

**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. E011 OF 2025 ( as consolidated with PETITION NO. E012 and E013 of 2025)**

**IN THE MATTER OF ARTICLES 22(1) AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF RIGHTS UNDER ARTICLES 73, 185, AND 194(1) (b) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE SITTINGS OF THE ISIOLO COUNTY ASSEMBLY**

**BETWEEN**

**HALIMA**

**HUSSEIN .....1<sup>ST</sup>**

**PETITIONER**

**ZEITUMA**

**ABDI.....2<sup>ND</sup>**

**PETITIONER**

**VERSUS**

**MEJJA ABDULLAHI GOLICHA ..... 1<sup>ST</sup>**

**RESPONDENT**

**SPEAKER, ISIOLO COUNTY ASSEMBLY .....2<sup>ND</sup>**

**RESPONDENT**

**THE CLERK, COUNTY ASSEMBLY OF ISIOLO ... 3<sup>RD</sup>**

**RESPONDENT**

## **RULING**

1. Before this Court are three Petitions, namely **Petition No. E011 of 2025, Petition No. E012 of 2025, and Petition No. E013 of 2025**. The Petitions collectively challenge the continued stay in office of the 1<sup>st</sup> Respondents as Members of the Isiolo County Assembly (MCAs). The petitioners state that the MCAs have vacated their seats by virtue of missing more than eight (8) consecutive sittings without the written permission of the Speaker, contrary to **Article 194(1)(b)** of the Constitution.
2. Upon being served, the 1<sup>st</sup> Respondents in the respective petitions filed Notices of Preliminary Objection challenging the jurisdiction of this court to entertain this petition. Given that the Preliminary Objections raised identical points of law, the petitions were consolidated for the purposes of the determination of the Preliminary Objection.
3. The 1<sup>st</sup> Respondents' Preliminary Objection is predicated on three primary grounds, namely:
  - a) *That the matter is fatally defective and an abuse of court process as the court does not have jurisdiction by didn't of Article 194 of the Constitution as read together Section 15 of the County Assemblies Powers and Privileges and Standing Order Number 235 of the County Assembly of Isiolo.*
  - b) *The matter is fatally defective as it seeks to usurp the functions of the Salaries and Remuneration Commission (SRC) in contravention of Articles 230, 248, and 249 of the Constitution.*

- c) The Petition herein should therefore be struck out with costs to the 1<sup>st</sup> Respondent.*
4. The objection was canvassed by way of written submissions
  5. Having considered the pleadings and submissions, the issue for determination whether there is a competent Preliminary Objection before the court and if in the affirmative, whether the objection should be upheld.

### **Analysis and Determination**

*Whether there is a competent Preliminary Objection before the court.*

6. The law regarding the nature of a Preliminary Objection was settled in the case of **Mukisa Biscuit Manufacturing Co. Ltd V. West End Distributors Ltd. (1969) EA 696**, where Law J.A. stated:

*“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection on the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”.*

Newbold, P. in the same case added:

*“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of*

*judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues.”.*

7. The Supreme Court of Kenya further elucidated this in **Independent Electoral & Boundaries Commission Vs Jane Cheperenger & 2 Others (2015) eKLR**:

*“ The true Preliminary Objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time... It is distinctly improper for a party to resort to the Preliminary Objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”.*

8. In the present case, the objection challenges the jurisdiction of the Court based on constitutional and statutory interpretation. Since jurisdiction is a pure question of law, I find that the Preliminary Objection has met the threshold of a preliminary objection.

*Whether this Court has jurisdiction.*

9. The 1<sup>st</sup> Respondents’ argue that jurisdiction is everything and, citing **Owners of Motor Vessel ‘Lilian S’ v Caltex Oil (Kenya) LTD (1989) 1 KLR**, contend that the Court must down its tools as the matter is an internal Assembly affair. They further rely on the doctrine of Exhaustion, citing the decision in **Speaker of National Assembly v Karume (1992) KLR 21**: where it was held:

*“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”.*

10. The High Court’s jurisdiction is anchored in **Article 165(3)** of the Constitution, which provides:

*“(3) Subject to clause (5), the High Court shall have— (a) Unlimited original jurisdiction in criminal and civil matters; (b) Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; ... (d) Jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of— (i) the question whether any law is inconsistent with or in contravention of this Constitution; (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;”.*

11. The Petitioners herein argue that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have failed or neglected to initiate the internal disciplinary procedures of the county Assembly of Isiolo, under **Standing Order 235**, thereby creating a constitutional crisis that only this Court can resolve.

12. They rely on **Isaac Oluoch Polo Aluochier v Attorney General & 2 Others**, where the court held:

*“It follows that where an act is purportedly taken under the Constitution the Court has the jurisdiction to entertain a dispute touching the exercise of such*

*Constitutional mandate. In my view the mere fact there exists an alternative avenue for settling such an issue does not oust the jurisdiction of the High Court...".*

13. Further in **Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamed & 3 Others (2019) eKLR**, the Supreme Court emphasized the holistic approach to constitutional interpretation, noting that an alternative venue does not automatically oust the High Court's supervisory jurisdiction.
14. Section 10 of the **County Assemblies Powers and Privileges Act**, states that proceedings of an assembly shall not be questioned in court. However, this immunity cannot be used as a shield for unconstitutional conduct. If an office holder has constitutionally vacated their seat under **Article 194(1)(b) of the Constitution**, and the administrative organs of the Assembly refuse to recognize such vacancy, it becomes a matter of constitutional interpretation and enforcement.
15. Therefore, jurisdiction is the practical authority to administer justice within a defined area. It is my view that this Court's defined area includes the enforcement of the Constitution. To summarily dismiss these petition is to suggest that the jurisdiction of the high court to supervise the enforcement of constitution has been ousted.
16. While I acknowledge the internal mechanisms provided by **Standing Order 235** and the **County Assemblies Powers and Privileges Act**, these mechanisms do not and cannot oust the unlimited original jurisdiction of the High Court to determine whether the Constitution has been contravened. The allegation is that the 1<sup>st</sup> Respondents have failed to

attend sittings, and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have condoned this conduct. These are substantive constitutional questions that merit a full hearing on the merits. The court should and must not shy away when asked to determine whether a constitutional imperative has been infringed or violated.

17. Accordingly, I find the Preliminary Objection has no merit. It is hereby dismissed.

Dated , signed and delivered at Isiolo this 19<sup>th</sup> day of March 2026.

S. Chirchir  
Judge

ORIGINAL