and as a result, on 25.10.2023, pursuant to Standing Orders No. 104 and 108 of Garissa County Assembly, he suspended the petitioners from the service of the County Assembly for the remainder of the current session of the House.
 13. It was urged that the petitioners did not disclose to the court the circumstances under which they were suspended from the Assembly and as such, they were culpable of non-disclosure. That the grave non – disclosure is a deliberate attempt by the petitioners to mislead this Honourable Court into believing that they were suspended from the House arbitrarily and without factual basis.
 14. He stated that Section 14 of the County Government vests the 2nd respondent power to make Standing Orders regulating the procedure of the County Assembly including and in particular, orders for the proper conduct of Assembly's proceedings. Further, that the Standing Orders prescribed various procedures relating to the proceedings of the House and in particular Part XVII of the said Standing Orders comprising of Standing Orders 95 to 109 which comprehensively provides for the manner of maintaining order in the County Assembly.
 15. That the decision to suspend the petitioners was not ultravires to *the constitution* and in violation of the petitioners' rights. That his decision was intended to maintain order in the house following the unprecedented conduct of the petitioners. This court was therefore urged not to issue the orders sought as the petitioners had approached this Honourable Court with unclean hands.
 16. The court directed that the petition be canvassed by way of written submissions.

Petitioners' submissions

17. The petitioners via their written submissions dated 05.02.2024 in support of the petition submitted in reference to three issues they coined for determination as follows;
 - i. Whether the 1st respondent's ruling was in accordance with the *County Assemblies Powers and Privileges Act* and Garissa County Assembly Standing Orders.
 - ii. Whether the 1st respondent's ruling contravened *the constitution* and was therefore illegal, null and void.
 - iii. Whether the petitioners are entitled to the orders sought.



18. On the first issue, it was contended that the 1st respondent's ruling of 25.10.2023 which suspended the petitioners from sitting in the Garissa County Assembly for a period of about sixteen weeks denied them an opportunity to be heard and infringed on their constitutionally guaranteed right to fair hearing. It was contended that any decision by the 1st respondent to suspend the petitioners from the Garissa County Assembly should have been in accordance with the [*County Assemblies Powers and Privileges Act*](#) which legislation gives effect to article 196(3) of [*the constitution*](#).
19. The petitioners urged that sections 15,16 and 17 give provisions for the procedure to be followed in the event of breach of privileges by a member of County Assembly. That the powers to suspend or otherwise discipline members of the county assemblies is the preserve of the Powers and Privileges Committee which is established at section 15 of the [*County Assemblies Powers and Privileges Act*](#).
20. In urging that the 1st respondent acted ultra vires, the petitioners relied on the case of Okiya Omtata Okioti & 3 Others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 6 Others [2021] eKLR where it was held that an act of ultra vires when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complainant. Acting without jurisdiction or ultra vires or contrary to the provisions of law or its principles renders the decision made laced with illegality.
21. That the Garissa County Assembly Standing Order No. 104 – 109 lists the conducts that would be considered disorderly by a member of the County Assembly and that the 1st respondent's interpretation of the said sections was grossly misleading. That the same was so since the 1st respondent purported to rely on the said Standing Order 108 but failed to recognize the provisions of standing orders 105,106 and 107 which provide basis for the same. The 1st respondent thus misdirected himself in applying the aforementioned Standing Orders to the exclusion of the [*County Assemblies Powers and Privileges Act*](#).
22. It was urged that the County Assembly Standing Orders ought not be read and construed independently as they are rules of procedure which derive authority from statutes; which in this case is the County Assemblies Powers and Powers and Privileges Act. To that end, reliance was placed on the case of Nathaniel Nganga Reuben v Speaker, Machakos County Assembly & Another [2016] eKLR where Nyamweya J pointed out that ...standing orders are subordinate rules of procedure for the conduct of business in legislative assemblies.
23. On the second issue, the petitioners argued that the impugned ruling infringed on the rights of the petitioners to fair administrative action and fair hearing as guaranteed under the Bills of Rights in [*the constitution*](#). That any action by the 1st respondent especially one that was likely to infringe on the rights of the petitioners and fundamental freedoms as well as the rights of those whom the petitioners represent, ought to reflect the intent of articles 47 and 50 of [*the constitution*](#). Reliance to that end was placed on the case of Hassan Halane v Ahmed Ibrahim Abass, Speaker County Assembly of Garissa [2019] eKLR where it was held that there is nothing like supremacy of parliament outside the supremacy of [*the constitution*](#). Thus every organ of state performing constitutional functions must perform it in conformity with [*the constitution*](#) and where the state fails to do so, the court as the ultimate guardian of [*the constitution*](#) will point out the transgression. As such, it was urged that the impugned ruling was unconstitutional and therefore null and void ab initio.
24. On the third issue, the petitioners argued that they are entitled to the orders herein for the reason that the 1st respondent (speaker) acted contrary to the provisions of the law. That the action was arbitrary and unilateral decision which violated the values and principles of [*the constitution*](#). That the same infringed the guaranteed rights of petitioners and was against the principles of leadership and integrity



particularly objectivity and impartiality in decision making. In the end, the petitioners urged this court to allow the prayers in the petition.

Respondents' submissions

25. The respondents in opposing the petition filed their written submissions dated 08.02.2024. The main issue that was discussed was in relation to whether the 1st respondent's ruling suspending the petitioners from the house was in violation of *the constitution*, the *County Assemblies Powers and Privileges Act* and Garissa County Assembly Standing Orders thus violating the rights of the petitioners.
26. It was argued that given that the House proceeded for recess on 30.11.2023 and was to resume on 13.02.2024, the determination of the petition herein is an academic exercise as the same has been overtaken by events. To that end, reliance was placed on the case of Christopher Mwambingu v Meshack Maghanga, Speaker, County Assembly of Taita Taveta (2021) eKLR where the court was of the view that ...a matter is moot if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of law.
27. That the above notwithstanding, the suspension of the petitioners from the House was procedural and in accordance with the provisions of *the constitution*, the Standing Order and the Law. It was argued that the running of the House is crucial in the conduct of the House Business and for the purposes of conduct of the House and its committees, article 185(2) of *the constitution* empowers a county assembly to make laws that are necessary for, or incidental to the effective performance of their functions and exercise of their powers. Equally, section 14 of the County Government Act, vests the 2nd respondent the power to make Standing Orders regulating the procedure of the county Assembly including in particular to orders for the proper conduct of Assembly's proceedings, the Garissa County Assembly enacted the Garissa County Assembly standing Orders to govern its affairs.
28. Reliance to that end was placed on the case of Republic v County Assembly of Kirinyaga & Another ex parte Kendi Muriuki & Another (2019) eKLR where Mativo J said that in this respect, article 185 of *the constitution* provides that 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. Likewise, section 14(1) of the *County Governments Act* gives the county assemblies powers to make standing orders consistent with *the constitution* and the Act that regulate their procedure, including the proper conduct of proceedings and establishment of committees.
29. That at the helm of the House leadership is the Speaker of the County Assembly who is empowered by the rules of procedure, the standing Orders, to enforce them and maintain order in an attempt to guide the proceedings of the House. To that end, just like the provisions of *the constitution* cannot be interpreted in isolation of each other, the provisions of the County Government Act, County Assembly Powers and Privileges Act and the Standing Orders must all be interpreted in a manner that ensures compliance and which gives effect to the constitutionally enshrined principles under *the constitution*.
30. It was urged that Standing Order No. 14 of the Garissa County Assembly Standing Orders provide for conduct which is considered to be grossly disorderly and mandates the speaker or the chairperson of the committees to order such member whose conduct is grossly disorderly to withdraw from the precincts of the Assembly. To that end, while investigating the place of the Speaker and the Committee formed under section 15, 16 and 17 of the *County Assemblies Powers and Privileges Act*, an all important question that arises is whether the speaker in his capacity as the person of the speaker of the County



Assembly is handicapped in terms of maintaining order in the house and suspending a member whose conduct is grossly disorderly.

31. That the speaker in his capacity as the person of the speaker of the County Assembly is also mandated to maintain order in the House during House Sessions as envisaged under Standing Order No. 95. And in fulfilling this important and crucial mandate, the Speaker of the County Assembly takes guidance from the provision of Standing Orders. It was contended that the petitioners having engaged in a grossly disorderly conduct as described under Standing Order 104 by violently attacking the Speaker and the other members of the House Business Committee, the speaker was entitled to act as he did. That the suspension was in accordance with provisions of Garissa County Assembly Standing Orders and specifically Part XVII of the said Standing Orders comprising of Standing Orders 95 to 109 which provides for the manner of maintaining order in the County Assembly.
32. Counsel urged that the suspension of the petitioners was not arbitrary and in violation of *the constitution* as the petitioners engaged in a grossly disorderly conduct under Standing Order 104 by violently attacking the speaker and other members of the House Business Committee. Reliance was placed on the case of Simon Wachira Kagiri v County Assembly of Nyeri & 2 Others (2013) eKLR where it was held that the only possible scenario in which the court may be prepared to interfere with the proceedings and decisions of the County Assembly ought to be in extreme situations. In conclusion the respondents urged that, the petition herein ought to fail with costs awarded to them.

Analysis and Determination

33. I have considered the petition herein, response thereof and submissions by both parties. The only issue that crystalizes for determination is whether the suspension of the petitioners from sitting in the county assembly sessions for the remainder of the second session was unconstitutional or irregular.
34. From the pleadings, it is apparent that this court's jurisdiction to hear this matter has been put to question once more despite the same having been ably dealt with. I will however superficially deal with the same issue in this judgment.
35. As stated above, the origin of these proceedings is the alleged 1st respondent's disobedience of this court's order issued by my brother justice Chigiti suspending his order directing the petitioners' removal from office. From the history of the proceedings, it was the said disobedience which precipitated the alleged violence on the material day. One would then ask whether chaos erupted in the assembly and who caused it? Were the applicants suspended from sitting in the remainder of the second session of the assembly business. Did the speaker act procedurally and legally in the circumstances.
36. There is no denial that chaos erupted in the county assembly on the material day. From the video captured and submitted as evidence by the respondents, it was a horrible and ugly scenario not befitting honourable members of the assembly. It is obvious that the chaos was caused by the team opposing the speaker's disobedience of the court order.
37. In such a scenario, what was the speaker supposed to do? According to the respondents, what the speaker did was the noble thing anybody in his shoes would have done in the circumstances. They went further to state that the speaker did exercise his authority properly understanding order Nos 95-109.
38. For avoidance of doubt, I wish to reproduce the relevant portions as hereunder.



a. Standing order No. 95 provides-

“Order shall be maintained in the County Assembly by the Speaker and in a Committee of the whole County Assembly by the Chairperson of such Committee but disorder in committee may be censured only by the County Assembly on receiving a report thereof.”

b. Standing Order No. 104 provides-

“

“(1) Conduct is grossly disorderly if the Member concerned-

- a. creates actual disorder;
- b. knowingly raises a false point of order;
- c. uses or threatens violence against a Member or other person;
- d. persists in making serious allegations without, in the Speaker’s opinion, adequate substantiation;
- e. otherwise abuses his or her privileges;
- f. deliberately gives false information to the County Assembly;
- g. votes more than once in breach of these Standing Orders;
- h. commits any serious breach of these Standing Orders; or
 - i. acts in any other way to the serious detriment of the dignity or orderly procedure of the County Assembly.

(2) The Speaker or the Chairperson of Committees shall order any Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the County Assembly-

- (a) on the first occasion, for the remainder of that day’s sitting;
- (b) on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension,
- (3) If on any occasion the Speaker or the Chairperson deems that his or her powers under this Standing Order are inadequate, the Speaker or the Chairperson may name such Member or Members, in which event the procedure specified in Standing Order 109 (Member may be suspended after being named) shall be followed.”

(c) Standing Order No. 109 provides-

“(1) In the event of grave disorder arising in the County Assembly, the Speaker may, adjourn the County Assembly forthwith or suspend any sitting for a period to be determined by him or her.



(2) In the event of grave disorder arising in the Committee of the whole County Assembly, the Speaker shall resume the Chair forthwith.”

39. The petitioners urged that the 1st respondent failed to uphold the rule of law which restricts the arbitrary exercise of power by subjecting such power to well defined and established laws. That in as much as the 1st respondent asserted that his decision was pursuant to the Garissa County Assembly’s standing orders, he failed to establish or constitute the Committee of Powers and Privileges under the [County Assemblies Powers and Privileges Act](#) to make an inquiry into the alleged breaches of privilege, which is contrary to the Act. In other words, it was alleged that the 1st respondent did not follow the laid down procedures as he appointed himself as the judge, jury and executioner by assuming the role of the Committee of Powers and Privileges.
40. On the other hand, the respondents contended that the decision taken by the 1st respondent was legal and procedural hence cannot be questioned before a court of law as it has no jurisdiction considering that the Assembly has an internal mechanism of resolving such disputes.
41. The question calling for an answer is whether the petition herein offends the doctrine of separation of powers hence the issue on whether this court has jurisdiction to hear the matter or not. To answer this question, I seek guidance from the case of Margaret Lorna Kariuki & Another v County Assembly of Embu & Another; National Forum for County Assemblies (Interested Party) [2019] eKLR, where the court stated that;

“ 20. The Supreme Court in Speaker of the Senate & Another v Attorney General & 4 Others, Reference No. 2 of 2013; [2013] eKLR signalled that it would be reluctant to question parliamentary procedures, as long as they did not breach [the Constitution](#). In reference to Article 109 of [the Constitution](#), which recognizes that Parliament is guided by both [the Constitution](#) and the Standing Orders in its legislative process, the Court thus held:

42. It therefore follows that the court will not interfere with the mandate and in this case County Assembly, if the threshold of fairness and proportionality is discharged with regard to article 47. It is critical to note that in as much as the Standing Orders are internal rules that govern the running of the various Assemblies, care must be taken to ensure that the interpretation of the same is in consonance with the provisions of [the constitution](#) being the supreme law of the land.
43. It is thus important to note that a court has the competence to pronounce itself on the compliance of a legislative body in as far as the provisions of [the constitution](#) are concerned and more so in upholding the rights of those affected. This is intended to protect parties who would have no recourse if the decision maker of the impugned decision deliberately ignores clear procedural requirements for internal dispute resolution mechanism provided under the relevant provisions thus encroaching into the constitutional right of another person. [See article 165 and 23 of [the constitution](#) also the case of James Opiyo Wandayi v Kenya National Assembly & 2 Others [2016] eKLR].
44. The above was well stated in the case of The Council of Governors and Others v The Senate Petition No. 413 of 2014 where it was held that;

“ this Court [is] vested with the power to interpret [the Constitution](#) and to safeguard, protect and promote its provisions as provided for under Article 165(3) of [the Constitution](#), has the duty and obligation to intervene in actions of other arms of Government and State Organs where it is alleged or demonstrated that [the Constitution](#) has either been violated



or threatened with violation. In that regard, the Petition before us alleges a violation of *the Constitution* by the Respondent and in the circumstances, it is our finding that the doctrine of separation of power does not inhibit this Court's jurisdiction to address the Petitioner's grievances so long as they stem out of alleged violations of *the Constitution*. In fact, the invitation to do so is most welcome as that is one of the core mandates of this Court”.

45. Similarly, the Supreme Court in *Speaker of National Assembly –vs. Attorney General and 3 Others* (2013) eKLR stated as follows: “Parliament must operate under *the Constitution* which is the supreme law of the land...”
46. Guided by the above case law and considering that I have in the past in related proceedings pronounced myself, I reiterate that the court is properly seized of jurisdiction to hear and determine this matter.
47. I will now turn to the substance of the matter. The petitioners urged that the 1st respondent did not follow the laid down procedures as he appointed himself as the judge, jury and executioner by assuming the role of the Committee of Powers and Privileges. That the power to suspend and otherwise discipline member/s of the County Assembly is the preserve of the Powers and Privileges Committee which is established under section 15 of the *County Assemblies Powers and Privileges Act*. It was urged that in doing so, parties alleged to have committed any gross disorderly conduct are afforded an opportunity to be heard.
48. On their part, the respondents contended that the speaker did properly exercise powers donated by standing orders in particular standing order numbers 95-109.
49. Under standing order number 95, the speaker has general powers to maintain order in the day to day management of the assembly business. That order does not confer a blanket cheque for the speaker to do whatever he wants to do uncontrolled or whimsically. That power is for general management of the assembly but subject to certain parameters.
50. Understanding order 104, which deals with acts of gross misconduct in this case order 104(1)(C), in case of such gross misconduct by a member, the only recourse the speaker has is to order such member to withdraw immediately from the precincts of the county assembly; on the 1st occasion for the remainder of that day's sitting and; on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension.
51. However, understanding order 104(3), where the speaker feels that his powers are not adequate in case of gross misconduct by a member, he can apply standing order no. 109 after naming such member.
52. Standing Order 109 basically talks about the speaker's powers to adjourn the county assembly forthwith or suspend any sitting for a period to be determined by him in case of gross misconduct by members. In the instant case, the speaker did not exercise his powers under standing order no. 104. Had he named the concern culprits, he would have proceeded to exercise standing order 109. In a nut shell the entire standing order no. 104 was not available hence standing order no.109 was not applicable.
53. In the absence of powers exercisable under the standing orders, what recourse does the speaker have. Ultimately, the law has given a remedy or provided disciplinary measures exercisable by the speaker or the assembly under the *county assemblies powers and privileges Act*.
54. Section 15 of the county assemblies' powers and privileges Act does establish the powers and privileges committee chaired by the speaker and whose mandate is to inquire into members' conduct in breach of privilege specified under Section 16 and also perform any other functions as may be specified in the Act. Section 26 of the said Act does specify further acts prohibited in the county assembly inter alia; assault or threatening a member, use of abusive language, taking part in any unlawful disturbance



- which interrupts the proceedings or likely to interrupt proceedings of the county assembly while on session etc.
55. From the chaos that took place in the assembly, it was definitely in breach of privilege under section 16 which constitutes prohibited act under section 26 of the Act hence the speaker ought to have reported the issue to the relevant powers and privileges committee rather than take unto himself powers he did not have in the circumstances. Obviously, the action taken was drastic hence bordering on breach of Article 50 (1) of the constitution on the right to be heard and article 47 of the constitution on fair administrative action.
56. The right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire justice system. (See *Onyango Oloo v. Attorney General* [1986-1989] EA 456). There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. (See *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 664, at 711 – Supreme Court of India)
57. Similarly, in *Ridge v Baldwin* (1964) AC (1963) 2 ALL ER 66 the court, while discussing the right to fair hearing observed as follows;
- “The principle of fairness has an important place in the administration of justice and is also a good ground upon which courts ordinarily exercise discretion to intervene and quash the decisions of a tribunal or subordinate court made in violations of right to a fair hearing and due process.”
58. It therefore follows that in issuing the order which suspended the petitioners from the County Assembly on 25.10.2023, the speaker exercised his constitutional role to preside over the County Assembly but the same was exercised in contravention of the statutory provisions in the County Assemblies Powers and Privileges Act as well Garissa County Assembly Standing Orders. That the illegal and arbitrary suspension of the petitioners by the 1st respondent violated Article 47(1) of the constitution.
59. That due to the fact that the 1st respondent failed to report for establishment or constitution of the Committee of Powers and Privileges to make an inquiry into the alleged breaches of privilege, the petitioners’ right to fair hearing as envisaged under Article 50 of the constitution was therefore breached.
60. As to whether the petition is rendered moot, the same is not absolutely true as it confirms the conservatory orders in place and therefore guards against loss of any accrued benefits.
61. As a consequence of the above, I am satisfied that the petitioners have sufficiently proved their claim to the required degree and therefore the orders commendable to me are that:
- i. A declaration be and is hereby made that the 1st respondent’s ruling made on 25.10.2023 suspending the 1st, 2nd and 3rd petitioners for the remainder of the Garissa County Assembly Second Session violates articles 47 and 50 of the constitution of Kenya and the same was illegal, null and void ab initio.**
 - ii. For purposes of harmonious co-existence, and further considering that both parties contributed to the occurrence of the chaos that erupted in the assembly, each party shall bear own costs.**

Dated, signed and delivered virtually this 8th day of March 2024



J. N. ONYIEGO

JUDGE

PET. NO. E019 OF 2023 Page 7 of 7

