



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CONSTITUTIONAL PETITION NO. E020 OF 2025**

**IN THE MATTER OF ALLEGED VIOLATION OF VALUES AND PRINCIPLES OF GOVERNANCE ENSHRINED IN THE CONSTITUTION AND THE LAW**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 ARTICLES 1, 2, 3 (1), 10, 19, 20 (1), (2), (3) & (4), 22, 23, 24, 27, 28, 47, 50, 159 (2) (e), 165 & 258**

**AND**

**RULES 4, 10, 11, 13 AND 20 OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOM) OF THE INDIVIDUAL, HIGH COURT PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF SECTIONS 9 AND 14 OF THE COUNTY GOVERNMENT ACT, ACT NO. 17 OF 2012 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE COUNTY ASSEMBLY OF KIRINYAGA STANDING ORDERS NO. 156, 157, 158, 171(4) AND 173**

**AND**

**IN THE MATTER OF THE FAIR ADMINSTRATIVE ACTION ACT**

**AND**

**IN THE MATTER OF INTERNAL MEMO 12<sup>TH</sup> NOVEMBER 2025 BY THE COUNTY ASSEMBLY OF KIRINYAGA ON VACANCY IN THE POSITION OF COMMITTEE**

**BETWEEN**

**HON. FREDRICK MAINA.....1<sup>ST</sup> PETITIONER**  
**HON. ISIAH MBOGO.....2<sup>ND</sup> PETITIONER**  
**HON MILKA THIOTHI.....3<sup>RD</sup> PETITIONER**

**VERSUS**

THE COUNTY ASSEMBLY OF KIRINYAGA.....1<sup>ST</sup> RESPONDENT  
THE CLERK, COUNTY ASSEMBLY OF KIRINYAGA.....2<sup>ND</sup>  
RESPONDENT  
THROUGH THE SPEAKER OF THE COUNTY ASSEMBLY OF KIRINYAGA....  
.....3<sup>RD</sup> RESPONDENT  
HON. CAROLINE W. MURIITHI.....4<sup>TH</sup> RESPONDENT  
HON. JANE MUGO.....5<sup>TH</sup> RESPONDENT  
HON. SUSAN NDIRANGU.....6<sup>TH</sup> RESPONDENT  
HON. DAISY GITHINJI.....7<sup>TH</sup> RESPONDENT  
HON. BEATRICE MITARU.....8<sup>TH</sup> RESPONDENT  
HON. LYDIA MURIITHI.....9<sup>TH</sup> RESPONDENT  
HON. BENARD GICANGI.....10<sup>TH</sup> RESPONDENT  
HON. HARISON KARIUKI.....11<sup>TH</sup>  
RESPONDENT  
HON. DAVID MAHENGE.....12<sup>TH</sup> RESPONDENT  
HON. KENNEDY MWENDIA.....13<sup>TH</sup>  
RESPONDENT  
HON. MURIITHI MBUNGU.....14<sup>TH</sup> RESPONDENT  
HON. GRACE KAMAU.....15<sup>TH</sup> RESPONDENT  
HON KINYUA WANGUI.....16<sup>TH</sup> RESPONDENT  
  
**AND**  
**UNITED DEMOCRATIC ALLIANCE PARTY**  
**(UDA).....INTERESTED PARTY**

**JUDGMENT**

1. By a Petition dated 17/11/2025, the Petitioners seek specific reliefs that;
  1. *This Honourable Court be pleased to declare that the decision by the 2<sup>nd</sup> Respondent to declare vacancy in the Petitioners' position as chairpersons in the aforementioned committees is a gross violation of the Petitioners' constitutional Rights under the Constitution.*
  2. *There be a Declaration that, the purported elections of committee chairpersons of sports, culture, and social services; medical services, public*

*health and sanitation; and women caucus respectively is premature, unconstitutional, null and void.*

3. *An order for judicial review to quash any decision of the 2<sup>nd</sup> Respondents made pursuant to the Internal Memo dated 12<sup>th</sup> November 2025.*
4. *This Honourable Court be pleased to declare that the Petitioners' Fundamental Rights and Freedom of the under Article 47 of the Constitution have been contravened by the Respondents in the manner they conduct themselves.*
5. *The committee chairpersons of sports, culture, and social services; medical services, public health and sanitation; and women caucus appointed in the first term shall continue to hold office until the expiry term of service.*
6. *This Honourable Court be pleased to Order that the Respondents do pay the Petitioners General Damages for contravention of their Fundamental Rights and Freedom as provided for in the Constitution of Kenya 2010.*
7. *This Honourable Court be pleased to grant the costs of this petition to the Petitioners.*
8. *Any other or further relief that this Honourable Court considers appropriate and just to grant.*

### **Petitioners' case**

2. On 5/11/2025, a resolution was passed in the absence of the Petitioners, wherein a vote of no confidence was irregularly entered against them. Subsequently, on 12/11/2025, the 2<sup>nd</sup> Respondent illegally and irregularly dismissed them from their respective committees through an Internal Memo without justifiable cause, thereby infringing on their Constitutional rights to be subjected to the due process. Thereafter, an advert was issued declaring vacancies in the Petitioners' positions as chairpersons of sports, culture, and social services; medical services, public health and sanitation; and women caucus, respectively, with elections scheduled for 17<sup>th</sup> and 18<sup>th</sup> November 2025. The 3<sup>rd</sup> Petitioner was voted for by Honourable members who were not members of the said committee, which contravened standing order No.173 of the County Assembly of Kirinyaga. They aver that the Respondents' actions were unfair, unlawful, arbitrary, actuated in bad faith, unconstitutional and illegal, consequent to which their constitutional rights to fair administrative action, human dignity and legitimate expectation, were violated.

**Respondents' Case**

11. The 4<sup>th</sup> Respondent swore a Replying Affidavit, on her own behalf and that of the Members of the Sports, Culture and Social Services Committee. She avers that on 3/11/2025, the Committee passed a resolution that a Vote of no confidence be moved against the then chairperson, the 1<sup>st</sup> Petitioner. On 12/11/2025, the Committee held its meeting and a vote of no confidence was passed against the 1<sup>st</sup> Petitioner. Upon declaration of the vacancy in the office of the Chairperson of the Committee, the 1<sup>st</sup> Respondent issued a list, wherein she was the only member nominated for the position of Chairperson, and on 17/11/2025, she was duly elected. When the Status quo orders were issued, elections had already been held and she had already assumed the office of the Chairperson, hence rendering the Orders moot.
12. The 7<sup>th</sup> Respondent swore a Replying Affidavit on 1/12/2025 on her behalf and that of the Women Caucus Committee. She avers that 3/11/2025, a petition was made that a meeting of the members of the Women Caucus Committee be held on 4/11/2025. On that day, members resolved to issue a notice of intended Vote of no confidence against the then chairperson, the 3<sup>rd</sup> Petitioner herein. The then Vice Chairperson, the 5<sup>th</sup> Respondent communicated the notice of intended vote of no Confidence to the 3<sup>rd</sup> Respondent. On 12/11/2025, the Committee held its meeting and a vote of no confidence against the 3<sup>rd</sup> Petitioner was passed, which resolution was duly communicated to the 2<sup>nd</sup> Respondent. Upon declaration of the vacancy in the office of the Chairperson of the Committee, a final list of Nominated members, with Hon. Irene Gathuku, being the only nominated member was issued on 17/11/2025. Owing to the status quo orders of this court, the election did not, however take place, and the Vice Chairperson, the 5<sup>th</sup> Respondent herein, resigned on 4/11/2025. The Committee has no Chairperson and Vice Chairperson, hence halting its operations, as the vote of no confidence was done procedurally and in accordance with the law.
13. The 10<sup>th</sup> Respondent swore a Replying affidavit on 1/122025 on his own behalf and that of the Members of the Medical Services, Public Health and Sanitation. He avers that on 3/11/ 2025, a petition was made that a meeting of the Medical Services, Public Health and Sanitation be held on 4/11/2025. On that day, members resolved to issue a notice of intended Vote of no confidence against the then chairperson, the 2<sup>nd</sup> Petitioner herein. He wrote to the 3<sup>rd</sup> Respondent requesting him to communicate the said resolution to the 2<sup>nd</sup> Petitioner. On 12/11/2025, the Committee held its meeting

and a vote of no confidence was passed against the 2<sup>nd</sup> Petitioner, which resolution was duly communicated to the 2<sup>nd</sup> Respondent. Upon declaration of the vacancy in the office of the Chairperson of the Committee, the 1<sup>st</sup> Respondent issued a final list of Nominated members, and on 17/11/2025, he was duly elected as the Chairperson of the Committee. When the Status quo Orders were issued, elections had already been held, and he had already assumed the office of the Chairperson. The vote of no confidence was done procedurally and in accordance with the law, and the status quo orders are now moot.

14. The other Respondents and the Interested Party did not file any responses.

### **Submissions**

15. The Petitioners urge that if it not legally viable to be reinstated, they should each be awarded Ksh.1,000,000, and cite **Amesa Zelemoi v County Assembly of Baringo & Another (2020) eKLR and Jane Chepkorir Barus v County Assembly of Baringo & 3 Others [2021] eKLR.**
16. The Respondents and the Interested Parties did not file any submissions within the time directed by the Court.

### **Analysis and Determination**

22. Having carefully considered the pleadings on record, the issue for determination is whether the Petitioners' rights under the Constitution were violated.
23. Article 47 of the Constitution provides that:

***“(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”***

22. Article 50 (1) of the Constitution guarantees every person the right to a fair hearing, which includes the right to be heard before an adverse decision is made against them.
25. The Committees on Sports, Culture and Social Services, Medical Services, Public Health and Sanitation and Women Caucus convened a meeting on 4/11/2025, where the Petitioners' intended vote of no confidence was initiated in their absence. On 10/11/2025, notices of the committees' meetings scheduled for 12/11/2025 were issued, wherein the agenda thereof included, inter alia, the hearing of the

Chairpersons pursuant to Standing Order 171 (4) and the subsequent voting in a vote of no confidence. Come that day, the meetings proceeded as planned, notwithstanding the Petitioners' absence.

26. The minutes of the said meeting indicate that the Petitioners were served with the notices of the intended vote of no confidence on 8/11/2025, to which they responded on 11/11/2025, objecting to the short notice and requesting additional time to prepare. Despite these requests, the committees proceeded with the hearings as scheduled, construed their non-attendance as a waiver of their rights to be heard, and ultimately resolved to pass the vote of no confidence against them.
27. Standing Order 171 of the County Assembly of Kirinyaga Standing Orders provides that:

*“(1) A Committee may, by a resolution supported by a majority of its Members, resolve that it has no confidence in the Chairperson or Vice-Chairperson and a Member designated by the Committee for that purpose shall thereupon direct the Clerk to conduct an election for the Chairperson or Vice-Chairperson, as the case may be, in accordance with Standing Order 155 (Conduct of election). (2) The Members desiring to make a resolution under paragraph (1) shall serve the Chairperson or Vice-Chairperson with a written notice of the intended vote of no confidence and may, if they constitute a majority, request the Clerk to call for a meeting at the expiry of three days after the giving of such notice. (3) The notice under paragraph (2) shall be deemed to have been given upon circulation of the notice in the offices of Members, depositing in the Member’s pigeon holes, circulation through the official e-mails of Members and posting on notice boards in the precincts of the County Assembly. A notice under paragraph (2) shall also be deemed to have been given upon delivery to the Chairperson’s or Vice-Chairperson’s official email address, deposit in respective pigeon holes and by delivery of the notice to the office of the Chairperson or Vice-Chairperson, as the case may be. (4) The Clerk of the County Assembly shall communicate to the Liaison Committee the results of an election held pursuant to Standing Order 171 (1). (4) (A) A Chairperson or a Vice-Chairperson as the case may be, upon who notice has been served shall be given an opportunity to be heard before an election is held pursuant to paragraph (1) of this Standing Order. (5) Provided that the provisions of the*

*above paragraphs shall not apply to select Committees established by Standing Orders 182, 183, 184, 185, 188, 189, 190, and 191 respectively.”*

28. In *Breen vs. Amalgamated Engineering Union* [1971] All E.R. 1148, Lord Denning observed that:

*“It is now settled that a statutory body which is entrusted by Statute with discretion must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand or as administrative on the other or what you will, still it must act fairly. It must in a proper case give chance to be heard.”*

25. Since the Court of Appeal for Eastern Africa *Hypolito Cassiani De Souza v. Chairman Members of Tanga Town Council* [1961] EA 77, it has been accepted in East Africa that an important component of the right to a fair hearing is the right to adequate facility and opportunity to respond to the charges levelled against a person as follows:

*“A fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement prejudicial to their view and to make any statement they may decide to bring forward”.*

28. The Kenya Court of Appeal in *Mbaki & Others v Macharia & Another* [2005] 2 EA 207 has enunciated that:

*“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”*

26. In *Republic v National Police Service Commission Ex parte Daniel Chacha Chacha* [2016] KEHC 7755 (KLR), the Court (G.V Odunga J. as he then was) observed that;

*“Procedural fairness is therefore now a Constitutional requirement in administrative action and the requirement goes further than the traditional meaning of the duty to afford one an opportunity of being heard. It is now clear that even in cases where there is no express requirement that a person be heard before a decision is made, the tribunal or authority entrusted with the mandate of making the decision must act fairly...<sup>54</sup>. Therefore, the principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in*

*the process. The ingredients of fairness or natural justice that must guide all administrative decisions are, firstly, that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker; secondly, that no one ought to be judge in his or her case and this is the requirement that the deciding authority must be unbiased when according the hearing or making the decision; and thirdly, that an administrative decision must be based upon logical proof or evidence material...65. In my view, an introduction of a procedure which does not permit the hearing of a party in his case whether orally or otherwise, may well amount to bad faith and constitute irrationality as one cannot be in a position to know what factors were considered by the authority in arriving at the decision. Such a decision may well be described as having being arbitrarily arrived at. This must necessarily be so because statutes are interpreted by reference to their purpose, and statutory powers must be exercised for the purpose for which they were conferred. Public authorities are required to promote, and not to frustrate, the legislative purpose. In my view the purpose of the procedure for review is to afford a person aggrieved by the decision made on his or her vetting an opportunity to challenge the same. To thwart that intention by blocking a person's grievance from being agitated on the vague ground that the request for review is not merited amounts in my view to thwarting statutory or legislative intent and purpose."*

29. In *Karanja v Director of Public Prosecution & another [2025] KEHC 8973 (KLR)*, the court (Mwamuye, J.) addressed the standard for determining violations of Article 47 of the Constitution, stating that the petitioner must demonstrate that the respondents acted unreasonably, irrationally, or without legal justification.

30. Section 4 (4) of the Fair Administrative Act, which gives effect to the constitutional right to fair administrative action, is explicit on issue of granting adequate opportunity to prepare for a hearing as follows:

*"(4) The administrator shall accord the person against whom administrative action is taken an opportunity to-*

*(a) attend proceedings, in person or in the company of an expert of his choice;*

*(b) be heard;*

(c) cross-examine persons who give adverse evidence against him; and  
(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”

31. Clearly as shown above, the County Assembly Committees have a duty to act fairly imposed by the Constitution, the Fair Administrative Action Act, caselaw and their Standing Orders.
32. As noted in the committees’ minutes, the Petitioners requested rescheduling of the meetings to a date after 19/11/2025, but those requests were thwarted without any reasons. The mere fact that the 3-day notice period under Standing Order 171 (2) of the Kirinyaga County Assembly Standing Orders had been complied with, does not, justify proceeding in the face of a request for adjournment, **particularly where the request is made before the hearing date and seeks a relatively short postponement.**
33. Despite acknowledging the request for adjournment by the Petitioners no adjournments were granted to allow the petitioners prepare their defence to the charges.
34. This court finds that the decision by the committees on Sports, Culture and Social Services, the Medical Services, Public Health and Sanitation and Women Caucus denying the Petitioners’ adjournment requests and proceeding with the hearings in their absence was unreasonable, procedurally unfair and an affront to their constitutional right to be heard. The committee was aware that they had acknowledged receipt of the notices and had requested a postponement. There is no indication that the requests were made in bad faith or granting them would have occasioned substantial prejudice to the committees’ businesses.
35. Of significance is the glaring contradiction regarding the 12<sup>th</sup> Respondent’s participation. According to the minutes of the Sports Committee meeting held on 12/11/2025, the 12<sup>th</sup> Respondent was absent, yet the subsequent Resolution of Vote of No Confidence bears his signature alongside five other members.

### **Verdict**

36. The Court must emphasize the legal position as Lord Wright said in **General Medical Council v. Spackman** [1943] A.C. 627 that *"If principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision*

would have been arrived at in the absence of the departure from the essential principles of justice. **The decision must be declared to be no decision.**””

37. However, there is public interest need to ensure that the proceedings of the County Assembly Committees are not unduly prejudiced by uncertainty and disruptions occasioned by abrupt change of leadership/membership.
38. Balancing these considerations, the court finds that while the Petitioners’ treatment was procedurally unfair, it did not amount to a violation of their inherent dignity under Article 28 of the Constitution. The right to dignity is reserved for treatment that is truly degrading, humiliating, or shows profound disrespect for the person’s worth. The procedural irregularities in this case, though serious, do not meet that high threshold.
39. Consequently, this court finds that the proceedings of the Committees on Sports, Culture and Social Services; the Medical Services, Public Health and Sanitation and the Women Caucus leading to the removal of the Petitioners as Chairpersons violated their rights under Articles 47 and 50 of the Constitution. The Petitioners are entitled to damages for breach of their constitutional rights to a fair hearing and fair administrative action.
40. In the 2020 case of ***Amesa Zelemoi v County Assembly of Baringo & Another (2020) eKLR***, this court awarded Ksh.500,000/- was awarded for breach of the right to fair administrative action and fair hearing. In ***Jane Chepkorir Barus v County Assembly of Baringo & 3 Others*** [2021] eKLR, (Wasilwa, J.) an award of damages for 1,000,000/- was made as compensation for the rights under Article 47 and 50 of the Constitution.
41. In the December 2023 case of ***Jekim Hospital Nkubu Ltd & another v Kenya Medical Practitioners and Dentists Council & 2 others*** [2023] KEHC 27205 (KLR), this court awarded compensation of Ksh.1,000,000/- for violation of the right to fair administrative action and fair hearing. While in no way presented as a conventional award, the amount of the Ksh.1,000,000/- would appear to vindicate the violation of the constitutional rights to fair administrative action and fair hearing.

### **ORDERS**

42. Accordingly, for the reasons set out above, the Court finds the petition merited and makes the following orders:

1. The Court makes a declaration that the process leading to the passing of the vote of no confidence on the Petitioners as respective Chairmen of their Committees of the County Assembly of Kirinyaga violated the Petitioners rights to fair administration action and fair hearing under Articles 47 and 50 of the Constitution.
  2. The 1st Respondent will pay to the Petitioners a sum of Ksh.1,000,000/- each as damages for breach of their rights to fair administrative action and fair hearing.
  3. As regards the Committees of the Assembly on **Sports, Culture and Social Services** and **the Medical Services, Public Health and Sanitation** where elections following the vote of no confidence were already held before the conservatory orders of the Court, composition shall remain as established by the elections in the interests of stability of governance and operations of the said Committees.
  4. As the election have not been held for the **Women Caucus Committee** following the Court order herein, the Court shall restore the *status quo ante* and direct that the composition of the Committee shall remain as established before the purported Vote of No Confidence was taken.
  5. For avoidance of doubt, the County Assembly is, in accordance with its Standing Orders, subject only to giving the parties their rights to fair administrative action and to fair hearing, empowered to proceed with a process leading to a vote of confidence on any committee of the Assembly.
43. The Petitioners shall have the costs of the Petition.

*Order accordingly.*

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. B. Makhandia for the Petitioners.

Ms. Mudezi for the 1-3 Respondents.