



**Omodni v Migori County Assembly; County Public Service Boards  
National Consultative Forum & 6 others (Interested Parties) (Constitutional  
Petition E004 of 2024) [2024] KEHC 17032 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 17032 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CONSTITUTIONAL PETITION E004 OF 2024**

**RPV WENDOH, J**

**JULY 5, 2024**

**IN THE MATTER OF THE AUTHORITY AND ENJOINER  
CONFERED BY ARTICLES 3(1), 20(1), 23, 50(1), 159(2) (A) & (E),  
165(3) (D) (II), (6) & (7) AND 258 CONSTITUTION OF KENYA, 2010.**

**AND**

**IN THE MATTER OF THE INTERPRETATION AND APPLICATION OF THE  
CONSTITUTION IN RELATION TO MANNER, INSTANCE AND NATURE OF  
EXERCISE OF THE AUTHORITY BY THE COUNTY ASSEMBLY OF MIGORI IN  
THE PROCESS AND SUBSTANCE OF RECEIPT, APPROVAL FOR ADMISSION AND  
ADOPTION OF THE PETITIONS FOR THE REMOVAL OF THE CHAIRPERSON  
AND MEMBERS OF THE MIGORI COUNTY PUBLIC SERVICE BOARD**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 10(1)(A) &  
(B) AND (2), 28, 29(D), 37, 47(1), 50(1) AND 251 CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF CONTRAVENTION OF SECTIONS 3(1), 4(3) &  
5(1) & (2) PETITION TO COUNTY ASSEMBLIES (PROCEDURE) ACT**

**AND**

**IN THE MATTER OF THE CONTRAVENTION OF  
SECTION 58(5) (A) & (B) COUNTY GOVERNMENTS ACT**

**AND IN THE MATTER OF THE CONTRAVENTION OF SECTION  
2:3(1), 4(1), (3) (A), (B) (E), (G), 7(2) (A) (I), (III), (K)(M)& (N);  
AND 12 FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015**

**AND**



**IN THE MATTER OF THE CONTRAVENTION OF STANDING ORDERS,  
64(10 & (2) AND 192 AT PARAGRAPH 5 AS READ WITH THE 2ND  
SCHEDULE MIGORI COUNTY ASSEMBLY STANDING ORDERS**

**BETWEEN**

**CPA MARVIN NGEI OMODNI ..... PETITIONER**

**AND**

**THE MIGORI COUNTY ASSEMBLY ..... RESPONDENT**

**AND**

**THE COUNTY PUBLIC SERVICE BOARDS NATIONAL CONSULTATIVE  
FORUM ..... INTERESTED PARTY**

**HON. JARED ODHIAMBO OPIYO - CHAIR ..... INTERESTED PARTY**

**MS. JEMIMAH ADHIAMBO - VICE CHAIR ..... INTERESTED PARTY**

**MR. HESBON OTIENO OMWA – MEMBER ..... INTERESTED PARTY**

**MR. ENOCK ODHIAMBO ACHIENG – MEMBER ..... INTERESTED PARTY**

**MS. PHOEBE ADHIAMBO ALOO – MEMBER ..... INTERESTED PARTY**

**MR. RANGE MWITA MAROA – MEMBER ..... INTERESTED PARTY**

**RULING**

1. Marvin Ngei Omodni has brought this Petition against the Migori County Assembly (Respondent) and named the County Public Service Boards National Consultative Form and others as Interested Parties. He seeks several declaratory orders and Judicial Review Orders of *certiorari* and prohibition. The Petition is pursuant to Articles 10(1) a & b; 2; 28; 29(d)37, 47(1)54 (1) and 251 of eh [Constitution](#) and Section 58 (5) of [County Government Act](#).
2. When this matter was placed before this court under Certificate of Urgency this court directed that the same be mentioned for directions on 11/6/2024. Before directions could be taken, Mr. Lusi, Counsel for the Petitioner sought to address the court on issuance of conservatory orders pending the hearing of the Notice of Motion and requested that Court make an the order referring this case to the Hon. The Chief Justice for empaneling of a three (3) Judge Bench.
3. The application was supported by the Interested parties represented by Mr. Ngwele for 1<sup>st</sup> interested party, and Ms Muchiri for 2<sup>nd</sup> to 7<sup>th</sup> Interested parties. Mr. Okongo, counsel for the Respondent opposed the grant of interim orders or reference to the Chief Justice for Constitution of a bench.
4. I have considered the rival submissions. Following the Migori Public Service Board decision of 6/2/2023, two suits were filed in Migori JR No. 3 of 2023 and Kisumu ELCR E002 of 2023. This court dismissed the Judicial Review Application No. 2/2023 which culminated in an appeal Kisumu HCA E174 of 2024 in which the court of Appeal rendered its on 14/5/2024 dismissing the appeal. The



Court of Appeal however made some observations in their judgment which the petitioners partially rely on this Petition. The Court of Appeal's observation in its decision is as hereinunder:-

“We have quoted the decision of the Employment and Labour Relations extensively because we believe that it demonstrates quite eloquently that the issues that the appellants had raised before the High Court were the same ones they had raised before the ELRC. The arguments the appellants have raised before this Court are a rather transparent attempt to transmogrify straightforward complaints about the removal process the appellants were subjected to into lofty considerations of the constitutional standards of review of legislative bodies when considering petitions by members of the public for the removal of public officers; and the constitutionally-permissible levels of scrutiny by courts in the process. The case at hand could plausibly have been framed as the latter – but it was not: the case presented to the High Court, as reproduced in paragraph 1 of this judgment was a challenge to the removal proceedings of the appellants.

On this score, while we agree with Mr. Ngwele, counsel for the 2<sup>nd</sup> respondent, that the facts in the case could, plausibly, be framed to raise important constitutional issues relating to the removal of members of the County Public Service Board, the truth of the matter is that in the present case, they were not so framed. So, while the question whether County Public Service Board are body cooperates whereby only a single member can be removed at a time and whether it is, therefore, improper to collectively remove their members is an important one that needs legal resolution, that was not the legal question presented by the appellants in this case. That legal question will have to await a future case for determination.”

5. At paragraph 62, the Court of Appeal further observed that the issues raised in the High Court and Court of Appeal had some public interest implication.
6. By this petition the petitioners and Interested parties contend that some of the issues to be considered in the Petition are:-
  1. The constitutionality of the process of removal of Public Service Board Members;
  2. Whether the procedure of removal of Board members by the Public is in breach of Section 58(5) of the *County Government Act* and Article 251 of the *Constitution*.
    - (i) Whether all members of the Board can be removed at once;
    - (ii) Whether the process is a breach of the members rights to fair hearing.
7. As pointed out by the Court of Appeal, the issues in the Judicial Review application and ELRC 2 of 2023 relate to the alleged procedurally and administratively unfair removal of the applicants from their positions as Chairman and members of Migori County Public Service Board
8. Although the applicants alleges that the issues raised in this petition are substantial constitutional issues that have affected the 47 counties there was no such evidence given regarding the 47 counties. From a reading of the Court of Appeal decision the issues had not even been raised before it. The fact that issues, raised herein may have public interest implications, it does not necessarily mean that the matter cannot be heard and determined by one High Court Judge. For that reason, I decline to forward this Petition to the Hon. The Chief Justice for appointing a bench of three judges as requested. It will proceed before the Judge at Migori High Court but counsel are at liberty revisit the issue at the hearing of the pending Notice of Motion.



9. As regards, interim orders, I note that there had been interim orders till 14<sup>th</sup> May, 2024 when the Court of Appeal rendered its decision. To protect the substratum of the petition, I hereby grant interim orders in terms of prayer 2 of the Notice of Motion dated 31/5/2024.
10. I direct that all the Respondents and interested parties do file and serve their respective replies to the Petition within seven (7) days hereof. There be a mention before the Judge for further directions as to the hearing of the Notice of Motion or Petition

**DELIVERED, DATED AND SIGNED AT MIGORI THIS 5<sup>TH</sup> DAY OF JULY, 2024.**

**R. WENDOH**

**JUDGE**

In presence of; -

Mr. Lusi for Petitioners

Mr. Okong'o for Respondent

Mr. Ngwele for 1<sup>st</sup> Interested party

Ms. Muchiri for 2 – 7<sup>th</sup> Interested parties

Ms. Emma –Court Assistant

