

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KITALE

PETITION NO. E001 OF 2026

(Before Hon. Lady Justice Maureen Onyango)

LINUS LOKAWA MIYANI.....
PETITIONER

VERSUS

THE TURKANA COUNTY

ASSEMBLY SERVICE BOARD.....1ST
RESPONDENT

THE SPEAKER,

TURKANA COUNTY ASSEMBLY.....2ND
RESPONDENT

AND

JOHN EKONIT KOMOI..... INTERESTED PARTY

RULING

1. Before the Court is a Notice of Motion Application dated 25th January 2026 which seeks the following Orders, re-produced verbatim:
 - i. Pending the hearing and determination of the Petition, a conservatory order be and is hereby

issued suspending, staying and/or otherwise halting the operation, implementation and effect of Kenya Gazette Notice No. 937, Vol.CXXVIII-No. 14 dated 23rd January 2026, which purports to appoint JOHN EKONIT KOMOL as Acting Clerk of the County Assembly of Turkana.

- ii. Pending the hearing and determination of the Petition, a temporary injunction be and is hereby issued restraining JOHN EKONIT KOMOL from assuming, occupying performing, or exercising any of the functions, duties or powers of the Clerk or Acting Clerk of the County Assembly of Turkana and from holding himself out as such
- iii. Pending the hearing and determination of the Petition, this Honourable Court be pleased to order the immediate restoration of the Petitioner's access to his office, official systems, staff and facilities and restrain the Respondents from interfering with or obstructing his access to the same.
- iv. Pending the hearing and determination of the Petition, this Honourable Court be pleased to stay the

continuation or pursuit of any removal proceedings against the Petitioner arising from;

- a. the 1st Respondent's letter dated 8 January 2026
- b. the purported Amended Statement of Charges dated 19 January 2026
- c. the alleged Board "resolution" of 8 January 2026
- d. or any process founded upon the said impugned actions
- v. Pending the hearing and determination of the Petition, a conservatory order do issue restraining the Respondents, their officers, servants or agents from harassing, intimidating, threatening or otherwise interfering with the Petitioner's performance of his statutory duties as Clerk of the County Assembly of Turkana.
- vi. The OCS, Lodwar Police Station is hereby directed to ensure compliance with order above and offer protection to the Petitioner while within the Turkana County Assembly precincts
- vii. The costs of and incidental to this Application shall abide in the outcome of the Petition.

2. The grounds upon which the application is brought are as follows: -

- i. The Petitioner is the duly appointed and substantive Clerk of the County Assembly of Turkana, serving on permanent and pensionable terms and is by law the statutory Secretary to the 1st Respondent. His removal or suspension must therefore comply strictly with the Constitution, the County Assembly Services Act and the principles of fair administrative action.
- ii. On 23rd January 2026, the Respondents caused the publication of Kenya Gazette Notice No. 937, Vol. CXXVIII-No. 14, purporting to appoint the Interested Party, Mr. John Ekonit Komol, as Acting Clerk with effect from 8 January 2026. The Gazette Notice is already in force and operational and its continued implementation threatens to irreversibly displace the Petitioner from office.
- iii. The Gazette Notice rests on an asserted "resolution of the County Assembly Service Board in its sitting held on 8 January 2026. The reliance on this alleged resolution raises a constitutional and legal crisis

because the only resolution of the said sitting disclosed to the Petitioner by the 1st Respondent in its letter of 19 January 2026 contains no decision to suspend the Petitioner or appoint an Acting Clerk. The inconsistency in the Board's records is material, unexplained and incapable of supporting a lawful public appointment.

- iv. The Petitioner, as Secretary to the Board, was never notified of, invited to, or furnished with any agenda for the alleged Board meeting of 8 January 2026. A statutory Board cannot lawfully meet to deliberate on the suspension and replacement of its Secretary in his absence and without notice. The legality of the meeting and its outcomes is therefore in serious doubt.
- v. The disciplinary process against the Petitioner is tainted at its foundation. The letter dated 8 January 2026 initiating removal proceedings expressly stated that the board acted on the basis of directions issued in the Ad Hoc Committee's report, including an ultimatum warning the Board that it would face

consequences if it failed to act. The Board's independence is a statutory requirement; a process commenced under coercion is inherently unlawful.

- vi. The publication of a Gazette Notice installing a new Clerk while charges against the Petitioner were still under consideration is clear evidence of predetermination. The Respondents have publicly executed the outcome before offering the Petitioner a hearing. A tribunal that has already replaced the subject of its process is demonstrably incapable of conducting an impartial disciplinary hearing.
- vii. The Interested Party has already begun occupying the office and exercising the functions of Clerk. His continued presence entrenches an unlawful status quo and creates binding administrative acts and third-party reliance that will complicate any future attempt to restore the Petitioner if the Petition succeeds.
- viii. Unless immediate conservatory relief is granted, the Petitioner stands to suffer continuing and irreparable prejudice, including loss of office, reputational injury,

impairment of his statutory duties, and erosion of institutional authority. Damages cannot adequately remedy an unconstitutional occupation of a statutory office.

- ix. There exists no equally effective alternative remedy. The Public Service Commission cannot suspend a Gazette Notice, restrain an acting appointment, halt a removal process tainted by illegality, or grant constitutional conservatory relief. Only this Honourable Court has jurisdiction to grant the urgent protection necessary to preserve the subject matter of the Petition.
- x. Granting the conservatory orders herein decidedly aligns with the public interest. Public interest is served by ensuring that public bodies (like the 1st Respondent) obey the law and respect constitutional norms. On the contrary, if the Respondents were allowed to proceed unrestrained, it would send a message that due process and rule of law can be sacrificed for expediency-a dangerous precedent.

- xi. The Turkana County Assembly, as a public institution, should operate within the confines of justice and fairness; maintaining the lawful office holder in place (or at least not replacing him illegally) does not harm the public-the Assembly will continue to function ,as it has been with internal adjustments. Indeed, the public has an interest in stability and legality in the Assembly's leadership.
- xii. The balance of convenience tilts in favour of preserving the status quo ante, because the potential disruption and harm from an illegal ouster is far greater (to the public confidence and to the individual) than the temporary maintenance of an incumbent whose performance has not been shown to jeopardize Assembly operations in any way.
- xiii. This Application is therefore necessary to preserve the authority of the Court, protect the integrity of the office of Clerk, prevent irreversible consequences, and ensure that the Petition is not rendered nugatory before it is heard.

- xiv. Such other, further, incidental, or alternative Grounds as may emerge or be canvassed at the hearing of this Application.
3. The application is supported by the sworn affidavit of Linus Lokawa Miinyan, the Petitioner herein, sworn on 25th January 2026. It reiterates the grounds at the foot of the application.
 4. In response, the Respondents filed a Replying Affidavit sworn by the 2nd Respondent on 3rd February 2026 where he deposes that the Petition and the instant application were filed prematurely before the conclusion of the statutory processes thereby infringing upon the mandate and functional independence of the 1st Respondent.
 5. It is averred that the County Assembly Service Board complied with all procedural requirements under the County Assembly Services Act and afforded the Petitioner adequate time and opportunity to respond to the issues raised against him before suspending him.
 6. The Respondents aver that the suspension of the Petitioner arose from investigations into numerous complaints lodged by Members and staff relating to missing salaries, persistent non-remittance of statutory deductions affecting Members

and staff, payroll irregularities, non-remittance of third-party loan deductions and mismanagement of special purpose funds, including the Members' and Staff Car Loan and Mortgage Funds.

7. The Respondents assert that the 1st Respondent commissioned a Human Resource Audit by the Ministry of Public Service and in addition, constituted an Ad Hoc Committee on Members and Staff Welfare to investigate welfare-related issues affecting the Assembly.
8. According to the Respondents, the HR Audit Report, the Ad Hoc Committee Report, and other statutory audit reports disclosed several key findings to wit; that the Assembly undertook an irregular and unauthorized mass recruitment not approved by the Board; that numerous payroll irregularities were attributable to certain officers, including the Petitioner in his capacity as Clerk and Chief Executive Officer; that the Petitioner failed to remit mandatory statutory deductions, including pension contributions, HELB deductions, loan repayments, NSSF, Housing Levy, SHIF, and other third-party deductions; that the Petitioner in collusion with the Head of Payroll, authorized payment of salary

arrears without the 1st Respondent's authority, thereby compromising the Assembly's financial sustainability and lastly, that there was irregular borrowing from Special Purpose Funds without repayment, rendering the funds non-revolving and prejudicial to eligible staff.

9. The Respondents maintain similar concerns were raised by statutory bodies including the Office of the Auditor-General, in audit reports for the financial years 2022, 2023 and 2024 thereby corroborating the findings of the internal audits and committee reports.
10. It is the Respondents case that in light of the findings from professional bodies, staff complaints and demand letters from banking institutions regarding misuse of funds arising from the authority of the Clerk's office, the Board was compelled to suspend the Petitioner pending investigations into the reports and findings.
11. The Respondents state that the Ad Hoc Committee was constituted at the instance of the Petitioner himself and that the Petitioner drafted the motion for its formation, prepared its terms of reference, assigned staff to support it and facilitated its work. That further, the Petitioner implemented

several of its recommendations, including declaring redundancy of approximately 225 staff, regularizing promotions for 102 staff and reorganizing the Human Resource and Finance Directorates but selectively declined to implement recommendations that directly affected him.

12. The Respondent contends that the 1st Respondent's decision-making process was independent and not solely reliant on the Ad Hoc Committee Report and that it considered the HR Audit Report, Auditor-General's Reports, and persistent complaints from Members and staff regarding welfare issues.
13. Relying on the Supreme court decision of ***Dzila v Kwale County Assembly Service Board & 6 others (Petition E034 of 2024) [2025] KESC 33 (KLR)***, the Respondents contended that pursuant to Section 43 of the Conflict of Interest Act, a public officer may be suspended on full pay pending investigations where necessary and that in the present case, the suspension of the Clerk was necessary given the seriousness of the allegations and the need to safeguard information forming part of the evidence.
14. On this basis, the Respondents maintain that suspension is a temporary measure and an employee placed on suspension

remains subject to recall at any time for purposes of disciplinary proceedings.

15. The Respondents further aver that a suspension under Section 22 of the County Assembly Services Act is not subject to the rules of natural justice at the initial stage, and that the Petitioner was not entitled to be heard prior to suspension. It is further contended that suspension does not amount to removal and does not require a full disciplinary hearing and its purpose is to enable inquiry which may result either in exoneration or in removal if sufficient evidence disclosing statutory grounds is established.
16. The Respondents therefore assert that the disciplinary process under Section 23 of the Act is ongoing and has not been concluded. It is contended that the Petitioner moved to Court prematurely alleging victimization and procedural impropriety before the statutory process had run its course.
17. The Respondents further contended that Section 21 of the County Assembly Services Act requires the Deputy Clerk to act as Clerk where the Clerk is absent or unable to perform his functions. In this regard, the Respondents argue that the temporary appointment safeguards institutional continuity

and does not prejudice the Clerk and further, that the Gazette Notice appointing an Acting Clerk did not implicate the Petitioner in misconduct nor occasion him permanent or irreparable harm.

18. The Respondents state that the decision directing the Clerk to step aside was communicated through a Board letter dated 8th January 2026 which the Petitioner did not contest. They contend that despite being afforded opportunities to exculpate himself, the Petitioner avoided the Board's process and instead pursued litigation intended to frustrate lawful statutory proceedings.
19. It is the Respondents' position that allowing the present application would expose the Assembly to interference with records, continued financial impropriety, and institutional paralysis thereby undermining public interest and the Assembly's ability to discharge its statutory mandate.
20. The Respondents further depose that the interim orders currently in place have left the County Assembly without a substantive Clerk or Secretary to the Board, thereby paralyzing its functions and adversely affecting staff welfare

and the residents who depend on the Assembly to discharge its mandate.

21. In the end, the Court was urged to dismiss the instant application and set aside the interim orders to allow the County Assembly to function while the matter is heard and determined on its merits.
22. In a rejoinder, the Petitioner filed a further affidavit sworn on 8th February 2026 and denied the averments made by the Respondents that the present proceedings are premature and against the exhaustion doctrine. According to the Petitioner, the doctrine of exhaustion of administrative remedies is inapplicable in this matter, as the internal process was unconstitutional and fundamentally flawed, thereby calling for an exception to the doctrine. In support of this position, reliance was placed on the case of *Speaker of the Senate & Another v Attorney General & 4 Others [2013] eKLR*
23. On the lawfulness of suspension, the Petitioner asserts that the 1st Respondent did not independently determine that grounds existed to warrant suspension but acted under duress and external pressure overstepping its mandate.

24. The Petitioner further contends that the 1st Respondent's documentation is internally inconsistent as the resolution of 8th January 2026 did not explicitly state that he was suspended pending investigation. In addition, he asserts that the issuance of amended charges immediately after the initial letter indicates that the process was rushed and ill-considered.
25. The Petitioner maintains that the Ad Hoc Committee had no mandate to recommend disciplinary action against him and the 1st Respondent's unquestioning reliance on its findings gives rise to a reasonable apprehension of bias. He avers that the process lacked procedural fairness from the outset.
26. With regard to the 1st Respondent's jurisdiction over financial and audit-related allegations, the Petitioner avers that the 1st Respondent exceeded its legal mandate. On this basis, he maintained that matters such as non-remittance of statutory deductions and mismanagement of funds fall under the oversight of the Public Finance Management Act, the Public Accounts Committee, and the Ethics and Anti-Corruption Commission. The Petitioner averred that the inclusion of

these issues in disciplinary proceedings amounts to a fishing expedition and threatens inconsistent or premature findings.

27. Regarding the Gazette Notice appointing an Acting Clerk, the Petitioner states that it was issued with undue haste, mere days after his purported suspension, without investigation or hearing. He contends that the Deputy Clerk could lawfully act in his absence, and that the Gazette notice was unnecessary and prejudicial.
28. The Petitioner avers that maintaining the conservatory order is imperative to prevent him from being stripped of office unfairly before his case is heard. He asserts that the Respondents' claims of paralysis are false and that preserving him in office does not prejudice the Assembly.
29. The Petitioner contends that the Application demonstrates a prima facie case with a likelihood of success, a real danger of irreparable harm, and that the balance of convenience favours preserving the status quo. He avers that the Respondents will not suffer any legitimate harm from the interim orders, which merely require them to comply with the law pending a lawful determination of the matter.

30. Consequently, the Petitioner urged the court to grant the reliefs sought in the Application pending the hearing and determination of the Petition.
31. The Interested Party in opposition to the application filed a Replying Affidavit sworn on 8th February 2026, which largely reiterates the Respondents' Replying Affidavit.
32. The application was heard orally on 10th February 2026, with Counsel Odhiambo representing the Petitioner, Lokaale representing the Respondent, and Omamo representing the Interested Party.

Determination

33. I have considered the application, the rival affidavits, as well as the oral submissions by counsel for the parties. The sole issue for determination is whether the orders sought ought to be granted.
34. Conservatory orders are distinct from private law injunctions. They are remedies in rem, aimed at preserving the subject matter of litigation and safeguarding constitutional values pending the Court's determination.
35. In ***Martin Nyaga Wambora vs Speaker of The County Assembly of Embu and 3 Others, Petition No. 7 of***

2014, the principles for grant of conservatory orders were set out in the following terms:

“(59)In determining whether or not to grant conservancy orders, several principles have been established by the courts. The first is that: ... an applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

The Court then added:

“[60]To those erudite words I would only highlight the importance of demonstration of “real danger”. The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court. Thus, an allegedly threatened violation that is remote and unlikely will not attract the court’s attention.

(61)The second principle, which naturally follows the first, is whether if a conservancy order is not granted, the matter will be rendered nugatory.

(62)The third principle is one recently enunciated by the Supreme Court in the election petition case of Gatirau Peter Munya Vs Dickson Mwenda Githinji & 2 Others Sck Petition No 2 Of 2013. The principle is that the public interest must be considered before grant of a conservatory order. Ojwang and Wanjala JJSC stated that: “[86] ‘conservancy orders’ bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within the public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private party issues as ‘the prospects of irreparable harm’ occurring during the pendency of a case; or ‘high probability of success’ in the suppliant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate

magnitudes, and priority levels attributable to the relevant causes”

(63) Thus, where a conservancy order is sought against a public agency like a legislative assembly that is mandated to carry out certain functions in the normal course of its business, it is only to be granted with due caution. The interruption of the lawful functions of the legislative body should take into account the need to allow for their ordered functioning in the public interest.”

36. It therefore follows that an applicant must satisfy three key principles in order to make out a case for the grant of conservatory orders that is:
- i. An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution
 - ii. Whether if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory

iii. The public interest must be considered before grant of a conservatory order.

37. In the present application, the Petitioner seeks to suspend the operation, implementation and effect of Kenya Gazette Notice No. 937, Vol. CXXVIII-No.14 dated 23rd January 2026, which purports to appoint the Interested Party as Acting Acting Clerk of the County Assembly of Turkana. The Petitioner contends that the said appointment was irregular and that, if allowed to take effect, it would cause irreparable harm to the Petitioner's legitimate expectations and interests.

38. Upon a careful examination of the rival affidavits and the oral submissions of the parties, it is apparent that the Petitioner has raised serious questions going to the legality and propriety of the impugned appointment.

39. At this interlocutory stage, the Court is not required to make definitive findings. It is sufficient that the issues raised disclose arguable constitutional and statutory violations.

40. While the ultimate determination will depend on the full hearing of the Petition, the circumstances suggest that the Petitioner has demonstrated a prima facie case with a

reasonable likelihood of success sufficient to justify consideration of conservatory orders.

41. With regard to the second limb, it is not in dispute that the Gazette Notice appointing the Interested Party as Acting Clerk is already operational. The Interested Party is said to be exercising the powers and functions of the office. The Respondents have argued that the Petitioner was only asked to step aside pending investigations and that any suspension was temporary and conditional on the outcome of the disciplinary process.
42. However, in my view, the continued occupation of a statutory office by an allegedly unlawfully appointed acting office holder risks complicating the position of the Petitioner should the Petition succeed.
43. I am therefore persuaded that if the impugned actions continue unchecked, the substratum of the Petition may be irreversibly altered rendering the Petition nugatory.
44. In the circumstances, I find that the failure to grant conservatory orders would effectively render the Petition a hollow remedy and this limb is therefore established.

45. Lastly, on the issue of public interest, the Court must consider whether granting conservatory orders serves the wider interest of justice and the integrity of public administration. The public has an interest in ensuring that appointments and administrative actions are carried out in accordance with law and proper procedure.
46. Granting interim relief in this case preserves the status quo, prevents potential abuse of office, and upholds the principle of legality. In contrast, refusal of the orders could result in actions that are ultra vires or procedurally flawed, which may have consequences beyond the parties and undermine public confidence in administrative processes. The Court is therefore satisfied that the public interest favours the granting of conservatory orders
47. In the circumstances, the balance of convenience, the potential for irreparable harm, and the interests of justice tilts towards granting the conservatory orders sought by the Petitioner.
48. Consequently, pending the hearing and determination of the Petition:

- i. A conservatory order is hereby issued suspending the operation and implementation of Kenya Gazette Notice No. 937, Vol. CXXVIII-No. 14 dated 23 January 2026 appointing John Ekonit Komol as Acting Clerk of the County Assembly of Turkana.
- ii. A temporary injunction is hereby issued restraining the Interested Party from assuming, occupying, or exercising the functions of Acting Clerk of the County Assembly of Turkana.
- iii. An order is hereby issued restoring the Petitioner's access to his office, official systems, staff, and facilities, and restraining the Respondents from interfering with such access pending hearing and determination of this petition.
- iv. A conservatory order is hereby issued restraining the Respondents from harassing, intimidating, or interfering with the Petitioner's performance of his statutory duties.
- v. Costs shall abide the outcome of the Petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 26TH DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO
JUDGE**
