

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E139 OF 2025s

(Before Hon. Lady Justice Hellen Wasilwa, J)

HON. ABDULLAHI J ALDESA
BANTICHA.....PETITIONER

VS

THE GOVERNMENT PRESS.....1ST
RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND
RESPONDENT

AND

HON. MOHAMED ROBA KOTO.....1ST INTERESTED
PARTY

THE CLERK- ISIOLO
COUNTY ASSEMBLY.....2ND INTERESTED
PARTY

AND

HON. ABDIRASHID ALI DIBA.....3RD INTERESTED
PARTY

HON. ABDINUR DIMA JILLO.....4TH INTERESTED
PARTY

HON. SALESIO KIAMBI.....5TH INTERESTED
PARTY

HON. LOROT NICHOLAS.....6TH INTERESTED
PARTY

HON. DAVID LEMANTILE.....7TH INTERESTED
PARTY

- HON. PETER LOSU.....8TH INTERESTED PARTY**
- HON. DAVID WAITHAKA.....9TH INTERESTED PARTY**
- HON. FOZIA J IBRIL BORE.....10TH INTERESTED PARTY**
- HON. FRANCISCO HAJI LETIMALO.....11TH INTERESTED PARTY**
- HON. RAHMA ABDIKADIR.....12TH INTERESTED PARTY**
- HON. AMINA OMAR ENOW.....13TH INTERESTED PARTY**
- HON. FATUMA ABDI.....14TH INTERESTED PARTY**

JUDGMENT

- 1 By a Petition dated 11th July 2025, the Petitioner prayed the following orders: -
- a) *A Declaration that once elected into office and duly gazette a Speaker of a county assembly cannot be removed from office through de-gazettment and the Respondents have no legal authority to revoke an election through de-gazettment.*
 - b) *A declaration that any actions that may be taken by the Respondents or any other person to purportedly remove the Petitioner from office as the Speaker of the Isiolo County Assembly, without strict adherence to the provisions of section 11 of the County Government Act, are illegal, unconstitutional, null and void.*

- c) *A Permanent Injunction restraining the Respondents from de-gazetting or removing the Petitioner from office as the Speaker of Isiolo County Assembly except in accordance with the Constitution and the County Governments Act, 2012.*
- d) *An Order of Certiorari to bring into this Honourable Court and quash any decision by the Respondents to de-gazette the Petitioner as the Speaker of the Isiolo County Assembly including any decision or actions in revocation of Gazette Notice No. 8667 in Vol CXXVII-NO. 139 of 27th June 2025.*
- e) *Costs of the Petition.*
- f) *Any other order or relief that this Honourable Court may deem just and appropriate in.*

Petitioner's Case

- 2 The Petitioner avers he is the duly elected and serving Speaker of the Isiolo County Assembly, exercising his mandate in accordance with Article 178 of the Constitution. His election was formalised through Gazette Notice No. 8667 published in Vol. CXXVII-No. 139 of 27th June 2025, and subsequently he was sworn into office in July 2025 in compliance with Section 9A of the County Governments Act and Standing Order No. 13 of the Isiolo County Assembly Standing Orders.

- 3 The Petitioner contends that upon taking oath, he lawfully assumed office and has since been discharging his

constitutional and statutory functions as Speaker. However, he later became aware of a letter dated 9th July 2025 addressed to the 1st Respondent, which sought to compel the arbitrary and unlawful de-gazettement and his removal from office.

- 4 It is the Petitioner's case that the said attempt is in blatant disregard of Section 11 of the County Governments Act, which prescribes the procedure for removal of a Speaker. He asserts that no notice of motion supported by at least one-third of the members of the County Assembly has been initiated, nor has any resolution supported by two-thirds of the members been passed to sanction his removal. The Petitioner therefore contends that the process sought to be undertaken is illegal, null, and void ab initio.
- 5 The Petitioner further avers that being aware of the illegal plans and writing to the 2nd Respondent the Petitioner has received no official communication in response, hence the Applicant remains reasonably apprehensive that the scheme for his removal is imminent contrary to his rights to fair administrative action and fair labour practices.
- 6 On the alleged violations, the Petitioner avers that the impugned actions amount to a violation of his right to fair administrative action under Article 47 of the Constitution as read with Sections 2 and 4(1) of the Fair Administrative Action Act, 2015. He contends that the intended de-

gazettement constitutes administrative action affecting his legal rights, yet it is neither lawful, reasonable, nor procedurally fair, and is being undertaken without due process or adherence to the statutory framework governing removal from office.

- 7 The Petitioner further contends that the actions complained of violate his right to fair labour practices under Article 41 of the Constitution as read with Section 41 of the Employment Act. It is his case that the intended removal amounts to an unlawful and arbitrary dismissal, undertaken without notice, without disclosure of any charges, and without affording him a hearing, thereby offending the principles of fairness and due process.
- 8 Additionally, the Petitioner avers that the impugned actions contravene Article 236 of the Constitution, which guarantees protection of public officers from unlawful dismissal or disciplinary action without due process. He asserts that as a holder of a public office, his removal can only be undertaken in strict compliance with the law, particularly Section 11 of the County Governments Act.
- 9 The Petitioner maintains that the attempt to de-gazette and remove him outside the prescribed legal procedure is unconstitutional, unlawful, and in violation of the protections accorded to him as a public officer.

10 It is the Petitioner's case is that the intended removal from office is procedurally flawed, substantively unlawful, and in violation of his constitutional and statutory rights.

Respondents' Case

11 In opposition to the petition, the Respondents' filed grounds of opposition dated 5th March 2026 on the following grounds:

1) THAT the Petition is premature, misconceived and an abuse of the process of this Honourable Court, as there is no evidence before the Court of decision or gazette notice issued revoking the gazette notice no. 8667 of 27th June, 2025.

2) THAT the orders sought are speculative and premature, being founded on conjecture and apprehension of a possible future outcome rather than on any actual or crystallized violation of rights, and are therefore not amenable to be granted by this Honourable Court as the same would be issued in vacuum.

3) THAT the Petition is founded on a misinterpretation of Article 178 of the Constitution as read with Section 11 of the County Governments Act as it is the County Assembly which has the mandate to appoint and remove a County Assembly Speaker and not the Government Press nor the Attorney General.

- 4) *THAT the role of Government Press is only to publish decisions and actions through the Kenya Gazette and has no role in decision making process and hence has no capacity to implement the court orders if issued in the circumstances.*
- 5) *THAT the Petitioner has failed to demonstrate with reasonable degree and precision the provisions of the Constitution or any other law violated, if any, how it was violated and the particulars of such violations as was espoused under locus classicus case of **Anariita Karimi Njeru v Republic (1979) eKLR.***
- 6) *THAT declaratory orders are discretionary and their scope and purpose is limited and can only be granted in the most deserving circumstances and it will be in the interest of justice that they are denied.*
- 7) *THAT the Petition discloses no reasonable cause of action against the Respondents and is otherwise frivolous, vexatious and an abuse of the court process.*

1st Interested Party's Case

- 12 In opposition to the petition, the 1st Interested Party filed a replying affidavit dated 18th December 2025.
- 13 The 1st Interested Party avers that he is the duly elected Speaker of the County Assembly of Isiolo, having been elected on 20th September 2022 and sworn into office on

the same date, and that she has never resigned nor been lawfully removed from office as contemplated under Section 11 of the County Governments Act and the applicable Standing Orders.

- 14 It is the 1st Interested Party's case that the procedure for removal of a Speaker is expressly provided for under Standing Order 63, which entails issuance of a Notice of Motion, approval of the motion, establishment of an ad hoc committee to investigate the allegations, invitation to the Speaker to defend himself or herself, and eventual debate and resolution by the Assembly. He contends that no such process was ever initiated or undertaken against him, and that he therefore remains the lawful holder of the office of Speaker.
- 15 He further avers that all Assembly proceedings are livestreamed and available on the Assembly's official platforms, and that there exists no record of any debate or deliberation concerning his removal from office.
- 16 The 1st Interested Party avers that the procedure for election of a Speaker under Standing Orders 6-13, including nomination of candidates, publication of candidates, and voting by the Assembly, was never undertaken in respect of the Petitioner. He contends that there is no evidence, including nomination forms or Hansard records, to show that the Petitioner was ever elected Speaker.

- 17 It is his case that 16 out of the 18 Members of the County Assembly swore affidavits confirming that no election of a new Speaker has been conducted since 20th September 2022 and that they never elected the Petitioner. He further avers that the said Members made public statements affirming that they neither voted for the Petitioner nor impeached him.
- 18 The 1st Interested Party contends that the Petitioner has misled the Court by claiming to be Speaker while, to the best of his knowledge, he remains the County Executive Committee Member in charge of Finance in the County Government of Isiolo, a position he has neither resigned from nor vacated, and continues to draw salary from.
- 19 He further avers that the affidavit of one Salad Boru Guracha is misleading, noting that the said deponent had earlier confirmed that the Assembly never sat on 26th June 2025 and could not therefore have elected the Petitioner as Speaker.
- 20 The 1st Interested Party avers that Gazette Notice No. 8667, which purported to gazette the Petitioner as Speaker, was revoked on 14th July 2025 through Gazette Notice No. 9513 upon it becoming apparent that its publication was procured fraudulently. He avers that the legal effect of the revocation is that the purported appointment is deemed not to have occurred.

- 21 He avers that upon the publication of Gazette Notice No. 8667, the Attorney-General requested the Directorate of Criminal Investigations to investigate the circumstances surrounding the gazette, and that the investigations revealed that the same was a case of forgery, leading to advice to de-gazette the notice.
- 22 It is the 1st Interested Party's case that the Petitioner was aware of the ongoing criminal investigations but failed to disclose this material fact to the Court. Further, investigations by the Directorate of Criminal Investigations established that the matter involved forgery and recommended that persons involved be charged with various offences under the Penal Code.
- 23 He contends that the orders granted on 15th July 2025 were issued without disclosure of material facts and were obtained through deliberate concealment. Subsequent communication from the Directorate of Criminal Investigations confirmed the existence of forgery in relation to the impugned documents.
- 24 The 1st Interested Party asserts that the gazette of the Petitioner is unlawful and criminal, and that the orders sought in the Petition ought not to be granted as they would serve to sanitise an illegality and facilitate the Petitioner's unlawful occupation of public office.

2nd Interested Party's Case

- 25 In opposition to the petition, the 2nd Interested Party filed a replying affidavit dated 11th March 2026.
- 26 The 2nd Interested Party avers that on or about 26th June 2025, his office duly forwarded the name of the Petitioner to the 1st Respondent for gazette as the duly elected Speaker of the County Assembly of Isiolo and Chairman of the Isiolo County Assembly Public Service Board, in compliance with the law and the Standing Orders of the Assembly.
- 27 He avers that upon receipt of the said communication, the 1st Respondent proceeded to gazette the Petitioner as Speaker vide Gazette Notice No. 8667 published on 27th June 2025. It is his case that following the gazette, the Petitioner was duly sworn into office on 3rd July 2025 in accordance with Section 9A of the County Governments Act and Standing Order No. 13 of the Isiolo County Assembly Standing Orders, and consequently assumed his constitutional and statutory functions as Speaker.
- 28 The 2nd Interested Party further avers that he is aware of a letter dated 9th July 2025 from an entity known as Treowe Empowering Trust, addressed to the 1st Respondent, seeking revocation of the said Gazette Notice. He contends that the 1st Respondent lacks the legal mandate

to revoke a Gazette Notice *suo motu*, its role being limited to acting on instructions from competent entities such as the County Assembly, and that no such instructions have been issued by his office.

29 He avers that neither he nor his office has authored or issued any revocation of the Petitioner's gazettelement, and therefore the purported Gazette Notice No. 9513 dated 14th July 2025 is a forgery and a misrepresentation of facts.

30 The 2nd Interested Party further contends that Article 236(a) of the Constitution protects public officers from removal without due process, and that under the law and Standing Orders, there can only be one Speaker at a time, with a former Speaker ceasing to hold office upon gazettelement of a new one.

31 He avers that removal of a Speaker is governed by Section 11 of the County Governments Act, which requires a motion supported by a two-thirds majority of the County Assembly, and that to the best of his knowledge, no such motion has been received, processed, or debated for the removal of the Petitioner.

32 It is the 2nd Interested Party's case that the demand for revocation of the Gazette Notice is unlawful, unprocedural, and unconstitutional, and amounts to an usurpation of the powers of the County Assembly and the sovereign will of

the people of Isiolo as envisaged under Articles 1 and 2 of the Constitution.

- 33 The 2nd Interested Party thus urges the Court to uphold constitutionalism, the rule of law, and the sovereignty of the people of Isiolo County, and to protect the integrity of the office of the Speaker from unconstitutional interference.

3rd to 14th Interested Parties' Case

- 34 In opposition to the petition, the 3rd - 14th Interested Parties' filed a replying affidavit dated 13th January 2026, sworn by the 3rd Interested Party's case.
- 35 The Interested Parties aver that they fully support the Petition and the Petitioner, whom they describe as the duly elected and gazetted Speaker of the Isiolo County Assembly.
- 36 They aver that they participated in and supported the election and swearing-in of the Petitioner as Speaker, contending that the process was conducted in strict compliance with the Standing Orders of the County Assembly, Section 11 of the County Governments Act, 2012, and the Constitution. It is their case that there was no fraud, irregularity, or impropriety in the election or assumption of office by the Petitioner.

- 37 The Interested Parties further aver that as the majority bloc within the Assembly, they affirm that the Petitioner enjoys the confidence and support of the County Assembly, and that any assertions to the contrary, including claims by the 1st Interested Party, are misrepresentations intended to mislead the Court. They contend that the Petitioner's continued occupation of office reflects the democratic will of the people of Isiolo County and the confidence of the Assembly.
- 38 They aver that there has been a purported attempt to de-gazette the Petitioner, and assert that any such attempt undertaken outside the lawful process would subvert the sovereign will of the people of Isiolo County whom they represent.
- 39 It is their case that any attempt to remove the Petitioner outside the prescribed legal framework is unconstitutional, illegal, null and void, and amounts to a violation of Articles 10, 41, 47, 50, 178 and 236 of the Constitution.
- 40 The Interested Parties further aver that the Petitioner, and by extension themselves, face a real and imminent threat to the constitutional office and their democratic mandate, and that judicial intervention is necessary to safeguard the integrity of the office of the Speaker, protect the

democratic choice of the people, and ensure adherence to statutory procedures.

- 41 They maintain that the Petitioner lawfully occupies the office of Speaker and enjoys the confidence of the majority of the Assembly, and that any attempt to circumvent constitutional and statutory safeguards undermines democratic governance and the rule of law.
- 42 It is the Interested Parties' case that the Court should grant the reliefs sought in the Petition so as to preserve the constitutional mandate of the Petitioner and uphold the rule of law.

Petitioner's Submissions

- 43 The Petitioner submitted on: The office of the speaker constitutionally protected office with security of tenure; Whether section 11 of the County Governments Act provides for the exclusive and mandatory procedure for removal of a speaker; Whether the de-gazettement is not a lawful mode of removal and cannot substitute the statutory process; Whether the impugned actions violated the Petitioner's constitutional rights under articles 41, 47, 50 and 236 of the Constitution.
- 44 On the first issue, the Petitioner submitted that Article 178(1) of the Constitution establishes the office of the

Speaker of a County Assembly as a constitutional office within the structure of devolved government, and not an office held at pleasure. He submitted that the Speaker is a constitutional office holder whose legitimacy flows from election by the County Assembly pursuant to the Constitution and statute.

- 45 It was submitted that the legal character of the office has been judicially considered in ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR***, where the Court of Appeal affirmed at paragraph 52 of its decision, affirmed that the relationship between a County Assembly and its Speaker bears the hallmarks of a contract of service, noting that once elected and remunerated from public funds, the Speaker occupies a legally protected position whose tenure cannot be interfered with arbitrarily.
- 46 The Petitioner further submitted that in ***Nick Githinji Ndichu v Clerk, Kiambu County Assembly & another [2014] eKLR***, the Court, at paragraph 13, rejected the argument that assumption of such office falls outside the protection of labour and service law, holding that, the law is not concerned with the mode of assumption of office, but with the existence of service rendered for remuneration.

- 47 He submitted that these decisions underscore that the office of Speaker is both constitutional and juridical in nature, and is governed by enforceable legal norms relating to tenure, accountability, and removal. He relied on Article 236 of the Constitution, submitting that it provides that a public officer shall not be: victimised or discriminated against for performing the functions of office; or removed from office except in accordance with due process of law.
- 48 It is the Petitioner's submission that Articles 10 and 232 demand adherence to the rule of law, transparency, and accountability in public administration. Arbitrary interference with a constitutionally created office would erode these national values and destabilize the governance framework contemplated by the Constitution.
- 49 It was submitted that the office of Speaker therefore enjoys constitutional and statutory security of tenure and is not capable of alteration through administrative correspondence or executive direction. The Petitioner argued that once elected, gazetted, and sworn into office, his tenure could only be questioned or terminated through the mechanism provided by law, and that any attempt to unsettle that tenure outside the statutory framework is a direct affront to constitutional guarantees.
- 50 On the second issue, the Petitioner submitted that Section 11 of the County Governments Act provides a complete

code governing the removal of a Speaker, prescribing a structured process initiated within the County Assembly, including a formal motion, investigation, deliberation, and adoption by a two-thirds majority of Members.

51 He submitted that the provision is couched in mandatory terms and leaves no room for alternative mechanisms, reflecting legislative intention that the question of a Speaker's tenure be resolved within the Assembly. Reliance was placed on ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR*** where the Court of Appeal held that where there is a clear procedure prescribed by the Constitution or statute, that procedure must be strictly adhered to.

52 The Petitioner further submitted that in [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others \[2012\] eKLR](#), the Supreme Court affirmed that a public authority may only exercise powers donated by law and cannot arrogate to itself jurisdiction exceeding that conferred by statute. Any action taken outside that mandate is ultra vires and void. Section 11 therefore operates not merely as guidance but as a jurisdictional precondition: unless and until the Assembly undertakes the removal process contemplated therein, no legal vacancy can arise in the office of Speaker.

53 He argued that the Respondents' attempt to effect removal through administrative means ignores the

statutory framework and offends the doctrine of legality, and undermines the autonomy of devolved institutions under Articles 174 and 175 of the Constitution.

54 It is therefore the Petitioner's submission that any purported removal absent compliance with Section 11 is legally ineffectual and constitutionally impermissible.

55 On the third issue, the Petitioner submitted that gazettelement is a mode of publication and not a source of legal authority, and that a Gazette Notice does not create the office of Speaker but merely communicates a legal act undertaken pursuant to the Constitution and statute.

56 He submitted that the juridical foundation of the office lies in election by the County Assembly under Article 178 and not in the Gazette Notice itself. Consequently, he argued that the legal status of the Speaker cannot be extinguished by administrative withdrawal of a Gazette Notice where the underlying legal act has not been lawfully set aside.

57 Reliance was placed on ***Republic v Kenya National Examination Council & anothers Ex-parte Kipkurui Michelle D. Jeruto & 34 others [2015] eKLR*** where the Court held that public authorities cannot use administrative action to defeat rights created under statute and that any such attempt is ultra vires and amenable to judicial review.

- 58 The Petitioner further submitted that the doctrine of legality requires that every exercise of public power be traceable to a lawful source, and that Section 11 provides the exclusive pathway for removal. He relied on ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR*** wherein the Court of Appeal affirmed that where the Constitution or statute provides a specific procedure, that procedure must be strictly followed, and parties are not at liberty to invent parallel mechanisms. Section 11 of the County Governments Act provides the exclusive pathway for the removal of a Speaker. To permit removal through de-gazettement would render that elaborate statutory safeguard meaningless and defeat Parliament's intention.
- 59 It was submitted that the purported de-gazettement constitutes an unlawful collateral attack on his tenure and violates Article 47 of the Constitution, and that allowing such a mechanism would undermine the constitutional order and devolved governance.
- 60 It is the Petitioner's submission that if administrative de-gazettement were accepted as a valid removal mechanism, it would invert the constitutional hierarchy by allowing subordinate executive processes to override constitutionally anchored institutions, thereby undermining Articles 1, 2, and 10 of the Constitution and

destabilising devolved governance. The only legally sustainable conclusion, therefore, is that a Gazette Notice cannot be used as an instrument to remove a duly elected Speaker, and any attempt to do so is null, void, and incapable of producing legal consequences.

61 On final issue, the Petitioner submitted that the Respondents' conduct violated his constitutional rights and falls within the Court's jurisdiction under Articles 22 and 23 of the Constitution.

62 He submitted that Article 47 guarantees lawful, reasonable, and procedurally fair administrative action, yet the attempted removal was undertaken without notice, without affording him an opportunity to be heard, and without adherence to any lawful procedure. Reliance was placed on ***Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] eKLR***, where the Court of Appeal held that Article 47 demands that administrative decisions affecting rights must meet the threshold of legality, rationality, and procedural propriety.

63 The Petitioner further submitted that Article 50(1) guarantees the right to a fair hearing whenever a person's rights or status are threatened, and that removal from office can only be undertaken through a transparent adjudicative process such as that provided under Section

11 of the County Governments Act. He argued that by bypassing that process, the Respondents violated the *audi alteram partem* rule which is a cornerstone of natural justice. He cited the Supreme Court in ***Kenya Revenue Authority v Export Trading Company Ltd [2022] KESC 31 (KLR)***.

64 The Petitioner submitted that the Respondents' conduct also implicates Article 41, which protects fair labour practices. The Speaker, being a remunerated constitutional office holder discharging full-time public functions, is entitled to protection from irregular termination of tenure or unlawful interference with the performance of official duties.

65 It was submitted that the cumulative effect of the Respondents' actions was to subject him to an unlawful, procedurally unfair, and constitutionally prohibited attempt at removal, thereby infringing multiple constitutional guarantees and warranting the intervention of this Court.

Respondents' Submissions

66 The Respondents submitted on four issues: whether the proceedings are premature; responsibility of appointment and removal of County Assembly Speaker; whether there is any constitutional violation by respondents; reliefs sought.

- 67 The Respondents submitted that the present proceedings amount to an abuse of the court process. The Petitioner has not placed before the Court any evidence of a decision or Gazette Notice revoking Gazette Notice No. 8667 of 27th June 2025.
- 68 They submitted that the orders sought are speculative and founded on apprehension of a possible future occurrence rather than an actual or crystallised violation of rights, and that this Court cannot grant orders in vacuum.
- 69 The Respondents further submitted that under Order 53 of the Civil Procedure Rules, an order of certiorari can only issue where there exists a decision capable of being quashed. They argued that in the absence of any impugned Gazette Notice, the Court cannot be called upon to quash a non-existent decision.
- 70 On the second issue, the Respondents submitted that the Petition is founded on a misinterpretation of Article 178 of the Constitution as read with Section 11 of the County Governments Act. They argued that the mandate to appoint and remove a Speaker vests exclusively in the County Assembly and not in the Government Press or the Attorney General.

- 71 It was submitted that under Section 85 of the Evidence Act, the Kenya Gazette constitutes *prima facie* evidence of notices issued pursuant to law, but the role of the Government Press is limited to publication of decisions and actions through the Kenya Gazette as transmitted to it by the relevant decision-making authority; and does not extend to determining the legality, validity, or constitutionality of the content published.
- 72 The Respondents argued that the Government Press has no role in decision making process and no capacity to implement the court orders if issued in the circumstances. If the Petitioner disputes the validity of the alleged resolution or decision, the proper challenge ought to be directed at the County Assembly as the decision-maker.
- 73 It is the Respondents' submission that the Government Press has been improperly joined in these proceedings as it does not exercise adjudicative, statutory or discretionary authority in respect of the impugned decision and is therefore a misjoined party against whom no orders can properly issue. They cited ***Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR.***
- 74 It was therefore submitted that the Respondents have been improperly enjoined in the proceedings, as they are not the decision-makers with respect to removal of the

Petitioner and have no statutory authority to implement the reliefs sought.

- 75 On the third issue, the Respondents submitted that the Petitioner has failed to demonstrate with precision the constitutional provisions allegedly violated, the manner of violation, and the particulars thereof, as required by the principle set out in ***Anarita Karimi Njeru v Republic [1979]eKLR***.
- 76 They argued that the Petition is speculative and does not disclose any actual violation of the Petitioner's rights attributable to the Respondents.
- 77 It was submitted that the threshold in ***Anarita Karimi Njeru*** has not been met, and on that basis alone, the Petition ought to be dismissed with costs.
- 78 On the prayer for declaratory orders, they argued that there is no basis for the Court to issue declarations regarding de-gazettement or removal in the absence of any demonstrated action or decision.
- 79 On the prayer for a permanent injunction, the Respondents submitted that the same would be futile as there is no evidence of any threat or intended action on their part, and that they are law-abiding public officers.

- 80 With regard to the order of certiorari, it was submitted that the Court is being invited to quash a speculative or non-existent decision, which is impermissible in law.
- 81 On costs, the Respondents urged the Court to dismiss the Petition with costs on the basis that they have been improperly joined and that no cause of action has been established against them.
- 82 It is Respondents' submission that declaratory relief is discretionary and can only be granted where there exists a real controversy and a justiciable issue. Reliance was placed on ***Karaha Bodas Co LLC v Pertamina Energy Trading Ltd & Another [2006] 1 SLR (R) 112***, where the prerequisites for declaratory relief were outlined, including the existence of a real controversy and legal uncertainty. They further relied on ***Durban City Council v Association of Building Societies 1942 AD 27***, to submit that courts must exercise caution in granting declaratory relief depending on the circumstances of each case.
- 83 It was therefore submitted that the Petition is premature, speculative, and an abuse of the court process, and ought to be dismissed with costs and the Respondents struck out of the proceedings.

2nd Interested Party's Submissions

- 84 The 2nd Interested Party submitted on three issues: whether the Court has jurisdiction to hear and determine the current Petition; whether the Petitioner was elected and gazetted in accordance with applicable substantive and procedural law; and whether the Petitioner had dispensed the burden of proof and if he is entitled to the orders sought.
- 85 On the question of jurisdiction, the 2nd Interested Party submitted that this Court lacks jurisdiction to hear and determine the Petition as the dispute herein concerns the constitutionality of the election and de-gazettement of a County Assembly Speaker, which is not an employment and labour relations matter but a constitutional issue. Reliance was placed on ***Likowa v Aluochier & 2 others [2025] KESC 25 (KLR)*** where the Supreme Court, adopting the High Court's reasoning, held: *"The court therefore rejected the argument that the dispute should have been handled by the Employment and Labour Relations Court, holding that the election of a County Assembly Speaker is not an employment matter but a constitutional one."*
- 86 On whether the Petitioner was elected and gazetted in accordance with the law, the 2nd Interested Party submitted that the Petitioner was neither validly elected nor lawfully gazetted as Speaker.

- 87 It was submitted that there was no vacancy in the office of Speaker to warrant a fresh election, as the 2nd Interested Party had neither resigned nor been removed from office in accordance with Section 11 of the County Governments Act and the applicable Standing Orders. It was argued that Article 178(3) of the Constitution, read together with Section 11 of the County Governments Act and Section 21 of the Elections Act, provides a complete legal framework governing the election and removal of a Speaker, and that these provisions must be strictly complied with.
- 88 The 2nd Interested Party submitted that the procedure for election as set out in Standing Orders 6 to 13 and the Fourth Schedule of the Isiolo County Assembly Standing Orders requires nomination of candidates, submission and verification of nomination papers, support by Members, publication of candidates, and election through a vote of the Assembly, none of which was undertaken in respect of the Petitioner.
- 89 It was submitted that there is no evidence of nomination papers, Hansard reports, or any Assembly sitting convened to deliberate and elect the Petitioner. Further, sixteen out of eighteen Members of the County Assembly swore affidavits confirming that no such election took place and that they never voted for the Petitioner.

- 90 It was further submitted that the Petitioner failed to demonstrate how the office of Speaker became vacant, and during cross-examination, he was unable to explain when and how such vacancy arose. The 2nd Interested Party contended that the Petitioner failed to discharge the evidentiary burden of proving lawful election, reiterating the principle that he who alleges must prove.
- 91 He submitted that he never resigned from position as Speaker of the County Assembly of Isiolo, nor had he been removed from said office by Members of the County Assembly as contemplated in Section 11 of the County Governments Act and Standing Order 63 of the County Assembly of Isiolo. He argued that there is no evidence that the process as by the law was ever undertaken, thus, he was never removed from office at any point.
- 92 The 2nd Interested Party further submitted that all Assembly proceedings are livestreamed and curated on the Assembly's YouTube page, Facebook page and on the Assembly's website, none of which have a record of any debate/deliberations for his removal from the office of the Speaker.
- 93 It was also submitted that the Petitioner could not lawfully hold the office of Speaker while simultaneously serving as the County Executive Committee Member for Finance, a position he had not resigned from and for which he continued to draw a salary, rendering his claim legally

untenable. The 2nd Interested Party further relied on the affidavit of the 1st Interested Party confirming that the Assembly never sat on the alleged date of election, thereby negating the possibility of any lawful election having taken place.

94 It is the 2nd Interested Party's submission that the import Article 178 of the Constitution, Section 11 of the County Government Act, Section 21 of the Election Act, Order 6 to 13, 63 and the Fourth Schedule of the Standing Order of County Assembly of Isiolo; is that for a Speaker to be removed and a new Speaker to be elected and for the election to be considered constitutional and lawful, it must necessarily be enacted in strict accordance with the substantive and procedural requirements as provided therein.

95 It was submitted that the Petitioner never met the requirement to be elected as Speaker and the process was never followed to warrant the Petitioner to be deemed as a duly elected speaker. If the process is flawed, the gazettelement cannot hold. Reliance was placed on **Likowa v Aluochier & 2 others (Supra)** where the Supreme Court outlined the procedural steps required for a valid election of a Speaker, including declaration of vacancy, nomination, verification, and voting.

96 The 2nd Interested Party further submitted that the impugned Gazette Notice No. 8667 was procured

fraudulently and was subsequently revoked through Gazette Notice No. 9513, the legal effect of which is that the purported appointment of the Petitioner is deemed never to have occurred.

- 97 He submitted that the Petitioner was aware of the criminal investigation into the fraudulent Gazette Notice No. 8667 being conducted by the DCI, but nonetheless deliberately failed to disclose this material fact to the Court.
- 98 It was submitted that investigations by the Directorate of Criminal Investigations vide its letter dated 31st October 2025 established that the gazettelement was a forgery, and that the Attorney-General advised its revocation upon receipt of the investigative findings. It was further contended that the Petitioner was aware of these investigations but deliberately failed to disclose this material fact to the Court, thereby misleading the Court.
- 99 The 2nd Interested Party submitted that the Directorate of Criminal Investigations concluded that the issue was a clear forgery and recommended that Salad Boru Guracha and Abdullahi Jaldesa Banticha be charged for several offences under the Penal Code in respect to the forgery.
- 100 It is the 2nd Interested Party's submission that the 1st Interested party who is the custodian of the documents further never submitted any documents to show that the procedure and law as followed and adhered to. Failure by

the Petitioner and the 1st Interested party to prove that due process as followed leads to the conclusion that the process was flawed and the same should not be allowed to stand.

101 On the burden of proof, the 2nd Interested Party submitted that the Petitioner has failed to meet the threshold set in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR***, which requires clear identification of alleged constitutional violations. It was submitted that the Petitioner merely cited constitutional provisions without demonstrating how they were violated or providing evidence in support of his claims. Consequently, it was argued that the Petitioner has not established any lawful basis for the grant of the orders sought.

102 The 2nd Interested Party concluded by submitting that it is evident that the process leading up to the purported enactment of the impugned Isiolo County Budget and Appropriation Act, 2025 was never subject of any meaningful, effective and informed public participation both by the County Executive and by the County Assembly, and consequently, the Act is unconstitutional.

3rd - 14th Interested Parties' Submissions

103 The 3rd - 14th Interested Parties' submitted on four issues: Whether the Petitioner can be lawfully removed from office

through de-gazettement; Whether the threatened action violates the Petitioner's constitutional rights under Articles 41, 47, 50, 178, and 236; Whether the Honourable Court has jurisdiction to hear and determine the Petition; Whether the cross-examination conducted by the 1st Interested Party is relevant to the issues before this Court.

104 On the first issue, it was submitted that the Petitioner's election and swearing-in were conducted strictly in accordance with the Standing Orders, Section 11 of the County Governments Act and Articles 178 and 236 of the Constitution. They submitted that the election was lawful, free, and reflective of the majority will of the Assembly, and that there exists no valid basis to impugn the same.

105 It was further submitted that the majority support of 12 out of 18 MCAs affirms the legitimacy of the Petitioner's continued occupancy of office.

106 The Interested Parties argued that the purported de-gazettement does not constitute a lawful mechanism for removal. Section 11 of the County Governments Act provides an exclusive and exhaustive procedure for the removal of a Speaker, requiring a written notice signed by at least one-third of MCAs, specified grounds, a resolution supported by two-thirds of members, and an opportunity for the Speaker to be heard.

- 107 It was submitted that any attempt to remove the Speaker outside this statutory framework, including through administrative de-gazettement, is *ultra vires*, unconstitutional, and null and void. They relied on the Clerk's affidavit to submit that he neither initiated nor sanctioned the de-gazettement, thereby confirming that the impugned act was external and unlawful.
- 108 The Interested Parties emphasized that there is no provision in law under the Constitution, County Governments Act, or Standing Orders, that contemplates removal of a Speaker through de-gazettement, arguing that the mechanism is "unknown to law" and incapable of conferring or extinguishing rights, thus rendering the purported removal null and void *ab initio*.
- 109 On the second issue, the Interested Parties submitted that the Petitioner, being a public officer within the meaning of Articles 178 and 260 of the Constitution, is protected under Article 236 from removal without due process. They submitted that the threatened removal through de-gazettement violates Article 236 as it amounts to dismissal without adherence to constitutional and statutory safeguards.
- 110 They further submitted that the impugned action contravenes Article 47(1) on fair administrative action, arguing that the Petitioner was not given notice, reasons, or an opportunity to be heard, thus rendering the action

unlawful, unreasonable, and procedurally unfair. Additionally, Article 50(1) on the right to a fair hearing was violated as the removal was undertaken without any form of adjudicative process.

111 The Interested Parties argued that the cumulative effect of Articles 41, 47, 50, 178, and 236 establishes a constitutional safeguard protecting the Petitioner's tenure, and that the arbitrary de-gazettement undermines the rule of law and the national values under Article 10. The Petitioner had a legitimate expectation that any removal would comply strictly with the Constitution and the County Governments Act, and that the impugned action is the antithesis of lawful, reasonable, and procedurally fair administrative action.

112 It is the Interested Parties' submission that they constitute 12 out of 18 MCAs, forming a majority and demonstrating the Petitioner's legitimate support. Any attempt to remove the Speaker against the majority will undermine the democratic will of the electorate, subvert the constitutional mandate of the Assembly and render the Petition ineffective.

113 On jurisdiction, the Interested Parties submitted that this Court is properly seized of jurisdiction under Article 162(2) of the Constitution and Section 12 of the Employment and

Labour Relations Court Act, which confer jurisdiction over employment and labour relations disputes.

114 They relied on the decision in ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] KECA 397 (KLR)***, submitting that a Speaker of a County Assembly holds a contract of service with the Assembly, thereby creating an employer-employee relationship. It was submitted that the Speaker is therefore entitled to procedural and employment protections, and that disputes arising from threatened unlawful removal fall squarely within the jurisdiction of this Court.

115 The Interested Parties argued that the attempt to characterize the dispute as an election matter is misconceived, as the Petition does not challenge the validity of the election but rather the legality of the removal process. They submitted that the question whether removal can be effected through a process unknown to law falls squarely within this Court's constitutional and statutory mandate.

116 On the final issue, the Interested Parties submitted that the cross-examination conducted by the 1st Interested Party, which focused on the circumstances surrounding the Petitioner's election as Speaker, is irrelevant to the issues for determination in this Petition. They argued that the gravamen of the petition is not the validity of the

election but the legality and procedural propriety of the de-gazettement.

117 They submitted that the attempt to introduce issues relating to the election process is a diversionary tactic intended to obscure the real question before the Court, namely whether a Speaker can be removed through administrative de-gazettement. Further, any challenge to the election ought to have been raised through a properly instituted election petition within the prescribed timelines, and that cross-examination cannot be used as a “back door” to mount such a challenge.

118 The Interested Parties thus urged the Court to disregard the matters raised during cross-examination as irrelevant and incapable of determining the outcome of the Petition, maintaining that they do not address the core legal issue in dispute.

119 I have examined all the averments and submissions of the parties herein. The petitioner came to this court contending that an action had been taken by the respondents purportedly removing him from office as speaker of Isiolo County contrary to the provision of section 11 of the County Government Act. He sought prayers to declare any such action illegal, unconstitutional, null and void.

- 120 He sought an order of certiorari to quash any decision by the respondents to degazette him as the speaker of the Isiolo County Assembly including any decision to revoke gazettee notice no 8667 in Vol CXXVII no 139 of 27th June 2025.
- 121 The respondents opposed the petition and the 1st respondent the Government Press indicated that there is no evidence before court that there is any decision or notice to degazette gazettee notice no 8667 of 27th June 2025 and therefore the orders sought are speculation and premature. The 1st respondent aver that they have no mandate to appoint or remove a County Assembly Speaker.
- 122 The 1st interested party also opposed the petition and averred that he is the duly elected Speaker of Isiolo County and has not been removed from office. He requested this court to allow the summons and cross examination of the petitioner to ascertain how he was appointed. The petitioner was indeed summoned and cross- examined before court and he explained that he went through the motion of being elected speaker.
- 123 This court has no jurisdiction to determine motions of the County Assembly. That as it may be, this court has not been called upon to ascertain who between the petitioner and 1st interested party is the Speaker of the County Assembly. I will therefore not delve at that issue.

- 124 The 2nd interested party on his part also opposed the petition and aver that there is no decision in place sanctioned by the county assembly of Isiolo to remove the petitioner as speaker of the assembly. He avers that the petitioner was gazetted as speaker of the assembly on 27/6/2025 and he was duly sworn in on 3/7/2025 and he remains speaker to date. He avers that any purported notice No 9513 of 14th July 2025 to degazette the petitioner is a forgery and a mis representation of facts.
- 125 2nd to 13th interested parties also opposed the petition and aver that the petitioner is the bonafide speaker of the Assembly as they participated in his election. They aver that any purported de gazettement of the petitioner would be illegal null and void.
- 126 Having considered all the averments, it is clear that the petitioner was gazetted as speaker of Isiolo County Assembly on 27/6/25. This Court has not been presented with any other gazette notice that is in place purporting to degazettee the petitioner and the one presented has been denied by the respondents as being a nullity. There is also no indication that there was any motion for removal of the petitioner as speaker of Isiolo County which has been passed by the Assembly.
- 127 The petitioner has asked this court to nullify a none existent gazette notice as denied by its would be makers

the government press. As submitted by the respondents, the petitioner is based on unfounded fears and is therefore premature and speculative founded on a future occurrence rather than an actual or crystalized violation of rights and this court cannot grant orders in a vacuum.

128 I therefore agree with the respondents and find that the orders sought cannot stand as there is no tangible evidence that the prayers are based on existing facts and that the gazette notice gazetting the petitioner has been revoked. The petition cannot therefore stand and is dismissed accordingly. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi
this 5th Day of May, 2026.**

HELLEN WASILWA

JUDGE