

**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MARSABIT  
IN THE CONSTITUTIONAL AND HUMAN RIGHTS DIVISION  
CONSTITUTIONAL PETITION NO. E005 OF 2025**

**IN THE MATTER OF CONTRAVENTION OF ARTICLES  
2,10,22,23,47,50 AND 165 OF THE CONSTITUTION OF  
KENYA,2020**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENTS ACT,2012  
AND STANDING ORDERS OF THE COUNTY ASSEMBLY OF  
MARSABIT**

**BETWEEN**

**HON. ADHI BINO.....**

**PETITIONER**

**VERSUS**

**THE COUNTY ASSEMBLY OF MARSABIT.....1<sup>st</sup>**

**RESPONDENT**

**THE SPEAKER, COUNTY ASSEMBLY OF**

## JUDGMENT

### A. BACKGROUND OF THE PETITION

1. The Petitioner filed this petition dated 9<sup>th</sup> May 2025 seeking for the following prayers;

***a. Spent.***

***b. Spent***

***c. A declaration that the respondents actions are unlawful and unconstitutional.***

***d. An order of certiorari quashing any further action taken by the respondent regarding the impugned matter.***

***e. An order of prohibition restraining the respondent from reopening or proceeding with the matter***

***f. Costs of the Petition be borne by the Respondent.***

***g. Any further relief or order that this Honourable court shall deem fit to grant.***

2. The said petition is supported by the Supporting Affidavit of the Applicant, **Hon Adhi Bino** where she contends that she is a nominated Member of the county assembly (MCA) of the Marsabit county Assembly and had on 24<sup>th</sup> April 2025, received written summons requiring her to appear before the assemblies committee of powers and privileges on 29<sup>th</sup> April 2025 to defend herself against a complaint made arising from her comments made in Okoa Marsabit County (OMC) WhatsApp messaging group.
3. Further on the said notice/summons and accompanying minutes, the committee did state that the matter would be concluded within 7 days and a report tabled within 14 days pursuant to the ***section 15(5) of assembles standing orders*** and the assembled internal resolution mechanisms.
4. On 28<sup>th</sup> April 2025, before the scheduled meeting, she got a notice postponing the said meeting due to lack of quorum, which notice also stated that the meeting was deferred sine die (until further notice) and thus was later surprised to be issued with fresh summons on 7<sup>th</sup> May 2025 after the lapse of procedural timelines, summoning her to appear before the said committee on 12<sup>th</sup> May 2025 at 11.30am, which action, in her opinion, was unprocedural and in violation of the ***section 15(5) of the assemblies standing orders, section 3(1), 4(1) & 4(3) of the Fair administrative Actions Act and Article 47 and 50 of the constitution***

**of Kenya**, as the said committee could not reopen or continue with the disciplinary proceedings outside the statutorily provided for timelines.

5. In her further affidavit dated 7<sup>th</sup> July 2025, the Petitioner reiterated that from March 2025 she had persistently raised corruption allegations against the governor and county executives of Marsabit County and that had rubbed some of her colleagues in a wrong manner culminating to the impugned disciplinary proceedings initiated by Hon Saida Osman Araru, alleging that she had threatened her life, which allegations had no iota of truth.
6. Subsequently on 24<sup>th</sup> April 2025, without being served with any formal complaint, she was invited by the assembly clerk to appear before the committee of powers and privileges, which letter did not specify the charges levelled against her, who was the complainant and the precise nature of evidence against her. This could be confirmed by the committee minutes of their meeting held on 22<sup>nd</sup> April 2025 (Min2/03/CAM/PPRC015/25), Which largely delved around the concerns she had raised as against the executive with no clear determination on alleged threats made to the complainant's life.
7. The petitioner also noted that without formally calling the complainant to shade light on the allegations made, the

committee had thrown the ball on her court, requiring that she defends herself, which act was unprocedural and made the complaint raise to be deemed as superfluous and one lacking in merit. She further faulted the committee for not finalized their inquiry within the statutorily provided time of fourteen days and urged the court to find that any proceedings beyond the prescribed time must be deemed unlawful, as it infringed on her right to fair administrative action and fair hearing.

8. The petitioner, thus urged the court to find merit in her petition as she risked being subjected to unfair proceedings, reputational harm, and administrative injustice, if the said proceedings were allowed to continue.

**(B) THE RESPONSE**

9. The respondents in opposing this petition did file their preliminary objection dated 26<sup>th</sup> May 2025, replying affidavit dated 9<sup>th</sup> June 2025 and further affidavit dated 22<sup>nd</sup> August 2025 both sworn by the 1<sup>st</sup> respondent. In the said objection the respondents opposed this petition on grounds that;

***a) That the petitioner herein has jumped the gun by failing to wait for the finalization of the inquiry and/or disciplinary process, proceedings and functions of the 1<sup>st</sup> respondents committee of powers and privileges under section 15 of the***

**county Assemblies powers and Privileges Act, 2017 to be finalized and a decision made, which she may choose to challenge for its unconstitutionality, before approaching this Honourable court for constitutional reliefs.**

**b) That the petitioner Applicant has thus failed to exhaust, or wait to be exhausted, the available internal dispute resolution mechanisms or administrative remedies and/or submit herself to the 1<sup>st</sup> respondents disciplinary and inquiry processes available under the county Assemblies powers and Privileges Act, 2017 before invoking the jurisdiction of this Honorable court, contrary to section 9 of the fair admirative Action Act, 2105.**

**c) That standing order number 107B of the Marsabit county Assembly standing orders, 2022 provides for the procedure and process of appeal of suspension of a member of the county assembly, which procedure is still available to the petitioner herein in the event that a decision, if at all, is eventually made to suspend or remove her from the county assembly upon the recommendation of the 1<sup>st</sup> respondents committee of powers and privileges under Section 15(6) of the county**

***assemblies powers and privileges Act,2017, which decision had not been made yet, hence the instant application and petition are preemptory and speculative.***

- d) That the petitioner applicant herein ought to wait for the 1<sup>st</sup> respondents committee of powers and privileges to hear her, render a verdict on her impugned conduct of privilege, and then challenge its constitutionality before this Honourable court if she is aggrieved.***
- e) That consequently, this Honourable court's jurisdiction to entertain, hear and determine this instant application and/or petition herein has not crystallized and the application and petition are thus barred under the constitutional doctrines of ripeness and avoidance.***
- f) That therefore, the instant application and petition are prematurely before this Honourable court and are a clear abuse of the court process.***
- g) That further, the instant application and petition offend the provisions of section 10 of the county assemblies and privileges Act, 2017 which provides that no proceedings or decision of a***

**county assembly or the committee of powers and privilege's acting in accordance with the act shall be questioned in any court.**

- h) That generally, courts are reluctant to question parliamentary or legislative procedures, including disciplinary or inquisitive ones such as the one the petitioner herein impugns, as long as they did not breach or violate the constitution and infringe upon the constitutional rights and freedoms enshrined thereunder.**
- i) That at this moment, the respondent herein, or the 1<sup>st</sup> respondent herein through the committee of powers and privileges, have not made any resolution, findings recommendations, or report on the impugned matter which would provide this Honourable court with the relevant material, grounds or basis to interrogate as to compliance with the constitution hence the instant petition is prematurely before the court.**
- j) That, hence, the instant application and petition dated 9<sup>th</sup> May 2025 are legally untenable, incompetent, frivolous, vexatious and an abuse of the court process and ought to be dismissed**

***and/or struck out, in limine, with costs to the respondents herein.***

10. In response to the petition, the 1st respondent's assembly clerk, Mr Chare Mato, deponed that on 22<sup>nd</sup> April, 2025, a complaint was lodged with the assemblies powers and privileges committee ( hereinafter referred to as " the committee") by Hon Sadia Osman concerning alleged threats to the life of a member of the county assembly by the petitioner herein on a WhatsApp page and subsequently the said committee exercising its powers under **Section 15 of the county assemblies power and privileges Act, 2017** did resolve to inquire into the petitioners conduct given the gravity of the said complaint and the alleged breach of decorum, safety and privileges of members of the said assembly.
11. On 23<sup>rd</sup> April 2025, the said committee secretariate did officially record the said complaint marking the commencement of the statutory 14 days period within which the said committee was required to hear and determine the said complaint and consequent thereto issued summons to both the complainant and the petitioner to appear before them on 25<sup>th</sup> and 29<sup>th</sup> April 2025 respectively to have the said complaint formally heard. On the said 25<sup>th</sup> April 2025, the said committee did commence its sitting and heard the

complainant, but adjourned the proposed sitting of 29<sup>th</sup> April 2025 due to lack of quorum and other unavoidable circumstances as the 2<sup>nd</sup> respondent, who mandatorily had to chair the said committee sessions, had a sick child and he had to rush and attend to the said child in hospital.

12. Subsequently, the said committee was only able to meet again on 7<sup>th</sup> May, 2025 and resolved that despite the statutory lapse of the 14-day period, it would be in the interest of justice to proceed with the said disciplinary hearing and thus issued fresh summons to the petitioner to appear before them on 12<sup>th</sup> May, 2025. The petitioner failed to attend the said meeting without any justification and instead prematurely rushed to court before the disciplinary process was complete.
13. The respondents urged the court to decline the petitioner's invitation to determine this matter as constitutional timelines do not necessarily apply to the timelines under the County Assemblies Powers and Privileges Act, particularly where reasonable justifications had been provided for failure to adhere to the said statutory timelines. The petition and application had therefore been prematurely filed as the petitioner was asking this honourable court to second guess or shepherd the 1<sup>st</sup> respondent in the performance of its functions, yet no substantive decision had been made by the

said committee, which then could be subject to judicial scrutiny or review.

14. Additionally, it was the respondent's contention that, the petitioner's averment that the instant petition raised substantial constitutional question touching, inter alia, on her freedom of expression was not merited as her action also breached other assembly's members rights and privilege, and thus, was a matter which could only in the first instance be rightly determined by the relevant assembly committee as provided for under **section 17 of the county assemblies powers and privileges Act.**

15. In their further affidavit dated 22<sup>nd</sup> August 2025, the respondents averred that the petitioner's new averments concerning the alleged exertion of improper influence over MCAs by the county Governor to undermined oversight, budget scrutiny, and procurement accountability were wild unsubstantiated allegations that had nothing to do with the disciplinary and/or inquiry proceedings initiated against the petitioner as the said proceedings were confined in its scope and had nothing to do with the extraneous matters raised in the petitioners further affidavit.

16. Further, the petitioner's averment that she was never served with the written formal complaint filed by Hon Sadia Osman as against her, was misleading since the said complaint

together with the relevant WhatsApp communication were forwarded to her vide the committees letter dated 24<sup>th</sup> April 2025 inviting her to attend the disciplinary proceedings.

17. They further emphasized that the delay in commencement of the inquiry proceedings had been occasioned by competing legislative and community responsibility of the 1<sup>st</sup> respondent members, including school term openings, funeral of the late Father Racho, a recognized peace icon in the community, and the 2<sup>nd</sup> respondent's child being hospitalized and thus the petitioner could not be heard complaining about not being accorded a fair hearing or adequate opportunity to defend herself.
18. Regarding the petitioner's challenge to the statutory timelines, the respondents reiterated that the statutory timelines provided for under **section 15 of the County Assemblies Powers and Privileges Act**, had to be interpreted while considering the provisions of **Article 159 of the Constitution** which provided for substantive justice devoid of procedural technicalities. The petitioner had not demonstrated how failure to adhere to the said statutory timeline would violate her right since she had been given an ample opportunity to defend herself and they thus urged this court not to shield the petitioner from being subjected to lawful, statutory inquiry and/or disciplinary process as provided for under the County assemblies Act.

19. The respondents also noted that **Section 9 of the Fair administrative Action Act** provided that the high court or a subordinate court under subsection (1) could not review an administrative action or decision under the said act, unless all internal mechanism for appeal or review and all remedies available under any written law were first exhausted. This applied in all fours to the facts pleaded herein and to the extent that the 1<sup>st</sup> respondents relevant committee had not completed its inquiry as against the petitioner, rendered this instant petition to be speculative and premature.
20. Finally, it was also the respondent's contention that the petitioner, had not demonstrated in what manner they had violated her rights so as to render their action unconstitutional, nor had she demonstrated any illegality in their action to justify issuance of orders of certiorari. Finally orders of prohibition too could not issue on account of the doctrine of separation of powers, necessity and judicial restraint.
21. The respondents thus urged the court to find that the petition as filed lacked merit and urged the court to dismiss the same with costs.

### **(C) PARTIES SUBMISSIONS**

#### **(i) The Petitioners submissions**

22. The petitioner relied on their submissions dated 5<sup>th</sup> September 2025, where they rehashed the pleadings filed and reiterated that under **Section 15(5) of the County Assemblies powers and privileges Act**, the assemblies' powers and privileges committee had fourteen (14) days from the date of receipt of a complaint to resolve the same. In this instant the complaint had been received on 22<sup>nd</sup> April 2025 and by 12th May 2025, when she was invited to appear before the said committee to defend herself the statutory period had already lapsed.
23. The initiated proceedings were also biased as the respondents were acting on clearly doctored minutes, with no evidence of the complainant ever appearing before the said committee on 25<sup>th</sup> April 2025. It was thus clear that the respondents were hell bent to unlawfully punish her through a biased predetermined administrative process made contrary to provision of **Section 4(1) and 4(2) of the Fair Administrative Actions Act and Article 47 of the Constitution of Kenya.**
24. The petitioner reiterated that the doctrine of exhaustion relied on by the respondents was not absolute as the High court under **Article 165(3) of the constitution** had original jurisdiction to determine any claim involving the violation of rights and freedoms espoused in the bill of rights. She further

relied on the finding made in **Republic Vs IEBC Ex parte National Super Alliance (NASA) Kenya (2017) eKLR**, where the court held that; where internal mechanism was ineffective, delayed or unfair, the affected party could move to court to seek redress.

25. Finally, on separation of powers, while **Section 10 of the county Assemblies Act** shielded the counties assemblies' proceedings from interference, the said section still retained the courts supervisory authority, where the said committee acted ultra vires, violated parties fundamental right or where there was lack of procedural fairness. Reliance was placed on Supreme court case of **Justus Kariuki Mate & Another Vs Martin Nyaga Wambora & Another (2017) Eklr** where it was held that the court could intervene where there had been failure to abide by standing orders which have been given constitutional underpinning. The court also had the last word in determining the constitutionality of all governmental actions and in the prevailing circumstances had been properly moved to intervene.
26. The petition as filed was therefore not frivolous as it raised legitimate issues which this court had to determined and therefore urged the court to allow the same with costs.

### **(ii) The Respondents Submissions**

27. The respondent relied on their submissions dated 6<sup>th</sup> November 2025 and urged the court to find that the petition had been filed prematurely before the powers and privilege committee had the opportunity to finalized its disciplinary sittings and it would only be logical to allow for the said sittings to be complete before the court could intervene as expressly provided for under **Section 9 of the Fair administrate Action Act**, which provided that all internal dispute mechanism had to be resolved before courts intervention could be maintained, unless exceptional circumstance existed enabling such a person to seek the court assistance, which in this petition had not been demonstrated. Reliance was placed on **MV Ais Mamas Seatrans Maritime Vs Owner, MV Ais Mamas & Another 2002 (6) SA 150 (C) at 156H, & Fredrick Odero Vs Governor Homa bay county & 3 Others (2020) KEELRC 1418 (KLR)** which explained the concept of exceptional circumstances and also delved on the doctrine of separation of powers.

28. The respondents further asserted that the instant petition had been filed without adherence to the doctrine of exhaustion/ constitutional ripeness since the process of disciplinary/inquiry hearing and processes that had commenced were still in progress and therefore, without doubt, the only inference which could be drawn was that the

present petition had been filed deliberately to usurp the powers of the respondents in performing their functions as contemplated under the County Assemblies Powers and Privileges Act. Reliance was placed in **Joseph Mboha Vs Speaker County Assembly of Siaya and Another 2020 KEHC 5654 (KLR), Mathenge Vs Clerk County Assembly of Kirinyaga (Judicial Review Application E004 of 2023), KEHC 27095 (Klr), Doctors of life International Vs Speaker of the National Assembly and Others (CCT 12/05),{2006} ZACC 11 & Supreme court Advisory opinion in Speaker of the Senate & Another Vs Attorney General & 4 others (2013)** where these concepts were emphasized.

29. Back to the central issue raised by the petitioner that failure to conclude the proceedings of inquiry into her conduct as a member of the Marsabit County Assembly within the statutory timelines is unlawful and/or unconstitutional, the respondents submitted that the said procedural infraction does not necessarily vitiate the entire proceedings or render the same ultra vires and urged the court to so hold as a contrary finding would stop a lawful, statutorily mandated legal process on its tracks and shield the petitioner from being taken through the inquiry/disciplinary process.

30. In further support of the above contention, the respondents further emphasized that the only constitutional deadlines and

other specific statutory deadlines, such as those under the elections Act were cast in stone. The drafters of **Section 15(5) of the County Assemblies Powers and privileges Act, 2017** did not envision or contemplate such an eventuality whereby proceedings are commenced against a member of the assembly and the same is quashed merely because of failure to conclude the same within 14 days, particularly where exigent circumstances did not allow the committee to comply with statutory timelines. Reliance was placed in **Senate & Another vs Attorney General & 4 others (2013) & Republic Vs The County Assembly of Nyamira Committee of Powers & Privileges & 4 others, Ex parte Hon. Thaddeus Nyarabo & Another, Misc Judicial Review No 02 of 2019.**

31. The final issues raised by the respondents was that the orders sought by the petitioner was not available since no decision had been made by the 1<sup>st</sup> respondent herein which was capable of being quashed by the Honourable court and also in view of the fact that the petitioner to had not proved that they had contravened any provision of the constitution or the law. They urged the court to uphold their position that the petition had been prematurely filed to circumvent a lawful statutory process and urged the court to dismiss the same.

**(iii) The Petitioners Response to the Respondents Submissions**

32. The petitioner in response did file further submission's dated 19<sup>th</sup> November 2025 where they emphasized that the doctrine of exhaustion of internal alternative dispute mechanism could only apply, where statutory timelines had been adhered to. The petitioners action fell within the scope of exceptional circumstances as provided for under **Section 9(4) of the Fair administrative Action Act, 2015** as the respondents' wanted to proceed with disciplinary hearing outside the statutorily provided time based on an outrightly biased process, where even the complainant evidence/disposition had in the first instance not been taken.

33. The petitioner further distinguished the legal precedent relied upon as the circumstances in the respective cases relied on were different from that, the court was faced with herein; namely the disciplinary/hearing process not being completed within the statutory provided timelines and therefore the legal doctrines relied on of exhaustion, separation of powers or ripeness where inapplicable under the circumstances.

34. What was in dispute was statutory infraction and not procedural infraction and any activity purported to be carried outside the provided for statutory timeline was void abinitio and could not be cured by parliamentary or legislative

privilege. The respondent's action after the statutory timelines constituted an abuse of the legal process and urged the court to so hold by allowing the petition filed.

**(D) DETERMINATION**

35. This court has considered the Petition, the affidavit's filed in support, and in opposition to the said petition, the preliminary objection and the parties' respective submissions. The issues which arise for determination are;

***a. Whether the County Assemblies Privileges and Powers Committee can sit and determine the complaint made against the respondent beyond the statutorily provided timelines.***

***b. Whether this petition is barred by the doctrines of ripeness, constitutional avoidance and/or without adherence to the doctrine of exhaustion.***

***c. Whether the Petitioner is entitled to the orders sought.***

***d. Who should bear the costs of this Petition?***

***(i) Whether the County Assemblies Privileges and Powers Committee can sit and determine the complaint made against the respondent beyond the statutorily provided timelines***

36. **Section 15 of the County Assemblies Powers and Privileges Act, 2017** provides in part, as follows

**(1) There is established, for each county assembly a committee known as the committee of Powers and Privileges consisting of ;**

**(a) The speaker, who shall be the chairperson of the Committee; and**

**(b) .....**

**(4) The functions of the Committee of Powers and Privileges shall be to;-**

**(a) Inquire into the conduct of a member whose conduct is alleged to Constitute a breach of privilege in terms of Section 16; and**

**(b).....**

**(5) The committee of powers and Privileges shall, either of its own motion or as a result of a complaint made by a person, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege in terms of section 16, within 14 days of receipt of a complaint.**

**(6) The committee of powers and Privileges shall, within fourteen days of the conclusion of an inquiry, table its findings in the relevant county assembly together with such recommendations as it considers appropriate.**

**(7) The county assembly shall, in accordance with its standing orders, consider the report and the recommendations thereon and may**

***take such action against the member concerned as maybe appropriate.”***

37. It is conceded by the respondents that they did not manage to sit and conclude the disciplinary hearings which commenced on 22<sup>nd</sup> April 2025, because of competing legislative and community responsibilities of the 1<sup>st</sup> respondent members, school opening, funeral of a leading peace icon within Marsabit community, Father Racho and the speaker’s child falling sick, and subsequently on 7<sup>th</sup> May 2025 reconvened and summoned the petitioner to appear before them on 12<sup>th</sup> May 2025.

38. The pleadings filed obviously confirm that the statutory timelines had been breached by the powers and Privileges committee while undertaking their assignment and while the petitioner insisted that the lack of adherence to the said statutory timelines is fatal to the said proceedings, the respondents on the other and insisted that the procedural infraction did not vitiate the said proceedings or render the said process to be ultra vires. To hold otherwise would stop a lawful, statutorily mandated legal process on its tracks and would have the effect of shielding the petitioner herein from being taken through the inquiry/disciplinary process.

39. The respondent further placed reliance on **Article 159 of the constitution** to guide the court in avoiding to

determine matters purely on technical/procedural objections. The principles that guide the court in the discharge of its mandate donated by the above provision of the constitution has now been crystallized by case law. I take it from the cases of **Jaldesa Tuke Dabelo vs. IEBC & Another** [2015] eKLR; **Raila Odinga and 5 Others vs. IEBC & 3 Others** [2013] eKLR; **Lemanken Arata vs. Harum Meita Mei Lempaka & 2 Others** [2014] eKLR; **Patricia Cherotich Sawe vs. IEBC & 4 Others** [2015] eKLR for principles/propositions, inter alia, that: the exercise of the jurisdiction under Article 159 of the Constitution is unfettered especially where procedural technicalities pose an impediment to the administration of justice **save that Article 159(2)(d) of the Constitution is not a panacea for all procedural ills.**

40. In **Raila Odinga v. I.E.B.C & others (2013) eKLR**, the Supreme Court observed further:

**“Article 159(2) (d) of the Constitution simply means that a Court of Law should not pay undue attention to procedural requirements at the expense of substantive justice. It was never meant to oust the obligation of litigants to comply with procedural imperatives as they seek justice from the Court.”**

41. Also, in **Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others [2013] eKLR**, Kiage, JA, on the same issue stated that:

***“... I am not in the least persuaded that Article 159 of the Constitution and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty*”**

**and clarity where issues of rules and their application are concerned...”**

42. Further, in **Equity Group Holdings Limited v Commissioner of Domestic Taxes (Civil Appeal E069 & E025 of 2020) [2021]**, the High Court had this to say:

**“Section 51 (11) of the TPA is couched in peremptory terms. Having correctly found that the decision was made after the expiry of 60 days, the TAT had no legal basis to proceed as it did and to invoke article 159(2) (d). First, there was no decision at all. The decision had ceased to exist by operation of the law. Second, the provisions of section 51 (11) (b) had kicked in. The Objection had by dint of the said provision been deemed as allowed. Third, the TAT had no discretion to either extend time or to entertain the matter further. Fourth, discretion follows the law and a tribunal cannot purport to exercise discretion in clear breach of the law. The TAT premised its decision on the provisions of Article 159 (2) (d) of the Constitution which requires courts to determine matters without undue regard to technicalities of procedure. On the face of a clear statutory dictate, I do not see how the TAT could term the express statutory edict as a matter of procedural technicality. This was a**

***gross misapprehension of the law. Article 159 (2) (d) of the Constitution was not meant to oust express statutory provisions and to open a window for disregard of statutory requirements.”***

43. The preceding discussion confirm that statutory timelines must be adhered to and cannot be regarded as procedural technicality and to allow the assembly to proceed with its inquiry beyond the timelines provided would render all their actions void. In **Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169** Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

**“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”**

## **E. DISPOSITION**

44. Having so determined, it is unnecessary to delve into the other issues raised in this petition. The upshot is that this petition is merited and I do order as follows;

- a. A declaration is hereby issued that any proceedings in relation hereto by the Marsabit county Assembly powers and privileges committee that goes beyond the statutorily provided for 14 days as provided for under the provisions of Section 15(5) of the County Assemblies powers and Privileges Act, 2017 is null and void abinitio.***
- b. An order of prohibition be and is hereby issued prohibition the respondents from further deliberating on or proceeding with any disciplinary action/hearing as against the Petitioner herein based on the complaint made by Hon Sadia Osman Araru on 22<sup>nd</sup> April 2025.***
- c. That each party shall bear their own costs of this Petition to encourage reconciliation between the parties herein and also to allow the assembly to focus on service delivery to the great citizen of Marsabit county.***

45. It is so ordered.

**Dated, signed, and delivered** in open court at **MARSABIT**  
this **4<sup>th</sup>** day of **MARCH, 2026.**

**FRANCIS RAYOLA OLEL  
JUDGE**

Delivered on the virtual platform, Team this **4<sup>th</sup>** day of  
**MARCH, 2026**

**In the presence of: -**

N/A .....Petitioner

N/A ..... Respondents

Mr. Jarso ..... Court Assistant