



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
CHERERE-J
HCCHRPET E001 OF 2026

BETWEEN

DR. PERIS NYABOKE OROKO.....PETITIONER
AND
HON. THADDEUS NYABARO, SPEAKER OF THE COUNTY
ASSEMBLY OF NYAMIRA.....1ST RESPONDENT
THE COUNTY ASSEMBLY OF NYAMIRA.....2ND RESPONDENT
AND
HON.AMOS KIMWOMI NYARIBO, GOVERNOR OF NYAMIRA
COUNTY.....INTERESTED PARTY

JUDGMENT

1. The Petitioner, Dr. Peris Nyaboke Oroko, is a resident of Nyamira County who was appointed by the Governor of Nyamira County on 15th April 2025 as a Member of the County Executive Committee. Upon her appointment, she initially served in the Department of Gender, Youth, Sports, Culture and Social Services before subsequently being reassigned to the Department of Agriculture, Livestock and Fisheries.
2. The 1st Respondent, Hon. Thaddeus Nyabaro, is the Speaker of the County Assembly of Nyamira and is sued in his official capacity as the presiding officer of the Assembly under Article 178 of the Constitution.

3. The 2nd Respondent is the County Assembly of Nyamira, the legislative arm of the County Government established under Article 176 of the Constitution and mandated under Article 185 to exercise legislative authority and oversight over the County Executive.
4. The Interested Party is the Governor of Nyamira County and the appointing authority of the Petitioner.
5. The Petition dated 06th February 2026 was filed contemporaneously with a Notice of Motion of even date. The Petition challenges the legality and constitutionality of resolutions passed by the County Assembly of Nyamira purporting to nullify the Petitioner's appointment and to require the Governor to submit another nominee for vetting.
6. The application is premised on the grounds that the Petitioner was lawfully appointed and approved as a Member of the County Executive Committee; that the Respondents' resolutions purporting to nullify her appointment and subject her to fresh vetting are unconstitutional, unlawful and undertaken without jurisdiction; that unless restrained, the said resolutions would interfere with her tenure and render the Petition nugatory; and that it is in the interests of justice that conservatory orders be granted.

7. It is common ground that the application was canvassed together with the Petition and that the parties addressed the Court fully on the merits of the dispute.
8. At the very outset, and before delving into the merits of the Petition, it is necessary to dispose of the status of that application. The orders sought therein were purely interim and conservatory in nature, intended to preserve the substratum of the dispute pending the determination of the Petition.
9. The Court having now heard the Petition on its merits, it follows that the interim reliefs sought in the Notice of Motion dated 06th February 2026 have been overtaken by events. The Notice of Motion is therefore spent and shall be marked as such.
10. Turning to the Petition, the Petitioner's case is that her appointment as a Member of the County Executive Committee was undertaken strictly in accordance with the Constitution, the County Governments Act and the Public Appointments (County Assemblies Approval) Act.
11. She states that her nomination was duly advertised by the County Assembly, that she appeared before the relevant committee for vetting, that she was approved by the

Assembly, sworn into office and her appointment subsequently gazetted.

12. The dispute arises from events that occurred on 30th September 2025 when the County Assembly, during a special sitting, adopted a report of its Committee on Justice and Legal Affairs purporting to declare her appointment null and void. The basis of that decision, according to the Respondents, was that the Petitioner's approval had occurred during sittings presided over by the former Speaker under what was described as "Bunge Mashinani."

13. The Petitioner contends that the legality of those sittings had already been the subject of judicial determination in **Ombongi & 9 others v County Assembly of Nyamira & another; Independent Electoral and Boundaries Commission (Interested Party) [2025] KEHC 18355 (KLR)**, where the High Court upheld their validity.

14. Notwithstanding that position, the Petitioner states that on 13th January 2026 the Clerk of the County Assembly advertised a fresh vetting process in respect of her position. The Petitioner appeared before the Committee on Appointments on 20th January 2026 and informed the committee that she had already been lawfully

vetted and approved and that the issue had been settled by the Court. Despite that position, the committee prepared a report dated 26th January 2026 recommending that the Governor submit another nominee. That report was adopted by the Assembly at a special sitting held on 27th January 2026, and a letter dated 28th January 2026 was issued requiring the Governor to submit another name.

15. The Petitioner contends that those actions amounted to an unlawful re-vetting process, unknown to the Constitution and the statutory framework governing appointments to the County Executive Committee. She further contends that the recommendation that she be investigated for alleged loss of funds was speculative, unsupported by evidence and made without affording her an opportunity to respond.

16. On that basis, the Petitioner approached this Court seeking the following reliefs:

1) A declaration that the resolutions of the County Assembly arising from the special sitting held on 30th September 2025 purporting to declare her appointment null and void are unconstitutional, unlawful and invalid;

2) A declaration that the resolutions of the County Assembly arising from the special sitting held on 27th January 2026 requiring the Governor to

submit another nominee are unconstitutional, unlawful and invalid;

3) An order of certiorari to remove into this Court and quash the said resolutions;

4) A declaration that she remains the lawful Member of the County Executive Committee unless removed in accordance with the Constitution and the law;

5) A permanent injunction restraining interference with her tenure;

6) Costs of the Petition.

17. The Petition is supported by a Supporting Affidavit sworn by the Petitioner on 06th February 2026. The Petitioner sets out in detail the factual foundation of her claim, including her appointment, vetting, approval by the County Assembly, swearing-in and gazettement, and deposes that the subsequent actions of the Respondents purporting to nullify her appointment were undertaken in violation of the Constitution and the law.

18. The Petitioner also filed a Further Affidavit sworn on 27th February 2026 in response to the replying affidavits filed by the Respondents, in which she reiterates that no court has invalidated her appointment, disputes the Respondents' interpretation of the *Bunge Mashinani* proceedings, and

maintains that the Respondents cannot purport to sit on appeal over a binding judgment of the Court.

19. The 1st Respondent, Hon. Thaddeus Nyabaro, opposed the Petition and the Notice of Motion through a Replying Affidavit sworn on 26th February 2026 in which he sets out the factual background relating to the impeachment of the former Speaker on 24th October 2024, deposes that the former Speaker ceased to hold office upon impeachment, and contends that any sittings convened thereafter, including those under the “Bunge Mashinani” arrangement, were unlawful.

20. The 1st Respondent further deposes that the legality of those sittings was addressed in **Moenga & Others v Nyamora & 7 Others; Nyabaro & Another (Interested Party) [2025] KEHC 7765 (KLR)**, which, according to him, held that the former Speaker had no authority to act after impeachment and that actions undertaken during that period were invalid.

21. The 2nd Respondent opposed the Petition through a Replying Affidavit sworn by Duke S. Onyari, Clerk of the County Assembly of Nyamira, on 18th February 2026, in which he deposes that the Assembly, acting under Article 185, raised concerns regarding the Petitioner’s approval and

referred the matter to the Committee on Justice and Legal Affairs for inquiry.

22. The Clerk further deposes that the Committee summoned relevant officials, including the Petitioner, and received legal advice from the County Attorney to the effect that the approval process lacked legal validity. He states that the Committee recommended that the Governor submit the name of the Petitioner or another nominee for proper vetting, and that the Assembly adopted that recommendation.

23. The Interested Party, Hon. Amos Kimwomi Nyaribo, filed a Replying Affidavit sworn on 26th February 2026 supporting the Petition, in which he confirms that the Petitioner was duly appointed and sworn in as a Member of the County Executive Committee on 15th April 2025 following due process. He further contends that the Respondents cannot rely on impeachment proceedings that were vacated by consent dated 14th July 2025 recorded in **Kisii ELRC Petition No. E001 of 2024, Enock Ogori Okero & Others v Nyamira County Assembly & Another [2025] KEELRC 3306 (KLR)**. He further maintains that **Moenga & Others v Nyamora & 7 Others; Nyabaro & Another (Interested Party)** (supra) did not invalidate the Petitioner's appointment, and contends that re-vetting is not provided for

in law, removal being governed exclusively by Section 40 of the County Governments Act.

24. Following the close of pleadings, the Court directed that the Petition be disposed of by way of written submissions, which the parties duly filed.

25. The Petitioner filed written submissions dated 20th February 2026 through the firm of Morara Omoke Advocates in which counsel submits that the dispute raises constitutional questions concerning the interpretation of Articles 179 and 185 of the Constitution and therefore falls within the jurisdiction of the High Court under Article 165(3)(d), and not the Employment and Labour Relations Court. Counsel argues that the attempt to subject the Petitioner to fresh vetting was unconstitutional and relies on **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)** for the principle that jurisdiction is foundational and must be determined at the earliest opportunity, **Governor, County Government of Kakamega & 4 others v Omweno & 12 others [2025] KECA 190 (KLR)** on the distinction between constitutional and employment disputes, **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696** on the nature of preliminary objections, **Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR)**

as reaffirmed in **Osman & another v Mohamud & 2 others [2024] KEELC 957 (KLR)** on the constitutional pleading threshold, and **Munya v Kithinji & 2 others [2014] KESC 30 (KLR)** together with **Nkunja v Magistrates and Judges Vetting Board & another [2016] KEHC 7269 (KLR)** on the principles governing conservatory orders.

26. The 1st Respondent filed written submissions dated 10th March 2026 through the firm of Robert Ndubi & Co. Advocates, in which he opposes both the Petition and the application and contends that the Petitioner’s approval was irregular for having been undertaken under the “Bunge Mashinani” sittings convened after the impeachment of the former Speaker. Counsel submits that those sittings were declared unlawful and relies on **Moenga & Others v Nyamora & 7 Others; Nyabaro & Another (Interested Party)** (supra), to argue that actions undertaken post-impeachment were null and void, and further relies on **Langat v Kericho County Assembly Committee on Appointments & 2 others [2020] KESC 34 (KLR)** and **Moses Kiprotich Langat v Kericho County Assembly Committee on appointments & 3 others [2018] KEELRC 1969 (KLR)** on the doctrine of separation of powers and the need for judicial restraint.

27. The 1st Respondent further submits that the County Assembly acted within its constitutional mandate under Article 185(3) of the Constitution by referring the matter to the Committee on Justice and Legal Affairs, and that the Petitioner was afforded an opportunity to undergo proper vetting but declined to participate. Counsel argues that the Petition does not meet the constitutional threshold and reiterates reliance on **Anarita Karimi Njeru v Republic** (supra), while also invoking the principles governing conservatory orders as set out in **Munya v Kithinji & 2 others** (supra).

28. The 2nd Respondent filed written submissions dated 14th March 2026 through the firm of G.K. Nyambati & Co. Advocates, in which it opposes the Petition and raises a jurisdictional objection, contending that the dispute is an employment matter falling within the jurisdiction of the Employment and Labour Relations Court under Article 162(2) (a) of the Constitution.

29. Counsel further submits that the Petition does not meet the constitutional pleading threshold as set out in **Anarita Karimi Njeru v Republic** (supra) and as affirmed in **Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 (KLR)**. The threshold requires

that a party alleging violation of constitutional rights must plead with a reasonable degree of precision the provisions of the Constitution alleged to have been infringed, the manner of such infringement, and the relief sought. It is contended that the Petition falls short of this standard as it does not clearly and specifically set out the alleged violations or the manner in which the Respondents' actions contravene the Constitution.

30. It is further submitted that the Petitioner has failed to satisfy the threshold for the grant of conservatory orders as articulated in **Munya v Kithinji & 2 others (supra)**, **Nkunja v Magistrates and Judges Vetting Board & another (supra)**, , **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] KEHC 4297 (KLR)**, and **Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] KEHC 2174 (KLR)**, in that she has not demonstrated a prima facie case with a likelihood of success, has not shown any real danger of prejudice, and has not established that the public interest warrants the grant of the orders sought.

31. Counsel further relies on **Judicial Service Commission v Speaker of the National Assembly & 4 others;** **Commission on Administrative Justice (Amicus Curiae);**

Law Society of Kenya (Interested Party)

[2014] KEHC 7493 (KLR) on the nature of conservatory orders, and on **Havi v Law Society of Kenya & 3 others**

[2018] KECA 731 (KLR) in support of the argument that the Petition would be rendered nugatory only in circumstances of demonstrated illegality.

32. It is also contended that the applicable threshold in interlocutory relief is as set out in **Giella v Cassman Brown & Co. Ltd (1973) EA 358**, and that public interest considerations as discussed in Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another (supra) and Bishop Joseph Kimani & others v Attorney General & others, Mombasa High Court Petition No. 669 of 2009, militate against the grant of the orders sought.

33. Counsel also cited **Muruatetu & another v Republic; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended Amicus Curiae) [2016] KESC 12 (KLR)** which this Court finds to be misplaced and irrelevant, as that decision concerned criminal sentencing and does not address the jurisdictional or constitutional issues arising in the present Petition.

34. Counsel maintains that the vetting process undertaken by the County Assembly was lawful and in accordance with its constitutional mandate, and that the Petition is premature and unmerited.
35. On the merits, the 2nd Respondent submits that the Petitioner's appointment was irregular, having arisen from the "Bunge Mashinani" process which was declared unlawful in **Moenga & Others v Nyamora & 7 Others** (supra), and contends that the Assembly properly exercised its oversight mandate under Article 185 by referring the matter to the Justice and Legal Affairs Committee and requiring fresh vetting in accordance with Section 7 of the Public Appointments (County Assemblies Approval) Act.
36. The 2nd Respondent further submits that the Petitioner declined to participate in the lawful vetting process despite being afforded an opportunity, and therefore cannot seek to restrain a process grounded in statute.
37. It is further submitted that the Petition would be rendered nugatory only where illegality is demonstrated, and reliance is placed on **Coalition for Reform and Democracy (CORD) & another v Republic of Kenya & another [2015] eKLR** and **Bishop Joseph Kimani & others v Attorney General & others, Mombasa High Court Petition No. 669 of**

2009, and on the applicable threshold in Giella v Cassman Brown & Co. Ltd (1973) EA 358, contending that the application is premature, unmerited and ought to be dismissed with costs.

ANALYSIS

38. I have carefully considered the Petition dated 06th February 2026, the Supporting Affidavit sworn by the Petitioner on even date, Petitioner's Further Affidavit sworn on 27th February 2026, the Replying Affidavit sworn by the 1st Respondent on 26th February 2026, the Replying Affidavit sworn on 18th February 2026 by Duke S. Onyari on behalf of the 2nd Respondent, the Replying Affidavit sworn by the Interested Party on 26th February 2026, together with the written submissions filed by the parties and the authorities relied upon.

39. From the pleadings, the affidavits filed by the respective parties, the written submissions and the authorities relied upon, it is evident that although a number of arguments have been advanced, the dispute falls for determination on the following issues:

1) Whether this Court has jurisdiction to hear and determine the Petition

2) Whether the Petition meets the constitutional pleading threshold

- 3) Whether the Petitioner was lawfully appointed and approved as a Member of the Nyamira County Executive Committee;**
- 4) Whether the County Assembly of Nyamira had the constitutional or statutory authority to reopen or revisit the approval of the Petitioner's appointment**
- 5) Whether the resolutions of the County Assembly passed on 30th September 2025 and 27th January 2026 were unconstitutional or unlawful**
- 6) Whether the impugned actions of the Respondents violated the Petitioner's constitutional rights and**
- 7) Whether the Petitioner is entitled to the reliefs sought in the Petition.**

40. Concerning the issue whether this Court has jurisdiction to hear and determine the present Petition, the Respondents contend that the dispute concerns the appointment and tenure of a Member of the County Executive Committee and therefore falls within the jurisdiction of the Employment and Labour Relations Court established under Article 162(2)(a) of the Constitution. The Petitioner and the Interested Party, on the other hand, maintain that the dispute raises constitutional questions concerning the legality of actions undertaken by the County Assembly and the interpretation of the

Constitution, and therefore falls within the jurisdiction of this Court.

41. The starting point in determining the issue of jurisdiction is the well-established principle articulated by the Court of Appeal in **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd** (supra), that jurisdiction is everything and that a court must determine whether it has jurisdiction at the earliest opportunity and before taking any further step.

42. Applying that principle to the present case, this Court must interrogate the true nature of the dispute before it and determine whether it falls within its constitutional mandate.

43. A careful reading of the Petition shows that the Petitioner is not merely contesting an employment decision or asserting rights arising from a contract of service. Rather, she challenges the legality and constitutionality of resolutions passed by the County Assembly purporting to invalidate her appointment and to subject her to a fresh vetting process outside the framework established by the Constitution.

44. In **Governor, County Government of Kakamega & 4 others v Omweno & 12 others** (supra), the Court of Appeal held that disputes concerning the appointment and removal of public officers within county governments raise questions

of constitutional interpretation and the exercise of public power, and are therefore properly within the jurisdiction of the High Court. The Court of Appeal in that case emphasised that the mere fact that a dispute involves a public officer does not automatically render it an employment dispute, and that the Court must consider the substance and not the form of the claim.

45. Applying that reasoning to the present case, the dispute is not about the enforcement of an employment relationship but about whether a County Assembly acted within the limits of its constitutional mandate in purporting to nullify an appointment and require fresh vetting.

46. That question directly implicates the interpretation of Articles 179 and 185 of the Constitution and the doctrine of separation of powers. Article 179 establishes the County Executive Committee and provides that its members are appointed by the Governor with the approval of the County Assembly, thereby delineating the respective roles of the Executive and the Assembly in the appointment process. Article 185, on the other hand, vests the County Assembly with legislative authority and oversight over the County Executive, but requires that such oversight be exercised within the confines of the Constitution and the law. The dispute therefore raises the question whether, in the

purported exercise of its oversight mandate, the County Assembly acted within those constitutional limits or exceeded them by purporting to invalidate an appointment already made. It thus concerns the legality of actions taken by a constitutional organ in the exercise of public authority and falls squarely within the jurisdiction conferred upon this Court under Article 165(3)(d) of the Constitution.

47. To accept the Respondents' contention would be to unduly restrict the jurisdiction of the High Court in matters involving constitutional interpretation and to overlook the true nature of the dispute, which concerns the legality of actions taken by a constitutional organ.

48. The Court must, in line with the principle in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd** (supra), determine jurisdiction at the earliest opportunity and on the basis of the real question in controversy, which in the present case concerns the legality and constitutionality of the actions of the County Assembly.

49. I therefore find that the dispute before this Court is constitutional in nature, raises questions falling within Article 165(3)(d) of the Constitution, and does not fall within the exclusive jurisdiction of the Employment and Labour Relations Court.

50. Consequently, the preliminary objection raised by the Respondents is without merit and the same is hereby overruled.
51. The Respondents further challenged the competence of the Petition on the basis that it does not meet the constitutional pleading threshold as set out in **Anarita Karimi Njeru v Republic** (supra) and as affirmed in **Matemu v Trusted Society of Human Rights Alliance & 5 others** (supra). That objection goes to the sufficiency of the Petition and falls for determination at the outset.
52. The principle emerging from those authorities is that a party alleging violation of constitutional rights must plead with a reasonable degree of precision the provisions of the Constitution alleged to have been infringed, the manner of such infringement, and the relief sought.
53. The Court has carefully considered the Petition in light of that threshold. The Petitioner has identified the impugned actions of the Respondents, the specific resolutions of the County Assembly challenged, the constitutional and statutory provisions alleged to have been violated, and the manner in which those actions are said to contravene the Constitution. The Petition further sets out the reliefs sought with clarity.

54. In the circumstances, the Court is satisfied that the Petition attains the requisite threshold of constitutional pleading. The objection on that ground is without merit and is accordingly rejected.
55. Having disposed of the question of jurisdiction and competence of the Petition, the Court now turns to the substantive issues arising in the Petition, beginning with whether the Petitioner was lawfully appointed and approved as a Member of the Nyamira County Executive Committee.
56. The Petitioner's position is that her appointment was undertaken in full compliance with the Constitution and the applicable statutory framework, including the County Governments Act and the Public Appointments (County Assemblies Approval) Act.
57. She asserts that her nomination was duly advertised, that she appeared before the relevant committee of the County Assembly for vetting, that the Assembly approved her nomination, and that she was thereafter sworn into office and her appointment gazetted.
58. The Respondents do not dispute that those steps were undertaken, but contend that the approval was invalid on the basis that it occurred during sittings presided over by the

former Speaker after his impeachment, and therefore lacked legal effect.

59. The Court has considered the competing positions advanced by the parties. However, it is not necessary, for purposes of this determination, to conclusively resolve the question of the legality of the sittings during which the Petitioner was approved, as the Constitution and the law provide a clear and sufficient framework for addressing the validity of an appointment and the tenure of a member of the County Executive Committee.

60. The constitutional framework governing the appointment of members of the County Executive Committee is set out in Article 179 of the Constitution. In particular, Article 179(2)(b) provides that:

“The county executive committee consists of members appointed by the county governor, with the approval of the assembly.”

61. The statutory framework is contained in Section 35 of the County Governments Act, which provides that the Governor shall nominate members of the County Executive Committee, and that such nominees are subject to vetting and approval by the County Assembly, which shall not approve nominations

that do not meet the constitutional requirements on representation, diversity and integrity.

62. It is clear from the foregoing provisions that the role of the County Assembly is confined to the vetting and approval of nominees at the point of appointment, and that once such approval is granted and the appointment made by the Governor, the constitutional and statutory process of appointment is complete, with no provision for any subsequent reopening or reconsideration of that approval.

63. The law provides a separate and distinct procedure for removal of a Member of the County Executive Committee under Section 40 of the County Governments Act, which permits removal by the Governor on specified statutory grounds, including incompetence, abuse of office, gross misconduct, incapacity and violation of the Constitution or any other law, and establishes a structured process involving the County Assembly, with an inbuilt right of the affected member to be heard.

64. The statute thus draws a clear distinction between the process of appointment under Section 35 and the process of removal under Section 40, and does not contemplate any intermediate procedure through which the County Assembly may reopen or invalidate an appointment once duly

completed. While the Respondents contend that the Assembly acted pursuant to its oversight powers under Article 185 of the Constitution, those powers must be exercised within the limits prescribed by the Constitution and the law and cannot be invoked to circumvent an express constitutional and statutory framework governing appointment and removal from office.

65. In the present case, the action taken by the Assembly in purporting to subject the Petitioner to fresh vetting and requiring the Governor to submit another nominee amounted, in substance, to an attempt to remove the Petitioner from office outside the procedure expressly provided under Section 40 of the County Governments Act and without recourse to the safeguards embedded therein.

66. That process further offended the constitutional framework under Articles 179 and 185 of the Constitution governing appointment and oversight, and violated the Petitioner's right to fair administrative action under Article 47 of the Constitution, which guarantees administrative action that is lawful, reasonable and procedurally fair, in that the Petitioner was subjected to a process not recognised by law and without the safeguards attendant to removal under Section 40.

67. Accordingly, the Court finds that the County Assembly acted outside its constitutional and statutory mandate in purporting to reopen the approval process and subject the Petitioner to fresh vetting.
68. The next issue for determination is whether the resolutions of the County Assembly passed on 30th September 2025 and 27th January 2026 were unconstitutional or otherwise unlawful.
69. The resolution of 30th September 2025 must first be considered. By that resolution, the County Assembly purported to declare the Petitioner's appointment as Member of the County Executive Committee null and void ab initio and to direct that the position be treated as vacant.
70. As already set out, the Constitution and the County Governments Act establish a clear and exhaustive framework governing the appointment and removal of members of the County Executive Committee. Once a nominee has been approved by the County Assembly and formally appointed by the Governor, the appointment attains legal validity and can only be brought to an end through the procedure prescribed under Section 40 of the County Governments Act.
71. The purported nullification of the Petitioner's appointment by a subsequent resolution of the County

Assembly finds no basis in either the Constitution or statute. The Assembly does not possess residual or inherent authority to invalidate an appointment once duly completed, and any such action amounts to an assumption of powers not conferred by law.

72. In purporting to declare the appointment *null and void ab initio*, the County Assembly effectively assumed a power reserved for the courts, namely the power to determine the legality of an appointment retrospectively and to invalidate it. Such power does not lie with the Assembly but with the courts in the exercise of judicial authority under Article 165 of the Constitution.

73. The resolution of 30th September 2025 was therefore ultra vires the constitutional and statutory mandate of the County Assembly, and is consequently unlawful and of no legal effect.

74. The Court now turns to the resolution of 27th January 2026. By that resolution, the County Assembly purported to subject the Petitioner to a fresh vetting process and to require the Governor to submit another nominee in her place.

75. That action, though framed as an exercise of oversight, in substance amounted to an indirect removal of the Petitioner from office. As already demonstrated, removal of a member of the County Executive Committee can only be undertaken in

accordance with the procedure set out in Section 40 of the County Governments Act.

76. The attempt to subject the Petitioner to fresh vetting was unsupported by law and constituted a circumvention of the statutory safeguards governing removal from office, including defined grounds, investigation and the right to be heard.
77. Moreover, by directing the Governor to submit another nominee, the County Assembly encroached upon the constitutional mandate of the Governor under Article 179 of the Constitution, thereby upsetting the balance of powers between the County Executive and the County Assembly.
78. In the circumstances, the resolution of 27th January 2026 was equally *ultra vires*, unconstitutional and unlawful.
79. The next issue is whether the impugned actions resulted in a violation of the Petitioner's constitutional rights. The Petitioner invokes Articles 47, 48 and 50(1) of the Constitution.
80. Article 47 guarantees the right to administrative action that is lawful, reasonable and procedurally fair. The process adopted by the Respondents in purporting to invalidate the Petitioner's appointment was not recognised by law and was therefore unlawful and incapable of meeting the threshold of

procedural fairness required under that Article. In those circumstances, the Court is satisfied that the Petitioner's right to fair administrative action was violated.

81. The Petitioner also invokes Article 50(1) of the Constitution, which guarantees every person the right to a fair hearing before an independent and impartial tribunal or body. In the context of the present dispute, the applicable framework that would have ensured observance of that right is the procedure for removal provided under Section 40 of the County Governments Act, which contemplates that a member is to be informed of the allegations against them and afforded an opportunity to respond. By bypassing that framework, the Respondents deprived the Petitioner of the procedural safeguards guaranteed by law, thereby violating her right to a fair hearing.

82. As regards Article 48 of the Constitution, while the necessity of approaching the Court does not of itself constitute a violation, the circumstances of this case demonstrate that the Petitioner was compelled to seek judicial intervention in order to vindicate rights infringed by actions taken in excess of constitutional mandate. Taken together, the Court is satisfied that the impugned actions were inconsistent with the Constitution and resulted in a violation of the Petitioner's constitutional rights.

83. Having so found, the Court turns to the question whether the Petitioner is entitled to the reliefs sought. The primary relief sought is a declaration that the impugned resolutions are unconstitutional, unlawful and invalid. Declaratory relief is an appropriate remedy where a court is called upon to pronounce itself on the legality of actions undertaken by a public authority, and in the present case such a declaration is both appropriate and necessary to vindicate the Constitution.

84. The Petitioner also seeks an order of certiorari to quash the impugned resolutions. Certiorari is available to quash decisions made without jurisdiction or in excess of jurisdiction. In light of the Court's finding that the Respondents acted outside the scope of their powers, the threshold for the grant of that remedy has been met.

85. The Petitioner further seeks a declaration that she remains the lawful Member of the Nyamira County Executive Committee unless removed in accordance with the Constitution and the law. In view of the Court's findings, that declaration is necessary to clarify her legal status and to affirm that her appointment remains valid unless lawfully terminated under Section 40 of the County Governments Act.

86. The Petitioner has also sought a permanent injunction restraining the Respondents from interfering with her tenure

except in accordance with the Constitution and the law. Given the unlawful actions already undertaken, such relief is warranted to prevent further interference and to safeguard the constitutional framework governing public appointments.

87. The principle that costs follow the event remains the primary guideline for courts, as codified under Section 27(1) of the Civil Procedure Act, which provides that costs shall follow the event unless the court, for good reason, orders otherwise. In the present case, the Petitioner was compelled to approach this Court to challenge actions taken in excess of constitutional and statutory mandate, and no reason has been advanced to justify a departure from that rule. Accordingly, the costs of the Petition shall be borne by the Respondents, while the Interested Party shall bear its own costs.

88. In the result, and for the reasons set out above, the Court finds that the Petition is merited and makes the following orders:

- 1) A declaration is hereby issued that the acts and resolutions of the 2nd Respondent arising from the special sittings held on 30th September 2025 and 27th January 2026, purporting to nullify the Petitioner's appointment and to require the**

submission of another nominee, are unconstitutional, unlawful and invalid.

2) A declaration is hereby issued that the resolution of the 2nd Respondent arising from the special sitting held on 27th January 2026, requiring the Governor to submit another nominee and purporting to subject the Petitioner to a fresh vetting process, is unconstitutional, null and void.

3) An order of certiorari is hereby issued removing into this Court and quashing:

(a) the resolution of the 2nd Respondent arising from the special sitting held on 30th September 2025; and

(b) the resolution of the 2nd Respondent arising from the special sitting held on 27th January 2026.

4) A declaration is hereby issued that the Petitioner's appointment as a Member of the Nyamira County Executive Committee remains valid and lawful unless terminated in accordance with the Constitution and the County Governments Act.

5) A permanent injunction is hereby issued restraining the Respondents, whether by themselves, their agents or otherwise howsoever, from interfering with the Petitioner's tenure as a Member of the Nyamira County Executive

**Committee otherwise than in accordance with the
Constitution and the law.**

**6) Petitioner is awarded costs of this Petition to be
borne by both Respondents jointly and severally**

**DELIVERED AT NYAMIRA THIS 19th DAY OF March
2026**



**WAMAE.T. W. CHERERE
JUDGE**

Appearances

Court Assistant - Hilda

**For Petitioners - Mr. Omoke for for Morara Omoke
& Co. Advocates**

**For 1st Respondent - Mr. Ndubi for Robert Ndubi &
Advocates**

**For 2nd Respondent - Mr. Nyambati for K. Nyambati & Co.
Advocates**

**For the Interested Party - Mr. Orina for County Attorney,
Nyamira County Government**