



**Apuko, The Clerk, County Assembly of HomaBay v Gaya, The
Speaker, County Assembly of HomaBay & 2 others (Petition
E022 of 2024) [2025] KEELRC 1741 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1741 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION E022 OF 2024

JK GAKERI, J

JUNE 16, 2025

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

IN THE MATTER OF SECTIONS 5, 45 & 46 OF THE EMPLOYMENT ACT OF 2007

AND

IN THE MATTER OF SECTION 12 & 13 OF THE COUNTY GOVERNMENTS ACT, 2012

AND

**IN THE MATTER OF SECTION 5, 10, 17, 19, 22, 23
OF THE COUNTY ASSEMBLY SERVICE ACT, 2017**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTION 9(2)(D)
OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT 2017**

AND

**IN THE MATTER OF VIOLATION AND CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS GUARANTEED UNDER
ARTICLES 10, 27, 28, 29, 41, 47 AND 236 OF THE CONSTITUTION**

BETWEEN

**FAITH ADHIAMBO APUKO, THE CLERK, COUNTY ASSEMBLY OF
HOMABAY PETITIONER**

AND

**HON JULIUS O GAYA, THE SPEAKER, COUNTY ASSEMBLY OF
HOMABAY 1ST RESPONDENT**



RULING

1. Before the court for determination is the Petitioner’s Notice of Motion dated 10th July, 2024 filed under Certificate of Urgency seeking Orders that:
 1. Spent
 2. A conservatory Order be issued staying the decision of the 2nd Respondent County Assembly of Homa Bay, dated and issued on 9th July, 2024 as communicated by the 1st respondent Hon. Julius O. Gaya suspending the Applicant from office as Clerk County Assembly of Homa Bay and Secretary to the County Assembly Service Board pending the hearing and determination of the Petition.
 3. A conservatory Order to issue restraining all the respondents (1) Hon. Julius O. Gaya – Speaker County Assembly of Homa Bay and or any person exercising the functions of that office, (2) the 2nd respondent, Homa Bay County Assembly Service Board from relying on the purported suspension and letter dated 9th July, 2024 to anchor and commence a process aimed at terminating the services removing from office and or otherwise replacing the Petitioner Faith Adhiambo Apuko from her position, Clerk County Assembly of Homa Bay and Secretary Homa Bay County Assembly Service board and Authorised Officer and or exercising and assigning the functions of her office, duties, powers and roles as spelt out under the law, unless due process and the legal process spelt out under the County Assembly Service Act pending the hearing and determination of the Petition.
 4. The court be pleased to issue a conservatory Order restraining the respondents from removing and or otherwise interfering with the Petitioner’s mandate, duties, functions and roles as an Accounting Officer and Secretary to the Bank Accounts of the County Assembly of Homa Bay and Homa Bay County Assembly Service Board, pending hearing and eventual determination of this petition.
 5. The court be pleased to issue a conservatory Order restraining the respondents from advertising, short listing, recruiting or appointing any person whether in acting capacity and or otherwise as a substantive holder of the office of the clerk, County Assembly of Homa Bay pending the hearing and determination of the Petition.
 6. In view of the urgency of the matter in the event there is any other statutory dispute resolution mechanism, the Applicant be exempted and be allowed to first approach this court as opposed to such other dispute resolution forum.
 7. Such orders be issued and directions be given as shall protect public funds and ensure continued service delivery at the County Assembly of Homa Bay and at and by the County Assembly Service Boar, in the public interest.
 8. Costs of this application be provided for.
2. The Notice of Motion is expressed under Rule 7(1), 17(1) and 28(1)(g) of Employment and Labour Relations Court (Procedure) Rules, 2016, Section 12(1)(a) and (3)(i) and (iii) of the *Employment and*



Labour Relations Court Act and Section 9(4) of the Fair Administrative Action Act and is based on the grounds set out on its face and the Supporting Affidavit of the applicant sworn on 10th July, 2024.

3. The affiant's case is that she is the Clerk, County Assembly of Homa Bay and doubles up as Secretary Homa Bay County Assembly Service Board having been appointed on 10th February, 2022 after a competitive process and was thus a public officer entitled to the rights under Article 236 of the Constitution of Kenya.
4. The gravamen of the applicant's case is that on 9th July, 2024, she received a letter of suspension from the office of Clerk and alongside the letter, the respondents directed employees of the County Assembly not to deal with her.
5. The affiant deposes that the suspension letter and notification to employees of the County Assembly not to deal with her were issued without due process as she was not heard, the suspension letter contained generalized allegations and was thus condemned unheard.
6. The affiant further deposes that the decision to suspend her was unlawful, illegal and made in a rush without reasons and thus an unfair administrative action.
7. That efforts to explain to the 1st respondent that execution of duties of Accounting Officer are guided by the Public Service (values and Principles) Act and the Public Finance Management Act and as such could not access public funds and dish out.
8. That the speaker and members of the 2nd respondent have ignored the affiant's pleas, the genesis of her problems with the 1st respondent who has since taken over the role of Clerk in the County Assembly Service Board and purported to bar the affiant from accessing her work station.
9. The affiant deposes that she was apprehensive that her employment would be terminated unfairly.
10. According to the affiant public funds are likely to be squandered, plundered, misused or applied contrary to the provisions of the Public Finance Management Act.

Response

11. In their grounds of opposition dated 21st July, 2024, the respondents contend that the 2nd respondent is mandated by the Constitution of Kenya and the County Assembly Services Act and other statutes and rules or regulations to deal with the applicant as it did and was thus seeking to halt a lawful and legitimate process without sound reasons.
12. That the applicant was seeking orders tantamount to asking the court to micromanage an employer-employee relationship.
13. The respondents argued that the petition as drafted or drawn was incurably and fatally defective and an abuse of court process.

Response by 2nd respondent

14. By Replying Affidavit sworn by Hon. Joan Minsari Ogada, a member of the 2nd respondent, the affiant deposes that the 2nd respondent was the applicant's employer and in exercise of its powers discovered discrepancies in the administration of budgeted finances by the Petitioner and devised a course of action, first by framing the thematic areas to be responded to and the suspension notice accorded the applicant, 10 days to prepare and present her defence to the issues raised for purposes of a hearing and the specific framed charges were served vide letter dated 10th July, 2024.



15. That in lieu of responding to the charges, the applicant filed the instant suit and if she had any misgivings about the Speaker's impartiality, he could recused himself.
16. The affiant further deposes that since the applicant's conduct was in issue, it was administratively and logistically fair that the functions of the office be discharged by another person who could avail the documentation required by the Petitioner or the board.
17. That the process of removing the applicant from office was elaborate and extensive and hearings are provided for.
18. The affiant deposes that the charges framed against the applicant were also intended to prevent events similar to those in the past to prevent loss of public funds.
19. In her Replying Affidavit, Hana Awino Ager, the Acting Clerk deposes that she was appointed on 10th July, 2024.
20. That the Board meeting held on 9th July, 2024 resolved to suspend the claimant for investigations into her conduct.
21. That a letter dated 10th July, 2024 informed the applicant about her suspension and charges against her and was asked to hand over vide letter dated 11th July, 2024.
22. The affiant deposes that investigations were-on-going on complaints raised anonymously.
23. The affiant deposes that the investigations related to;
 - a. Sanctioning release of Kshs.4,715,400.00 to M/s Jabali Logistics Ltd for incomplete work.
 - b. Payment voucher was signed for the accountant and the applicant also signed.
 - c. Sanctioning release of Kshs.2,718,009.00 to M/s Aydenew General Enterprises before the relevant committee accepted the project and the payment voucher was not signed by the Chief Finance Officer and signed for by the accountant.
 - d. Failing to account for money allocated to certain budgetary votes such as travelling allowance and Assembly attendance allowance.
24. The affiant further deposes that the Ethics and Anti-Corruption Commission (EACC) had filed and was prosecuting Hartland Enterprises Ltd & others in High Court at Nairobi ACEC Suit NO. 30 of 2022 EACC v Hartland Enterprises Ltd and the Applicant is the 5th Defendant for the recovery of Kshs.36,270,032.68.
25. The affiant deposes that after the applicant's suspension Hana Awino Ager was appointed the Acting Clerk of the Homa Bay County Assembly vide Gazette Notice No.8874 of 15th July, 2024 and banks were notified of the applicant's suspension.
26. In a Supplementary Affidavit sworn on 11th September, 2024, the applicant deposes that on 11th July, 2024 she received the statement of the allegations dated 10th July, 2024 and on the following day received a letter from the 1st respondent through one Hannah Awino Ager to hand over the office to the chairperson of the board and on 13th July, 2024 received an email from Hannah Awino Ager on appearance before the Central Bank of Kenya to surrender tokens and hand over.
27. The affiant deposes that she responded to the allegations on 21st July, 2024 and forwarded the same to the 1st respondent and received a letter dated 19th July, 2024 to appear before the County Assembly Service Board on 22nd July, 2024.



28. The affiant states that on 8th August, 2024, the Board commenced a different process based on different reasons and facts pending the application in court and on 3rd September, 2024, the affiant received a letter from Hannah Awino Ager demanding security documents during suspension.
29. That the suspension without due process was stage setting for her removal from office.
30. The affiant further deposes that on 29th August, 2024, the County Assembly Service Board placed an advertisement in the Daily Nation at page 4 that she was on suspension and thus not authorised to transact business on behalf of the respondents.
31. In a Further Affidavit sworn in March, 2025, Hon. Joan Minsari Ogada deposes that since Mr. Julius O. Gaya was no longer the Speaker of the Homa Bay County Assembly, the applicant's fears of malice had no basis and the Petition and application herein had been overtaken by events.
32. That all issues raised in court could be raised before the Board which is independent and for applicant to exhaust internal dispute resolution mechanisms.
33. That any personal bad blood between the applicant and the former Speaker was specific to them, not the Board.
34. In response to Hon. Joan Minsari Ogada's Further Affidavit, the Applicant vide Affidavit sworn on 11th March, 2025 deposes that M/s Ogada's affidavit did not respond to the issues raised by the Petition and violation of her rights by Mr. Gay which the Board ratified.
35. That the affidavit confirmed that the Board had no reason to suspend the applicant but remains on suspension.

Applicant's submissions

36. On the principles that govern the grant of conservatory Orders, counsel for the applicant relied on the sentiments of the court in *Wilson Kaberia Nkunja v The Magistrates and Judges vetting Board and others* [2016] eKLR, namely: establishment of a prima facie case with likelihood of success, whether if the orders are not granted the Petition alleging violation of or threats of violation will be rendered nugatory and public interest and urged that the list was not exhaustive.
36. Reliance was also placed on the sentiments of the Court of Appeal in *Naftali Ruthi Kinyua v Patrick Thuita Gachure & another* [2015] eKLR where the court cited the sentiments of Lord Diplock in *American Cyanamid v Ethicon Ltd* [1975] AC 396 on the essence of establishing a prima facie case.
37. Counsel relied on Articles 22(1) and 258(1) of *the Constitution* of Kenya on the right to institute proceedings in the event a right or fundamental freedom has been denied, infringed or threatened, to submit that although the County Assembly had the power to suspend the Clerk from office, she was protected by Article 236 of *the Constitution* as a public officer as regards due process and Article 47 on Fair Administrative action.
38. According to counsel, these provisions were not considered in the suspension of the applicant.
39. Counsel further, submitted that the letter of suspension dated 9th July, 2024 did not disclose any ground of suspension of the County Assembly Clerk and will suffer prejudice if conservatory Orders are not granted as the applicant will have lost her job.
40. According to counsel, the suspension was done without notice or justifiable reason and due process and the suspension was illegal and unlawful.



41. Counsel argued that the suspension was a final punishment on the applicant but equally submitted that there was a risk that applicant could be removed from office without due process as ordained by the provisions of Articles 20(1), 27, 28, 41(1) and 5 of *the Constitution* of Kenya and *Fair Administrative Action Act*.
42. Reliance was placed on the decision in Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General [2011] eKLR.
43. According to counsel, the court should interrogate whether the suspension of the applicant offended Article 47 of *the Constitution* of Kenya and Section 7 of the *Fair Administrative Action Act* on expeditious, reasonable and efficient administrative action.
44. Counsel urged that as no investigations were on-going or contemplated and the applicant's suspension was unfair and conservatory Orders were merited.
45. According to counsel, the applicant's suspension was an end to itself and unlawful for want of due process and fair administrative action and conservatory Orders would safeguard the substratum of the litigation.

2nd and 3rd Respondent's submissions

46. The skeleton submissions of the 2nd and 3rd respondents addressed the nullus principle with respect to the two (2) letters of appointment of the Petitioner, purportedly authored by different persons, to argue that they could be both genuine and a forensic examination was necessary.
47. Counsel urged that the author and protagonist of a criminal enterprise ought not to benefit from his wrongdoing, citing the decision of the Supreme Court of India in Union of India & Others v Major General Madan Lal Yadav [1996] AIR 1340 as well as the sentiments of Kuloba J in Gabriel Mbui v Mukindia Maranya [1993] eKLR, to urge that the Petitioner ought not to be heard on account of her wrongdoing.
48. Another issue raised is that the court lacks jurisdiction to hear and determine the matter on account that the issues raised relate to the appointment of one Hannington Day as his gazettement as Acting Clerk of Homa Bay County Assembly a statutory office citing the Court of Appeal decision in Governor County Government of Kakamega & 4 Others v Omweno & 12 others [2025] KECA 190 (KLR).
49. Relatedly, the issues raised related to recruitment selection appointment and qualification attached to any office citing Hussein Wanyana Mulebo & 5 others v County Public Service Board & 2 Others [2022] eKLR and Section 87 of the *Public Service Commission Act* and the Petition did not raise any constitutional issue.
50. Counsel submitted that guided by the sentiments of Nyarangi JA in Owners of Motor vessel "Lillian S" v Caltex Oil (K) Ltd [1989], the court has no jurisdiction to hear and determine the petition.

2nd Respondent's submissions

51. Counsel relied on the principle of exhaustion to urge that the issues raised by the Petitioner ought to have been her defence before the 2nd respondent and should have accorded it an opportunity to make a decision before invoking the court's jurisdiction did not wait.



52. According to counsel, the Petitioner ought to have written a demand letter to the respondents, object to the disciplinary process and respond to the notice to show cause to urge that since none of the steps were taken, the 2nd respondent was condemned.

Applicant's response

53. In response to the submissions of the 2nd and 3rd respondents, counsel cited the sentiments of the Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR on conservatory Orders to submit that the respondents had misapprehended the law and urge that at this stage, the court should restrict itself to whether interlocutory reliefs sought should be granted, whether the case is arguable and not frivolous, or whether the suit will be rendered nugatory if the reliefs are not awarded and it was in the public interest to grant the orders.
54. Counsel urged that the orders sought by the Petitioner at this stage were as per the Notice of Motion, including costs.
55. On jurisdiction, counsel submitted that the respondents had misconstrued the Court of Appeal decision in *Governor, County Government of Kakamega & 4 others v Omewno & 12 others*, which related to removal of the entire County Assembly Public Service Board under Article 251 of *the Constitution* and the Petitioner herein was an ex officio member of the County Assembly Service Board by virtue of being the Clerk of the County Assembly of Homa Bay and the respondents authored the scenario at hand and the employment and Labour Relations Court had jurisdiction to hear and determine the instant suit as the Clerk of the County Assembly is an employee.
56. Counsel further submitted that the Petitioner was suspended illegally and unlawfully and without notice.
57. Counsel expressed disagreement with the Court of Appeal's sentiments in *Governor, County Government of Kakamega & others v Omweno & Others* (supra) that the ELRC court "however have no original or unlimited jurisdiction to interpret and apply *the Constitution*" citing Words and Phrases Legally Defined vol. 3 John Beecroft Saunders, on jurisdiction and the sentiments of the Supreme Court of Kenya in *Samuel Kamau Macharia & another v Kenya Commercial Bank & others* [2012] eKLR as well as *Republic v Karisa Chengo & 2 others* [2017] eKLR to urge that other than the sentiments cited above, the decision in *Governor County Government of Kakamega & others v Omweno & others* confirmed that the ELRC had jurisdiction to hear and determine the instant petition.

Analysis and determination

58. The applicant is the Clerk County Assembly of Homa Bay, having been appointed on 10th February, 2022.
59. The applicant received a suspension letter dated 9th July, 2024 from the 1st respondent, the Speaker of the Homa Bay County Assembly.
60. The letter suspended the applicant from the office of Clerk Homa Bay County Assembly with immediate effect on allegations of gross misconduct and violation of legislation, abuse of office, alleged misappropriation of public funds for the financial year 2022/2023 and 2023/2024 and alleged irregular tender awards and payments in the financial year 2022/2023 and 2023/2024.
61. The letter informed the applicant that she would be advised within ten (10) days to present her defense to the allegations and could be accompanied by her advocate.



62. In addition, the applicant received a statement of the allegations on 11th July, 2024 vide letter dated 10th July, 2024.
63. In charge Number 1, the applicant was accused of embezzlement of County Assembly funds by use of fake companies to which tenders had been awarded for personal benefit, contrary to the provisions of the *Public Finance Management Act*. She was also accused of exaggerating prices of items to be procured such as proposed office repair and external toilets extension in the financial year 2022/2024.
64. Regarding abuse of office, the applicant was accused of falsification of documents and award of tenders to non-existent companies formed for purposes of embezzlement of funds and awards of tender to companies affiliated to her without disclosure.
65. On misappropriation of funds, the charge stated that whereas sitting allowance for 2022/2023 was Kshs.118,648,554, the amount expensed was only Kshs.61,889,354 and no explanation on how the variance was spent, if at all, while in 2023/2024 the budgeted amount was Kshs.56,659,200 and the actual amount spent was Kshs.39,959,200 without explanation.
66. That on travelling allowance, whose budget for 2022/2023 was Kshs.67,088,884, only 49,784,452 was actually spent while in 2023/2024, the budget was Kshs.49,484,452 and only Kshs.40,114,452 was actually spent. That the unexplained discrepancy constituted misappropriation of public funds.
67. Finally, on irregular tender awards, the applicant was accused of awarding tenders to Jabali Logistics, Aydenew General Enterprises, vatovel Enterprises Ltd, Dizoh Enterprises Ltd and Sabelo Ltd between August 2022 and April 2024.
68. The letter did not indicate the period within which the applicant had to respond.
69. In addition to the suspension letter, the respondent issued a notice to all staff dated 9th July, 2024 informing them of the applicant's suspension and that she had no authority to transact any business on behalf of the County Assembly.
70. Relatedly and by a letter of even date, the respondents requested the applicant to hand over keys to the office, safe and cabinets, CBK token, Board papers and files, County Assembly log books and ownership documents including title deeds, laptops and tablets, password to the official email account, files and documents in her custody and any other document and equipment under her care to the office of the Speaker on 10th July, 2024 (8:00am to 5:00pm).
71. The applicant deposed that she responded to the charges on 21st July, 2024 and was invited to appear before the County Assembly Service Board on 22nd July, 2024 vide letter dated 19th July, 2024.
72. The gravamen of the applicant's case is that her suspension was made without due process as she was not heard.
73. Before delving into the core issue in this application, it is necessary to dispose off the issues raised by the respondents counsels by way of submissions.
74. First, the court was unable to contextualize the nullus principle in the instant application and the court proceeds no further.
75. Second, on jurisdiction the court finds it disingenuous for the respondents to bring up the issue of the court's jurisdiction bearing in mind that maintenance of the Order for maintenance of status quo was made on 23rd July, 2024 more than 8 months ago and the issue of exhaustion of internal dispute resolution mechanism had not been raised.



76. The court is at a loss why the respondents could not file a Notice of Preliminary Objection as opposed to introducing such a foundational issue in submissions.
77. Similarly, the Court of Appeal decision in *Governor County Government of Kakamega & 4 others v Omweno and 12 others* [2025] KECA 190 (KLR) was delivered on 7th February, 2025 and the respondents had sufficient time to file a Notice of Preliminary Objection challenging the jurisdiction of this court.
78. The question of jurisdiction is so critical and basic that it ought to be raised at the earliest possible instance whenever it arises for an expeditious determination owing to its potential to scuttle the suit before it is heard and determined.
79. As neither of the respondents challenged the order of maintenance of status quo dated 23rd July, 2024 on which the application for contempt of court is grounded, the matter rest there.
80. The singular issue for determination is whether the applicant has met the threshold for the grant of conservatory orders.
81. On suspension and as correctly held by Radido J. in *Shedd Dennies Simotwo v Speaker Narok County Assembly & another* [2015] KEELRC 1236 (KLR),
For a suspension of an employee to be lawful, it must have either a contractual authority or statutory underpinning (see *Kenya Plantation and Agricultural Workers Union v Finlays Horticulture Kenya Ltd* [2015] eKLR and *Mackenzie Smith* [1976] IRLR 345).
In the instant case, the suspension of the applicant is underpinned by statute...”
82. This court is in agreement with these sentiments.
83. In the instant case the operative statutory provision is Section 22 of the [County Assembly Services Act](#) which provides for the suspension of the Clerk as follows:
84. 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.
85. The applicant faults the suspension on the ground of want of sufficient reason and hearing before it took place.
86. Needless to emphasize, the suspension letter dated 9th July, 2024 identified four (4) general thematic areas and informed the applicant that she would be advised within 10 days so as to prepare for her defense and she received the charges with statements of fact on 11th July, 2024.
87. Thus, although the suspension letter identified general areas of alleged infractions by the applicant, the brief statement of allegations dated 10th July, 2024 provided detailed allegations.



88. In *James Otieno Ndiege v Judicial Service Commission* [2021] KEELRC 1454 KLR Mbaru J. held:
- “Suspension from employment is an administrative prerogative. An employer is allowed to suspend an employee from duty for stated reasons. Such is to remove the employee from the shop floor to allow for investigations or as a sanction for a stated reason”.
89. Further, in *Donald C. Avude v Kenya Forest Service* [2015] eKLR the court held:
- “... the court in this case distinguished between “disciplinary” suspension and administrative suspension for the purposes of the case, disciplinary suspension was defined as “a punitive measure for a reproachable act made during work” while administrative suspension is a “preventive measure which can be taken when the interest of the employer’s business require it, even in the absence of an act made by the employee while working”.
90. In the instant case, the applicant’s suspension letter dated 9th July, 2024 stated that the applicant had “been found culpable of the offences identified therein.
91. The purpose of the suspension was to remove the applicant from the workplace for purposes not disclosed in the letter.
92. Typically, employees are suspended to facilitate investigation or safeguard the employer’s interests.
93. Concerning the right due process, the court is guided by the sentiments of Rika J. in *Dennis Musyoka Mutui v Kwale County Assembly Service Board* [2018] eKLR, thus:
94. Section 22 of the *County Assembly Services Act* authorizes the County Assembly Service Board, to suspend or remove the Clerk from Office. There is no requirement that the Clerk is given a hearing before suspension. Hearing is only required, under Section 23, once the process of removal is commenced. Suspension contemplated under Section 22, is not suspension in form of a penalty, after a disciplinary hearing; it is suspension in the form of an administrative measure. The Claimant is merely being asked to step aside, to enable investigations and the process of removal, to go on without his possible interference. He has not been adjudged guilty and suspended as punishment for any employment offence. There is no requirement that he is heard before being placed on administrative suspension”.
95. These sentiments apply on all fours to the circumstances of the instant case.
96. In the court’s view, although the suspension letter dated stated that the applicant “had been found culpable”, that was not the case as no proceedings or other adjudicatory process had been conducted to ascertain the applicant’s culpability.
97. The is clearly captured by the subsequent paragraphs of the letter which expressly notify the applicant that she would be advised within 10 days as to when she would present her defence and other process would inevitably have followed.
98. From the foregoing, it is clear to the court that the applicant’s suspension is not assailable on the ground of want of due process or Fair administrative action on account that at this stage the employer is neither required to hear the employee nor avail charges other than any allegations made.
99. Relatedly, the court is in agreement with the respondent’s averments that Section 23 of the *County Assembly Services Act* sets out an elaborate and extensive process for the removal of the Clerk of a County Assembly which inter alia sufficiently guarantees the Clerks right to due process in not less than in three (3) instances.



100. Equally, only the County Assembly has the mandate to remove a Clerk from office by approving a motion to that effect. To that extent, the applicant's assertions that the 1st respondent had gone rogue or was usurping powers or could influence the outcome are of little persuasion and in any case, the 1st respondent had since resigned and another Speaker appointed.
101. In the court's view, the applicant was being asked to step aside to enable the respondents comply with the law in ascertaining whether the applicant is guilty of misconduct or other forms of wrong doing and the suspension was purely administrative, which is the employer's prerogative. From the extracts of the minutes held on 10th and 17th July, 2024, it is discernible that the decision to place the applicant on suspension was made earlier as the agenda of the meeting evinces, namely; the meeting was discussing the applicant's suspension as opposed to his conduct for purposes of her suspension.
102. Minute 2/HBC/CASB/9/07/2024: Reads "Suspension of Clerk". From the extract of the minutes it is clear that the suspension was intended to pave way for investigation into the allegations.
103. Considering that the 2nd respondent has the statutory mandate to suspend the Clerk of the County Assembly under the provisions of Section 22 and 23 of the *County Assembly Services Act*, and the applicant has not demonstrated that the board acted in contravention of the provisions of Section 22 of the Act, when it suspended her from office vide letter dated 9th July, 2024, other than want of due process and detailed reasons which are not a legal requirement at the suspension stage, unless provided for by the relevant statute or manual or regulations, which was not the case in this instance, the court finds that the applicant has failed to sustainably prove her case against the respondents.
104. The court is not satisfied that the applicant has demonstrated that she has a prima facie case with a likelihood of success or that the Petition will be rendered nugatory if the Orders sought are not granted or public interest will be prejudiced. The test in *Wilson Kaberia Nkunjia v The Judges & Magistrates vetting Board [2016] eKLR* has not been met.
105. Consequently, from the foregoing, it is the finding of this court that the applicant's Notice of Motion dated 10th July, 2024 is unmerited and it is disallowed with no Orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 16TH DAY OF JUNE 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE



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