



**Jillo & another v The Secretary General, County Assemblies Forum (CAF) & another; Speaker County Assembly of Isiolo & 5 others (Interested Parties)
(Constitutional Petition 11 of 2023) [2023] KEHC 18211 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CONSTITUTIONAL PETITION 11 OF 2023**

EM MURIITHI, J

JUNE 5, 2023

**IN THE MATTER OF ABUSE OF PROCESS AND PROCEDURES THROUGH
POLITICAL INSTIGATED, ILLEGAL EXCOMMUNICATION, SUSPENSION AND/
OR REMOVAL FROM THE PRECINCTS OF MEMBERS OF THE COUNTY ASSEMBLEY**

AND

**IN THE MATTER OF DEFENCE OF ARTICLE 1,2,3,10,23,25,38,47,48,50,108,159,176,232,236
& 258 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF INTERPRETATION, ENFORCEMENT AND
PROTECTION OF THE ARTICLE 10, 25(3) 47, OF THE CONSTITUTION AND
SECTION 15, 16, AND 17 OF THE POWERS AND PRIVILEGES ACT 2017**

BETWEEN

ABUBAKAR HASSAN JILLO 1ST PETITIONER

HASSAN DIMA KUMPA 2ND PETITIONER

AND

**SECRETARY GENERAL, COUNTY ASSEMBLIES FORUM (CAF) 1ST
RESPONDENT**

**REGIONAL REPRESENTATIVE OF COUNTY ASSEMBLIES FORUM, UPPER
EASTERN, MARSABIT, ISIOLO, MERU AND EMBU 2ND RESPONDENT**

AND

SPEAKER COUNTY ASSEMBLY OF ISIOLO INTERESTED PARTY

KENYA KWANZA COALITION INTERESTED PARTY

AZIMIO LA UMOJA-ONE KENYA COALITION INTERESTED PARTY



NURA MOHAMED HUKA INTERESTED PARTY
MEJJA ABDULAHI GOLICHA INTERESTED PARTY
ABUBAKAR ABDI GODANA INTERESTED PARTY

RULING

1. This is a ruling on a request by Counsel for some of the parties - the petitioners, the respondents and the 4, 5 & 6 interested parties - in this petition, which is opposed by the 1st interested party Speaker of the County Assembly of Isiolo and unsupported by the other interested parties.
2. The consent dated May 19, 2023 proposed by the petitioners, the respondents and the 4th, 5th and 6th for adoption by the court as an order of the court is in the following terms:

“Consent

By consent of all parties herein.-

1. On realizing that the statutes governing the County Assemblies have been revised or amended during the period 2013 and 2023. and on consideration of the clear provisions of section 14(1) of the County Governments Act and the constitution of Kenya. the parties herein agree with the petitioners that any County Assembly whose standing orders are not up to date and compliant, the same should be set aside and the county assembly shall forthwith apply the standing orders of the National Assembly pursuant to section 14(7) of the County Government Act.
 2. That the respondents shall undertake to advise their county Assemblies who are their members to be compliant with the constitution of Kenya and section 14(1) as read together with section 14(7) of the county government Acts.
 3. That the respondents be granted an amnesty of 90 days to comply with the Statutes and the Constitution of Kenya 2010 and any effects of any unlawful decision emanating from the Standing orders of their non-complied members be set aside forthwith.
 4. That the members of a county assembly who may have been affected or discharged of their duties based on the inconsistencies in the standing orders of the said county assembly. the same be stood over until the said county assembly complies with the law.”
3. The court is aware, the two proceedings having been heard by this court, of related Constitutional Petition no E009 of 2023 in which the petitioners seek an outcome similar to the proposed item No 4 of this consent by the relief sought in the petition therein in terms as follows:
 - “ 1. This petition be allowed.
 2. This court be pleased to issue an order of certiorari to bring into this court and quash the internal memo dated March 28, 2023.



3. 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 27th of March 2023.
4. Costs of this suit.

Dated at Nairobi this 3rd day of May 2023"

Determination

Right to be heard

4. The Speaker of the County Assembly of Isiolo, the 1st interested party herein, is the principal respondent in this matter being the person whose purported conduct pursuant to the Standing Orders is subject of the application for the conservatory orders sought in the petition.
5. The speaker is, however, not a party to the consent proposed to be entered between the petitioner and the respondents which has the effect of undoing the directions of the Speaker.
6. It requires no brainy argument to see that the person whose decision is challenged in a proceeding - which decision would be affected by an order made by consent of the parties effectively quashing and setting aside such decision - is a person who must be heard on the matter. A decision made without hearing such a party before the court would be one which the court can set aside *ex debito justitiae*. See for this proposition, [Craig v Kanseen](#) [1943] 1 All ER 108 where it is established that an order made ex parte without hearing a party, which is a nullity, shall be set aside *ex debito justitiae*.
7. For this reason alone, the court is entitled to reject the proposed consent by the other parties to the suit to the extent that it affects the one party unheard. The Speaker of the County Assembly of Isiolo, the 1st interested party herein, has not been heard on the proposed consent and it will be rejected. There is more.

Joinder of Interested Parties

8. The County assemblies whose standing orders are the subject of the petition on invalidity are not parties to the petition. Although, the 1 and 2nd respondents are a forum of Speakers of County Assemblies, there is reasonable doubt whether the respondents act for the County Assemblies or their respective decisions bind the County Assembly. The Speaker of a County Assembly, an ex officio member, may be removed from office by the County Assembly under section 11 of the [County Governments Act](#), and it is unclear in what manner such an officer may bind the County Assembly which exercises authority over him. The County Assemblies are corporate persons established under article 177 of the [Constitution](#) and section 8 of the [County Governments Act](#). It is the mandate of the County Assemblies, not their Speakers, to promulgate, under section 14 of the [County Governments Act](#), Standing Orders "regulating the procedure of the county assembly including, in particular, orders for the proper conduct of proceedings". The 47 County Assemblies must be heard, or given an opportunity to be heard, on the matter of the validity of the Standing Order which they make and under which they operate before a valid consent and or determination by the court. This has not happened in this case.
9. Counsel for the 1st Interested Party urged the court to exercise its suo moto discretion under Rule 7 of the [Constitution of Kenya \(protection of Rights And Fundamental Freedoms\) Practice And Procedure Rules, 2013](#) to bring in the County Assemblies whose Standing Orders are sought to be affected by the proposed Consent Order.



10. The *Constitution of Kenya (protection of Rights And Fundamental Freedoms) Practice And Procedure Rules, 2013*, (Mutunga Rules), Legal Notice No 117 of 28th June, 2013 provide for joinder of an interested party as follows:

“Interested party.

7.

- (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.
- (2) A court may on its own motion join any interested party to the proceedings before it.”

11. The court shall, therefore, direct that the petition forthwith be served upon all the County Assemblies as interested parties in this suit pursuant to Rule 7 (2) of the *Mutunga Rules*.

Consent affecting matters in separate suit

12. Moreover, the purported consent herein seeks principally to determine the issues presented for determination by the court in the constitutional Petition No E009/2023 which is pending ruling on an application for conservatory order to substantially the same result as the consent herein. It is improper for parties in one suit to seek to determine, by their consent in the said suit, the outcome of another suit between different parties who are not party to the consent.

13. Indeed, when appraised through the arguments in this suit, of the existence of the suit over the exercise by the 1st Interested Party Speaker of Isiolo County Assembly exercise of disciplinary powers under the Isiolo County Assembly Standing Orders, the learned Counsel for the respondents, Mr. Walukwe, conceded that the matter should proceed to substantive hearing of the petition. And the petitioners’ counsel himself eventually agreed that the matter proceeds to hearing of the interlocutory notice of motion, rather than the petition.

Orders

14. Accordingly for the reason set out above, the court makes the following orders:

1. The request by the petitioner and the 2-6 interested parties for adoption as an order of the court the proposed consent dated by some of the parties herein is declined.
2. The 47 County Assemblies of Kenya are joined as interested parties to this petition.
3. The petition shall forthwith be served on all the County Assemblies.
4. 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.

15. Costs in the cause.

Order accordingly.

DATED AND DELIVERED THIS 5TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE



APPEARANCES:

Mr. Kyule Advocate for the Petitioner.

Mr. Walukwe Advocate for the Respondents.

Mr. E. Theuri with Ms. Kiunga Advocates & Mr. Aluku with Mr. Lesaigor Advocates for the 1st Interested Party.

N/A for the 2nd Interested Party.

Mr. Makori with Mr. Oburu Advocate for the 3rd Interested Party.

Mr. Mendini F. Advocate for the 4,5 & 6 Interested Parties.

