



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

JUDICIAL REVIEW APPLICATION NO. 1 OF 2015

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE EMPLOYMENT ACT OF 2007

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE RULES

AND

IN THE MATTER OF SECTION 8 & 9 OF THE LAW REFORM ACT CAP 26 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT

AND

IN THE MATTER OF THE BARINGO COUNTY ASSEMBLY STANDING ORDERS

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS

BETWEEN

REPUBLIC **APPLICANT**

AND

THE CLERK COUNTY ASSEMBLY OF BARINGO **RESPONDENT**

AND

WILLIAM KASSAIT KAMKET **EX PARTE APPLICANT**

JUDGMENT

1. On 20 March 2015, the Court granted William Kassait Kamket (*ex parte* applicant) leave to apply for judicial review orders of prohibition and certiorari against the Clerk, County Assembly of Baringo (Respondent). The leave granted was to operate as a limited stay to enable the payment of such salaries/benefits payable to a speaker on suspension. The stay also stopped the advertising and processing of applications to fill the position of the Speaker of the County Assembly of Baringo.
2. The *ex parte* applicant thereafter filed judicial review proceedings on 23 March 2015, and the Respondent filed a replying affidavit on 27 March 2015.
3. On 23 April 2015, the *ex parte* applicant filed a supplementary affidavit pursuant to leave granted on 14 April 2015.
4. At the same time, the Court directed the parties to file and exchange written submissions. Towards this end, the *ex parte* applicant filed his submissions and authorities on 23 April 2015, while the Respondent filed his submissions and authorities on 5 May 2015.
5. The parties highlighted their respective cases/submissions on 6 May 2015 and the Court directed the application to be mentioned on 17 July 2015 to confirm whether judgment was ready.
6. On 8 May 2015, the *ex parte* applicant filed a supplementary list of authorities and on 29 May 2015, he filed a motion under certificate of urgency seeking a review/interpretation of the orders given on 20 March 2015 (granting leave to commence the judicial review application).
7. The Respondent filed a replying affidavit to the latter motion and it was taken on 10 June 2015. The Court reserved its ruling on the application to be delivered together with this judgment.
8. According to the *ex parte* applicant, the application for review/interpretation was based on discovery of new and important matter of evidence which he did not have before the orders of 20 March 2015 were made.
9. The new and important matter of evidence was the judgment delivered on 26 May 2015 by the High Court in Eldoret Judicial Review Application No. 8'B' of 2014, *Republic v Clerk, County Assembly of Baringo ex parte William Kamket*.
10. The High Court in Eldoret had in the judgment granted orders prohibiting the Respondent from implementing a motion passed on 4 November 2014 suspending the *ex parte* applicant from office of Speaker of the County Assembly of Baringo.
11. In my view, it is not necessary to go into any detailed discussion of the merits of the review/interpretation application except to say that the judgment delivered by the High Court in Eldoret cannot qualify to be a new and important matter of evidence for purposes of reviewing the ruling/orders granting leave to commence the judicial review proceedings.
12. The ruling/orders sought to be reviewed or interpreted related to a cause of action accruing on 18 March 2015 (removal from office of *ex parte* applicant) while the judgment by the High Court in Eldoret was in respect of a cause of action accruing on 4 November 2014 (suspension from office of *ex parte* applicant).
13. Further, it is clear to me that determining the review application any other way would serve no utilitarian purpose except to obfuscate the real issues for determination in the instant judicial review proceedings.
14. The motion therefore stands to be dismissed with no order as to costs.
15. Before outlining the parties' respective contestations in the present application, a very brief background would be in order.
16. The *ex parte* applicant was elected as the first Speaker of the County Assembly of Baringo after the 2013 General Elections. On 4 November 2014, the County Assembly resolved to suspend him from office.
17. The basis of the Assembly's action of suspension was a pending criminal case against the *ex parte* applicant in Eldoret Criminal Case No. 7031 of 2014.
18. The reasons as outlined in the motion for suspension were that the *ex parte* applicant had violated the Constitution, made inflammatory utterances on 28 April 2014 and 30 April 2014, displayed lack of professionalism, failed to spearhead peace building, failed to observe impartiality and objectivity in discharging his duties, abused office by sacking and disciplining employees without due process, violated procurement laws, misused public resources and failed to accord members of the County Assembly respect and dignity.
19. The *ex parte* applicant however moved the High Court in Eldoret to challenge the suspension (the High Court subsequently found in his favour on 26 May 2015).

20. On 10 February 2015, the County Assembly commenced a fresh initiative to remove the *ex parte* applicant from office of Speaker.
21. According to the *ex parte* applicant, on the night of 10 February 2015 (notice is dated 10 February 2014); the Respondent served him through email with a notice to appear before the County Assembly to respond to 4 allegations. The notice was issued pursuant to Standing Order 61.
22. The 4 allegations were *gross misconduct and continuous violation of the law, abuse of office, misuse of public resources and failure to accord dignity and respect* to the Assembly.
23. The next day, 11 February 2015, the County Assembly debated a motion to remove the *ex parte* applicant from office. The motion set out in *extenso* the particulars of the allegations against the *ex parte* applicant.
24. The removal motion, according to the *ex parte* applicant, and newspapers was defeated by one vote, a fact not denied by the Respondent.
25. However, on 3 March 2015, a Petition signed by some 209 citizens of Arabal community and seeking the removal of the *ex parte* applicant was addressed to the Respondent.
26. On 12 March 2015, an Ad Hoc Committee of the Assembly wrote to the *ex parte* applicant requesting him to appear before it on 16 March 2015 at 10.00am to respond to the Petition. The invitation letter informed the *ex parte* applicant that a copy of the Petition was enclosed.
27. The *ex parte* applicant contended that he received the invitation letter on 14 March 2015, but a copy of the Petition was not enclosed. As a consequence, his advocate wrote to the Respondent complaining that a copy of the Petition was not enclosed, the notice period was not sufficient, a motion to remove him from office had been defeated only a month earlier, the action was *sub judice* and that a public petition was not one of the methods known in law for removal of a speaker.
28. Nonetheless, the County Assembly proceeded to debate a motion and ultimately voted to remove the *ex parte* applicant from office of Speaker on 18 March 2015. This prompted the present proceedings.

***Ex parte* applicant's case**

29. According to the *ex parte* applicant, the process followed by the Assembly in purporting to remove him commenced through a public petition was illegal in that it was contrary to section 11 of the County Governments Act. The avenue, he urged was not only illegal but unlawful.
30. He also impugned the resolution to remove him from office on the ground that he was not given an opportunity to be heard by the Assembly and that the whole process was a charade organised by his political opponents.
31. The *ex parte applicant* further contended that because a motion to remove him from office had been debated and voted on 11 February 2015, it was against the Standing Orders to bring a fresh motion for his removal before the lapse of 6 months.

Respondent's case

32. According to the Respondent, he received a public petition seeking the removal of the *ex parte* applicant, and that by dint of Article 50 of the Constitution, section 15 of the County Governments Act and Standing Order 197(1), the Assembly had the authority to receive and debate public petitions.
33. After receipt of the public petition, the Assembly constituted an Ad Hoc Committee which invited the *ex parte* applicant through the Sunday Nation and Sunday Standard newspapers to appear before it on 16 March 2015 but he snubbed the invitation and instead wrote a lengthy letter through his advocate.
34. In his affidavit, the Respondent deposed that the *ex parte* applicant was served with a copy of the Petition through email.
35. According to the Respondent the *ex parte* applicant was granted sufficient opportunity but failed to attend before the Ad Hoc Committee and so he cannot complain of being condemned unheard.
36. And that it is only after he snubbed the Ad Hoc Committee that the Assembly debated the report of the Ad Hoc Committee and adopted the recommendation to remove the *ex parte* applicant.
37. The Respondent also contended that there was no employment relationship between the *ex parte*

- applicant and himself, and so this Court had no jurisdiction.
38. He also asserted that the County Assembly was not a public body whose decision could be challenged by way of judicial review and that in any case the action of the Assembly was not *ultra vires*.
39. He further contended that the instant application lacked merit and was an abuse of court process because of the pendency of Eldoret Judicial Review No. 8 of 2014. The *ex parte* applicant was attempting to circumvent the said application before the High Court.

The submissions

40. The parties broadly addressed similar issues in submissions as on the papers though couched in different language. Some issues cut across and may appear repetitive
41. According to the Respondent, the *ex parte* applicant was elected by the County Assembly and therefore as between him and the *ex parte* applicant, there was no employer/employee relationship to warrant his being sued.
42. The Respondent took the submissions further by urging that he was an employee of the County Assembly Service Board (section 13 of the County Governments Act) while the *ex parte* applicant was an employee of the County Assembly (Article 178 of the Constitution) and so there was no employment relationship.
43. He also urged that because the *ex parte* applicant was removed by the County Assembly, that was the proper party to sue.
44. The Respondent asserted that because the *ex parte* applicant had an alternative remedy of damages were the Court to find his removal was unfair, damages would be the appropriate remedy and not orders of judicial review.
45. It was further urged that the *ex parte* applicant was not likely to suffer irreparable harm.
46. And the reasons for the submissions were that the position of Speaker of County Assembly of Baringo had already been declared vacant after the adoption of the recommendation of the Ad Hoc committee.
47. The Respondent cited the case of *Peter Kingoina v County Assembly of Nyamira* (2014) eKLR for the proposition that judicial review was not available in employment relationships. This authority was not filed.
48. The *ex parte* applicant on the other hand urged that County Assemblies were covered by the definition of employer in section 2 of the Employment Act, 2007 and that the County Assembly had acknowledged previously during the suspension motion and before the High Court in Eldoret that he was an employee of the Assembly.
49. Further, the *ex parte* applicant submitted that pursuant to Article 162(2) of the Constitution, this Court had the power to deal with all employment and labour related matters.
50. To support the position as urged, the *ex parte* applicant cited the authorities of *Richard Bwogo Birir v Narok County Government & 2 Ors* (2014) eKLR and *Nick Githinji Ndichu v Clerk, Kiambu County Assembly & Ar* (2014) eKLR.

Evaluation

51. The Respondent dwelt at length on certain preliminary legal issues. The Court has considered the submissions and identified the issues it needs to discuss as, *whether the correct party(ies) were cited, whether the ex parte applicant and in any case, Speakers of County Assemblies are employees, whether the Court's jurisdiction is ousted because of separation of powers doctrine and lastly, the hot potato question of whether the removal of the ex parte applicant was lawful.*

Whether correct party(ies) were cited

52. The Respondent's case was that the *ex parte* applicant was an employee of the County Assembly and thus that was the correct and proper party which ought to have been sued but was not cited.
53. In this regard, the Respondent urged that he was an employee of the County Assembly Service Board and there was no employment relationship as between him and the *ex parte* applicant and therefore the Court had no jurisdiction.

54. Under the civil procedure act/rules framework and more specifically under Order 1 rule 9, a suit would not be defeated merely on the ground of non-joinder or misjoinder of a party. In fact, if a party is not sure of the correct and proper person to sue, he may join one or more persons as defendants.
55. The rules give the Court wide latitude as to addition and substitution of parties.
56. The rules of this Court (Industrial Court Procedure Rules 2010) also have near similar provisions.
57. However, the instant proceeding is not a proceeding under the civil procedure or Industrial Court rules framework. The Court is dealing with a judicial review application which is proceedings *sui generis*. These proceedings are commenced in the name of the Republic.
58. Judicial review proceedings have traditionally been anchored primarily on the Law Reform Act and Order 53 of the Civil Procedure Rules and under Order 53 rule 3, the Court has the power to direct that the notice of motion be served upon all persons directly affected.
59. No such direction was sought nor did the Court at its own instance give such directions and the question whether the application here should fail in that respect is material.
60. The *ex parte* applicant had cited the *Clerk of the County Assembly*. The Clerk is an appointee of the County Assembly Service Board (section 13 of the County Governments Act) but approved by the County Assembly. The Clerk is given the same functions and powers as the Clerk of Parliament and he is also an *authorised officer* for the purposes of the County Governments Act.
61. The offices of Clerk of Parliament are given constitutional underpinning in Article 128 of the Constitution but the functions and powers are not expressly outlined in the Constitution.
62. Among the functions of the Clerk (Respondent) as gleaned from the Standing Orders of the County Assembly of Baringo is the receipt of motions (standing orders 45 and 61 and public petitions and reviewing of the petitions to ascertain such petitions meet the requirements of the Standing Orders (standing order 197).
63. The motions and petitions in the instant case may include questions of removal of a Speaker and therefore in my view, the Clerk would be an appropriate and proper party to any judicial review application challenging the removal of a speaker.
64. This is so because under Standing Order 197(3), the Respondent had a duty to review the Petition to ensure that it met the specified requirements. The requirements or considerations would have included Standing Order 47.
65. And because the Clerk and the Speaker represent the collective of the County Assembly, where the Speaker himself is the complainant, the Clerk may be cited to defend and represent the collective known as the County Assembly.
66. The Respondent, although raising the issue of correct party did not suggest that the County Assembly had suffered any prejudice or injustice because it was not made a party. In my view the Respondent ably dealt with the issues raised despite the fact that the County Assembly was not cited.
67. In *Republic v National Social Security Fund Board of Trustees & Another ex parte Town Council of Kikuyu* (2014) eKLR, Odunga J cited with approval a passage by the Court of Appeal in Civil Appeal (Application) No. NAI. 281 of 2005, *Republic ex parte Minister for Finance & the Commissioner of Insurance v Charles Lutta Kasamani t/a Kasamani & Co. Advocates & Another* that suffice it to say that a defect in form in the title or heading of an appeal, **or a misjoinder or non-joinder of parties are irregularities that do not go to the substance of the appeal and are curable by amendment...** (my emphasis) Is the form or title to the appeal as adopted by the Attorney General in this matter defective or irregular? We think not, as we find that it substantially complies with the guidelines set out by *this Court*.
68. In my view the legal principle running through failure to join a party under both the civil procedure regime and judicial review framework is that the failure is an irregularity which is not fatal and can be cured.
69. But all in all, it is desirable that the County Assembly as a collective be enjoined in this type of proceedings.
70. To enable it deal with substantial justice, the Court therefore reaches the conclusion that a correct and proper party was cited and the failure to cite the County Assembly is an irregularity which is not fatal considering the role given to the Respondent by the Standing Orders.

Whether ex parte applicant an employee/jurisdiction of the Court

71. The question of employment relationship in the case of Speakers of County Assemblies are intractably linked with the question of the extent of the jurisdiction of the Employment and Labour Relations Court. It is both a Constitutional issue as well as one of statutory application.
72. The Respondent made much of the issue that the *ex parte* applicant was not in an employer/employee relationship with him and therefore the Court had no jurisdiction. Article 162 of the Constitution and section 12 of the Employment and Labour Relations Court Act were referred to.
73. According to the *ex parte* applicant, he was an employee within the meaning of section 2 of the Employment Act, 2007. It was also urged that the County Assembly had acknowledged that he was an employee and therefore this Court had the requisite jurisdiction.
74. The *ex parte* applicant cited some authorities to buttress the position he had taken.
75. One authority cited was *Nick Githinji Ndichu v Clerk, Kiambu County Assembly & Another* (2014) eKLR, where Nduma Principal Judge assumed jurisdiction in a case where the Petitioner (Speaker of Kiambu County Assembly) was challenging his removal as Speaker.
76. The Principal Judge was of the view that the law is not concerned with the method of acquiring an employee. The law does not concern itself with whether the person was appointed or elected. Rather, the person must;

- i. be having an oral or written contract of service;
- ii. be providing a service to a real or legal person;
- iii. be receiving a wage/salary for the services rendered.

77. In the *Ndichu* case, the County Assembly was cited as a party.
78. In *Kisumu County Assembly Service Board & Anne Atieno Adul v Kisumu County Assembly Service Board & 4 Or* (2014) eKLR, the Speaker of the County Assembly of Kisumu challenged her removal before the Employment and Labour Relations Court in Kisumu.
79. From the judgment, it appears that the issue of jurisdiction was not raised nor discussed by the Court, but the Court assumed jurisdiction and held that the removal of the Speaker was in violation of the Constitution and law.
80. Article 162 of the Constitution envisaged Parliament establishing a Court to hear and determine disputes relating to *employment and labour relations*.
81. And Parliament performed the task it was ordained to do by enacting the Employment and Labour Relations Court Act (initially the Industrial Court Act) and the jurisdiction of the Court was set out in section 12.
82. It is in order to set out the section in *extenso*

12. (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations ***including*** (emphasis mine) —

(a) disputes relating to or arising out of employment between an employer and an employee; (emphasis mine)

(b) disputes between an employer and a trade union;

(c) disputes between an employers' organisation and a trade unions organisation;

(d) disputes between trade unions;

(e) disputes between employer organizations;

(f) disputes between an employers' organisation and a trade union;

(g) disputes between a trade union and a member thereof;

(h) disputes between an employer's organisation or a federation and a member thereof;

(i) disputes concerning the registration and election of trade union officials; and

(j) disputes relating to the registration and enforcement of collective agreements.

83. A reading of Article 162 of the Constitution and section 12(1)(a) of the Employment and Labour Relations Court Act leave no doubt in my mind that the jurisdiction of the Court encompasses and includes *all disputes relating or arising out of employment*.

84. And if the matter was left there, I believe the numerous objections regarding the Court's jurisdiction would not arise.

85. The doubt and debate in my view arises because of the definition of *employer* in section 2 of the Employment Act, 2007 and more so the use of the term *contract of service*. Employer is defined as means any person, public body, firm, corporation or company who or which has entered into a *contract of service* to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.

86. *Contract of service* is also defined in the Act, but I need not outline it here.

87. Now, there are many categories of employees who do not have what is classically called a *contract of service* (contract of service is a term which has gone out of fashion in modern employment law and the term contract of employment is used more).

88. The abundance of such persons can be found in offices created by the Constitution and various statutes and include holders of independent offices, members of constitutional commissions, judges, judicial officers, Speakers of Parliament and the County Assemblies. These officers do not have *contract of services* as ordinarily known or as envisaged under the Employment Act, 2007.

89. The crucial question therefore becomes whether this Court has jurisdiction where persons holding offices created by the Constitution and various statutes have complaints relating to the manner of suspension or removal from office unless otherwise provided for in law, such as in the case of persons directly elected under universal suffrage.

90. Before discussing that narrow issue, I need to restate that for myself, a Speaker of Parliament or County Assembly is not an employee for the purposes of the Employment Act, 2007 and the Courts jurisdiction can only be determined by looking outside the said Act.

91. Article 162 of the Constitution did not envisage a Court limited or restricted to dealing with disputes arising out of a *contract of service* as defined in the Employment Act, 2007 which in any case predates the Constitution.

92. The primary statute granting this Court universal jurisdiction is the Employment and Labour Relations Court Act (previously the Industrial Court Act).

93. The most relevant provision is located in section 12 of the Act. And in granting the Court its jurisdiction, Parliament faithfully observed the command of the Constitution by using the phrase *disputes relating to employment and labour relations*.

94. The jurisdiction granted included ***disputes relating to or arising out of employment between an employer and an employee and*** not only in respect of *contract of service* as a reading of the Employment Act, 2007 may suggest.

95. And in my view, the use of the term *including* in section 12 is significant as it helps to construe the jurisdiction of the Court in a way which promotes the purposes, values and principles of the Constitution in establishing a specialist Court to deal with employment and labour relations disputes.

96. The jurisdiction of the Court over the present proceedings flow from application of Article 162 of the Constitution and section 12(1) (a) of the Employment and Labour Relations Court Act rather than from an interpretation of the provisions of the Employment Act, 2007.

97. The definition of *employer*, *employee* and *contract of service* in the Employment Act, 2007, in my view, is not meant to limit or restrict the jurisdiction granted to the Court by section 12 of the Employment and Labour Relations Court Act. Such approach involving limitation or restriction is the source of the uncertainty currently being experienced.

98. For purposes of the Constitution and the Employment and Labour Relations Court Act, office holders are employees who have access to this Court and where a Speaker alleges improprieties in the removal process, that is a dispute relating to and arising out of employment. It matters not that they are employees or servants of the people or the respective Commissions or County Assemblies.
99. I would therefore reach the conclusion that this Court has jurisdiction to deal with disputes relating to removal of a Speaker of a County Assembly but for reasons different to those in the Ndichu case.

Separation of power concerns

100. Kimondo J in the Eldoret case made reference to the Court being drawn into a political thicket.
101. Kenya is now a constitutional democracy. The reach of the Constitution has not yet been fully appreciated in this country. Its reach is such that it has made inroads even into the inner sanctums of the citizens' lives.
102. The Constitution and many other statutes have created certain offices. Appointment and removal from such offices have been provided for.
103. Where the appointing authority/body does not comply with the applicable procedures as far as removal or discipline is concerned, the disadvantaged party has recourse to the Courts not only under private law (contract) but under public law and judicial review may in certain instances be appropriate and effective.
104. Although the Respondent suggested that the County Assembly is not a public body, that suggestion has no merit. A county assembly is an organ of state and a public body and where allegations of procedural impropriety are made, the judicial arm has the requisite mandate to intervene.
105. The County Governments Act and various Standing Orders of County Assemblies have explicit procedures to be followed in the event the Assembly intends to remove the Speaker.
106. The Assembly cannot be heard to argue that removal of a Speaker is a political process in which the Courts cannot intervene when they do not follow the requisite constitutional or statutory processes. There is no political thicket which the Constitution may not reach in such a case.
107. The country is now firmly a constitutional and not only a *majoritarian* democracy and politics must be conducted within those confines the people of Kenya have decreed for themselves in the Constitution.
108. The Court has jurisdiction over the process of removal of a County Speaker where procedural impropriety is alleged.
109. I now turn to the hot potato of the moment.

Whether process followed was legal Public petition

110. The *ex parte* applicant urged that his removal through the route of a public petition was illegal and not recognised in law.
111. The County Governments Act (section 15) and the Standing Orders of the County Assembly of Baringo envisage and allow receipt of public petitions. In my view this is in tandem with the constitutional injunction that public participation in governance is now firmly part of our national values and principles of governance.
112. In so far as the citizens of Arabal filed a Petition seeking the removal of the *ex parte* applicant, they were perfectly within the constitutional and legal framework. The County Assembly was also within its lawful mandate to entertain the petition.
113. The public petition was merely one way for the citizens of Arabal to initiate a process in governance within their community, but once the Petition was received, the County Assembly had to scrupulously comply with the statutory requirements.
114. And as part of its inquiries into the Petition, in my view, the Ad Hoc Committee was acting with prudence to invite the *ex parte* applicant to appear before it. In so far as the Petition sought the removal of the *ex parte* applicant, it was, to use common parlance, an added advantage to him to be invited and present himself before the Ad Hoc Committee. That is what natural justice required.
115. And once the Ad Hoc Committee had made recommendations to the Plenary, appropriate and

applicable protections afforded the *ex parte* applicant kicked in.

Process within and by the County Assembly

116. On receipt of the Petition, the Respondent was under an obligation to ensure that it complied with the Standing Orders. He had 7 days to do so and forward it to the Speaker. The Petition was presented to the Respondent on 4 March 2015 but it had anomalies.
117. The Respondent notified the Petitioners and they supplied a list with names of 120 petitioners.
118. Thereafter, the County Assembly appointed an Ad Hoc Committee to look into the issues raised and report back.
119. In the meantime, one Hon. Valentine Serگون had been appointed to lay the Petition on behalf of the Petitioners before the Assembly.
120. But what is material in my view is that ultimately the Ad Hoc Committee made recommendations to have the *ex parte* applicant removed from office.
121. The removal processes to be followed after the recommendation of the Ad Hoc committee had to scrupulously comply with the law, because what the Committee was involved in, was strictly preliminary to the statutory process of removal of the *ex parte* applicant.
122. The *ex parte* applicant urged that the procedure for removal of a Speaker was located in section 11 of the County Governments Act and that a notice of motion had to be in writing and the Assembly had to pass a resolution supported by at least 75% of the membership.
123. A motion was moved on 18 March 2015 by Hon. Jacob Cheboiwo for the adoption of the report.
124. Pursuant to section 11(4) of the County Governments Act and Standing Order 61(4), the *ex parte* applicant was entitled to be granted an opportunity to respond to allegations against him on the floor of the Assembly.
125. There was nothing placed before Court to suggest even remotely that the *ex parte* applicant was invited to appear before the plenary of the Assembly to defend himself or make representations.
126. The invitation to appear before the Ad Hoc committee could not substitute the legal requirement for the *ex parte* applicant to be given an opportunity to make representations before the Plenary of the Assembly.
127. The process taken by the Assembly in my view was therefore tainted with procedural impropriety in that the *ex parte* applicant was not accorded an opportunity to make representations before the Plenary.
128. Natural justice or procedural fairness has become such a cardinal principle in our governance that however grievous the allegations one is facing, he is entitled to an opportunity to be heard and the body taking the decision must ensure that it observes the processes necessary to safeguard and protect the rights of the party likely to suffer the detriment.
129. The requirement is so cardinal that if the nine horned monster were to be subjected to such action, he would be entitled to have his day and say. That is a requirement of our constitutional democracy.

No motion for removal before lapse of 6 months

130. The *ex parte* applicant also urged that a motion to remove him from office as speaker could not be moved before the lapse of 6 months if a similar motion had been debated and resolved during the preceding 6 months. And for this attractive proposition, Standing Order 47 was cited.
131. The Respondent did not respond in any meaningful manner to this issue either in the affidavits or the submissions.
132. There was an attempt to remove the *ex parte* applicant from office of Speaker on 11 February 2015. The Respondent had notified the *ex parte* applicant of the same through a notice dated 10 February 2015.
133. The motion was debated on 11 February 2015 and was defeated by a single vote.
134. A fresh attempt was made just a month later.
135. A perusal of the grounds and reasons as outlined in the motion which failed by 1 vote on 11 February 2015 and the Petition which came on 3 March 2015 (and subsequent motion) indicate the grounds/reasons were essentially the same.
136. The substance of the allegations made in February 2015 and March 2015 were the same.

137. In my view, the County Assembly was barred from debating the question of the removal of the *ex parte* applicant on basically the same substantial grounds which had been rejected the previous month.

138. The County Assembly could not commence the process before expiry of 6 months and in so acting it was acting in violation of its internal procedures.

Conclusion and Orders

139. From the foregoing, the Court finds and holds that the *ex parte* applicant has satisfied the test for grant of judicial review and the Court grants orders 1 and 2 of the motion dated 20 March 2015.

140. Each party to bear costs.

Delivered, dated and signed in Court in Nakuru on this 31st day of July 2015.

Radido Stephen

Judge

Appearances

For applicant Mr. Kipkoech instructed by Gordon Ogola, Kipkoech & Co. Advocates

For Respondent Mr. Yego & Mrs. Manyarkiy instructed by Z.K. Yego & Co. Advocates

Court Assistant Nixon