



Mwambire v Clerk, County Assembly of Kilifi & 2 others (Petition E019 of 2025) [2025] KEELRC 1970 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 1970 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E019 OF 2025**

M MBARŪ, J

JULY 3, 2025

BETWEEN

TEDDY NGUMBAO MWAMBIRE PETITIONER

AND

THE CLERK, COUNTY ASSEMBLY OF KILIFI 1ST RESPONDENT

THE COUNTY ASSEMBLY OF KILIFI 2ND RESPONDENT

HON THOMAS MUMBA CHENGO 3RD RESPONDENT

RULING

1. The ruling herein relates to a Notice of Preliminary Objections filed by the 1st and 2nd respondents, the Clerk, County Assembly of Kilifi, and the County Assembly of Kilifi, dated 20 June 2025, on the grounds:
 1. Section 21(5)(c) of the *Elections Act*, read together with Section 11(1)(c) of the County Government Act, empowers the County Assembly with the mandate for the removal of the Speaker of a County Assembly.
 2. Under section 14 of the County Government Act, the County Assembly of Kilifi enacted the County Assembly of Kilifi Standing Orders to regulate its procedure, including, inter alia, the removal of the Speaker of the County Assembly of Kilifi as exposed under Standing Order 59 of the County Assembly of Kilifi Standing Orders.
 3. By way of a Notice of Motion dated 9 June 2025, the 3rd respondent, Hon. Thomas Mumba Chengo, commenced the process for the removal of the petitioner as the Speaker of the County Assembly of Kilifi under Section 21(5)(c) of the *Elections Act*, as read together with section 11(1)(c) of the County Government Act and the County Assembly of Kilifi Standing Order 59, through impeachment.



4. Standing Order 59 of the County Assembly of Kilifi makes the process for the petitioner's removal as Speaker time-bound.
 5. The entire petition herein is premature.
 6. This court lacks jurisdiction in the first instance to intervene in the process of removing the petitioner through impeachment.
 7. The petition and the Notice of Motion dated 13 June 2025 contravene the doctrine of separation of powers espoused under article 174, read together with article 175 of *the constitution*.
2. Reasons wherefore the 1st and 2nd respondents pray that the petition dated 13 June 2025, together with the Notice of Motion dated 13 June 2025, be struck out and dismissed with costs to the respondents.
 3. The parties attended and agreed to make oral highlights in court. The 1st and 2nd respondents filed a list of authorities.
 4. The 1st and 2nd respondents submitted that the process of removing a speaker from office is under section 21(5) of the *Elections Act*, read together with section 11(1) of the County Government Act (CGA) and Standing Orders 59 of the County Assembly of Kilifi Standing Orders which regulates the procedures thereof. The petitioner was served with the Notice of Motion dated 9 June 2025 and tabled on 10 June 2025, and immediately an ad hoc committee was appointed to determine the motion and make recommendations. The Clerk notified the petitioner who failed to attend and address the issue.
 5. The 1st and 2nd respondents submitted that this court lacks jurisdiction to interfere with the Speaker's removal process. Under section 21(5)(c) of the *Elections Act*, read together with section 11(1)(c) of the County Government Act and the County Assembly of Kilifi Standing Order 59, through impeachment, the procedures for removal are addressed. Before the County Assembly is the motion for removal, and the petitioner will be invited to defend himself before the whole assembly, which will then vote on the motion. The petition before the court is speculative and premature and should be struck out. In the case of *Mate & another v Wambora & another* [2017] KESC 1 (KLR); *Mwangaza v County Assembly of Meru & another*; *Council of Governors (Interested Party)* [2023] KECA 1599 (KLR); and *Salma Muhiddin Ahmed v County Assembly of Kilifi & 2 others* [2017] eKLR, the courts have held that impeachment is a separate constitutional process and the courts should not interfere as this restricts and inhibits the mandate of the County Assembly.
 6. The third respondent filed written submissions in agreement with the first and second respondents' submissions. They further highlighted that Article 178(3) of *the Constitution* and Section 11 of the CGA provide the procedures for impeaching the speaker.
 7. On 9 June 2025, the third respondent issued a Notice for removing the speaker under section 11 of the CGA and Standing Order 59. The petitioner was also notified on 10 June 2025, under which he had 7 days to respond.
 8. The petition is thus limited to stopping the removal process scheduled for 16 June 2025 and nothing beyond. Parties are bound by their pleadings; where a statute has established dispute resolution procedures, those must be followed. The petitioner has yet to appear before the complete County Assembly to defend himself.



9. Under article 196(3) of *the Constitution*, section 10 of the County Assembly Act, and proceedings for the second respondent, the objections should be allowed, and the petition struck out for being overtaken by events.
10. The petitioner submitted that the objections related to ongoing facts and proceedings before the respondents. The petitioner has the right to come to court to seek the protection of his rights where there is a threat of violation. The respondents' case is that the removal proceedings are ongoing, illegal, and inconsistent with the law, and the court has the jurisdiction to stop an unlawful process.
11. The petitioner was given 7 days to respond through a notice dated 10 June 2025, yet on 16 June 2025, the County Assembly deliberated over the matter. This reduced the time allowed to respond or to attend.
12. The respondents have not complied with section 11 of the CGA. The tabled motion should have been supported by a third of the members, which is lacking. The notice was signed on 11 June 2025, and the court should determine whether there was a valid motion for the petitioner to address by 11 June 2025. To classify the matter as a case of gross misconduct and that events have overtaken it is occasioned by the illegalities committed by the respondents, which cannot support the objections. To stop these proceedings would be to sanction illegalities.

Determination

12. First, the petitioner submitted and confirmed that events had overtaken the petition. The process sought to be addressed, and attendance on 16 June 2025 was addressed when the respondents convened and appointed an ad hoc committee to address and make recommendations.
13. Secondly, the petitioner moved the court through a petition and Notice of Motion dated 13 June 2025, seeking remedies for the unconstitutionality and unlawfulness of the intended removal process from office as Speaker of the County Assembly of Kilifi. In the Notice of Motion, the petitioner sought urgent orders stopping the empanelling and sitting over the motion dated 9 June 2025 for hearing the impeachment motion.
14. As noted above, the ad hoc committee was appointed and held a sitting on 16 June 2025.
15. Indeed, Article 195 of *the Constitution* provides that:-
 - (1) A county assembly or any of its committees has the power to summon any person to appear before it to give evidence or provide information.
 - (2) For the purposes of clause (1), an assembly has the same powers as the High Court –
 - (a) Enforce the attendance of witnesses and examining them on Oath, affirmation or otherwise; (b) Compel the production of documents; and
 - (c) Issue a commission or request to examine witnesses abroad.
16. The County Assemblies are entitled to perform their duties, and the Courts should not interfere with or restrict their mandate. The general legal principle is that when the Assembly exercises its legislative functions, the Courts do not intervene in its mandates. However, when the Committees are merely exercising their administrative jurisdiction, the Courts can intervene in their proceedings to prevent violation of private and public rights as held in *Nzioka v County Assembly of Kitui & 3 others (Petition E007 of 2023)* [2024] KEHC 911.



Is the respondent's initiation of the process for the removal of the petitioner constitutional and lawful?

17. The respondents contest that these proceedings are premature, deny the court jurisdiction, and should be struck out. They also argue that the first respondent proceedings contain an incomplete dispute resolution mechanism.
18. The petitioner urges the court that under the notice dated 6 June 2025, he had a right to respond within 7 days, but the convening was on 16 June 2025, denying him a fair chance to state his case.
19. The petitioner attached the Notice of Motion, which sets a chronology of events from 5 May 2025. A notice dated 8 May 2025 was to attend before the County Budget Committee.
20. The Notice dated 10 June 2025 is a Notice of Intention and Notice of Motion Seeking a Resolution to remove you as Speaker of the County Assembly of Kilifi. This notice invited the petitioner to respond in writing to the facts constituting the grounds for removal to the Clerk of the Assembly, County Assembly Kilifi, within 7 days.
21. Under section 11(1) (c) of the CGA, a speaker may be removed from office.
 - c) If the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly;
The court's reading of these provisions gives a timeline for the respondents to address their resolution under section 11(5) of the CGA:
 - (5) Upon notice of the motion being given under subsection (2)—
 - (a) The clerk of the county assembly shall, within five days—
 - (b) Notify the speaker; and
 - (c) Invite the speaker to respond, within seven days, in writing, setting out the grounds of opposition;
These timelines are imperative to explain.
22. The clerk's notice to the speaker should be within 5 days. This was the notice issued on 9 June 2025.
23. The speaker should then be allowed 7 days' right of reply. This notice should be issued after the notice due under Section 11(5) (c) of CGA.
24. The notice dated 9 June 2025 went to the Clerk, County Assembly of Kilifi. This is the Notice of Motion subject to these proceedings.
25. The Notice dated 10 June 2025, from the Clerk, County Assembly of Kilifi, to the Petitioner allowed him 7 days to file a response. From the submission in court on the proceedings on 16 June 2025, the 1st respondent convened to empanel the committee to hear the motion.
26. To this extent, the procedures set in motion are constitutional and lawful, weighed against the provisions of Article 195 of *the Constitution* and section 11 of the CGA. At the point of addressing these objections, the petitioner had yet to attend before the ad hoc committee or the whole assembly, after which a vote as envisaged under sections (11) (7) and (8) of the CGA:
 - (7) The speaker shall have the right to appear and be represented before the county assembly during its investigations.



(8) The county assembly shall consider the motion within fourteen days and resolve whether to approve the motion.

This shall suffice.

27. On this basis, the objections are with merit to the extent that the petition is premature before the court. The process undertaken is lawful. The petition is struck out. Being premature, each party to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 3 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

