

REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION  
PETITION NO. E009 OF 2025

HON. SAMSON OLIMA OBONYO.....1<sup>ST</sup>  
PETITIONER/APPLICANT  
HON. ODII EUNICE APIYO.....2<sup>ND</sup>  
PETITIONER/APPLICANT AND  
THE SPEAKER OF THE MIGORI COUNTY ASSEMBLY.....1<sup>ST</sup>  
RESPONDENT  
THE CLERK OF THE MIGORI COUNTY ASSEMBLY.....2<sup>ND</sup>  
RESPONDENT  
ETHICS AND ANTI-CORRUPTION  
COMMISSION.....INTERESTED PARTY

**RULING**

Before this court is a Notice of Motion application dated **13.11.2025** brought under Articles 1, 2, 3, 4, 5, 10, 19, 20, 21, 22, 23, 24, 25, 35, 47, 73, 74, 75, 129, 159, 165, 174, 175, 176, 177, 178, 185, 196 (1) (a), 228, 232, 258 and 259 of the Constitution of Kenya; the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013; and all enabling provisions of the law] seeking that pending the hearing and determination of this application and the Petition the Honourable Court be pleased to issue conservatory orders restraining the Respondents from in any way suspending the Petitioners from Migori County Assembly for 30 days and 60 days respectively or any other period and/or removing them from forums of the Migori County Assembly on matters herein;

That pending the hearing and determination of this application and the Petition the Honourable Court be pleased to issue conservatory orders restraining the Respondents from in any way denying the Petitioners their sitting allowances, responsibility allowances or any other allowance that the Petitioners are entitled to under any law in discharge of their mandates as elected Members of County Assembly, Migori County. The Petitioners also sought that pending the hearing and determination of this application and the Petition the Honourable Court be pleased to issue conservatory orders restraining the Migori County Assembly Committee of Powers and Privileges from deliberating matters herein concerning the Petitioners.

The Petitioners also sought for any further order or other orders permissible under Article 23 of the Constitution or any other law in the interest of justice in the circumstances as the Honourable court may deem fair, reasonable and just.

They also sought that the costs of this application be awarded to them.

The application was supported by the affidavit of Samson Olima Obonyo filed herewith on the grounds that:

1. The 1st Respondent has with utmost vindictiveness and without any legal right unlawfully and unconstitutionally made an oral communication to the Members of Migori County Assembly on 4.11.2025 in the plenary to the effect that the Petitioners are suspended from the County Assembly for 30 days and 60 days respectively.
2. To found a basis for allegations of misconduct, the 1st Respondent stated that the 1st Petitioner had warned the 2nd Respondent, Mr. Collins Bala, of dire consequences should he proceed to pay Members and staff their October salaries and operational expenses.
3. There was no motion moved by any member to warrant the impugned decision by the 1st Respondent.
4. Instead, the 1st Respondent, with utmost partiality and in a manner inconsistent with his office, made unsubstantiated allegations against the Petitioners and proceeded to make the impugned decision thereby becoming a judge in his own cause contrary to the legal principle of *nemo iudex in causa sua*, which is a rule of fundamental component of natural justice, designed to prevent bias and ensure impartiality in legal and administrative proceedings.
5. The concomitant effect of the impugned decision is that the 2nd Respondent has now barred the Petitioners from accessing Migori County Assembly; the Petitioners have been removed from forums of the Migori County Assembly, including various Committees that they sit in hence they are unable to represent their constituents and perform their constitutional mandates that they were elected to do.
6. The impugned act of the 1st Respondent of suspending them from the Migori County Assembly is not only nonsensical and irrational but unconstitutional and contravenes Articles 47 (1) and 50 (1) of the Constitution which provide respectively that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public

hearing before a court or, if appropriate, another independent and impartial tribunal or body.

7. The impugned suspension also contravenes Standing Order No 64 of the Standing Orders of the County Assembly of Migori which mandatorily provides that whenever the Constitution, any written law or the Standing Orders requires the County Assembly to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant Committee of the County Assembly considering the matter and shall be entitled to legal representation.

8. The impugned suspension purporting to suspend them from the County Assembly for 30 days and 60 days respectively also contravenes Standing Order No 104 (2) of the Standing Orders of the County Assembly of Migori which only allows the 1st Respondent or the Chairperson of Committees, as the case may be, to order a Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the County Assembly on the first occasion, for the remainder of that day's sitting and on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension.

9. It is only the said Committee of Powers and Privileges that can order for suspension of a member, among other sanctions, under Section 17 (3) (g) of the County Assemblies Powers And Privileges Act Chapter 265C of the Laws of Kenya; and upon granting such a member a hearing hence the 1st Respondent made the impugned decision without any authority and/or power and in a predetermined manner. 7 Page 3 of 5

10. It is also noteworthy that the 1st Respondent, who has demonstrably taken a position in the matter, is the Chairperson of the said Committee of Powers and Privileges under Section 15 (1) (a) of the County Assemblies Powers And Privileges Act Chapter 265C of the Laws of Kenya hence the Petitioners are reasonably apprehensive that they might not be granted a fair hearing.

11. The Respondents' impugned decision is malicious, made in bad faith and amounts to witch-hunt.

12. The Petitioners reasonably believe that the real mischief behind the impugned decision is to silence them in their quest for good governance and accountability in Migori County Assembly and Migori County Government at large.

13. The Petitioners' position is buttressed by the fact that they got wind that the 1st Respondent had the intention of unlawfully diverting County Assemblies Sports

Association (CASA) Games funds of KSh.22,459,500/= on the pretext of paying October, 2025 salaries and September, 2025 office operations whereas the Migori County assembly had separately vide another Request Reference Number MIG/REC/VOL.10(17) dated 28.10.2025 requested and indeed received KSh.36,858,194/= for County Assembly Members and Staff Salaries and allowances for the same month of October, 2025.

14. As a result of the foregoing, the Petitioners have been unlawfully barred from accessing Migori County Assembly and have been unconstitutionally barred from exercising their constitutional mandates of representation, oversight and legislative without following the law and the Constitution and without upholding integrity, transparency and accountability which are mandatory ingredients of good governance.

15. The Petition is meritorious and raises serious and weighty constitutional issues and has high probability of success; and if the conservatory orders as sought herein are not granted, the Petitioners will suffer irreparable harm and the Petition rendered merely academic.

16. The Petition and the accompanying motion herein have been brought with immense promptitude.

17. It is in the interest of fair administration of justice and fairness that the Petition be determined first and the proceedings in conservatory orders issued to prevent further miscarriage of justice if the Petition is successful.

The application was filed concurrently with petition of even date seeking for an ORDER OF DECLARATION declaring that the 1<sup>st</sup> Respondent's decision made on **4.11.2025** in the Plenary of Migori County Assembly against the Petitioners purporting to suspend the Petitioners from Migori County Assembly for 30 days and 60 days respectively and that the Petitioners are to forfeit their sitting allowance; responsibility allowance and also that they are removed from all forums of the Migori County Assembly, including various Committees that they sit in; and referring the matter to the Committee of Powers and Privileges is malicious, vindictive, amounts to witch-hunt hence unconstitutional and therefore illegal and void.

AN ORDER OF JUDICIAL REVIEW BY WAY OF CERTIORARI quashing the 1<sup>st</sup> Respondent's decision made on **4.11.2025** in the Plenary of

Migori County Assembly against the Petitioners as particularised under prayer (a) above.

AN ORDER OF PROHIBITION prohibiting the Respondents from in any way continuing to suspend the Petitioners from Migori County Assembly for 30 days and 60 days respectively on matters hereof and,

AN ORDER OF DECLARATION declaring that the Respondents have violated the Constitution hence not fit to hold public office.

The Court was also asked to compel the Respondents to compute and pay to the Petitioners their sitting allowances, responsibility allowances or any other allowances that the Petitioners were denied due to the impugned decision of **4.11.2025**.

The Court was also asked to compel the Respondents to compensate the Petitioners for violation of their rights.

Costs of the Petition was also sought

The application is premised on the GROUND THAT:

The 1<sup>st</sup> Respondent has with utmost vindictiveness and without any legal right unlawfully and unconstitutionally made an oral communication to the Members of Migori County Assembly on **4.11.2025** in the plenary to the effect that the Petitioners are suspended from the County Assembly for 30 days and 60 days respectively.

There was no motion moved by any member to warrant the impugned decision by the 1<sup>st</sup> Respondent.

Instead, the 1<sup>st</sup> Respondent, with utmost partiality and in a manner inconsistent with his office, made unsubstantiated allegations against the Petitioners and proceeded to make the impugned decision thereby becoming a judge in his own cause contrary to the legal principle of *nemo iudex in causa sua*, which is a rule of fundamental component of natural justice, designed to prevent bias and ensure impartiality in legal and administrative proceedings.

The concomitant effect of the impugned decision is that the 2<sup>nd</sup> Respondent has now barred the Petitioners from accessing Migori County Assembly; the Petitioners have been removed from forums

of the Migori County Assembly, including various Committees that they sit in hence they are unable to represent their constituents and perform their constitutional mandates that they were elected to do.

The impugned act of the 1<sup>st</sup> Respondent of suspending them from the Migori County Assembly is not only nonsensical and irrational but unconstitutional and contravenes Articles 47 (1) and 50 (1) of the Constitution which provide respectively that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

The impugned suspension also contravenes Standing Order No 64 of *the Standing Orders of the County Assembly of Migori* which mandatorily provides that whenever the Constitution, any written law or the Standing Orders requires the County Assembly to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant Committee of the County Assembly considering the matter and shall be entitled to legal representation.

The impugned suspension purporting to suspend them from the County Assembly for 30 days and 60 days respectively also contravenes Standing Order No 104 (2) of *the Standing Orders of the County Assembly of Migori* which only allows the 1<sup>st</sup> Respondent or the Chairperson of Committees, as the case may be, to order a Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the County Assembly on the first occasion, for the remainder **of that day's sitting** and on the second or subsequent occasion during the same session, **for a maximum of three sitting days including the day of suspension.**

The Respondents' impugned decision is malicious, made in bad faith and amounts to witch-hunt.

The Petitioners reasonably believe that the real mischief behind the impugned decision is to silence them in their quest for good governance and accountability in Migori County Assembly and Migori County Government at large, noting that the Petitioners got wind that the 1<sup>st</sup> Respondent had the intention of unlawfully diverting County Assemblies Sports Association (CASA) Games funds of **KSh.22,459,500/=** on the pretext of paying **October, 2025** salaries and **September, 2025** office operations whereas the Migori County assembly had separately vide another Request Reference Number **MIG/REC/VOL.10(17)** dated **28.10.2025** requested and indeed received **KSh.36,858,194/=** for County Assembly Members and Staff Salaries and allowances for the same month of **October, 2025**.

That as a result of the foregoing, the Petitioners have been unlawfully barred accessing Migori County Assembly and have been unconstitutionally barred from exercising their constitutional mandates of representation, oversight and legislative without following the law and the Constitution and without upholding integrity, transparency and accountability which are mandatory ingredients of good governance.

The Petition is meritorious and raises serious and weighty constitutional issues and has high probability of success; and if the conservatory orders as sought herein are not granted, the Petitioners will suffer irreparable harm and the Petition rendered merely academic.

That it is in the interest of fair administration of justice and fairness that the Petition be determined first and the proceedings in conservatory orders issued to prevent further miscarriage of justice if the Petition is successful.

The application is also supported by the affidavit in support sworn on 13<sup>th</sup> November **2025** by Samson Olima Obonyo the 1<sup>st</sup> Petitioner herein who averred that he was well conversant with the facts giving rise to this case and that he was duly authorized by his Co-Petitioner herein as per anexture **“SOO - 1” is the Letter of Authority**.

That he swore the affidavit on his behalf and on behalf of his Co - Petitioner herein and he brought Petition and the instant application on his behalf and on behalf of his Co - Petitioner in defence of the Constitution and in public interest.

That Article 3 of the Constitution of Kenya provides in mandatory terms that every person has an obligation to respect, uphold and defend this Constitution and the provision of Article 3 binds the Respondents herein.

That vide Request Reference Number **MIG/REC/VOL.10(16)** dated **21.10.2025** the Migori County Assembly requested and indeed received **KSh.22,459,500/=** for County Assemblies Sports Association (CASA) Games that was scheduled to be held in Meru County, Kenya from **October, 24** to **November 1, 2025** in which Migori County Assembly was to participate in several sports disciplines including, Soccer, Volleyball, Netball, Ajua, Badminton, Table Tennis, Pool table, Swimming, Darts, Athletics Beauty Contest and Scrabble.

That however, the sports event was postponed for 3 weeks hence it did not take place as envisaged.

That they got wind that the 1<sup>st</sup> Respondent had the intention of taking advantage of the postponement of the said CASA Games to unlawfully divert the CASA funds of **KSh.22,459,500/=** aforesaid on the pretext of paying **October, 2025** salaries and **September, 2025** office operations contrary to Article 228 (4) and (5) of the Constitution and the *Public Finance Management Act Chapter 412A of the Laws of Kenya* because the Migori County assembly had separately vide another Request Reference Number **MIG/REC/VOL.10(17)** dated **28.10.2025** requested and indeed received **KSh.36,858,194/=** for County Assembly Members and Staff Salaries and allowances for the same month of **October, 2025**.

That the 1<sup>st</sup> Respondent had also received **KSh.2,876,93/=** for payment of County Assembly Members & Staff Gratuities for the month of October, 2025 vide Request Reference Number

**MIG/REC/VOL.10(18)** dated **28.10.2025**; **KSh.3,762,000/=** for payment of County Assembly Reissue Ward Offices Standing Imprests for **September, 2025** vide Request Reference Number **MIG/REC/VOL.10(22)** dated **28.10.2025** among other payments.

That upon receiving the information aforesaid they engaged the Interested Party through a proxy as a whistle blower.

That pursuant to the whistle blower's said complaint, the Interested Party wrote to the 1<sup>st</sup> Respondent and directed the 1<sup>st</sup> Respondent not to utilize the funds for the activities that they were not requisitioned and/or intended but the 1<sup>st</sup> Respondent defiantly proceeded to divert the funds.

That later on **4.11.2025** they attended the Migori County Assembly sitting which was presided by the 1<sup>st</sup> Respondent.

That the orders of Business were well known in advance through the Order Paper of the day as is the parliamentary practice as per **annexture marked "SOO - 2" .**

That however, the 1<sup>st</sup> Respondent with utmost vindictiveness and without any legal right unlawfully and unconstitutionally made an oral communication to the Members of Migori County Assembly to the effect that the Petitioners were both suspended from the County Assembly for 30 days each.

That to found a basis for allegations of misconduct, the 1<sup>st</sup> Respondent stated that the 1<sup>st</sup> Petitioner had warned the 2<sup>nd</sup> Respondent, Mr. Collins Bala, of dire consequences should he proceed to pay Members and staff their October salaries and operational expenses.

That while so doing, the 1<sup>st</sup> Respondent did not give them the opportunity to defend themselves. That when the 2<sup>nd</sup> Petitioner rose to inquire why we were not granted a right of reply the 1<sup>st</sup> Respondent whimsically and arbitrarily enhanced the 2<sup>nd</sup> Petitioner's suspension from 30 to 60 days. **(Annexed hereto and marked "SOO - 3" is the Hansard).**

That the 1<sup>st</sup> Respondent stated that the Petitioners were to forfeit their sitting allowance; responsibility allowance and also that they

were removed from all forums of the Migori County Assembly, including various Committees that they were sitting in.

That there was no motion moved by any member to warrant the impugned decision by the 1<sup>st</sup> Respondent.

That instead, the 1<sup>st</sup> Respondent, with utmost partiality and in a manner inconsistent with his office, made unsubstantiated allegations against the Petitioners and proceeded to make the impugned decision thereby becoming a judge in his own cause contrary to the legal principle of ***nemo judex in causa sua***, which is a rule of fundamental component of natural justice, designed to prevent bias and ensure impartiality in legal

and administrative proceedings. That the concomitant effect of the impugned decision is that the 2<sup>nd</sup> Respondent has now barred them from accessing Migori County Assembly; they had been removed from forums of the Migori County Assembly, including various Committees that they sit in hence they are unable to represent their constituents and perform their constitutional mandates that they were elected to do.

***(Annexed hereto and marked "SOO - 4a" and "SOO - 4b" are screenshots of WhatsApp communication and Certificate of Electronic Record respectively***

That while making the impugned decision the 1<sup>st</sup> Respondent cited Standing Orders 1, 104, 105 and 106 of *the Standing Orders of the County Assembly of Migori*.

That the impugned act of the 1<sup>st</sup> Respondent of suspending the Petitioners from the Migori County Assembly is not only nonsensical and irrational but unconstitutional and contravenes Articles 47 (1) and 50 (1) of the Constitution which provide respectively that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

That the impugned suspension contravenes Standing Order No 64 of *the Standing Orders of the County Assembly of Migori* which mandatorily provides that whenever the Constitution, any written law or the Standing Orders requires the County Assembly to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant Committee of the County Assembly considering the matter and shall be entitled to legal representation.

That the impugned suspension purporting to suspend the Petitioners from the County Assembly for 30 days and 60 days respectively also contravenes Standing Order No 104 (2) of *the Standing Orders of the County Assembly of Migori* which only allows the 1<sup>st</sup> Respondent or the Chairperson of Committees, as the case may be, to order a Member whose conduct is grossly disorderly to withdraw immediately from the precincts of the County Assembly on the first occasion, for the remainder of that day's sitting and on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension. **(Annexed**

***hereto and marked "SOO - 5" is the Standing Orders of the County Assembly of Migori).***

That under Standing Order No 105 which the 1<sup>st</sup> Respondent also relied on in his impugned decision, it is only a Member who can, on a point of order, invite the 1<sup>st</sup> Respondent or the Chairperson of Committees to name another Member for grossly disorderly conduct, which was not the case herein.

That demonstrably, the impugned decision was *ultra vires* the powers of the 1<sup>st</sup> Respondent.

That in fulfilling their respective mandates, the Respondents are obligated to be guided by the national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in article 232(1) of the Constitution.

That specifically, Article 10 (2) (c) and (d) of the Constitution behoves the Respondents to uphold the national values and principles of governance, which include good governance, integrity, transparency and accountability and sustainable development.

Article 232 (e) on the other hand imbues the Respondents while exercising their respective mandates to have regard to accountability for administrative acts.

That to the contrary, as already demonstrated hereinabove, the Respondents have blatantly violated the foregoing provisions of the Constitution.

That by purporting to suspend the Petitioners from the County Assembly for 30 days and 60 days respectively and referring the matter to the Committee of Powers and Privileges, the 1<sup>st</sup> Respondent usurped the powers of the said Committee.

That it is only the said Committee of Powers and Privileges that can order for suspension of a member, among other sanctions, under Section 17 (3) (g) of the *County Assemblies Powers And Privileges Act Chapter 265C of the Laws of Kenya*; and upon granting such a member a hearing hence the 1<sup>st</sup> Respondent made the impugned

decision without any authority and/or power and in a predetermined manner.

That it is also noteworthy that the 1<sup>st</sup> Respondent, who has demonstrably taken a position in the matter, is the Chairperson of the said Committee of Powers and Privileges under Section 15 (1) (a) of the *County Assemblies Powers And Privileges Act Chapter 265C of the Laws of Kenya* hence we are reasonably apprehensive that they might not be granted a fair hearing.

That the Respondents' impugned decision is malicious, made in bad faith and amounts to witch-hunt and the Petitioners reasonably believe that the real mischief behind the impugned decision is to silence them in their quest for good governance and accountability in Migori County Assembly and Migori County Government at large.

That the Respondents have proceeded with their impugned conducts aforementioned with reckless abandon and in total disregard of the Constitution and the relevant laws.

That as a result of the foregoing, the Petitioners have been unlawfully barred from accessing Migori County Assembly and we have been unconstitutionally barred from exercising our constitutional mandates of representation, oversight and legislative without following the law and the Constitution and without upholding integrity, transparency and accountability which are mandatory ingredients of good governance.

That under Article 10 (2) of the Constitution, national values and principles of governance include:

- a. *patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*

- b. *human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;*
- c. *good governance, integrity, transparency and accountability; and*
- d. *sustainable development.*

That there was no iota of, good governance, integrity, transparency and accountability on the part of the Respondents in arriving at the impugned decision.

That the 1<sup>st</sup> Respondent does not have the authority and/or power to suspend the Petitioners for 30 days and 60 days respectively as purported.

That the Petitioners are reasonably apprehensive that since the impugned decision has already been made, the referral of the matter to the Committee of Powers and Privileges by the 1<sup>st</sup> Respondent is a charade for a predetermined outcome to achieve an intended outcome.

That the Respondents are playing with the sensitive and serious matters of governance and behaving in a manner that suggests that they are not accountable to the people of Kenya for their decisions.

That Article 232 (1) on the other hand adumbrates the values and principle of public service to include:

- e. *high standards of professional ethics;*
- f. *efficient, effective and economic use of resources;*
- g. *responsive, prompt, effective, impartial and equitable provision of services;*

- h. involvement of the people in the process of policy making;*
- i. accountability for administrative acts;*
- j. transparency and provision to the public of timely, accurate information;*
- k. subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;*
- l. representation of Kenya's diverse communities; and*
- m. affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of-- (i) men and women; (ii) the members of all ethnic groups; and (iii) persons with disabilities.*

That Article 232 (2) further provides that the values and principles of public service apply to public service in all State organs in both levels of government and all State corporations.

That however, the Respondents in purporting to suspend the Petitioners from Migori County Assembly for 30 days and 60 days respectively have violated the foregoing provisions of the Constitution.

That firstly, the impugned decision does not promote accountability for administrative acts.

That there is no transparency and provision to the public of timely, accurate information.

That demonstrably therefore, the impugned decision does not promote public interest and the interest of the Kenyans at large.

That the Respondents have prejudiced and compromised the Petitioners' right to fair administrative action by purporting to suspend them from Migori County Assembly for 30 days and 60 days respectively without due regard to the mandatory constitutional provisions aforestated.

That Article 201 provides for the principles of public finance as follows:

*“The following principles shall guide all aspects of public finance in the Republic—*

- a. there shall be openness and accountability, including public participation in financial matters;*
- b. the public finance system shall promote an equitable society, and in particular—*
  - (i) the burden of taxation shall be shared fairly;*
    - 1. revenue raised nationally shall be shared equitably among national and county governments; and*
    - 2. expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;*

- a. *the burden and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;*
- b. *public money shall be used in a prudent and responsible way; and*
- e.
- f. *financial management shall be responsible, and fiscal reporting shall be clear.*

That Articles 228 (4) and (5) on the other hand respectively provide that the Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207; and that the Controller shall not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law.

That in purporting to divert the CASA Games funds for the activities that they were not requisitioned and/or intended, more so against the advice of the Interested Party, the 1<sup>st</sup> Respondent violated Articles 201 and 228 (4) and (5) aforestated.

That the Respondents have in effect acted in a manner tantamount to miscarriage of justice and due process.

This application was opposed by the Replying Affidavit sworn by Christopher Odhiambo Rusana in which he averred that he was responding to the application on his behalf and on behalf of the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> Respondent averred that the entire content of the Petitioners' application and supporting affidavit is based on perjury and false allegation.

That the Petitioners have intentionally and maliciously concealed to this court the material fact that they had on 6<sup>th</sup> November, 2025 filed Migori Chief Magistrates' Court Civil Suit No. E163 of 2025 where they misled the trial magistrate through

distortion and concealment of material facts to give them stay orders which the court later vacated after we had disclosed all material facts and documents to court. That the said case is scheduled for directions before Hon. Okuche on 20<sup>th</sup> November, 2025. [Annexed marked 'COR 1 & 2' is a copy of court order given on 6<sup>th</sup> & 10<sup>th</sup> November, 2025 respectively]

That the Petitioners filed this Petition as a matter of after to forum shop for favorable orders after realizing that the stay orders that they had obtained in Migori Chief Magistrates' Court Civil Suit No. E 163 of 2025 through distortion and concealment of material facts had been vacated by the said court on 10<sup>th</sup> November, 2025.

That his decision of 4<sup>th</sup> November, 2025 which the Petitioners are challenging was made during a legislative and parliamentary proceeding of Migori County Assembly and that the orders sought by the Applicant should not be granted by this court as granting the said orders would mean that this court shall have usurped the legislative powers of Migori County Assembly against the doctrine of Separation of powers between the judiciary and the legislature as provided by the constitution yet Article 195 (2) ranks proceeding of a County Assembly in the same level as the High Court, even at the committee stage.

The 1st Respondent further averred that his decision of 4<sup>th</sup> November, 2025 once made became the decision of the Migori County Assembly which is not a party to this case. That issuing the orders prayed for by the Petitioners in the application would mean that Migori County Assembly is being condemned unheard.

That the Petition herein is brought against them by the Petitioners in bad faith as it can be seen that the Petitioners had the conscious to include the ETHICS AND ANTI-CORRUPTION COMMISSION as an interested party in this case but intentionally failed to include Migori County Assembly whose decisions they are seeking to stay.

The Deponent further averred that it is within his own knowledge that the Petitioners have maliciously and intentionally failed to file before this court a written copy of his communication/decision dated 4<sup>th</sup> November, 2025 which suspended them because they wanted to conceal the truth from the Honorable court

that he only gave an oral communication, yet the Petitioners already had a copy of the said decision as at the time of filing the Petition. [Apnexed marked 'COR 3' is a copy of my communication]

The 2<sup>nd</sup> Respondent further deponed that the Petitioners are misleading this Honorable court that he only relied on Standing Orders 104(2) in suspending them yet a perusal of the Hansard and the said decision clearly shows that he relied on the following laws;

- a) Article 38 of the Constitution.
- b) Sections 16 & 26 (l)(a) of the County Assemblies Powers and Privileges Act, 2017.
- c) Sections 11 & 34 (l)(a) of the Leadership and Integrity Act, 2012.
- d) The whole of the County Assembly of Migori Standing Orders Nos. 1, 104.105 and 106.

That the Petitioners main intention is to mislead this court by selectively choosing to interpret the legality of his decision only under Standing Order 104(2) in total disregard to the provisions of the constitution, statutes and Standings Orders which he quoted and relied on.

That the averments of the Petitioners that he acted ultra-vires of his powers or without jurisdiction when he made the decision to suspend them on 4<sup>th</sup> November 2025 is a baseless allegation as Standing Orders number 1, 15,104, 106, 107 108 & 109 clothes him with powers and jurisdiction to make the decision he made on 4<sup>th</sup> November, 2025.

That standing order No. 1 of Migori County Assembly Standing Orders clothes the Speaker with inherent jurisdiction in cases not provided for under the standing orders. The said Order provides that;

"(1) In all cases where matters are not expressly provided for by the Standing Orders or by other Orders of the County Assembly, any procedural question shall be decided by the Speaker.

(2) The decisions made in paragraph (1) shall be based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and the County Assembly of Migori and other jurisdictions to the extent that these are applicable to Kenya. "

That the Petitioners allegation that his direction that they should forfeit all allowances and benefits payable during the suspension period is unlawful is a false allegation as Standing Order 107 (2) is very clear that;

"A member who is ordered to withdraw under Standing Order 109 (Gross Disorder) or who is suspended from the service of the County Assembly under Standing Order 105(Member may be suspended after being named) shall forfeit all allowances payable during the period of such suspension,"

That the allegation by the Petitioners that he acted ultra-vires his powers by suspending them for 30 days & 60 days respectively is a false allegation pleaded by the Petitioners to mislead this court to grant the interim orders after the Petitioners have maliciously concealed from this court a copy of the decision which they are challenging.

That the 2<sup>nd</sup> Petitioner had actually been suspended for 30 days by his communication only for her to misconduct herself further thereby forcing 1<sup>st</sup> Respondent to enhance the said period from 30 days to 60 days as can be seen from the communication and the Hansard which has since been filed before this Honorable court to enable this court to reach a just determination.

That the 2<sup>nd</sup> Petitioner failed to disclose to the court that it was not the 1<sup>st</sup> time that she was being named for gross disorderly conduct as she had sometimes in September 2025 faced disciplinary investigations of her conduct and was even invited to appear before the Powers and Privileges Committee. [Annexed marked 'COR 4' is a orevious summon to the 2<sup>nd</sup> Petitioner to appear before the powers and privileges committee.]

That had the Petitioners filed in court the 1<sup>st</sup> Respondents written communication/decision which they are challenging, this Honorable court would have taken note of the fact that he was very specific at page 4 of his communication that he invoked the provision of Standing Order No. 1 and

subsequently standing Order No. 105 to suspend the Petitioners and to arrive to the duration of suspension since the matter raised being, was gross disorderly conduct, of the Petitioners committed outside chambers and committee meetings which are provided for in standing orders.

That the 1<sup>st</sup> Respondent's communication/decision even had a reason why he was not obliged to await a formal complaint from any other member. He concluded as follows;

**"Honorable Members,**

**These actions constitute gross disorderly conduct and are in violation of Standing Orders Nos. 104 and 105 which govern the conduct of Members both within and outside the assembly.**

**Given that the threats were directed at the Speaker and members of staff; I am not obliged to await a formal complaint from any other Member.**

**Consequently, and in accordance with Standing Order No. 105 and 106,**

**I hereby name the following Members for gross disorderly conduct;**

- 1. Samson Olima**
- Obonyo 2 Eunice**
- Apiyo Odii**

**Since the matter raised above were done outside the Chambers and Committee meetings which are provided for in the Standing Orders, I hereby invoke provision of Standing Order No. 1 and subsequently Standing Order No. 105.**

**Pursuant to standing Order No. 105, I hereby suspend the two members from the services of the County Assembly for a period of thirty (30) calendar days, effective today.**

**Further, in exercise of the powers conferred under Standing Order No.**

**106, I order the two Members to withdraw immediately from the Chamber and the precincts of the County Assembly for the duration of the suspension.**

**The two Members shall forfeit all allowances and benefits payable during the suspension period. Further the two members be excluded from the official communication platforms of Migori County Assembly during the period of suspension.**

**Additionally, and pursuant to the powers vested in the Speaker under Standing Order No. 15 regarding the composition of the Speaker's panel, I hereby remove Hon. Eunice Apiyo Odii from the Speaker's Panel with immediate effect. This decision has been necessitated by her recent conduct, which falls short of the decorum and integrity expected of a member serving in that position.**

**Further I direct that the committee of privileges conduct further investigations”**

The 1<sup>st</sup> Respondent invited the court to note from the above quoted extract of the communication that he gave reasons for his decision and further even ordered the powers and privileges committee to conduct investigations over the matter. That his decision was not a final disciplinary process against the Petitioners but just an initiation of the process.

That he gave the Petitioners a chance to be heard before the powers and privileges committee by directing the Powers and Privileges Committee to investigate the matter.

The 1<sup>st</sup> Respondent discouraged the court from interfering or staying parliamentary proceedings and decisions under the doctrine of separation of powers.

That in any event, the Petitioners have not denied anywhere in their pleadings that they grossly misconducted themselves.

That the 1<sup>st</sup> Respondent's decisions made to suspend the Petitioners was based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and the County Assembly of Migori and other jurisdictions which are applicable to Kenya.

That the Petitioners have not disclosed to this court any irreparable loss which cannot be compensated by damages they are likely to suffer if the interim orders sought are not granted.

That the Petition as filed is premature as the Petitioners should have waited for the outcome of the investigation of the powers and privileges committee which has the same powers as this court during its investigation hearings.

THAT this Petition lacks merit and should be dismissed with costs.

The Petitioners subsequently sought leave to file a supplementary affidavit in response to the Replying Affidavit sworn by Christopher Odhiambo Rusana on **19.11.2025**

That I reiterate the averments of my said supporting affidavit and deny all the allegations as set out in the Respondents' affidavit aforestated.

That the averments by the Respondents in their said affidavit are misleading in their entirety.

That in the Respondents' affidavit aforestated the Respondents have not annexed or demonstrated evidence of any misconduct by ourselves to justify their impugned decision.

That in response to paragraphs 4 and 5 of the Respondents' affidavit, there is no malice or forum shopping as alleged, or at all.

That on the issue of the **Migori Chief Magistrate's Court Civil Suit No.E163 of 2025** (hereinafter referred to as "**MCCC/E163/2025**") as alluded by the Respondents we humbly invite the Honourable Court to take judicial notice that we filed the matter by ourselves while acting in person as lay persons.

***(Annexed hereto and marked "SOO - 1" is a copy of the Complaint).***

That when we served the Respondents with the pleadings in the said **MCCC/E163/2025** the Respondents objected to the jurisdiction of the subordinate court on the premise that we ought to have filed a constitutional Petition or Judicial Review proceedings in the High Court.

***(Annexed hereto and marked "SOO - 2" is the Respondent's application in the lower court).***

That we then sought legal advice from our Advocates herein whereupon our Advocates first filed Notice of Withdrawal dated **12.11.2025** in the said **MCCC/E163/2025** before filing these proceedings on **13.11.2025** since, evidently, the subordinate has no jurisdiction on matters herein.

***(Annexed hereto and marked "SOO - 3" is the Notice of Withdrawal).***

That on **20.11.2025** the said **MCCC/E163/2025** was endorsed and the matter successfully withdrawn.

***(Annexed hereto and marked "SOO - 4" are the certified proceedings).***

That it is therefore mischievous of the Respondents to raise the issue of the filing of the **MCCC/E163/2025** aforesaid since this the appropriate forum to ventilate our grievances.

That the Respondents cannot approbate and reprobate at the same time by at one hand stating in **MCCC/E163/2025** that we ought to have filed a constitutional Petition or Judicial Review proceedings in the High Court yet when we have now filed the Petition herein then Respondents make unfounded allegations of forum shopping.

That in any event, the orders initially issued by the subordinate court in **MCCC/E163/2025** have since been vacated as admitted by the Respondents.

That in response to paragraphs 6 and 7 of the Respondents' affidavit, the averments are misplaced and in total misreading of Article 195 (2) of the Constitution.

That in response to paragraph 8 of the Respondents' affidavit, the decision that we seek to challenge was made by the 1<sup>st</sup> Respondent personally without the benefit of a plenary endorsement by way of debate hence the contention that Migori County Assembly will be condemned unheard is uncalled for.

That in response to paragraph 9 of the Respondents' affidavit, we have elaborately given the genesis of the impugned decision and the allegations of misappropriation of funds in the Migori County Assembly to justify inclusion of **Ethics And Anti-Corruption Commission**, the Interested Party herein, as a necessary party. It is not for the Respondents to choose who should be sued or not but to defend the allegations against them.

That curiously enough, from the Respondents' affidavit there is no single paragraph where the Respondents have denied the

allegations of misappropriation of funds against them or even offered a different perspective from ours.

That in response to paragraph 9 of the Respondents' affidavit, the 1<sup>st</sup> Respondent made the impugned decision without giving us a copy of the decision. In any event, the filed communication (Respondents' annexure marked "**COR 3**") confirms the existence of the impugned decision and also shows that the 1<sup>st</sup> Respondent came to the plenary with an already made decision disguised as "*communication from the chair.*"

That in response to paragraphs 10, 11, 12, 13, 14, 15 and 16 of the Respondents' affidavit, the 1<sup>st</sup> Respondent does not have jurisdiction to suspend any member of the County assembly as he did in our case. The averments are in total misreading/misrepresentation of *the Standing Orders of the County Assembly of Migori.*

That the decision by the 1<sup>st</sup> Respondent to refer the matter to the Powers and Privileges Committee also offends Section 15 (5) of *the County Assemblies Powers and Privileges Act Chapter 265C of the Laws of Kenya* because the 1<sup>st</sup> Respondent has no powers to refer a matter to the said Committee since, under that Section, the Committee can only act on its own motion or through a complaint before it.

That as things stand, there is neither complaint nor indication that the Committee has acted on its own motion hence any deliberations pursuant to the impugned decision would be unlawful and/or unconstitutional.

That in response to paragraph 17 of the Respondents' affidavit, the 1<sup>st</sup> Respondent has confirmed that he indeed originally suspended the 2<sup>nd</sup> Petitioner for 30 days and capriciously and arbitrarily enhanced the same to 60 days in the spur of the moment.

That in response to paragraph 18 of the Respondents' affidavit, the allegations have nothing to do with the matters herein. In any event, the Respondents have not furnished any adverse findings against the 2<sup>nd</sup> Petitioner pursuant to the alleged summons.

That in response to paragraphs 19, 20, 21 and 22 of the Respondents' affidavit, there is nothing to show that the Respondents gave us a chance to be heard before the impugned decision.

That indeed the 1<sup>st</sup> Respondent arbitrarily enhanced the 2<sup>nd</sup> Petitioner's suspension from 30 to 60 days when the 2<sup>nd</sup> Petitioner inquired why she was not given a fair hearing.

That in response to paragraph 23 of the Respondents' affidavit the Respondents are not above the law but are enjoined to abide by the Constitution in discharge of their respective mandates.

That this Court has both supervisory and interpretative jurisdiction under Article 165 of the Constitution to ensure that the actions of the Respondents are lawful and constitutional.

That in response to paragraph 24 of the Respondents' affidavit, we stated in our affidavit in support of the Petition and the application that the impugned decision was vindictive and baseless noting the allegations of misappropriation of funds by the Respondents.

That in response to paragraph 25 of the Respondents' affidavit, the impugned decision is *ultra vires* hence should not stand.

That in response to paragraphs 26 and 27 of the Respondents' affidavit, there will be irreparable harm since we will be subjected to suspension made without authority by the 1<sup>st</sup> Respondent.

That secondly, allowing the Powers and Privileges Committee to proceed with its proceedings against us pursuant to the impugned decision will be irreversible because the decision by the 1<sup>st</sup> Respondent to refer the matter to the said Committee offends Section 15 (5) of *the County Assemblies Powers and Privileges Act Chapter 265C of the Laws of Kenya* because the 1<sup>st</sup> Respondent has no powers to refer a matter to the said Committee as already stated hereinabove.

That in nutshell, there was no basis for the impugned decision and the orders sought should issue to save the substratum of the Petition.

The application was canvassed by way of written submissions.

The Applicants' submissions are dated 28<sup>th</sup> November 2025. The Applicant submitted that they are duly elected Members of the County Assembly in Migori County for their respective wards and by dint of the instant application they are seeking conservatory orders based on the decision by the 1<sup>st</sup> Respondent to suspend them from the County Assembly for 30 days and 60 days respectively without authority and to refer the matter to the Migori County Assembly Powers and Privileges Committee contrary to Section 15 (2) of *the County Assemblies Powers and Privileges Act*.

It was submitted that this Court's jurisdiction to grant the orders sought is not in doubt.

It was also submitted that the Respondents do not deny the existence of the impugned decision. Instead, they state that the Petitioners filed ***Migori MCCC/E163 of 2025*** hence, according to them, the Petitioners are forum shopping.

That by dint of these submissions, the Petitioners intend to demonstrate to the Court that the Respondents' response is trifling and baseless.

The Petitioners argued that the Respondents' position on the doctrine of separation of powers and their reliance on Article 195 (2) of the Constitution that proceedings of a County Assembly is at the same level as the High Court is incorrect and misleading.

The Petitioners craved the court to find that the application is merited, and urged that it should allow the conservatory orders sought with costs to them.

The Applicants relied on the following authorities:

**Hassan Halane vs. Ahmed Ibrahim Abass, Speaker County Assembly of Garissa [2019] KEHC 3504 (KLR)** (paragraphs 87 to 92 thereof);

**Ungai vs. Speaker, County Assembly of Kakamega & 2 others**  
**[2024] KEHC 14322 (KLR)** (paragraphs 63 to 67);

**Katiba Institute & 4 others vs. Attorney-General & 3 others**  
**[2025] KEHC 12779 (KLR)** (paragraphs 72 to 86 thereof); and

**Law Society of Kenya vs. Attorney General & another [2020]**  
**KEHC 10496 (KLR)** (paragraphs 29 and 30 thereof).

The Constitution is the supreme law of the land by dint of Article 2 of the Constitution and no state organ or officer is above the law.

The High Court has **jurisdiction** under Article 165 (3) (b) of the Constitution to determine questions whether a right or fundamental freedom in the Bill of rights has been denied, violated, infringed or threatened.

The High Court also has **interpretative jurisdiction** under Article 165 (3) (d) (ii) to hear any question on the interpretation of the Constitution on whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution.

In this matter, the Petitioners/Applicants have stated that they were not accorded the right to be heard before the impugned decision was made. The 1<sup>st</sup> Respondent merely alluded to “*the communication from the chair*” and expelled the Petitioners.

Therefore, the impugned decision is unconstitutional and contravenes Article 47 (1) of the Constitution which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

That in any event, the Petition is straightforward and the Respondents have not denied the existence of the impugned decision.

That **Migori MCCC/E163 of 2025** was withdrawn for want of jurisdiction and the dispute herein is real and existing as admitted by the Respondents; the Petitioners have not presented a hypothetical, premature or academic dispute that would warrant invoking the doctrine of ripeness to oust jurisdiction of the Court.

It was also contended that it is not disputed that the Petitioners have set out with a degree of precision their complaint, the provisions infringed and the manner in which they are alleged to be infringed in strict compliance with the decision in **Anarita Karimi Njeru vs. The Republic [1979] eKLR** at paragraph 3, page 2 thereof.

The Petitioners also submitted that the application for conservatory orders is meritorious. The Supreme Court holding in **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others [2014] eKLR** at paragraph 86, page 16 thereof was cited as giving guidance on the threshold to be met by a party seeking conservatory orders. In the court's considered view, a conservatory order 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.

Similarly the Petitioners relied on the holding of the High Court in **Katiba Institute & 4 others vs. Attorney-General & 3 others [2025] KEHC 12779 (KLR)** at page 22, paragraph 89 thereof that the threshold for granting conservatory orders are 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 a real danger that he will suffer

prejudice as a result of the violation or threatened violation of the Constitution; whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be **rendered nugatory**; and the **public interest** must be considered before grant of a conservatory order.

**According to the Petitioners they had established a prima facie case with a likelihood of success** as the Respondents in their response to the application, did not file any evidence constituting misconduct by the Petitioners to justify the impugned decision.

That it was also not contested that the Petitioners were suspended for 30 days and 60 days respectively by the 1<sup>st</sup> Respondent and it was also not in dispute that the 1<sup>st</sup> Respondent then referred the matter to the Powers and Privileges Committee after suspending the Petitioners.

It is also not disputed that there was no motion moved by any member of the Assembly. Rather, the 1<sup>st</sup> Respondent who complained about personal attacks by the Petitioners unilaterally made the decision.

There is also considerable merit on the Petitioners' contention that the 1<sup>st</sup> Respondent being the complainant could not be a judge on his own cause and purport to suspend the Petitioners without declaring conflict of interest.

Moreover, in the copy of the Hansard filed by the Petitioners, there is no indication that the 1<sup>st</sup> Respondent accorded the Petitioners a chance to address the plenary and give their own account before the decision was made.

Standing Order No 104 (2) of *the Standing Orders of the County Assembly of Migori* only allows the 1<sup>st</sup> Respondent to order

withdrawal of a member from the precincts of the County Assembly for a maximum of three sitting days, including the day of suspension.

On facts and Standing Orders similar to this case, the High Court in **Hassan Halane vs. Ahmed Ibrahim Abass, Speaker County Assembly of Garissa [2019] KEHC 3504 (KLR)** held at paragraph 80 thereof that the Speaker has a limited disciplinary scope and that under **Standing order 104 (2)** the Speaker has no authority to suspend a member for three months.

The High Court while analysing the Standing Orders, whose wording is similar to *the Migori County assembly Standing Orders*, held that the Speaker can only order any member whose conduct is grossly disorderly to withdraw immediately from the precincts of the assembly or on the first occasion, for the remainder of that days sitting and on the second or subsequent occasion, for the remainder of that days sitting and on the second or subsequent occasion during the same session, for a maximum of three sitting days including the day of suspension.

Also, reliance by the Respondents on **standing Order 105** to justify the impugned decision is misplaced since under that Standing Order there must be a motion moved by a member as a prerequisite, which was not done in this case.

On the other limb of the Petition on the decision by the 1<sup>st</sup> Respondent to refer the matter to the Powers and Privileges Committee the Petitioners argued that the same offends Section 15 (5) of *the County Assemblies Powers and Privileges Act* because the 1<sup>st</sup> Respondent has no powers to refer a matter to the said Committee since, under that Section, the Committee can only act on its own motion or through a complaint before it.

That the High Court in **Hassan Halane vs. Ahmed Ibrahim Abass, Speaker County Assembly of Garissa, supra** held at paragraph 79 that there is no provision in the Act for reference of a speaker's ruling to the committee.

As things stand, there is neither complaint nor indication that the Committee has acted on its own motion hence any deliberations pursuant to the impugned decision would be unlawful and/or unconstitutional.

Therefore, the Committee would be sitting illegally on the matters herein.

Demonstrably, there is a prima facie case with a likelihood of success. Unless the Court grants the conservatory order, there is a real danger that the Petitioners will suffer prejudice for two reasons.

Firstly, failure to issue the conservatory orders will mean that the Petitioners will continue being suspended arising from a decision made without authority.

Secondly, allowing the Powers and Privileges Committee to proceed with its proceedings against the Petitioners pursuant to the impugned decision will be irreversible because the decision by the 1<sup>st</sup> Respondent to refer the matter to the said Committee offends Section 15 (5) of *the County Assemblies Powers and Privileges Act Chapter 265C of the Laws of Kenya* because the 1<sup>st</sup> Respondent has no powers to refer a matter to the said Committee as already stated hereinabove.

**The Petitioners submitted that if the conservatory orders are not granted the petition will be rendered nugatory as the** Petitioners have been unlawfully barred from accessing the County assembly and sit in various committees and cannot participate in the proceedings. That failure to stop the impugned decision means

that the Petitioners will continue to be unlawfully denied the right to exercise their mandate and the same will be irreversible if the Court's makes a decision on the main Petition that the decision is unconstitutional.

On whether the Petition touches on public interest, the Petitioners have argued that they are unable to represent their constituents and perform their constitutional mandates that they were elected to do. That Legislative business has specific timelines in terms of scrutiny and passing of Bills to support the devolved government in its functions and public interest lies in favour of allowing the application so that the Petitioners can continue exercising their mandate and represent their constituents.

The Petitioners also submitted that costs follow the events and the same should be awarded to them as there is/was no justification whatsoever for the impugned decision which animated the Petition and the application should be allowed with costs.

The Respondents' did not file submissions and relied on the Replying Affidavit sworn by Christopher Odhiambo Rusana opposing the application.

## **ANALYSIS AND DETERMINATION**

From the application, the grounds and the affidavits supporting and opposing the application as well as the submissions by the Applicant/Petitioners the material facts are not seriously disputed. On 4th November 2025, during the Assembly sitting, the Petitioners were ordered to withdraw from the Chamber and were subsequently suspended for sixty (60) days due to alleged disorderly conduct. The Petitioners contend that no Motion was moved under Standing Order 105; no debate took place; and no hearing was conducted. They assert that they were not notified of the allegations and that the Speaker acted suo motu. They also argue that Section 15(5) of the County Assemblies Powers and Privileges Act specifically bars the Speaker from participating in disciplinary processes where he is a complainant. The Respondents state that the Petitioners were disorderly and that the Speaker exercised his discretion to maintain order. The Petitioners withdrew a related matter filed before the

subordinate court and filed the present Petition on 13th November 2025. By the time the Application came for inter partes consideration, the 60-day suspension had lapsed.

From the brief background and pleadings before the court, the issues for determination are

- a. Whether the Application is moot due to expiry of the suspension period.
- b. Whether the Petitioners have established a prima facie case warranting conservatory orders.
- c. Whether the Application satisfies the public interest threshold.
- d. What orders should issue.

Petitioners in their submissions have argue that the Speaker lacked jurisdiction, failed to act in accordance with Standing Orders, and denied them a hearing contrary to Articles 47 and 50 of the Constitution. They emphasize that the Respondents' Replying Affidavit contains no Hansard record, no minutes, and no report justifying the suspension. They rely on:

- *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR
- *Judicial Service Commission v Mbalu Mutava & Another* [2015] eKLR
- *Dry Associates Ltd v Capital Markets Authority & Another* [2012] eKLR
- *CREAW & 7 Others v Attorney General* [2011] eKLR
- *Okiya Omtatah Okiiti v Speaker, National Assembly* [2013] eKLR

They submitted that procedural impropriety and failure to provide reasons automatically raises a prima facie case under Article 47.

The Respondents' argued that the Speaker had authority to maintain decorum under Standing Orders. They contend that the Petition is overtaken by events since the suspension period has expired. They invoked the doctrine of restraint in parliamentary matters, citing: *Republic v County Assembly of Migori; ex parte Zachary Okoth Obado* [2014] eKLR and *the Speaker of the National Assembly v Njenga Karume* [2008] 1 KLR.

They assert that the Petitioners have not demonstrated substantial prejudice.

On whether the matter is moot the Respondents argue that the lapse of the suspension renders the matter academic. With respect, that argument is not tenable. A matter is not moot where rights are alleged to have been violated; the action complained of is capable of repetition; the decision continues to have collateral consequences and the constitutional questions raised are of public interest. **See Raila Odinga v IEBC & Others (Munya 1) [2013] eKLR; Moses Mwicigi v IEBC [2016] eKLR.**

The disciplinary process of a County Assembly is a continuing relationship, and the Petitioners' participation in public office is ongoing. Further, constitutional issues touching on due process and abuse of power must be heard on their merits. I therefore find that the matter is not moot.

On whether a prima facie case has been established, the Supreme Court in *Munya 1* defined a prima facie case as one that discloses:

**“a clear arguable constitutional issue... an infringement or threatened infringement of a right.”**

In **Mumo Matemu**, case the Court of Appeal emphasized that a prima facie case is established where the pleadings demonstrate a plausible claim of illegality, irrationality, or procedural impropriety.

Under Article 47 and the Fair Administrative Action Act, failure to give notice, give reasons, follow procedure and accord a hearing automatically raises a constitutional question.

On whether Standing Order 105 was complied with, the Petitioners asserted that no Motion was moved and the Respondents did not annex a Hansard transcript, minutes of debate, evidence showing that a Member of County Assembly moved a Motion of suspension and a copy of the Speaker's Ruling delivered on the floor. Standing Order 105 requires that a Motion of suspension be moved by a Member of County Assembly, seconded, debated, and voted on. From the response by the Respondents and present record, none of this occurred. Failure to comply with internal rules of procedure is a justiciable constitutional matter where the breach affects rights.

On whether the Speaker had jurisdiction under Section 15(5) of the County Assembly Act, the same disqualifies the Speaker from participating where he is a complainant.

The Respondents did not dispute that the Speaker was the one offended by the Petitioners' alleged conduct. He therefore had a personal interest. Jurisdiction cannot be presumed; it must be demonstrated. A public officer acting without jurisdiction acts in nullity. The Petitioners have therefore shown an arguable point of law.

On whether the Petitioners were accorded fair hearing, Article 47 and 50 of the Constitution require that a notice of charges is served; the party accused of wrongdoing accorded an opportunity to respond and the person making the decision must be an impartial arbiter. Reasons for the decision arrived at must also be given.

The Respondents did not annex a notice to the Petitioners, minutes of any disciplinary session and there was no evidence that they were invited to defend themselves or even the reasons for the decision. In **Judicial Service Commission v Mutava & another (Civil Appeal 52 of 2014) [2015] KECA 741 (KLR)** the Court of Appeal stated that due process is mandatory even for administrative proceedings.

In *Dry Associates Ltd v CMA*, the Court held that failure to accord fair hearing establishes a prima facie case.

I find that the Petitioners have demonstrated procedural impropriety, which satisfies the court to find that they were not accorded fair hearing by the Respondents in the County Assembly before the decision to suspend them was made.

On whether the Application satisfies the public interest threshold, Constitutional litigation is guided by legality, rationality and procedural fairness. On the evidence presented, the suspension appears to have been unilateral, unprocedural, unsupported by evidence and issued by a possibly disqualified decision-maker. These are serious public law issues that must go to full hearing. I therefore find that a **prima facie case** has been established.

Public interest requires protection of due process in County Assemblies. See ***International Centre for Policy and Conflict v AG [2013] eKLR***. The integrity of disciplinary processes in legislative bodies is essential to democracy. It is in the public interest that the rule of law be upheld, public office holders be treated fairly and internal parliamentary discipline not be used arbitrarily. Granting conservatory orders will therefore preserve the substratum of the Petition.

Having considered the Application, affidavits, submissions, authorities and the law, I am satisfied that the matter is not overtaken by events, the Petitioners have demonstrated a prima facie case and public interest favours preservation of the subject matter. The Court therefore orders as follows:

1. A conservatory order is hereby issued restraining the Respondents from implementing, enforcing, or taking further disciplinary or adverse action against the Petitioners arising from the events of 4<sup>th</sup> November 2025, pending hearing and determination of the Petition.
2. The Petition herein to be fast-tracked for expeditious hearing and determination of the substantive issues raised by the Petitioners.
3. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT MIGORI THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**ANNE ADWERA-ONG'INJO**

**JUDGE  
HIGH COURT OF KENYA**



