



**Omweno & 3 others v Governor, County Government of Kakamega
& 4 others; Wanyama & another (Interested Parties) (Petition
E008 of 2023) [2024] KEELRC 463 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 463 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
PETITION E008 OF 2023
JW KELL, J
FEBRUARY 29, 2024**

BETWEEN

**CATHERINE RAINI OMWENO 1ST PETITIONER
STANLEY AMWAYI WERE 2ND PETITIONER
DR RALPH WANGATIA IMMAM 3RD PETITIONER
JOEL ANYERA OMUKOKO 4TH PETITIONER**

AND

**THE GOVERNOR, COUNTY GOVERNMENT OF KAKAMEGA 1ST
RESPONDENT
THE COUNTY ASSEMBLY OF KAKAMEGA 2ND RESPONDENT
COUNTY GOVERNMENT OF KAKAMEGA 3RD RESPONDENT
DENNIS DUNCAN MUHANDA 4TH RESPONDENT
THE COUNTY SECRETARY 5TH RESPONDENT**

AND

**JOHN AMBROSE WANYAMA INTERESTED PARTY
SILVIA ITEMBE OTUNGA INTERESTED PARTY**

RULING

1. The Petitioners following the resolution by the County Assembly of Kakamega to remove them from office of the Kakamega County Public Service Board filed a Petition dated 19th December 2023 alleging violation of constitutional rights in the process and seeking compensation among other orders. In



addition, the Petitioners filed a Notice of Motion application dated 19th December 2023 seeking the following orders:-

- a. Spent
- b. Spent
- c. That upon the inter-partes hearing hereof, the temporary conservatory orders issued in (2) herein above be confirmed and the 1st Respondent herein and or his authorised representative(s) be restrained and or prohibited from proceeding on account of the illegal, irregular, unprocedural and ultra vires recommendation by the 2nd Respondent vide its purported resolutions of an unconstitutional, illegal and or irregular session of 14/12/2023 to remove the Petitioners from office as Chairperson and Members of the Kakamega County Public Service Board and or issuing any dismissal letters and further staying the purported and ultra vires resolution and or decision of the 2nd Respondent herein vide its said unconstitutional, illegal and irregular session and proceedings of 14/12/2023 purporting to direct the removal of the Petitioners from their respective offices and or staying any and all recruitment processes commenced for the replacement of the said Petitioners pending hearing and final determination of the Petition herein.

2. The Application was based on the grounds on the face of the application and the joint affidavit by the Petitioners that: -

- i. The 2nd Respondent, that is the County Assembly of Kakamega, had through an unconstitutional, illegal, and irregular Assembly's sitting of 14/12/2023 purportedly passed a resolution affirming the report dated 11/12/2023 of its Public Service and County Administration Committee("Committee") to remove the Petitioners from office as County Public Service Board members.
- ii. That the process of their removal was marred by irregularities spanning from illegal obtaining and production of documents by the 4th Respondent, Dennis Muhanda, who had brought a Petition for the Petitioners' removal before the Assembly; the documents had been produced through an affidavit that was signed on 20th November 2023 yet received on 17th November 2023 which was contrary to provisions of section 5 of the Oaths and Affirmations Act; the hurried nature of the process, lack of a fair hearing as the Petitioners were not given a chance to defend themselves, the short notice of the service period in respect of the notice to the Petitioners motion to be removed from office which was served on 13/12/2023 and the Motion moved on 14/12/2023; that the Committee members of the Assembly who unanimously resolved to the removal of the Petitioners from office also voted during the motion on 14/12/2023 yet they were already conflicted; that the Committee's report was varied with total strangers who took position and voted in a manner that they clearly had not participated in; that the Committee in complete disregard to fairness extensively cross-examined the Petitioners on issues that were raised by the 4th Respondent in his Petition instead of doing the same on the 4th Respondent who had brought the Petition ; that that the Petitioners were denied equal time and resources before the 2nd Respondent's committee; that the 2nd Respondent's committee treated the Petitioners and interested parties with indifference and its members would only sign in and leave without participating in the said proceedings, an issue which was raised by the Petitioner's counsel and never addressed.
- iii. The Petitioners contend that the 1st Respondent, and the 5th Respondent, advertised their positions before they received the communication from the County Assembly, which amounts



to their summary dismissal which they term premature and ultra vires on the part of the 1st and 5th Respondents.

- iv. The Petitioners allege that the voting by members of the Assembly was not secret as is required by the Assembly's standing orders.
 - v. The Petitioners allege that they on 15th December 2023 requested for the report of the Assembly on the resolution, recommendation, and decision of its sitting of 14/12/2023 which was used by the 1st and 5th respondents to summarily dismiss them but only got a copy on 19th December 2023 at 16.51hrs way after the 1st and 5th Respondents had advertised their positions which was ultra vires.
3. The Petitioners further asserted that the 2nd Respondent's committee had obtained documents for its investigations and then had passed on the same documents to the 4th Respondent who used them to file a Petition for the removal from office of the Petitioners. The Petitioners assert that the 2nd Respondent's Committee acted as a litigant before itself.
 3. The Petitioners also assert that the advertisement for their positions was in circulation by 10.30 pm on 14/12/2023 before even the decision of the Assembly was passed to show that the removal process was a sham and predetermined.

Response

4. The 1st, 3rd, and 5th Respondents entered appearance through the law firm of Lutta and Company Advocates and filed a response application and notice of preliminary objection dated 26th January 2024 and received in Court on the 1st February 2024. They further filed in a replying affidavit to the application which was sworn by Lawrence Angolo Omuhaka the 5th Respondent on the 26th of January 2024 and received in Court on the 1st February 2024.
5. The 2nd Respondent entered appearance through the law firm of Okong'o Wandago & Company Advocates and filed grounds of opposition received in Court on the 10th January 2024. The 2nd Respondent further filed a Replying Affidavit in response to the application and the Petition which was sworn by Hon. James Namasti, its Speaker, on the 8th January 2024 and received in Court on 10th January 2024.
6. The 4th Respondent who was the Petition mover before the County Assembly, entered appearance through Agnes Awuor Advocate and filed his Replying affidavit, to the Petition and application, sworn on the 5th of January 2024 and received in Court on the 10th January 2024.
7. The 1st, 3rd, and 5th Respondents submit that the application and the Petition offend the separation of powers principle as the decisions of the County Assembly cannot be questioned before any Court.
8. The 2nd Respondent submits that the Court has no mandate to review its motions based on the principle of separation of powers and that the Petition offended the exhaustion principle.
9. 4th Respondent on its part states that the Petition and Application offend the principle of exhaustion under Section 77 of the [County Governments Act](#) and Section 85 of the [Public Service Commission Act](#).
3. The 2nd Interested Party states that the Application and Petition are properly before the Court as the Court has the requisite jurisdiction to prevent political mechanisations.



Preliminaries

10. The Court sitting in Kisumu, Justice Radido Stephen, on the 21st December 2023 certified the application as urgent and issued a temporary order that:- ‘Pending further directions, the Court issues a temporary interdict stopping the replacement of the Petitioners and or recruitment of new County Public Service Board Members to replace them’.

Written Submissions

11. The Court directed that the Notice of Preliminary Objection by the 1st, 3rd and 5th Respondents be canvassed together with the Notice of Motion Application by way of written submissions and issued directions accordingly. The Parties complied.
12. The Petitioners’ written submissions drawn by Nyikuli, Shifwoka & Company Advocates were dated 9th February 2024 and received in Court on an even date.
13. The 2nd Interested Party’s written submissions drawn by Ongwenyi Mirieri & Company Advocates were dated 8th February 2024 and received in Court on 9th February 2024.
14. The 1st, 2nd and 5th Respondents’ written submissions drawn by Lutta & Company Advocates were dated 31st January 2024 and received in Court on the 5th February 2024.
15. The 2nd Respondent’s written submissions drawn by Okong’o Wandago & Company Advocates were dated 1st February 2024 and received in Court on an even date.
16. The 4th Respondent’s written submissions drawn by Agnes Owuor Advocate were dated 2nd February 2024 and received in Court on the 5th February 2024.

Determination

17. The Court having perused the pleadings and the written submissions by the parties, outlined above, was of the considered opinion that the issues for determination in the notice of preliminary objection and the Application were as follows: -
 - a. Whether the application/Petition is competent to be entertained by the Court.
 - b. Whether the Court has jurisdiction to entertain the Petition and application.
 - c. Whether the County Assembly has the power to remove members of a County Public Service board.
 - d. What is the Procedure for the removal of a member of the County Public Service Board?
 - e. Was this process followed?
 - f. Whether to grant the conservatory order sought.Issue a. Whether the application/Petition is competent to be entertained by the Court.
17. The 1st, 3rd, and 5th Respondents challenged the competence of the Petition and further alleged that the Petitioners’ affidavit was defective for having been signed jointly by all the Petitioners, alleging that an



affidavit as an oath should be administered on one witness at a time relying on an excerpt in the Court of Appeal decision in Francis Kariu Gakumbi & Another v Piliska Njoki Maina (2008)e KLR) that:-

“The Learned Single Judge must have had these provisions in mind when he remarked that he was unaware of circumstances when two different people can swear one oath at the same time. As rightly pointed out by the learned single judge an affidavit is evidence. A person states under oath the truth or falsity of a certain matter. It has to be on some specific portion, not a general statement on the state of affairs. So, a deponent must specifically direct his collective mind to each paragraph in the affidavit and accordingly affirm the truth thereof.”

18. The Court finds that the 3rd & 5th Respondents in relying on the said authority in Francis Kariu Gakumbi (supra) failed to consider that Court’s further finding on the said issue where the Court held that:-

“From No. 11, part of which we reproduced earlier, appear to be couched in the terms of the Indian practice. This to us appear to lend credence to what the learned single Judge of this Court was complaining about. On that we have no basis for faulting him. He however fell into error when he expressed the view that he doubted whether two people can swear one oath at the same time. He expressed himself too widely on that aspect because as we have shown above certain common law jurisdictions freely allow two or more people to swear one affidavit at the same time.”

19. The Single Judge in Francis Kariu Gakumbi (supra) while considering the application that had been brought on the said case before him that was supported by a joint affidavit held that:- “The practice of two people swearing and signing one affidavit must stop and if the motion had been opposed on the ground that it was not supported by a competent affidavit, I might well have struck it out on that basis. Be that as it may, I think it would be an abuse of my discretion if I granted to the applicants the orders which seek.”

20. The Court finds that in the said authority it was disclosed in many common law jurisdictions like Kenya the impugned affidavit is allowed. The Court is further guided by Article 159 of *the Constitution* to hear and determine matters on merit and overlook procedural technicalities and thus the Court finds the Petition competent for determination on merit.

Issue b. Whether the Court has jurisdiction to entertain the Petition and application.

21. The 1st, 3rd, and 5th Respondents filed a Notice of Preliminary Objection alleging that the Court lacks jurisdiction to entertain the application and Petition as actions and decisions of the County Assembly(2nd Respondent) by virtue of section 10 of the County Assemblies (Powers and Privileges) Act, No. 6 of 2017

22. On behalf of the 2nd & 3rd Respondents was filed Grounds of Opposition dated 8th January 2024 raising the issue of the lack of jurisdiction of the Court under sections 77(1) and (2)(c) of the *County Governments Act*, section 85(a)and 87(2) Public Service Commission, as the Petitioner’s application and Petition offend the principle of exhaustion per Article 159(2) (c) of *the Constitution* and Section 9(2) of the *Fair Administrative Action Act*. It is argued that there exists an appeal process to the Public Service Commission under section 77 of the *County Governments Act* which was not invoked by the Petitioners. This was also part of the 4th Respondent’s grounds of opposition.



23. On one limb of the application is the challenge to the decision of the County Assembly to remove the Petitioners from office and on another the imminent decision to advertise by the 1st, 3rd, and 5th Respondents the positions of the Petitioners.

Jurisdiction on the decision of the County Assembly

24. The 1st, 3rd, and 5th Respondents argue that under section 10 of the County Assemblies (Powers & Privileges) Act, No. 6 of 2017, as per the doctrine of separation of powers, proceedings of a county assembly are immunized against challenge before any Court and that the Court has therefore no jurisdiction to entertain the Petition.

25. Section 10 of the County Assemblies (Powers & Privileges) Act, No. 6 of 2017 is reproduced below:

“No proceedings or decision of a county assembly or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any Court.”

26. The Court of Appeal on separation of powers in County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR stated that:

33. Understanding of, and respect for, the principle of separation of powers is the sine qua non of a democratic State. The essence of the doctrine of separation of powers is that the Executive, the Legislature and the Judiciary constitute three separate and independent arms of government with different and exclusive responsibilities. The legislative function, that is the enactment of laws, belongs to the legislature; the implementation of law and government policies is the role of the Executive; and the interpretation and enforcement of the rule of law is the mandate of the Judiciary. By virtue of this separation, it is not permissible for any branch to interfere with the others' spheres.

34. With regard to the issue before us, under the doctrine of separation of powers, the Court should not interfere with the freedom of speech and debate of legislative bodies. The Court must resist unwarranted intrusion into internal procedures of Parliament and the County Assemblies unless they act unconstitutionally. As this Court stated in *Martin Nyaga Wambora & Others v. Speaker of the Senate & Others*, where it is shown that in conducting its proceedings, a legislative authority has acted within the confines of *the Constitution*, Courts have no jurisdiction and ought not to interfere simply because anybody is aggrieved by a decision passed by the legislative authority. However, where they have not, the Court can interfere. This is because the legislative assemblies, like all other organs of state and indeed every person, must act in accordance with *the Constitution*.

35. Article 2(1) of *the Constitution* declares that *the Constitution* is “the supreme law of the Republic” which “binds all persons and all state organs at both levels of government.” Every person, organ or institution is therefore enjoined to respect, uphold and defend *the Constitution*.”

27. It follows that Parliament or any County Assembly cannot seek refuge under the National Assembly (Powers and Privileges) Act where it violates any provision of *the Constitution*. The Supreme Court reiterated this point in the case of *Speaker of the Senate & Another v. Attorney General & 4 Others* in the following terms:-

“...Kenya’s legislative bodies bear an obligation to discharge their mandate in accordance with the terms of *the Constitution*, and they cannot plead any internal rule or indeed, any



statutory scheme, as a reprieve from that obligation... If Parliament violates the procedural requirements of the supreme law of the land, it is for the Courts of law... to assert the authority and supremacy of *the Constitution*. It would be different if the procedure in question were not constitutionally mandated. This Court would be averse to questioning Parliamentary procedures that are formulated by the Houses to regulate their internal workings as long as the same do not breach *the Constitution*. 36. This view was echoed by the South African Constitutional Court in the case of *Doctors For Life International v. Speaker of The National Assembly And Others* where it held that: -“Courts are required by *the Constitution* ‘to ensure that all branches of government act within the law’ and fulfill their Constitutional obligations.”

28. The Supreme Court in *Justus Kariuki Mate & Another v Martin Nyaga Wambora & another* [2017]eKLR affirming the Court Appeal’s position (supra)also had this to say on the separation of powers:-

(i) Separation of Powers

(52) In *Judicial Service Commission v. Speaker of the National Assembly & 8 Others* [2014] eKLR, this Court signalled that, by the doctrine of separation of powers, the limits on judicial authority, and *the Constitution*’s design of entrusting certain issues to other organs of Government, are vital principles. The Court thus remarked [paragraph 121]:

“*The Constitution* disperses powers among various constitutional organs. Where it is alleged that any of these organs has failed to act in accordance with *the Constitution*, then the Courts are empowered by Article 165 (3)(d) (ii) to determine whether anything said to be done under the authority of *the Constitution* or of any law is inconsistent with, or in contravention of *the Constitution*” [emphasis supplied].

.....

(58) The Supreme Court has also pronounced itself on this issue. In, *In Re the Matter of the Interim Independent Electoral Commission* [2011] eKLR, the Court observed [paragraph 54]:

“The effect of *the Constitution*’s detailed provision for the rule of law in the processes of governance, is that the legality of executive or administrative actions is to be determined by the Courts, which are independent of the Executive branch. The essence of separation of powers, in this context, is that the totality of governance-powers is shared out among different organs of government, and that these organs play mutually-countervailing roles. In this set-up, it is to be recognized that none of the several governmental organs functions in splendid isolation” [emphases supplied].

(59) Also quite relevant is this Court’s decision in *Speaker of the Senate & Another v. Attorney General & 4 Others*, Reference No. 2 of 2013; [2013] eKLR. The Court, in that case, signalled that it would be reluctant to question parliamentary procedures, as long as they did not breach *the Constitution*. In reference to Article 109 of *the Constitution*, which recognizes that Parliament is guided by both *the Constitution* and



the Standing Orders in its legislative process, the Court thus held [paragraphs 49 and 55]:

“Upon considering certain discrepancies in the cases cited, as regards the respective claims to legitimacy by the judicial power and the legislative policy – each of these claims harping on the separation-of-powers concept – we came to the conclusion that it is a debate with no answer; and this Court in addressing actual disputes of urgency, must begin from the terms and intent of *the Constitution*. Our perception of the separation-of-powers concept must take into account the context, design and purpose of *the Constitution*; the values and principles enshrined in *the Constitution*; the vision and ideals reflected in *the Constitution*...

“It is clear to us that it would be illogical to contend that as the Standing Orders are recognized by *the Constitution*, this Court, which has the mandate to authoritatively interpret *the Constitution* itself, is precluded from considering their constitutionality merely because the Standing Orders are an element in the ‘internal procedures’ of Parliament. We would state, as a legal and constitutional principle, that Courts have the competence to pronounce on the compliance of a legislative body, with the processes prescribed for the passing of legislation.”

[60] The Court went on to state as follows [paragraph 60]:

“It makes practical sense that the scope for the Court’s intervention in the course of a running legislative process, should be left to the discretion of the Court, exercised on the basis of the exigency of each case. The relevant considerations may be factors such as: the likelihood of the resulting statute being valid or invalid; the harm that may be occasioned by an invalid statute; the prospects of securing remedy, where invalidity is the outcome; the risk that may attend a possible violation of *the Constitution*.”

29. The Supreme Court, however, cautioned against undue interference with running processes in other arms of Government. The Court thus pronounced itself [paragraph 61 supra]: “This Court will not question each and every procedural infraction that may occur in either of the Houses of Parliament. The Court cannot supervise the workings of Parliament. The institutional comity between the three arms of government must not be endangered by the unwarranted intrusions into the workings of one arm by another [emphases supplied].
30. A clear inference to be drawn is that it was the Supreme Court’s stand that no arm of Government is above the law. This being a constitutional democracy, *the Constitution* is the guiding light for the operations of all State Organs. The Court’s mandate, where it applies, is to avert any real danger of constitutional violation. The Supreme Court (supra) stated:- “From the course of reasoning emerging from such cases, it is possible to formulate certain principles, as follows:
- (a) each arm of Government has an obligation to recognize the independence of other arms of Government;
 - (b) each arm of Government is under duty to refrain from directing another Organ on how to exercise its mandate;



- (c) the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;
 - (d) for the due functioning of constitutional governance, the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case;
 - (e) in the performance of the respective functions, every arm of Government is subject to the law.”
31. In establishing whether the Employment and Labour Relations Court has jurisdiction to consider proceedings of the County Assembly as relates to the removal of members of a County Public Service Board, the Court appreciates that Article 200(2) (c) of *the Constitution* empowers Parliament to enact legislation for the manner of election or appointment of persons to, and their removal from, offices in county governments.
 32. Pursuant to this Provision, Parliament enacted the *County Governments Act* Section 58 (5) which provides for the Removal of members of the Public Service Board. The section provides:- “(5) The members of the Board may only be removed from office—
 - (a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of *the Constitution*; and
 - (b) by a vote of not less than seventy-five percent of all the members of the county assembly.”
 33. *The Constitution* is “the supreme law of the Republic of Kenya” which “binds all persons and all State organs at both levels of government” Nobody, including State organs like Parliament and the County Assemblies can violate it with impunity. It is therefore no derogation from the doctrine of separation of powers for a Court to question any unconstitutional acts of legislative assemblies within the confines set out by the Supreme Court in *Justus Kariuki Mate & another v. Martin Nyaga Wambora*(supra).
 34. The Petitioners in this case, relying on the provisions of Articles 10,27,28, 35,47,48,50 41, and 236 of *the Constitution* and Section 35,80,81,& 82 of the *Evidence Act*; Section 58 of the *County Governments Act*, challenged their removal from office by the 2nd Respondent on the grounds the process was procedurally and substantially biased, discriminative, indignifying, suppressing their right to access to information, administratively unfair, contrary to ideals of fair trial and hearing and geared toward taking adverse action on public servants.
 35. As to whether the acts of the 2nd Respondent were within the Constitutional confines is a pertinent issue that the Court is asked to determine in the Petition.
 36. Article 165(3)(d)(ii) of *the Constitution* provides that:- “Subject to clause (5), the High Court shall have jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;”
 37. Article 165(6) of *the Constitution* provides that:- “The High Court has supervisory jurisdiction over subordinate Courts and over any person, body or authority exercising judicial or quasi-judicial function but not over a superior Court.”
 38. The proceedings before the County Assembly and its committees are quasi-Judicial in nature and based on that the County Assemblies are subject to the supervisory jurisdiction of the Court.



39. The *County Governments Act*, section 58 (5) provides for the removal of the members of a County Public Service Board to be through the Procedure for the removal on grounds set out for the removal of members of a constitutional commission under Article 251(1) of *the Constitution*. The process of removal must comply with the Constitutional requirements.
40. The process for removal is through a Petition as per Article 251(2) before the County Assembly and this process is provided under the Kakamega County Assembly Standing Orders and the process for the removal of the said members of the Public Service Board is quasi-judicial.
41. Under Article 162 of *the Constitution*, this Court has the status of the High Court and it follows that in matters falling within its jurisdiction, the ELRC has supervisory powers over “any person, body or authority exercising judicial or quasi-judicial functions.
42. The Court of Appeal in *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others* (2015)e KLR affirmed the supervisory jurisdiction of the Court over county assemblies in paragraph 43 as follows:- ‘43. According to Article 162 of *the Constitution*, the ELRC has the status of the High Court. This being the case, it follows that in matters falling within its jurisdiction, the ELRC has supervisory powers over “any person, body or authority exercising judicial or quasi-judicial functions.” We have already found that the removal of a Speaker of a County Assembly is a quasi-judicial function.’ The Court finds that the process of removal of the County Public service board members from their employment is a quasi-judicial process hence under the supervisory powers of the Court. The Court in assuming jurisdiction over the matter is further guided by decision cited with approval of Court of appeal in the *Kisumu Assembly matter* (supra) by Majanja J as follows:- *United States International University (USIU) v. The Attorney General & Others* in which the learned judge observed that: “Since the Court is of the same status of the High Court, it must have jurisdiction to enforce labour rights in Article 41 and the jurisdiction to interpret *the Constitution* and fundamental rights and freedoms is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce, not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of *the Constitution* within the matter before it.”
43. The 2nd Interested Party submits that the conduct or misconduct of the County Assembly in its proceedings in itself raises an employer-employee relationship. The Court found the 2nd interested party was in support of the Application.
44. Consequently, applying the cited decisions above, the Court finds and determines it has jurisdiction in the matter.

The second limb was whether the Court has jurisdiction in the first instance to stay the decision of the 1st, 3rd and 5th Respondents removing the Petitioners from office.

45. The 1st Respondent argues that according to Section 58(1) of the *County Governments Act* and the Public Appointments (County Assemblies Approvals) Act, the Governor received communication from the County Assembly that the Petitioners had been removed from office effective 14th December 2023 through the communication of 15th December 2023 and this set into motion the process of the appointment of the Chairperson and members of the County Public Service Board under Section 58(a & b) and 58A of the *County Governments Act* and which process had commenced at the point of filing the Petition. The 1st Respondent argues that it has not been shown that the Governor acted outside any legal provision and the presumption of validity of acts undertaken by public bodies when they



exercise clear constitutional and statutory mandates should not be impeded by Courts as the laws that create the statutory powers and functions would be rendered useless.

46. The County Secretary, one Lawrence Angolo Omuhaka, in his replying affidavit dated 26th January 2024 states that the 1st Respondent revoked the advertisement in the standard Newspaper of 15th December 2023 issued for the positions of the Chairperson and Members of the County Public Service Board and annexed an extract of a newspaper page with the word REVOKED on the face of the said extract marked as 'Annexure B'. This position has not been denied by the Petitioners.
47. The effect of the revocation of the advertisement is that there is no action in place by the Governor, the First Respondent, or the 3rd or 5th Respondents to dismiss the Petitioners, but only the threat to so act which is what the Petitioners are seeking for orders to stop the 1st, 3rd and 5th Respondents from acting. In essence, the Petitioners' prayers are anticipatory at the moment. The Petitioners are nominated and later appointed by the 1st Respondent, who acts for the 3rd Respondent and through the 5th Respondent.
48. The Court holds that it has supervisory jurisdiction to determine whether or not to stay the communication to the Governor from the County Assembly dated 15th December 2023 (page 746 of the 2nd Respondent's response) by a grant of conservatory order.

Exhaustion of procedure before the Public Service Commission.

49. The 2nd and 4th Respondents submit that the Petitioners offended the principle of exhaustion by failing to appeal to the Public Service Commission according to Section 77 of the *County Governments Act*.
50. The Petitioners on their part argue that the 2nd Respondent was not exercising any disciplinary action against them but rather was undertaking a mandate bestowed upon it by statute and as per Regulations 2 and 4 of the Public Service Commission (County Appeals procedures) Regulations, 2022, the decisions of the County Assembly are not appealable to the Public Service Commission under Section 77 of the *County Governments Act*.
51. Justice Byram Ongaya in *Abdikadir Suleiman v County Government of Isiolo & another* [2015] eKLR held that:-

“The Court has considered the submissions made for the parties. Article 234(2) (i) of *the Constitution* provides that the Public Service Commission is vested with the function and power to hear and determine appeals in respect of county governments' public service. Article 262 defines “public service” to mean the collectively of all individuals, other than state officers, performing a function within a state organ. Accordingly, and firstly, the Court holds that the power of the Commission to hear and determine appeals in respect of county governments' public service constitutionally applies only to public officers, and not state officers, in the service of the county governments or any other state organ. Secondly, the Court holds that section 77 of the *County Governments Act*, 2012 amplifies and brings into operation Article 234(2) (i) of *the Constitution*.”

52. As rightly stated by the Petitioners, under Article 262 of *the Constitution*, a State officer” means a person holding a State office. A state office includes a member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government.



53. Section 77 of the County Government Act provides that:-

“77. Appeals to the Public Service Commission

- (1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the “Commission”) against the decision.
- (2) The Commission shall entertain appeals on any decision relating to employment of a person in a county government including a decision in respect of—
 - (a) recruitment, selection, appointment and qualifications attached to any office;
 - (b) remuneration and terms and conditions of service;
 - (c) disciplinary control;
 - (d) national values and principles of governance, under Article 10, and values and principles of public service under Article 232 of *the Constitution*;
 - (e) retirement and other removal from service;
 - (f) pension benefits, gratuity and any other terminal benefits; or
 - (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine on appeal in that regard.”

54. The Court in *Abdikadir Suleiman V County Government Of Isiolo & Another* (2015) eKLR held that:-

“In considering the constitutional and statutory provisions that empower the Commission to hear and determine appeals in respect of county governments’ public service, the subject matter is set out in section 77 of the Act, but the decisions the Commission may make are not set out in the Act or *the Constitution*. It is this Court’s opinion and holding that in appeals to the Commission, the Commission can only make decisions that the County Public Service Board or relevant lawful authority could have made or vary such decision by simply setting it aside or making a decision that was in the Board’s or the other relevant lawful authority’s jurisdiction to make. The Court has guided itself that on appeal the appellate authority applies the same substantive law and facts as applied by the primary authority that made the decision appealed against and generally considers facts as they were presented before the primary authority so that an appellate authority, in absence of anything else, may only set aside the decision appealed against or substitute the decision with any of the remedies that the primary authority was empowered to make. In other words, the appeal process deals with the merits or substance of the case and not procedural or legal propriety of the case.”

55. It flows from the foregoing decision and reading of section 77(1) of the *County Governments Act*; that, the Public Service Commission’s appellate power is to exercise the powers that are exercised by the Public Service Board or a person in the said purported exercise in the public service, either by varying the decision made or upholding it. This was not the case herein.



56. At this juncture then relying on the decision in *Abdikadir Suleiman V County Government of Isiolo & Another* (2015) eKLR Justice Byram Ongaya observed that:-

“...In the instant case, looking at the alleged claims of illegality, unconstitutionality, breach of constitutional rights and the remedies as prayed for, it is difficult to find that the cited alternative procedure and remedy under section 77 of the Act was available to the claimant. Even if it is said that it was a case of mixed jurisdiction of the Commission and the Court, it is the Court’s opinion that the legitimate path was to invoke the Court’s jurisdiction to hear and determine the intertwined issues, that being the most efficient and effective manner of disposing the dispute.

In the circumstances of this case, the Court returns that the provisions of section 77 of the County Government Act, 2012 did not oust or restrict the jurisdiction of the Court for want of exhaustion of the procedure and remedies envisaged under the section.”

57. As earlier found under Article 165 (3)(d)(ii) Courts are empowered to determine whether anything said to be done under the authority of *the Constitution* or of any law is inconsistent with, or in contravention of *the Constitution*” The Petitioners’ application is anticipatory against what they term will result in their removal from office arising from what they term as a decision arrived at in an unconstitutional process. The Court has jurisdiction to consider allegations of constitutional violations in all employment and labour relations matters and decide whether to issue a Conservatory order.

58. The Court in the exercise of its supervisory jurisdiction is guided by *the Constitution* and case law. In *Damour Florian Emmeric v Director of Immigration Services* [2022] eKLR observed that:-“29. Given the interlocutory nature of conservatory orders, it is argued, that there is need for a Court to exercise caution when dealing with any request for such prayers. I agree with that proposition for the reason that matters which are the preserve of the main Petition ought not to be dealt with finality at the interlocutory stage.”

59. The Supreme Court in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR held that :_-

(86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. 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 supplicant’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 the proportionate magnitudes, and priority levels attributable to the relevant causes.

(87) The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

- (i) the appeal or intended appeal is arguable and not frivolous; and that
- (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.



- (88) These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely:
- (iii) that it is in the public interest that the order of stay be granted.”
60. In *Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Others* Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR the Court summarized three main principles for consideration on whether to grant conservatory orders as follows: -“
- (a) An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the Court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
- (b) Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
- (c) The public interest must be considered before grant of a conservatory order.”
61. The Court (supra) observed that the above principles are, however, not exhaustive. Depending on the nature of the matter under consideration, there may be other parameters that a Court ought to look into. Such may include the effect of the orders on the determination of the case, whether there is eminent danger to infringement of the human rights and fundamental freedoms under the Bill of Rights, the applicability of the doctrine of presumption of constitutionality of statutes, whether the Applicant is guilty of laches, the doctrine of proportionality, among many others.
62. The Court of Appeal in *Nairobi Civil Appeal No. 44 of 2014 Naftali Ruthi Kinyua vs. Patrick Thuita Gachure & Another* (2015) eKLR while dealing with what a prima facie case is, made reference to Lord Diplock in *American Cyanamid vs. Ethicon Limited* (1975) AC 396, when the Judge stated thus: -
- “If there is no prima facie case on the point essential to entitle the plaintiff to complain of the defendant’s proposed activities, that is the end of any claim to interlocutory relief.
56. In sum, therefore, in determining whether a matter discloses a prima-facie case, a Court must look at the case as a whole. It must weigh, albeit preliminarily, the pleadings, the factual basis, the respective parties’ positions, the remedies sought and the law. In so doing, a Constitutional Court must be guided by Articles 22 (1) and 258(1) of *the Constitution* which provisions are on the right to institute Court proceedings whenever a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened or the when *the Constitution* has been contravened, or is threatened with contravention.”
63. The removal of members of a County Public Service Board is by the County Assembly. The decision emanating from the County Assembly has the effect of commencing the process of recruitment of new members of the Board to replace those who were removed by the decision of the County Assembly. The recruitment process has the effect of rendering the Petitioners jobless without determining whether their fundamental rights were or were not infringed in the process before the 2nd Respondent.
64. The Petitioners have alleged that the grounds for their removal were not proved before the County Assembly and they submit that they provided all evidence to corroborate that they acted within the confines of the law and that the County Assembly’s Committee ignored their evidence.
65. In such a case, unless otherwise demonstrated, the Petitioners have demonstrated that if the conservatory orders are not issued they may suffer prejudice if the decision of the County Assembly was



not lawful and they will have lost their employment. The decision to remove the Petitioners from office by the 1st, 3rd, or 5th respondents is dependent on the determination of the legality of the process before the County Assembly. The Court will determine this on prima facie basis at the interlocutory stage.

Issue c. Whether the County Assembly has the power to remove members of a County Public Service board.

66. The Petitioners in their applications allege that the 2nd Respondent, which is the County Assembly acted beyond its powers in alleging to remove them from office.
67. The Speaker of the County Assembly communicated to the 1st Respondent vide letter dated 15th December 2023 that it had considered the recommendations of the Committee and having considered 6 motions with respect to the public service board members sought to be removed by the 4th Respondent, resolved only 4 members be removed. The Court noted that the Assembly retained one of the members as Vice Chair and another as a member.
68. A County Public Service Board is a body corporate established under Section 57 of the [County Governments Act](#), and its composition is provided for under Section 58 of The [County Governments Act](#).
69. As to whether the members comprising the Board may be removed, the law is provided under Section 58 (5) of the [County Governments Act](#) as follows:-
 - (5) 5) The members of the Board may only be removed from office—
 - (a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of [the Constitution](#); and
 - (b) by a vote of not less than seventy-five percent of all the members of the county assembly.”
70. It is therefore right to find that a County Assembly can remove members of a County Board based on the provisions under Article 251(1) of [the Constitution](#) and Section 58 of the [County Governments Act](#). The Procedure for removal of a member of the County Public Service Board and whether there was compliance
71. The removal of a member of a county public service board is governed by section 58(5) of the [County Governments Act](#) which provides that:-

“58(5) The members of the Board may only be removed from office—

 - a. on grounds set out for the removal of members of a constitutional commission under Article 251(1) of [the Constitution](#); and
 - b. by a vote of not less than seventy-five percent of all the members of the county assembly”
72. Article 251 of [the Constitution](#) provides that:-

“251(1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for -

 - a. serious violation of this Constitution or any other law, including a contravention of Chapter Six;



- b. gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise;
 - c. physical or mental incapacity to perform the functions of office;
 - d. incompetence; or
 - e. bankruptcy.”
73. The *County Governments Act* while setting out that a member of the County Public Service Board may only be removed on the grounds contained in Article 251(1) of *the Constitution*, did not outline the process to be invoked in the process for the said removal on the said grounds.
74. However, Article 251(2) of *the Constitution* provides that:- “A person desiring the removal of a member of a commission or a holder of an independent office on any ground specified in clause (1) may present a Petition to the National Assembly setting out the alleged facts constituting that ground.”
75. In the absence of any further provisions, the County Assembly is the equivalent of the National Assembly at the County Level, and thus the procedure under Article 251(2) (supra) of *the Constitution* comes into play where before the removal of members of any county public service board from office, a Petition has to be submitted before the assembly.
76. A Petition is presented before the County Assembly by a person who desires the removal of a member of the County Public Service Board setting out the grounds for their removal as provided for under Article 251(1) of *the Constitution* of Kenya
77. The removal process is subject to the Standing Orders of a County Assembly and an extract of the Kakamega County Assembly Standing Orders was provided as “Annexure A” by the 5th Respondent in his replying Affidavit dated 26th January 2024.
78. Standing order No. 64 (5) of the Kakamega County Assembly Standing Orders is to effect that once a Petition for the removal of a member of a Public County Service Board is filed in the Assembly it is committed to a Sectoral Committee dealing with County Public service and administration.
79. Under Standing Order 64(6), the committee has sixty days to investigate the matter and report to the Assembly whether the Petition discloses grounds for removal under Article 251(1) of *the Constitution*. (See Standing Order 219(2))
80. Under Standing Order 65(7), a member of the County Service Board who is before the Assembly for a Petition for removal has a right to appear and be represented before the Committee during investigations.
81. Section 18 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 provides for the process of Inviting and summoning of witnesses before either the assembly or any of its Committee.
82. Section 19 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 provides that “Where a county assembly or a committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the county assembly or the committee may—
- (a) cause such witness to be examined on oath; and
 - (b) require the witness to produce any document, paper, book, or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.



83. Section 20 of the County Assemblies (Powers and Privileges) Act No. 6 of 2017 then provides that:-

“(1) Every person who is summoned to give evidence or to produce a document before a county assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a Court of law.

84. The import of the above provisions, on prima facie basis, is that the rules of evidence that apply to witnesses in a Court of law are also applicable at hearings before the County Assembly Committees.

On Admissibility of evidence

85. The Petitioners raised the issue of the admissibility of documentary evidence produced by the 4th Respondent and the admissibility of the Affidavit dated 20th November 2023 but filed on 17th November 2023 under section 35, 80, 81, and 82 of the *Evidence Act* on the grounds that the same were obtained illegally and the affidavit offended section 5 of the Oaths and Affirmations Act. The Court will examine this issue at the hearing of the petition.

Voting by Committee members

86. The Petitioners alleged that the Committee members who heard the Petitioners, the interested Parties any the 4th Respondent were not supposed to vote in the Assembly’s proceedings but under Standing Order 64(10) a vote supported by not less than seventy-five percent of all the members of the Assembly, is to be undertaken. The issue will considered in the petition.

Time for hearing and Service of Report before Debate at Assembly

87. Section 20 of the *County Assemblies Powers and Privileges Act* No. 6 of 2017 then provides that:-“

1. Every person who is summoned to give evidence or to produce a document before a county assembly or a committee shall be entitled to the same rights and privileges that are applicable to a witness before a Court of law.
2. A person who is being examined under oath or affirmation in terms of section 19 shall be required to answer any question put to the person in connection with the subject of the inquiry and to produce any document or information that the person is requested to produce under that section despite the fact that the answer or the document would incriminate or expose the person to criminal or civil proceedings in a Court of law.
3. Evidence given under oath or affirmation by a person before a county assembly or a committee shall not be used against the person in a Court or other place outside the county assembly except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated under section 27(1)(c) or (3)(g) or (h).
- (4) The right to fair hearing under Article 50 of *the Constitution* shall be limited as specified under this section for the purposes of advancing the freedom of speech and debate set out in Article 117 of *the Constitution*.”

88. The Applicants state that they were denied equal time to cross-examine or in examination in chief. This is an issue for consideration in the petition.

89. Standing Order 65(2) provides that:-“ the person being removed from office shall be provided with the report of the select committee, together with any other evidence adduced and such notes or papers presented to the Committee at least three days before the debate on the Motion.”



90. The Petitioners state that they received the letters to appear before the 2nd Respondent to answer to the issues raised in the Committee’s report on 13th December 2023, which was in violation of the standing order requiring at least three days.
91. The 2nd Respondents stated that the Petitioners were served with the Committee’s report and Notice to appear on 11th December 2023 through WhatsApp and through email of their advocates on record and thus the Assembly complied with Standing Order 65 and that It was false that they were served on 13th December 2023. The Petitioners did not file any further reply relating to this assertion.
92. The Court did not find the WhatsApp messages but the email document. The email document was addressed to the advocates for the Petitioners at nyikulishifwokaadvs@gmail.com on Monday 11th December 2023 at 6.23 pm. The County Assembly sat on 14th December 2023. The service on 11th December 2023 at 6.23 pm was outside official working hours. The notice is held to have been less than the stipulated minimum notice of three days under Standing Order 65(2).

Whether the Applicants are entitled to the conservatory order sought.

93. Having considered, on prima facie basis, the procedures followed by the 2nd Respondent and made findings, I now consider the merit of the application. The Court is empowered under article 23(3) of *the Constitution* to grant conservatory order as follows:- ‘23(3) In any proceedings brought under Article 22, a Court may grant appropriate relief, including– (c) a conservatory order;’
94. The Supreme Court which is binding on all Courts except itself has defined the threshold for grant of conservatory orders. In *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR the Supreme Court observed that :-
 - (86) “Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. 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 supplicant’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 the proportionate magnitudes, and priority levels attributable to the relevant causes.
 - (87) The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:
 - (i) the appeal or intended appeal is arguable and not frivolous; and that
 - (ii) unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.
 - (88) These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely:
 - (iii) that it is in the public interest that the order of stay be granted.”



95. In *Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Others* Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR the Court summarized three main principles for consideration on whether to grant conservatory orders as follows: -
- “(a) An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the Court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
 - (b) Whether, if a conservatory order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
 - (c) The public interest must be considered before grant of a conservatory order.
96. . The above principles are, however, not exhaustive. Depending on the nature of the matter under consideration, there may be other parameters which a Court ought to look into. Such may include the effect of the orders on the determination of the case, whether there is eminent danger to infringement of the human rights and fundamental freedoms under the Bill of Rights, the applicability of the doctrine of presumption of constitutionality of statutes, whether the Applicant is guilty of laches, the doctrine of proportionality, among many others.”
97. The 1st, 3rd and 5th Respondents submit that the conservatory order sought has the effect of reinstating the Petitioners back to office at an interlocutory stage. That reinstatement is a substantive order. That grant of the conservatory order at this stage will render further proceedings an academic exercise. To buttress this submission they rely on decision of the Court of Appeal in *Kenya Tea Growers Association & Another v Kenya Plantation and Agricultural Workers Union* [2018] eKLR where the Court held at para 30:-
- “We agree entirely with the statement by Rika, J. in *Alfred Nyungu Kimungii v Bomas of Kenya* [2013] eKLR that ‘ordinarily reinstatement of an employee is a substantive remedy, not a temporary relief. The law does not contemplate that reinstatement issues (sic) as a provisional measure. It is a remedy that should normally be granted upon the full hearing of the employer, and employee.’ This Court upholds the the decision.
98. The Applicants seek the following Order:- ‘That upon the inter-partes hearing hereof, the temporary conservatory orders issued in (2) herein above be confirmed and the 1st Respondent herein and or his authorised representative(s) be restrained and or prohibited from proceeding on account of the illegal, irregular, unprocedural and ultra vires recommendation by the 2nd Respondent vide its purported resolutions of an unconstitutional, illegal and or irregular session of 14/12/2023 to remove the Petitioners from office as Chairperson and Members of the Kakamega County Public Service Board and or issuing any dismissal letters and further staying the purported and ultra vires resolution and or decision of the 2nd Respondent herein vide its said unconstitutional, illegal and irregular session and proceedings of 14/12/2023 purporting to direct the removal of the Petitioners from their respective offices and or staying any and all recruitment processes commenced for the replacement of the said Petitioners pending hearing and final determination of the Petition herein.’”
99. The Court finds that the employment of the Petitioners is threatened by the communication of the resolutions of the 2nd Respondent to the 1st Respondent on the 15th December 2023. The Conservatory order as framed is meant to preserve the employment of the Petitioners pending the final determination of the Petition. However, the Court has to trend carefully not to be seen to grant a substantive order of reinstatement at the interlocutory stage guided by the Court of appeal decision in *Kenya Tea Growers Association and another v Kenya Plantation and Agricultural Workers Union* (2018)e KLR(supra).



100. Guided by the above decisions on threshold for grant of conservatory orders of the Supreme Court(supra), and having considered the case on prima facie basis and found there was substantial non-compliance by the Kakamega County Assembly, the 2nd Respondent, with requirements for fair hearing, various laws and its own Standing Orders in the process of coming up with the resolution to remove the Petitioners, I am satisfied that there is a real danger that the Petitioners will suffer prejudice as a result of the violation or threatened violation of the Constitutional Bill of Rights if the conservatory order sought is not granted as the 1st Respondent may act on the communication by the County assembly dated 15th December 2023 and commence recruitment to replace the Petitioners in the Board. The threat is further evidenced by the immediate advertisement on 15th December 2023 of the said positions held by the Petitioners by the 1st Respondent which was alleged to have been revoked as per replying affidavit of Lawrence Angolo Omuhaka. I do find there is real threat that the substratum of the Petition will be rendered nugatory if the conservatory order sought is not granted.
101. In the upshot, the Court makes an order confirming the temporary order in place of Justice Radido dated 21st December 2023 to be effective until determination of the Petition as follows:- A temporary order is hereby issued staying the decision of the Kakamega County Assembly as communicated to the 1st Respondent on the 15th December 2023 and to prohibit the 1st, 3rd and the 5th Respondents or any other person or agent from taking any step towards the replacement of the Petitioners in the Kakamega Public Service Board and or recruitment of new county public service board members to replace the Petitioners.
102. In the public interest, the county public service board membership being critical for the operations of the 3rd Respondent, it is hereby ordered that the hearing of the main Petition proceeds on an urgent basis and without any delay. The Court will issue directions accordingly.
103. The Notice of Preliminary Objection by the 1st, 3rd and 5th Respondent dated 26th January 2024 is held to be without merit and is dismissed.
104. No order as to costs in the Application and the Notice of Preliminary Objection.

It is so Ordered

DATED, SIGNED, AND DELIVERED THIS 29TH FEBRUARY 2024 IN OPEN COURT AT KAKAMEGA.

J.W. KELI

JUDGE

In the presence of

C/A Lucy Macheso

Petitioners:- Mr. Shifwoka

1st, 3rd and 5th Respondents – Ms. Moga h/b Mr. Lutta

2nd Respondents- Mr. Okong'o

4th Respondent – Mr. Odero

2nd interested party - Mr. Mukonyi

