



REPUBLIC OF KENYA



**Hassan v County Assembly of Isiolo & 3 others (Petition E004 of 2025)  
[2026] KEHC 4445 (KLR) (Constitutional and Human Rights) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4445 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E004 OF 2025**

**SC CHIRCHIR, J**

**MARCH 31, 2026**

**BETWEEN**

**HON. ABDI IBRAHIM HASSAN ..... PETITIONER**

**AND**

**THE COUNTY ASSEMBLY OF ISIOLO ..... 1<sup>ST</sup> RESPONDENT**

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

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

**AND**

**HON. ABUBAKAR GODANA ..... CONTEMNOR**

**RULING**

1. What is coming up for determination is a Notice of Motion Application dated 23<sup>rd</sup> June 2025 seeking orders as follows;
  1. (Spent)
  2. (spent)
  3. That summons be issued against Hon. Mohamed Roba- the Speaker of Isiolo County Assembly, the 1<sup>st</sup> Respondent and to Hon. Abubakar Abdi Godana, a member of Isiolo County Assembly to appear before court and show cause why he should not be committed to jail for a term of six (6) months.
  4. That Hon.Mohamed Roba- the Speaker of Isiolo County Assembly, the 1<sup>st</sup> Respondent and Hon. Abubakar Abdi Godana, a Member of Isiolo County Assembly cited for contempt of



Court and be committed to jail for a term of six (6) months and or be fined a sum of not less than Kshs.200,000/=

5. (Spent)
6. The costs of the Application be borne by the Respondents.
2. The Application is supported by the Affidavit of Hon.Abdi Ibrahim Hassan, the Applicant.
3. The petitioner states that on 16<sup>th</sup> June 2025, this Court issued a conservatory order restraining the Respondents from any further consideration of the Notice of Motion dated 10<sup>th</sup> June 2025 for the proposed removal from office of the Governor of Isiolo through an impeachment. That despite being served with the order, the Respondents allegedly embarked on a scheme to circumvent it.
4. The Petitioner deposes that on 20<sup>th</sup> June 2025, the 2<sup>nd</sup> Respondent published a notice in the Daily Nation calling for public participation regarding his removal. He further learnt that a new Notice of Motion for his impeachment was purportedly tabled on 18<sup>th</sup> June 2025. The Petitioner contends that this second motion is a mere tactical withdrawal of the first to cure procedural defects and bypass the conservatory order that had been issued by the court.
5. In response the 1<sup>st</sup>, 2<sup>nd</sup> Respondents and Contemnor filed their replying Affidavit and a Notice of Preliminary Objection dated 24<sup>th</sup> June 2025 . The objection is based on the following grounds;
  1. That the Application offends Section 10 of the County Assemblies Power and Privileges Act, which expressly bars the questioning of proceedings or decisions of a County Assembly, including impeachment proceedings, in any court.
  2. That the Application similarly offends Section 11(1) of the *County Assemblies Powers and Privileges Act* which immunizes Members of County Assemblies from civil or criminal proceedings for words spoken or documents tabled in the course of Assembly business.
  3. The Application fails to meet the mandatory threshold under Rule 81.4 (2) of the English Civil Procedure (Amendment No.3) Rules, 2020 which governs the formulation and proof of contempt proceedings under the common law framework and is therefore fatally defective, incompetent and untenable in law.
  4. Given the matter set out in paragraphs 1 to 3 above, this Honourable Court has no jurisdiction to hear and determine the Application.
6. The Application proceeded by way of written submissions.

### **Petitioner/ Applicant's Submissions**

7. It is the Petitioner's submission that this Court issued two distinct and clear conservatory orders on 13<sup>th</sup> June 2025 and 25<sup>th</sup> June 2025. These orders expressly barred the Respondents from admitting, processing, or debating the impeachment motions against the Applicant
8. The Petitioner submits that the Contemnors engaged in an apparent attempt to defeat and circumvent these orders by purportedly withdrawing the first motion only to immediately introduce a fresh, near-identical motion dated 18<sup>th</sup> June 2025.
9. It is further submitted that despite the clear terms of the order issued on 25<sup>th</sup> June 2025 in the presence of the parties, the County Assembly proceeded to impeach the Petitioner on 26<sup>th</sup> June 2025. The Petitioner contends this was done in blatant disregard of the Court's directions. Reliance is placed on



the decision of the Constitutional Court of South Africa in *Burchell v. Burchell* [Case No 364/2005], where it was held that:

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. *The Constitution* states that the rule of law and supremacy of *the Constitution* are foundational values of our society. It vests the judicial authority of the state in the court and requires other organs of the state to assist and protect the court. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

10. Consequently, the Petitioner urges this Court to find the Contemnors guilty of contempt for the blatant breach of the orders issued on 25th June 2025, arguing that such a finding is necessary to prevent a "shameful mockery" of Kenya's constitutional order.

### **Respondent's and Contemnor's Submissions**

11. The Respondents and the Contemnor filed joint submissions. They have argued that the conservatory orders of 16<sup>th</sup> June 2025 were limited to the Notice of Motion dated 10<sup>th</sup> June 2025; that the Contemnor, in a show of respect for the judicial process, formally withdrew the said motion on 18<sup>th</sup> June 2025 in furtherance of the court's directions.
12. The Respondents further aver that the introduction of a fresh and distinct Impeachment Motion dated 17<sup>th</sup> June 2025, tabled on 18<sup>th</sup> June 2025, was a routine and lawful legislative process that fell outside the scope of the existing stay orders.
13. They argue that the Petitioner's attempt to cite them for contempt for actions taken during Assembly proceedings directly offends Section 11(1) of the *County Assemblies Powers and Privileges Act*.
14. Further, the Respondents submit that the Petitioner's application for contempt is fatally flawed for failing to meet the mandatory procedural threshold under Rule 81.4(2) of the English Civil Procedure (Amendment No. 3) Rules, 2020, which they argue governs the formulation of such applications in this jurisdiction.
15. On the jurisdiction of the high court to entertain the petition and the Application, the Respondents have relied on the binding principle of the Separation of Powers. They argue that this Court lacked the jurisdiction to grant conservatory orders to halt an ongoing impeachment process in the first instance. They have relied on the Supreme Court in *Mate & another v Wambora & another* (2017)KESC 1 (KLR), where it was held:

“The effect is that, a methodical and conscientious inquiry would show the County Assembly to have been operating quite properly, within the constitutional scheme of devolution, and running its legislative processes within the ordinary safeguards of the separation of powers and consequently, quite legitimately outside the path of the ordinary motions of the judicial arm of State. On that basis, there would have been hardly any scope for the deployment of the court's conservatory orders more particularly without first hearing the petitioners”

16. The Respondents further submit that the standard of proof for contempt, which they define as quasi-criminal in nature has not been met. They cite the Supreme Court in *Republic v Mohammed & another*(2018) KESC 51 (KLR) where the court stated that : “The power of the Court to punish for



contempt is an awesome power which should be exercised with great care and circumspection... As such, the standard of proof had to be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt... This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort.”

17. The Respondents and the Contemnor thus urge this Court to find that they acted strictly within their constitutional and statutory mandate.

### **Analysis and determination**

18. The following issues lend themselves for determination:
- a. Whether this court has jurisdiction to entertain this Application.
  - b. Whether the respondents are guilty of contempt.

### **Jurisdiction of the court**

19. The Jurisdiction of the high court is founded on Article 165(3) of *the Constitution*. The Article provides as follows:

- “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;
  - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
  - (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;
    - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
    - (iv) a question relating to conflict of laws under Article 191”.



20. The Respondents herein have raised a Preliminary Objection based on the doctrine of separation of powers. On the question of separation of powers the supreme court had this to say

in the case of *Sonko Versus the Clerk, County Assembly of Nairobi City & 11 others* KESC 26 (KLR):

“Where it is alleged that any of them [legislative branches] has failed to act in accordance with *the Constitution*, then the courts are empowered by article 165(3)(d)(ii) to determine that allegation... the court’s role is confined to deciding whether the Governor’s constitutional rights and fundamental freedoms have been breached in the process and whether the procedures for removal from office have been followed.”

21. Also in *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* (2017) eKLR the Apex court held:

“A clear inference to be drawn is that, it was the Supreme Court’s stand that no arm of Government is above the law. This being a constitutional democracy, *the Constitution* is the guiding light for the operations of all State Organs. The Court’s mandate, where it applies, is for the purpose of averting any real danger of constitutional violation... the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies.”

22. Impeachment is both a constitutional and a political process. Consequently it is the duty of the high court, pursuant to Article 165(3)(d) (ii) of *the constitution*, to ensure that the process is done in accordance with *the constitution*, the law and standing orders of the Assembly.

23. Thus, whereas the courts should be careful not to unnecessarily encroach on the jurisdiction of the other two arms of government it is now settled ,based on the various decisions of the superior courts ,that the question of whether anything has been done in accordance with *the constitution* or the law by the Legislature or the Executive can only be settled by the courts . The courts are the custodians of *the constitution* and the Law

24. The other ground of objection that has been raised is that the contempt proceedings offends Section 11(1) of the *County Assemblies Powers and Privileges Act*. The section provides as follows: “No civil or criminal proceedings may be instituted against a member for words spoken before, or written in a report to, the county assembly or a committee, or by reason of any matter or thing brought by the member therein by a petition, Bill, resolution, motion or otherwise.”

25. The nature and extent of parliamentary privilege or in this case of the county Assembly has been a subject of many past decisions of the courts. In *Francis Matheka & 10 others v Director of Public Prosecutions & another* [2015] KEHC 7642 (KLR) the court stated:

“A reading of section 4 of the Privileges Act clearly reveals that the immunity be it in civil or criminal proceedings is limited to words spoken before, or written in a report to, the Assembly or a committee, or by reason of any matter or thing brought by him therein by petition, Bill, resolution, motion or otherwise. It is therefore clear that by far, the most important right accorded to Members of the House is the exercise of freedom of speech in parliamentary proceedings. This right is a fundamental right without which they would be hampered in the performance of their duties. It permits them to speak in the House without inhibition, to refer to any matter or express any opinion as they see fit, to say what they



feel needs to be said in the furtherance of the national interest and the aspirations of their constituents."

The above provision though it was in relation to parliamentary privilege is the same provision contained in Section 11(1) of the [County Assemblies Powers and Privileges Act](#).

26. However, it is now well settled that parliamentary immunity is not an absolute shield against illegal actions. Whereas immunity is meant to protect freedom of speech in the Assembly, it does not authorize violation of court orders or breaking of the law. Immunity granted to members of county Assembly is limited to county Assembly debates, reports and actions taken within the lawful actions of the Assembly. It does not shield members from engaging in criminal acts or quasi- criminal, like the disobedience of court orders, like it happened in this case.
27. The last technical objection is what the respondents have called failure to comply with the mandatory requirement under Rule 81.4 (2) of the English Civil Procedure (Amendment No.3) Rules, 2020 which governs the formulation and proof of contempt proceedings under the common law framework. However, the respondents have not specified which part of the procedure has not been complied with.
28. Nevertheless, an Application under Rule 81.4 (2) provides:

A contempt application must include statements of all the following, unless (in the case of (b) to (g)) wholly inapplicable—

- (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
  - (b) the date and terms of any order allegedly breached or disobeyed;
  - (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
  - (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
  - (e) confirmation that any order allegedly breached or disobeyed included a penal notice; (f) the date and terms of any undertaking allegedly breached;
  - (g) .....
29. In the present case , the respondents have not pointed which part of the provisions of Rule 81(4) (2) was not complied with. There is no dispute on service or the terms of the order. That much the respondents admitted. An admitted fact becomes a non- issue and the court need not address itself to it.
  30. To conclude on the preliminary objection all the three grounds are without merit, and it is the finding of this court that it has the jurisdiction to entertain this petition.

### **Whether the respondents are guilty of contempt**

31. On 16<sup>th</sup> June 2025, following an Application by the Applicant herein , the court issued a conservatory order restraining the respondents from any further consideration of the notice of motion brought to the Assembly , which motion sought for the impeachment of the Governor as aforesaid . It is the Applicant's case that despite the existence of the above orders the respondents went ahead and tabled another Motion with similar effect to the Assembly.



32. For an Application for contempt to succeed it must meet a certain requirements.. In Samuel M. N. Mweru & Others v National Land Commission & 2 others [2020] eKLR the test set out as follows: “It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove ;-(i) the terms of the order;(ii) Knowledge of these terms by the Respondent, (iii). Failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities.

The standard of proof is higher than the balance of probabilities required in civil law , but lower than that of criminal law of beyond reasonable doubt.

33. On the terms of the order , there was no ambiguity. The respondents were restrained barred from admitting, processing debating or considering in any way the Motion dated 10<sup>th</sup> June 2025 , which sought to remove from office the Governor by way of impeachment. In regard to the knowledge of the order , under paragraph 4 of his replying Affidavit , the condemner has admitted that he was aware that the court had issued an interim conservatory order. In respect to the 2<sup>nd</sup> respondent, while he does not expressly admit that he was aware of the order of 16<sup>th</sup> June 2025, he does not deny the same. Indeed in paragraphs 11, 12, and 14 of his replying affidavit ,he makes reference to the court order of 16<sup>th</sup> and the fact that any action undertaken late was not meant to circumvent the subject order. The 2<sup>nd</sup> respondent and the contemnor were therefore aware of the court order and what it required of the two of them as the speaker of the county Assembly, and mover of the motion, respectively.
34. The last issue is whether the Respondent failed to comply with the order. The 2<sup>nd</sup> respondent states that the Motion dated 10<sup>th</sup> June 2025 was withdrawn and what was placed before the house on 18<sup>th</sup> June 2025 was a different Motion , that is the Motion dated 17<sup>th</sup> June 2025. He argues that the Motion dated 17<sup>th</sup> was a completely different Motion , and thus was not the subject of the court order issued on 16<sup>th</sup> June 2025. On the part of the condemner , he states that he realized he needed to amend the Motion to include additional information that had been left out; ( paragraph 5 of his affidavit), then he goes on to state that upon further review of the petition and the directions of this court, he decided to withdraw the Motion. He withdrew ,then he introduced another one. The Hansard Report of 18<sup>th</sup> June 2025, shows that indeed the Motion dated 10<sup>th</sup> June was withdrawn, then immediately , the one dated 17<sup>th</sup> June was introduced. He insists that the motion dated 10<sup>th</sup> was never debated . The Hansard also shows that the one for 17<sup>th</sup> June was also not debated, but it was tabled before the Assembly. However the court order of 16<sup>th</sup> June 2025 not only barred the debate it also barred the admission. The order of 16<sup>th</sup> June under paragraph ( c) read:

“That pending pending the hearing and determination of this Application interpartes a conservatory order is hereby issued restraining barring or preventing the respondents either by themselves or their Agents from admitting , processing, debating or considering or in any manner whatsoever considering the Notice of Motion dated 10<sup>th</sup> June 2025 for proposed removal from office of the Governor of Isiolo by impeachment founded on the Notice of Motion presented and intended to be debated on Tuesday , 17<sup>th</sup> June , 2025, or any other day the respondent may set”

35. Nevertheless whether the Motion of 18<sup>th</sup> June 2025 was an amendment or a new Motion is immaterial. What is fundamental is , was the nature and import of the Motions. The Motion dated 10<sup>th</sup> June and 18<sup>th</sup> June was for the impeachment of the Applicant . what the court restrained was the Motion to impeach the Governor. But the respondents want this court to focus on the dates of the Motion , not the substance. What the condemner simply did was to change the date of the Motion, but the substance



and effect was the same. The respondents' argument in this regard is a diversionary tactic . It is full of mischief . Indeed the condemner's statement that he decided to withdraw the motion due to interalia the directions given by the court on 16<sup>th</sup> June 2025, is instructive .I entirely agree with the Applicant that the 2<sup>nd</sup> Motion which was placed before the house on 18<sup>th</sup> was an attempt to circumvent the court order of 16<sup>th</sup> June 2025. The 2<sup>nd</sup> respondent and the condemner were in contempt .

36. Thus the condemner introduced a Motion of impeachment , and the 2<sup>nd</sup> respondent allowed its introduction, in defiance of the express orders of the court issued on 16<sup>th</sup> June. In the case of *Mwangaza vs County Assembly of Meru [2025] KEHC2059(KLR)*, the scenario was exactly what has transpired in this case . The Motion was withdrawn and immediately another was introduced , while the interim orders of the court were subsisting. The court did not hesitate in arriving at the finding that the respondents were in contempt.
37. I reiterate what my brother Justice Nyaga pointed out in his ruling of 2<sup>nd</sup> July 2025;- that the law against contempt has nothing to do with the egos of Judges or judicial officers. It serves a much greater good; - the upholding of the Rule of law. Ultimately, it sends the message that we are a country governed by the Rule of law. The opposite is catastrophic.
38. In *Republic vs Ahmad Abolfathi Mohammed & Another [2019] eKLR* the court held: "There is no doubt that an act in contempt of the Court constitutes an affront to judicial authority; and the Court has the liberty and empowerment to mete out penalty for such conduct, in a proper case. The object is, firstly, to vindicate the Court's authority; secondly, to uphold honourable conduct among Advocates, in their standing as officers of the Court; and thirdly, to safeguard its processes for assuring compliance, so as to sustain the rule of law and the administration of justice"(Emphasis added)
39. In the end, am satisfied that the Applicant has established that the respondents were in contempt of the court orders of 16<sup>th</sup> June 2025. The court finds them guilty of contempt.
40. In his submissions the Applicant has referred to the court order of 25<sup>th</sup> June 2025. However the present Application is in reference to the court orders of 16<sup>th</sup> June only. The court can only make a determination on the basis of pleadings placed before it.
41. In conclusion the following orders hereby issue:
  - a). The preliminary objection dated 24<sup>th</sup> June 2025 is hereby dismissed
  - b). Mohamed Roba and Abubakar Godana are hereby found guilty for contempt of court.
  - c). Mohamed Roba and Abubakar Godana to appear in court to show cause why they should not be committed to civil jail for a period for a period of 6 months for disobedience of the court order of 16<sup>th</sup> June 2025.
  - d). The date for the Notice to show cause to be fixed on the date of the delivery of this Ruling.
  - e). Each of the parties to meet their own costs .

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH 2026.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Ismail Adow- Court Assistant



Ms. Kiunga for the Applicant

Mr. Mbaya for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and the condemner.

