



**Omar & 8 others v Inspector General of Police & 2 others (Constitutional Petition E014 of 2025)
[2026] KEHC 436 (KLR) (Constitutional and Human Rights) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 436 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E014 OF 2025**

SC CHIRCHIR, J

JANUARY 22, 2026

IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 2(1) & (4), 3 (1), 4, 10, 19(1) & (2), 20(1), 22(2), 23, 27, 33, 159(2), 196, 258, 259 & 260 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 PART 1 3(10), (2), (3), (4), (5) (6), (7), (8), PART III 23 & 24

AND

IN THE MATTER OF SECTION 8, 10 & 11 COUNTY ASSEMBLIES POWER AND PRIVILEGES ACT

BETWEEN

**HON AMINA OMAR 1ST PETITIONER
HON ABDINOOR DIMA 2ND PETITIONER
HON ABDI RASHID 3RD PETITIONER
HON FATUMA ABDULLAHI 4TH PETITIONER
HON FRANCISCO LETIMALO 5TH PETITIONER
HON DAVID LEMANTILE 6TH PETITIONER
HON REHEMA ABDIKADIR 7TH PETITIONER
HON DAVID WAITHAKA 8TH PETITIONER
HON FOZIA JIBRIL 9TH PETITIONER**

AND



INSPECTOR GENERAL OF POLICE 1ST RESPONDENT
DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT
DIRECTOR OF PUBLIC PROSECUTIONS 3RD RESPONDENT

RULING

1. What is due for determination is the Petitioner's Notice of Motion dated 27/08/2025. It is premised on Articles 22, 23, 24, 25, 27 of *the Constitution* and Rule 3, 4, 19, 23, and 24 of Kenya (Protection of Rights and Fundamental Freedom.) practice and Procedure Rules 2013 and Sections 8, 10 and 11 of the *County Assemblies powers and privileges Act*.
2. The Motion seeks orders as follows:-
 1. (spent)
 2. (spent).
 3. That pending the inter partes hearing and determination of the Petitioner, this Honourable Court be pleased to issue an interim conservatory order restraining the Respondent, whether by themselves, their agents, servants, employees, or any other person acting under their authority or instructions, from summoning, investigating, arresting, detaining, arraigning, charging, prosecuting, or in any other manner whatsoever interfering with the Petitioners/Applicants' liberty and constitutional rights arising from or in connection with their contributions, debates, and voting on motions on the floor of the County Assembly of Isiolo on the 19th day of June 2025, the 24th day of June, 2025, and the 26th day of June 2025, pertaining to the motion for the removal of Mohamed Roba Koto as Speaker and the subsequent election of Abdullahi Jaldesa Banticha as the new Speaker of the Isiolo County Assembly
 4. That pending the inter partes hearing and determination of the Petition, this Honourable Court be pleased to issue an interim conservatory order restraining the Respondents, whether by themselves, their agents, servants, employees, or any other person acting under their authority or instructing, from summoning, investigating, arresting, detaining, arraigning, charging, prosecuting, or in any other manner whatsoever interfering with the Petitioners/Applicants' liberty and constitution rights arising from or in connection with their contributions, debates, and voting on motions on the floor of the County Assembly of Isiolo on the 19th day of June 2025, the 24th day of June 2025, and the 26th day of June 2035, pertaining to the motion for the removal of Mohammed Roba Koto as Speaker and the subsequent election of Abdullahi Jaldesa Banticha as the new Speaker of the Isiolo County Assembly.
 5. That pending the hearing and determination of this application and Petition, this Honourable Court be pleased to issue an interim conservatory order restraining the Respondent, whether by themselves, their agents, servants, employees, or any other person acting under their authority or instructions, from conducting any further investigations, recommending the prosecution, and/or commencing or continuing with any prosecution of the Petitioners/Applicants arising from or in connection with their contributions, debates, and voting on the 19th June, 2025, 24th June, 2025, and 26th June 2025, relating to the motion for the removal of



Mohammed Roba Koto as Speaker and the subsequent election of Abdullahi Jaldesa Banticha as the new Speaker cost of the County Assembly.

6. That cost of the Application be borne by the Respondents.

The Applicants' case

3. The Application is supported by the grounds appearing on the face of the Application, the Supporting Affidavit and further Affidavit, both Sworn by Amina Omar Enow, the 1st petitioner herein.
4. The Applicants state that they are members of the County Assembly of Isiolo; that were summoned by Police following their participation in a Motion by the county Assembly of Isiolo , to remove Mohammed Roba as the Speaker of the County Assembly, and the subsequent election of one Abdullahi Jaldesa Banticha, to take his place.
5. It is the Applicants' case that pursuant Section 8 of the *County Assemblies Powers and Privileges Act* (CAPPA) they are immured from any Criminal or Civil proceedings by reason of any matter said in the debate, Petition, Motion or other Proceedings of a County Assembly; that the summoning by the respondents violates the independence of the County Assembly and the doctrine of Separation of powers envisaged in *the Constitution*. It is further argued that their intended arrest, arraignment and prosecution with the offence of conspiracy to commit a felony, Contrary to Section 393 of the Penal Code, arising from privileged proceedings do not constitute a criminal offence and is maliciously brought against them to prevent them from discharging their Constitutional mandate as members of the County Assembly of Isiolo . It is further stated that the Respondents' action is devoid of public interest, fails the test of fair administrative action envisaged under Article 47 of *the Constitution* and Section 4 of the *fair Administrative action Act*.(FAAA).
6. The Applicants further state that as members of the county Assembly, they do not prepare the order papers or Hansard reports; that the respondents are demanding for : that there is nothing to show that the motion was not authentic, that the earlier Affidavit purportedly sworn by them denying the existence of the subject Motion was done under coercion by Mohammed Roba, and that they never appeared before any Advocate for purposes of swearing the said Affidavit; that in any event they were summoned at night by Directorate of criminal investigation (DCI) officer to appear before the Attorney General (AG), where they were made to sign the said Affidavits.

Respondents' case

7. The Respondents' Replying Affidavit is sworn by one Inspector Kennedy Ireri Mugo, attached to the General Investigations Unit at the DCI headquarters. He states that he is investigating a case of conspiracy to commit a felony, following a request by the AG on the Circumstances leading to the Gazettement of Abdullahi Jaldesa Banticha as the speaker of the County Assembly of Isiolo.
8. He further states that the AG submitted the documents listed below for investigation:
 - a). A letter dated 26/6/2025 submitted by the Clerk of the County Assembly of Isiolo submitting a draft Gazette Notice. On the election of the speaker. The letter was signed by one Salad B. Guracha.
 - b). Order papers, Hansard and votes of proceedings of the County Assembly for 26/06/25.
 - c). Signed copies of the oath of office of the speaker and affirmation of office of the speaker, Signed by Abdullahi Jaldesa Banticha.



- d). Order papers, Hansard and votes of proceedings of the County Assembly for 19/6/2025 and 24/06/2025.
9. It is further stated the sixteen members of county Assembly (MCA's) voluntarily presented themselves before the DCI headquarters, and recorded statements in respect to the removal of Mohammed Roba as the speaker of the Assembly. Those who recorded statements included the 1st, 2nd, 4th, 5th, 6th and 8th petitioners' herein. Their affidavits are attached to the replying Affidavit. He further states that he recorded statements from Eighteen (18) officers of the County Assembly on the same matter.
10. The respondent further deposes that the 1st, 4th, 5th, 6th, 7th, 8th and 9th Petitioners have voluntarily recorded statements as aforesaid. However the 5th, 6th, 7th, 8th and 9th Petitioners are not currently under investigations, unless further investigations disclose their culpability; That the 1st, 2nd, 3rd and 4th Petitioners were indeed summoned but are not under any investigation unless further investigation discloses their culpability.
11. The respondents argue that the privileges under CAPP do not extend to the making of false documents; that preliminary investigations show that orders papers for 19/06/25, 24/06/24 (sic) and 26/06/25 which the Government Press relied on were forged.
12. It is stated that the Police have the mandate to require recording of statements on any matter under investigations, and it is only a court of law that can determine whether a crime has been committed or not.
13. The application was prosecuted by way of written submissions.

The Applicants' submissions

14. The Applicant didn't file any submissions. what is on record are submissions in respect of the main Petition.

Respondents' submissions.

15. It is submitted that pursuant to Article 157 of the Constitution, the 3rd Respondent has the powers to institute and undertake Criminal Proceedings against any person before any court (with the exception of the martial court) in respect of any offence alleged to have been committed, and in so doing, does not require the consent of any person or authority.
16. In the respect to the 1st and 2nd respondents, it is submitted that Section 24 of the National Police Service Act gives the Police the mandate to Investigate crimes, carry out criminal interrogation, and apprehend offenders.
17. It is the respondent's further submissions that the Petitioners will not suffer any prejudice if investigation is allowed to continue; there is not evidence that the petitioner will not be accorded a fair trial; that indeed the Kenya laws provide essential safeguards to guarantee a fair trial.
18. On the privileges, it is submitted that they do not cover Criminal Acts, like making false documents, as in this case.
19. It is finally submitted that in any event, the investigations are still on and the final verdict may as well exonerate the Applicants.



Determination

20. I have considered the pleadings and Submissions of the parties. The only issue discernable for determination is whether the Petitioners as members of County Assembly enjoy immunity from investigations and prosecution for Criminal Acts.
21. Section 8 of the *County Assemblies Powers and Privileges Act*, 2017 provides as follows:-

“Freedom of speech and Debate,
No Civil or criminal proceedings may be instituted in any court or Tribunal against a member of a County Assembly by reason of any matter said in any debate, Petition motion or other proceedings of a County Assembly.
22. Section 11 of the same Act provides for immunity from legal proceedings for members, guaranteeing that no member is liable to any civil or criminal proceedings, arrest, or damages for any action taken, matter brought, or speech made in the county assembly or its committees.
23. The starting point for this determination is to first settle the question of what is the subject matter of investigation? The Petitioners have sought for a conservatory order: “restraining the Respondents from summoning, investigating, arresting, detaining, arraigning, charging, prosecuting or in any manner interfering with Petitioners Constitution liberty and Constitutional rights arising from or in connection with their contribution, debates, and voting on motions on the floor of the County Assembly”.
24. According to the Respondents however, what is under investigations are the authenticity of the documents listed at Paragraph 8 of this judgment. The Applicants have not challenged this assertion. The Respondents’ assertion is supported by the AG’s letter addressed to the DCI. The AG request was for investigations into the authenticity of the documents , not the Petitioners’ contributions during the debate of motion.
25. Thus, the investigation has nothing to do with what they said or contributed to the Motion within the Assembly. The Applicants’ pleas that they are seeking protection from investigation , and prosecution for their contribution during the debate on the subject Motion are therefore not true and are misleading.
26. Nevertheless, are their acts, or the aforesaid documents within the precincts of the county Assembly or the documents referred to enjoy immunity from investigation and subsequent prosecution of the petitioners , if found culpable?
27. In the case of *Justus Kariuki Mate & Jim G. Kauma v Martin Nyaga Wambora & County Government of Embu* [2014] KECA 376 (KLR), the court of Appeal took the position that parliamentary privilege is not absolute and proceeded to hold the respondents guilty of the contempt of court.
28. The nature and extent of the privilege was extensively discussed in the case of *Francis Matheka & 10 Others v Director of Public Prosecutions & Another* [2015] KEHC 7642 (KLR) in which the subject matter was the privilege accorded to parliament, the nature of which is the same as the privileges accorded to the county Assemblies. The court had this to say: “A reading of section 4 of the Privileges Act clearly reveals that the immunity be it in civil or criminal proceedings is limited to words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise. It is therefore clear that by far, the most important right accorded to Members of the House is the exercise of freedom of speech in parliamentary proceedings.It is to be recognised that



privilege essentially belongs to the House as a whole; individual Members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the House. In addition, individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House. It follows that the special privileges of Members are not intended to set them above the law; rather, the intention is to give them certain exemptions from the law in order that they might properly execute the responsibilities of their position. In this context, it would be difficult to envisage a criminal act which would fit into or be a part of a parliamentary proceeding save for those contemplated under section 4 of the Privileges Act as read with section 16 of the CGA.....Whereas the Speaker must always ensure that the privileges of the House and its Members are respected, he must at the same time ensure that the privileges accorded to Members are not misused to obstruct justice.

Therefore, it goes without saying that if Members are charged with infractions of the criminal law other than those contemplated under the two provisions cited above, they must abide by the due process of law. To do otherwise would show contempt for the Kenyan Constitution and the system of justice. Under Article 27 of *the Constitution*, every person is equal before the law and has the right to equal protection and equal benefit of the law. Therefore the powers, privileges and immunities granted to the legislative assemblies ought to be enjoyed only to the extent permitted by the law and ought not to be abused for reasons outside the ambit of the law in order to commit offences which are not covered by the privilege”

29. In the case of Elizabeth Manyala and 12 Others vs AG & EACC (2017) e KLR, Members of the Nairobi County Assembly (MCAs) were alleged to have engaged in a fist- fight during one of the Assembly sessions. They were summoned by the Ethics and Anti- corruption for investigation. The MCAs sought to quash the summons, on the basis of parliamentary privilege. While dismissing the Application, the court stated that fighting is not part of county Assembly proceedings.
30. If the Respondents suspect that certain documents, submitted to, made in, or sent out of the county Assembly of Isiolo to the Government press were forgeries, this has nothing to do with the debates or the petitioners contribution to the motion. Actions which constitute a crime cannot be said to enjoy immunity from scrutiny by law enforcement Agencies as they are not acts that can be said to foster the debate in the house. In other words, an illegality cannot be said to foster a good. Further what, for instance, would stop an MCA with criminal intentions against a fellow member or county Assembly staff from reserving their actions, in the name of parliamentary privilege , until they get to the county Assembly hall or its precincts?
31. The nature, the source and indeed the authenticity of the subject documents, are matters outside the scope of the present Application. They are the preserve of the investigators, prosecutors and the criminal court.
32. In a nutshell, parliamentary privilege does not extent to criminal acts committed within or at the precincts the county Assembly chambers. consequently, the Applicants have failed to demonstrate that the intended investigation and / or prosecution has violated any of their rights.
33. I do not find any merit in the Application. It is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 22ND DAY OF JANUARY 2026.

S. CHIRCHIR

JUDGE



In the Presence of:-

Roba Katelo- court AAssistant

Mr. Ngithi for the petitioners

Mr. Manjale for the Respondents.

