



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. 45 OF 2019**

**(Originally Siaya High Court Petition No. 40 of 2019)**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: AN APPLICATION BY DOROTHY OWINO**

**AND**

**IN THE MATTER OF: VIOLATIONS OF THE FUNDAMENTAL RIGHTS OF THE PETITIONER UNDER ARTICLES 2, 3, 10, 20, 22, 27, 47, 50, 165, 179, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: SECTIONS 14, 31 AND 40 OF THE COUNTY GOVERNMENTS ACT, 2012**

**AND**

**IN THE MATTER OF: STANDING ORDER NO. 73(9) AND 74(1))b) & (2) OF THE SIAYA COUNTY ASSEMBLY STANDING ORDERS**

**AND**

**IN THE MATTER OF: IMPEACHMENT OF THE PETITIONER FROM OFFICE AS COUNTY EXECUTIVE COMMITTEE MEMBER FOR HEALTH SERVICES**

**AND**

**IN THE MATTER OF: PRINCIPLES OF NATURAL JUSTICE**

**BETWEEN**

**DOROTHY OWINO.....PETITIONER**

**VERSUS**

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

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

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

**RULING**

1. In a judgment delivered on 27 January 2021, the Court issued the following orders:

**i. A declaration is hereby issued that the action by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to exclude the Petitioner from the Assembly proceedings of 6<sup>th</sup> August 2019 on the hearing of a motion to impeach the Petitioner as member of the County Executive Committee in charge of Health and the decision of the 1<sup>st</sup> Respondent to recommend the dismissal of the Petitioner was procedurally unfair as it violated the constitutional rights of the Petitioner under Article 47 of the Constitution as read together with Standing Orders no. 73(9) and 74(1)(b) and (2) of the 1<sup>st</sup> Respondent Standing Orders and the same is null and void.**

**ii. The County Assembly and the Speaker are ordered to cause to be debated afresh the report of the Ad Hoc Committee strictly in compliance the provisions of section 40(5) of the County Governments Act.**

2. The applicant was aggrieved, and on 9 March 2021, she lodged a Motion with the Court seeking orders:

**i. ...**

**ii. ...**

**iii. THAT the Honourable Court be pleased to order a stay of execution of its judgment and decree delivered on 27<sup>th</sup> January 2021 pending the lodgement, hearing and determination of the applicant's intended Appeal to the Court of Appeal, and to direct the urgent issuance of certified typed proceedings to the applicant within such period as the Court may specify for purposes of Appeal.**

**iv. THAT the costs of this application be provided for.**

3. On 22 March 2021, the Court directed the Respondents to file and serve responses. The parties were also directed to file and exchange submissions.

4. The applicant filed her submissions on 14 April 2021, while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their submissions on 27 April 2021.

5. The Court has considered the Motion, affidavit(s) and submissions and come to the view that the Motion lacks merit and should be dismissed for the following reasons.

6. First, the primary remedy granted by the Court was a declaration. Contingent to the declaration, the Court issued an order to the County Assembly to proceed with its lawful function of debating a Motion concerning the removal of the applicant from the office of County Executive Committee member in strict compliance with the law.

7. In terms of the declaration, there is nothing which the Court can stay as the effect of the stay would be to annul the declaration (see *Attorney-General v Law Society of Kenya & Ar* (2009) eKLR. It was the declaration which formed the foundation of the order to the County Assembly.

8. In other words, the stay of execution order sought by the applicant would be self-defeating her own cause with the effect that the declaration would stand annulled.

9. Second, the principles upon which this Court grants a stay of execution of a judgement or decree is a derivative of Order 42 Rule 6 of the Civil Procedure Rules.

10. According to the principles, the party seeking a stay of execution should demonstrate substantial loss likely to be occasioned if a stay of execution is not granted, that the application has been made without unreasonable delay and provision of due security for the due performance of the decree.

11. Apart from asserting that the judgment sought to be appealed against exposed her to risk of further impeachment and that she had filed an application before the Court of Appeal seeking extension of time within which to file a Notice of Appeal, the applicant has not indicated what substantial loss would be occasioned to her.

12. Impeachment of a County Executive Committee member is contemplated by the legal framework in place, and if the organs concerned have the grounds to impeach, the Court should not lightly intervene.

13. In the instant application, the applicant has not even suggested remotely that the County Assembly would be acting outside its legal mandate or unfairly if the Assembly were to carry its impeachment role.

14. For the above reasons, the Court declines the invitation by the applicant. The Motion is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 26<sup>TH</sup> DAY OF MAY 2021.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For Petitioner Osiemo Wanyonyi & Co. Advocates

For 1<sup>st</sup> – 2<sup>nd</sup> Respondents Carrey Joseph Advocates

For 3<sup>rd</sup> Respondent Wasuna & Co. Advocates

Court Assistant Chrispo Aura