



**Kiptoo & 3 others v County Assembly Elgeyo Marakwet; Kibire (Interested Party)  
(Constitutional Petition E009 of 2025) [2025] KEHC 13897 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CONSTITUTIONAL PETITION E009 OF 2025**

**E OMINDE, J  
OCTOBER 2, 2025**

**BETWEEN**

**AMOS KIMOSOP KIPTOO ..... 1<sup>ST</sup> PETITIONER  
KIPKOECH CHERONO ..... 2<sup>ND</sup> PETITIONER  
KIPKOECH KULEI ..... 3<sup>RD</sup> PETITIONER  
PHILEMON KIBIWOTT CHESEREK ..... 4<sup>TH</sup> PETITIONER**

**AND**

**THE COUNTY ASSEMBLY ELGEYO MARAKWET ..... RESPONDENT**

**AND**

**LAWI KIBIRE ..... INTERESTED PARTY**

**JUDGMENT**

1. By way of a Petition dated 24<sup>th</sup> March 2025, the Petitioner seeks the following orders;
  - a. A declaration be and is hereby issued that the declaration of Honourable Lawi Kibire, member of the county assembly for Metkei ward as the winner in the election held on 11<sup>th</sup> February, 2025 for the position of the Speaker of the County Assembly of Elgeyo Marakwet County was illegal, unconstitutional null and void.
  - b. A declaration be and is hereby issued that Honourable Lawi Kibire, member of the county assembly for Metkei ward was not qualified to contest in the election held on 11<sup>th</sup> February, 2025 for the position of the Speaker of the County Assembly of Elgeyo Marakwet County.
  - c. A declaration be and is hereby issued that pursuant to Standing Order 11 of the County Assembly, Elgeyo Marakwet County Standing Orders, Honourable Michael Chemwok being the one candidate who has been duly nominated for election as Speaker at the expiry of the



nomination period, be declared forthwith to have been elected Speaker without any ballot or vote being required.

- d. An order of Judicial Review does issue pursuant to Article 23 of *the Constitution* of Kenya, quashing the notices issued by the Respondent declaring Honourable Lawi Kibire, member of the county assembly for Metkei ward as qualified to contest in the election held on 11th February, 2025 for the position of the Speaker of the County Assembly of Elgeyo Marakwet County for being illegal, unconstitutional, and ultra vires.
  - e. An order of Judicial Review does issue pursuant to Article 23 of *the Constitution* of Kenya, quashing proceedings presided over by Honourable Lawi Kibire, member of the county assembly for Metkei ward as the Speaker of the County Assembly of Elgeyo Marakwet County for being illegally and unconstitutionally in office and have acted ultra vires.
  - f. An order of Judicial Review does issue pursuant to Article 23 of *the Constitution* of Kenya, prohibiting and/or restraining the Honourable Lawi Kibire, member of the county assembly for Metkei ward from acting as the Speaker of the County Assembly of Elgeyo Marakwet County.
  - g. The costs of this Petition be provided for.
  - h. This Honourable Court be pleased to grant any other or further reliefs that it may consider just or necessary.
2. The Petition is expressed to be brought under Article 22 & 258 of *the Constitution* of Kenya. The Petitioners laid out the Constitutional Foundations of the Petition, urging that it is founded on Articles 1,2,3, 10, 10(7), 19, 20, 21, 22, 23, , 24, 178, 258, and 259 of *the Constitution* of Kenya. Additionally, that the Petition is founded on the *County Governments Act*, Election Act, The Fair Administrative Actions Act, and The County Assembly. Elgeyo Marakwet County Standing Orders.
  3. The Petitioners filed verifying affidavits confirming the correctness of the averments in the Petition. The 1<sup>st</sup> Petitioner swore his affidavit on behalf of the other petitioners.
  4. The Petitioner laid out the facts underlying the Petition as follows. On 30<sup>th</sup> January, 2025, Honourable Philemon Kiplagat Sabulei, the Speaker of the County Assembly, Elgeyo Marakwet County resigned and the County Assembly declared a vacancy, annexing a copy if the registration notice and a copy of the declaration of vacancy as KC1 and 2. He stated that on 4<sup>th</sup> February, 2025, the Independent and Boundaries Commission (IEBC) cleared Honourable Lawi Kibire, the Member of County Assembly for Metkei Ward and Michael Kipkorir Chemwok, an Advocate of the High Court to contest for the office of the Speaker of the County Assembly, annexing and marking copies of the respective clearances as KC3 and 4. The announcement of candidates cleared was made at the floor of the house of the County Assembly, Elgeyo Marakwet County before proceeding to hold elections wherein Honourable Lawi Kibire was declared the winner.
  5. On 20<sup>th</sup> February, 2025, with instructions from the Petitioners, the firm of Chemwok and Company Advocates served a letter to the County Assembly of Elgeyo Marakwet requesting for information under Article 35 of *the Constitution* of Kenya and *Access to information Act* 2016, particularly:
    - a) Hansard Report on Resignation of the Member of County Assembly for Metkei Ward, Lawi Kibire.
    - b) Hansard Report of the House for 11<sup>th</sup> February, 2025.
    - c) Letter recalling the House after recess.



- d) Payment payroll for the month of December 2024 and January, 2025 for the members of the Elgeyo/Marakwet County Assembly.
  - e) Sessional paper communication to the house upon resignation of the Member of County Assembly for Metkei Ward, Lawi Kibire.
  - f) Gazette notice on resignation of the Member of County Assembly for Metkei Ward. Lawi Kibire.
  - g) Declaration of vacancy for the seat of the Member of County Assembly for Metkei Ward, upon resignation of Lawi Kibire,
  - h) List of candidates who contested for the seat of the Speaker of the Elgeyo/Marakwet County Assembly and their qualifications submitted upon declaration of a vacancy in the office of Speaker of the Elgeyo/Marakwet County Assembly on 30<sup>th</sup> January, 2025.
6. He annexed a copy of the instruction note marked as KC5.
  7. The Petitioners stated that the request for information under the said Article 35 of *the Constitution* of Kenya and *Access to information Act* 2016 was never responded to and no explanation of specific exemption or exclusion under the law was availed to the requester to justify denial of the said information.
  8. In the Petition, the Petitioners laid down the Constitutional and Statutory Violations, together with the Standing Order violations that they levelled against the Respondents and Interested Party. They cited Article 2(2) and 178(1) of *the Constitution* alongside Section 7 and 9A of the *County Governments Act*. Further, they cited Section 21(1) of the Election Act which requires that the speaker of a County Assembly be elected in accordance with the Standing Orders of the County Assembly, from among persons who are qualified to be elected as members of a County Assembly but are not such members and Section 22(1) of the Election Act which requires that nomination of a candidate for an election under the Act only if that person is qualified to be elected to that office under *the Constitution* and the Act.
  9. They cited Section 26(1) of the Election Act and Standing Order No. 4(2) which requires that if the office of the speaker falls vacant at any time before the expiry of the term of County Assembly, no business shall be transacted by the County Assembly until the election of a new Speaker. Additionally, they stated that Standing Order No. 5(3) requires that the nomination papers of a candidate shall be accompanied by the names and signatures of at least two Members who support the candidate and a declaration by them that the candidate is qualified to be elected as a Member of County Assembly under Article 193 of *the Constitution* and is willing to serve as Speaker of the County Assembly.
  10. The Petitioners reproduced the requirements of Standing Order No, 5(4), (5), (6) and 11, urging that Honourable Lawi Kibire's clearance to contest for the position of speaker of the County Assembly of Elgeyo Marakwet held on 11<sup>th</sup> February, 2025 and his declaration as the winner in that election constituted a violation of *the Constitution*, cited statutes and the County Assembly of Elgeyo Marakwet Standing Orders.
  11. On the violation to the right to information and fair administrative action, the Petitioners cited Articles 35(c) 47(1) and (2) of *the Constitution*. Additionally, they reproduced the provisions of Sections 4(1), (2), (3) (c), (4), 5(4) of the *Fair Administrative Action Act* and stated that the failure by the County Assembly of Elgeyo Marakwet to avail the information requested to the firm of Chemwok



and Company Advocates constituted a violation of the right to information under Article 35 of the Constitution of Kenya, the Fair Administrative Action Act and the Access to information Act, 2016.

12. On violation of the right to equality before the law, the Petitioners cited Articles 27(1) and (2) of the Constitution, urging that the favoritism accorded to Honourable Lawi Kibire because of his position as the Member of County Assembly for Metkei ward by being cleared to contest for the position of speaker of the County Assembly of Elgeyo Marakwet held on 11<sup>th</sup> February, 2025 and his declaration as the winner in that election constituted a violation of the right to equality before the law.

### **Respondents' Replying Affidavit**

13. The respondent filed an affidavit on 14<sup>th</sup> April 2025, deponed by Jane K Mutai, the Clerk to Elgeyo Marakwet County Assembly. She stated that the entire petition is misconceived, based on inaccurate facts and completely ill advised. Further, that the only issue that seems to be coming out of the entire Petition is that the Petitioners seem to be contesting whether the interested party herein Hon. Lawi Kibire was validly elected as the Speaker of the Assembly. She stated that the interested party was validly elected and so declared as the Speaker of the Assembly on 11<sup>th</sup> February 2025.
14. She urged that following the resignation of Hon, Philemon Sabulei from the office of the speaker of the assembly, in accordance with the provisions of Section 21 (5)(b) of the Elections Act, she issued a gazette notice declaring the vacancy and inviting qualified persons to apply for the position. Seven candidates applied for the position but only five qualified to contest including Mr. Michael Chemwok and Hon. Lawi Kibire. The interested party, while presenting his nomination papers submitted a letter of resignation from the office of member of County Assembly representing Metkei ward together with clearance from the Independent Electoral and Boundaries Commission (IEBC). She annexed and marked as JM 1, a copy of the resignation letter.
15. The deponent averred that Article 194 (l) (d) of the Constitution provides that the office of member of the County Assembly becomes vacant if a member resigns in writing addressed to the speaker of the assembly and as such, the Interested Party ceased being a member of county assembly from the date of his resignation. She stated that before the day of the election three of the candidates withdrew their candidature leaving only two candidates and the elections were conducted on 11<sup>th</sup> February 2025. At the end of the ballot Michael Chemwok got 1 vote and Hon. Lawi Kibire got 28 votes, she annexed and marked as JM 2 proceedings of the assembly on the said date. The interested party was declared as the duly elected speaker and he immediately took oath of office.
16. The deponent stated that it is clear beyond any iota of doubt that Hon. Lawi Kibire was qualified to contest for the position of the speaker as he was competent to be elected as a member of the county assembly but he was no longer a member as he had presented his resignation to the speaker vacating the office of the member of county assembly for Metkei ward before his nomination. Additionally, that writs have already been transmitted to the IEBC declaring vacancy of the member of county assembly of Metkei ward. She annexed and marked as JM 3 copies of the writs already received by the IEBC. She stated that this Petition does not stand on any ground and the farfetched prayers sought should be dismissed with costs.
17. On the issue of information sought from the respondent, she urged that the petitioners were informed that all the information they were seeking are in the assembly's website and can be accessed anytime.

### **Interested Party's Replying Affidavit**

18. The interested party filed a replying affidavit dated 14<sup>th</sup> April 2025. He stated that he was elected as a member of county assembly of Metkei ward in Elgeyo/Marakwet County in the August 2022 general



elections, annexing and marking as LB 1, a copy the gazette notice to that effect. Further, that on 24<sup>th</sup> January 2025, pursuant to the provisions of Article 194 (l) (d) of Constitution of Kenya 2010 he vacated the office of the member of county assembly with effect from 30<sup>th</sup> January 2025. He annexed and marked as LB2 a copy of his resignation letter. Additionally, that upon the position of the Speaker of the county assembly of Elgeyo Marakwet being declared vacant, he submitted his nomination papers together with clearance by the Independent Electoral and Boundaries Commission to contest for the position of the speaker on 6<sup>th</sup> February 2025. He annexed a copy of clearance certificate.

19. The deponent averred that on 11<sup>th</sup> February 2025 he garnered 28 votes in the election upon which he was declared the winner the second nearest candidate one, Mr. Michael Chemwok having received one vote. He immediately took oath of office to the office of the speaker and was handed over the tools of the office by the outgoing speaker. He reiterated that his nomination and subsequent election for the aforesaid position was valid. He opposed the Petition vehemently.
20. Further, the immediate former Speaker of the County Assembly one Philemon K. Sabulei also filed an Affidavit dated 14<sup>th</sup> April 2025 wherein he deposed that on 24<sup>th</sup> January , pursuant to the provisions of Article 194(1)(d) of *the Constitution*, he received a resignation letter from Hon Lawi Kibire vacating Office of the Member of County Assembly for Metkei Ward with effect from 30<sup>th</sup> January 2025 which resignation he accepted and as such the said Lawi Kibire ceased being a Member of County Assembly for Metkei Ward.

### **Response to Petition**

21. The respondents filed a Response to the Petition on 14<sup>th</sup> April 2025. The Response was a reproduction of the contents of the Replying Affidavit and the Respondents sought to have the Petition dismissed with costs.

### **Petitioners' Further Affidavit**

22. The Petitioners filed a Further Affidavit sworn by Philemon Kibiwott Cheserek filed on 22<sup>nd</sup> April 2025. He deposed that what has been raised in the Affidavit is an issue of Jurisdiction and proceeded to summarize the complaint of the petitioners, basically reiterating the contents of the Replying Affidavit and the petition on the sequence of events from the alleged resignation of the speaker on 24<sup>th</sup> January 2025, pointing out that on 31<sup>st</sup> January 2025 while the County Assembly was on official recess, the Clerk of the Assembly the 1<sup>st</sup> Respondent issued a Gazette notice No. 1113 date of even reference declaring the position of the Speaker vacant. Further, that the Assembly resumed sittings on 11<sup>th</sup> February 2025 and without adequate notice to the Public or members of the Assembly conducted an Election of the new Speaker on the same day.
23. He deposed that the said election resulted in the election of the Interested Party as Speaker of the County Assembly. He stated that Article 178 (1) of *the Constitution* requires that the Speaker of the County Assembly be elected from persons who are not members of the County Assembly and further, that at the time of his election as Speaker, Hon. Lawi was still a sitting MCA, there being no formal notification from the Electoral and Boundaries Commission (IEBC) of his resignation, and no Gazettement of a vacancy in Metkei Ward.
24. He urged that the 1<sup>st</sup> Respondent and the former Speaker both claim in their respective affidavits to have received Hon. Lawi's resignation, yet no evidence has been presented to show that such resignation was processed, accepted or made Public in accordance with the applicable law. Additionally, that the Constitutionality of a resignation effected during recess and/or when the County Assembly is not sitting is an issue that this court has to determine. He stated that resignation is not an event but



a process and as such it is fundamental that this court determine the interpretation of the Constitution on resignation of a member of the County Assembly.

25. He further stated that the court has to make a decision as to when the resignation became effective to wit is it at the time of receiving the letter and or when the same is Gazetted and or when it is dated by the drawer to take effect. He posed the question; if the letter is received and not acted upon does it mean that the people of Metkei Ward are not represented even not considering that the advertisement had not been done?
26. The deponent urged that they wished for the court to tell them whether, as at the time of election of the Speaker, the people of Metkei Ward were represented by a member of the County Assembly. Further, they sought an interpretation on the time that the County clerk or the Speaker received the letter as they have not told this court when they received the same. The deponent invited the court to check the stamp and consider who received the said letter. The deponent stated that the respondents intend to derail the cause of Justice by filing an ineligible document and as a consequence this court ought to treat as forfeiture of right to justice and be construed in favour of the Petitioners as they cannot tell if the same was received by the Speaker or the Clerk.
27. The deponent further deponed that much as they are ineligible and owing to the Assembly being on recess it could only be construed as having been received by the office of the Clerk. That no evidence has been tendered by the Speaker to show that the resignation was tendered by Hon. Lawi to the Speaker himself or at all. He pointed out that the respondents opted voluntarily not to participate to defend this Petition despite being served, which service is not disputed. Further, that they opted not to challenge the Petitioners assertion that the Assembly was on recess by not providing evidence that the house was recalled bringing back the Speaker to the office to Act on the resignation.
28. The deponent sought the directions of the court on whether an act done by a Speaker on recess is valid in law. Further, that having no evidence of recalling the Speaker back to the office to attend to this resignation means that the respondents did not object that the County Assembly was on recess as an admission. He urged that there was no public notice that the Assembly that was on recess up to 11<sup>th</sup> February 2025 when the election was done. He stated that the import of this is that it was an act that was done to sanitize an unconstitutional process allegedly done by the respective offices of the County Clerk and the County Speaker.
29. He urged that the notice of declaration of vacancy on 24/2/2025 literally means the office was still occupied to then by Hon. Lawi thus the need for the court's interpretation on the same. Urging that recess in particular is indeed being on leave, counsel pointed out that it must be noted that Elgeyo Marakwet County Assembly standing orders do not explicitly detail its procedures during recess. He stated that the only inferred applicable practice is that the County Clerk or designated officers only may handle administrative duties during recess a fact which the respondents have mischievously handled by using an invisible Stamp.
30. He urged that the respondents cannot and should not be allowed by this Honourable court to regularize and sanctify irregularities by purporting to adduce documents procured after the fact and which are evident that this is a clear backdating of the process that had not been done. He stated that this matter is not an election Petition under the Elections Act as the Speaker is not elected through a popular vote and the Elections Act does not provide for a Mechanism to challenge a speaker's election. Further, that the issues they have raised concern Constitutional violations, not merely the outcome of the vote. He urged the court dismiss the preliminary point of law and determine the Petition.



## **Respondents Further Replying Affidavit**

31. The Respondent filed a Further Replying Affidavit deponed by Jane K Mutia. She deponed that the Further Affidavit is made on the basis of unfamiliarity of how the county assembly operates and is completely misguided and or misadvised on the law on the subject matter. She stated that the term for the county assembly is five years after general election. The county assembly activities are steered by a calendar which is approved by the county assembly at the beginning of every session.
32. Further, that the calendar provides for sitting period and recess period when the assembly is not sitting which basically helps in planning the activities of the assembly. During the recess period the assembly does not have plenary sittings unless a special sitting is convened but the rest of the activities of the assembly including committee meetings and other constitutional mandates of the assembly and that of each member that does not require plenary sittings of the assembly would be up and running.
33. She urged that during the recess period the Speaker and indeed the members of the county assembly are not on leave and the powers of the Speaker in running the business of the assembly is not suspended and the Speaker is fully in charge of all the legal powers bestowed upon in. Additionally, that during the subject period there was a publicized calendar of the assembly which clearly showed that the long recess of the assembly would end on 10<sup>th</sup> February 2025 which means that the new session would begin on 11<sup>th</sup> February 2025 and the assembly would be resuming its sittings then. She annexed and marked as JM 1, a copy of the publicized calendar for the third session. She stated that this is backed by the provisions of standing order 28 (1) of the county assembly. The deponent averred that it is therefore not a coincidence that the 11<sup>th</sup> of February 2025 was gazetted as the date for the election of a new speaker following the resignation of the speaker of the assembly but also made on the basis of the full cognizance of the consequence of the provisions of standing order 4 (2).
34. On the issue of resignation, she cited Article 194 (l) (d) and stated that the interested party demonstrated that he tendered his resignation. She reproduced the sequence of events pertaining to the resignation and clearance of the candidates as per the replying affidavit. As regards the declaration of the vacancy of the office of the speaker and the publication thereof, she stated that the same was proper and the time sufficient as the person whom the petitioners seeks to be declared the elected speaker has not contested that he was in any way impeded by the time given the application as he indeed qualified and participated in the elections albeit getting one vote.

## **Petitioners' Submissions**

35. The Petitioners submitted that the resignation procedure of Honourable Lawi Kibire was indeed irregular. Counsel urged that the resignation was dated 24<sup>th</sup> January 2025 to take effect on 30<sup>th</sup> January 2025. However, the Assembly was not in session and there is uncertainty as to who received the resignation; the Speaker or the clerk as both claim to have received the same in their respective Replying Affidavits. Counsel submitted that Article 75(1)(b) requires that resignation from public office be clear, formal and procedurally compliant. Further the Hansard has no record of the resignation having been tabled, debated, or adopted by the Assembly.
36. Counsel cited the case of Speaker of the Senate & Anor. vs 4 others [2013] eKLR and urged that in the present case, the confusion over whether the speaker or the clerk received the resignation and the lack of clarity in the receiving stamp, further invalidates any claim of proper procedure. Moreover, in the absence of the speaker (who was on leave) only the Deputy Speaker or the Assembly itself, not the clerk, had capacity to process such an essential Constitutional Act. Counsel maintained that all that was done was a nullity ab initio, as it was irregular and unconstitutional. He additionally cited the case



of Martin Nyaga Wambora & 3 others vs Speaker of the County Assembly of Embu & 6 others [2014] eKLR in this regard.

37. Counsel submitted that the Clerk, acting without proper authorization is akin to exceeding the lawful scope of power, thus making such action unlawful. Further, that in case of the key holding thereto was that public officers are bound by the principle of legality, and must act within the four corners of their legal mandate. He urged that the application of this principle is that the Clerk as a public officer, must act only within the confines of their statutory and procedural mandate. Receiving a speaker's resignation and triggering an election are not within that mandate unless directed by proper authority which is not the case hereto as both the Speaker and member of County Assembly resigned on the same day.
38. Counsel urged that in the *Speaker of the Senate & Anor. vs Attorney General & 4 other* [2013] eKLR, the key holding thereto was that the Supreme Court underscored the Constitutional separation of roles between officers and Arm of Government. It held that decisions must be made by the proper organ and in accordance with formal procedure. He further stated that only the Speaker or Deputy Speaker in their absence may direct Assembly business.
39. That the Clerk cannot usurp this function such as to order for the Gazettement and vacancy of the speaker's office. Counsel posited that the County Government's Act 2012, Section 12 (7) clearly outlines the clerk's role as secretarial and procedural not executive. The section does not vest any authority in the clerk to receive resignations or call elections unilaterally. He additionally cited the case of *Kariuki vs Attorney General* [2013] eKLR where the court held that an office bearer cannot vacate office unless resignation is formally received, acknowledged and procedural obligations fulfilled. He stated that without the Hansard entry or formal acknowledgement by the Assembly, the resignation process received was incomplete as of 30<sup>th</sup> January 2025, procedural irregularities that go to the root of legality invalidate subsequent decisions or elections.
40. Counsel submitted that the Deputy Speaker or presiding member can trigger an election process. Upon resumption of the Assembly and once the speaker's resignation is officially tabled and acknowledged, the Deputy Speaker who assumes the role of presiding officer under Article 178 (2) (b) of *the Constitution* is vested with authority to:
  - a) Declare a vacancy
  - b) Direct the clerk to issue a notice of election and
  - c) Provide over the process of electing a new speaker.
41. The purported election, done outside proper session without formal notice, lacked legal grounding. Further, that the notice requested was at least three (3) days from the 11<sup>th</sup> February 2025 immediately upon resumption of the Assembly but not the same day. He cited the case of *Moses Nyandusi Osoro vs National Police Service Commission & Attorney General (Pet E004 OF 2021)* [2022] KEELRC 184 (KLR) (28<sup>th</sup> April 2022).
42. Counsel urged that on the access to information, *the Constitution* of Kenya, Article 35 guarantees every citizen the right to access information held by the state. Additionally, the *Access to information Act*, section 4 provides that every citizen has a right to access information held by the state subject to exemptions under section 6 of the same act. Section 5 of the Act imposes upon public entities a duty to facilitate access to information held by them. It is required that they do so expeditiously and at reasonable cost. The Act emphasizes that the entities exercise transparency as well as accountability. Furthermore, that the Act, under section 28, outlines that failure to comply with the provisions above



is an offence and attracts a fine not exceeding fifty thousand shillings or an imprisonment for a term not exceeding three months, or both.

43. Counsel cited the case of *Legal Advice Centre t/a Kituo Cha Sheria & 33 others v Cabinet Secretary, Ministry of Education & 7 others* (Petition No. 104 of 2019) and the case of *Khalifa & another v Principal Secretary, Ministry of Transport & 4 others* (Constitutional Petition E032 of 2019) on access to information. Counsel reiterated that the firm of Chemwok & Co. Advocates on behalf of the Petitioners wrote a letter dated that day requesting various information as stated in the supporting affidavit.
44. He stated that the County Assembly failed to provide; the Letter recalling the House after recess, the Payment payroll for the month of December 2024 and January, 2025 for the members of the Elgeyo/Marakwet County Assembly, the Sessional paper communication to the house upon resignation of the Member of County Assembly for Metkei Ward, Lawi Kibire, the Gazette notice on resignation of the Member of County Assembly for Metkei Ward, Lawi Kibire and the List of candidates who contested for the seat of the Speaker of the Elgeyo/Marakwet County Assembly and their qualifications submitted upon declaration of a vacancy in the office Speaker of the Elgeyo/Marakwet County Assembly on 30<sup>th</sup> January, 2025. In doing so, the Assembly violated the right to access information as provided for in *the Constitution* of Kenya under article 35 and the *Access to Information Act*, 2016 section 4. He placed reliance on *R -vs- Kenya Pipeline Co. Ltd & Anor.* [2017] eKLR and *Kenya National Commission on Human Rights an=vs= The Attorney General & 4 others* [2016] eKLR.
45. Counsel cited the case of *Mwangi wa Iria vs The Speaker Murang'a County Assembly and 3 Others* (2014) eKLR and urged that this dispute is properly challenged via a Constitutional Petition.

### **Respondents' Submissions**

46. Learned counsel for the respondent submitted that the petition is based on a misunderstanding of the law. Further, he pointed out that the issue of resignation is a new matter as the main contention in the petition is that the current speaker did not resign and therefore was not qualified to contest for the election. Counsel submitted that parties are bound by their pleadings, placing reliance on the case of *Raila Amolo Odinga & Another vs IEBC & 2 Others* (2017) eKLR.
47. Counsel submitted that when they demonstrated that the interested party had resigned from his position as the member of county assembly, the petitioners in their further affidavit sworn on 22<sup>nd</sup> April 2025 introduced a new ground that the former Speaker was incapacitated to receive the interested party's resignation because the assembly was on recess and that resignation is a process not an event. He urged that they responded on that issue that during the recess period the Speaker is not impeded from exercising his official duties apart from the plenary sittings as the assembly does not sit during recess. Additionally, that a vacancy of a member of a county assembly is occasioned by a member tendering his written resignation to the speaker only.
48. Counsel stated that it is quite unconscionable that petitioners are seeking in their prayers in this petition to have one Mr. Michael Chemwok to be declared as the duly elected speaker while at the same time urging this court to make a finding that the resignation of the former speaker did not take a legal effect, meaning he should be legally in office and therefore their prayer will be defeated by their own argument. Further he pointed out that they want the said Mr. Chemwok to be declared the speaker in a process that was conducted by the Clerk, who, in their submissions did not have capacity to conduct the elections. This is clear indication that the petitioners are making arguments and submissions for the sake of it and do not believe in their own cause for obvious reasons. Counsel urged that submissions



cannot take the place of evidence, citing the Court of Appeal case of Daniel Toroitich Arap Moi vs. Mwangi Stephen Muriithi & Another [2014] eKLR in this regard.

49. On resignation of a Member of County Assembly, counsel urged that Article 194(1) (d) provides that the office of a member of County Assembly becomes vacant if the member resigns in writing addressed to the Speaker of the County Assembly. Additionally, that they have clearly demonstrated that in a letter dated 24<sup>th</sup> January 2025 addressed to the Speaker, the interested party expressed his unequivocal intention to vacate the office of the member of County Assembly from 30<sup>th</sup> January 2025.
50. Counsel submitted that the Clerk averred that she received the resignation letter from Hon, Lawi Kibire because the resignation letter was part of the documents presented by the interested party in order to be cleared to contest for the Position of the Speaker. Meaning, she did not receive the resignation letter in the first instance from the interested party. It was an obvious document to be presented as the qualifications to contest for the office of the Speaker under Section 21(1) of the *Elections Act*. In the same manner he must have presented the same resignation letter to the Independent Electoral and Boundaries Commission (I.E.B.C) for the interested party to have been cleared to contest.
51. On election of the speaker, counsel submitted that it was triggered by the resignation of the former Speaker Hon. Philemon Sabulei pursuant to the provisions of Section 21 (5) (d). Standing Order 4 (2) of the County Assembly standing orders. That the election of the speaker is therefore prompted by any vacancy that occurs before the expiry of the term of the assembly. Once the office falls vacant owing to the resignation of the Speaker, election to replace him is automatically activated.
52. Counsel submitted that Section 19 of the *County Assembly Services Act* provides that the clerk is the chief administrative officer of the county assembly and is responsible for the day to day management of the county assembly. Further that standing order 5(1) empowers the clerk to, by gazette, notify the interested person to submit their nomination papers for election for the office of speaker.
53. He urged that the deputy speaker explained why he could not preside over the elections on the day and guided by standing order 5, he ceded the position chair to the clerk to conduct elections and to administer the oath to the newly elected Speaker pursuant to standing order 12. He posited that there cannot be any procedural lapses in the said elections as a reading of the standing orders 5-12 and the First Schedule to the *Elections Act* places the Clerk in a pivotal position with responsibility of clearing nominees for vie, conduct the elections and administer oath of office to the successful candidate.
54. Counsel stated that they have demonstrated that the sitting of 11<sup>th</sup> February 2025 was not a special sitting and did not require Gazettement, placing reliance on standing Order 28.
55. On the issue of Violation of the right to equality before the law, counsel urged that the petitioners have not shown how the nominees especially Mr. Chemwok whom they want to be declared the speaker was not equally treated. That by the petitioners' own admission Mr. Michael Chemwok was cleared and participated in the elections only that he did not garner sufficient votes to be declared the speaker. The fact that the petitioners want Mr. Chemwok to be declared a winner in an election they claim there was violation of *the constitution* is nothing but a demonstration of another push for a point which they themselves do not believe in but just for the sake of it.
56. On the issue of access to information, counsel submitted that they have demonstrated that the petitioner was informed that all the information they wanted can be accessed free of charge from the County Assembly website. He urged the court to dismiss the Petition with costs.



## Analysis & Determination

57. The issues that arise for determination are;
- a. Whether the Petition meets the threshold for a Constitutional Petition
  - b. Whether the election of a speaker is an election dispute
  - c. Whether process of the election of the speaker was unconstitutional

### Whether the Petition meets the threshold for a constitutional petition

58. The threshold for constitutional petitions was set in the case of Anarita Karimi Njeru –vs The Republic (1979) eKLR where it was held that constitutional petitions should set out with a reasonable degree of precision the petitioner’s complaint, the provisions of *the constitution* alleged to have been infringed and the manner in which those provisions of *the constitution* have been infringed. Similarly, in the case of Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others (2013) eKLR the Court of Appeal stated that: -

“It is our finding that the petition before the High court was not pleaded with precision as required in Constitutional petitions. Having reviewed the petition and Supporting Affidavit we have concluded that they did not provide adequate particulars of the claims relating to the alleged violation of *the Constitution* of Kenya and the Ethics and Anti- Corruption Commission Act, 2011, accordingly the Petition did not meet the standard enunciated in the Anarita Karimi Njeru Case”

59. Having considered the Petition filed by the Respondent alongside the above cited cases, I am satisfied that the same has met the threshold of a Constitutional Petition as therein laid out.

### Whether the election of the speaker is an election dispute

53. Under Article 87 of *the Constitution*, Electoral disputes are defined as follows;
- (1) Parliament shall enact legislation to establish mechanisms for timely settling of electoral disputes.
  - (2) Petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission.
  - (3) Service of a petition may be direct or by advertisement in a newspaper with national circulation.
53. A reading of *the Constitution* reveals that election disputes that are to be resolved in this context are those conducted by the Independent Electoral and Boundaries Commission, which is established by Article 88 of *the Constitution*. Article 88(4) of *the Constitution* of Kenya provides as follows
- (4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament.



53. In Republic v Transitional Authority & another Ex-Parte Crispus Fwamba & 4 Others [2013] eKLR Korir J held: -

“One may then ask why the election of a speaker of a county assembly has been included in the *Elections Act*. In my humble view, such inclusion was just a matter of convenience. It can be compared to the inclusion of Order 53 in the Civil Procedure Rules. This Order which deals with judicial review applications has no nexus with the other Civil Procedure Rules. In summary, I express a guarded view that a dispute concerning the election of a speaker of a county assembly need not be addressed through an election petition. The best means for addressing such a dispute is through a judicial review application or constitutional petition.”

53. The election of a speaker of the County Assembly of Elgeyo Marakwet is not one of an office established by *the Constitution* and therefore cannot be considered to be disputed by way of Election Petition.

**Whether the process of election of the speaker was unconstitutional**

53. On this particular issue, the relevant and applicable law is as follows. Article 178 of *the Constitution* provides as follows;

Article 178. Speaker of a county assembly

- (1) Each county assembly shall have a speaker elected by the county assembly from among persons who are not members of the assembly.
- (2) .....
- (3) .....

57. Section 9A of the *County Governments Act* provides;

- (1) The speaker of a county assembly shall be elected, in accordance with standing orders of the respective county assemblies, from among persons who are eligible to be elected as members of a county assembly but are not such members.
- (2) .....
- (3) .....
- (4) .....

58. Section 21 of the *Elections Act* provides as follows;

Election of county assembly speaker

- a. The speaker of a county assembly shall be elected by each county assembly in accordance with the Standing Orders of the county assembly, from among persons who are qualified to be elected as members of a county assembly but are not such members.

59. The Standing Orders of Elgeyo Marakwet County Government provides as follows on the election of a Speaker;

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- (1) A Speaker shall be elected when the County Assembly first meets after a General Election and before the County Assembly proceeds with the dispatch of any other



business, except the administration of the Oath or Affirmation of Office to Members present.

- (2) If the office of Speaker falls vacant at any time before the expiry of the term of County Assembly, no business shall be transacted by the County Assembly until the election of a new Speaker.
- (3) A Member elected by the County Assembly in accordance with Article 178(2) of *the Constitution* shall preside over the election under paragraph (2).

59. Section 5 of the *Elections Act* provides; Declaration of Vacancy in the office of the speaker

- (5) The office of speaker of a county assembly shall become vacant—
  - (a) when a new county assembly first meets after an election;
  - (b) if the office holder vacates office;
  - (c) if the county assembly resolves to remove the office holder by a resolution supported by the votes of at least two-thirds of its members;
  - (d) if the office holder resigns from office in a letter addressed to the county assembly;
  - (e) where the office holder violates *the Constitution*;
  - (f) in the case of gross misconduct on the part of the office holder;
  - (g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;
  - (h) where the office holder is bankrupt;
  - (i) where the office holder is sentenced to a term of imprisonment of six months or more; or
  - (j) if the officer holder dies.

61. Under Standing Order 5(1) it is provided that;

- 5(1) Upon the Governor notifying the place and date for the first sitting of a new County Assembly pursuant to Standing Order 3, the Clerk shall by notice in the Gazette notify that fact and invite interested persons to submit their nomination papers for election to the office of Speaker.

62. In considering the submissions raised by both Counsel, it is my considered view that in noting that Counsel for the Petitioners in his submissions deviated considerably from the substratum of his Petition, it is necessary to go back to the basics and reiterate the legal position that parties are bound by their pleadings. This is important because in the body of their Petition, and as is also apparent from the Reliefs that they seek in the said Petition, the Petitioners cause of action was simple clear and unequivocal and that is that the Interested Party was elected as the Speaker of the Elgeyo Marakwet County Assembly while still a sitting Member of County Assembly and further that their request for information that would have enabled them demonstrate this fact was not responded to which amounts to a presumption of denial.

62. However, subsequent to the filing by the Respondents of their various responses to the facts deposed in the various Affidavits filed by the Petitioners, the Petitioners in their submissions now abandoned his earlier pleading and submitted almost exclusively on the issue of the resignation of the Interested



- party, the process appertaining to the same and the subsequent elections that led to the Interested Party as Speaker of the County, issues that are not at all germane to the petition as filed.
62. This is because the Petitioners did not at all plead in the alternative to the assertion that the Interested Party was elected Speaker while still a sitting Member of County Assembly that the process of the Interested Party's resignation and subsequent election as Speaker was procedural and/or irregular to give the Court a foothold to delve into the issues now raised in submissions.
62. For the above reasons, I will only address myself to the cause of action raised in the Petition as I have already herein clarified. Briefly, I have considered the depositions made by the Respondent and the immediate past Speaker on the Resignation of the Interested Party. I have also addressed myself to the annexures in support thereof as already herein summarized including the Hansard of 11<sup>th</sup> February 2025 when the elections were held. It is worthy of note that the law on the resignation of a Member of the County Assembly as provided in *the Constitution* under Article 194(1)(d) only requires that the member resigns in writing addressed to the speaker of the assembly.
62. It does not provide for timelines or any process of acceptance of the said written resignation either by the Speaker or by the Assembly. In this instance, I note that the Respondents deposition that a written resignation, also annexed to the various Affidavits and confirmed by the former Speaker as already herein summarized was not denied by the Petitioners in their Further Affidavit but instead, they embarked on questioning the how's and wherefores and implications and ramifications of the said resignation which in my view were adequately responded to by the Respondents in their Further replying Affidavit in reply to the Petitioner Further Affidavit. In this regard, I am satisfied that the candidate that was declared the winner had complied with the legal requirements of submitting his resignation vide a letter to the County Assembly through the Speaker.
62. Further to the above, from the Respondent's pleadings and particularly the Hansard Report filed as an annexure thereto, I am satisfied that the election conducted on 11<sup>th</sup> February 2025 just after the recess had ended and before the Assembly could embark on the business of the Assembly after the resignation of the Speaker was in compliance with the Constitutional and relevant Statutory requirements. Also, for reasons that the Respondent's deposition that the Petitioner's request for information they were informed that the documentation that they sought could be accessed through the County's website was not at all rebutted, then I find no merit in their averment that their request was arbitrarily denied.
62. All in all, in light of my conclusions as herein above stated, it is my finding that that the Petitioners failed to sufficiently demonstrate that their constitutional rights were violated by the Respondent as they have as averred in their Petition to warrant the reliefs that they seek. The Petition therefore lacks merit and the same is dismissed in its entirety. Since the matter was filed as a public interest litigation, each party shall bear their own costs.

**READ DATED AND SIGNED AT ITEN ON 2<sup>ND</sup> OCTOBER 2025**

**E. OMINDE**

**JUDGE**

