



**Onyango v County Assembly of Siaya & 2 others (Petition E012 of 2023)  
[2023] KEELRC 2903 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2903 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E012 OF 2023  
CN BAARI, J  
NOVEMBER 16, 2023**

**BETWEEN**

**DR. JULIE CAROLINE PHEOBE ADHIAMBO AKINYI  
ONYANGO ..... PETITIONER**

**AND**

**THE COUNTY ASSEMBLY OF SIAYA ..... 1<sup>ST</sup> RESPONDENT**

**THE SPEAKER, COUNTY ASSEMBLY OF SIAYA ..... 2<sup>ND</sup> RESPONDENT**

**GOVERNOR, COUNTY GOVERNMENT OF SIAYA ..... 3<sup>RD</sup> RESPONDENT**

**The procedure for the removal of a member of the County Executive Committee**

*The petitioner was a County Executive Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resource in Siaya County. The petitioner was later removed from office through a process which the petitioner contended violated the provisions of article 50 of the Constitution. The Environment and Land Court held that there was no violations of articles 47 and 50 of the Constitution with respect to the removal of the petitioner from office. The petitioner was validly removed from the office of County Executive Committee Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resources.*

Reported by John Ribia

**Jurisdiction** – jurisdiction of the Employment and Labour Relations Court – jurisdiction to determine disputes of removal of County Executive Committee Members - whether the Employment and Labour Relations Court had the jurisdiction to determine a dispute on the impeachment of a member of a County Executive Committee – Constitution of Kenya, 2010 article 165(6).

**Devolution** – County Executive Committees – removal of members of County Executive Committees - what was the procedure for the removal of a member of the County Executive Committee - whether the petitioner was granted a fair hearing and a fair administrative process in her removal as the County Executive Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resource in Siaya County - County Government Act (cap 265) sections 40(2)(a), 40(3)(a), 40(5)(a), and 40(6)(b).



## **Brief facts**

The petitioner was a County Executive Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resource in Siaya County. The petitioner was later removed from office through a process which the petitioner contended violated the provisions of article 50 of the . It was her contention that she was denied an opportunity to cross examine one of the witnesses who appeared before the Select Committee to testify, and that the unchallenged evidence as adduced by the witness was heavily relied upon by the committee and the house to impeach her. The petitioner contended that the claims against her were never substantiated, proved to the required standard, and as such prejudiced with the entire process as conducted before the select committee. The respondents contended that the petitioner was accorded a fair hearing in that she was issued with notice of the removal motion, allowed to respond and was further invited to the hearing, and allowed to attend with an advocate of her choice.

## **Issues**

- i. Whether the Employment and Labour Relations Court had the jurisdiction to determine a dispute on the impeachment of a member of a County Executive Committee.
- ii. What was the procedure for the removal of a member of the County Executive Committee?
- iii. Whether the petitioner was granted a fair hearing and a fair administrative process in her removal as the County Executive Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resource in Siaya County.

## **Held**

1. There were two methods by which a member of a County Executive Committee could be dismissed from service. Under Section 40 of the County Government Act, a Governor could dismiss a County Executive Committee member on any specified ground following a resolution by the County Assembly for dismissal. Under section 31(a), a Governor could dismiss a County Executive Committee member on his own motion at any time if he considered it appropriate and necessary to do so.
2. By dint of the supervisory jurisdiction vested upon this Employment and Labour Relations Court (ELRC) by article 165(6) of the Constitution, the ELRC had the power to interrogate the issue of impeachment of the petitioner, separation of powers notwithstanding.
3. By dint of article 236(b) of the Constitution and section 40(2) of the County Government Act, it was mandatory to accord an officer facing possible removal from office due process. The petitioner was entitled to be heard on the allegations made against her in accordance with the provisions of article 50 of the Constitution. She was also by law entitled to receive information relating to the allegations against her and sufficient time to prepare her defence, as well as an opportunity to cross-examine witnesses.
4. The court record pointed to a meticulous adherence by the respondents to the provisions of section 40(3) of the County Government Act, in as far as the removal procedure. The petitioner appeared together with her advocate before the Select Committee and made representation on the charges levelled against her. The assembly voted to impeach the petitioner, and which impeachment was sanctioned by the 3<sup>rd</sup> respondent through the dismissal letter dated March 30, 2023, pursuant to the section 40(6) of the County Government Act.
5. There was no violations of articles 47 and 50 of the Constitution with respect to the removal of the petitioner from office. The petitioner was validly removed from the office of County Executive Committee Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resources.

*Petition dismissed with no orders as to costs.*

## **Citations**

### **Cases**

1. Catherine Chepkemai Mukenyang v Evanson Pkemei Lomaduny & another (Constitutional Petition E002 of 2021; [2022] KEHC 1548 (KLR)) — Applied



2. County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others (Civil Appeal 17 & 18 of 2015; [2015] KECA 397 (KLR)) — Explained
3. County Government of Nyeri & another v Ndungu (Civil Appeal 2 of 2015; [2015] 1 KLR 253) — Applied
4. Republic v Firearm Licensing Board & Another Ex parte Jimi Wanjigi ((2019) eKLR) — Applied
5. Wambora Martin Nyaga & another v Speaker of the Senate & another (Petition 51 of 2014; [2014] KEHC 7080 (KLR)) — Applied
6. In the matter between The Speaker of the National Assembly and Patricia De Lille (MP) & another (Case No. 297/98) — Explained

#### Statutes

1. Constitution of Kenya, 2010 — article 10, 20, 22, 25, 27, 28, 47(1); 50(1); 50(2)(b)(j)(n); 162; 165(2); 179; 185; 196; 232; 236; 236(b); 258; 259 — Cited
2. County Government Act (cap 265) — section 40(2)(a); 40(3)(a); 40(5)(a); 40(6)(b) — Cited
3. Evidence Act (cap 80) — Cited

#### Advocates

*Mr. Okoyo Omondi present* for the 1st & 2nd Respondents

*Mr. Okanda present* for the 3rd Respondent

## JUDGMENT

1. The petition herein, is dated 29<sup>th</sup> March, 2023, and was filed on 11<sup>th</sup> April, 2023. The Petitioner seeks the following reliefs:
  - i. A declaration that the impeachment process initiated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, was conducted in violation of the right to public participation and the Petitioner’s right to fair administrative action and fair hearing, under Articles 10, 47(1) and 50(1) of the [Constitution of Kenya](#) and in breach of statutory procedures of the [County Government Act](#), 2012, and the Standing Orders of the County Assembly of Siaya.
  - ii. A declaration that the Petitioner was not validly removed from the office of the member of the Siaya County Executive Committee in charge of Water, Sanitation, Environment, Climate Change and Natural Resources by the impeachment process which was held in contravention of Articles 10, 47, 50 and 196 of the [Constitution](#).
  - iii. General damages for violation of the Petitioner’s fundamental rights and freedoms under the [Constitution of Kenya](#), 2010.
  - iv. An order of *certiorari* to bring into this Court and quash the decision made by the 3<sup>rd</sup> Respondent on 30<sup>th</sup> March, 2022 in relation to the removal of the Petitioner from office of the Siaya County Executive Committee in charge of Water, Sanitation, Environment, Climate Change and Natural Resources by the impeachment process based on the resolution of the 1<sup>st</sup> Respondent.
  - v. As appropriate consequential relief, an order of mandatory injunction be granted against the 3<sup>rd</sup> Respondent, compelling the Petitioner to hand over the Siaya County Executive Committee position in charge of Water, Sanitation, Environment, Climate Change and Natural Resources and consequently reinstate into office.
  - vi. Costs of the Petition be provided for.



2. The petition is premised on the grounds that:
- i. The 2<sup>nd</sup> Respondent convened the County Assembly hearing on 28<sup>th</sup> day of March, 2023, for purposes of hearing and deliberating of the motion, by way of voting, to adopt the report of the *Ad Hoc* select Committee on the impeachment of the Petitioner as the Member of Siaya County Executive Committee in charge of Water, Sanitation, Environment, Climate Change and Natural Resources.
  - ii. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent and the select *Ad Hoc* Committee were legally and constitutionally bound by the Constitution, the County Governments Act, 2012 and the County Assembly Standing Orders No. 73 to summon the Petitioner with her advocate, and to be accorded fair hearing and to challenge the case against her and further to be given an opportunity to defend her case before the committee and the entire House, once the report was tabled before the mover of the motion could move the impeachment motion voting.
  - iii. The *Ad Hoc* Committee report that was tabled before the 1<sup>st</sup> Respondent for discussion by the 2<sup>nd</sup> Respondent, did not afford the Petitioner the right to fair hearing/rules of natural justice and further that the 2<sup>nd</sup> Respondent proceeded to hear and adopted the *Ad Hoc* report and proceeded to make a decision to impeach the Petitioner.
  - iv. The *Ad Hoc* Committee denied the Petitioner and her Counsel an opportunity to cross examine one of the witnesses who appeared before the select committee to testify, and that the unchallenged evidence as adduced by the said witness was heavily relied upon by the committee and the house to impeach the Petitioner.
  - v. The *Ad Hoc* Committee denied, neglected and blatantly ignored to supply the Petitioner with the witness statements recorded before them, and the same was affirmed by the witnesses and the select committee itself.
  - vi. The Petitioner was entitled to be heard on her defence on the report of the select committee before the 1<sup>st</sup> Respondent could be called to make a decision.
  - vii. The effect of blatant violation of the right of fair hearing was that the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent acted on incomplete information to make a decision condemning the Petitioner to loss of employment.
  - viii. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent were legally bound by standing orders No. 74(2) to avail to the Petitioner the report of the select Committee, together with any other evidence adduced at least (3) days before the debate on the motion.
  - ix. That the 2<sup>nd</sup> Respondent in allowing the *Ad Hoc* Committee to table a motion that was in contravention of the [Constitution of Kenya](#), 2010, the [County Government Act](#) and the County Assembly Standing Orders, violated the inalienable right to fair hearing and further the right to fair trial of the Petitioner.
  - x. The Petitioner is a state officer and a Kenyan citizen entitled to the right to fair hearing which is enacted at Article 50 of the [Constitution](#) on which premise, standing orders 73(9) and 74(1) (b) and (2) are founded.
  - xi. The Petitioner has thus been deprived the constitutional protection afforded to her by the [Constitution](#) at Article 236(b) which cushions her from unfair disciplinary process devoid of due process of law.



- xii. That the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent in allowing members of the County Assembly to debate on issues not within the impugned and *Ad Hoc* Committee report touching on the person, life, privacy, health, sex and the being of the Petitioner without affording her the right to be heard, and or rebut the same was an administration decision which was exercised unlawfully, unreasonably and that has become procedurally unfair to the Petitioner who is entitled to the rights of fair administration action that is lawful, reasonable and procedurally fair as enacted under Article 47(1) of the [Constitution](#).
  - xiii. The Petitioner is entitled to be heard by the entire assembly on the proceedings adopting a recommendation by a committee that has made adverse findings against her at all times.
  - xiv. That one witness Henry Juma indicated that on the 23<sup>rd</sup> day of March, 2023, he was called by the Chairperson of the *Ad Hoc* Committee to record his statement, which statement, he recorded when he appeared before the select committee on the 23<sup>rd</sup> day of March, 2023 at around 6pm. That the statement was never supplied to the Petitioner at all, the identity of the witness withheld until the time he testified, a fact that exhibited bias and violation of the right to fair trial and fair hearing.
  - xv. That the claims against the Petitioner were never substantiated, proved to the required standard, and as such, prejudiced with the entire process as conducted before the select committee.
  - xvi. That the committee whose report was tabled was a mere investigation committee constituting of five (5) people by dint of Section 40 (3)(a) of the [County Government Act](#).
  - xvii. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondent proceeded to convene the Assembly, refused to supply the report and evidence adduced, neglected to invite the Petitioner to be heard and unprocedurally proceeded to purport to impeach the Petitioner as member of the County Executive Committee.
3. The Respondents opposed the petition vide a replying affidavit sworn on 29<sup>th</sup> April, 2023, by Erick Ogenga. The Respondents' case is:
- i. That *vide* a Notice of Motion dated 14<sup>th</sup> March 2023, and received by the Offices of the Speaker and the Clerk County Assembly of Siaya on even date, one Hon. Justus Oguta Obuya, MCA West Uyoma Ward moved a motion for the removal of the Petitioner from office of the County Executive Committee Member (CECM) for Water, Environment, climate Change and Natural Resources.
  - ii. That the aforesaid Motion was tabled before the County Assembly of Siaya in March 2023 and the same was, Pursuant to Section 40(1) of the County Government Act, approved by more than a third of the Members of the County Assembly of Siaya.
  - iii. That upon approval of the motion, the County Assembly of Siaya Pursuant to Section 40(2) (a) of the [County Government Act](#), moved a motion to appoint 5 members to form a Select Committee to investigate the allegations made against the Petitioner herein.
  - iv. That the Petitioner herein, was vide a letter dated 17<sup>th</sup> March, 2023, informed of the approval of the motion seeking to remove her from Office by the county Assembly of Siaya, and requested to appear either by herself and/or her legal representative on 24<sup>th</sup> March, 2023. That the aforesaid letter also informed the Petitioner to send any written submissions, to the select committee on or before ■ 23<sup>rd</sup> March, 2023.



- v. That the Petitioner did, *vide* a letter dated 23<sup>rd</sup> March, 2023, serve upon the office of the Clerk, County Assembly of Siaya with her written response to the notice of removal from the office of the CECM for Water, Sanitation, Environment, Climate Change and Natural Resources
- vi. That a public notice was placed on page 8 of the Standard Newspaper of 17<sup>th</sup> March, 2023, inviting members of the public and relevant stakeholders to submit comments, information and memorandum on the removal from office of the Petitioner herein, which comments were to be delivered or emailed to the office of the clerk on or before Thursday, 23<sup>rd</sup> March, 2023 at 5.00pm.
- vii. That the select committee did, *vide* letters dated 22<sup>nd</sup> March, 2023, send, through the office of the clerk of the county assembly of Siaya, invitations to potential witnesses requesting them to appear before the said committee on 23<sup>rd</sup> March, 2023, to testify on various charges levelled against the Petitioner.
- viii. That the Petitioner appeared before the Select Committee on 24<sup>th</sup> March, 2023, together with her Advocate, Mr. Ochar, and upon hearing, the Select Committee compiled its report dated 26<sup>th</sup> March 2023.
- ix. That the Chairman of the Select Committee tabled a motion before the County Assembly of Siaya on 28<sup>th</sup> March 2023 for adoption of the Report of the Select Committee on the proposed removal from office by impeachment of Dr. Julie Caroline Phoebe Adhiambo Akinyi Onyango, the CECM for department of water, Sanitation, Environment, Climate Change and Natural Resources.
- x. That the aforesaid motion was placed for debate by the Membership of the County Assembly of Siaya on 28<sup>th</sup> March, 2023 at 2.30pm, and which report was debated by the membership of the House upon hearing the submissions from both the Petitioner and her Advocate, Mr. Ochar.
- xi. That upon debate, a question was put by the Speaker to the Membership of the County Assembly of Siaya on whether they wished to adopt the report by the select committee on the proposed removal from office by impeachment of Dr. Julie Caroline Phoebe Adhiambo Akinyi Onyango CECM for department of Water, Sanitation, Environment, Climate Change and Natural Resources, which question was answered, by majority, in the affirmative.
- xii. That upon the resolution by the majority of the Membership of the Siaya County Assembly, the Speaker, Siaya County Assembly did, pursuant to Section 40(5)(a) of the [County Government Act](#), delivered the said resolution to the Governor, Siaya County Government.
- xiii. That the allegations by the Petitioner that she was not accorded fair hearing before the select committee, especially that she was denied a chance to cross examine one Benta Akoth, is untrue as they elected by their own volition not to exercise their aforesaid right.
- xiv. That the proceedings before the County Assembly of Siaya was carried out in compliance with Section 40 of the [County Government Act](#), and in adherence to the principles of natural justice.
- xv. That the orders being sought in the Petition dated 29<sup>th</sup> March, 2023 are incapable of implementation, premised on that fact that the County Assembly vetted and approved one Prof. Jacqueline Adhiambo Oduol for appointment as County Executive Committee Member in Charge of Water, Sanitation, Environment, Climate change and Natural Resources, and her



appointment in the said docket done by the Governor, County Government of Siaya on 3<sup>rd</sup> October, 2023.

- xvi. That in view of the foregoing, the docket of County Executive Committee Member in Charge of Water, Sanitation, Environment, Climate change and Natural Resources which was previously held by the Petitioner, has no vacancy as the same has already been filled by Prof. Jacqueline Adhiambo Oduol.

### **The Petitioner's Submissions**

4. It is submitted for the Petitioner that the mover of the motion that sought to remove her from office failed to meet the legal threshold on sufficiency and admissibility of evidence contrary to Article 50(2) (b), (j) and (n) of the Constitution and the Standing Orders of the Siaya County Assembly. It is her submission that her removal from office was fraught with violation of the provisions of the Constitution on her rights under the Bill of rights,
5. The Petitioner further submits that there were no specific particulars of her conduct provided, nor were any evidentiary documents or sworn affidavits presented in support of the serious allegations made against her or charges which would render her jobless.
6. The Petitioner submits that her removal from office did not meet the standard of proof for impeachment proceedings set in the case of Martin Nyaga Wambora & others v. the speaker of the Senate & others, where the Court of appeal held that the standard of proof required for removal of governor is above a balance of probability, but below reasonable doubt.
7. The Petitioner submits that the right to a fair hearing guaranteed under Article 50 of the Constitution cannot be limited, and that it includes the right to be informed of the charges with sufficient details to answer and the right to have adequate time and facilities to prepare a defence. She had reliance in Republic V. Firearm Licensing Board & Another Ex parte Jimi Wanjigi (2019) eKLR to support this position.
8. It is the Petitioner's submission that no evidence was presented by the witnesses before the Select Committee to substantiate the claim made against her, to warrant her removal from office, hence her removal violated the rules of evidence and the standard of proof set under the Evidence Act.
9. The Petitioner submits that the Select Committee having been operating under Section 40(3)&(3) of the County Government Act, did so as a quasi-judicial body and was under duty to observe the rule of law and the principle of fair hearing under Article 50 of the Constitution. It is her further submission that the process to remove her from office was tainted with illegality from inception as the same was biased and unfair, and she was denied the right to equal benefit before the law.
10. The Petitioner submits that her rights under Articles 10, 20, 22, 25, 27, 28, 47, 50, 162, 165, 179, 185, 196, 232, 236, 258 & 259 were violated, and as such, she is entitled to an award of damages.
11. It is the Petitioner's submission that her right to be treated with dignity, respect and her right to privacy, were violated by use of uncivilized and demeaning utterances used in the impeachment proceedings.
12. The Petitioner finally submits that this Court has power to award the orders sought and prays that the petition is allowed as prayed.

### **1<sup>st</sup> & 2<sup>nd</sup> Respondents' Submissions.**

13. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent did not file submissions.



### **The 3<sup>rd</sup> Respondent's Submissions**

14. It is the 3<sup>rd</sup> Respondent's submission that indeed, the Petitioner was entitled to the right to "notice and hearing" in accordance with the provisions of the County Assembly standing Orders, and that it is its submission that the Petitioner was accorded a hearing and cannot thus be heard to say that her right to fair hearing and administrative action as provided for in the *Constitution of Kenya* 2010 was violated.
15. It is the 3<sup>rd</sup> Respondent's submission that there was nothing unprocedural in the manner the impeachment motion was originated, scheduled, tabled, discussed and passed. It further submits that the Notice of Intention to remove the Petitioner dated 14<sup>th</sup> March, 2023, was supported by 42 Members of the County Assembly. It sought to rely in *Catherine Chepkemoi Mukenyang v Evanson Pkemei Lomaduny & another* [2022] eKLR to buttress the assertion that the Petitioner could not have been condemned unheard.
16. It is submitted that the 3<sup>rd</sup> Respondent was under an obligation to dismiss the Petitioner from office upon receipt of the impeachment resolution from the County Assembly as provided under Section 40(6)(b) of the *County Government Act*. It is their submission that the 3<sup>rd</sup> Respondent was thus not wrong in dismissing the Petitioner.
17. The 3<sup>rd</sup> Respondent further submits that this Court cannot in any circumstances decide that the grounds for the impeachment of the Petitioner had not been substantiated since that decision primarily lies in the County assembly of Siaya, and once it was established and all due procedure followed, the decision of the county assembly is final and inviting the court in this process is an issue that is clearly contrary to the doctrine of separation of powers.
18. It is the 3<sup>rd</sup> Respondent's submission that the Petitioner has not established any basis for granting of the orders sought. It further submits that the orders sought against the 3<sup>rd</sup> Respondent to bar it from recruiting, replacing, placing for advertisement, nominating or appointing any person into the office of the County Executive Committee of Siaya County Government in charge of water, sanitation, environment, climate change and natural resources, is clearly untenable in law, and that in any event the 3<sup>rd</sup> Respondent has already procedurally appointed Prof. Jackline Oduol into the position previously occupied by the Petitioner.
19. It is the 3<sup>rd</sup> Respondent's final submission that this petition is frivolous, incompetent and bad in law, and should be dismissed with costs to the Respondents.

### **Analysis and Determination**

20. I have considered the petition, the reply by the Respondents and the submissions by the Petitioner and the 3<sup>rd</sup> Respondent. The issues that fall for determination are:
  - i. Whether the impeachment process violated the Petitioner's rights.
  - ii. Whether the Petitioner is entitled to the reliefs sought.
  - iii. Who bears the costs of the suit.

### **Whether the impeachment process violated the Petitioner's rights**

21. The Petitioner's assertion is that the process of her removal from office violated the provisions of Article 50 of the *Constitution*. It is her contention that she was denied an opportunity to cross examine one of the witnesses who appeared before the Select Committee to testify, and that the unchallenged evidence as adduced by the witness was heavily relied upon by the committee and the house to impeach her.



22. It is her position that the *Ad Hoc* Committee did not supply her with the witness statements recorded before them and the same was affirmed by the witnesses and the select committee itself. She further stated that she was not availed the report of the select Committee before the debate on the motion for her removal.
23. She further avers that a witness named Henry Juma recorded a statement against her on 23<sup>rd</sup> March, 2023, just a day to her hearing and that she was not supplied with that statement.
24. It is the Petitioner’s case that the claims against her were never substantiated, proved to the required standard, and as such prejudiced with the entire process as conducted before the select committee.
25. The Respondents on their part, assert that the Petitioner was accorded a fair hearing in that she was issued with notice of the removal motion, allowed to respond and was further invited to the hearing, and allowed to attend with an advocate of her choice.
26. The Court of Appeal in the case of *County Government of Nyeri & another versus Cecilia Wangechi Ndungu* Civil Appeal 2 of 2015 held that there are two methods by which a member of a County Executive Committee could be dismissed from service. Under Section 40, a Governor could dismiss a County Executive Committee member on any specified ground following a resolution by the County Assembly for dismissal. Under Section 31(a), a Governor could dismiss a County Executive Committee member on his own motion at any time if he considered it appropriate and necessary to do so.
27. The 3<sup>rd</sup> Respondent submitted that this petition violates the doctrine of separation of powers on the basis that the decision to impeach primarily lies in the County Assembly of Siaya, and that once it was established that all due procedure was followed, the decision of the county assembly is final.
28. The Court in the case of *Martin Nyaga Wambora & others v. The Speaker of the Senate & others* held that the doctrine of separation of powers rests on the principle that:
 

“.....all branches of government are bound by the rule of law.”
29. Further, the Supreme Court of South Africa *In the matter between The Speaker of the National Assembly and Patricia De Lille (MP) & another*, Case No. 297/98 the dicta of which was similarly adopted in the *Martin Nyaga Wambora case (supra)* stated that:
 

“...No Parliament, no official and no institution is immune from judicial scrutiny...”
30. In the case of *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others* (2015) eKLR, it was held that the court must resist unwarranted intrusion into internal procedures of Parliament and the County Assemblies unless they act unconstitutionally. The Court further cited its decision in the case of *Martin Nyaga Wambora (supra)* for the holding that;
 

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.”
31. By dint of the supervisory jurisdiction vested upon this Court by Article 165(6) of the Constitution, I hold that this Court has the power to interrogate the issue of impeachment of the Petitioner, separation of powers notwithstanding.



32. Section 40(2) of the *County Government Act* states:

- (2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds —
  - a. gross violation of the Constitution or any other law;
  - b. incompetence;
  - c. abuse of office;
  - d. gross misconduct; or
  - e. if convicted of an offence punishable by imprisonment for at least six months.
- (3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—
  - a. the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
  - b. the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

33. Article 236(b) of the constitution states:

A public officer shall not be—

- (a) ...
- (b) Dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”

34. By the foregoing provisions, it is clear that it is mandatory to accord an officer facing possible removal from office due process. The issue is whether the procedure adopted by the Respondents in the removal of the Petitioner accorded with the Constitutional requirements.

35. The motion for the removal of the Petitioner was placed before the County Assembly on 14/3/2023. The Assembly adopted the motion on 16/3/2023, and subsequently constituted a five (5) member select committee to interrogate the issues subject of the removal motion.

36. Further, the Petitioner was notified of the motion on 17/3/2023 and which is the same date public comments were invited vide a newspaper advert on the impending impeachment. She was heard on 24/3/2023 and officially dismissed vide a letter dated 30<sup>th</sup> March, 2023.

37. I agree with the Petitioner that she was entitled to be heard on the allegations made against her in accordance with the provisions of Article 50 of the *Constitution*. She was also by law entitled to receive information relating to the allegations against her and sufficient time to prepare her defence, as well as an opportunity to cross-examine witnesses



38. The Court record points to a meticulous adherence by the Respondents to the provisions of Section 40(3) of the County Government Act, in as far as the removal procedure goes.
39. It is not disputed that the Petitioner appeared together with her advocate before the Select Committee and made representation on the charges levelled against her. It is also not disputed that the assembly voted to impeach the Petitioner, and which impeachment was sanctioned by the 3<sup>rd</sup> Respondent through the dismissal letter dated 30<sup>th</sup> March, 2023, pursuant to the Section 40(6) of the County Government Act.
40. From the chronology of events, I am unable to find a violation of the provisions of Articles 47 and 50 of the Constitution with respect to the removal of the Petitioner from office.
41. I find and hold that the Petitioner was validly removed from the office of County Executive Committee Member in charge of Water, Sanitation, Environment, Climate Change and Natural Resources.
42. The Petition is dismissed with no orders as to costs.
43. Judgment of the Court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**C. N. BAARI**

**JUDGE**

**Appearance:**

N/A for the Petitioner

Mr. Okoyo Omondi present for the 1<sup>st</sup> & 2<sup>nd</sup> Respondents

Mr. Okanda present for the 3<sup>rd</sup> Respondent

Erwin Ongor- C/A

