



Mutai & 5 others v County Assembly of Kericho & 12 others (Petition E009 of 2025) [2025] KEHC 18923 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PETITION E009 OF 2025
JK SERGON, J
DECEMBER 19, 2025**

BETWEEN

- HON. DOMINIC KIPKIRUI MUTAI 1ST APPLICANT**
- HON. BAVINA CHEPKIRUI 2ND APPLICANT**
- HON. WINNIE CHEPKOECH LANGAT 3RD APPLICANT**
- HON. GABRIELLA CHEPNGENO 4TH APPLICANT**
- HON. OPILLE NOELLA OMOLLO 5TH APPLICANT**
- HON. ISSACK MATKEIR 6TH APPLICANT**

AND

- THE COUNTY ASSEMBLY OF KERICHO 1ST RESPONDENT**
- SPEAKER, COUNTY ASSEMBLY OF KERICHO 2ND RESPONDENT**
- CLERK, COUNTY ASSEMBLY OF KERICHO 3RD RESPONDENT**
- HON. HARON ROTICH 4TH RESPONDENT**
- HON. PAUL BII 5TH RESPONDENT**
- HON. PHILIP MUTAI 6TH RESPONDENT**
- HON. BETRICE CHEPKEMOI 7TH RESPONDENT**
- HON. JESCA CHEPKEMOI 8TH RESPONDENT**
- HON. EVALINE CHEPWOGEN 9TH RESPONDENT**
- HON. PHILIP RONO 10TH RESPONDENT**
- HON. CHERUIYOT BETT 11TH RESPONDENT**
- SERGEANT AT ARMS, KERICHO COUNTY ASSEMBLY ... 12TH RESPONDENT**



RULING

1. The 1st, 2nd, 3rd, 4th, 5th, and 6th Petitioners filed the Petition dated 11th August, 2025 whereof they sought for the following Orders:-
 - i. That Orders do issue against all the Respondents jointly and severally, and permanently staying any “Notice to Show Cause” hearings and/or any other proceedings, and/or decisions by the 2nd Respondent or anyone else declaring the Petitioners’ status as Member of County Assembly (MCA) positions as vacant and/or any de-gazettement in the Kenya Gazette of the Petitioners as Members of County Assembly or in any other forum, holding out the Petitioners as having ceased being Members of County Assembly arising from or connected to the alleged non-attendance of the County Assembly Sessions and captured in the “Notice to Show Cause” dated 6th August, 2025 issued by the 1st, 2nd, and 3rd Respondents to the Petitioners.
 - ii. That an order do issue against all the Respondents jointly and severally, and permanently restraining them from undertaking any acts of commission or omission designed to deny the Petitioners their entitlement to access the County Assembly and/or participate in any debate, and/or vote on any proceedings including those relating the motion of impeachment of the Governor, County Government of Kericho due on 15th August, 2025 and/or any other dates and/or any other acts of commission or omission intended to remove, evict, exclude, obstruct, restrain or otherwise interfere with the Petitioners in the exercise of all their rights and privileges as duly Elected and Nominated Members of the County Assembly (MCAs), Kericho County.
 - iii. That the Honourable Court be pleased to make a finding that the Petitioners are not in default of the eight (8) consecutive sittings in the current session and there is no justifiable cause to warrant any sanction and/or removal in law.
 - iv. That pending any other or further consideration of the cause and the application, an order do issue to the 1st to 11th Respondents do issue under the hand of the 1st Respondent’s head of the Information Communication Technology (ICT) the data of all biometric attendance registers, certified as a true and genuine as to the attendance over the current County Assembly Sessions.
 - v. That a declaration do issue that the Standing Order No.237 (238) of the County Assembly of Kericho Standing orders is null and void to the extent of it being Contrary to *the Constitution* and unlawful.
 - vi. That in the interest of justice, this Honourable Court be pleased to make any further orders that it may deem fit.
 - vii. That the costs of the Petition be borne by the 2nd Respondent.
2. The Petitioners filed the Affidavit sworn by Dominic Kipkirui Mutai in support of the Petition. The Petitioners also filed the motion of even dated whereof they sought for inter alia a conservatory order to stay any Notice to Show Cause hearings and or decisions by the 2nd Respondent or anyone else declaring the Petitioners/Applicants’ status as MCA positions as vacant and or any de-gazettement as MCA or holding out the Petitioners as having ceased being MCA arising from or connected to the alleged non-attendance of the County Assembly Sessions and captured in the “Notice to Show Cause” dated 6th August, 2025 issued by the 1st – 3rd Respondents to the Petitioners.



3. When the Respondents were served with the Petition and the motion, they file the Notice of Preliminary Objection dated 24th September, 2025 to oppose the aforesaid Petition and motion. The Court issued directions to have the Notice of Preliminary Objection to be determined first by way of written submissions.
4. In the Notice of Preliminary Objection, the Respondents sought for the motion and petition to be struck out for the following reasons.
 - i. The Petition does not pass muster of Constitutional Petitions set out in Anarita Karimi Njeru -vs- The Republic [1976-1980] KLR 1272 that Constitutional Violations must be pleaded with a reasonable degree of precision, for the reasons that:-
 - a. Whereas the title of the Petition refers to Articles 1, 2, 3, 10, 19, 20, 21, 23, 24, 25, 27, 28, 47, 50, 165, 194 (1) (b), 196, 258 and 259 of *the Constitution*, the said title does not make reference to any provisions of *the Constitution* that are alleged to have been violated, threatened and/or infringed by the Respondents.
 - b. The Petition does not provide particulars as to the allegations and the manner of the alleged infringements, threats and/or violations of the cited Constitutional Provisions.
 - ii. The substratum of the Petition, i.e. the declaration of the vacancies in the positions of the Petitioners for absence from eight (8) sittings at the Assembly without the Speaker's permission under Article 194 (1)(b) of *the constitution* is both presumptuous and speculative and therefore non-justiciable.
 - iii. Further to objection (2) above, the Petitioners/Applicants' petition is barred by the doctrine of exhaustion and Constitutional avoidance as Standing Order 238 of the Kericho County Assembly Standing Orders establishes sequential steps of addressing the grievances forming the basis of the instant Petition.
 - iv. The main ground upon which the Petition is premised, namely: the allegations touching on the impeachment of the Governor of the County Government of Kericho has since taken place rendering the Petition moot and therefore non-justiciable.
 - v. The Court's jurisdiction to hear and determine the issues raised in the Application and the Petition is limited by Section 17 (7) of the *County Assemblies Powers and Privileges Act*, Cap 265C.
5. I have considered the grounds stated on the Notice of the Preliminary Objection. I have also considered the written submissions filed in support and against the Notice of Preliminary Objection. It is the submission of the Respondents that the Petition before this Court fails to meet the muster of Constitutional Petitions set out in the case of Anarita Karimi Njeru -vs- Republic [1976 – 1980] KLR 1272.
6. It is argued that the Petition provides neither the particulars of the alleged complaints the manner of the alleged infringements, nor the jurisdictional basis of the action before the Court.
7. In the Anarita Karimi Njeru case, the Court held inter alia that a party has to set out with a reasonable degree of precision that which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.
8. In the instant Petition, the Petitioners cited omnibus provision of Articles 1, 2, 3, 10, 19, 20, 21, 23, 24, 25, 27, 28, 47, 50, 165 194 (1) (b), 196, 258 and 259 of *the Constitution*. The Petitioners did not



with reasonable precision indicate the particulars and the manner of the alleged infringements. The allegations and or violations are so general.

9. It is also the contention of the Respondents that the Substratum of this Petition is presumptuous and speculative and offends the doctrine of ripeness and is therefore non-justiciable. It is apparent from the Petition that the Petitioners are apprehensive that their positions may be declared vacant on the basis of the absence from 8 consecutive sittings without the Speaker's permission under Article 194 (1) (b) of the Constitution. However, it is clear that no declaration of vacancies have been made by the 2nd Respondent.
10. With respect, I am persuaded by the Respondents assertion that the Petitioners complaints are merely speculative and presumptuous. Their complaints are more hypothetical. The action speculated may take place is yet to crystalize. Parties are prohibited from moving to Court before the cause of action crystalized by the doctrine of ripeness.
11. The other ground the Respondents argued is that the Petition offends the doctrine of Constitutional avoidance and exhaustion.
12. It is trite law that an aggrieved party must first pursue all avenues of relief found within the administrative agency responsible for the issue at hand to address and resolve before escalating the same to the Courts.
13. A critical examination of the instant Petition reveals that the grievances raised therein can be addressed in the County Assembly. Standing Order 238 of the Kericho County Assembly establishes sequential steps of addressing the grievances raised in the Petition.
14. I am convinced that the instant Petition therefore offends the doctrines of Constitutional avoidance and exhaustion.
15. The other important ground which was raised and argued is that the Petition is premised on allegations that touched on the impeachment process of the Governor of Kericho County. It is pointed out that the aforesaid impeachment process has since been concluded hence the instant Petition is moot. This argument is not contested by the Petitioners. In any case it is common knowledge that the impeachment process of the Governor of Kericho County was concluded. I am therefor satisfied that the Petition could moot.
16. The final issue argued by the Respondents is to effect that this Court lacks jurisdiction entertain the Petition since it touches on the internal disciplinary and administrative processes of the Assembly. A careful consideration of the Provisions of Section 17 (7) of the County Assemblies Powers and Privileges Act reveals that no Court has jurisdiction to question the validity of the proceedings or decision of the Assembly or the committee of privileges acting in accordance with.
17. With respect, I am persuaded by the argument put forward by the Respondents that the Court will not intervene in such disputes unless there are peculiar circumstances that have been demonstrated. Unfortunately, the Petitioners have failed to do so.
18. In the end, I find the Notice of Preliminary Objection dated 24th September, 2025 to be with merits. The same is upheld.
19. Consequently, the Petition and motion dated 11th August, 2025 are hereby ordered struck out. A fair order on costs is to order, which I hereby do that each party bears its own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 19TH DAY OF DECEMBER, 2025.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

No Appearance

