



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTION AND HUMAN RIGHTS DIVISION**

**PETITION NO. 51 OF 2014**

**BETWEEN**

**HON. MARTIN NYAGA WAMBORA ..... 1<sup>ST</sup> PETITIONER**

**THE COUNTY GOVERNMENT OF EMBU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE SPEAKER OF THE SENATE ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. I am satisfied that the matter herein is urgent and it is certified as such. The issue is whether I should grant interim relief to restrain the Senate from proceeding with the business of commencement of the impeachment of the sitting Governor of Embu. I am alive and indeed it has been demonstrated that the proceedings at the Embu County Assembly were carried out in total disregard of specific orders of the High Court issued in *Embu Petition No. 1 of 2014 (Hon Martin Nyaga Wambora & County Government of Embu v The Speaker, County Assembly of Embu and Others)*. The orders were issued on 23<sup>rd</sup> January 2014 by Githua J., sitting in Kerugoya and according to the material before me, served on the County Assembly which despite the order proceeded to commence impeachment proceedings.
2. The Court is now called upon once again to intervene. I am aware of the doctrine of separation of powers which demands that the judiciary show deference to the legislature on certain matters. *Re Matter of the Interim Independent Electoral Commission, SCK Constitutional Application No. 2 of 2011 [2011]eKLR* and *Mumo Matemu v Trusted Society of Human Rights Alliance and 5 Others CA Civil Appeal No. 290 of 2012 [2013]eKLR*. However, every State Organ including the Legislature is subject to the Constitution and the final arbiter of the Constitution is the High Court and the appellate courts. The High Court has wide jurisdiction under **Article 165** including jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of:-
  - i. The question whether any law is inconsistent with or in contravention of the Constitution;
  - ii. The question whether anything said or done under authority of this Constitution or of any law is inconsistent with or in contravention of this constitution;
  - iii. Any matter relating to the Constitution powers of state organs in respect of county governments

and any matter relating to the constitutional relationship between levels of Government.

3. I have set out these provisions to ascertain and assure myself that I have jurisdiction to interfere with the act of impeachment of a Governor at this stage as the matter is within **Article 165** for the following reasons (i) as the petitioners contention is that the acts complained of and impugned violate the Constitution (ii) that the act of impeachment constitutes “*anything said and done under authority of the Constitution ...*” which is alleged to be a contravention of the Constitution and (iii) that it is a matter relating to Constitutional powers of State Organs, in this case the Senate and County Government, that is the Governor on one hand and the County Assembly on the other. In all these cases the court is the final arbiter of the nature and extent of these relationships and indeed must have the right to finally pronounce on the application of the doctrine of separation of powers in this respect.
4. Although I have not had the benefit of contrary arguments, I am satisfied that I have jurisdiction to proceed and determine whether I should issue conservatory orders. The purpose of the conservatory order herein is to preserve the dignity of the Court and the rule of law. The court in Kerugoya issued an order that cannot be wished away. It was a solemn pronouncement of a Court of law and I believe that any step taken to undermine it must be stopped in its tracks. The fact that the doctrine of separation of powers may be waved in the face of the Court or asserted does not divest the High Court of its jurisdiction to adjudicate on matter brought before it, to accede to a contrary proposition is to undermine the premise upon which the legal system is founded, that is the respect of the court and its processes.
5. In the circumstances and in the eyes of this court, the impeachment process may be tainted. The petitioner risks being denied the opportunity to ventilate his grievance in the Halls of Justice, in accordance with a right which the Constitution itself grants and secures.
6. After the County Assembly completed its sitting of 28<sup>th</sup> January 2014 and approved a motion to remove from office by impeachment the Governor and Deputy Governor of Embu County, it forwarded the resolution to the Speaker of the Senate pursuant to **section 33(2)** of the **County Governments Act, 2012**. The Speaker of the Senate has now issued **Gazette Notice No. 627** dated 31<sup>st</sup> January 2014 calling for a Special Sitting of the Senate for purpose of transacting inter alia business concerning the hearing of charges against Mr Martin Wambora Nyaga and Ms Dorothy Nditi Muchungu, the Governor and Deputy Governor of Embu County respectively. The legislative sitting is supposed to commence on 4<sup>th</sup> February 2014.
7. The petitioner avers that he has only received the notice today, 3<sup>rd</sup> February 2014 in the afternoon. He is apprehensive that should the proceedings commence his rights and the Constitution will be violated further.
8. In order to protect the petitioner’s rights and in particular his undoubted constitutional right to approach the court and further, in order to maintain dignity of the court process, I make the following orders;
  1. **The Notice of Motion dated 3<sup>rd</sup> February 2014 be and is hereby certified as urgent and service thereof dispensed with in the first instance.**
  2. **A conservatory order be and is hereby issued restraining the 1<sup>st</sup> respondent from introducing discussing, sitting or otherwise deliberating the impeachment of the 1<sup>st</sup> petitioner based on the resolution forwarded by the Embu County Assembly until further orders of the Court.**
  3. **The Respondent shall be served with the application, petition the petition for hearing and further directions/orders on 4<sup>th</sup> February 2014 at 10.00 am.**

**DATED and DELIVERED at NAIROBI this 3<sup>rd</sup> day of February 2014**

**D.S. MAJANJA**

**JUDGE**