



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PETITION NO 24 OF 2015.

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS SECURED AND GUARANTEED UNDER ARTICLES 20, 22, 23, 34, 47, 50, 176, 177 AND 251 OF THE CONSTITUTION OF KENYA 2010

AND

THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2010

BETWEEN

ROSEMARY MULEE.....PETITIONER

VERSUS

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

THE SPEAKER OF MACHAKOS COUNTY ASSEMBLY.....2ND RESPONDENT

JUDGMENT

Introduction

The Petitioner is the Secretary to the Machakos County Public Service Board. The 1st Respondent is the County Assembly of Machakos County, while the 2nd Respondent the Speaker of the County Assembly of Machakos County. The Petitioner filed a petition dated 19th June 2015, in which she averred that on 14th May 2015, the County Assembly of Machakos notified her that it had received, discussed and approved a motion for her investigation, with a view to have her removed from office. The Respondents then formed an *ad hoc* committee to investigate the Petitioner and she appeared before the said committee on 21st May 2015, where she was served with a list of grounds and particulars of the charges.

The grounds advanced for her removal were:

- a) Gross violation of the provisions of the Constitution
- b) Gross violation of the various Acts of Parliament including the County Government Act No. 17 of 2012, the Public Ethics Act and leadership and integrity Act No. 19 of 2012.
- c) Gross misconduct including abuse of office

d) Incompetence.

The Petitioner also filed an application by way of a Notice of Motion contemporaneously with her petition, in which she sought interim conservatory orders restraining the *ad hoc* committee from conducting any further proceedings investigating her pending the hearing of her application and petition. It was agreed by consent of the parties that the interim conservatory orders issued by this Court (Mutende J.) on 26th June 2015 be extended pending the hearing and determination of the petition.

A Preliminary Objection was also raised by the Respondents that this Court has no jurisdiction to hear this petition on account of the doctrine of separation of powers, and cannot supervise constitutional bodies carrying out their mandate within the confines of the Constitution. The said preliminary objection was heard and found not to have merit in a ruling delivered by this Court on 12th October 2015.

The Petitioner's Case

The Petitioner's case is detailed out in her Petition, and in a supporting affidavit and supplementary affidavit she swore on 19th June 2015 and 14th July 2015 respectively. The Petitioner claims that the list of the charges against her was not substantiated, and did not disclose the facts of the alleged charges. Additionally, the Petitioner averred that she requested for time to prepare herself and seek legal representation, but that the committee unreasonably declined to grant an adjournment and proceeded to hear witnesses while she was not represented.

The Petitioner claimed that the statements of witnesses and documents in support of the charges were not availed to her in advance, and the members of the committee did not specify the rules and procedures to be followed. Further, that no rules were made by the 1st Respondent to regulate the procedure of the committee as provided for by Section 14(1) (a) & (b) of the County Government Act (No. 17 of 2012).

The Petitioner took issue with the procedure used to investigate her which she claimed to be unlawful, and is not provided for under any written law, and which contravenes article 47, 50 & 51 of the Constitution as read with section 8(2) of the County Governments Act (No. 17 of 2012). Further, that there is no proper record of the proceedings of the committee, and no proper record of the proceedings and exhibits alluded to and /or produced. It was her contention that the process was arbitrary, lacked transparency, accountability, and the standards of a proper quasi-judicial process.

It is also contended by the Petitioner that the membership of the "*ad hoc*" committee of the County Assembly is flawed as the law does not permit their appointment in a committee to investigate a member of the County Public Service Board, as the said members are adversely mentioned in the evidence before the committee. Further, that the member of County Assembly of Machakos County who moved the motion for removal of the Petitioner sit in the "*ad hoc*" committee, thus making him the accuser and judge over the Petitioner, which is against the rules of natural justice the spirit of the Constitution of 2010.

The Petitioner's case is that the *ad hoc* committee is a quasi-judicial tribunal with far reaching consequences on her fundamental rights, and that the said body ought to exercise its functions judiciously in accordance with the Articles of the Constitution and other laws. Further, that the *ad hoc* committee has infringed on her right to fair trial and protection under the Constitution, as she stands to lose her job and suffer irreparable damage in her career. The Petitioner relied on Articles 20, 22, 23 (1) & (3) 47, 50, 176, 177, and 251 of the Constitution, as read with the provisions of Sections 14(1) (a) & (b) and 58 of the County Government Act

The Petitioner therefore seeks orders of injunction against the Respondents to restrain them from investigating her through the *ad hoc* committee; and an order of certiorari to quash the proceedings, orders, findings, rulings and decision of the Respondents and its *ad hoc* committee.

The Respondents' Case

The Respondents case is set out in a replying affidavit sworn by the 2nd Respondent on 7th July 2015 and a further affidavit sworn on 28th October 2015 by Hilary Muthui, the 1st Respondent's Principal Legal Counsel. The Respondents aver that the petition is predicated on unspecified anticipated actions by the Respondents, who are separate and distinct legal entities. Further, that the Petitioner's pleadings do not disclose adequate particulars in support of their alleged cause of action and/or claim relating to the alleged violations of the Constitution, to enable this Court grant the reliefs sought herein.

The Respondents contend that the Petitioner's petition is factually incorrect and an abuse of the court process, for the reasons that section 58(5) of the County Government Act is clear that only Article 251(1) of the Constitution of Kenya, 2010 is applicable to members of the County Public Service Board, and hence the Petitioner herein, in as far as grounds for removal of a member of the Board is concerned. Further, that the Constitution does not provide for the procedure for the removal of the said members. It was averred that the 1st Respondent in the premises has in compliance with Section 14(1) of the County Government Act made standing orders consistent with the Constitution that regulate the procedure of committees established therein.

Therefore, that it is incorrect for the Petitioner to allege that the *ad hoc* Committee investigating her conduct is unlawful and unprocedural, and that the procedure in the committee is guided by the Constitution, the 1st Respondent's Standing Orders, the National Assembly (Powers and Privileges) Act and the Evidence Act among other laws. Furthermore, that the Petitioner has not specified the procedure and law applicable for her removal, and how the Respondents have allegedly breached the same. The Respondents attached copies of the standing orders adapted by the 1st Respondent and the National Assembly (Powers and Privileges) Act as exhibits.

The Respondents also stated that they acted well within the confines of Article 251(1) of the Constitution of Kenya, 2010 as read with section 58 of the County Government Act, in that a motion had been moved by a member of the County Assembly for the Petitioner's removal as contemplated under Article 75 of the Constitution. A copy of the said motion was annexed as an exhibit. As such, that the procedure for removal thereof, would be akin to that under section 40(3) as read with subsection 5(b) and (6) of the County Government Act, 2012, which procedure is also similar to the one provided for by the standing orders. It was asserted that the Petitioner has not moved Court for a declaration that the said provisions are unconstitutional and/or offend articles 50(1) and 185 of the Constitution, 2010.

Further, that upon receipt of the said motion, the Respondent served the Petitioner with the same, in line with her constitutional rights to be notified of the charges facing her, and to accord her an opportunity to be heard and to defend herself, and required the Petitioner to appear before the *ad hoc* Committee on the 21st May 2015 at 10.00 a.m. It was alleged that the Petitioner admitted receipt of the said letter dated 14th May 2015 in paragraphs 3 and 4 of her supporting affidavit, which letter was also annexed as an exhibit.

The Respondents detailed and annexed copies of the correspondence that followed the said letter. The first was a letter from the Petitioner dated 18th May 2015 to the clerk of the 1st Respondent giving reasons why she would not appear at the said date. The second correspondence was a letter by the 1st Respondent to the Petitioner dated 20th May 2015 informing her that the notice given to her was sufficient and advising her to retain the services of a legal representative.

The Respondents averred that from the said correspondence it was clear that:

- (i) The Petitioner was served with a seven day notice to appear before the *ad hoc* Committee for the hearing;-
- (ii) The Petitioner was informed of the charges facing her and the particulars were adequate;
- (iii) The Petitioner was informed of her right to retain a legal representative;
- (iv) The Petitioner was informed of the reasons for the decline of her application for adjournment.

The Respondents further averred that it is incorrect for the Petitioner to allege that she was served with the list of charges on 21st May, 2015 when she appeared before the committee, as the letter dated 14th May, 2015 was clear that it contained an annexed list and particulars of the charges. Furthermore, that despite having said in her letter of 18th May 2015 that she was having exams and that she has a sick parent, the Petitioner managed to come for the committee hearing and participate the whole day.

According to the Respondents, the Petitioner was given time to cross examine the witnesses and she was availed copies of all documents presented by the witnesses. Further, that the Petitioner's lawyers were granted adjournments whenever the requested, which adjournments were particularized in the Respondent's replying affidavit. It was also averred that the committee adjourned several times so that committee members can attend to other house business, and the Petitioner cannot therefore be heard to say that she was not accorded enough time to prepare her case;

The Respondents also informed the Court that the records/ proceedings of the committee are being taken by video and hard copy Hansard and notes by the clerk. Further, that the Petitioner in her own affidavit attached proceedings of the *ad hoc* committee, and it is clear therefrom that she has been participating in the same.

It is the Respondents' stand that no tribunal is required for the removal of a member of County Public Service Board under section 58 of the County Government Act, and that Article 251(1) of the Constitution is referred to only for purpose of the grounds for removal. Further, that the removal is a parliamentary process where the *ad hoc* Committee investigating the conduct of the Petitioner will make recommendation, and it will be incumbent of the County Assembly to vote for and or against the recommendation.

In addition, that members of a committee must always be members of the County Assembly, and there is no provisions in any law that provide that a member of the County Assembly who has moved a motion or otherwise should not sit in the *ad hoc* committee.

The Submissions

This Court directed that the Petition be heard by way of written submissions. The Petitioner's Advocates, Kasyoka & Associates Advocates filed submissions dated 16th November 2015, while the submissions filed by the Respondents' Advocates, Kamende D.C. & Co Advocates, are dated 12th November 2015. The Petitioners submitted that the Respondents had contravened Article 50(1) of the Constitution, which provides that every person has the right to have any dispute that can be resolved by application of the law decided in a fair and public hearing before a court or another independent and impartial tribunal. Further, that the members of the *ad hoc* tribunal cannot be said to be independent nor impartial as they are members of the County Assembly of Machakos; and the motion for removal of the Petitioner was moved by a member of the County Assembly who is also a member of the *ad hoc* committee.

Therefore, that the *ad hoc* committee members would play a three-tier role in the removal of the Petitioner from office as they sat in the house during the motion for removal, they are also sitting in the *ad-hoc* committee to censor/investigate the Petitioner in the presence of the mover of the motion, and finally as they will sit in the county assembly and pass the motion for removal of the Petitioner. It was submitted that this is unconstitutional, and reliance was placed on the decision in **Stephen Nendela vs County Assembly of Bungoma, HC. Const. Petition No. 4 of 2014**, where it was held that a tribunal set up to investigate a member of county executive committee was improperly constituted because all the members were drawn from the County Assembly.

It was further submitted that no procedure has been laid down for removal of a member of the County Public Service Board under any statute, and that section 58 of the County Government Act only provides for the grounds for removal and refers to Article 251(1) of the Constitution. Further, that any rules of procedure for such removal contravene Article 50 of the Constitution with regard to impartiality of the investigative Tribunal and indeed the whole process. According to the Petitioner, the Respondents should have borrowed from Article 251(2) of the Constitution, with regard to the procedure and membership of a

tribunal for removal of a member of commission or holder of an independent office.

It was also contended by the Petitioner that it became apparent during the proceedings that some of the *ad-hoc* committee members were adversely mentioned, and were biased as they understood their mandate to be that of censoring the Petitioner. Further, that the Petitioner was not given adequate time to prepare as she received the letter informing her of the charges while on leave and while attending to exams and hospital issues, and she requested for adjournment on the first date which was declined.

The Petitioner also argued that that no witness statements or depositions were given to her before the trial, and that her advocates were also denied an adjournment on their first appearance when it was clear that they did not have copies of the proceedings at the time. The Petitioner in addition contended that the proceedings availed to her advocates are slovenly done and are not a proper record of a serious tribunal.

The Respondents on their part reiterated that section 58(5) of the County Governments Act 2012 provides for the removal of a member of the Public Service Board, and as such the Petitioner herein, and that the grounds thereof are enumerated in Article 251 of the Constitution. Therefore, that the procedure for removal would be akin to that under section 40(3) as read with subsections 5(b) and (6) of the County Governments At, 2012 and which procedure is also similar to the provided for by the 1st Respondent's standing orders.

Reliance was placed by the Respondents on the decision in **Bernard Muia Tom Kiala vs the Speaker of Machakos County Assembly & 4 others**, Machakos H.C Misc. Civil Application No. 113 of 2014, where the Court found that the Standing orders made pursuant to section 14 of the County Government Act regulate the procedure for the conduct of business of the Assembly, and that once there are standing orders in place, a party cannot be heard to say that he or she is insulated from impeachment process, and that they are being subjected to an unlawful process.

The Respondents urged this court to find that the process that is the subject of this Petition is an investigative procedure, and not removal proceedings. The Respondents reiterated the contents of its pleadings as to the Petitioner having been given notice of the charges against her, and that the proceedings of the *ad hoc* committee were conducted in compliance with the applicable law, rules and regulations. The Respondents submitted that the Petition had not met the standard for grant of the orders sought, as the Petitioner's pleadings do not disclose adequate particulars in support of her alleged cause of action/claim relating to the alleged violations of the constitution to enable this Court grant the reliefs sought.

It was further submitted in this regard that the Court has no jurisdiction to supervise constitutional bodies carrying out their mandate within the confines of the Constitution, and that the Petitioner's pleadings offend the doctrine of separation of powers as the same invite this Court to direct County Assemblies which are Legislative branches of Government on their procedures and how they ought to run their affairs.

Reliance was placed on Article 196(3) of the Constitution which provides that Parliament shall enact legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members. Further, that section 17 of the County Government Act provides that the national law regulating the powers and privileges and parliament shall with the necessary modifications apply to a County Assembly.

Lastly, it was submitted by the Respondents that the investigation for removal of a member of the County Public Service Board by an *ad hoc* Committee is not judicial or quasi-judicial, as the procedure thereof is not envisaged under any Article in the Constitution. Therefore, it is clear that Article 165(6) of the Constitution is not applicable herein. The Respondents cited various judicial authorities in support of their arguments, including that of the Court of Appeal in **Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 Others** (2013) eKLR and the decision in **Simon Wachira Kagiri vs County Assembly of Nyeri & 2 others** (2013) eKLR .

The Issues and Determination

I have read and carefully considered the pleadings and submissions made by the Petitioner and Respondents. There are four issues for determination:

1. Whether the procedure adopted by the Respondent in the removal of the Petitioner is lawful;
2. If so, whether this Court can interfere with the proceedings of the 1st Respondent's *ad hoc* committee investigating the Petitioner
3. If so, whether the said *ad hoc* committee has infringed on the Petitioner's rights to a fair trial;
4. Whether the Petitioner is entitled to the orders sought.

On the first issue, the Petitioner has advanced the position that a procedure akin to that provided in Article 251 as to the removal of members of independent Constitutional Commissions ought to have been applied by the Respondents, and a Tribunal set up to investigate her removal. It is my view that this position cannot lie for the reasons that a County Public Service Board is a statutory and not a constitutional body, and the appointment of the Secretary to a County Public Service Board and the procedure for the removal of such a Secretary is clearly set out of the County Government Act which is therefore the applicable law. Under section 58 of the Act the procedure of removal is as follows:

“The members of the Board may only be removed from office—

(a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and

(b) by a vote of not less than seventy five percent of all the members of the county assembly.”

The reference to Article 251(1) of the Constitution is for the grounds for removal, and Article 251(2) which provides for the procedure of removal of members of constitutional Commissions is not referred to or applied. Article 251(1) provides that a member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office only for a serious violation of the Constitution or any other law, including a contravention of Chapter Six; gross misconduct, whether in the performance of the member's or office holder's functions or otherwise; physical or mental incapacity to perform the functions of office; incompetence; and/or bankruptcy.

The applicable law therefore requires the reason for removal to be within the parameters set by article 251(1). I have perused the letter dated 14th May 2015 sent to the Petitioner informing her of a motion to remove her from office and attaching grounds and particulars thereof. The said detailed out the particulars for the alleged grounds for removal which were gross violation of the Constitution; gross violation of various Acts of Parliament including the County Government Act No. 17 of 2012, the Public Officers Act and the Leadership and Integrity Act No 19 of 2012; gross misconduct including abuse of office; and incompetence.

The grounds cited therefore fall within the parameters set out for the Petitioner's removal, and at this stage it is for the 1st Respondent to decide whether the same are merited or not.

The 1st Respondent in making this decision is required under section 58 (5) of the County Government Act to do so by a majority vote of all members of the Assembly. Section 20 of the Act provides as follows as regards the voting procedures in County Assemblies:

“(1) Except as otherwise provided in the Constitution, in this Act or in other legislation, any question proposed for decision by the county assembly shall be determined by a majority of the members of the county assembly present and voting.

(2) On a question proposed for decision by a county assembly—

(a) the speaker of the county assembly has no vote; and

(b) in the case of a tie, the question is lost.

(3) A member of a county assembly shall—

(a) at all times observe the principles of integrity including those set out in Chapter Six of the Constitution; and

(b) promptly declare to the speaker any interest that the member has in any matter being discussed in the county assembly.

(4) A member of a county assembly shall not vote on any question in which the member has a pecuniary interest.”

No evidence was brought by the Petitioner as to whether the said vote has been taken by the 1st Respondent. To the extent therefore that no voting has been done on the motion for the Petitioner’s removal, then the Petitioner’s petition herein is premature and speculative as this Court cannot at this stage determine if the correct procedure will be followed by the 1st Respondent.

The Petitioner in addition has in this respect urged that the procedure that the 1st Respondent has adopted of appointing an *ad hoc* committee to investigate the allegations made against her is unlawful and unknown in law. The Respondents in answer relied on section 14 of the County Government Act which provides as follows:

“(1) A county assembly—

(a) may make standing orders consistent with the Constitution and this Act regulating the procedure of the county assembly including, in particular, orders for the proper conduct of proceedings; and

(b) subject to standing orders made under paragraph (a), may establish committees in such manner and for such general or special purposes it considers fit, and regulate the procedure of any committee so established.”

The 1st Respondent provided a copy of its Standing Orders that were adopted by it on 9th July 2014, and which were attached to its replying affidavit and marked as exhibit “BMM-A”. Upon perusal, I note that Part XXI of the Standing Orders is dedicated to select committees and specifically provides under Standing Orders 153 up to 170 for the selection of select committee and proceedings before the said committees.

Part XIII also provides for procedure for removal from State office, and Standing Order 63 in particular provides for the right to be heard whenever the Constitution, any written law or the standing orders require the 1st Respondent to consider a petition or proposal for the removal of a state officer.

It is thus the finding of this Court that to the extent that the *ad hoc* committee established by the Respondents has its foundation in the aforementioned statutory provisions and Standing Orders, the said committee and the proceedings therein are accordingly provided by law and are therefore lawful.

Can this Court therefore interfere with the proceedings of the *ad hoc* committee? The Respondents have relied on the doctrine of separation of powers to argue that the investigation for removal of a member of the County Public Service Board is within the mandate of the County Assembly and not the Courts. There are indeed occasions when insisting upon the application of the rule of law would cause, or risk causing the Judiciary to interfere with the proper operations of Parliament and County Assemblies. The claims of the rule of law must therefore be balanced against the competing claims of other principles including that of the separation of powers.

This Court is mindful of the fact that privilege attaches to those matters which, either because they are part of proceedings in Parliament and County Assemblies, or because they are necessarily connected to those proceedings, are subject to Parliament's and/or the County Assembly's sole jurisdiction or "exclusive cognisance". I am also mindful of the provisions of the Constitution under Article 117(2) where it is provided that Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of and members. Section 12 of the National Assembly (Powers & Privileges) Act further provides in this regard that no proceedings or decision of the Assembly or the Committee of Privileges shall be questioned in any court.

These provisions also apply to County assemblies by virtue of section 17 of the County Government Act, which provides that the national law regulating the powers and privileges of Parliament shall, with the necessary modifications, apply to a county assembly. In addition, Standing Order 171 of the 1st Respondents Standing Orders also provides that committees shall enjoy and exercise all the powers and privileges bestowed upon the 1st Respondent by the Constitution and statute.

The possibility of tension arising between these provisions on parliamentary privilege and the application of the rule of law is real and does exist, and when confronted with such situations, it is the settled position the claims by Parliament and County Assemblies to exclusive cognisance should be strictly limited to those areas where immunity from normal legal oversight is necessary, in order to safeguard the effective functioning of the two institutions.

The Supreme Court of Canada in this regard in the case of **Canada (House of Commons) v. Vaid [2005] 1 SCR 667** provided a "doctrine of necessity" in explaining the areas where Courts should exercise restraint as regards parliamentary and County assembly proceedings as follows:

"If the existence and scope of a privilege have not been authoritatively established, the court will be required to test the claim against the doctrine of necessity—the foundation of all parliamentary privilege. In such a case, in order to sustain a claim of privilege, the assembly ... must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account,"

The restraint by the Courts to interfere with the workings of Parliament and County Assemblies on account of their mandate and privilege has also been expressed in various Kenyan judicial decisions. In **Okiya Omtatah Okoiti & 3 others v Attorney General & 5 others [2014] eKLR** it was expressed by a 3-judge bench of this Court (Lenaola J., Ngugi J., and KorirJ.) as follows;

"Where then does our finding leave the issue of parliamentary privilege as provided by Article 117(1) of the Constitution and elaborated upon in statute by Section 12 of the National Assembly (Privileges and Immunities) Act? Article 94 of the Constitution stipulates the role of Parliament whereas Article 95 provides the role of the National Assembly. The role of the Senate is found in Article 96. A perusal of the Constitution in its entirety clearly shows that Parliament has a major role in running the affairs of this country. In order for Parliament to operate effectively, there is need to ensure that there is free debate on the floors of the two houses. That is where the immunity of parliamentary debate comes in.

56. Our view is that Members of Parliament can debate anything under the sun. The freedom of speech in this respect is unlimited except by the Standing Orders which are made by Parliament. We are therefore persuaded by the decision in the Canadian case of *Canada (House of Commons) v. Vaid* [2005] 1S.C.R. where at paragraph 42 the importance of parliamentary privilege as stated in the British Joint Commission Report is captured in the following words:-

“Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.”

57. In our view, Members of Parliament should not look over their shoulders when conducting debates in Parliament. They must express their opinions without any fear. The Court should be hesitant to interfere, except in very clear circumstances, in matters that are before the two Houses of Parliament and even those before the county assemblies. It is, however, the mandate of this Court to check the constitutionality of the resolutions and statutes made by the legislature. In the case before us, a resolution has been made and we have a duty to interrogate the constitutionality of that resolution.

58. In holding as above, we are in agreement with the decision of this Court in *Petition No.496 of 2013, Commission for the Implementation of the Constitution -v- The National Assembly of Kenya & 2 Others* (supra) where the Court stated that while the High Court has powers to overturn certain resolutions of Parliament, it must restrain itself in *“not trespassing onto that part of the legislative field which has been reserved by the Constitution, and for good reasons, to the legislature”*. (See also *National Coalition for Gay and Lesbian Equality & Others 13 Others, Case CCT. No.10/99*.)”

Likewise, the Court of Appeal (*Okwengu, GBM Kariuki, & Mohamed JJA*) has recently in *Martin Nyaga Wambora v County Assembly of Embu & 37 others* [2015] eKLR held as follows particularly with respect to the exercise of County Assemblies powers on the removal of state officers:

“For instance in Nyeri Civil appeal No 21 of 2014, the court dealt with the question of the interpretation of Article 181 of the Constitution and section 33 of the County Government Act and expressed itself succinctly as follows:

‘31. Our reading and interpretation of Article 181 of the Constitution as read with section 33 of the County Government’s Act shows that removal of a Governor is a constitutional and political process; it is a sui generis process that is quasi-judicial in nature and the rules of natural justice and fair administrative action must be observed. The impeachment architecture in Article 181 of the Constitution reveals that removal of a Governor is not about criminality or culpability but is about accountability, political governance as well as policy and political responsibility. Section 33 of the County Governments Act provides for the procedure of removal of an erring Governor. The organ vested with the mandate at first instance to move a motion for the removal of a County Governor is the County Assembly. Neither the Courts nor the Senate have the constitutional mandate to move a motion for the removal of a County Governor. The Senate’s constitutional mandate to hear charges against a Governor is activated upon receipt of a resolution of the County Assembly to remove a Governor. Upon receipt of such a resolution, the Senate shall convene a meeting to hear the charges against the Governor and may appoint a Special Committee to investigate the matter. It is our considered view that the jurisdiction and process of removal of a Governor from office is hierarchical and sequential in nature. There are three sequential steps to be followed: first is initiation of a motion to remove the Governor by a member of the County Assembly; second there is consideration of the motion and a resolution by two thirds of all members of the County Assembly and third, the Speaker of the County Assembly

is to forward the County Assembly's resolution to the Senate for hearing of the charges against the Governor.'

[33] In my view the above is a clear exposition of the law in regard to the application of Article 181 and section 33 of the County Government Act in the removal of a County Governor. The process of removal lies entirely with the County Assembly wherein it is initiated, and the Senate wherein it is concluded. The court may only come in where necessary to confirm that the process has been properly followed as laid down in the Constitution and the Statute."

Applying the above principles and decisions, it is my finding that the matter that is before this Court is at the stage of discussion before a County Assembly committee and therefore subject to parliamentary privilege, and is not ripe enough for determination or interference by this Court. A determination of the two remaining issues therefore becomes moot as this Court cannot at this stage interfere with the proceedings in the *ad hoc* committee, and cannot thereby grant the Petitioner the reliefs she seeks.

The Petitioner's petition therefore fails for the foregoing reasons and each party shall bear their respective costs of the Petition. The interim conservatory orders issued herein on 26th June 2015 are accordingly also discharged.

Orders accordingly.

Dated, Signed, and Delivered at Machakos this 4th day of February 2016

P. NYAMWEYA

JUDGE