



Bondo v Speaker, Homa Bay County Assembly & another (Constitutional Petition E002 of 2026) [2026] KEHC 3531 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CONSTITUTIONAL PETITION E002 OF 2026**

OA SEWE, J

MARCH 13, 2026

**IN THE MATTER OF ARTICLES 1, 22, 23, 47, 258
AND 259 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE COUNTY
GOVERNMENT ACT, CAP 265 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS UNDER ARTICLES 1, 2(1), 3(1), 10(1) (2), 20(2), 27(1), 35(1), 38(1)
(2) & (3), 47(1)(2), 48, 50(1)(2) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF SECTIONS 15, 16 AND 17 OF THE COUNTY ASSEMBLY
POWERS AND PRIVILEGES ACT, CAP 265C OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF STANDING ORDER NO. 1, 104, 104A, 105, 106, 107
& 107A OF THE HOMA BAY COUNTY ASSEMBLY STANDING ORDERS**

BETWEEN

VICKINS BONDO PETITIONER

AND

THE SPEAKER, HOMA BAY COUNTY ASSEMBLY 1ST RESPONDENT

THE CLERK, HOMA BAY COUNTY ASSEMBLY 2ND RESPONDENT



RULING

1. When the Notice of Motion dated 27th February 2026 came up for directions on 5th March 2026, the petitioner prayed for interim orders in terms of Prayer 2 of the application. The application was filed under Articles 22, 23, 50 and 159 of *the Constitution* of Kenya, Rules 11, 10(1), (2) and 11 Constitution of Kenya (Protection of Rights and Fundamental freedoms) Practice and Procedure Rules, 2013, as well as Sections 1A, 1B, 3 & 3A of the *Civil Procedure Act*, Section 9 of the *County Governments Act*, Section 3 of the *Fair Administrative Action Act*, Sections 16 & 17 of the County Assembly Powers and Privileges Act and Order 51 of the Civil Procedure Rules, and all other enabling provisions of the law. The applicant thereby sought the following orders:
 - (a) That the Court be pleased to certify this matter as urgent; service thereof be dispensed with and the same be heard ex-parte in the first instance.
 - (b) That pending the inter partes hearing of this application and the Petition, this Honorable Court be pleased to issue conservatory orders in favour of the petitioner to resume his roles and functions as a member of the County Assembly of Homa Bay with the privileges accruing thereto.
 - (c) That pending the inter partes hearing of this application and the Petition, this Honourable Court be pleased to compel the 1st and 2nd Respondents herein to furnish the Petitioner with the a written communication of his suspension from Homa Bay County Assembly.
 - (d) That any other or further order this Court deems fit, proper and just to grant be granted.
 - (e) That the costs of the application be provided for.
2. Before directions could be given on how to dispose of the application, the respondents filed a Notice of Preliminary Objection dated 4th March 2026 seeking the striking out of the entire suit along with the application on the grounds that:
 - (a) This Court lacks jurisdiction to entertain this matter, as it is currently pending before the County Assembly Powers and Privileges Committee in line with provisions of Standing Order 107B, Sections 10 and 11(2) of the *County Assemblies Powers and Privileges Act* No. 6 of 2017.
 - (b) Further, application is premature and a sheer abuse of the court process as it fails to appreciate that the suspension in question is not a punitive suspension but a merely preliminary administrative measure to facilitate an ongoing investigation as was aptly distinguished by the Supreme Court in *Dzila v Kwale County Assembly Service Board & 6 Others* (Petition E034 of 2024) [2025] KESC 33 (KLR) (23 May 2025) (Judgment).
3. Consequently, the respondents were opposed to any interim orders being given before a determination can be made on the issue of jurisdiction. In the course of their oral submissions, counsel for the petitioner informed the Court that Ms. Opar is yet to take out a Practising Certificate for the current year and is therefore not qualified to practice as an Advocate. They posited that, in the circumstances, the Notice of Preliminary Objection and submissions filed by her on behalf of the respondents are null and void.
4. In response to the objection, counsel for the respondents conceded that she is yet to take out her Practising Certificate for the current year, but submitted that as an inhouse lawyer, she is exempted from taking out a Practising Certificate, and has been doing so merely out of an abundance of caution.



It was consequently her submission that she has the right of audience before the Court and that the Notice of Preliminary Objection and submissions filed by her on behalf of the respondents are tenable.

5. In the premises, the first issue for determination is whether indeed Ms. Opar has the right of audience because Section 9 of the *Advocates Act*, Cap 16 of the Laws of Kenya, is explicit that:

Subject to this Act, no person shall be qualified to act as an advocate unless—

- (a) he has been admitted as an advocate; and
- (b) his name is for the time being on the Roll; and
- (c) he has in force a practising certificate;

6. Although not expressly stated, the objection appears to be hinged on Section 34(1) of the *Advocates Act*. It states:

- (1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document or instrument—

- (a) relating to the conveyancing of property; or
- (b) for, or in relation to, the formation of any limited liability company, whether private or public; or
- (c) for, or in relation to, an agreement of partnership or the dissolution thereof; or
- (d) for the purpose of filing or opposing a grant of probate or letters of administration; or
- (e) for which a fee is prescribed by any order made by the Chief Justice under section 44; or
- (f) relating to any other legal proceedings;

nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument:

Provided that this subsection shall not apply to—

- i. any public officer drawing or preparing documents or instruments in the course of his duty; or
- ii. any person employed by an advocate and acting within the scope of that employment; or
- iii. any person employed merely to engross any document or instrument.

7. The foregoing notwithstanding, Section 10 of the Act recognizes that:

Each of the following persons shall, if he holds one of the qualifications specified in paragraphs (a), (b) and (c) of section 13(1) at the time of his appointment to his office, be entitled in connection with the duties of his office to act as an advocate, and shall not to that extent be deemed to be an unqualified person, that is to say—

- a. an officer in the Office of the Attorney-General or the Office of the Director of Public Prosecutions;



- b. the Chief Land Registrar, Deputy Chief Land Registrar, County Land Registrar and Land Registrars;
- c. any person holding office in a local authority established under the Local Government Act (Repealed);
- d. such other person, being a public officer or an officer in a public corporation, as the Attorney-General may, by notice in the Gazette, specify:

Provided that the officers referred to in this section shall not be entitled to charge fees for so acting.

8. Since Section 33 of the Sixth Schedule of *the Constitution* provides for succession of offices and institutions, I entirely agree with the respondent’s counsel that she is indeed exempt from taking out a Practising Certificate. The provision states:

“An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of Parliament in force immediately before the effective date, whether known by the same or a new name.”

9. In *J.A.S. Kumenda & Another v Clerk Municipal Council of Kisii & 6 Others* [2013] eKLR the position was taken, which I am entirely in agreement with, that:

“...the County Governments are in my view the successors of the local authorities that were constituted under the repealed Local Government Act and should be the ones to proceed with pending legal actions by the defunct local authorities and against whom the pending legal proceedings against the said local authorities should be sustained. I find support in this proposition in the Sixth Schedule to *the Constitution* of Kenya. Section 33 of the Sixth Schedule to *the Constitution* of Kenya, 2010 provides that, an office or institution established under *the constitution* of Kenya, 2010 is a legal successor of the corresponding office or institution under the former Constitution or under a former Act of parliament in force immediately before the effective date of *the Constitution* of Kenya, 2010 whether known by the same name or a new name. County Governments under the new constitution took over the powers and functions of the local authorities as they were recognized and defined under the old constitution and the Local Government Act. Pursuant to the provisions of the said Section 33 of the Sixth Schedule to *the Constitution* of Kenya, 2010 County Governments are therefore the natural and presumptive legal successors of the defunct local authorities.”

10. Moreover, in *National Bank of Kenya Ltd v Anaj Waherehousing Ltd* [2015] eKLR the Supreme Court had occasion to pronounce itself on the import of Section 34 of the *Advocates Act* and stated as follows:

48. The decision by the Appellate Court in *Ndolo Ayah* was based on certain fundamental assumptions. The first of these was that the phrase “an unqualified person” is synonymous with “an advocate without a current practising certificate”. On the face of Section 34(1) of the *Advocates Act*, this assumption is not without merit, especially taking into account the provisions of Section 2 of that Act, which defines “an unqualified person” as “a person not qualified under Section 9 to act as an advocate”. Section 9 of the *Advocates Act* in turn provides that “...no person shall be qualified to act as an advocate unless



- (a) he has been admitted as an advocate; and
 - (b) his name is for the time being on the Roll; and
 - (c) he has in force a practising certificate”.
49. Such provisions, however, to convey their full import, ought to be read together with others in the same statute. For instance, Section 2 of the Act also defines an “advocate”, as “any person whose name is duly entered upon the Roll of Advocate, or upon the Roll of Advocates having the rank of Senior Counsel and...includes any person mentioned in Section 10”. Section 10 makes no mention of a practising certificate. Sections 12 and 13 of the *Advocates Act* on the other hand, are devoted to the qualifications for being admitted as an advocate and these are both academic and professional.
11. The Supreme Court went on to state that:
- 50. While Section 34 (1) of the *Advocates Act* forbids an unqualified person from indirectly or directly taking instructions, or drawing any document relating to the conveyancing of property, it exempts from this prohibition, “any person who is employed by an advocate and who is acting within the scope of that employment”. What is the import of this exemption? Is it to be taken to refer to persons who are not qualified as advocates, such as lay persons, or persons belonging to professions other than law?
 - 51. Alternatively, can it be assumed that “an advocate without a current practising certificate”, being an “unqualified person” within the meaning of Section 34(1) of the *Advocates Act*, becomes “qualified” when he or she is employed by another advocate (presumably one with a practising certificate)?
 - 52. But if the contrary be true, then would it mean that the law views the acts of “a non-advocate” who is employed by an advocate, more favourably than those of “an advocate without a practising certificate”, as regards the preparation of conveyancing and other documents?
 - 53. What is the real intention of Section 34 of the *Advocates Act*? Is it aimed exclusively at advocates “without practising certificates”, or persons who are not advocates within the terms of Sections 2, 12 and 13 of the *Advocates Act*? Does one cease to be “an advocate”, on account of not taking out a practising certificate? Or does one remain “an advocate”, but “one who is not qualified to perform the tasks of an advocate”?
 - 54. It is plain to us that there are no clear-cut answers to these vital questions. Such a state of uncertainty flows from either, the inelegance of draftsmanship; or equivocation in the expression of parliamentary intent.
 - 55. The Appellate Court’s second assumption, in *Ndolo Ayah*, was that Section 34(1) of the *Advocates Act* had the effect of rendering all instruments of conveyance prepared by advocates without current practising certificates, null and void for all purposes. It is now clear that such an assumption was not based on any express or implied meaning of Section 34, or other provisions of the *Advocates Act*. In the reasoning of the Appellate Court, the ground for invalidating such documents rests in public policy: citizens must obey the broad intent of the law of the land; and Courts must enforce the law of the land, and deter acts of illegality.
 - 56. It is true, of course, that such are virtuous objects in a well-conducted socio-political order, that coincide with goals of public policy. However, within that context, and by the terms of



the constitutional law, the Courts are under obligation to resolve live disputes on questions that are governed by quite specific propositions of law.

57. Thus, the issue still remains: whether Section 34 of the *Advocates Act* actually invalidates all instruments of conveyance prepared by advocates who do not have current practising certificates. In our opinion, it is essential to establish the main objective of Section 34, as a basis for any conclusions. This Section prohibits unqualified persons from preparing certain documents. It is directed at “unqualified persons”. It prescribes clear sanctions against those who transgress the prohibition. The sanctions prescribed are both civil and criminal in nature. But the law is silent as to the effect of documents prepared by advocates not holding current practising certificates.
 58. In these circumstances, how does the citizen’s position rest? If he or she were to walk into an advocate’s office, for a conveyancing service at a fee, would there be an initial obligation resting on him or her to demand the advocate’s practising certificate? Would he or she be in breach of the law if after the service, it turned out that the advocate lacked a certificate? The transgressor, in our view, is the advocate, and not the client. The illegality is the assumption of the task of preparing the conveyancing document, by the advocate, and not the seeking and receiving of services from that advocate. Likewise, a financial institution that calls upon any advocate from among its established panel to execute a conveyance, commits no offence if it turns out that the advocate did not possess a current practising certificate at the time he or she prepared the conveyance documents. The spectre of illegality lies squarely upon the advocate, and ought not to be apportioned to the client.
 59. Is such reasoning in keeping with a perception that Section 34 of the *Advocates Act*, invalidates all documents prepared by an advocate who lacks a current practising certificate? We do not think so.
12. In response to this lacuna in the law, Parliament intervened by introducing Section 34B in 2017. It specifically provides for the validity of legal documents in the following terms:
 - (1) A practising advocate who is not exempt under section 10 and who fails to take out a practicing certificate in any year, commits an act of professional misconduct.
 - (2) Notwithstanding any other provisions of this Act, nothing shall affect the validity of any legal document drawn or prepared by an advocate without a valid practising certificate.
 - (3) For the purpose of this section, “legal document” includes pleadings, affidavits, depositions, applications, deeds and other related instruments, filed in any registry under any law requiring filing by an advocate.
 13. For the foregoing reasons, I find no merit in the submission by counsel for the petitioner that Ms. Opar has no right of audience or that the documents filed by her ought to be expunged from the record.
 14. That said, the second issue is whether the petitioner is entitled to interim orders pending the hearing and determination of the application. It is noteworthy that the interim orders prayed for by the petitioner are not only mandatory in nature but are also dispositive of the key issue in contest between the parties. Such orders can only be issued in the interim upon hearing the other side. Accordingly, directions are hereby given as follows:
 - (a) The respondent’s Preliminary Objection be deemed as their response to the Notice of Motion dated 27th February 2026.



- (b) The application be canvassed by way of written submissions
- (c) The applicant to file and serve written submissions within 14 days from today.
- (d) The respondents to comply within 14 days from the date of service.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT HOMA BAY THIS 13TH DAY OF MARCH
2026**

.....

OLGA SEWE

JUDGE

