REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 123 OF 2020 (COVID-19 045)

ANNE MUMBI WAIGURU.....APPLICANT/PETITIONER

VERSUS

THE COUNTY ASSEMBLY OF KIRINYAGA.....1ST RESPONDENT

THE SPEAKER, COUNTY ASSEMBLY OF KIRINYAGA.....2ND RESPONDENT

RULING

1. The Applicant/Petitioner, Anne Mumbi Waiguru, filed her petition dated 31st March, 2020 together with an application by way of notice of motion. Through the application she seeks orders as follows:-

> **a. THAT for the reasons set out in the Certificate of Urgency filed herewith, service of this application upon the Respondents be dispensed with and the Application be certified as urgent and be heard ex-parte in the first instance.**
>
> **b. THAT pending the hearing and determination of this application, this Honourable Court issues conservatory orders suspending the tabling of the impeachment motion by the members of the 1st Respondent against the Petitioner.**
>
> **c. THAT pending the hearing and determination of this application, the 1st Respondent be prohibited from discussing, debating and or in any way dealing with the impeachment motion against the Petitioner.**
>
> **d. THAT pending the hearing and determination of the Petition, this Honourable Court issues conservatory orders suspending the tabling of the impeachment motion by the members of the 1st Respondent against the Petitioner.**
>
> **e. THAT pending the hearing and determination of this Petition, the 1st Respondent be prohibited from discussing, debating and or in any way dealing with the impeachment motion against the Petitioner.**
>
> **f. THAT cost of this application be provided.**

2. The application is supported by the grounds on its face and an affidavit sworn by the Applicant on the date of the application.

3. The 1st Respondent, the County Assembly of Kirinyaga County ("the Assembly") and the 2nd Respondent, the Speaker, County Assembly of Kirinyaga County ("the Speaker") oppose the application.

4. The case of the Applicant who is the Governor of Kirinyaga County is that the Assembly through Hon. Kinyua Wangui had delivered a motion to the Assembly Clerk seeking her removal from office through impeachment. She avers that the Clerk had already forwarded the motion to the Speaker and the motion was set for tabling before the House Committee on 1st April, 2020. Thereafter it was to be tabled before the Assembly for debate within seven days in accordance with the Standing Orders of the Assembly.

5. It is the Applicant's case that if the impeachment proceedings are allowed to proceed, her constitutional rights and fundamental freedoms will be violated on various grounds. According to the Applicant, the impeachment proceedings were commenced to spite her as the members of the Assembly were displeased with the orders she obtained in **Nairobi High Court Petition No. 115 of 2020, County Government of Kirinyaga v County Assembly of Kirinyaga** suspending a resolution by the Assembly to abolish the Directorate of Liaison and Communication.

6. It is the Applicant's averment that the timing of the impeachment motion is suspect as the same has been brought at a time when she cannot adequately prepare her defence due to inability to access most of the offices as a result of the directive by the President and the Cabinet Secretary for Health that only a few members of staff should remain in the office due to the Covid-19 pandemic.

7. The Applicant deposes that she has a history of hypertension and she will not be in a position to appear before the Assembly as she is out of office following the directive by the Cabinet Secretary for Health that all public servants who have pre-existing medical conditions should work from home. She further avers that in order to properly prepare her defence she needs to access several official documents which will pass through various hands posing unnecessary risk of coronavirus infection.

8. It is also the Applicant's case that the timing of the impeachment violates Rule No. 58(5) of the Assembly Standing Orders as the residents of the County of Kirinyaga who are complying with the "stay at home" directive from the Cabinet Secretary for Health will be denied the opportunity of participating in the process within the period of seven days granted by the provision. Further, that under the curfew issued by the national government, public meetings have been prohibited hence the residents of the County of Kirinyaga will not have a chance to participate in the process.

9. The Applicant is apprehensive that the impeachment motion may be debated without her input and that of the members of the public who have an interest in the motion. She avers that allowing the impeachment motion to proceed without the participation of the residents of the County of Kirinyaga will be a mockery to democracy.

10. The Applicant further contends that the allegations made against her do not meet the threshold for the removal of a governor from office. It is her case that the respondents have not demonstrated any nexus between her and the alleged wrongdoings. The Applicant supports her assertion that there must be a connection between the allegations made and the governor by citing the decision of the Court of Appeal in **Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others [2014] eKLR.** She relies on the holding in the said case that there "**must be nexus between the alleged gross violation and the conduct of a Governor",** and that **"an element of personal knowledge that includes intentional, brazen or willful gross violation of the Constitution or other written law"** should be established.

11. The Applicant further relies on the said case of **Martin Nyaga Wambora** for the statement that "**the role of the High Court for purposes of removal of a Governor from office is inter alia supervisory in nature to ensure that the procedure and threshold provided for in the Constitution and the County Governments Act are followed".** According to the Applicant, the High Court is mandated by Article 165(6) of the Constitution to address a grievance arising from an unconstitutional, wrong, un-procedural or illegal impeachment. She urges that unless the orders sought are granted the consequences of the resolution by the respondents will be irreparable both to herself and the residents of Kirinyaga County.

12. Counsel for the Applicant reiterated the application on 2nd April, 2020 during the virtual *inter partes* hearing.

13. The respondents did not file any reply to the application. Their advocates indicated to the court that it was not possible to file any reply due to the tight timelines that had been issued by the court. The advocates on record nevertheless made comprehensive oral submissions in opposition to the application.

14. According to the respondents, they are executing a constitutional mandate which can only be interfered with in exceptional circumstances. The respondents indicate their appreciation of the effects of the Covid-19 pandemic but contend that they have implemented measures to ensure that the Applicant's rights and fundamental freedoms are protected during the impeachment process.

15. It is also the respondents' contention that the Applicant's assertion that she will not have an opportunity to appear before the Assembly is without merit since mechanisms have been put in place to ensure that she will enjoy all her constitutional rights. Further, that her right to a fair hearing guaranteed under Article 50 of the Constitution will be protected because she can appoint counsel to represent her at the Assembly. The fact that the Applicant has appointed counsel to represent her in this case is cited in support of the said argument.

16. The respondents further submit that the Applicant's claim that her rights will be violated is presumptive as technology can be deployed to ensure that her right to a fair hearing is guaranteed. The respondents additionally assert that mechanisms will be established to ensure that the public participate in the proceedings.

17. The respondents' interpretation of Assembly's Standing Order No. 58(5) is that the impeachment process lasts 21 days and not 7 days as claimed by the Applicant. They therefore opine that there will be sufficient time to conduct public participation within the 21 days.

18. On the claim by the Applicant that the nexus between her and the alleged improprieties has not been established, the respondents retort that the issue of threshold can only be dealt with by the Assembly during the interrogation of the motion and after the Applicant has been given adequate time and facilities to respond to the allegations. According to the respondents, the motion will fail if no link is established between the allegations and the Applicant.

19. The respondents contend that the Assembly cannot be stopped from executing its legislative and oversight role as mandated by Article 185 of the Constitution. They add that the Assembly has other roles as set out in Section 8 of the County Governments Act, 2012 (CGA).

20. The respondents refer to Article 163(7) of the Constitution on the binding nature of the decisions of the Supreme Court and urge this court to adhere to holding in the case of **Justus Kariuki Mate & another v Martin Nyaga Wambora & another, Supreme Court Petition No. 32 of 2014** that in exercising its supervisory jurisdiction over other constitutional organs, the High Court should act with restraint. The respondents urge that the holding in **Martin Nyaga Wambora** (supra) is inapplicable to the circumstances of this case as the cited case was only filed after the impeachment process had been concluded.

21. The respondents stress that this application is futuristic as it is based on the speculation by the Applicant that she will not get a fair

hearing. The respondents contend that it is only after the impeachment process is concluded that the court can determine the issue as to whether the Applicant was accorded a fair hearing.

22. The respondents conclude by urging the court not to issue any conservatory orders. In their view, conservatory orders will violate the Constitution and affect the operations of the Assembly. Further, that the respondents are executing their lawfully mandates in the interest of the people of the County of Kirinyaga and it will be prejudicial to the public if conservatory orders are issued.

23. In reply to the submissions by the respondents, the Applicant brushes off the claim that her application is speculative. She submits that rights are violated either in the past or in the future hence the constitutional authority granted to the courts to stop any threatened violation of rights. It is the Applicant's position that her rights have already been violated by the respondents' failure to give her an opportunity to respond to the allegations that form the foundation of the impeachment motion before commencing the impeachment.

24. The Applicant agrees that the decisions of the Supreme Court are indeed binding on this court but rejects the respondents' argument that this court cannot intervene where a constitutional organ is violating the Constitution. The Applicant additionally argues that the court has not been told in what manner the respondents will protect her constitutional rights. She states that a notice published by the respondents in the newspapers inviting the residents of the County of Kirinyaga to submit memoranda on the impeachment motion does not meet the constitutional threshold for public participation.

25. The only issue for the determination of the court in this ruling is whether the Applicant has met the threshold for grant of conservatory orders. It is important to appreciate from the outset that a conservatory order is one of the reliefs provided by Article 23(3) of the Constitution for the redress of a denial, violation or infringement of, or threat to a right or fundamental freedom in the Bill of Rights.

26. The fact that a conservatory order is a constitutional remedy was confirmed in the case of **Kimathi Munjuri, Jacob Miriti & 3 others v Head of Public Service and Chief of Staff - Joseph Kinyua & 3 others [2017] eKLR** where the Court stated that:-

> **"Conservatory orders are remedies that are available under the Constitution for purposes of preserving the status quo pending the determination of the constitutional issues that are submitted for determination…."**

27. The law on the conditions to be met by a supplicant seeking conservatory orders is now well established in our jurisdiction. Some of those conditions were stated in the above cited as follows:-

> **"In this regard, in considering whether to grant conservatory orders, the court has to consider if the case is arguable, whether the matter before the court will be rendered nugatory if the orders are not granted whereby the adjudicatory authority of the court might be exercised in vain and finally, whether it is in the public interest that the orders be granted."**

28. In **Platinum Distillers Ltd v Kenya Revenue Authority [2019] eKLR,** I was alive to these principles when I stated that:-

> **"The law, as I understand it, is that in considering an application for conservatory orders, the court is not called upon and is indeed not required to make any definitive finding either of fact or law as that is the province of the court that will ultimately hear the petition. The jurisdiction of the court at this point is limited to examining and evaluating the material placed before it, to determine whether the applicant has made out a *prima facie* case to warrant grant of conservatory orders. The court is also required to evaluate the pleadings and determine whether denial of conservatory orders will prejudice the applicant."**

29. In considering an application for conservatory orders, the court is not supposed to make findings on the substantive issues in the petition. This principle of law was highlighted in the case of **Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General, Nairobi High Court Petition No. 16 of 2011; [2011] eKLR** thus:-

> **"It is important to point out that the arguments that were advanced by counsel and that I will take into account in this ruling relate to the prayer for a conservatory order in terms of prayer 3 of the petitioner's application and not the petition. I will not therefore delve into a detailed analysis of facts and law. At this stage, a party seeking a conservatory order only requires to demonstrate that he has a *prima facie* case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution."**

30. In the case of **Kenya Association of Manufacturers & 2 others v Cabinet Secretary-Ministry of Environment and Natural Resources & 3 others [2017] eKLR** it was similarly held that:-

> **"In an application for a conservatory order, the court is not invited to make any definite or conclusive findings of fact or law on the dispute before it because that duty falls within the jurisdiction of the court which will ultimately hear the substantive dispute. The jurisdiction of the court at this point is limited to examining and evaluating the materials placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of a conservatory order. The court is also required to evaluate the materials and determine whether, if the conservatory order is not granted, the applicant will suffer prejudice. Thirdly, it is to be borne in mind that conservatory orders in public law litigation are meant to facilitate ordered functioning within the public sector and to uphold the adjudicatory authority of the court in the public interest."**

31. The Supreme Court in the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** summarized the principles that guide courts in determining an application for conservatory orders as follows:-

"[86] *"Conservatory orders"* bear a more decided *public-law* connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the *public interest.* Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as "the prospects of irreparable harm" occurring during the pendency of a case; or "high probability of success" in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the *inherent merit of a case*, bearing in mind the *public interest, the constitutional values,* and *the proportionate magnitudes, and priority levels attributable to the relevant causes."

32. A review of the cited cases will show that even where an applicant establishes a *prima facie* case and shows the prejudice to be suffered if orders are not granted, the court is also required to take into account the public interest, constitutional values, the priority levels attributed to the cause at hand and the magnitude of the issues in question. In short, the court is called upon to do a balancing act in order to arrive at a decision that will protect the rights of the applicant without causing an unjustifiable injury to the public at large.

33. It is noted that both the Court of Appeal in **Martin Nyaga Wambora** (supra) and the Supreme Court in the case of **Justus Kariuki Mate** acknowledged and validated the High Court's supervisory jurisdiction under Article 165(6) of the Constitution over county assemblies. The Court of Appeal spoke to the need to deploy supervisory power of the High Court in the protection of the Constitution. On its part, the Supreme Court cautioned that constitutional organs should not be retrained from the lawful discharge of their mandates.

34. In **Justus Kariuki Mate** (supra) the petitioner who was the Speaker of the County Assembly of Embu presided over the impeachment of the Governor in disobedience of a conservatory order issued by the High Court. The petitioner was found liable for contempt of the order by the High Court. His appeal to the Court of Appeal was dismissed. The petitioner moved to the Supreme Court to challenge the finding that he had acted in contempt of a court order.

35. In allowing the appeal, the Supreme Court held that:-

"[90] All the indications, from the stand of the superior Courts, are that *expressly-prescribed constitutional time-frames are binding on the governance processes in place.* Even though our specific examples are drawn only from the Constitution's scheme of *electoral justice*, they nonetheless bear a wider signal, regarding *time,* as it must direct the various agencies of the State.

[91] Such a time-perception, therefore, has a clear relevance to the instant matter. A seven-day time-frame is provided for in Standing Order No. 61 of the County Assembly of Embu Standing Orders, which defines the *'procedure for removing the Governor by impeachment'*, in these terms:

> ***"(3) A member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a seven days' notice calling for impeachment of the Governor.***
>
> ***"(4) Upon the expiry of seven days, after notice is given, the Motion shall be placed on the Order Paper and shall be disposed of within three days; Provided that if the County Assembly is not then sitting, the Speaker shall summon the assembly to meet… and cause the Motion to be considered at that meeting after notice has been given…."*** **[emphasis supplied].**

[92] 'Standing Orders', all by themselves, by no means rest at the direct level of the Constitution, or indeed, the statute law. Even though Standing Orders certainly guide the *constitutional functioning of the legislature*, we still find it necessary to consider their constitutionality or otherwise. A relevant example is this Court's decision in the Senate matter, in which the following passage appears:

> ***"It is clear to us that it would be illogical to contend that [though] the Standing Orders are recognized by the Constitution, this Court, which has the mandate to authoritatively interpret the Constitution itself, is precluded from considering their constitutionality merely because the Standing Orders are an element in the 'internal procedures' of Parliament. We would state, as a legal and constitutional principle, that Courts have the competence to pronounce on the compliance of a legislative body, with the processes prescribed for the passing of legislation"*** **[emphasis supplied].**

[93] However, the Standing Orders, the individual merits of which were not contested, may be said to be properly coalesced in the constitutional scheme of *legislative functions*, and thus, to constitute an organic framework for the legislative agency's operations, on the basis of all available information.

[94] The effect is that, a methodical and conscientious inquiry would show the County Assembly to have been operating quite properly, within the constitutional scheme of devolution, and running its legislative processes within the ordinary safeguards of the separation of powers – and consequently, quite legitimately *outside the path of the ordinary motions of the judicial arm of State.* On that basis, there would have been hardly any scope for the deployment of the Court's *conservatory Orders* – more particularly without *first hearing the petitioners*.

[95] It is our understanding that the *exceptional circumstance* of this case, with a complex scenario of justiciabilities from contrasted standpoints, would lend justification to the non-effectuation of contempt Orders at the beginning; and consequently, we would accommodate the reality of there not having been immediate compliance, as would otherwise be required."

36. Earlier in the judgement, the Supreme Court, after acknowledging the supervisory jurisdiction of the High Court cautioned that:-

> **"[84] From the facts of this case, it is clear to us that the integrity of Court Orders stands to be evaluated in terms of their inner restraint, where the express terms of the Constitution allocate specific mandates and functions to designated agencies of the State. Such restraint, in the context of express mandate-allocation under the Constitution, is essential, as a scheme for circumventing conflict and crisis, in the discharge of governmental responsibility. No governmental agency should encumber another to stall the constitutional motions of the other. The best practices from the comparative lesson, signal that the judicial organ must practice the greatest care, in determining the merits of each case."**

37. Indeed the Supreme Court, prior to issuing the stated caution, formulated principles that should guide a constitutional organ in situations where the exercise of its mandate is likely to intrude into the functions of another arm of government. Those principles which are found at paragraph 63 of the judgement are as follows:-

> ***"(a) each arm of Government has an obligation to recognize the independence of other arms of Government;***
>
> ***(b) each arm of Government is under duty to refrain from directing another Organ on how to exercise its mandate;***
>
> ***(c) the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;***
>
> ***(d) for the due functioning of constitutional governance, the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case;***
>
> ***(e) in the performance of the respective functions, every arm of Government is subject to the law."***

38. I have intentionally reproduced the judgement of the Supreme Court because it is quite relevant to the circumstances of this case. My understanding of the decision of the Supreme Court is that the deployment of conservatory orders in the exercise of supervisory jurisdiction by the High Court over the other arms of government should be done with utmost restraint and only where overt violation of the Constitution and the law has been shown. Otherwise, constitutional organs that are carrying out their lawful functions should be left alone.

39. The question therefore is whether the Applicant has placed before the court sufficient grounds to warrant the halting of the impeachment process which is time-bound. I do not need much persuasion in order to agree with the respondents that the question as to whether the allegations against the Applicant meet the constitutional threshold goes to the merits of the motion before the Assembly. In my view, I will be contradicting the binding decision of the Supreme Court in the **Justus Kariuki Mate** case if I venture into determining whether the allegations placed before the Assembly meet the threshold for commencing an impeachment process. The issue of threshold forms the substance of the impeachment motion and the Assembly is best placed to determine it. While I agree with the decision of the Court of Appeal in **Martin Nyaga Wambora** (supra), I nevertheless hold the view that the supervisory jurisdiction of the High Court on the issue of threshold is best exercised after the fact.

40. Impeachment proceedings are in the nature of a trial by peers. If at the end of the trial the Assembly removes the Applicant, that decision will have to be confirmed by the Senate. In my opinion, the work of the Senate is like that of an appellate court. It will hear the Applicant and review the impeachment proceedings and materials in order to ensure that the constitutional and legal parameters have been met. The issue as to whether the constitutional threshold has been met will be considered by the Senate. The allegation by the Applicant that the impeachment motion has been brought in bad faith will also be addressed by the Senate which is duty-bound to consider the merits of the impeachment. I therefore do not find merit in the Applicant's argument that the impeachment motion should be stopped because the threshold for impeachment has not been met or that the proceedings have been commenced in bad faith.

41. In this case, however, there is an averment by the Applicant that her constitutional rights will be violated if the impeachment motion is allowed to proceed in the context of the Covid-19 pandemic. The Applicant also asserts that the impeachment will violate the constitutional right of the residents of Kirinyaga County to participate in the proceedings.

42. What is the effect of the Covid-19 pandemic on the operations of the Assembly? How does the disruption of the operations of the Assembly affect the rights of the Applicant? In my view, the Covid-19 pandemic provides an exceptional circumstance which should be taken into account in determining this application.

43. The fact that public participation plays a key role in democratic governance is no longer a question for legal debate. In impeachment proceedings the role of the public is important. Governors are put in office through public votes. Whenever members of a county assembly decide to impeach a governor, the voice of the voters must be loudly and clearly heard. Although members of county assemblies are indeed the representatives of people, sometimes they forget that the voters are their real masters and start playing politics with the powers bestowed upon them by the electorate. It is therefore necessary to involve the people in decisions that have repercussions on their rights. In my view, adequate and meaningful public participation should be undertaken whenever a county assembly undertakes the process of impeaching a governor.

44. The place of public participation in the governance of county governments was addressed at length in the case of **Robert N. Gakuru & others v Governor of Kiambu County & 3 others [2014] eKLR** where the Court stressed the need to comply with the constitutional principle of public participation by stating that:-

> **"75. In my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just**

enough in my view to simply "tweet" messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspect as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as may fora as possible such as churches, mosques, temples, public *barazas* national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action….

76. In my view to huddle a few people in a 5 star hotel on one day cannot by any stretch of imagination be termed as public participation for the purposes of meeting constitutional and legislative threshold. Whereas the magnitude of the publicity required may depend from one action to another a one day newspaper advertisement in a country such as ours where a majority of the populace survive on less than a dollar per day and to whom newspapers are a luxury leave alone the level of illiteracy in some parts of this country may not suffice for the purposes of seeking public views and public participation."

45. The impeachment of a governor is not a closed-door affair. Where an impeachment motion is successful, it does not only affect the governor but also prejudices political rights (Article 38 of the Constitution) of the people who voted for the governor. The public must be involved in such a process through qualitative and quantitative participation. It is evident that public participation will be affected by the Covid-19 pandemic. It is obviously not possible to hold public "barazas" or other public meetings due to the recommendation by the health experts that one way of avoiding coronavirus infection is through social distancing. It is my view that in a momentous matter like the removal of a governor the residents of the county in question must be properly engaged in the debate.

46. I agree with the Applicant that the respondents' claim that they have made special arrangements for engaging the public was not backed by any evidence. It is conceded that the respondents were not given an opportunity to avail the evidence by way of affidavits but I do not see how the respondents can hold public meetings in these dark times of the Covid-19 pandemic. How will the views of the voters be collected and collated in the prevailing circumstances? It must be appreciated that our people are too poor to take advantage of technological advances and the easiest and cheapest way of reaching them is through public rallies.

47. There is also the pertinent issue of the Applicant's rights to fair administrative action and fair hearing. The Applicant has disclosed that she is working from home as she has a condition that would put her life at risk were she to be infected by coronavirus. It is her case that she can only fairly defend the allegations against her using documents that are kept at the County offices. This averment has not been challenged by the respondents. They instead argue that the Applicant can be represented by counsel as is the case in this petition. I find this argument to be short-sighted and unconvincing. In my view, the Applicant is entitled to appear before the Assembly in person and to representation by an advocate. Her right to appear in person before the Assembly cannot be taken away on the ground that she can instruct counsel to defend her. She may want to follow the proceedings herself and that opportunity should be provided. She may even want to testify before the Assembly. I did not hear the respondents say that they will provide facilities which will enable the Applicant to appear at the Assembly without risking coronavirus infection.

48. In the circumstances of this case, I find that the Applicant has demonstrated that proceeding with the impeachment motion during the Covid-19 crisis is likely to violate her rights to fair administrative action. She has also succeeded in demonstrating that proceeding with the impeachment in the prevailing circumstances will impede the right of the people of Kirinyaga County to participate in the process. In my view, the unique circumstances posed by the Covid-19 pandemic imposes a duty on this court to interfere with the respondents' mandate in so far as it relates to the impeachment of the Applicant. The Applicant has successfully demonstrated that her constitutional rights are threatened with violation by the respondents. The Applicant has also established that if the impeachment motion is allowed to proceed to conclusion, the doctrine of public participation will be violated.

49. I appreciate the fact that the respondents are executing their constitutional mandate. However, by failing to take into account the effects of the Covid-19 pandemic on its operations, the respondents have chosen a path that will surely result in the violation of constitutional rights and principles. The High Court has a solemn duty of ensuring that any power granted to a constitutional organ is exercised in compliance with the Constitution and the law. Where a constitutional organ steps outside the confines of the Constitution, this court must bring back such a wayward body to the path of the law. One of the ways of doing so is by halting further violation of the Constitution by issuance of conservatory orders.

50. Considering what I have stated in this ruling, it follows that the application succeeds. A conservatory order is therefore issued directing the respondents to halt any further action on the motion relating to the impeachment of the Applicant. It is important to note that this order would not have issued were it not for the effects of the Covid-19 pandemic on the ability of the Assembly to process the impeachment motion without violating the Constitution. As such the order shall remain in force pending the hearing and determination of the petition or the containment of the Covid-19 pandemic, whichever event occurs first.

51. The parties shall meet their own costs for the application. This matter will be mentioned on 14th May, 2020 for directions on the hearing of the petition.

52. I apologize to the parties and counsel for not delivering this ruling on 6th April, 2020 as scheduled. Due to the disruption of normal court operations by the Covid-19 pandemic, the advocates for the parties consented to the delivery of this ruling through email.

Dated, signed and delivered by email at Nairobi this 7th day of April, 2020.

W. Korir,

Judge of the High Court