



**Omweno & 3 others v Governor, County Government of Kakamega  
& 4 others; Wanyama & another (Interested Parties) (Petition  
E008 of 2023) [2024] KEELRC 1384 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1384 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
PETITION E008 OF 2023**

**JW KELL, J**

**JUNE 6, 2024**

**IN THE MATTER OF ARTICLES 1,2,3,10,19,20,22,47, 48, 50,73,159,160,165,  
181, 234(2) (1), 236, 251(1) & 259 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF SECTIONS 58(5), 59 AND 77 OF  
THE COUNTY GOVERNMENTS ACT, NO. 17 OF 2012**

**AND**

**IN THE MATTER OF AN ILLEGAL, IRREGULAR, UNJUST, SELECTIVE AND OR  
DISCRIMINATORY DECISION, RECOMMENDATION AND OR RESOLUTION OF  
THE COUNTY ASSEMBLY OF KAKAMEGA VIDE ITS PURPORTED ASSEMBLY  
PROCEEDINGS ON 14/1/12/2023 TO REMOVE FROM OFFICE ;(1) MRS CATHERINE  
RAINI OMWENO; 2). MR. STANLEY AMWAYI WERE; 3). DR. RALPH WANGATIA  
IMMAM; & 4). MR. JOEL ANYERA OMUKOKO FROM OFFICE AS CHAIRPERSON AND  
MEMBERS OF THE KAKAMEGA COUNTY PUBLIC SERVICE BOARD RESPECTIVELY**

**BETWEEN**

**CATHERINE RAINI OMWENO ..... 1<sup>ST</sup> PETITIONER  
STANLEY AMWAYI WERE ..... 2<sup>ND</sup> PETITIONER  
RALPH WANGATIA IMMAM ..... 3<sup>RD</sup> PETITIONER  
JOEL ANYERA OMUKOKO ..... 4<sup>TH</sup> PETITIONER**

**AND**

**GOVERNOR, COUNTY GOVERNMENT OF KAKAMEGA .. 1<sup>ST</sup> RESPONDENT  
COUNTY ASSEMBLY OF KAKAMEGA ..... 2<sup>ND</sup> RESPONDENT  
COUNTY GOVERNMENT OF KAKAMEGA ..... 3<sup>RD</sup> RESPONDENT**



DENNIS DUNCAN MUHANDIA ..... 4<sup>TH</sup> RESPONDENT  
COUNTY SECRETARY ..... 5<sup>TH</sup> RESPONDENT

AND

JOHN AMBROSE WANYAMA ..... INTERESTED PARTY  
SILVIA AMBROSE OTUNGA ..... INTERESTED PARTY

## JUDGMENT

1. The Petitioners alleged that the decision arising from the Kakamega County Assembly's proceedings of 14/12/2023 to remove them from office was illegal, irregular, unjust, selective, and/ or discriminatory and unconstitutional vide Petition dated 19<sup>th</sup> December 2023 and received in court on the 20<sup>th</sup> December 2023 under certificate of urgency which had been accompanied by an already determined application and supporting affidavit of an even date, seeking remedies under Article 23 (3) of the Constitution for inter alia: -
  - a. A declaration that the findings and recommendations of the 2<sup>nd</sup> Respondent's Committee on Public Service and County Administration dated 11/12/2023 and as supersessionally adopted and/or passed and purportedly executed by the said 2<sup>nd</sup> Respondent vide its letters of 15/12/2023 to the Petitioners and served upon the Petitioners on 19/12/2023 technically, substantively and legally amounted to usurping exclusive powers an independent constitutional organ and or entity and in contravention of the Constitution, the County Governments Act and the Employment Act and in the premises unconstitutional, illegal, null and void and of no legal consequence at all.
  - b. A declaration that the Resolution, Decision and or Directive by the 2<sup>nd</sup> Respondent made on 14/12/2023 and or as contained in its letters of 15/12/2023 to the petitioners or any other date pursuant to the findings of the select committee date 11/12/2023 were in contravention of the Constitution, The County Governments Act and the Employment Act and therefore unconstitutional, illegal, null and void and of no legal consequence at all.
  - c. A declaration that the Respondents are jointly and or severally in violation of the principles of natural justice and in violation of the petitioners' rights as guaranteed under Articles 27,28,35,37,41,47 and 50 and contrary to Article 236 of the Constitution.
  - d. A declaration that the proceedings before the Committee on Public Service and County Administration of the 2<sup>nd</sup> Respondent and the motions for adoption of the said findings and or recommendations thereof as contained in the said report dated 11/12/2023 of the said committee were made in error, deliberate ignorance, contravention of the rules of natural justice and therefore illegal, null and void.
  - e. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 5<sup>th</sup> Respondents' purported summary dismissal of the petitioners herein albeit on the basis of reliance on the purported communication from the 2<sup>nd</sup> Respondent in its letters of 15/12/2023 delivered to the petitioners on 19/12/0223 purporting to remove them from office and purportedly subsequent to the alleged proceedings before the Committee on Public Service and County Administration of the 2<sup>nd</sup> Respondent and the Motions for adoption of the finding and or recommendations thereof as contained in the said Report dated 11/12/2023 of the said Committee amounted to usurping the discretionary



powers of the 1<sup>st</sup> respondent and in the premise unconstitutional, illegal, null and void and of no legal consequences at all.

- f. A declaration that the petitioners' rights to a fair termination of service under S.45 of the [Employment Act](#) were violated.
  - g. An order of Certiorari to remove from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents into the Honourable Court to quash the decision and or recommendations of the 2<sup>nd</sup> Respondent's Committee on Public Service and County Administration as contained in its Report dated 11/12/2023 and its subsequent adoption and recommendations made on 14/12/2023 by and as purportedly communicated by the said 2<sup>nd</sup> Respondent vide its letters dated 15/12/2023 and delivered to the Petitioners on 19/12/2023 purporting to remove the Petitioners from office be and is hereby issued and of made.
  - h. Permanent conservatory orders against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents herein restraining and or prohibiting them and or their authorized representative from proceeding on account of the illegal, irregular, unprocedural and ultra vires recommendation by the 2<sup>nd</sup> Respondent on 14/12/2023 as contained in its letters of 15/12/2023 purporting to remove the Petitioners from office as Chairperson and Members of the Kakamega County Public Service Board and further permanently staying the purported and ultra vires decision of the Respondents herein purporting to summarily dismiss the Petitioners vide their advertisements as appearing in the local dailies.
  - i. A permanent conservatory order and or injunction do issue to restrain the Respondents, their agents and or anyone claiming under them from removing the petitioners from office based on the findings contained in the 2<sup>nd</sup> Respondent's Committee on Public Service and County Administration Report dated 11/12/2023 and or the 2<sup>nd</sup> Respondents recommendation of 14/12/2023, further restraining any advertising as vacant and or recruiting any person as chairperson and member of the Kakamega County Public Service Board on any basis until their Petitioners terms are served.
  - j. General and exemplary damages for violations hereinabove complained of be made to the petitioners.
  - k. Costs of the Petition.
2. The Petition was supported by the grounds on the face of the petition; the supporting affidavit of the petitioners of even date; and the verifying affidavit to the Petition sworn by all the Petitioners.
  3. The certificate of urgency was considered by my Brother Judge Radido during the recess who by Order dated 21<sup>st</sup> December 2023 issued a temporary interdict stopping the replacement of the petitioners and recruitment of new members to replace them and directed the parties to appear before the court on 25<sup>th</sup> January 2024 for hearing directions on the Notice of Motion Application and Petition. The court record thus comprised the said record before Judge Radido and was transmitted to the court by email then.
  4. The petition was opposed. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents on 1<sup>st</sup> February 2024 filed a joint replying affidavit sworn by Lawrence Angolo Omuhaka the 5<sup>th</sup> Respondent on the 26<sup>th</sup> January 2024. Subsequently, on 11<sup>th</sup> March 2024, they filed a supplementary replying affidavit sworn by same deponent on 9<sup>th</sup> March 2024.



5. The 2<sup>nd</sup> Respondent on 10<sup>th</sup> January 2024 filed a Replying affidavit sworn by Hon. James Namatsi (the Speaker) on 8<sup>th</sup> January 2024, who later on 29<sup>th</sup> January 2024 filed a further affidavit dated on an even date.
6. The 4<sup>th</sup> respondent on 10<sup>th</sup> January 2024 filed a Replying affidavit sworn on 5<sup>th</sup> January 2024.
7. The 2<sup>nd</sup> Interested party on 9<sup>th</sup> February 2024 filed submissions dated 8<sup>th</sup> February 2024 in support of the petition.
8. There was no appearance by the 1<sup>st</sup> interested party.

### Written Submissions

9. The court directed that the Petition be canvassed by way of written submissions. The Petitioners' written submissions drawn by Nyikuli Shifwoka & Company Advocates were dated 26<sup>th</sup> March 2024 and received in court on 28<sup>th</sup> March 2024. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents' written submissions drawn by Lutta & Company Advocates were dated 11<sup>th</sup> April 2024 and received in court on an even date. The 2<sup>nd</sup> Respondent's written submissions drawn by Okong'o, Wandago & Company Advocates were dated 3<sup>rd</sup> April 2024 and received in court on an even date. The 4<sup>th</sup> Respondent's written submissions drawn by Agnes Awuor, Advocate were dated 12<sup>th</sup> April 2024 and received in court on an even date.
10. The 2<sup>nd</sup> Interested party filed written submissions dated 8<sup>th</sup> February 2024 in support of the Petition.

### Authorities Relied on by Parties

11. The Petitioners in support of their petition relied on the following authorities which the court perused:- Hezekiah Oira v Patrick Quarcoo (2017)eKLR; Mugo Mungai & 4 others v Official receiver & Provisional Liquidator (Capital Finance Limited and Pioneer) & 2 others)(2019)eKLR; Satrose Ayuma & 11 others v Registered Trustees of Kenya Railway staff retirements Benefits Scheme(2011); Patrick Musimba v the National Land Commission and 4 others HCCP 613 OF 2014; Stephen Nendela v County Assembly of Bungoma & 4 others (2014) eKLR; and Francis Omondi Okonya v National Police Service Commission(2016)eKLR.
12. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents relied on the following's decisions in their submissions which the court perused:- Anarita Karimi Njeru v Republic (1976-1980); Mumo Matemu v Trusted Society of Human Rights Alliance & 5others (2013) eKLR; Mike Sonko v County Assembly of Nairobi City & 11 others (petition 11(E008 of 2022); County Government of Nyeri V Cecilia Wangechi Ndungu (2015) eKLR; and the [Institute of Social Accountability & Another v National Assembly of Kenya & 3others SC Petition 1 of 2018](#).
13. The 2<sup>nd</sup> Respondent relied on the following decisions which the court perused:- [Kioko v Clerk, Nairobi City County Assembly & 11 others, Civil Appeal No. E425 OF 2021](#)2022; United Millers Limited V Kenya Bureau of Standards, Director, Directorate of Criminal Investigations & 5 others (2021)eKLR; Albert Chaurembo Mumba & 7 others v Maurice Munyao & 143 others (2019)eKLR; Secretary, County Public Service Board & other v Hulbhai Gedi Abdille(2017)eKLR; [The Clerk, Nakuru County, The Clerk, Nakuru County, the Speaker Nakuru County Assembly & 3 others V Odongo & 7 others \(Civil Appeal E136 of 2022](#)(consolidated); Justus Kariuki Mate & Another v Martin Nyaga Wambora & Another(2017)eKLR; and Sonko v County Assembly of Nairobi City & 11 others(petition 11(E008 of 2022)
14. The 4<sup>th</sup> Respondent relied on the following authorities:- Secretary, County Public Service Board & other v Hulbhai Gedi Abdille(2017)eKLR; Republic v Migori County Secretary & Another; Migori



County public Service Board(Interested party); Ngwala & 8 others (Exparte Applicants) (Judicial Review E013 of 2022); The Clerk, Nakuru County, *the Speaker Nakuru County Assembly & 3 others V Odongo & 7 others (Civil Appeal E136 of 2022*(consolidated); Catherine Gathoni Otenyo v Governor, County Government of Kakamega & 3 others(2022)eKLR; Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others(2015)eKLR; Mui Coal Bain Local Community & 15 others v Permanent Secretary, Ministry of Energy & 17 others (2015) eKLR; Director of Planning & Architecture, County Government of Mombasa v Makupa Transit Shade Limited(2019)eKLR; Justus Kariuki Mate & Another v Martin Nyaga Wambora & another(2017)eKLR; and Sonko v County Assembly of Nairobi City & 11 others(petition 11(E008 of 2022);

15. The court took notice of the contents of the authorities cited by the parties some of which had been considered in the application as relates to the doctrine of exhaustion under the Public Service Commission.

### **Highlighting of Submissions**

16. On April 15, 2024, the court accepted the request by the parties to highlight their written submissions. Parties highlighted their submissions on 30<sup>th</sup> April 2024.

### **Background to the Petition**

17. A petition was on 12<sup>th</sup> October 2023 submitted by the 4<sup>th</sup> Respondent to the Clerk of the County Assembly seeking the removal of the petitioners and the interested parties herein, the 1<sup>st</sup> petitioner as the Chairperson and the rest of them as members of the Kakamega County Public Service Board on alleged violation of *the Constitution*, conflict of interest, incompetence and abuse of office (2<sup>nd</sup> Respondent's JWN 1).
18. The Speaker of the Assembly was notified of the Petition under petitions to County Assemblies (Procedure) Act and Standing orders 215-219 of the Assembly Standing orders (JWN 2), who informed the members of the County Assembly on 17<sup>th</sup> October 2023 during the House Business Committee.
19. On 19<sup>th</sup> October 2023, pursuant to standing order 219, the Petition was committed to the Public Service and County Administration Committee (JWN 3). The Assembly Committee on 10<sup>th</sup> November 2023 notified the 4<sup>th</sup> Respondent (JWN4) to file further evidence and the Petitioners and the interested parties conversely notified of the petition on 20<sup>th</sup> November 2023(JWN 5a, b, c, d). The public was also invited to the scheduled hearing of the petition on 22<sup>nd</sup> November 2023(JWN-7).
20. The assembly petition dated 6<sup>th</sup> October 2023 and the affidavit sworn by the 4<sup>th</sup> Respondent on 20<sup>th</sup> November 2023, were availed to the petitioners and interested parties through letters individually addressed to them on 20<sup>th</sup> November 2023 requiring them to respond by 27<sup>th</sup> November 2023, a period extended on the petitioners and interested parties' application to 29<sup>th</sup> November 2023(JWN 8A a and b & JWN 8B). They filed their respective responses (JWN8).
21. The Speaker averred in his affidavit that the hearing was conducted from 4<sup>th</sup> December to 7<sup>th</sup> December 2023 and the Assembly Committee wrote its report dated 11<sup>th</sup> December 2023(JWN9) recommending the removal of the petitioners. A hearing was scheduled and a hearing notice was sent to the petitioners and the interested parties vide WhatsApp on 11<sup>th</sup> December 2023 and through the Parties' advocates' email. A copy of the Report was shared with the parties.
22. The speaker of the County Assembly convened its sittings on 14<sup>th</sup> December 2023 to debate, hear and determine the proposals in the Report. The petitioners and the Interested parties were heard and they



defended themselves on 14<sup>th</sup> December 2023 before the County Assembly, after which the report was put to a vote by members of the County Assembly who resolved to remove the petitioners from office. The Interested Parties survived the removal bid as the 75% threshold required under Section 58(5) of the County Governments Act was never met.

23. The removal decision dated 14<sup>th</sup> December 2023 was communicated to the petitioners through the letters dated 15<sup>th</sup> December 2023(JWN 10 a, b, c and d). and an advert notifying the public of the Petitioners' removal from office was published in the local dailies and later withdrawn (JWN 12).
24. It is the proceedings before the County Assembly's Committee and before the Assembly as outlined from the affidavit of Hon. Namasti and the subsequent advertisement of the Petitioners' positions that are subject of the present Petition, with the Petitioners alleging that they were denied a fair chance and opportunity to be heard.
25. The Petitioners argued that the 2<sup>nd</sup> Respondent acted ultra vires in their removal and the evidence presented before the assembly controverted the allegations levelled against them by the 4<sup>th</sup> Respondent.
26. The Petitioners further allege that the acting Clerk of the 2<sup>nd</sup> respondent acted beyond their power in writing letters on the petitioner's removal which is a reserve of the Speaker.
27. The petitioners further alleged that the documents produced before the assembly by the 4<sup>th</sup> Respondent violated the provisions of the Evidence Act on admissibility.
28. The Petitioners allege that their removal from office contravened Articles 27, 28, 35, 47, 48 and 236 of the Constitution for having been procedurally and substantively biased, discriminatory, in dignifying, suppressing their right to access to information, administratively unfair contrary to the ideal of fair trial and hearing and geared towards taking adverse action on public servants for doing and or carrying out their mandate. They also alleged failure to be accorded sufficient time before the assembly.
29. The Petitioners further averred in their supporting affidavit that the report of the Assembly's committee was unlawful having been affirmed by strangers.
30. The 2<sup>nd</sup> Interested party in his submissions addressed the court on the jurisdictional capacity of the court to address the petition that raised constitutional breaches on the actions or inactions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents during and after the impeachment of the members of the County Public Service Board.
31. The Respondents opposed the petition affirming that the procedural aspects required by the Standing orders of the Assembly were followed in the Proceedings before the County Assembly's committee; and asked the court to exercise caution not to interfere with the decision of the 2<sup>nd</sup> Respondent based on the doctrine of separation of powers.

### **Summary of Submissions by the Parties**

#### **Petitioner's submissions by Mr. Shifwoka Advocate**

32. The petitioners relied on their Petition dated 19<sup>th</sup> December 2023 together with supporting affidavit by the petitioners of even date and the documents. Counsel highlighted the written submissions dated 26<sup>th</sup> March 2024 in summary as below:-
33. The Petitioners submitted there was violation of Section 35 of the Evidence Act to wit:-
  35. Admissibility of documentary evidence as to facts in issue.



- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the 2. either—
- (i) had personal knowledge of the matters dealt with by the statement; or
  - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and (b) if the maker of the statement is called as a witness in the proceedings: Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or cannot be found, or is incapable of giving evidence, or if his attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable”.

34. Third parties did not certify the documents produced by the 4<sup>th</sup> Respondent before the Committee nor were the makers called as witnesses before the Committee.
35. The Petitioners further submitted that they were profiled by the county assembly members isolating two members to remain from the report. The committee report was on the entire board to be removed. The petitioners submitted that the committee report was to be rejected or accepted as a whole.
36. The petitioners submitted that the Report was signed by a non-member of the committee Hon. Makhanu. Hon. Philip Maina a member of the committee never signed the report. They relied on the decision in Stephen Nendela v County Assembly of Bungoma on variance committee members. The petitioner submitted that the committee members voted at the assembly hence conflicted having participated in making the report. The assembly had no mandate to remove the petitioners.
37. The petitioners submitted there was no fair hearing as they sought and were denied documents by Committee. That the Hansard of the committee having not been produced gave credence to their assertion that the committee proceedings were a sham. There was no record of any witness testifying before the committee and the only evidence of what transpired before the committee was as per account of the petitioners and the interested party’s hence undisputed.
38. The petitioners submitted that all documents were obtained in contravention of the law. The documents before the committee were sought by the Assembly clerk for the 4<sup>th</sup> Respondent (petitioner before the Assembly) who presented them before the committee. That the production of the documents did not comply with the provisions of sections 107, 108, 109, 80,81, and 83 of the *Evidence Act*. That the documents relied on did not comply with the provisions of the Oath and Statutory Declarations Act as purported in the affidavit dated 20<sup>th</sup> November 2023 by the 4<sup>th</sup> Respondent.



39. That the documents at the Assembly committee did not establish any of the grounds under Article 251 (1) of the Constitution. Counsel submitted that this was admitted by the 4<sup>th</sup> respondent at cross-examination.
40. That the report before the assembly was different from the report filed by the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondent and that the one by 2<sup>nd</sup> respondent was edited.
41. That the act of advertising the positions at midnight was a prima facie evidence of pre- determined outcome hence no fairness of procedure.

## **2<sup>nd</sup> Interested Party's Submissions**

42. Mr. Mirieri, Advocate informed the court his client associated himself with the submissions of the petitioners.

## **1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents' submissions by Mr.Lutta**

43. Mr. Lutta submitted that the Petitioners were granted an opportunity to be heard.
44. Counsel relied on paragraph 7 of the Replying affidavit of Catherine Raini Omweno on Notification by Assembly of the report.
45. Counsel submitted that the constitution of the Committee was not challenged by the petitioner at the Hearing of the Petition before the Assembly Committee.
46. That there was no prayer asking the court to quash the petition or declare it illegal and that the petition remained in place. Counsel then asked what would happen to the petition. He contended that the Orders sought would be in vain.
47. Counsel submitted that the Evidence Act was not applicable in proceedings before the County Assembly. He referred court to Paragraphs 66 and 67 of their submissions.
48. Counsel asked Court to look into the affidavit of the 5<sup>th</sup> Respondent of 9<sup>th</sup> March 2024, which he said was not responded to attaching Hansard of 14<sup>th</sup> December 2023. That Hansard demonstrates no party or counsel objected on time to be heard (3 days) or that rules of natural justice were not complied with or they were unfairly treated. Those issues appeared for the first time in court.
49. Counsel referred to pages 50-52 of the Hansard on remarks by the Petitioner's counsel. Mr. Lutta submitted that the issues in the petition ought to have been raised before the Speaker. That from the foregoing, the petition was an afterthought.
50. Mr. Lutta contended that no material was before the court that the petitioners could have produced before the Assembly. Page 50-52 of the Hansard was to effect that the Petitioner was given the invitation to appear before the house on 11<sup>th</sup> December 2023 at 5 pm. The petitioners confirmed they received a WhatsApp notice and the hearing occurred on the 14<sup>th</sup>. Before the Assembly the petitioners did not raise the issue of Notice.
51. Mr. Lutta referred to Paragraphs 8-10- of Affidavit of the 5<sup>th</sup> Respondent and page 51 of Hansard. He submitted that the issue of variance of members who signed the report of the committee was not in the pleadings of petitioners and was a new issue at submissions.
52. Counsel submitted that the issue of the advert at 6 am of next day was not an issue as technology is fast.



53. That the issue of affidavit or petition before the assembly being improper was not challenged at the start.
54. Counsel submitted that there were no good grounds for the petition.

#### **2<sup>nd</sup> Respondent's Submissions by Mr. Okong'o**

55. In opposition to the petition the 2<sup>nd</sup> Respondent relied on their response vide replying affidavit of Hon. Namatsi (the Speaker) of 8<sup>th</sup> January 2024 filed on the 10<sup>th</sup> January 2024. They relied on their written Submissions together with list of authorities dated 4<sup>th</sup> April 2024.
56. Counsel submitted that section 58(5) of the County Government Act provides for voting of all members hence committee members are not excluded.
57. The 2<sup>nd</sup> Respondent addressed the court on the process followed by the assembly and was emphatic that the procedures under the standing orders of Kakamega County Assembly were followed as well as the County Assembly Procedures Act and Article 47 of *the Constitution*.
58. Counsel further submitted that the County Assembly exercises power to hear petitions under Section 15 of the *County Governments Act* and exercises power under section 58 (5) of *County Governments Act* to remove Board Members.
59. That the act of retaining some of the Board members was an exercise of discretion by Members of the County Assembly when voting on an issue.

#### **4<sup>th</sup> Respondent (mover of the petition before the Assembly) submissions by Mr. Odera Advocate**

60. In opposition to the petition the 4<sup>th</sup> respondent relied on his Replying affidavit of 5<sup>th</sup> January 2024 and written submissions of 12<sup>th</sup> April 2024.
61. Mr. Odera submitted that the committee members are not prohibited from voting at the Assembly.
62. On the *Evidence Act*, Counsel submitted that documents were produced as exhibits and examined. That the Documents stood on their own and not as exhibits. That the 4<sup>th</sup> Respondent was cross-examined.
63. Mr. Odera submitted that the *Evidence Act* was not applicable in the Assembly proceedings. Counsel relied on Paragraphs 24 to 34 of the 4<sup>th</sup> respondent's submissions and manner of production of exhibits as per paragraph 27 of his Replying Affidavit.
64. Counsel contended that the petitioners were heard and made submissions before the Assembly.

#### **Rejoinder by Petitioner**

65. Mr. Shifwoka submitted that the Petitioners were not challenging the jurisdiction of the 2<sup>nd</sup> Respondent, but the process for violation of the Constitutional safeguards, inadequate and unfair allocation of resources. That they pleaded and those facts were not controverted.
66. Counsel asserted that they asked for an extension of time at the Assembly on 14<sup>th</sup> December 2023 and that the chairman of the Committee admitted 14 days were required to understand the information before the Assembly.



67. That Section 2 of the [Evidence Act](#) application is to court and other bodies that take evidence. It applied before the committee and the assembly. The County Assembly and Privileges Act does not exclude the application of the [Evidence Act](#).
68. That the moment the petitioner elected to rely on affidavit, he was bound to comply with [Evidence Act](#) and the Oaths and Statutory Act. The court in interpreting of any law is duty bound under Article 259 to interpret the law that promotes Constitutionalism and does not leave Lacuna.
69. Counsel submitted that if it was true that the petitioners appeared, the 4<sup>th</sup> respondent appeared before the committee and was cross-examined and made an admission of lack of evidence of the allegations, the court then should ask where then is the record of the cross-examination of the 4<sup>th</sup> respondent. Counsel contended that was why he submitted that the report tabled before Assembly had no basis for lack of Hansard of committee. The Hansard copy produced by 1<sup>st</sup>, 3<sup>rd</sup> & 5<sup>th</sup> respondents was for a single day. Counsel submitted that if a party has evidence and fails to produce in court it should be construed it was adverse against them hence the failure to produce the Assembly's Committee proceedings.
70. The County Assembly powers under Section 58(5) of the [County Governments Act](#) are to investigate and make recommendations and not to remove the Board. That is why the 2<sup>nd</sup> respondent's Standing Order No.64 the Speaker has to communicate the recommendation to the governor to comply with Article 251 (5) of [the Constitution](#).
71. That means the Governor is to appoint a committee as prescribed under Article 251 (5) of Constitution to remove members from office on the vote. The discretion of Members of the Assembly is not absolute. It has to be exercised within Section 58 (5) of [County Governments Act](#) and Article 251 of Constitution.
72. The grounds in the petition were not supported by evidence to meet the threshold of Article 251 of Constitution and that is why they asked for the proceedings before the Assembly committee. There was no informed vote before the assembly that met the threshold of the law.
73. Counsel referred court to paragraphs 95 – 105 of the petition dated 19<sup>th</sup> December 2023 to highlight the manner in which the respondents violated [the Constitution](#).
74. On the issue of failure to challenge the procedure hence afterthought petition, the petitioners submit that the 2<sup>nd</sup> respondent was mandated to maintain fidelity to the law which they violated on notice, and service of summons after 5 p.m. That was deemed to have been served the next day under court evidence rules. No proper service is deemed on a public holiday as the next day was a public holiday. The petitioners had only a day to prepare for the hearing before the Assembly.
75. Counsel submitted they sought to quash the decision and one can cannot quash a pleading like the petition. On the proceedings and documents, they relied on the record.
76. Counsel submitted that the petition was not an afterthought as the Assembly being a public body ought to be left to do its work. The court only comes in on supervisory jurisdiction on account of undue process. At page 16 of the petitioners' submissions, he addressed on the participation of process of members not in the committee. see Francis Omondi –versus- National Police Service Commission.

### **Objection by Lutta**

77. The issue of membership of committee variance was not pleaded.



## Response by Shifwoka

78. It can be read into the documents before court.
79. The court informed parties it would look into the pleadings before it on the issue and decide.

## Determination

### Issues for determination.

80. The Petitioners in their submissions addressed the following issues: -
- a. Whether there was any evidence that met the constitutional threshold for the recommendation for removal of the Petitioners from office of the Preliminary Objections are merited.
  - b. Whether the evidence, if any, against the Petitioners at the 3<sup>rd</sup> Respondent's Committee on Public Service and County Administration was proper, lawfully, legally and or regularly obtained and available for reliance upon.
  - c. Whether the petitioners are entitled to the orders sought before this Honourable court.
81. The 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Respondents in their submissions addressed the following issues: -
- Preliminary Issue
- a. Whether the Petitioners' prayer that the Respondents violated their rights under Article 28,35, 37 and 41 is tenable.
- Substantive issues
- b. Whether the petitioners' right under Articles 27, 47, 50 and 236 of *the Constitution* were violated in the proceedings before the County assembly?
  - c. Whether there was substantial compliance with the procedure for the removal of the petitioners from office.
  - d. Whether the provisions of the *Employment Act* on termination of employment are applicable to the petitioners as state officers.
  - e. Whether the Charges raised against the Petitioners were substantiated to the appropriate standard to warrant their removal from office.
  - f. Whether the 4<sup>th</sup> Respondent's petition filed before the County assembly is valid.
82. The 2<sup>nd</sup> Respondent in its submissions addressed the following issues: -
- a. Whether the County Assembly of Kakamega had jurisdiction to consider the 4<sup>th</sup> Respondent's petition.
  - b. Whether the county Assembly of Kakamega had jurisdiction to remove the petitioners from office as members of Kakamega County Public Service Board
  - c. Whether the *Evidence Act* applies to proceedings before the County Assembly and its committees.
  - d. The process that the County Assembly of Kakamega followed in removing the Petitioners from office, whether the Petitioners' rights were violated as alleged in the Petition.



- e. Whether there existed reasons for removal of the Petitioners from office as members of Kakamega County Public Service Board
  - f. Whether due process was followed in the removal process by the county Assembly of Kakamega.
  - g. Whether there exists any basis for the petitioners' allegations that their rights were violated as alleged and or allegations that the 2<sup>nd</sup> Respondent breached *the Constitution* and law in the process.
  - h. Who between the County Assembly of Kakamega and or County Governor, Kakamega County had the obligation and duty to communicate the removal from office decision to the petitioners and whether this duty was undertaken
  - i. Whether the reliefs sought are available to the Petitioners in the circumstances.
83. The 4<sup>th</sup> Respondent submitted globally opposing the Petition arguing that the petitioners had not proved that their removal was unlawful, affirmed that his petition to the 2<sup>nd</sup> Respondent for the petitioners' removal from office was lawful and could not be incompetent arising from any defect in form; that his petition did not require him to prove allegations for the Petitioners' removal from office before the 2<sup>nd</sup> Respondent on a level he would be required to, in a court of law, and that the procedures before the 2<sup>nd</sup> Respondent are different from those in court and that the *Evidence Act* had no place in the proceedings before the 2<sup>nd</sup> Respondent.
84. The 2<sup>nd</sup> Interested party in his submissions addressed the court on the jurisdictional capacity of the court to address the petition that raised constitutional breaches on the actions or inactions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents during and after the impeachment of the members of the County Public Service Board.
85. The court having perused the pleadings by the parties and their submissions was of the considered opinion that the issues placed before the court by the parties for determination are as follows:-
- a. Whether the court had jurisdiction.
  - b. Whether the County Assembly of Kakamega had jurisdiction to entertain the petition and remove the petitioners from office as members of Kakamega County Public Service Board
  - c. Whether the *Evidence Act* applies to proceedings before the County Assembly and its committees.
  - d. Whether the process that the County Assembly of Kakamega followed in removing the Petitioners from office was legal and fair and whether the Petitioners' rights were violated as alleged in the Petition.
  - e. Whether there existed reasons for removal of the Petitioners from office as members of Kakamega County Public Service Board that met the threshold of Article 251 of *the Constitution*.
  - f. Whether the reliefs sought are available to the Petitioners in the circumstances.



### a. Jurisdiction of the Court

86. The issue of jurisdiction was addressed by the Respondents and the court held it had jurisdiction in ruling dated 29<sup>th</sup> February 2024. For the benefit of the parties, the court reiterates the basis of holding it had jurisdiction in the matter as follows:-

87. Article 2(1) of *the Constitution* declares that *the Constitution* is:- “the supreme law of the Republic” which “binds all persons and all state organs at both levels of government.” Every person, organ or institution is therefore enjoined to respect, uphold and defend *the Constitution*.”

88. The Supreme Court in the case of Speaker of the Senate & Another v. Attorney General & 4 Others stated:-

“...Kenya’s legislative bodies bear an obligation to discharge their mandate in accordance with the terms of *the Constitution*, and they cannot plead any internal rule or indeed, any statutory scheme, as a reprieve from that obligation... If Parliament violates the procedural requirements of the supreme law of the land, it is for the Courts of law... to assert the authority and supremacy of *the Constitution*. It would be different if the procedure in question were not constitutionally mandated. This Court would be averse to questioning Parliamentary procedures that are formulated by the Houses to regulate their internal workings as long as the same do not breach *the Constitution*. 36. This view was echoed by the South African Constitutional Court in the case of Doctors For Life International v. Speaker of The National Assembly And Others where it held that:-“Courts are required by *the Constitution* ‘to ensure that all branches of government act within the law’ and fulfill their Constitutional obligations.”

89. The Supreme Court further in Justus Kariuki Mate & Another v Martin Nyaga Wambora & another [2017]eKLR had the following to say on the separation of powers:-

“(i) Separation of Powers

(52) In *Judicial Service Commission v. Speaker of the National Assembly & 8 Others* [2014] eKLR, this Court signalled that, by the doctrine of separation of powers, the limits on judicial authority, and *the Constitution*’s design of entrusting certain issues to other organs of Government, are vital principles. The Court thus remarked [paragraph 121]:

“*The Constitution* disperses powers among various constitutional organs. Where it is alleged that any of these organs has failed to act in accordance with *the Constitution*, then the Courts are empowered by Article 165 (3)(d)(ii) to determine whether anything said to be done under the authority of *the Constitution* or of any law is inconsistent with, or in contravention of *the Constitution*” [emphasis supplied].

.....



- (58) The Supreme Court has also pronounced itself on this issue. In, *In Re the Matter of the Interim Independent Electoral Commission* [2011] eKLR, the Court observed [paragraph 54]:

“The effect of *the Constitution*’s detailed provision for the rule of law in the processes of governance, is that the legality of executive or administrative actions is to be determined by the Courts, which are independent of the Executive branch. The essence of separation of powers, in this context, is that the totality of governance-powers is shared out among different organs of government, and that these organs play mutually-countervailing roles. In this set-up, it is to be recognized that none of the several governmental organs functions in splendid isolation” [emphases supplied].

- (59) Also quite relevant is this Court’s decision in *Speaker of the Senate & Another v. Attorney General & 4 Others*, Reference No. 2 of 2013; [2013] eKLR. The Court, in that case, signalled that it would be reluctant to question parliamentary procedures, as long as they did not breach *the Constitution*. In reference to Article 109 of *the Constitution*, which recognizes that Parliament is guided by both *the Constitution* and the Standing Orders in its legislative process, the Court thus held [paragraphs 49 and 55]:

90. In establishing whether the Employment and Labour Relations Court has jurisdiction to consider proceedings of the County Assembly as relates to the removal of members of a County Public Service Board, the Court appreciates that Article 200(2) (c) of *the Constitution* empowers Parliament to enact legislation for the manner of election or appointment of persons to, and their removal from, offices in county governments.
91. Pursuant to this Article 200(2) (c) of *the Constitution* which provides, “(c) the manner of election or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates;”, Parliament enacted the *County Governments Act*, Section 58 (5) which provides for the Removal of members of the Public Service Board. The section provides:-  
“(5) 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.”
92. The Petitioners in this case, relying on the provisions of Articles 10,27,28, 35,47,48,50 41, and 236 of *the Constitution* and Section 35,80,81,& 82 of the *Evidence Act*; Section 58 of the *County Governments Act*, challenged their removal from office by the 2<sup>nd</sup> Respondent on the grounds the process was procedurally and substantially biased, discriminative, indignifying, suppressing their right to access to information, administratively unfair, contrary to ideals of fair trial and hearing and geared towards taking adverse action on public servants.



93. As to whether the acts of the 2<sup>nd</sup> Respondent were within the Constitutional confines is a pertinent issue that the Court is asked to determine in the Petition.
94. The *County Governments Act*, section 58 (5) provides for the removal of the members of a County Public Service Board to be through the Procedure for the removal on grounds set out for the removal of members of a constitutional commission under Article 251(1) of *the Constitution*. The process of removal must comply with the Constitutional requirements.
95. The process for removal is through a Petition as per Article 251(2) before the County Assembly and this process is provided under the Kakamega County Assembly’s Standing Orders and the process for the removal of the said members of the Public Service Board is quasi-judicial.
96. Under Article 162 of *the Constitution*, this Court has the status of the High Court and it follows that in matters falling within its jurisdiction, the ELRC has supervisory powers over “any person, body or authority exercising judicial or quasi-judicial functions.
97. The Court of Appeal in *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others* (2015)e KLR affirmed the supervisory jurisdiction of the Court over county assemblies in paragraph 43 as follows:- ‘43. According to Article 162 of *the Constitution*, the ELRC has the status of the High Court. This being the case, it follows that in matters falling within its jurisdiction, the ELRC has supervisory powers over “any person, body or authority exercising judicial or quasi-judicial functions.” We have already found that the removal of a Speaker of a County Assembly is a quasi-judicial function.’ The Court finds that the process of removal of the County Public service board members from their employment is a quasi-judicial process hence under the supervisory powers of the Court. The Court in assuming jurisdiction over the matter is further guided by decision cited with approval of Court of appeal in the *Kisumu Assembly matter* (supra) by Majanja J as follows:- *United States International University (USIU) v. The Attorney General & Others* in which the learned judge observed that: “Since the Court is of the same status of the High Court, it must have jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret *the Constitution* and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of *the Constitution* within the matter before it.”(emphasis given on the quasi-judicial status in the removal of the public officers under Article 251 of *the Constitution*)
98. The 2<sup>nd</sup> Interested Party submits that the conduct or misconduct of the County Assembly in its proceedings in itself raises an employer-employee relationship. The Court found the 2<sup>nd</sup> interested party was in support of the Application.
99. Applying the cited decisions above, the Court finds and determines it has jurisdiction in the matter.

**b. Whether the county Assembly of Kakamega had jurisdiction to entertain the petition and remove the petitioners from office as members of Kakamega County Public Service Board**

100. The Petitioners in their submissions assert that the 2<sup>nd</sup> Respondent acted beyond its powers in purporting to remove them from office.
110. The Speaker of the County Assembly communicated to the 1<sup>st</sup> Respondent vide letter dated 15<sup>th</sup> December 2023 that it had considered the recommendations of the Committee and having considered 6 motions with respect to the public service board members sought to be removed by the 4<sup>th</sup>



- Respondent, resolved only 4 members be removed. The Court noted that the Assembly retained one of the members as Vice Chair and another as a member.
110. A County Public Service Board is a body corporate established under Section 57 of the [County Governments Act](#) as follows:-“Establishment of the County Public Service Board There is established a County Public Service Board in each County, which shallbe— (a) a body corporate with perpetual succession and a seal; and (b) capable of suing and being sued in its corporate name.”
  111. The composition of the Board is provided for under Section 58 of the [County Governments Act](#) which provides:-“ Composition of the County Public Service Board (1) The County Public Service Board shall comprise— (a) a chairperson nominated and appointed by the county governor with the approval of the county assembly; (b) not less than three but not more than five other members nominated and appointed by the county governor, with the approval of the county assembly; and (c)a certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.”
  112. Article 251 of [the Constitution](#) provides for grounds of removal of a member of the Board as follows:-
    - “251(1) 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 this Constitution or any other law, including a contravention of Chapter Six;
      - b. gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise;
      - c. physical or mental incapacity to perform the functions of office;
      - d. incompetence; or
      - e. bankruptcy.”
  113. The [County Governments Act](#) while setting out that a member of the County Public Service Board may only be removed on the grounds contained in Article 251(1) of [the Constitution](#), did not outline the process to be invoked in the process for the said removal on the said grounds.
  114. However, Article 251(2) of [the Constitution](#) provides that:- “A person desiring the removal of a member of a commission or a holder of an independent office on any ground specified in clause (1) may present a Petition to the National Assembly setting out the alleged facts constituting that ground.”
  115. [The constitution](#) of Kenya is supreme and the county assembly in handling the petition is bound to respect, promote and uphold [the Constitution](#) as admitted in paragraph 16 of the Replying affidavit dated 8<sup>th</sup> January 2024 of James Namatsi, the Speaker.
  116. Section 15 of the [County Governments Act](#) provides for petitions to the county assembly to wit: “15. Right to petition county assembly (1) A person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation. (2) Each county assembly shall prescribe a procedure for exercising the right under subsection (1).”
  117. A Petition is presented before the County Assembly by a person who desires the removal of a member of the County Public Service Board setting out the grounds for their removal as provided for under Article 251(1) of [the Constitution](#) of Kenya.



118. The Petitioners contended that the 2<sup>nd</sup> Respondent could only make recommendations on their removal.

119. As to whether the members comprising the Board may be removed, the law is provided under Section 58 (5) of the [County Governments Act](#) as follows:-

- “(5) 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.”

120. From the foregoing the court holds that a County Assembly can remove members of a County Public Service Board based on the provisions under Article 251(1) of [the Constitution](#) and Section 58 (5) of the [County Governments Act](#).

**c. Whether the [Evidence Act](#) applies to proceedings before the County Assembly and its committees.**

121. The Petitioners raised the issue of the admissibility of documentary evidence produced by the 4<sup>th</sup> Respondent and the admissibility of the Affidavit dated 20<sup>th</sup> November 2023 but filed on 17<sup>th</sup> November 2023 under section 35, 80, 81, and 82 of the [Evidence Act](#) on the grounds that the same were obtained illegally and the affidavit offended section 5 of the Oaths and Affirmations Act. That the decision of their removal was on the basis of these documents obtained and produced contrary to the law.

122. The 2<sup>nd</sup> Respondent, the Speaker, in his replying affidavit asserted that the [Evidence Act](#) was not applicable to the Committee Assembly proceedings. This position was supported by all the other respondents.

123. This is a question of the law.

**Decision on issue (c)**

124. The Petitioners relied on non-compliance with the provisions of the [Evidence Act](#) among other grounds to challenge the evidence relied on to reach the decision.

125. The Respondents contended that the [Evidence Act](#) was inapplicable to the proceedings of the County Assembly and its committees.

126. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents in paragraphs 66 and 67 of their submissions asserted that the requirement of certification of public documents is according to the [Evidence Act](#). That the petitioners had not shown any provision of the [Evidence Act](#) that applied to the proceedings of the county assembly. That Section 2 of the [Evidence Act](#) reads:- 2. Application. ‘(1) This Act shall apply to all judicial proceedings in or before any court other than a Kadhi’s court, but not to proceedings before an arbitrator. (2) Subject to the provisions of any other Act or of any rules of court, this Act shall apply to affidavits presented to any court.’”

127. The 2<sup>nd</sup> Respondent submits that the [Evidence Act](#) was not applicable. The legal regimes governing the proceedings of the county assembly in considering petitions and motions was [the Constitution](#), [County Governments Act](#), [Petitions to County Assemblies \(Procedures\) Act](#) and the Standing Order of the



Kakamega County Assembly. They assert that Article 195 of *the Constitution* provides for manner of calling witnesses and production of documents to wit:- “195. County assembly power to summon witnesses (1) A county assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information. (2) For the purposes of clause (1), an assembly has the same powers as the High Court to— (a) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise; (b) compel the production of documents; and (c) issue a commission or request to examine witnesses abroad.”

128. The 2<sup>nd</sup> respondent further relied on the provisions of section 14,18,19, 20 and 21 of the County Assemblies Power and Privileges Act.
129. The Court applying the provisions of section 14 of the County Assemblies Power and Privileges Act holds that the *Evidence Act* is not applicable as relates to the question of production of documents. Section 14 reads:- “Where at any time any question arises in a county assembly or in a committee with regard to— (a) the right or power of a county assembly or a committee to hear, admit or receive oral evidence; (b) the right or power of a county assembly or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record or document before a county assembly or committee; or (c) the right or privilege of any person (including a member of the county assembly or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before a county assembly or committee that question shall, where no express provision is made in this Act for the determination of that question, be determined in accordance with the usages, forms, precedence, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.”(emphasis given into the manner of solving such a question on production of documents)
130. The Court on other hand finds that the rights of witnesses before the committee are protected in equal measure as before High Court which the court interprets to mean the rights of the witnesses under the *Evidence Act* to produce evidence in their defence and cross-examine evidence against them are protected before the County Assembly/ committees proceedings . Section 20 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 then provides that:-
- (1) Every person who is summoned to give evidence or to produce a document before a county assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a Court of law.”(emphasis given on the mandatory nature of the right)

**d. Whether process that the County Assembly of Kakamega followed in removing the Petitioners from office was legal and fair and whether the Petitioners' rights were violated as alleged in the Petition.**

131. The petitioners raised several grounds under this issue to challenge the constitutionality, fairness and legality of the proceedings of the Committee and the County Assembly and the decision of their removal.

**Notice before the Assembly**

132. The Petitioners in their petition supported by their affidavit jointly sworn on 19<sup>th</sup> December 2023 contended that they were not granted adequate notice to appear before the assembly. In my ruling of 29<sup>th</sup> February 2024, I held that the notice was not in compliance with the provisions of Kakamega County Assembly Standing Order 65(2).
133. The respondents still raised the issue in their oral submissions at hearing of the petition.



134. Kakamega County Standing Order No. 65 (2) reads '65(2) the person being removed from office shall be provided with the report of the select committee , together with any other evidence adduced and such notes or papers presented to the committee at least three days before the debate of the motion. '
135. Hansard is the official record of the proceedings of the county assembly. It was produced by the 5<sup>th</sup> Respondent as an annexure in his replying affidavit of 26<sup>th</sup> January 2024.
136. The burden of proof lay with the 2<sup>nd</sup> Respondent to demonstrate compliance with its Standing Orders. In the replying affidavit of the Speaker sworn on the 8<sup>th</sup> January 2024 at paragraph 45 he stated that copies of the committee report , documents of the committee relied on, and all other necessary documents were given to each of the petitioners and the same were sent through WhatsApp on 11<sup>th</sup> December 2023. That their lawyers were also served. In Paragraph 53 of the affidavit the Speaker produced extract of emails as JWN9A. The court found the emails were all sent to Nyikuli Shifwoka and none was to the persons affected. The report was shared at 6.23pm of 11<sup>th</sup> December 2023 and dated even date. There were other undisclosed documents titled letters sent at 4.49pm. No evidence of the alleged WhatsApp was annexed.
137. The court finds that electronic print documents must be accompanied by a certificate of the person downloading. Section 106 B (4) of the *Evidence Act* provides for requirements to produce electronic evidence to wit:- '(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following— (a) identifying the electronic record containing the statement and describing the manner in which it was produced; (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;'' The Court of Appeal in *County Assembly of Kisumu v Kisumu County Assembly Service Board & 6 others (2015) e KLR* in paragraph 66 held that the provision of section 106 B of the *Evidence Act* to be mandatory and that the court should not admit non-compliant documents. This was the case here. No certificate was filed to accompany the said email document and the same is held as non- admissible.
138. The petitioners in their supporting affidavit in para 22 (o) averred that the report was served on them on the 13<sup>th</sup> of December 2023 contrary to the provisions of the standing orders.
139. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents relying on the Hansard brought to the attention of the court that at page 51 the petitioners acknowledged having received notification on WhatsApp platform. The court finds that the relevant page was 55 and not 51 where Omweno is recorded to have stated:- 'so thank you for giving us this opportunity in line with articles 47 and 50 in line with fair administrative actions, of course we have issues with the service the fact that we did receive the notification by WhatsApp at about 5 O'clock on Monday and just yesterday at 9 O'clock is when we received the physical copies. '
140. Article 259 (6) of *the Constitution* provides that where a period under *the Constitution* is less than 6 days, public holidays are to be excluded: ' (6) If a period of time prescribed by this Constitution for any purpose is six days or less, Sundays and public holidays shall not count when calculating the time.'. Standing orders of the Assembly must comply with *the Constitution* under section 14 of the County Government Act which provides: -(14)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;'' The court holds that 12<sup>th</sup> December 2023 which was Jamhuri day did not count in calculating the 3 days' notice to which the petitioners were entitled to. .
141. It is the finding of the court that 3 days was the minimum notice under the Standing Orders and the notice was to be accompanied by the report, documents and notes before the committee. The second



day after service of notice was Jamhuri day hence a public holiday. The notice is held to have been insufficient for the petitioners to prepare for hearing before the Assembly hence in violation of fair administrative action under Article 47 of the Constitution .

### **Procedural fairness before the Assembly Committee.**

142. The Petitioner raised several grounds on this issue which the court discerned to be :-
- a. Failure to be accorded adequate time and opportunity to prepare for defence
  - b. Denial of access to important documents and information,
  - c. The committee was biased, partial and uncertainly constituted,
  - d. Denied opportunity to cross-examine witnesses and equal facilities as the 4<sup>th</sup> respondent
  - e. Material produced by the petitioner(4<sup>th</sup> Respondent) were procured with assistance of the acting Clerk of the Assembly transforming the committee to the investigator and witnesses of the 4<sup>th</sup> respondent.
  - f. Decision arrived at was based on documents obtained contrary to the provisions of section 81- 83 of the Evidence Act, section 4 of Access to Information Act , section 27 of the Kakamega County Public Service Board Act and section 35 of the Evidence Act.
  - g. All exhibits were presented vide flawed affidavit of the 4<sup>th</sup> respondent contrary to provisions of section 5 of the Oaths and Statutory Act.
  - h. The process before the assembly was hurried and they were denied access to documents relied on by Catherine Otenyo
  - i. The report of the committee was not accompanied by the proceedings before the committee or annexures relied on.
  - j. Despite the improper production the exhibits produced controverted the allegations by the 4<sup>th</sup> respondent but the committee ignored the same making decision based on political machinations.
  - k. At the committee the 4<sup>th</sup> respondent was granted 2 hours of examination and the petitioners and interested parties 1 hour in cross-examination and one of the days the 4<sup>th</sup> Respondent had 6 and ½ hours while the petitioners and the interested parties had 1 hour and later 45 minutes each. They assert this was a demonstration of partiality and bias,
  - l. At oral submissions the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents asserted the issue of strangers having signed the report was not in the pleadings. The court said it would check the record. In paragraph 22(m) of their supporting affidavit, the petitioners asserted that the report dated 11<sup>th</sup> December 2023 that formed the basis of the motions before the assembly for their removal was signed by strangers who had not participated in the proceedings. This the court discerned as evidence of the alleged machinations and flawed procedure. It was part of the case presented for response by the petitioner and the respondents had the opportunity to respond.
  - m. The petitioners raised issue of being denied to cross-examine Catherine Otenyo called to testify and produce documents by the committee.
  - n. That at the assembly the committee produced strange documents that were not part of the committee proceedings contrary to the rules of natural justice.



- o. That the report was for removal of all 6 board members yet assembly voted to remove only two deeming the act to be targeted removal.
143. The removal process of the members of the County Public Service Board was subject to the Standing Orders of a County Assembly and an extract of the Kakamega County Assembly Standing Orders was provided as “Annexure A” by the 5<sup>th</sup> Respondent in his replying Affidavit dated 26<sup>th</sup> January 2024.
144. Standing order No. 64 (5) of the Kakamega County Assembly Standing Orders is to effect that once a Petition for the removal of a member of a Public County Service Board is filed in the Assembly it is committed to a Sectoral Committee dealing with County Public service and administration.
145. Under Kakamega County Standing Order 64(6), the committee has sixty days to investigate the matter and report to the Assembly whether the Petition discloses grounds for removal under Article 251(1) of *the Constitution*.
146. Standing Order No. 65 (2) provides for notice to the person sought to be removed as follows:- ‘65(2) the person being removed from office shall be provided with the report of the select committee , together with any other evidence adduced and such notes or papers presented to the committee at least three days before the debate of the motion. ‘
147. Under Standing Order 65(7), a member of the County Service Board who is before the Assembly for a Petition for removal has a right to appear and be represented before the Committee during investigations.
148. Standing Order 66 provides that for manner of debate of the motion.
149. Standing Order no. 67 provides for voting at the county assembly and the decision is by majority members (75%) of the assembly present and voting.
150. Section 18 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 provides for the process of Inviting and summoning of witnesses before either the assembly or any of its committees.
151. Section 19 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 provides that:- “Where a county assembly or a committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the county assembly or the committee may—
- (a) cause such witness to be examined on oath; and
  - (b) require the witness to produce any document, paper, book, or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.
152. As per the replying affidavit of the Speaker it was the position of the 2<sup>nd</sup> respondent that they complied with the foregoing applicable law and *the Constitution* and that the petitioners and interested parties were granted opportunity to present their case including making several objections in bid to scuttle the process. The deponent further produced documents in relation to the process.
153. The 4<sup>th</sup> Respondent in his affidavit contended the process was fair and no prejudice was suffered in production of the documents or the failure to be allowed to cross- examined Otenyo.



## Decision on issue d

154. I already held that pursuant to Section 20 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 which provides that:-

- (1) Every person who is summoned to give evidence or to produce a document before a county assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a Court of law.”

The witnesses before the assembly committee which exercises quasi-judicial powers are to be treated as if before the High Court. One can say they have right to make representations before the committee, to be cross-examined by persons they are to testify against, and to produce evidence as well as be challenged before the committee. The petitioners and the interested parties were public officers whose jobs were at the chopping board and had right to procedural fairness before the Committee consistent with the provisions of Article 236 of *the Constitution* which states: -‘A public officer shall not be—(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.’(emphasis given). The court, from the foregoing, finds the process adopted by the Committee was in violation of Article 236 of *the Constitution*.

155. On the procedural fairness on the admission of documents produced by the 4<sup>th</sup> Respondent before the committee; Whereas the Assembly Committee under section 14 of the County Assembly (Powers and Privileges) Act had discretion to admit documents, the court found how the documents were obtained fell short of the requirements of Article 10 of *the Constitution*. There was no transparency. The 4<sup>th</sup> Respondent in his affidavit did not disclose how he obtained the said documents all emanating from the County Government of Kakamega including contracts of other employees. The 2<sup>nd</sup> respondent vide letter dated 10<sup>th</sup> November 2023 requested the CEO of the Board to provide evidence in support of the petition (JWN4). The 2<sup>nd</sup> Respondent produced exhibit JWN1 in the supplementary affidavit of the Speaker dated 29<sup>th</sup> January 2024 a letter of even date addressed to the 4<sup>th</sup> Respondent to produce evidence in 2 sets to substantiate his allegations. The 4<sup>th</sup> Respondent filed the said documents under the list dated 20<sup>th</sup> November 2023 without any disclosure of source(s). The court found no record of whether or not the request for documents by the Acting Assembly Clerk Esther Ariko of 10<sup>th</sup> November 2023 was complied with. The proceedings of the committee were not produced. The court holds it is more likely than not that the position by the petitioners that the acting Assembly Clerk sourced the said documents and gave them to the petitioner(4<sup>th</sup> Respondent ) to produce before the Committee is true.

156. Article 10 of *the constitution* reads: “(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them— (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. (2) The national values and principles of governance include —....(c) good governance, integrity, transparency and accountability;” The court found there was opaqueness and lack of transparency in the obtaining and producing the said documents before the Assembly Committee and collusion with the 4<sup>th</sup> Respondent which led credence to the allegation of partiality of the Committee.

157. The County Assembly though not bound by the *Evidence Act* is bound to uphold the letter and spirit of *the Constitution* in upholding the principles of transparency and integrity. Documents obtained in the manner done by the 4<sup>th</sup> Respondent without express authority, in form of affidavit or certified as true copies by the custodian were held to have no evidential significance by the Supreme Court in Evans



Muriuki Muthuuri and others v Attorney General and others (Petition 15(e022) of 2021 at paragraph 70.

158. The Hansard of the proceedings before the assembly committee having not been produced, the court took the position that the allegation of unequal opportunity to be heard before the committee was uncontroverted. The Speaker was not before the committee and his evidence on what transpired at the floor of the committee, without the Hansard, was hearsay.
159. The court found it was uncontroverted evidence that the committee called a witness Catherine Otenyo who testified and produced documents but the petitioners and interested parties were not allowed to cross-examine her. The 4<sup>th</sup> respondent admitted to that and said no prejudice was suffered by the petitioners.
160. The 2<sup>nd</sup> Respondent submits that under Article 195 of *the Constitution* the assemblies have power to summon witnesses and it was absurd to be accused of having violated rights of the petitioners by calling Otenyo to testify and produce documents which they found relevant for consideration of the petition. That there was no requirement that the witness be availed for cross-examination. That the petitioners could have summoned Otenyo. That the petitioners had closed their case. They further relied on section 14 of the County Assemblies Power and Privileges Act (supra) to state the *Evidence Act* was inapplicable. They further submit that if aggrieved by evidence of Otenyo, the petitioners' remedy was under section 37 of the County Assemblies Power and Privileges Act and not vide petition before court. The said section 37 reads:- "Protection of members of public, '(1) A person, other than a Member, who is aggrieved by a statement or a remark made by a Member or a witness in or before a county assembly or committee about that person may submit a written request to the Clerk to have a response by the person to the statement or remark recorded and published in a journal or record of the county assembly.'" The court did not find this to be an appropriate remedy in the context of a person subject to the proceedings before the Assembly as urged by the 2<sup>nd</sup> Respondent.
161. In paragraph 40 of his affidavit, the 4<sup>th</sup> respondent agreed with the petitioners that Otenyo appeared before the committee and testified and produced documents after all the parties had closed their cases and neither party was allowed to cross-examine her. He further stated Otenyo had been mentioned in the petition hence the reason she was called to substantiate the allegations.
162. I find on these issues the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondent had no role hence their response would only be hearsay.
163. At page 29 paragraph 3.3.3 was the report of the Committee on the participation of other witnesses. It is stated that the committee for purposes of getting more information summoned Catherine Gathoni Otenyo, the current CEO/ Secretary of the Kakamega CPSB for purposes of clarification on issues that arose consistently throughout the hearing (page 711 of the 2<sup>nd</sup> Respondent's bundle of documents).
164. The Report further stated that the committee examined her in the presence of the petitioners and his counsel and the persons sought to be removed(now petitioners and the interested parties) and their counsel pursuant to Article 196 constitution. Article 196 states:- "196. Public participation and county assembly powers, privileges and immunities (1) A county assembly shall— (a) conduct its business in an open manner, and hold its sittings and those of its committees, in public; and (b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees. (2) A county assembly may not exclude the public, or any media, from any sitting unless in exceptional circumstances the speaker has determined that there are justifiable reasons for doing so. (3) Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members."



165. The evidence of Otenyo is stated at page 29 of the report. At page 34 of the report was the Assembly's committee findings. On the accusation of serious violation of Constitution and statute law the observations by the committee were to effect that the board members (persons sought to be removed) conspired to have Catherine Otenyo removed from office contrary to section 58 of the [County Governments Act](#). The court finds the untested testimony of Otenyo was used to remove the petitioners from office.
166. The principle of Natural Justice traces its roots to the Latin maxim *Nemo Judex in causa sua*, which means, 'No one can be a Judge in their own case'. In simpler terms, this maxim means that the adjudicating authorities, in any case, should be impartial and must not carry any bias against or towards any of the parties. Thus, a Judge should not have any vested interests in the case he/she is adjudicating. The committee called a witness who had been mentioned overwhelmingly and formed the basis of the petition, after closure of the case by all parties, and since they are not a court and are flexible, the least requirement was to allow the persons sought to be removed to question her testimony in substantiation with regards to the allegations in the petition and further as regards to the documents she had been asked to produce. The failure to do so, the committee breached the tenets of natural justice of fairness and impartiality.

#### **Whether the petitioners were profiled by the assembly**

167. The Petitioners further submitted that they were profiled by the county assembly members isolating two members to remain in office. The committee report was for the entire board to be removed. The petitioners submitted that the committee report was to be rejected or accepted as a whole. The 2<sup>nd</sup> Respondent submitted that at voting the individual petitioners were voted separately and the voting was at discretion of the members.
168. The court examined the report and the petition and found the same sought for the removal of the 6 Board members on similar grounds. However, at voting, the members of the assembly awarded different votes for the board members before it.
169. The court holds the process by the Assembly violated the tenets of natural justice as the members faced the same charges as a corporate board and the isolation was not justified.

#### **Whether strangers signed the report.**

170. The issue was raised in paragraph 23(m) of the supporting affidavit. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondent counsel told the court it could not make a finding on the unpleaded issue. The authenticity of the report was challenged vide supporting affidavit of the petitioners and indirectly in the petition. The Court finds that the Respondents had opportunity to rebut the allegation in their responses. The report was the document relied on to move motions to remove the petitioners from office. It thus came within the jurisdiction of the court for consideration on procedural integrity. At page 11 of the report (page 693 of the 2<sup>nd</sup> Respondent's documents) the names of the committee members were listed. At page 55, the committee members who signed to affirm the report were also listed. The Court noted that page 11 at no. 17 was name of Hon. Phillip Maina. At page 55 that name was substituted with Hon. Robert Makhanu who signed. Hon. Makhanu having not been a member of committee at hearing could he affirm the report? In *Francis Omondi Okonya v National Police Service Commission (2016)* KLR Justice Lenaola held such conduct to be an illegality (paragraph 66). I so decree in the instant case that the report was thus tainted with illegality for being affirmed by non- member to the committee.
171. In the upshot the Court returns there was no procedural fairness in the process of removal of the petitioners.



**e. Whether there existed reasons for removal of the Petitioners from office as members of Kakamega County Public Service Board that met the threshold of Article 251 of *the Constitution*.**

172. Article 251 of *the Constitution* provides for the grounds of the removal of public officers like the petitioners as follows:- “(1) 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 this Constitution or any other law, including a contravention of Chapter Six;
  - (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise;
  - (c) physical or mental incapacity to perform the functions of office;
  - (d) incompetence; or
  - (e) bankruptcy.
- (2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground”
173. The Supreme Court in *Sonko v County Assembly of Nairobi City & 11 Others* (2022)e KLR paragraph 149, outlined the threshold for removal of a person from office by county assembly to be that the allegations must be serious, substantial and weighty, there must be a nexus between the person to be removed and the alleged gross violations of *the Constitution* and any other written law, the charges framed must disclose a gross violation of *the Constitution* and lastly the charges as framed must state with a degree of precision the article(s) or even the sub-article(s) of *the Constitution* or the provision of the law that have been alleged to be violated.
174. In the determination of the petition I am further guided by the aforesaid decision cited by the 2<sup>nd</sup> Respondent of the Supreme Court In *Sonko v County Assembly of Nairobi City & 11 others* (Petition 11(E008 ) OF 2022, (2022 e KLR) (supra) at paragraphs 148 to effect that removal proceedings through quasi-judicial are not in nature of criminal proceedings. All that is required is that the allegations be substantiated. The purpose of impeachment is generally to protect public interest and to preserve constitutional norms, while at the same time observing the rules of natural justice throughout the process, both interests must be balanced.
175. The court noted glaring inconsistencies between the observation of the committee in the report and the documents filed by the 4<sup>th</sup> Respondent. For example observations in the report to effect that petitioners and the interested parties jointly conspired to dismiss Otenyo from office while they lacked such powers. The court found this finding by the committee was not true as per decision of Public Service Commission at paragraph 2 of page 213 (2<sup>nd</sup> respondent’s bundle ). The said Otenyo was issued with letter of termination dated 19<sup>th</sup> October 2021 signed by the Governor on same grounds the report states she gave the committee to remove the Members. The person who signed her letter was not the Board but the Governor who is a state officer and ought to have taken responsibility. The finding by the committee of the petitioners conspiring to dismiss Otenyo from office was thus unfounded. The Governor takes responsibility over any document he signs. He was not summoned. The fact he is the one who caused the termination of Otenyo remained valid. Ironically, the court finds that the 1<sup>st</sup> Respondent was the said Governor who in the petition supports the removal of the petitioners on the basis of his action. On the other hand, there was no pending complaint on the allegations before



the relevant authorities or even the respondents. All the allegations were based on speculations and conjectures. The Board Members were entitled to be presumed to have been acting in good faith unless the contrary was proved.

176. The court finds it was unfair to take away the petitioners' jobs without valid reasons. I echo the words of my Brother Justice Abuodha in *Mundia Njeru Geteria v Embu County Government & 3 others* (2013) e KLR to wit:- "21. Removal from office or loss of employment for that matter is a very drastic step especially in a country like ours where jobs are hard to come by. But it can be done where circumstances demand so. However those tasked with such responsibility are enjoined both by law and good conscience to act in good faith and in accordance with the law. To this Lord Denning observed in the case of *Abbot vs. Sullivan* (1952) 1 KB 189 at p198 that: "... bodies which exercise a monopoly in important sphere of human activity with power of depriving a man of his livelihood must act in accordance with elementary rules of justice. ...."
177. From the above, I hold that the petition before the Assembly did not meet the threshold of Article 251 of *the Constitution* to wit:- "(1) 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 this Constitution or any other law, including a contravention of Chapter Six; (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise; (c) physical or mental incapacity to perform the functions of office; (d) incompetence; or (e ) bankruptcy." The conduct of voting by the assembly to retain some of the members when all were facing same allegations and without further substantiation before the house of the different treatment, supports my conclusion that the petition had no merit. If the petition had merit the assembly would have removed all the board members as recommended by the committee as the board members faced accusation for corporate actions as a board.
178. The Court also found that the role of the assembly under section 58(5) was limited to removal and the act of designating one of the members retained as a vice chair was *ultravires*. That was beyond their statutory mandate and hence unlawful and gives credence to the allegation of profiling and premeditated decision against the board members. The decision of the assembly was not about integrity and leadership as held in *Sonko v County Assembly of Nairobi City and others* (2022)e KLR.
179. I will say no more on the credibility of the petition before the Assembly and the Committee report save to answer Counsel for the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents question on the fate of the petition before the assembly. The answer of the Court being that the Assembly having made a decision on the petition was *functus officio* on the said petition. There was no petition hanging over the neck of the petitioners or the interested parties.
180. In the upshot, the court holds that the petition before the Assembly did not meet the threshold of grounds for removal from office of the petitioners under Article 251 of *the Constitution*.

#### **f. Whether the reliefs sought are available to the Petitioners in the circumstances**

181. Based on my findings above, it cannot be gainsaid that procedural fairness consistent with the provisions of *the Constitution* of Kenya is the yardstick to determine whether the court should interfere with county assembly decisions in regard to removal of members of the County Public Service Board members. I am satisfied there was no procedural fairness in the process of removing the petitioners from office nor did the petition meet the threshold of the Article 251 of *the Constitution* on removal of members. The process was tainted with partiality, bias, illegalities and unfairness.
182. Where merited the court has powers under *the Constitution* in determination of constitutional petitions to issue orders sought under Article 23 of *the Constitution* to wit:- '23(3) In any proceedings



brought under Article 22, a court may grant appropriate relief, including— (a) a declaration of rights; (b) an injunction; (c) a conservatory order; (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24; (e) an order for compensation; and (f) an order of judicial review.”

### **Disposition**

183. Based on my above findings, I find merit in the Petition dated December 19, 2023 and in final disposition of the petition order as follows:-

1. It is hereby declared that the removal process of the Petitioners from office, by the Kakamega County Assembly, the 2<sup>nd</sup> Respondent, was in violation of Articles 35, 47, 50 and 236 of the Constitution.
2. It is declared that the rushed proceedings without sufficient notice to the Petitioners before the Assembly and removal of the Petitioners from office was unlawful. The Petition by the 4<sup>th</sup> Respondent before the Assembly did not meet the threshold of removal of members of the Kakamega Public Service Board under Article 251(1) of the Constitution. The signing/affirming of the report by Assembly Members who were not at the hearing was unlawful.
3. An order of certiorari is hereby issued quashing the Report of the Assembly committee dated 11<sup>th</sup> December 2023 and the consequential decisions including the resolutions of 14<sup>th</sup> December 2023 of the 2<sup>nd</sup> Respondent communicated vide letters to the Petitioners dated 15<sup>th</sup> December 2023 removing them from office.
4. The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents are restrained from relying on the letters dated 15<sup>th</sup> December 2023 communicating removal from office of the petitioners.
5. The petitioners are to resume office with immediate effect and serve for the remainder of their term unless lawfully removed from office.
6. The petitioners are each awarded Kshs.1 million each for violation of their rights plus costs. Monies awarded to attract interest at court rates from the date of judgment if not paid within 30 days of the judgment. ‘‘

184. It is so Ordered

**DATED, SIGNED, AND DELIVERED THIS 6<sup>TH</sup> JUNE 2024 IN OPEN COURT AT KAKAMEGA.**

**J.W. KELI**

**JUDGE**

**In the presence of:-**

C/A Lucy Macheso

Petitioners:- Shifwoka

1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents – Lutta

2<sup>nd</sup> Respondents- Twena h/b Okongó

4<sup>th</sup> Respondent – Odera

2<sup>nd</sup> interested party - Absent

