



**Republic v Elgeyo Marakwet County Assembly Service Board & 2
others; Kiptum (Exparte Applicant) (Judicial Review E004 of 2023)
[2025] KEELRC 331 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 331 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
JUDICIAL REVIEW E004 OF 2023
MA ONYANGO, J
FEBRUARY 7, 2025
IN THE MATTER OF ARTICLES 1,2,3(1),22,27,28,32,47,48,50
AND 159 OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT,2015
AND
IN THE MATTER OF THE COUNTY ASSEMBLY SERVICES ACT, NO.27 OF 2017
AND
IN THE MATTER OF THE COUNTY GOVERNMENT ACT, NO.17 OF 2012
AND
IN THE MATTER OF ORDER 53 CIVIL PROCEDURE RULES,2010
AND
IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW
REFORM ACT, CHAPTER 26 OF THE LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

AND

**THE ELGEYO MARAKWET COUNTY ASSEMBLY SERVICE
BOARD 1ST RESPONDENT**

THE ELGEYO MARAKWET COUNTY ASSEMBLY 2ND RESPONDENT



**THE HONOURABLE SPEAKER, ELGEYO MARAKWET COUNTY
ASSEMBLY 3RD RESPONDENT**

AND

JANE JEBIWOTT KIPTUM EXPARTE APPLICANT

JUDGMENT

1. Pursuant to leave of court dated 17th November 2023, Jane Jebiwott Kiptum (hereinafter, the Applicant) filed a Notice of Motion dated 28th November 2023, seeking the following orders: -
 - a. Certiorari to bring before this court and quash the decisions of the 1st Respondent, Elgeyo/Marakwet County Assembly Service Board, taken on 24th October, 2023 and 14th November, 2023 to suspend the Ex-Parte Applicant from service and recommending for the revocation of the Ex-parte Applicant's employment as the Clerk of the Elgeyo/Marakwet County Assembly.
 - b. Prohibition to prohibit the Respondents whether by themselves, their servants, agents, officers or whosoever otherwise in any manner whatsoever unlawfully acting or continuing to act upon or enforcing or continuing to enforce or maintaining or continuing with the motion or hearing for purposes of revoking the Appointment of the Ex-Parte Applicant or to otherwise take action against applicant based on the decisions of the 1st Respondent taken on 24th October,2023 and 14th November,2023.
 - c. Prohibition to prohibit Respondents whether by themselves, their servants, agents, officers or whosoever otherwise from unlawfully taking action attempting to take any action with respect to any further investigation leading to the revocation of the appointment of the Ex-Parte Applicant as the Clerk of the County Assembly of Elgeyo Marakwet or in any manner whatsoever from carrying out any processes based on the decision issued by the 1st Respondent on 24th October, 2023 and 14th November,2023 and / or at the behest of the 1st Respondent or its own motion.
 - d. Costs of the suit are awarded to the Ex-parte Applicant.
2. The application is supported by Verifying Affidavit and Supporting Affidavit of the Applicant, and is based on the following grounds in the Statutory Statement dated 28th November 2023: -
 - i. The 1st Respondent made a decision on 24th October, 2014 to suspend the Ex-parte Applicant from service without any justifiable basis and prior notification of the allegations against her hence the decision is irrational and unreasonable.
 - ii. The 1st Respondent denied the Ex-parte Applicant an opportunity to adequately prepare herself for her Defence by failing to supply particulars of the Charges within a reasonable timeline hence depriving her of the constitutional right to a fair hearing.
 - iii. The 1st Respondent failed to furnish with sufficient particulars of the Charges and evidence to be relied on hence depriving the Ex-parte Applicant of her right to a fair hearing.
 - iv. The 1st Respondent disregarded and or dismissed the Ex-Parte Applicant's Response to the allegations against her without being given reasons for the dismissal.



- v. The 1st Respondent denied the Ex-parte Applicant the opportunity to cross-examine persons who raised the allegations against her thereby depriving her of the opportunity to test the veracity of the allegations which is a breach of the Rules of Natural Justice.
- vi. The 1st Respondent's Board members arrogated themselves the duty to adjudicate on issues they had personal interest on breaching the Rule against biasness, impartiality and conflict of interest.
- vii. The 3rd Respondent acted in an irrational manner by indicating that the proceedings before the 1st Respondent are not quasi-judicial whereas the proceedings were adjudicatory in nature.
- viii. The 3rd Respondent proceeded to commit the 1st Respondent's Report to a Select Committee without an appropriate Motion being moved at the County Assembly thereby breaching the express provisions of section 23 (2 & 3) of the County Assembly Services Act, 2017 making the decision unlawful.
- ix. The 3rd Respondent has planted his cronies in the Select Committee with the intention of influencing the proceedings before it and depriving the Ex-parte Applicant of a fair process thereby manipulating the ultimate decision to suit an ulterior motive.

The Applicant's Case

3. In the supporting affidavit of the Applicant sworn on the 28th November 2023, she avers that pursuant to Section 12 of the County Government Act she was appointed the Clerk to the County Assembly on 14th January 2014 having been competitively recruited. She deposed that she has served as the administrative head of the Assembly for about 10 years diligently executing her responsibilities and effecting transformative changes to improve the institution without any disciplinary or integrity concerns.
4. It is the Applicant's case that on 24th October 2023, she was called by the Speaker of the County Assembly, the 3rd Respondent herein, to attend an informal meeting of Members of the County Assembly popularly known as Speaker's Kamukunji. While at the meeting, the members raised some issues on both administrative and management of the County Assembly. According to the Applicant, she was requested by the Speaker to respond comprehensively to the issues raised before the board.
5. The Applicant contends that during the meeting, the Speaker, as the Chairperson of the Board asked her to step out of the meeting as the issues raised in the Speaker's Kamukunji touched on her office. She was later served with a letter of suspension, suspending her for 90 days on the same date.
6. She avers that she was shocked because she was never given an opportunity to explain herself yet a drastic decision had been made against her.
7. The Applicant avers that she wrote to the Chairperson of the County Assembly Service Board requesting for particulars of the Charges as the Charges were generic and ambiguous making it difficult for her to respond. That she was given the particulars of the Charges at 9.00 p.m. or thereabouts on the eve of the date she was to make her representation before the Board. That nonetheless, she responded to each and every issue contained in the Charge.
8. It is the Applicant's contention that on 2nd November 2023, she appeared before the 1st Respondent in the company of her advocate and sought clarification from the Chairperson as to whether there were other documents to be relied on in prosecuting the charges against her. The response was that there were no other documents or witnesses to be called. She states that she made both oral and written representation before the Board explaining in detail the issues raised in the Charge and the particulars



of the Charge. That at the end of the session only one Board member asked for clarification on her presentation which she avidly responded to, in her belief, to their satisfaction.

9. The Applicant stated that on 15th November 2023, she received communication from the Speaker informing her that a Select Committee had been constituted to consider the Board's recommendation that her appointment be revoked.
10. The Applicant averred that the Board's observation on her Response was a casual dismissal of all her explanations and representations which were never controverted or challenged during the hearing. That even though the Chairperson ruled during the hearing that the Board sitting to hear her presentation over the charges is not sitting as a quasi-judicial authority, the decision made therein was adverse and did not adhere to the rules of natural justice.
11. The Applicant contends that her rights to fair hearing were violated as she was not given sufficient information and particulars of the charges and all the documentary evidence to enable her respond adequately. Further, that the decision against her was made based on documents which were not served on her which is a blatant breach of her fundamental rights.
12. The Applicant also alleged that no motion was submitted by the Board to the Speaker seeking the revocation of her appointment as a Clerk as envisaged by section 23(4) of the County Assembly Service Act, 2017. According to her, the Speaker only reported to the Assembly that he had received a report from the Board recommending that her appointment be revoked without a Motion.
13. The Applicant states that there will be no other outcome from the proceedings of the Select Committee other than the revocation of her appointment since the committee will be relying on a report of the Board which she alleges is a product of an unjust processes.
14. The Applicant thus seeks that the court examine the process undertaken by the Respondents against her. She states that she stands to suffer irreparably if the offensive acts by the Respondents are not redressed at this stage as their decision will have far-reaching implications on her career and professional development.

The Respondents' case

15. The Respondents filed a Replying Affidavit sworn on 11th December 2023 by P.K. Sabulei, the Chairperson of the 1st Respondent and Speaker of the 2nd Respondent. He described the application as frivolous, vexatious, devoid of merit and marred with half-truths.
16. The Respondents aver that the instant application was filed without adherence to the doctrine of exhaustion since the process of disciplinary hearings and processes that were commenced against the ex-parte Applicant were still in progress and the present judicial review application was deliberately filed to stop the Respondents from performing their functions as contemplated under the [County Assembly Services Act](#), the [County Governments Act](#) as well as the County Assembly Powers and Privileges Act.
17. It is deposed that the Judicial Review filed herein is speculative as the Ex-parte Applicant seems to be apprehensive that the motion on allegations of incompetence, violation of the [County Assembly Services Act](#) and [Public Finance Management Act](#) and gross misconduct, which is yet to be debated by the 2nd Respondent, might result in her removal from office.
18. The Respondents contend that the Applicant is inviting the court to find that the grounds for her intended removal, and the motion anchored thereon are unfounded thereby inviting the court to review the merit of her case in blatant violation of the powers donated to this court in entertaining judicial review applications. In addition, it is contended that the Ex-parte applicant has not tendered



- any evidence of exceptional circumstances that would warrant the court's intervention in the 1st Respondent's disciplinary process.
19. The Respondents contend that the Ex-Parte applicant has further failed to tender any evidence of documents she claims were relied on but were never served upon her and were allegedly used by the 1st Respondent to arrive at its decision. The Respondents maintained that they strictly followed the process set out in the law, which procedure is designed to afford the Applicant a fair hearing.
 20. It is the Respondents' case that a members' Kamukunji was convened by the members of the 2nd Respondent, where serious complaints were made against the Ex-parte Applicant as a result of which the 1st Respondent retired to consider the complaints.
 21. It is averred that after the deliberation, and subsequent investigations, the 1st Respondent concluded that the allegations against the applicant were well founded and initiated the process that would lead to the removal of the applicant from office unless she advanced plausible explanation for the allegations. That the charges were prepared and the ex-parte applicant invited to respond to the charges against her in writing and also appear before the 1st Respondent to defend herself. That the charges availed to the applicant contained the grounds for her removal and the facts in support of the grounds.
 22. According to the Applicant, on the face of the charges, the complaints were not general challenges arising from day-to-day operation in any institution but related to the Applicant's failure to disclose releases by the exchequer amounting to Kshs 4.8 million transferred from National Treasury to the County Assembly Accounts during FY ending 30th June 2022 which the 1st Respondent considered as a serious allegation that required interrogation.
 23. The Respondents further contend that a day before the hearing, the ex-parte applicant requested to be furnished with further and better particulars which request was considered, and she was availed all the documents she requested for to enable her answer to the charges presented. That she appeared before the 1st Respondent accompanied by her advocate and presented her response and members of the 1st Respondent even sought clarification from the Applicant.
 24. The Respondents state that the 1st Respondent considered the materials placed before it, to wit, the complaint as well as the explanation made by the Applicant and concluded that on the basis of the evidence before it, the Applicant had committed serious violations of *the Constitution* and the law. That based on the violations, the Applicant was liable to be removed from office, a decision which was communicated to the ex-parte Applicant.
 25. It is averred that the 1st Respondent forwarded its motion to the 3rd Respondent as required by the law, that the 3rd Respondent then formed a Select Committee and the Applicant was invited for a hearing. It is therefore the Respondents' case that the Applicant still has an opportunity to present her case before the select committee
 26. The 1st Respondent denies that it breached any rules of natural justice and maintains that it considered the explanation given by the ex-parte applicant and arrived at a conclusion based on cogent evidence against her. In addition, the 1st Respondent contends that the 2nd Respondent and its sub-committees is empowered by law to dismiss the motion if they find that the charges against the applicant are not merited.
 27. In the end, the Respondents argued that the applicant is in blatant violation of the Respondent's hallowed rights and the court was urged to dismiss the judicial review application with costs.



28. The 1st Respondent also filed a Replying Affidavit on 23rd May 2024 sworn by P.K Sabulei. By and large, that affidavit reiterates the contents of the Respondents' Replying Affidavit sworn on 11th December 2023. In addition, it is contended that the Board has the power to exercise disciplinary control over the officers for any actions connected to the exercise of their duties and functions. In this regard, the 1st Respondent averred that the Board has the power to suspend or remove from office the Clerk for, among other reasons, incompetence, gross misconduct or misbehavior in violation of the Constitution or the County Assembly Services Act.

The Submissions

29. The application was canvassed by way of written submissions. The ex-parte Applicant's submissions are dated 20th September 2024 while the 1st Respondent's submissions are dated 26th September 2024. The parties broadly reiterated their respective arguments in their pleadings before the court.

Analysis and Determination

30. Upon careful consideration of the respective facts as presented by the parties herein, together with the rival submissions, the issue that falls for determination is whether the Applicant merits the grant of the judicial review orders sought.
31. In judicial review proceedings the court is not concerned with the merits of the case but with the decision-making process.

The Supreme Court practice 1997 vol 53/1-14/6 states:

“The remedy of judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but the decision making process itself. It is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute by law the decision in the matter in question.”

32. In the case of Republic v National Land Commission and another; Ex parte Farmers Choice Limited [2020] eKLR, the Court explained the concept of judicial review, whilst relying on the case of Municipal Council of Mombasa v Republic Umoja Consultants Ltd, Nairobi Civil Appeal No.185 of 2007 (2002) eKLR, as follows: -

“The Court would only be concerned with the process leading to the making of the decision. How was the decision arrived at? Did those who made the decision have the power i.e the jurisdiction to make it. Were the persons affected by the decision heard before it was made. In making the decision, did the decision maker take into account relevant matters or did they take into account irrelevant matters. These are the kind of questions a court hearing a matter by way of judicial review is concerned with, and such court is not entitled to act as a Court of Appeal over the decider. Acting as an appeal court over the decider would involve going into the merits of the decision itself - such as whether this was or there was no sufficient evidence to support the decision and that as we have said, is not the province of Judicial Review.”

33. The power to suspend and/or remove a Clerk of a County Assembly is vested in the County Assembly Service Board by section 22 of the County Assembly Services Act which provides as follows: -



22. The Board may suspend or remove from office, the Clerk for
- (a) inability to perform the functions of the office, whether arising from infirmity of body or mind;
 - (b) gross misconduct or misbehaviour;
 - (c) incompetence;
 - (d) bankruptcy;
 - (e) violation of the provisions of the Constitution, including Chapter Six of the Constitution; or
 - (f) violation of the provisions of this Act.
34. Section 23 of the County Assembly Services Act governs the process for the removal of a Clerk of a County Assembly. It provides: -
23. Procedure for removal of the Clerk
- (1) Where the Board considers it necessary to remove the Clerk under section 20, the Board shall—
 - (a) frame a charge or charges against the Clerk;
 - (b) forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges;
 - (c) invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and
 - (d) invite the Clerk to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.
 - (2) If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Clerk.
 - (3) A motion under subsection (1) shall specify—
 - (a) the grounds set out in section 21 in which the Clerk is in breach; and
 - (b) the facts constituting that ground.
 - (4) Upon notice of the motion under subsection (2), the Speaker shall refer the matter to a select committee of the assembly consisting of eleven members and established in accordance with the Standing Orders of the assembly to investigate the matter within ten days of receipt of the motion.
 - (5) The select committee shall, within ten days, report to the assembly whether it finds the allegations against the Clerk to be substantiated.
 - (6) The Clerk shall have the right to appear and be represented before the select committee during its investigations.



- (7) The assembly shall consider the report of the select committee and resolve whether to approve the motion.
- (8) If the assembly approves a motion filed under this section, the Clerk against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved.

35. The disciplinary proceedings against the Applicant were commenced by the County Assembly Service Board of Elgeyo Marakwet, the 2nd Respondent herein, vide a letter dated 24th October 2023 which is reproduced hereunder:

24th October 2023

Ms. Jane Mutai

The Clerk

County Assembly of Elgeyo Marakwet

PO Box53-30700

Iten

Dear Madam,

RE: SUSPENSION AS THE CLERK, ELGEYO MARAKWET COUNTY ASSEMBLY

The County Assembly Service Board (CASB) of Elgeyo Marakwet County is established under section 12 of the [County Governments Act](#) as an independent institution of exemplary administrative and technical competence. The Board exercises disciplinary control over the officers of the Service. Section 22 of the [County Assembly Services Act](#) provides for suspension or removal of the Clerk of the County Assembly.

The Board has received complaints touching on your conduct as the Clerk of the County Assembly of Elgeyo/Marakwet and as the Secretary to the Board. The grounds are grave and constitutes grounds for your suspension from office pending investigations. To allow thorough & objective review of matters at hand, the Board has decided to suspend you from holding office as the Clerk of Elgeyo/Marakwet County Assembly for a period of 90 days. If the charges constitute grounds for removal, then the Board will commence the process in accordance with provisions of the County Assembly Service Act.

We hereby bring to your attention the following reasons for your suspension;

- i. Frequent delays in processing Members per diems and salaries and failure to implement the imprest system as per the requirements of [Public Finance Management Act](#).
- ii. Insubordination
- iii. Failure to implement County Assembly Service Board resolutions
- iv. Failure to undertake administrative support to Honourable Members and staff
- v. Incompetence
- vi. Gross Misconduct



- vii. Violation of the provisions of the Constitution, including Chapter six of the Constitution of Kenya,2010.

In view of the seriousness of the allegations made against you, and in compliance with the provisions of Section 23 of the County Assembly Service Act, you are hereby invited to respond and appear before the Board personally on 2nd day of November 2023 at 9 o'clock without fail, to exculpate yourself. You may be accompanied by an advocate during the hearing.

Meanwhile, you required to hand over all documents and assets in your possession belonging to the Elgeyo/Marakwet County Assembly to the Deputy Clerk, Mr. Elias Maritim. During the suspension period, the Board directs that you keep off the precincts of the Assembly unless otherwise advised.

Authorized by the County Assembly Service Board on this 24th day of October 2023

Signed

Chairman County Assembly Service Board

36. The letter of suspension dated 24th October, 2023 did not comply with section 23(1)(b) of the Act as it did not “forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges”.
37. The charges as framed in the letter of suspension were very general to the extent of being vague, and did not contain any particulars that could enable the Applicant to respond to the same.
38. It is apparent that the 1st and 3rd Respondents realized this serious omission and on 27th October 2023, the Applicant was issued with another letter referenced “Charges on suspension as the clerk, Elgeyo Marakwet County Assembly”. It reads:

Date: 27th October 2023

Ms.Jane Mutai

The clerk

County Assembly of Elgeyo Marakwet

PO.Box 53-30700

ITEN

Dear Madam,

RE: CHARGES ON SUSPENSION AS THE CLERK, ELGEYO MARAKWET COUNTY ASSEMBLY

The above subject matter refers.

Further to the Letter issued to you dated 24th October 2023 by the County Assembly Service Board which suspended you as the Clerk, Elgeyo Marakwet County Assembly, we hereby bring to your attention the following charges and the brief statements of the allegations in support of the charges;

1. Incompetence



- a. Frequent delays in processing of salaries and allowances of Members of County Assembly and staff
 - b. Failure to submit data required by Commission on Revenue Allocation on assembly committees.
 - c. Failure to act on reports of Auditor General on various issues raised thereby leaving a trail of numerous issues over the past financial years
 - d. Failure to advise the board on appropriate designation of staff and their responsibilities
 - e. Failure to undertake and provide administrative support to members of the county assembly
2. Violation of the provisions of the county Assembly Services Act and PFM Act
- a. Failure to disclose exchequer release amounting to Kshs 4.8M transferred from National Treasury to the County Assembly Accounts during FY ending 30th June 2022
 - b. Failure to account for the unexpected differences between the approved budget and actual expenditure resulting to a gap of Kshs 1,379,916 for FY ending 30th June 2022
3. Gross misconduct
- a. Insubordination of the Speaker's Office and the County Assembly Service Board; on several occasions you have failed to adhere to directives of the Speaker and failure to execute the resolutions of the Service Board
 - b. Failing to provide adequate disclosures on the procurement process in line with the procurement plan approved by the Board.

You are reminded to appear before the board in person at the Assembly on 2nd November 2023 at 9 O'clock to answer to the above charges. You may be accompanied by an advocate during the hearing.

Authorized by the County Assembly Service Board on this 27th day of October 2023.

Signed

Chairman County Assembly Service Board

39. The letter dated 27th October, 2023 apart from containing completely fresh charges that were substantially different from those in the letter of suspension dated 24th October, 2023, again did not contain sufficient particulars that would enable the Applicant to adequately respond to the same. The Applicant therefore sought better particulars by her letter dated 30th October, 2023 which were supplied to her at 9.00 pm on the eve of the hearing, thus denying her the right to adequately prepare for the hearing.



40. It was further the Applicants contention that the 1st and 3rd Respondents did not comply with section 23(2) and (3) of the Act as no motion was submitted to the 3rd Respondent as contemplated in the said provisions. Section 23(2) and (3) provide that:
- (2) If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Clerk.
 - (3) A motion under subsection
 - (1) shall specify
 - (a) the grounds set out in section 21 in which the Clerk is in breach; and
 - (b) the facts constituting that ground.
41. From the facts presented in this case, the decision to suspend the Applicant was reached by the Respondents on 24th October 2023, after the informal meeting of Members of the County Assembly dubbed “Speaker’s Kamukunji” where the members raised some issues on both administrative and management of the County Assembly.
42. The Applicant states that she was summoned to the meeting in order to respond to issues that may arise concerning her office but was later asked by the 3rd Respondent to leave the meeting on grounds that she was the subject of the discussions. It was the Applicant’s position that the Speakers Kamukunji was an open forum where she expected to be given an opportunity to respond to the issues raised by the members. Immediately after the meeting she was issued with the letter of suspension.
43. The 3rd Respondent stated at paragraph 11 of his replying affidavit that:
- Further to the foregoing, it is indeed true that a members’ Kamukunji was convened by the members of the 2nd Respondent, where serious complaints were made against the Ex-parte Applicant. The 1st Respondent thereafter retired to consider the complaint by the members and after a lengthy deliberation, it was unanimously agreed that the allegations against the ex-parte applicant were serious and would likely lead to the removal of the ex-parte applicant from office. The 1st respondent therefore invoked the process set out under Section 22 of the *County Assembly Services Act, 2017*.
44. There is no evidence that the 1st Respondent considered the complaints before reaching the conclusion to remove the Applicant from office as the letter of suspension is written on the same day as the Kamukunji. No evidence was adduced of a meeting of the 1st Respondent having taken place on 24th October, 2023.
45. Further, it would not have been possible to consider the allegations raised at the Speakers Kamukunji without asking the Applicant to clarify the same. The decision to suspend the Applicant was therefore made without the Applicant being given a chance to respond to the complaints from the Kamukunji.
46. The only conclusion that can be drawn from the fact that the letter of suspension was written on the same day as the Speakers Kamukunji is that the decision to remove that Applicant from office was made at the Kamukunji, without giving the Applicant an opportunity to respond to the complaints against her before a decision to take adverse action against her was made. The decision was thus made by a person who is not qualified and had no poers to make such decisions. It was thus not an independent decision of the 1st Respondent.



47. It further means that the members of the Assembly who had made the decision to remove the Applicant at the Speakers Kamukunji were the same ones who would constitute the select committee of the Assembly and the Assembly that would eventually determine the fate of the Applicant. The Applicant would thus not be subjected to an independent process.
48. Further, as stated above, the Applicant was issued with two letters with different charges, the second one being five days to the disciplinary hearing. The second letter was further to and not a replacement of the first letter. The Applicant was therefore placed in a situation where she had to respond to both letters, the first of which had no specific charges or particulars. This amounts to denying the Applicant a fair hearing. It further gives the impression that the disciplinary process was hurriedly commenced and convened before the charges could be properly framed and therefore intended to arrive at a predetermined conclusion. The same was therefore not objective or fair.
49. Article 47 of *the Constitution* and the *Fair Administrative Action Act* require that a person likely to be affected by an administrative decision be given a fair hearing. Further Article 236 protects a Public Officer from dismissal or removal from office or being subjected to disciplinary action without due process of the law.
50. In this regard, I find that the Respondents violated the Applicant's Constitutional rights under Article 41, 47 and 236 of *the Constitution*.
51. The Applicant has also faulted the procedure followed by the 1st Respondent is suspending her. According to the Applicant, the suspension was in blatant disregard of section 23(4) of the *County Assembly Services Act* which provides that the Board shall submit a Notice of Motion to the Speaker seeking that the County Assembly adopts the motion to revoke the appointment of the Clerk, but no such Motion was placed before the Speaker.
52. As already stated, the Applicant was suspended by the Board vide a letter dated 24th October 2023. In that letter, she was invited to respond and to appear before the Board on 2nd November 2023. On 31st October 2023, the Applicant wrote to the 1st Respondent requesting to be furnished with further and better particulars. The requested particulars were provided vide a letter dated 1st November 2023.
53. On 2nd November 2023, the Applicant appeared before the Board with her advocate. The minutes of the proceedings of 2nd November 2023 indicate that the Advocate raised concerns whether the documents served upon the Applicant were the only documents to be relied upon in the proceedings and whether there would be an opportunity for the applicant to cross examine witnesses. The Advocate further inquired if any other documents not served upon the Applicant would be provided to the Applicant and whether she would be given another opportunity to appear before the board.
54. The 3rd Respondent forwarded the report of the 1st Respondent to the 1st Respondent on 14th November 2023, following which a select Committee was set up to consider the Report and report back to the 2nd Respondent.
55. The Applicant questioned the procedure adopted in sending the report of the 1st Respondent to the 2nd Respondent which she submitted did not comply with section 23 of the *County Assembly Services Act*.
56. Under section 23(2) of the *County Assembly Services Act*, the Board is required to submit a notice of motion to the speaker seeking that the county assembly revokes the appointment of the clerk. There is no evidence that this was done. What the 3rd Respondent attached to his affidavit at annex "PKS1" which he refers to as the motion is a letter forwarding the report of the 1st Respondent to the 2nd Respondent.



57. The Hansard for 14th November, 2023 does not refer to a motion but a report. It reads:

“Communication from the chair

Formation of a select committee

Honourable members, I have a special communication to make to the house. I am in receipt of the report by the County Assembly Service Board in respect to the suspension of of the Clerk, Madam Jane Mutai. The report recommends that the appointment of the Clerk be revoked.

Pursuant to the provisions of section 23 of the County Assembly Service Act, I shall refer the matter to a select committee of the County Assembly consisting of 11 members. I therefore direct that the selection committee to constitute the select committee for approval of this house. Thank you.”

58. The Hansard for 15th November, 2023 also does not refer to a motion. It reads:

“Whereas, pursuant to Section 23(2) of the County Assembly Service Act, 2017, on 14th November, 2023, the Hon. Speaker of the County Assembly of Elgeyo/Marakwet notified the County Assembly on the receipt of the report from the County Assembly Service Board seeking the County Assembly to institute a motion to revoke the appointment of Ms. Jane Mutai as the Clerk of the County Assembly of Elgeyo/Marakwet.

And whereas Section 23(4) of the County Assembly Service Act, 2017 provides that the matter shall be referred to Select Committee of the County Assembly comprising of eleven of its members and established in accordance with the Standing Orders of the Assembly to investigate the matter and report within ten days...”

59. I have further perused the report of the County Assembly Service Board at pages 118 to 155 of the Applicant’s documents and confirmed that there is no motion attached to the report.

60. No evidence was tabled before court to confirm that the Board forwarded a Motion as required by law before or after the Speaker forwarded the report to the County Assembly. Section 23(4) of the Act requires that the Speaker should receive the Motion from the Board.

61. In view of the foregoing, it is the finding of this court that the decision made by the Speaker to forward the report to the County Assembly to constitute a Select Committee without receiving the Motion from the Board was in violation of section 23(3) and (4) of the *County Assembly Services Act*.

62. From the evidence on record, it is the finding of the Court that the process of removal of the Applicant from the position of clerk of the county Assembly of Elgeyo Marakwet did not comply with the provisions of section 23 of the County Assembly Service Act. The Process was further in violation of section 4 of the *Fair Administrative Action Act* and Articles 47 of *the Constitution*.

63. I therefore issue the following orders:

1. An order of Certiorari to bring before this court and quash the decisions of the 1st Respondent, Elgeyo/Marakwet County Assembly Service Board, taken on 24th October, 2023 and 14th November, 2023 to suspend the Ex-Parte Applicant from service and recommending for the revocation of the Ex-parte Applicant’s employment as the Clerk of the Elgeyo/Marakwet County Assembly.



2. An order of Prohibition to prohibit the Respondents whether by themselves, their servants, agents, officers or whosoever otherwise in any manner whatsoever acting or continuing to act upon or enforcing or continuing to enforce or maintaining or continuing with the motion or hearing for purposes of revoking the Appointment of the Ex-Parte Applicant or to otherwise take action against applicant based on the decisions of the 1st Respondent taken on 24th October, 2023 and 14th November, 2023.
3. An order of Prohibition to prohibit Respondents whether by themselves, their servants, agents, officers or whosoever otherwise from taking action, attempting to take any action with respect to any further investigation leading to the revocation of the appointment of the Ex-Parte Applicant as the Clerk of the County Assembly of Elgeyo Marakwet or in any manner whatsoever from carrying out any processes based on the decision issued by the 1st Respondent on 24th October, 2023 and 14th November, 2023 and / or at the behest of the 1st Respondent or its own motion.
4. Costs of the suit are awarded to the Ex-parte Applicant.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 7TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

