



**Oloo v Kisumu County Assembly Service Board & another; O.C.S. Kisumu
Central Police Station & 2 others (Interested Parties) (Civil Appeal
008 of 2020) [2025] KECA 333 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KECA 333 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 008 OF 2020
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA
FEBRUARY 21, 2025**

BETWEEN

GEORGE ONYANGO OLOO APPELLANT

AND

KISUMU COUNTY ASSEMBLY SERVICE BOARD 1ST RESPONDENT

KISUMU COUNTY ASSEMBLY 2ND RESPONDENT

AND

O.C.S. KISUMU CENTRAL POLICE STATION INTERESTED PARTY

ELISHA JACK ORARO INTERESTED PARTY

ELIUD OWEN OJUOK INTERESTED PARTY

*(Being an appeal from the Judgment of the Employment and Labour Relations
Court of Kenya at Kisumu (Nduma Nderi J.) dated 10th December, 2019 in
Petition No. 32 of 2019 As consolidated with ELRC Cause No.85 of 2019)*

JUDGMENT

1. The appellant filed a petition dated 27th September, 2019, before the Employment and Labour Relations Court at Kisumu against the respondents, alleging that the 2nd respondent had illegally and unconstitutionally impeached and removed him from his position as the Speaker of the Kisumu County Assembly. The appellant roped in the interested parties so that in the event he succeeded in his petition to be reinstated back to office, they would assist him access the office of the Speaker.
2. The appellant's case was that on 18th September, 2019, at 1.26 p.m., he received an email from the 2nd respondent, inviting him to appear before the 2nd respondent on the same day, at 3.00 p.m., to



answer to allegations laid against him, in accordance with Article 50 of *the Constitution* and Standing Order No. 61 (5) of the Kisumu County Assembly Standing Orders. The email further contained a copy of an impeachment motion signed by the Member of the 2nd respondent for Kondele Ward, which was delivered to the Clerk of the 2nd respondent on 17th September, 2019. The motion set out various allegations of misconduct levelled against the appellant, in his capacity as the Speaker of the 2nd respondent. The motion was hastily confirmed and approved to be placed before the assembly for deliberations on the same date it was presented.

3. According to the appellant, the impeachment proceedings were conducted contrary to *the Constitution*, the County Government Act and the County Assembly of Kisumu Standing Orders. He complained that the actions of the respondents had occasioned him great prejudice, and infringed upon his fundamental rights and freedoms as enshrined under Articles 27, 41, 47 and 50 of *the Constitution*, as well as his right as an employee, guaranteed by the *Employment Act*. He contended that the appointment of the 1st interested party as the acting Speaker of the 2nd respondent was done in contravention of the provisions of Article 178 (1) and (2) of *the Constitution*, as at the time of his appointment, the 1st interested party was a sitting Member of the 2nd respondent and he, as the substantive holder of the said office had not been ousted from office.
4. The appellant further averred that he was not afforded an opportunity to defend himself and respond to the allegations levelled against him, contrary to Section 11 of the County Government Act and Standing Order No. 61(5) of the County Assembly of Kisumu Standing Orders. He contended that he was barred from accessing his office, and frustrated from making an appearance before the 2nd respondent to answer to the charges, and in the process was denied the right to respond to administrative action taken against him in manner that was fair and reasonable. He asserted that his right to a fair hearing was infringed.
5. It was his further averment that his removal from office was vide a resolution passed by less than seventy-five percent (75%) of the Members of the 2nd respondent, contrary to Standing Order No. 61(1). He asserted that the 2nd respondent illegally convened a meeting purporting to be a House Business Committee meeting to illegally facilitate the removal of the appellant from office, contrary to Standing Order No. 154. Accordingly, the appellant sought the following prayers from the trial Court:
 - i. A declaration do issue that the removal from office and the blocking of the Petitioner from accessing his office by the County Assembly of Kisumu and their agents was illegal, null and void, and contrary to Articles 1, 2, 10, 21, 27, 28, 41, 47, 50 and 178 (1) of *the Constitution*, as read together with the County Government Act, Section 11 of the County Assembly Service Act, Standing Orders No. 61 (1) and (5) of the County Assembly of Kisumu Standing Orders, the *Employment Act*, and the *Fair Administrative Action Act*;
 - ii. An order of compensation do issue pursuant to Article 23 of *the Constitution*, directing the County Assembly of Kisumu to pay damages to the appellant for violation and contravention of his fundamental rights and freedoms;
 - iii. An order do issue pursuant to Article 23 of *the Constitution* reinstating the appellant as the Speaker of the County Assembly of Kisumu;
 - iv. An order do issue pursuant to Article 23 of *the Constitution* quashing and declaring illegal and unconstitutional the decision contained in the letter dated 19th September, 2019, and referenced CAK/VEHICLES/2019/09/03/2; and the resolution by the County Assembly of Kisumu as contained in the Hansard of 18th September, 2019, whose effect is the removal of the appellant as the Speaker of the County Assembly of Kisumu;



- v. An order do issue pursuant to Article 23 of *the Constitution* reinstating all such benefits, allowances, privileges, and entitlements of the appellant as the Speaker of the County Assembly, as were enjoyed by him by virtue of his position as the Speaker of the County Assembly of Kisumu;
 - vi. The OCS, Kisumu Central Police Station does oversee the implementation of this Court's orders;
 - vii. An order do issue restraining the respondents from conducting an election for the office of the Speaker and or gazetting the election of the Speaker pending hearing and determination of the Petition;
 - viii. An order do issue restraining the respondents from charging the accounts of the Assembly other than through the Assembly Service Board as duly constituted at the commencement of the Second Assembly pending the hearing and determination of the application;
 - ix. An order awarding costs of the Petition to the appellant;
 - x. Any further orders, writs and directions this court considers appropriate and just to grant for the purpose of the enforcement of the appellant's fundamental rights and freedoms.
6. The petition was opposed. The 1st interested party, who at the time, was the acting Speaker of the 2nd respondent, filed a replying affidavit sworn on 4th October, 2019, on behalf of the respondents, as well as the 3rd interested party. He deponed that various disagreements occurred between the appellant and members of the 2nd respondent, which culminated in a number of impeachment attempts against the appellant, where he was accused of highhandedness, poor leadership and general acts of contempt, which were crippling the business of the county assembly and the executive's functions.
 7. He deponed further that the appellant was facing corruption charges vide Milimani CMCC Anti-Corruption Case Number 26 of 2019 Republic v. George Onyango Oloo & 17 others, in respect to his tenure prior to his election as Speaker as the Chairman of the Board of the Lake Basin Development Authority, which charges led to his impeachment, pursuant to the leadership and integrity tenets of *the Constitution*. He averred that the members of the 2nd respondent formed the opinion that the charges faced by the appellant would taint the office of the Speaker, which the appellant held at the time, and that the appellant could not be trusted to chair the board of the 1st respondent.
 8. He further deponed that a petition was filed by twenty-nine members of the 2nd respondent on 10th September, 2019, which was approved and led to his election as the acting Speaker. That since there existed an employer-employee relationship between the appellant and the respondents, the members of the 2nd respondent were within their right to exercise managerial oversight over the conduct of the appellant, and ask him to step aside, in light of the corruption charges that were laid against him, and to further initiate an impeachment motion against him if the said charges were established. That the 2nd respondent, by virtue of the provision of Section 11 of the County Government Act and Standing Order No. 61 of the 2nd respondent's standing orders, passed a resolution to impeach the appellant, which resolution was supported by forty-two (42) members, making up more than seventy-five (75%) of the membership of the assembly.
 9. The 1st respondent averred that the notice of intention to move a motion of impeachment against the appellant was presented to the Clerk of the 2nd respondent on 17th September, 2019, and was approved and slotted for debate on 18th September 2019, at 3.00 p.m., bearing in mind that the impeachment process was required to be commenced and concluded within seven (7) days, in accordance with



Standing Order No.61 (3) of the 2nd respondent's standing orders. He deponed that the appellant was duly served with the notice via WhatsApp and his email address, and that it is common ground that he received the communication on 18th September, 2019, at 1.26 p.m., yet he failed to appear before the assembly to answer to the allegations made against him. He stated that the appellant failed to exercise his right to request for an adjournment to prepare his defence, if he felt that the period to give his response was insufficient. He contended that due process was followed in removing the appellant from office.

10. A further affidavit sworn on 18th October, 2019, was filed by Kenneth Onyango, in his capacity as the Leader of the Majority Party, the Orange Democratic Movement (ODM), at the County Assembly of Kisumu. In the affidavit, Kenneth Onyango deponed that the appellant exhibited poor leadership with respect to management of the 1st and 2nd respondents, and which reputation reflected poorly on ODM the party which nominated him for the position. He averred that the appellant, despite being in receipt of the notice of the intention to move a motion for impeachment against him, failed to attend the impeachment session, and further failed to furnish a response to the allegations levelled against him. He deponed that the appellant made an appearance at the assembly on 18th September, 2019, between 9.00 a.m. and 10. 00 a.m., accompanied by goons, with the intent of forcefully occupying the office of the Speaker.
11. After considering the matter on its merits, the ELRC, vide a judgment dated 10th December, 2019, dismissed the appellant's petition for lack of merit. The learned judge determined that due process was adhered to by the respondents with respect to the impeachment proceedings against the appellant, and that the respondents could not be faulted for failure by the appellant to attend the said proceedings at the assembly.
12. Aggrieved by this decision, the appellant lodged this appeal premised upon eight grounds contained in his memorandum of appeal. In summary, the appellant faulted the learned trial Judge, for failing to appreciate the facts in issue, as articulated by the appellant in his petition, thereby occasioning him an injustice. The appellant complained that he did join issues with the responses made by the respondents to the petition, contrary to the holding by the learned Judge. He took issue with the fact that the learned Judge placed emphasis on the sole ground that the appellant was facing corruption charges before a court of law, and in doing so, the learned Judge failed to consider the validity of the remaining allegations leveled against him with respect to the impeachment motion.
13. The appellant faulted the learned Judge for failing to appreciate that the impeachment proceedings were presided over by a party who had no capacity to act as a Speaker of the County Assembly. He was aggrieved that the learned Judge failed to determine that the appellant was removed from office without any just cause, and that the procedure leading to his removal violated the provisions of the 2nd respondent's own standing orders, the County Government Act and *the Constitution*. Lastly, the appellant was aggrieved that the learned Judge misapprehended the facts and the law placed before him, and failed to consider the appellant's written submissions. In the premises, the appellant urged us to allow the appeal, and set aside the decision of the superior court.
14. Both parties file written submission prior to the plenary hearing of the appeal. They also filed a list of authorities in their respect opposing positions. Oral highlights were made in court. The firm of Prof. Tom Ojienda & Associates was on record for the appellant. Prof. Ojienda appeared for the appellant during the plenary hearing. At the time the appeal was being heard, it became apparent that some of the prayers sought by the appellant in his petition before the trial court had been overtaken by events, save for the prayer challenging the procedural and substantive fairness of the process in which the appellant was removed from office. Further, it was clear that the term of the relevant assembly had since expired. Therefore, the prayer sought by the appellant touching on his reinstatement back to office



- of the Speaker of the 2nd respondent was abandoned together with the attendant and consequential enforcement prayers.
15. Counsel for the appellant faulted the learned Judge for finding that the mere fact that the appellant was facing corruption charges before a court of law was a sufficient ground to warrant his removal from office. Counsel submitted that the appellant was entitled to his constitutional right of presumption of innocence, until the contrary was proved.
 16. With respect to whether the impeachment of the appellant followed due process, counsel submitted that the appellant was notified of the intended impeachment against him vide a notice dated 17th September, 2019, which was served upon him on 18th September, 2019, at 1.26p.m. Counsel complained that the notice invited the appellant to appear before the County Assembly Plenary Sitting on the same day, that is 18th September, 2019, at 3.00 p.m.
 17. It was learned counsel's submission that the appellant confirmed receipt of the notice, albeit with the short notice, he made his way to the 2nd respondent, but was denied access by hired goons. Counsel was of the view that the one-and-a-half-hour notice issued by the 2nd respondent did not constitute compliance of adequate notice and due process in line with the provisions of Articles 47 and 50 of *the Constitution*, which guarantee fair administrative action and fair hearing. Counsel contended that the said time frame was insufficient for the appellant to properly prepare a defence, and answer to the allegations levelled against him, and was in clear violation of the rules of natural justice. He submitted that the right to a fair trial was a right that could not be limited as provided under Article 25 of *the Constitution*.
 18. It was the appellant's submission that the impeachment proceedings against him did not meet the procedural requirements outlined in Article 178 of *the Constitution*, and Standing Order No. 61 of the 2nd respondent's standing orders. Counsel for the appellant explained that the notice of impeachment was required to be approved by the Speaker, and that an acting speaker is only elected for purposes of the debate, and that an acting speaker ought not be a member of the county assembly. Counsel urged that in line with Standing order No. 61(5), the debate with respect to a notice of impeachment can only proceed after the person has had an opportunity to respond to the allegations levelled against him. Counsel submitted that the appellant was not accorded such an opportunity to defend himself, and that the debate with respect to the impeachment motion was presided over by an illegally elected acting speaker. In conclusion, counsel urged that the appellant's impeachment process was tainted with significant procedural improprieties, and invited us to allow the appeal as prayed.
 19. Mr. Amondi, learned counsel appeared alongside Mr. Rodi Orege and Mr. Obiero for the 1st and 2nd respondents, and the 1st and 3rd interested parties. The 2nd interested party was not represented in the appeal. Neither did they file any response to the appeal. In rebuttal, counsels for the respondents submitted that the appellant was duly notified of the impending impeachment motion against him, and that his claims that he was arrested or obstructed by goons, hence unable to appear before the 2nd respondent were unsubstantiated. Counsels urged that the appellant was indeed within the premises of the 2nd respondent on the material day, where he addressed a press conference. Counsels explained that the appellant chose not to attend the hearing, and that he failed to make a request for extension of time to prepare his defence, if he felt that the notice given to him was insufficient. Counsels were of the view that his absence was construed as a deliberate waiver of his right to be present or appear during the hearing.
 20. With respect to the alleged procedural flaws, counsels submitted that the legal framework governing removal of a County Assembly speaker is governed by Standing Order No.61(4) of the 2nd respondent's standing order, which mandated that the removal of a Speaker shall be presided over by an acting



speaker elected from the members of the County Assembly. Counsels were of the view that allowing an incumbent speaker to approve a motion for his/her removal from office would create an inherent conflict of interest. Counsel urged that there were nine (9) grounds of misconduct that were levelled against the appellant, other than the fact that he was facing corruption charges. Counsels submitted that the said grounds were sufficiently proved, and that they constituted a gross violation of *the Constitution* and standards set by the Supreme Court in *Sonko v. County Assembly of Nairobi City & 11 others* (Petition 11 (E008 of 2022) [2022] KESC 76 (KLR)). They contended that the appellant was removed from office procedurally, and that his prayer for damages, which lacked specificity, was unsustainable. They urged this Court to dismiss the appeal and uphold the decision of the superior court.

21. As the first appellate court, we are required to re-evaluate the evidence that was adduced before the trial court afresh before reaching our own independent determination. However, in doing so, we must bear in mind that the trial court had the advantage of seeing and hearing the witnesses. In *Peters v. Sunday Post Limited* [1958] EA 424 at P.429 O’Connor P. held:

“An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether this conclusion originally reached upon that evidence should stand.”

22. We have carefully considered the grounds of appeal, submission by counsel, the authorities cited and the law. We have also re- evaluated the evidence placed before the trial court. The issues that come to the fore for determination are two:

- i. Whether the process that led to the impeachment of the appellant was legal and accorded with the rules of natural justice.
- ii. If issue (1) is determined in the appellant’s favour, what remedies, if any, should be issued.

23. As stated earlier in this Judgment, most of the prayers that the appellant sought in his petition were overtaken by events with the expiry of the term of the 2nd respondent in the year 2022. The appellant, correctly in our view, abandoned those prayers which essentially related to his desire to secure reinstatement back to the position of the Speaker of the 2nd respondent that he held before the said impeachment.

24. The facts that led to the filing of the petition are more or less straight forward. The appellant was elected as the speaker of the 2nd respondent on the sponsorship of the majority Party in the County Assembly; the Orange Democratic Movement (ODM) Political Party. The appellant was elected to this position following the conclusion of the 2017 National Elections.

25. It was apparent from the evidence presented in the trial Court, by the then leader of the majority of ODM in the 2nd respondent, that prior to the said impeachment motion being tabled before the 2nd respondent, the relationship between the appellant, as speaker, and members of the 2nd respondent had deteriorated to the extent that a decision was made by ODM to remove the appellant from the position of speaker of the 2nd respondent.

26. The then leader of the majority, Kenneth Onyango put in motion the process of removal of the appellant as speaker of the 2nd respondent. From the evidence adduced before the trial court, the motion to impeach the appellant was presented to the clerk of the 2nd respondent on 17th September, 2019. It was approved on the same day and scheduled for debate the following day. The leader of the majority justified this haste in the approval and scheduling for debate the impeachment motion to Standing



Order No.61(3) of the 2nd respondent which requires that such motions be commenced and concluded within seven (7) days.

27. It is not contested that the appellant was invited to appear before the 2nd respondent on 18th September, 2019 at 1.26pm. The appellant was required to appear before the 2nd respondent to answer to the charges of impeachment laid against him. The invitation was sent to the appellant via email and Whatsapp. The appellant acknowledged receipt of this invitation. He stated that his attempts to access the 2nd respondent so that he could seek an adjournment of the hearing of the motion was thwarted by goons hired by the members of the 2nd respondent. He was therefore not able to present his plea to the 2nd respondent when it convened for hearing at 3.00pm.
28. On its part, the 2nd respondent denied the assertion by the appellant that it had denied him access to it. To the contrary, the 2nd respondent accused the appellant of organizing goons to storm it in a failed bid to disrupt its proceedings and frustrate the impeachment motion. What is not in doubt is that the appellant was not able to defend himself in regard to the charges laid against him as contained in the impeachment motion.
29. The motion to impeach the appellant was debated and a resolution impeaching the appellant passed the same day. The 2nd respondent noted that the appellant had chosen not to defend the charges laid against him as contained in the impeachment motion. By a vote of 42 members in favour of the motion, which constituted 75% of the members of the 2nd respondent, the motion sailed through resulting in the impeachment of the appellant and his subsequent removal from office.
30. The appellant's attempt to be restored back to office by the trial court was unsuccessful hence this appeal.
31. As regards the first issue for determination i.e whether the appellant was afforded fair hearing, it is clear from the facts of this appeal that indeed the appellant was not afforded a fair hearing. The notice given of one and a half hours to answer to the serious charges that were laid against in the impeachment motion was not sufficient or adequate to enable the appellant prepare and present his defence before the 2nd respondent.
32. The justification for the rushed impeachment proceedings is not supported by law. Standing Order 61 of the 2nd respondent provides thus:
 - “(1) The Speaker may be removed from office by the Assembly through a resolution supported by not less than seventy-five percent of all the Members of the County Assembly.
 2. A notice of the intention to move a motion for a resolution to remove the speaker shall be given in writing to the clerk of the County Assembly, signed by at least one third of all the members of the County Assembly, stating the grounds for removal as provided under section 11 of the County Governments' Act.
 3. Once informed by the clerk the motion contemplated under paragraph (2) has met the legal threshold, the speaker shall approve the motion and inform the House Business Committee to slot the motion for debate within 7 sitting days from the date of submission of this motion to the clerk.”
33. Standing Order 61(3) of the 2nd respondent does not support its argument that they were under legal obligation to commence and conclude the impeachment motion within seven days. It is common



ground that the notice of the intention to move a motion for the impeachment of the appellant was placed before the clerk on 17th September, 2019. The motion was approved by the acting speaker on 18th September, 2019. The 2nd respondent had upto the 25th September, 2019 to consider and debate the impeachment motion. This period would have been sufficient to enable the appellant to be served with the impeachment charges and be given adequate opportunity to prepare his defence and later defend himself before the 2nd respondent.

34. Instead, the 2nd respondent moved with speed, firstly, to approve the motion, secondly, to invite the appellant to respond to the charges, thirdly, to convene the special sitting of the 2nd respondent and fourthly to impeach the appellant in his absence. All this was done within a span of three (3) hours! It was clear that the members of the 2nd respondent executed a plan to which had a pre-determined outcome irrespective of the applicable laid out rules of natural justice.
35. We are satisfied that the appellant established to the required standard of proof on a balance of probabilities that his right to be afforded a fair hearing as provided under Article 50 (i) of *the Constitution* and his right to be accorded fair administrative action as provided under Article 47 (1) and (2) of *the Constitution* were infringed.
36. This Court agrees with the holding made in *Pinnacle Project Ltd v. Presbyterian Church of East Africa, Ngong Parish & another* [2018] eKLR where it held thus:

“While the wording of Article 50 of *the Constitution* on the right to fair hearing prima facie seems to focus on criminal trials, it’s not lost that fair trial in civil cases includes, the right of access to a court, the right to be heard by a competent independent and impartial tribunal, the right to equality of arms, the right to adduce and challenge evidence, the right to legal representation, the right to be informed of the claim in advance before the suit is filed, the right to a public hearing, and the right to be heard within a reasonable time.”

37. It is clear from the facts of this appeal that the appellant’s right to fair hearing, i.e the right to access the 2nd respondent which was hearing the motion of impeachment, the right to be informed of the charges laid against him in advance before the hearing of the motion by the 2nd respondent, the right to adduce and challenge evidence presented by the 2nd respondent and finally the right to be heard by an independent and impartial tribunal were infringed. These breaches, considered singly, and cumulatively established the appellant’s assertion that he was not afforded a fair hearing. This conclusion is reached irrespective of the strength or otherwise of the charges that were laid against him in the motion of impeachment.
38. What remedy is available to the court in such circumstances to vindicate the appellant’s infringed rights? As stated earlier in this Judgment, the appellant cannot be reinstated back to the office of speaker because the term of office of the second County Assembly of Kisumu has expired. However, it is clear to this Court that the right of the appellant as an employee of the 2nd respondent were infringed. His legitimate expectation to remain employed as speaker for the full term of the 2nd respondent was abridged. He lost income which was due to him in form of a salary and allowances.
39. This Court in *Gitobu Imanyara & 2 others v Attorney-General* [2016] eKLR held thus:

“...it seems to us that the award of damages for constitutional violations of an individual’s right by state or government are reliefs under public law remedies within the discretion of a trial court, however, the court’s discretion for award of damages in Constitutional violation cases though is limited by what is “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional



remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In other, an award of reasonable damages may be called for in addition to the declaration...”

40. We hold that the appellant is entitled to the vindication of his violated rights more so since it caused loss earnings as a result of the 2nd respondent’s unlawful and unconstitutional conduct. We form the view that the payment of six (6) months’ salary, including all allowances due to him shall be adequate assessment of damages.
41. In the premises, therefore, the following are the final orders of the Court:
- i. The appeal by the appellant succeeds and is allowed as follows:
 - a. The appellant’s right to fair hearing and fair administration action were violated and breached by the 2nd respondent when it purported to impeach the appellant, who was the speaker of the second County Assembly of Kisumu.
 - b. The appellant shall be paid reparation of six (6) months’ salary (including all the allowances due to him) by the 2nd respondent.
 - c. The appellant shall have the costs, both in the Employment and Labour Relations Court and before this Court.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF FEBRUARY, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

SIGNED

DEPUTY REGISTRAR

