



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISII

PETITION NO. E007 OF 2026

IN THE MATTER OF ARTICLES: 1(1), 2, 3, 10, 19, 20, 22, 23, 27, 38, 41, 47, 48, 50, 73, 159, 162, 178, 232, AND 258 OF THE CONSTITUTION

AND

IN THE MATTER OF SECTIONS: 9, 10, 11, 12, 13, AND 17 OF THE COUNTY GOVERNMENTS ACT CAP 265 LAWS OF KENYA

AND

IN THE MATTER OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT, 2011; THE FAIR ADMINISTRATIVE ACTION ACT, 2015; THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015; AND THE COUNTY ASSEMBLY STANDING ORDERS

AND

IN THE MATTER OF VIOLATION AND THREATENED VIOLATION OF THE CONSTITUTION, FAIR ADMINISTRATIVE ACTION, LEADERSHIP AND INTEGRITY PRINCIPLES, AND THE LAWFUL TENURE OF A CONSTITUTIONAL OFFICE

AND

IN THE MATTER OF INTERPRETATION AND ENFORCEMENT OF A
CONSENT JUDGMENT UNDER ORDER 25 RULE 5 OF THE CIVIL
PROCEDURE RULES, SECTION 67(2) OF THE CIVIL PROCEDURE
ACT AND RULE 57 OF THE EMPLOYMENT AND LABOUR
RELATIONS COURT (PROCEDURE) RULES NO. 144 OF 2024

BETWEEN

HON. ERICK OGORI OKERO.....
.....**PETITIONER**

VERSUS

NYAMIRA COUNTY ASSEMBLY.....
.....**RESPONDENT**

AND

HON. THADEUS NYABARO.....**INTERESTED**
PARTY

RULING

1. For determination is the Petitioner's application dated 25th
February 2026 seeking:

(1) *Spent*

(2) *Spent*

(3) *Spent*

(4) *Spent*

(5) THAT, pending hearing and determination of the
Petition, this Honourable Court be pleased to issue a

conservatory order preserving the *status quo ante* as affirmed in the Consent Judgment dated 31st July 2025 such that the Speaker Enock Ogori Okero continues to discharge the functions of the office unimpeded, and to restrain the Respondent or any person acting under their authority or on their behalf from taking any action that interferes with the lawful occupancy or performance of functions of the office of the Speaker by the Petitioner/Applicant.

- (6) THAT, Pending the hearing and determination of the Petition, the Honourable Court be pleased to, issue interim temporary injunctive orders restraining the Interested Party, from purporting to act and or discharge of duties as Speaker of the Respondent;
- (7) THAT, the Honourable Court be pleased to issue such other Orders as are just and expedient to preserve the substratum of and secure the ultimate just determination of the instant application and petition;
- (8) Costs of this Application be borne by the Respondent.

2. The application is premised on the grounds on its face together with the Petitioner's supporting affidavit. He asserts that despite a consent judgment in Kisii ELRC Petition No. E001 of 2024 setting aside his impeachment the Respondent has refused to grant him access to his office and has treated the seat of speaker as vacant. He asserts that despite the consent having the effect of preserving the *status quo* prior to his impeachment, essentially maintaining him in office, the Respondent has ignored those orders and continued perpetuating illegalities appurtenant to the office including but not limited to: unlawful appointment of a clerk, unlawful reconstitution of the County Assembly Board, dismissal of staff and carrying out procurement and financial transactions without budgetary approval. In view of the foregoing the Petitioner emphasizes that this Court's intervention is vital in order to clarify and give effect to the consent judgement. Additionally, he contends that this Court is the last bastion of defence of constitutional order and urges it to allow the application to arrest the continued disregard of the law by the Respondent.

3. In opposition to the application the Respondent filed a replying affidavit sworn by Mr. Duke Onyari its clerk. He avers, at the outset, that the Petition and the application are an abuse of the court process, contending that the Petitioner is a vexatious litigant who has filed multiple similar suits in various courts over the same subject matter, many of which remain unresolved. He depones that the issues raised herein are substantially similar to those in previous proceedings, particularly Kisumu ELRC Petition No. E052 of 2024, hence this application is *sub judice* and/or *res judicata*. The deponent further asserts that any dispute arising from the consent dated 14th July 2025 should be dealt with within the file it was recorded namely Kisii ELRC No. E001 of 2024, not through the filing of a fresh suit. Moreover, he adds that there is a pending application before the Court of Appeal in Kisumu Civil Application No. E027 of 2026 challenging the said consent, and therefore the present proceedings ought to be stayed. The Clerk maintains that the Petitioner was lawfully impeached, a vacancy duly declared and was filled by the Interested Party. He asserts that the impeachment was upheld by the Bomet High Court a decision that has not

been set aside. Further, regarding the consent the deponent avers that the issue of reinstatement is not conceivable as the Petitioner waived it by opting to be compensated monetarily in lieu of reinstatement. He therefore reiterates that the Petitioner's remedy, if any, lies in enforcing the consent rather than filing a fresh petition. It is further deponed that the Petitioner is guilty of laches, having brought the present application after 6 months, and has failed to make full and frank disclosure, particularly regarding the pending appellate proceedings. The deponent maintains that the office of Speaker is not vacant, is lawfully occupied by the Interested Party, and that no constitutional rights of the Petitioner or the residents of Nyamira County have been violated. The deponent therefore urges the court to dismiss the application asserting that granting it would be akin to reinstating the Petitioner at an interlocutory stage a situation which is not fathomable.

4. The Interested Party also opposes the application through a replying affidavit sworn on 9th March 2026. He reiterates that the application is vexatious and an abuse of process as it revolves around issues that are subject to a multiplicity of

suits. He maintains that the Petitioner's impeachment was comprehensively dealt with by the High Court in Bomet via the consolidated suit **Bomet Petition No. E004 of 2025 Moenga & 2 others v Nyamora & 7 others; Nyabaro & another (Interested Parties) (Petition E004 of 2025) [2025] KEHC 7765 (KLR)** in which it was held that the Petitioner was rightly impeached and ceased holding office on 24th October 2024.

5. The Interested Party avers that the Petitioner also appealed the decision of the Bomet High Court which he failed to properly prosecute or withdraw for that matter. Moreover, he avers that the consent was entered into without his knowledge and or approval and an appeal has since been lodged with a view to staying its execution and to set it aside. The Interested Party maintains that the consent judgment was purely a monetary decree and does not affect his gazettelement as speaker. He therefore urges the court to dismiss the application as allowing it would paralyse the operations of the Respondent.

6. The Petitioner filed a further affidavit sworn on 15th March 2026 denying that he was a vexatious litigant. He emphasizes that some of the cited matters were transferred from other courts or do not involve him. He asserts that each of the matters had a separate cause of action resulting in different outcomes. He depones that the Respondent wilfully entered the consents agreeing to set aside his impeachment hence it could not be heard to say that he is vexatious. It is his contention that the interim reliefs should be granted as the Petition raises serious constitutional questions regarding the lawful occupancy of the office of Speaker of the Nyamira County Assembly. He further contends that the Respondents cannot rely on the argument that he opted for compensation in lieu of reinstatement, as they have failed to honour the terms of the consent by making the agreed payments. He asserts that a consent judgment has the same force as a court judgment and, having been adopted after the Bomet High Court decision, it supersedes the findings therein. He asserts further that the consent has neither been set aside nor successfully challenged, and that an attempt to do so was dismissed in Kisii ELRC PET E001 of 2024. With respect

to the alleged pending proceedings in the Court of Appeal, the Petitioner contends that no competent appeal exists, as any such appeal would be out of time and unsupported by leave of the Court. The Petitioner further avers that the consent was drawn by the Respondent's advocates and cannot now be impugned for lack of authority. He maintains that the Respondent is bound by the actions of its duly instructed counsel. He contends that the Respondent's failure to comply with the consent is the basis upon which he now seeks restoration of the *status quo ante*, arguing that once the impeachment was set aside, he is deemed never to have been impeached. The Petitioner asserts that the Interested Party's occupancy of the office of speaker is invalid as no vacancy existed in the first place. He further contends that the decision of the High Court in Bomet did not affirm the Interested Party's position but merely declined jurisdiction over that issue. In response to the allegation that the consent was entered without authority, the Petitioner terms the assertion untenable, maintaining that the Respondent is bound by its advocates' actions. He further avers that the current leadership of the Assembly is engaged

in unlawful acts, thereby prejudicing public resources and violating the constitutional rights of the people of Nyamira County. In conclusion the Petitioner reiterates that the consent set aside his impeachment and that the Interested Party is unlawfully in office.

7. In compliance with court directions parties filed written submissions.

Petitioner/Applicant's Submissions

8. The Petitioner submits that the alleged appeals alluded to are not valid. He asserts that there is no evidence of either of them maintaining that an appeal usually dies a natural death in the absence of compliance with timelines as is the case herein. In support of this proposition, he cites the case of **Mae Properties Limited v Joseph Kibe & another [2017] KECA 238 (KLR)**. The Petitioner avers that he has met the threshold for grant of conservatory orders set out in **Munya v Kithinji & 2 others (Application 5 of 2014) [2014] KESC 30 (KLR) (2 April 2014)**, to the effect that: the petition should not be frivolous, should raise serious

constitutional issues with reasonable degree of success and should bear public law connotation of protecting public interest. He submits that his case is arguable as the High Court in Bomet did not declare him impeached or allow the Interested Party to resume office. With regard to the balance of convenience, he submits that it tilts in his favour as there is danger of mismanagement of funds given the illegality of the Interested Party's appointment. He further asserts that public interest cannot be interpreted in favour of the Respondent as the deponent of its replying affidavit himself is a product of an illegal process and has been previously cited for contempt.

Respondent's Submissions

9. From the outset the Respondent submits that the Petitioner has filed over six Petitions in the last two years over the impeachment issue, some of which are still pending in court. He highlights **Kisumu ELRC No. E052 of 2024** and **Kisumu Court of Appeal Civil Application No. E027 of 2026**, both of which revolve around the alleged consent, to argue that this matter is *sub judice* and/or *res judicata*. Additionally, the Respondent submits that the Petitioner is

guilty of material non-disclosure having failed to notify the court of the pending cases. It cites the case of **Owuor & others ((Suing as the proposers of the proposed union)) v Gicheha & another; Lidigu & 2 others (Interested Parties) [2023] KEELRC 1390 (KLR)**, in which the court held that the matter was *res-judicata* due to a pending appeal at the Kisumu Court of Appeal. Further opposing the application, the Respondent reiterates that the contract does not provide for reinstatement and in any case the position has already been filled.

10. With respect to the threshold for grant of injunctions set out in **Giella v Cassman Brown & Co Ltd [1973] EA 358**, the Respondent submits that none have been met. On the question of a *prima facie* case, it submits that the suit is *res judicata* due to the pendency of the appeal. On irreparable damage it asserts that none has been demonstrated. With respect to the balance of convenience the Respondent asserts that it tilts towards maintenance of the *status quo*. It is its contention that this will allow the Court of Appeal to ventilate the application seeking to set aside the consent.

Moreover, the Respondent submits that the remedy of reinstatement being sought by the Petitioner cannot issue at the interlocutory stage. They cite the decision in **Kenya Shipping Clearing Freight Logistics and Warehouse Workers Union v May Freight Ltd [2020] eKLR**, where it was held that reinstatement was tantamount to specific performance and can only be ordered in exceptional circumstances. The Respondent asserts that in the circumstances of this suit no such exceptional circumstances exist. It therefore urges the Court to dismiss the application with costs.

Interested Party's Submissions

11. On his part the Interested Party identifies the following issues for determination:

- (1) Whether the petitioner is entitled to the orders sought; and
- (2) Who should bear the costs of the application.

12. On the first issue the Interested Party submits that the Petitioner has not met the threshold for grant of

conservatory orders. He asserts that principles for granting conservatory orders are different from temporary injunctions to the extent that conservatory orders carry a public law connotation, none of which have been demonstrated in this suit. The Interested Party references the decision of the Supreme Court in **Munya v Kithinji & 2 others (Application 5 of 2014) [2014] KESC 35 (KLR)**, where it was stated:

"Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders therefore, are not unlike interlocutory Injunctions, linked to such private -party issues as in the prospects of irreparable harm occurring during the pendency of a case; or "high probability of success" in the supplicant's ease for orders of stay. Conservatory orders, consequently, 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 attributed to the relevant causes".

13. The Interested Party further submits that the citation of the case the consent judgment emanates from has not been cited. He also asserts that the consent was categorical that the Petitioner would receive money instead of being reinstated. For this reason, he submits that reinstatement of the *status quo ante* the consent is not open to this Court. The foregoing notwithstanding, the Interested Party submits that this suit in itself is untenable due to a pending appeal at the Court of Appeal in Kisumu. Moreover, he asserts that if at all the Petitioner wished to enforce the consent, he should have moved the Court in the matter where the consent was recorded. With respect to the principles for grant of injunction, the Interested Party cites the factors set out in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others Civil Appeal 39 of 2002) [2000] KECA 175 KLR)**, and submits that none has been met by the Petitioner. On the issue of a *prima facie* case, the Interested Party submits that none exists as he was not a party to the consent and he

was lawfully elected and gazetted speaker. On irreparable harm the Interested Party submits that none has been demonstrated. He therefore urges the Court to dismiss the application with costs.

Disposition

14. The issue for determination herein is whether there has been established grounds for the grant of interlocutory relief to the Petitioner. The Petitioner impugns a consent entered between the parties.

15. In reviewing the application, the Court has come across decisions made in this Court by my colleague Judges on the matter of the position the Petitioner articulates. It is evident that the efforts to reverse course begun when the consent was recorded granting the Petitioner relief which he at the start accepted and thereafter attempted to recant to the point of getting his lawyer to state he had no instructions to enter into the consent – see the decision of this Court differently constituted, in **Okero & 12 others v County Assembly of Nyamira & another (Petition No. E001 of 2024)** [2025] KEELRC 3306 (KLR)

(26 November 2025) (Ruling) where the Petitioner herein was the 1st Petitioner.

16. A consent order/judgment is a binding contract that can only be set aside on limited grounds, such as fraud, collusion, or misapprehension of material facts. A consent made by counsel is binding on parties, and a court will not vary it unless the grounds for rescinding a normal contract exist per Law Ag. JA in **Brooke Bond Liebig (T) Limited v Mallya [1975] E.A 266**. The consent order/judgment between the parties is one that cannot be vitiated and the effort this time round must fail.

17. The Consent entered into acknowledged the Petitioner was entitled to payment. The Petitioner is not entitled to the grant of the order preserving the *status quo ante*. The Petitioner's motion is therefore accordingly dismissed with costs to the Respondents and Interested Party. There will be directions on the disposal of the Petition herein after the delivery of this Ruling.

It is so ordered.

Dated and delivered at Kisumu this 22nd day of April

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**

Original