



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. E001 OF 2024**

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 1, 3, 10, 19, 20, 21, 22, 23, 28, 47, 50, 165, 174, 181, 196, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010

**AND**

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012 (SECTIONS 3, 14A, 21, 22, 23, 24, 25, 33, 87(a), 87(b) AND 91)

**AND**

IN THE MATTER OF ABUSE OF ADMINISTRATIVE ACTION CONTRARY TO ARTICLE 47 OF THE CONSTITUTION OF KENYA AND SECTION 5 OF THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

**AND**

IN THE MATTER OF CONTRAVENTION OF THE OBJECTS OF DEVOLUTION UNDER ARTICLE 174 OF THE CONSTITUTION OF KENYA

**AND**

IN THE MATTER OF CONTRAVENTION OF THE PRINCIPLES OF LEADERSHIP AND INTEGRITY UNDER ARTICLE 73 OF THE CONSTITUTION OF KENYA

**AND**

IN THE MATTER OF CONTRAVENTION OF PUBLIC PARTICIPATION,  
THE RULE OF LAW AND DEMOCRACY IN COUNTY ASSEMBLY  
AFFAIRS UNDER ARTICLES 10 AND 196 OF THE CONSTITUTION OF  
KENYA

**BETWEEN**

DANIEL TUWIT LOREIRA ..... 1<sup>ST</sup> PETITIONER  
SAM LIMO LOURIEN ..... 2<sup>ND</sup> PETITIONER

**VERSUS**

THE SPEAKER, COUNTY ASSEMBLY  
OF BARINGO ..... 1<sup>ST</sup> RESPONDENT  
BARINGO COUNTY ASSEMBLY ..... 2<sup>ND</sup> RESPONDENT

**AND**

LAWI KIPCHUMBA TALLAM, LEADER OF  
MAJORITY PARTY ..... INTERESTED PARTY

**JUDGMENT**

1. This petition challenges the constitutionality and legality of the proceedings of the Baringo County Assembly held on 16th April 2024 and the resultant Committee on Selection Report on review of members in various committees. The petitioners contend that the impugned proceedings were conducted in violation of Article 196 of the Constitution, mandatory Standing Orders of the County Assembly, and fundamental principles of public participation, legality, and fair administrative action.

2. The petitioners seek the following reliefs:

- i. A Declaration that the Respondents breached Article 196 of the constitution by failing to conduct/facilitate public participation and involvement of the petitioners in the process of the generation of the impugned report of the committee on selection of members in various sectorial committees.
- ii. A Declaration that the proceedings and subsequent generation of the impugned report of the committee on selection of members in various committees on 16th April 2024 were unconstitutional by failing to adhere to the provisions of standing order no. 192, 196 and 239 of Baringo County Assembly Standing Orders
- iii. A Declaration that the Majority Leader has no powers in the running of the affairs of the Minority Party wit to de-whipping and or appointing members of minority party to and from various house sectorial committees.
- iv. A Declaration that by failing to publish the order paper on the county assembly official website at least 12 hours before the house meets, the proceedings that gave rise to the impugned report dated 16.04.2024 contravened standing order no. 37 rendering it illegal per se.

- v. A Declaration that the signatures of the Petitioners herein were fraudulently procured in sanctioning the impugned report rendering all its imports illegal and unenforceable ab initio
  - vi. A Declaration that the Speaker and Clerk of the County Assembly be held individually liable for approving an illegality and to reimburse public funds lost as a result of the said Report
  - vii. A Declaration that the Clerk recovers public funds paid to the members of the illegally introduced Committees.
3. The petition dated 24<sup>th</sup> April 2024 was filed together with an application for conservatory orders. The Interested Party raised a Preliminary Objection principally on the ground of misjoinder, contending that he was the proper respondent and that conservatory orders could not issue in the manner sought.
4. In a ruling delivered on 21<sup>st</sup> June 2024, this Court dismissed the Preliminary Objection, holding that issues of joinder or non-joinder of parties are procedural technicalities which cannot defeat a constitutional petition. The Court further found that the petition disclosed an arguable prima facie case raising serious constitutional questions, and granted

conservatory relief preserving the status quo ante pending determination of the petition.

5. Following that ruling, the Court directed that the petition be canvassed by way of written submissions. Despite being accorded several opportunities, the Respondents and the Interested Party neither filed responses nor written submissions. The petition therefore proceeded on the basis of the pleadings, affidavits and submissions filed by the petitioners, which evidence remained uncontroverted.
6. Upon considering documents on record, I find the following issues arise for determination:
  - a. Whether the proceedings of the Baringo County Assembly held on 16<sup>th</sup> April 2024 and the resultant report complied with Article 196 of the Constitution and the Standing Orders of the County Assembly.
  - b. Whether the Majority Leader acted ultra vires by interfering with the affairs of the Minority Party and committee representation.
  - c. Whether the impugned report was tainted by procedural impropriety and fraud.
  - d. Whether the petitioners are entitled to the reliefs sought.

## **ANALYSIS AND DETERMINATION**

7. Compliance with Article 196 of the Constitution and the Standing Orders
8. Article 196 of the Constitution obligates county assemblies to conduct their business in an open manner and to facilitate public participation and involvement in their legislative and other business. This constitutional requirement is operationalized through Standing Orders which prescribe mandatory procedures governing the conduct of assembly affairs.
9. The petitioners demonstrated that the Order Paper relating to the proceedings of 16th April 2024 was not published on the official County Assembly website at least twelve hours before the sitting, contrary to Standing Order 37. It was further shown that the Committee on Selection Report increased the membership of the Budget and Appropriations Committee from nine to eleven members and introduced new sectoral committees without amendment of the Standing Orders, contrary to Standing Orders 192, 196 and 239.
10. No evidence was placed before this Court to show compliance with the prescribed procedures or facilitation of public participation. In the absence of any rebuttal, the Court finds that the impugned proceedings were conducted in violation of Article 196 of the Constitution and in breach of

mandatory Standing Orders. Such violations are not mere internal irregularities but go to the constitutional validity of the process.

(ii) **Whether the Majority Leader acted ultra vires**

11. The petitioners contended that the Majority Leader unlawfully interfered with the affairs of the Minority Party by purporting to de-whip minority members and alter their committee representation. The authority to nominate and discipline members lies with the respective political parties through their recognized leadership.

12. No legal or constitutional basis was demonstrated to justify the Majority Leader's actions. Applying the principle that public officers must act strictly within the authority conferred upon them, the Court finds that the Majority Leader acted ultra vires and in violation of the Constitution and the Standing Orders of the County Assembly.

(iii) **Whether the impugned report was tainted by fraud**

13. The petitioners swore affidavits denying authorship or consent to the use of their signatures on the impugned report. These averments were not controverted. In the absence of rebuttal evidence, the Court accepts the petitioners' sworn depositions. A process tainted by fraud is

unlawful and unenforceable. The fraudulent procurement of signatures further invalidates the impugned report.

**(iv) Whether the petitioners are entitled to reliefs sought**

14. Having found that the impugned proceedings violated Article 196 of the Constitution, breached mandatory Standing Orders, involved ultra vires conduct, and were tainted by fraud, the Court is satisfied that the petition has merit and petitioners are entitled to reliefs sought.

15. **FINAL ORDERS:-**

a) A declaration is hereby issued that the proceedings of the Baringo County Assembly held on 16th April 2024 and the resultant Committee on Selection Report are unconstitutional, unlawful, null and void.

b) A declaration is hereby issued that the actions of the Interested Party in interfering with the affairs of the Minority Party and committee representation were ultra vires and unlawful.

c) An order is hereby issued quashing the Committee on Selection Report dated 16th April 2024 and any actions or resolutions arising therefrom.

- d) An order is hereby issued directing that the status quo ante relating to committee membership and structure, as existed prior to 16th April 2024, shall remain in force unless lawfully altered in strict compliance with the Constitution and the Standing Orders.
- e) Each party shall bear its own costs.

**Dated** and signed at **Nairobi** this 11<sup>th</sup> day of March 2026.



.....  
**R NGETICH**

**JUDGE**

**Dated, Countersigned** and delivered at **Eldoret** this 12<sup>th</sup> day of March 2026.

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**J.R. WANANDA**

**JUDGE**

**In the presence of:**

Court Assistant - Brian Kimati

Ms Betty Toroitich for Respondents.

Kiptoo for Applicants/Respondents.

ORIGINAL