



**Gurcha v Speaker - County Assembly of Isiolo & another (Employment and Labour Relations Constitutional Petition E010 of 2025) [2025] KEELRC 1925 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1925 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS CONSTITUTIONAL PETITION E010 OF 2025**

**ON MAKAU, J**

**JULY 1, 2025**

**IN THE MATTER OF: ARTICLES 10, 20,22,23,27, 28,41,  
47,50 AND 236 OF THE CONSTITUTION OF KENYA,2010**

**AND**

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

**AND**

**IN THE MATTER OF: SECTIONS 5, 17, 35,43, & 46 OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF: SECTIONS 5, 10, 17, 19, 22, 23, AND  
27 OF THE COUNTY ASSEMBLY SERVICES ACT, 2017**

**AND**

**IN THE MATTER OF: VIOLATION AND THREATENED VIOLATION OF  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER (INTER ALIA) ARTICLES  
10, 27, 28, 29, 41, 47 AND 236 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**SALAD BORU GURCHA ..... PETITIONER**

**AND**

**THE SPEAKER - COUNTY ASSEMBLY OF ISIOLO ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY ASSEMBLY SERVICE BOARD, ISIOLO**

**COUNTY ..... 2<sup>ND</sup> RESPONDENT**



## RULING

### Introduction

1. This ruling relates to the petitioner's Notice of Motion dated 17<sup>th</sup> June 2025 and 18<sup>th</sup> June 2025, on the one hand, and the respondents' Notice of Motion dated 24<sup>th</sup> June 2025.
2. The Notice of motion dated 17<sup>th</sup> June 2025 seeks the following orders: -
  - a. This Application be certified as urgent, service be dispensed with and it be heard ex parte in the first instance;
  - b. Pending the hearing and determination of this Application inter parties, this Honourable Court be pleased to issue an order temporarily suspending the Respondents' decision to place the Petitioner/Applicant on compulsory leave, as communicated in the 1<sup>st</sup> Respondent's letter dated 16<sup>th</sup> June 2025;
  - c. Pending the hearing and determination of this Application inter parties, this Honourable Court be pleased to issue an order, restraining the Respondents, their agents, their assigns, representatives or any other person acting under the Respondents' authority from ejecting, blocking, denying access into the office and/or otherwise impeding the petitioner/Applicant from occupying or discharging the functions of the office of Clerk-Isiolo County;
  - d. Pending the hearing and determination of the Petition filed herewith, this Honourable court be pleased to issue an order temporarily suspending the Respondent's decision to place the Petitioner//Applicant on compulsory leave, as communicated in the 1<sup>st</sup> Respondent letter dated 16<sup>th</sup> June 2025;
  - e. Pending the hearing and determination of the Petition filed herewith, this Honourable court be pleased to issue an order, restraining the Respondents, their agents, their assigns, representatives or any other person acting under the Respondents authority from ejecting, blocking, denying access into the office and/or otherwise impeding the Petitioner/Applicant from occupying or discharging the functions of the Office of Clerk-Isiolo County;
  - f. This Honourable court be pleased to grant any orders as it may deem fit in the interests of Justice.
3. The motion is supported by the petitioner's affidavit sworn on even date and a further affidavit sworn on 24<sup>th</sup> June 2025. On 20<sup>th</sup> June 2025 the firm of JN & P LAW Advocates appeared on behalf of the 2<sup>nd</sup> respondent and filed Replying Affidavit sworn by Mr. Abdi Sora Balla on behalf of the 2<sup>nd</sup> respondent. The Replying Affidavit by Mr. Abdi Sora Balla supported the petitioner's motion.
4. Subsequently, the firm of GHM Advocates LLP appeared for the two respondents and filed a Replying Affidavit sworn by the 1<sup>st</sup> Respondent, Mr. Mohammed Roba Koto dated 24<sup>th</sup> June 2025 on behalf of the 2<sup>nd</sup> respondent. The affidavit opposed the petitioner's motion.
5. The notice of motion dated 18<sup>th</sup> June 2025 seeks the following orders:
  - a. This Application be certified as urgent, service be dispensed with and it be heard ex parte in the first instance;



- b. The Honourable court be pleased to grant an ex parte conservatory order, to preserve the office of the clerk of County Assembly, Isiolo County and to prevent any other person from discharging the functions of the office of the clerk-Isiolo County, pending the hearing and determination of the Application dated 17<sup>th</sup> June 2025;
  - c. The Honourable Court be pleased to grant an ex parte order temporarily suspending the Respondent's decision to place the Applicant on compulsory leave, as communicated in the 1<sup>st</sup> Respondent's letter dated 16<sup>th</sup> June 2025 pending the hearing and determination of the Application dated 17<sup>th</sup> June 2025;
  - d. The Honourable Court be pleased to direct that the Office Commanding Station (OCS), Isiolo Police Station to ensure compliance with the orders above;
  - e. This honourable court be pleased to grant any orders as it may deem it in the interests of justice.
6. The motion is supported by the petitioner's affidavit sworn on the even date. The Respondents did not file any response but instead they filed a Notice of motion dated 24<sup>th</sup> June 2025 seeks the following orders: -
- a. This Application be certified urgent and service thereof be dispensed with in the first instance.
  - b. Pending the hearing and determination of this application, this court be pleased to review the orders of this court issued on 19<sup>th</sup> June 2025 limited only to allowing the Deputy Clerk-Isiolo County or any other person designated by the 2<sup>nd</sup> Respondent to perform the functions and discharge the duties of the office of the clerk Isiolo County pending the hearing and determination of the petition herein.
  - c. Any other order in the interest of justice.
  - d. Costs of this Application be in the cause.
7. The motion is supported by the Affidavit sworn by Mr. Mohammed Roba Koto on the even date but no responses were filed due to the urgency of the whole matter and the compromise hereunder, by the two sides.
8. The petitioner's motions were fixed for hearing on 25<sup>th</sup> June 2025 but the respondents' motion being newly filed under certificate of urgency had no hearing date. Before the start of the hearing of the petitioner's motions, the 1<sup>st</sup> respondent sought direction on the hearing of his motion. The parties agreed to have the respondent's motion argued together with the petitioner's motions. It was further agreed that the petitioner will make oral submissions on the respondents' motion since the material on record is sufficient to dispose of the said motion.
9. Subsequently, another controversy arose as to who, between Mr. Abdi Sora Balla and Mohammed Roba Koto, was representing the 2<sup>nd</sup> respondent by swearing Replying Affidavits on record and who, between JN & P LAW Advocates and GHM Advocates LLP should act for the 2<sup>nd</sup> Respondent. In the end, a compromise was reached that Mr. Abdi Sora Balla morphs to an Interested Party and continues to be represented by JN & P law Advocates. His Replying Affidavit was also retained on record as his own personal pleading. It was further agreed that the two respondents will be represented by GHM Advocates LLP.



## Petitioner's case

10. The applicant's case is that he is the Clerk of the County Assembly of Isiolo County duly appointed in accordance with section 13 of County Government Act (CGA) and section 18 of the [County Assembly Services Act](#) (CASA); that the respondents have arbitrary and unlawfully hatched a malicious scheme to unfairly suspend, and subsequently terminate the petitioner's employment contract without adhering to mandatory Constitutional and statutory requirements; and that the said scheme has been commenced by the 1<sup>st</sup> respondent's letter dated 16<sup>th</sup> June 2025 placing the petitioner on 30 days compulsory leave effective the same date.
11. It is further applicant's case that the foregoing action did not result from a resolution by the 2<sup>nd</sup> respondent but a decision made solely by the 1<sup>st</sup> respondent; that he compulsory leave of the petitioner by the 1<sup>st</sup> respondent is unlawful and ultra vires as only the 2<sup>nd</sup> respondent has that mandate under section 23 of the CASA to suspend or remove the Clerk from office; and that the impugned compulsory leave letter dated 16<sup>th</sup> June 2025 offends section 22 and 23(1) of CASA as the petitioner has not been accorded a chance to appear before the Board to respond to specific charges.
12. He further avers that the 1<sup>st</sup> Respondent's unlawful actions are motivated by the petitioner's dutiful performance of his functions and consequent refusal to bend the law to the 1<sup>st</sup> respondent's whims; that the 1<sup>st</sup> respondent is part of the large scheme to impeach the Governor of Isiolo County and the petitioner was expected to act contrary to his statutory duties and obligations and facilitate irregular and unlawful impeachment of the Governor; and that the Respondents actions in unlawfully and unprocedurally removing the petitioner from office violates his right to fair Labour Practices under Article 41 of [the Constitution](#).
13. He averred that he filed Nairobi ELRC Petition No. E119 of 2025, but then withdrew it to pursue the instant petition.
14. He contends the 2<sup>nd</sup> respondent has at all times praised the petitioner's diligence in service to the Assembly and his strict adherence to the law in the execution of his functions. He averred that the unlawful compulsory leave is intended to eradicate the petitioner and create room for the 1<sup>st</sup> respondent to go through with his unlawful enterprise of impeaching the Governor without strict adherence to the law.
15. The Interested party's case is that he is a member of the 2<sup>nd</sup> Respondent having been appointed under section 9 of the CASA; that under section 11 of CASA, the 2<sup>nd</sup> Respondent is bound by the dictates of Article 10 of [the Constitution](#) to ensure that its decisions are accountable, transparent and in tandem with the rule of law and therefore it cannot act outside the parameters of the law.
16. He avers that the 2<sup>nd</sup> respondent has not met to consider, deliberate or pass any resolution sanctioning the suspension of the petitioner as the clerk of Isiolo County Assembly; and that under section 22 of CASA, the power to suspend or remove the Clerk of the County rests with the Board collectively and cannot be undertaken unilaterally by a single member of the Board.
17. He contends that suspension or removal of the Clerk can only be done upon the following grounds: -
  - i. inability to perform the function of the office, whether arising from body or mind.
  - ii. Gross misconduct or misbehaviour.
  - iii. Incompetence
  - iv. Bankruptcy



- v. Violation of *the Constitution* including Chapter six; or
  - vi. Violation of the provisions of the CASA.
18. He further contends that suspension or removal cannot be done based on any other ground except the above and the procedure is set out in section 23 of the CASA. Finally, he contends that the decision in the letter dated 16<sup>th</sup> June 2025 suspending the petitioner as Clerk of Isiolo County Assembly is flawed, unprocedural and extra-constitutional and as such, the Interested Party did not wish to be associated with it.
19. The Respondents' case is that the 1<sup>st</sup> respondent is the Chairman of the 2<sup>nd</sup> Respondent and is duly authorised to swear the affidavit on behalf of the 2<sup>nd</sup> respondent; that the Petitioner's applications are frivolous, vexatious, still born and gross abuse of the process of the court and should be struck out because: -
- i. The petition is sub judice, Nairobi ELRC Petition E119 of 2025.
  - ii. The petition offends section 6 of the *Civil Procedure Act*.
  - iii. The court lacks jurisdiction to hear the petition as the 2<sup>nd</sup> Respondent has only just commenced the preliminary disciplinary process against the petitioner.
20. They aver that the petitioner's applications are premised on allegations that the decision by the 2<sup>nd</sup> Respondent to send the petitioner on 30 days compulsory leave violated provisions of CGA, CASA and other legal instruments, but Section 22 of CASA does not require the 2<sup>nd</sup> respondent to adhere to section 23 of the Act before suspending the petitioner herein. Consequently, the petitioner's applications have been filed without any legal basis and should be dismissed with costs.
21. They denied that there is a scheme to arbitrarily suspend or terminate petitioner's employment as alleged and aver that the compulsory leave is an administrative measure to pave the way for an investigation into the petitioner's conduct as an employee of the 2<sup>nd</sup> respondent. The allegations against him are: -
- i. Failure to provide monthly requisitions sent to the Controller of Budget for April and May 2025.
  - ii. Gross financial impropriety
  - iii. Absenteeism
  - iv. Lack of coordination of regular management meetings
22. They aver that the petitioner was served with a warning letter dated 24<sup>th</sup> May 2022 and 10<sup>th</sup> March 2025 for similar offences, and therefore, the petitioner was sent on compulsory leave because of his deviant conduct in the discharge of his functions.
23. It is the respondent's case that the petitioner was sent on compulsory leave by the 2<sup>nd</sup> Respondent and not 1<sup>st</sup> respondent who merely signed the offending letter as the head of 2<sup>nd</sup> Respondent; and that the suspension of the petitioner does not violate the provisions of the CGA or CASA or any other law as neither the CGA nor CASA prescribes a resolution of the 2<sup>nd</sup> respondent to suspend the petitioner herein.



24. They aver that the petitioner is using the court process to shield himself from the disciplinary process since the disciplinary process has just started and no decision has been made to terminate his employment. They aver that evidence of any threat of replacing the petitioner has been adduced.
25. They opposed the orders sought in the motion dated 18<sup>th</sup> June 2025 since they would cause the County Assembly to grind to a halt as the petitioner is mandated with the management of the day-to-day business of the County Assembly of Isiolo. It would be gravely disproportionate to deny residents of Isiolo County their Constitutional right to legislative representation by grinding the activities of the County Assembly of Isiolo to a halt as sought by the petitioner.
26. For the said reasons, the respondents pray for the interim order granted on 19<sup>th</sup> June 2025 be reviewed to allow the Deputy Clerk of the Isiolo County or any other person designated by the 2<sup>nd</sup> Respondent to perform the functions and discharge the duties of the office of the Clerk Isiolo County pending the hearing and determination of the petition herein.
27. They contend that the said order was procured fraudulently and through gross concealment of material facts since the petitioner failed to get orders in Nairobi ELRC Petition E119 of 2025 and filed a new suit before this court. The impugned order restrained the County Assembly of Isiolo from undertaking any business, including discussing the motion to impeach the Governor of Isiolo scheduled for 26<sup>th</sup> June 2025.

### **Submissions**

28. The motions were orally argued on 25<sup>th</sup> June 2025, where the counsel basically reiterated the averments summarised above. Mr. Theuri, learned counsel for the petitioner urged that the decision to send the petitioner on compulsory leave lacks procedural fairness and the 1<sup>st</sup> respondent acted ultra vires as that power rests in the 2<sup>nd</sup> respondent; that Section 22 and 23 of the CASA applies to the suspension and removal of the Clerk of a County and there must be a resolution of the Board; that Section 22 sets out the grounds for suspension and removal while Section 23 provide the procedure for the suspension or removal of the clerk.
29. He submitted that the respondents have not produced copy of the HR Manual to prove that it provides for compulsory leave of the Clerk; that the offending letter dated 16<sup>th</sup> June 2023 states that the compulsory leave was by a resolution of the Board made on 16<sup>th</sup> June 2025 but that is not true since the 1<sup>st</sup> respondent has averred in his Replying Affidavit that the Board's resolution is not required before suspending the clerk; and that the 1<sup>st</sup> respondent acted illegally on his own to send the petitioner to compulsory leave. Reliance was placed on *Macfoy v United Africa Limited (1961) All ER 1169* where the court held that there is nothing that can come out of nothing.
30. He further submitted that the requirements under Sections 22 and 23 of CASA were meant to shield the Clerk from suspension and or removal for political reasons; that a prima facie case has been established and as such the scale of justice tilts towards upholding constitutional values and the petitioner's right to fair labour practices and fair administrative action; that granting the conservatory order will enhance constitutional rights and values while denying it will render the suit nugatory as the substratum of the matter will be destroyed. Finally, he urged that granting the order is in the public interest since public affairs ought to be managed as per the law and not by personal whims.
31. Mr. Lesagor and Ngwele Advocates for the Interested Party submitted that Article 20 of *the constitution* provides that the Bill of Right applies to all laws, state organs and persons; that the power and procedure to discipline clerk of the County is provided under Sections 22 and 23 of the CASA and it is exercisable by the Board and not by any individual member of the Board. He argued that the 1<sup>st</sup> Respondent



- acted on his own contrary to the law and thereby violated *the Constitution*; and that Article 2(4) of *the Constitution* provides that any action done or taken contrary to *the Constitution* is null and void.
32. He submitted that Section 22 and 23 of CASA provides for suspension or removal but not compulsory leave; that the HR policy manual for Isiolo County Assembly also does not provide for compulsory leave; and that the impugned letter does not quote the provision of the Law and HR Manual although it bases the compulsory leave on the HR Manual. Therefore, he urged the court to protect the employees from arbitrary decisions that are not founded on the law or HR Manual.
  33. Mr. Ngwele Advocate, who also appeared for the Interested Party, laid before the court the relevant case law, including Paul Mwendu Thirika v Tharaka Nithi County Assembly (2017) eKLR, where the court held that there must be procedural conformity before compulsory leave of the Clerk, including the existence of a published regulation allowing such compulsory leave. He further cited Mutwiri v Speaker, Laikipia County & Another (2024) KEELRC 68 (KLR), where the court held that decisions are to be based on Article 10 and 236 of *the Constitution*.
  34. Mr. Wafula Advocate for the Respondents submitted that the Board has statutory mandate to suspend the Clerk under section 22 of CASA; that the Board is a body corporate and it communicates through its Chairperson (1<sup>st</sup> Respondent) who authored the offending letter; and that the 1<sup>st</sup> respondent is also authorised by the law to send the Clerk on compulsory leave since it is the same action as suspension. He contended that the Court of Appeal in Kwale County Assembly Service Board v Dzilla (2024) KECA 945 (KLR) paragraph 32 held that the language of suspension means keeping a person temporarily from performing a function and it includes compulsory leave.
  35. He submitted that the offending letter merely suspended the petitioner from office which as per the said Kwale County Assembly case, paragraph 48. Section 23 of the CASA does not apply. Further in Apuka v Gaya, Speaker of Homabay County Assembly & 2 others (2025) KEELRC 1741 (KLR) the court also held that Section 23 of CASA does not apply in case of suspension.
  36. He further submitted that public interest tilts in favour of allowing the 2<sup>nd</sup> respondent to investigate the corruption allegation made against the petitioner and that such an officer should not be allowed to continue occupying the office.
  37. As regards, the Notice of Motion dated 24<sup>th</sup> June 2025, it was urged that the interim order should be varied to allow the deputy clerk or any other person designated by the respondents to act as the clerk since any motion to the County Assembly must be served on the Clerk; that the interim order has curtailed the right to representation of the residents of Isiolo; that there is prejudice since no business can be discussed by the Assembly; and that the interests of the petitioner will be served if the order is varied to prohibit the respondents from undertaking any process that would lead to the replacement of the petitioner as the Clerk of Isiolo County Assembly pending hearing of his petition.
  38. In a brief rejoinder, Mr. Theuri submitted that the Kwale County Assembly Board case and the Apuko case cited by the Respondent are distinguishable from the instant case because in those cases the decision was by the CAS Board and not by an individual Board member, like in this case. He maintained that the decision herein was ultra vires and the cited authorities are therefore irrelevant. He urged the court to find that a good case has been made out, warranting the conservatory orders sought since the impugned letter went contrary to Article 236 of *the Constitution*.
  39. With respect to the respondents' Notice of motion dated 24<sup>th</sup> June 2025, he submitted that Section 21 of CASA allows the Deputy Clerk to act in place of the Clerk but only when the inability to act by the Clerk is not caused by illegal decision of the 1<sup>st</sup> respondent like in the instant case. He urged for extension of the interim orders in order to protect the petitioner.



40. Mr. Ngwele Advocate submitted that under Section 17 of CASA, the Clerk is the one authorised to convey resolutions of the Board. He contended that suspension is different from compulsory leave and the offending letter gives notice of compulsory leave for internal administrative process. If suspension was invoked, show cause letter would be first served under section 22 of CASA.
41. If the petitioner is subjected to an illegal process, the interested party may suffer prejudice if in the end individual Board members are held liable for the illegal decision. Reliance was placed on *Mutwiri v Speaker Laikipia County Assembly*, supra. He maintained that there was no Board meeting that resolved to send the petitioner on compulsory leave and therefore the petitioner's application should be allowed.

### **Issues for Determination and Analysis**

42. I have considered the pleadings, affidavits and submissions from both sides and it is clear that the petitioner had filed Nairobi ELRC Petition No. E119 of 2025 but he withdrew it to pursue the instant petition. Consequently, I am satisfied that the suit is not sub judice. The main issues for determination are:
- a. Whether conservatory orders should be issued as prayed by the petitioner.
  - b. Whether the interim order granted on 19<sup>th</sup> June 2025 should be reviewed and/or varied.

### **Review of the interim orders issued on 19<sup>th</sup> June 2025.**

43. The second question is fairly straight forward so I will answer it first. The respondents motion dated 24<sup>th</sup> June 2025 seeks for review of the interim order issued on 19<sup>th</sup> June 2025 in order to allow the Deputy Clerk or any other person appointed by the 1<sup>st</sup> respondents to discharge the functions of the Clerk. The question that begs for answer is whether the review is still necessary in view of this ruling. My considered opinion is that the application for review of the interim order will be rendered otiose by the delivery of this ruling since the impugned order was only to last until the determination of the petitioner's motions. Varying the interim order as proposed by the respondents would mean that the interim orders are to remain in force even after the determination of the petitioner's motions.

### **Conservatory order**

44. The threshold for granting conservatory orders was stated in the case of *Peter Gatirau Munya v Kithinji & 2 others* (2014) KESC 30 (KLR), where the Supreme Court held that: -

“Conservatory orders, therefore are not, unlike interlocutory injunctions, linked to such private-party issues as “The prospects of irreparable harm” occurring during the pendency of a case, or “high probability of success” in the applicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and other proportionate magnitudes, and priority levels attributable to the relevant causes.”

45. Guided by the above binding authority, I am required to satisfy myself that on the face value, the applicant has established a prima facie case that warrants protection from being rendered nugatory. I must also consider whether public interest tilts in favour of granting or withholding of the order; and finally, whether on the whole, the Constitutional values and rights in the Bill of Rights will be undermined if conservatory order is declined.



46. Prima facie case was defined by the Court of Appeal in *Mrao Ltd v First American Bank of Kenya* (2003) KECA 175 (KLR) as follows: -

“I would say that in civil cases it is a case in which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

47. Having considered the material presented by the two sides, on the face value, the impugned compulsory leave is tainted with illegality and procedural impropriety. To begin with, CASA does not provide for compulsory leave pending investigations that may lead to disciplinary action. It only provides for suspension or removal from office of the Clerk under section 22. Consequently, I find that, for the respondent cannot lawfully impose that action, unless it is provided in the employee’s contract of employment or its own Regulations. I gather support from the case of *Paul Mwendu Thirika & 2 others v Tharaka Nithi County Assembly* (2017) eKLR, Ongaya J held that:

“There is no evidence that there exist regulations by the respondent providing for compulsory leave prior to commencement of investigations that may lead to initiation of disciplinary action against its staff....The compulsory leave would therefore be proceedings in clear contravention of the protection of public officers as provided in section [sic] 236 of *the Constitution* and which is expressly referred to in the cited section 27 of the County Assembly Act, 2017.”

48. The respondents admitted that the respondent has not made the regulation contemplated under Section 27 read with section 45 of the CASA to guide on the exercise of the disciplinary powers donated by Section 27 of the Act which provides that:

- “(1) The Board shall exercise disciplinary control over the officers in the service.
- (2) The Board may terminate the employment of an employee of the service in accordance with the provisions of this Act and the Regulations made thereunder.
- (3) The provisions of Article 236 of *the Constitution* shall apply in relation to the exercise of the power conferred on the Board under this Act.”

49. Without the existence of the said Regulations, and the fact that section 22 of the Act does not provide for compulsory leave, I must hold that the compulsory leave letter against the petitioner was not well founded and it runs contra to Article 236 of *the Constitution* which provides that:

- “A public officer shall not be-
- a. Victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law, or
  - b. Dismissed, removed from office, demoted in rank or subjected to disciplinary action without due process of law.”

50. Even if the court was to treat the compulsory leave as suspension under Section 22 of the CASA, as suggested by the respondents, the court finds that the decision to sent the petitioner on compulsory leave was not aligned to the said section since it was not sanctioned by a resolution of the 2<sup>nd</sup> respondent board which alone has the legal mandate to discipline the officers in the County Assembly Service of



Isiolo by dint of the section 27 of the Act. Besides, section 22 of the Act specifically donates the power to suspend the Clerk to the Board only, and not individual Board members. The section provides that:

“The board may suspend or remove from office, the Clerk for –

- a. inability to perform the functions of the office...”

51. The respondents admitted that the Board never met and passed any resolution to send the petitioner on compulsory leave. The interested party, who is a member of the Board also confirmed under oath, that the Board never met and passed any resolution to place the petitioner on compulsory leave or at all.
52. It was submitted for the respondents that the 1<sup>st</sup> respondent was right in writing the offending letter as the procedure to hear the petitioner before suspending the petitioner was not required. They sought refuge in the Court of Appeal decision *Kwale County Assembly Service Board & 6 others v Dzilla* [2024] KECA945 (KLR) where the court held that:

“47. We agree and would adopt this observation for purposes of section 22 of the County Assembly Act that a hearing at the point of issuance of holding suspension was not necessary, particularly since no procedure is spelt out for the issuance of such suspension.”

53. I entirely agree with the above binding decision because unless the contract of employment, employer’s Regulations or a statute provides for hearing before suspension or some other form of temporary removal from office, the employer need not accord an employee any hearing before issuing a suspension letter. However, that is beside the point as the petitioner has correctly distinguished the facts of this case and the above authority. In the said authority, the Clerk was lawfully suspended by the Board while in the instant case, the Clerk has been sent on a compulsory leave by the Speaker acting alone and without any legal mandate to do so.
54. In addition to Section 27 (3) of CASA, Section 11 of the Act also obliges the Board to comply with *the Constitution* while exercising its mandate. Section 11(2) of the Act provides that:

“In the performance of its functions under this Act, the Board shall apply –

- a. the national values and principles of governance set out under Article 10 of *the Constitution*; and
- b. the values and principles of public service set out under Article 233 (1) of *the Constitution*.”

55. The above provisions remind both the Board and its individual members that there is always a cloud of the supreme law hovering over their heads whenever they exercise their powers under the Act. The said cloud includes Article 2 which declares the supremacy of *the Constitution* as follows:

“2.

- (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.
- (2) No person may claim or exercise State authority except as authorized under this Constitution.



- (3) The validity or legality of this Constitution is not subject to challenge by or before any court or other State organ.
- (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”

56. Article 10, 232 (1) and 236 of *the Constitution*, cited by sections 11, 22 and 27 of the CASA reflect the new national Culture in this country whereby public officers, public organs and institutions of government are not allowed to act with impunity or caprice. Rule of law, accountability and high standards of professionalism are, but some of the components of the chain of constitutional imperatives that now hang permanently around the neck of every state organ, state officers and public officers whenever they sit or stand to exercise state power or public duty. Anyone choosing to serve in the public spaces must appreciate the above constitutional reality and shape up since Article 2 of *the Constitution* permanently hangs over him or like the sword of the Damocles.
57. In this case the petitioner alleges that he is being victimized for his stand that a motion to impeach the County Governor should adhere to the legal procedure. However, that allegation can only be verified by evidence during the hearing of the petition and not at this stage. The respondents will also have the chance at the trial to tender evidence to substantiate the corruption allegation made against the petitioner, and then the court will rule.
58. I have said enough to fortify my earlier finding that the 1<sup>st</sup> respondent issued the offending letter dated 16<sup>th</sup> June 2025 without any legal mandate to do so. On the face value, the letter was a nullity and automatically void on the basis of the said illegality.
59. Whether the said illegal actions violate the petitioner’s rights under the contract of employment or violate his rights to fair labour practices and fair administrative action as enshrined under Articles 41 and 47 of *the Constitution*, as alleged, will be decided during the trial. Suffice it to say, for now, that the applicant has established prima facie with good chances of success and the conservatory orders sought are justified, subject to the issue of public interest.
60. The respondents submitted that public interest tilts in favour of withholding of the orders because the Clerk is a very crucial officer when it comes to the operations and the conduct of business of the county Assembly. Without the Clerk, or another person acting will grind the County Assembly to a halt, and deny the residents of Isiolo County their democratic rights to representation in the County Assembly. In principle, the respondents did not oppose the conservatory orders but mainly suggested that it should be limited to preservation of the petitioner’s position pending the hearing and determination of his petition.
61. The applicant, on the other hand, argued that public interest tilts in favour of granting the order because the compulsory leave runs contrary to the law. Further, that granting of the order will enhance constitutional values and rights in the Bill of Rights.
62. I have already found that the Board, which has the legal mandate to discipline the Clerk, has not sat to initiate a disciplinary process against him. Nothing has prevented the 1<sup>st</sup> respondent from presenting the allegations contained in the offending letter to the Board and resolving to suspend the petitioner as per section 22 of CASA. Until that happens, the Court finds that the public interest tilts in favour of suspending the impugned Compulsory leave letter and allowing the petitioner back to his office pending the hearing of his suit.



63. I say so because the respondents have confirmed that the Clerk is very central to the operations and business of the County Assembly, and without whom the County Assembly may grind to a halt, as all motions to the Assembly must be served on the Clerk. Besides, it is in the public interest that the employment of the Clerk be managed according to the law and not by the personal whim of the individual members of the Board. Further, it is also in the public interest that public funds are spent to pay the Clerk who is working and not staying at home due to an illegal order made by the 1<sup>st</sup> respondent.
64. Finally, the court finds that, on the whole, granting the conservatory orders sought will uphold constitutional values and fundamental rights in the Bill of Rights, including the petitioner's rights to fair labour practices and fair administrative action.

### **Conclusion**

65. I have found that the applicant has an arguable case which may be rendered nugatory if the conservatory order sought is withheld. I have further found that the public interest tilts in favour of granting the orders sought. Consequently, I allow the petitioner's notice of Motion dated 17<sup>th</sup> June 2025 and make the following orders: -
- a. An order be and is hereby granted, temporarily suspending the Respondent's decision to place the Petitioner//Applicant on compulsory leave, as communicated in the 1<sup>st</sup> Respondent's letter dated 16<sup>th</sup> June 2025, pending the hearing and determination of the Petition herein.
  - b. An order be and is hereby granted, restraining the Respondents, their agents, their assigns, representatives or any other person acting under the Respondents authority from ejecting, blocking, denying access into the office and/or otherwise impeding the Petitioner/Applicant from occupying or discharging the functions of the Office of Clerk-Isiolo County Pending the hearing and determination of the Petition herein.
  - c. The respondents' Notice of Motion dated 24 June 2025 is overtaken by events.
  - d. Costs of the three applications to the petitioner.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 1<sup>ST</sup> DAY OF JULY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**ORDER**

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

