



Lekakimon v Speaker, County Assembly of Baringo & 2 others (Petition E010 of 2024) [2025] KEELRC 2394 (KLR) (29 August 2025) (Judgment)

Neutral citation: [2025] KEELRC 2394 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E010 OF 2024**

**J RIKA, J
AUGUST 29, 2025**

BETWEEN

WESLEY LEKAKIMON PETITIONER

AND

THE SPEAKER, COUNTY ASSEMBLY OF BARINGO 1ST RESPONDENT

THE COUNTY ASSEMBLY OF BARINGO 2ND RESPONDENT

THE CLERK , COUNTY ASSEMBLY OF BARING 3RD RESPONDENT

JUDGMENT

1. In his Petition amended on 8th August 2024, the Petitioner states that, he was appointed as Member of the Baringo County Assembly Service Board.
2. A motion was moved at the 2nd Respondent on 20th March 2024, for the removal of the Petitioner from the Board. He was to be replaced by the 3rd Respondent, based on a decision of the Minority Party Members, in the 2nd Respondent.
3. The 1st Respondent presided over the session where the motion was debated and passed. The 3rd Respondent was appointed to the Board, in place of the Petitioner.
4. The Petitioner was sick and hospitalized during debate of his removal and replacement motion. The 1st Respondent was notified of the Petitioner’s illness and inability to attend proceedings, but did not defer the hearing.
5. The Petitioner submits that his right to fair administrative action under Article 47 of *the Constitution* was compromised. The Respondents did not follow Section 10 of the *County Assembly Services Act* and Standing Order No. 67 of Baringo County Assembly Standing Orders.



6. He contends further that the Respondents violated his right to fair labour practices, under Article 41 of *the Constitution*.
7. He legitimately expected to continue serving in the Board until his tenure as a Member of the County Assembly expired, or if he otherwise ceased to be a Member, under Section 12[5] of the *County Governments Act*.
8. He was removed for “lack of representation at the Board,” which is not one of the grounds for removal, under Section 10 of the *County Assembly Services Act*.
9. The Petitioner states that the Board, is a creature of Section 12 of the *County Governments Act*, 2012. Its composition is provided for under Section 12 [3] of the Act, to include the Speaker as the Chairperson; a Vice-Chair elected by Board Members; 2 Members of the County Assembly nominated by the Political Parties represented in the County Assembly, according to their proportion of Members in the County Assembly; and, 1 man and 1 woman appointed by the County Assembly, from amongst persons who are experienced in public affairs, but are not Members of the County Assembly.
10. Section 12[5] of the Act sets out the grounds for vacation of office by Board Member: at the end of the term of the County Assembly; if the Member ceases to be a Member of the County Assembly; if a person is an appointed Member, by revocation of that person’s appointment by the County Assembly; and if the person is a Speaker, when that person ceases to be a Speaker.
11. The *County Governments Act* is to be read with Section 10 of the *County Assembly Services Act*. A Member of the Board under this law may be removed for: violation of *the Constitution*; inability to discharge duties for any reason; bankruptcy; or if convicted of any offence with sentence of more than 6 months’ imprisonment.
12. Any person may petition the County Assembly for removal of a Board Member, for reasons specified under Section 10 [1] of the *County Assembly Services Act*.
13. Procedure for removal under Section 10 of the *County Assembly Services Act*, is prescribed in the Standing Orders of the County Assembly.
14. The Petitioner argues that his reading of Section 10 [1][2] and [3] of the *County Assembly Services Act*, convinces him Members who can be removed from the Board, are those appointed by the Assembly under Section 12 [3] of the *County Governments Act*.
15. He could only be removed under Section 12[3][c] of the *County Governments Act* on two instances: at the end of the term of the County Assembly; or, if he ceased to be a Member of the County Assembly.
16. The 1st and 2nd Respondents had no power and / or legal authority to remove the Petitioner from office. Removal is null and void ab initio. The Respondents acted ultra vires.
17. An act is void and a nullity in law, if done without authority, as held in *Macfoy v. United Africa Co. Limited* [1961] 3 All ER 1169. Where a statute prescribes a procedure to be followed, that procedure must be followed, in accordance with the decision of the Court of Appeal in *Republic v. County Assembly of Kisumu & 2 Others ex parte Onyango Oloo* [2018] e-KLR.
18. The Petitioner underscores that proceedings for his removal went on in his absence. He was not furnished with the allegations against him. He was denied his rights under Article 47 of *the Constitution*, read with Section 4 of the *Fair Administrative Action Act*. He was not given the opportunity to attend proceedings in person, or in the company of an expert of his choice, in accordance with Section 4[4] of the *Fair Administrative Action Act*. He submits that his right under



- Article 47 of *the Constitution* is closely linked to Article 50[1], guaranteeing a fair and public hearing, before a Court, or another independent and impartial tribunal or body.
19. Further, Article 236 of *the Constitution* protects Public Officers from victimisation and discrimination for having performed their official functions in accordance with the law; or to be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action, without due process of the law.
 20. The County Assembly of Baringo Standing Orders, 2014 do not contain a specific procedure for removal of Board Member, as envisaged under Section 10[3] of the *County Assembly Services Act*. Standing Order No. 66 however, guarantees the right to be heard, whenever the County Assembly is required to consider a petition, or a proposal for removal of a person from office.
 21. The Standing Order requires that the person shall appear before the relevant Committee of the County Assembly considering the matter. He shall be entitled to legal representation. If the County Assembly is required to hear a person on ground of removal from office, or in such similar circumstances, the County shall hear the person at a date and time to be determined by the Speaker; hearing shall be for not more than 2 hours, or such further time as the Speaker may determine; and, hearing shall be in such a manner and order as the Speaker shall determine.
 22. The Standing Order requires that the person being removed from office, shall be availed the report of the Committee and other evidence adduced before the Committee, at least 3 days before the motion is debated in the Assembly.
 23. In his Amended Petition, and Affidavits in support sworn on 8th May 2024 and 8th August 2024, the Petitioner states that he was not served with a notice containing allegations of “lack of representation.” He was not granted an opportunity to respond to the allegations. Due process was not followed. The Respondents acted on bare allegations. He was not given reasons, justifying the administrative action.
 24. The Petitioner prays for remedies: in form of declaratory orders, that the decision removing and replacing the Petitioner from the Board is unconstitutional under Articles 41, 47, 50, 232; that the Petitioner remains a lawful Member of the Board; an order of certiorari quashing the decision; reinstatement to the Board; compensation of all allowances and remuneration, based on a monthly sum of Kshs. 200,000, earned by the Petitioner; general damages; costs; interest; and, any other suitable remedy.
 25. The 1st Respondent opposes the Petition, through his Affidavit sworn 31st May 2024. He associates himself with the reply of the 3rd Respondent. He states that the Petitioner was nominated to the Board, by his Party Azimio Coalition, pursuant to Section 12 [3] [c] of the *County Governments Act*. He was removed by the same Political Party, in its meeting held on 18th March 2024.
 26. Section 12 [3] [c] of the *County Governments Act*, applies to the Petitioner. He was a nominee of a Political Party.
 27. He was entitled to allowances. This is regulated under Section 15 of the *County Assembly Services Act*. Payment of allowances does not make a Member of the Board, its Employee. There was no contract of employment between the Petitioner and the Respondents.
 28. The circumstances the Petitioner found himself in and out of the Board, confirm that he was not by any stretch of the imagination, an Employee. Section 2 of the *Employment Act* defines an Employee as “a person employed for wages or a salary.” An Employee is not nominated; he is employed. He does not earn a statutory allowance alone; he must earn wages or salary.



29. The Board was not his Employer. Section 2 of the *Employment Act* defines an Employer, as “ any person ...who or which has entered into a contract of service to employ any individual.” The definition cannot apply in relation to the Board and its Members. The Petitioner held office courtesy of a power sharing deal, between political actors.
30. The Board, which the Petitioner served as a Member, employs persons in the County Assembly Service. Under Section 11 of the *County Assembly Services Act*, the Petitioner, alongside other Members of the Board, would collectively be deemed as an Employer. The Petitioner and other Members cannot be both Employer and Employee. A Member of the County Assembly Service Board, is similar to a Board Member in a company. The 1st Respondent relies in support of this position, on Court of Appeal decision in Rift Valley Water Services Board & 3 Others v. Asanyo & 2 Others, KECA 778 [KLR] [10th June 2022] [Judgment].
31. The Petitioner can only complain about violation of his political party’s internal rules, though the internal party’s grievance and dispute handling mechanisms. If that fails, he can escalate the grievance to the Political Parties Disputes Tribunal. In Kieru John Wambui & Another v. Jubilee Party; Secretary-General Jubilee Party & 2 Others [interested Parties] [2021] e-KLR, a Board Member who had similar grievance as the Petitioner herein, moved to the Political Parties Disputes Tribunal, which held that it would have admitted his dispute for hearing under Section 40 of the *Political Parties Act*, if he had exhausted the internal party grievance and dispute handling mechanism first.
32. The 1st Respondent posits that the Petition herein is a dispute between a Member of a Political Party, and his Political Party, governed by Section 40 [1][b] of the *Political Parties Act*. The issues raised by the Petitioner are not justiciable in the employment jurisdiction.
33. Resort to constitutional jurisdiction by the Petitioner, is aimed at disguising a political dispute.
34. The Petitioner’s interpretation of Section 12[5] [a] of the *County Governments Act*, to the effect that a Member of the Board nominated by a Political Party can only be removed at the end of the Assembly’s term, or upon the Member ceasing to be a Member of the County Assembly, is flawed. It would mean that once nominated, the Political Party has no way of recalling such a Member. It would prejudice the right of Political Parties, to determine who best represents their interests in the Boards.
35. The Petitioner’s rights were not violated. The 1st Respondent urges the Court to dismiss the Petition with costs.
36. The 3rd Respondent relies on his Affidavits, sworn on 6th August 2024 and 30th October 2024.
37. He affirms that the Petitioner was nominated to serve in the Board, by his Party, Azimio Coalition Party. Upon nomination, he became entitled to allowances, payable under Section 15 of the *County Assembly Services Act*. Such allowances did not qualify him to be, an Employee.
38. The Board does not have the mandate to determine who sits in it. Nomination to the Board, and decision on continued stay in the Board, is a prerogative of the respective Political Parties.
39. If there is a grievance by a nominated Member of the Board, recourse is to the internal grievance and dispute handling mechanisms of the nominator, failing which the aggrieved Party may move on to the Political Parties Disputes Tribunal. The Petitioner has not shown that he exhausted these mechanisms, before approaching the Court.
40. The 1st Respondent is bound to adopt the decision submitted to him, by the nominating Party. The Speaker of the County Assembly cannot impose a Member on the Board. The Speaker is mandated to



adopt the decisions of the Assembly, in line with Article 178 of *the Constitution*. The 1st Respondent, Speaker of the County Assembly, acted legally.

41. The Petitioner was not guaranteed to serve the full tenure of the County Assembly. The Petitioner's interpretation of Section 12 [5] [a] of the *County Governments Act*, as guaranteeing him tenured membership to the Board, is repugnant to internal checks and balances, and the prerogatives of Political Parties.
42. The Political Party need not be informed in its decision by any accusations against a nominated Member; the decision is a culmination of judicious exercise of discretion by the nominating Party. It is based on the Party's assessment of its Member's performance, viewed against the Party's expectations.
43. The Nominating Party is not required to prove merit, in nominating a Member. It is likewise not required to give detailed reasons, in replacing a Member.
44. The computations tabulated by the Petitioner as compensation for unlawful removal from the Board are unjustified, the Petitioner having lawfully been removed from the Board.
45. The Petitioner held office as a Member of County Assembly, representing Ilchamus Ward. He was a Member of the Board, representing the interests of the Party which nominated him.
46. His prayers are unfounded, premature and in the wrong jurisdiction. The 3rd Respondent prays that the Petition is declined, with costs to the Respondents.
47. The 2nd and 4th Respondents did not place anything on record, associating or dissociating themselves with the Petition.
48. The participating Parties agreed that the Petition is considered and determined on the strength of their pleadings, affidavits, documents and submissions. They confirmed filing and exchange of their submissions at the last appearance before the Court, on 1st July 2025.
49. The issues, as identified by the Petitioner at paragraph 3 of his submissions, and as understood and modified by the Court, are: -
 - a. Whether the Petitioner was an Employee of the Respondents or the County Assembly Service Board, with the capacity to pursue an employer-employee dispute before the Court.
 - b. Whether the Respondents had the power and / or legal authority to remove the Petitioner from office.
 - c. Whether due process was followed in removal of the Petitioner.
 - d. What remedies are available to the Petitioner.

The Court Finds: -

50. The first issue is central to the Petition, because, if there was no employer-employee relationship, then the Court must decline jurisdiction.
51. Hon. Lekakimon, the Petitioner herein, is an elected Member of the Baringo County Assembly. He represents Ilchamus Ward, Baringo County.
52. Section 12 [1] of the *County Governments Act*, creates The County Assembly Service Board, for each County Assembly.
53. Section 12[2] states that the Board is a body corporate, with perpetual succession and common seal.



54. Its composition is governed by Section 12[3]. It includes:-
- a. The Speaker of the County Assembly, as the Chairperson.
 - b. The Leader of the Majority Party, or a Member of the County Assembly deputed by him or her, as the Vice-Chairperson.
 - c. The Leader of the Minority Party, or a Member of the County Assembly deputed by him or her, as the Vice-Chairperson.
 - d. One person, resident in the County, appointed by the County Assembly from among persons who have knowledge and experience in public affairs, but who is not a Member of the County Assembly.
55. The County Assembly Clerk, is the Secretary to the Board.
56. The Petitioner was appointed as a Member of the Board, under Section 12 [3] [c], as a representative of the Minority Party in Baringo County Assembly, Azimio Coalition Party.
57. From this mode of appointment, it is clear that the Petitioner was not an Employee of any of the Respondents. He was not an Employee in any shape. There was no employer-employee relationship between him and any of the Respondents, that would justify his resort to the employment and labour relations jurisdiction.
58. He was a Member of the Board, which is a separate legal entity from the Respondents, with a capacity to contract, sue and be sued in its own name. The Board has the capacity to contract, and therefore to employ, but its Members are not contracted by the Board to serve in it.
59. He acknowledges that he was not earning a salary or wages. He was receiving an allowance.
60. A fundamental element in defining an employer-employee relationship, is that there is payment of salary or wages, in exchange for labour.
61. Section 2 of the *Employment Act*, defines an “Employee” to mean, an individual employed for wages or salary, and includes an apprentice or indentured learner.
62. Underscoring the definition, which is repeated in other employment and labour statutes, such as the *Labour Relations Act* and the *Work Injury Benefits Act*, is that an Employee earns wages or salary.
63. The Petitioner did not earn wages or salary, and cannot therefore have been an Employee, to any of the Respondents.
64. Section 2 of the *Employment Act*, defines an “Employer,” to mean any person, or public body, or any firm, corporation or company, who or which has entered into a contract of service to employ any individual, and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.
65. “A contract of service,” under the same employment law glossary, means an agreement, whether oral or in writing, and whether expressed or implied to employ, or serve as an Employee for any period of time, and includes a contract of apprenticeship and indentured learnership, but does not include a foreign contract of service to which part 111 of the Act applies.
66. The Petitioner has not established that he had a contract of service in any form, within the meaning of Section 2 of the *Employment Act*. He has not exhibited a contract of employment. He has not shown that he was paid wages or salary, or that any of the Respondents, employed him.



67. The Board to which he was a Member, is a body corporate, with perpetual succession and a common seal. It has separate legal identity from its Members, and from the Respondents. A body corporate can own property, enter into contracts, and sue or be sued in its own name.
68. If the Petitioner served the Board, which has separate legal identity, with the capacity to contract, to sue and be sue, in the view of the Court he should have directed his employment dispute, if any to the Board. He ought to have explored whether there was an employer-employee relationship against this body corporate, instead of directing his grievance against the Respondents.
69. There is resonance in the 1st Respondent's submission, that indeed, the Petitioner himself, as a Member of the Board, could be deemed collectively, alongside his colleagues in the Board, to have been an Employer. The Board has all the trappings of an Employer under Section 11 of the [County Assembly Services Act](#). It directs and supervises administration of services. It determines and reviews terms and conditions of service of persons holding or acting in the services of the Service. It is an Employer.
70. In the Court of Appeal decision, *Rift Valley Water Services Board & 3 Others v. Asanyo & 2 Others* [2022] KECA 778 [KLR] [10th June 2022] [Judgment], the question arose whether a Board Member, was an Employee of a water and sanitation company. The E&LRC had initially held that the Board Member is an Employee, both as a Director and appointed Public Officer, and therefore, that the E&LRC had jurisdiction to hear and determine the Petition.
71. On appeal, it was held that the Board Member was not an Employee, within the meaning of Section 2 of the [Employment Act](#). The Court of Appeal underscored that the Board Member was not employed for wages or salary. He was not an apprentice or indentured learner. He did not hold a contract of service. This decision authoritatively puts to rest, the question whether Hon. Wesley Lekakimon, was an Employee of any of the Respondents or the Board, and whether he has approached the right forum, in pursuit of his remedies which include reinstatement and compensation.
72. Section 15 of the [County Assembly Services Act](#), 2017 mandates the Salaries and Remuneration Commission [SRC], to determine allowances payable to Members of the County Assembly Service Boards.
73. The provision does not provide for wages or salaries to be paid to Members of County Assembly Service Boards.
74. The SRC issued a circular dated 8th September 2017, on remuneration of County Assembly Service Board Members.
75. Although Section 15 of the [County Assembly Services Act](#), states that the SRC shall determine the allowances payable to Board Members, the circular is expansive, providing for a range of benefits common to Employees, that would encourage a Member of the Board, to misread his position to be that of an Employee.
76. The benefits include sitting allowances to Chairpersons, Vice-Chairpersons and Members, but also include: transport allowance; airtime; daily subsistence; car loan and mortgage benefit; medical benefit; group life insurance; group personal accident cover; and curiously, retirement benefit in form of service gratuity, at the rate of annual retainer remunerative package for the term served.
77. These benefits that go beyond mere sitting allowances for Members of the County Assembly Service Boards, in the view of the Court, would encourage Members to confuse their roles for employment roles. Is a Member of the County Assembly Services Board retired, so as to be eligible for retirement benefits?



78. The Court is satisfied that the Petitioner was not in any event, an Employee of the Board or any of the Respondents, to justify resort to employment and labour relations jurisdiction.
79. The other issues, on power of the Respondents to remove the Petitioner from the Board; whether due process was followed; and what remedies would be available to the Petitioner, are issues the Court cannot delve into, having concluded on the authority of the Court of Appeal decision above, that it does not have jurisdiction on the dispute.
80. The dispute relates to nomination of a Member of County Assembly to a County Assembly Service Board, by his Minority Party. Nomination was carried out in accordance with *the constitution* and rules of the particular Minority Party, and if a grievance or dispute has arisen, with regard to that nomination, the first port of call would be the internal party grievance and dispute handling mechanisms.
81. Failing those mechanisms, the Petitioner has the option of approaching the Political Parties Disputes Tribunal, pursuant to Section 40 [2] of the *Political Parties Act*.
82. This is the judicial body with the closest connecting factors to the Petitioner's grievance and dispute, not the E&LRC.
83. The Court agrees with the decision of the Political Parties Disputes Tribunal in *Kieru John Wambui & Another v. Jubilee Party; Secretary- General, Jubilee Party & 2 Others [Interested Parties] [2021] e-KLR*, where a nominated County Assembly Service Board Member, had a similar dispute with his nominating Party, as the Petitioner herein.
84. The Political Parties Disputes Tribunal held that it had jurisdiction in the dispute, but that the aggrieved party ought to have first exhausted the internal party grievance and dispute handling mechanisms.
85. In *Clerk, Nairobi City County Assembly v. Speaker Nairobi County Assembly & Another; Orange Democratic Party & 4 Others [Interested Parties] [2019] e-KLR*; *Gabriel Bukachi Chapia v. Orange Democratic Party & Another [2017] e-KLR*; and *Musalia Mudavadi & 4 Others v. Angela Gathoni Wambura & 2 Others [2019] e-KLR*, it was restated that political disputes should appropriately be ventilated and resolved through internal grievance and dispute handling mechanisms, with resort to the Political Parties Disputes Tribunal, failing those mechanisms.
86. From The Hansard of Baringo County Assembly, dated 20th March 2024, it is clear that the question of the Petitioner's removal from membership of the Board, was a political issue, involving his Minority Party. The Speaker of the Assembly observed that the decision to remove and replace the Petitioner, was a decision made by his Minority Party. The Speaker was bound by that decision. He directed that the Minority Party could convene another meeting, and reverse its decision. He correctly placed the grievance and the dispute at the doorstep of the internal mechanisms, of the nominating Party, which the Petitioner ought to have followed through, before approaching the Political Parties Disputes Tribunal, if need be.
87. The Supreme Court, in a catena of decisions such as *Republic v. Karisa Chengo & 2 Others [2017] e-KLR*; and *Kenya Tea Growers Association & 2 Others v. National Social Security Fund Board of Trustees & 13 Others [2024] KESC 3 [KLR] [21st February 2024] [Judgment]*, has drawn the jurisdictional contours of the E&LRC to extend to disputes emanating from an employer-employee relationship, and/or disputes which affect its status. The Petitioner's membership of Baringo County Assembly Service Board, was not founded on an employer – employee relationship.
88. The Court does not have jurisdiction in this Petition.



It is ordered: -

- a. The Petition is declined.
- b. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, PURSUANT TO RULE 68 [5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 29TH DAY OF AUGUST, 2025.

JAMES RIKA

JUDGE

