



Huka & 2 others v County Assembly of Isiolo & another; Kenya Kwanza Coalition & 2 others (Interested Parties) (Constitutional Petition E009 of 2023) [2023] KEHC 18895 (KLR) (13 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18895 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION E009 OF 2023**

EM MURIITHI, J

JUNE 13, 2023

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT 2012

AND

**IN THE MATTER OF SECTION 16 & 17 OF THE COUNTY POWERS &
PRIVILEGES ACT 2017**

AND

IN THE MATTER OF THE ISIOLO COUNTY ASSEMBLY STANDING ORDER

AND

**IN THE MATTER OF ILLEGAL SUSPENSION, DE-WHIPPING AND/OR
REMOVAL OF MEMBERS OF ISIOLO COUNTY ASSEMBLY**

AND

**IN THE MATTER OF ARTICLE 1, 2, 3, 10, 23, 38, 47, 48, 50, 108, 159, 232, 251 & 258
OF THE CONSTITUTION**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT 2015

BETWEEN

HON NURA MOHAMMED HUKA 1ST APPLICANT

HON MEJJA ABDULLAHI GOLICHA 2ND APPLICANT

HON ABUBAKAR ABDI GODANA 3RD APPLICANT

AND

COUNTY ASSEMBLY OF ISIOLO 1ST RESPONDENT



THE SPEAKER COUNTY ASSEMBLY OF ISIOLO 2ND RESPONDENT

AND

KENYA KWANZA COALITION INTERESTED PARTY

HON ABDINOOR DIMA JILO INTERESTED PARTY

HON KAMILA WARSAME INTERESTED PARTY

RULING

1. Upon hearing Counsel for the parties on the Notice of Motion dated June 6, 2023, and filed on June 7, 2023 seeking consolidation of this Petition with Constitutional Petition No 11 of 2023, and noting the request for adjournment by the Petitioners and the Respondents in the latter Petition to take instructions on the issue of consolidation, the Court agrees to reserve the consideration of the application for consolidation to a later date when all the necessary parties shall be heard. In this regard, the Court notes the orders for joinder of the 47 County Assemblies of Kenya to the latter Petition No 11 of 2023 and they too are entitled to make representations on the question of consolidation of their Petition upon being joined and filing respective responses. The Court ordered that upon the joinder and “Upon their filing of any responses as the County Assemblies as Interested Parties will be entitled to do, within 14 days, under Rule 15 of the Rules, the Petition shall be mentioned for directions as to hearing on June 22, 2023.”
2. Accordingly, the Court shall consider the issue of consolidation of the two Petitions when it gives directions as to the hearing of the Petition No 11 of 2023 as scheduled on June 22, 2023 after the County Assemblies to be joined have had opportunity to files their responses to the Petition.
3. However, the hearing of the interlocutory application herein dated May 3, 2023 need not await the consolidation of the main Petitions, as the consideration of such interlocutory application depends on clear principles and there shall still remain to be heard the main Petition for the reliefs of Certiorari to “quash the internal memo dated March 28, 2023” and “a perpetual order do issue directing the petitioners to resume their roles and functions as members of county assembly of Isiolo with the privileges accruing thereto ante March 27, 2023”, which may be consolidated with the hearing of the Petition in No 11 of 2023 challenging, primarily, the content of the Standing Orders of the County Assemblies, including Isiolo County Assembly.
4. By its ruling in the Preliminary Objection in this Petition, Court directed the parties to file written submissions each side taking seven (7) days and reserved the ruling for the June 14, 2023. The Court cannot conclude the ruling as scheduled on the June 14, 2023 as, in the meantime, before the written submissions were filed as directed by the Court, the 1st Respondent made the application for consolidation with Const. Petition No 11 of 2023.
5. The Court must, therefore, review the directions for hearing and ruling on the application dated May 3, 2023. It is the least that Court can do having regard to its overriding objective of The *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, as anticipated by Rule 3(2)–

“(2) The overriding objective of these rules is to facilitate access to justice for all persons as required under Article 48 of the Constitution”.



6. For this purpose, the Court is required under sub-rule (4) to ensure as follows:

“(4) The Court in exercise of its jurisdiction under these rules shall facilitate the just, expeditious, proportionate and affordable resolution of all cases.”

7. The fair, just and expeditious disposal of the dispute requires the hearing, on the basis of its urgency, of the interlocutory motion pending the hearing of the Petition. The application for consolidation maybe done at any stage and upon the necessary parties being served, the court may upon taking their representations order consolidation of the Petitions for hearing and determination.

8. Such a course does not prevent the Court, in the meantime, to proceed with the interlocutory motion of May 3, 2023, which principally only affects the Petitioners in Petition No E009 of 2023 and the 1st and 2nd Respondents herein. A situation where the consideration of the interlocutory application filed by Petitioners herein is held in abeyance to await the time when subsequent Petition No 11 of 2023 is ready for hearing will occasion delay and defeat the said overriding objectives set out above. And it would contrary to the principle of sub judice, which requires that the earlier suit be heard while the subsequent one is stayed. Not staying the former suit in preference of the subsequent suit!

Orders

9. Accordingly, for the reasons set out above, the Court makes the following orders:

1. The Respondent’s application dated June 6, 2023 and filed June 7, 2023 for consolidation with Petition No 11 of 2023 shall be heard on the June 22, 2023 upon the filing of the responses by the County Assemblies directed to be enjoined by Ruling of the Court dated June 5, 2023 therein.
2. The Petitioners’ application filed earlier herein dated May 3, 2023 shall be heard by way of oral submissions on Wednesday June 14, 2023 at 11.00am, and ruling set thereafter.

10. Costs in the Cause.

11. Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mwendani F Advocate for the Petitioners.

Mr. Aluku with Mr. Lesaigor, Advocates for 1st Respondent.

Mr. E. Theuri with Ms. Kiunga, Advocates for the 2nd Respondent.

N/A for the Interested Parties.

