



**Rakewa v Vihiga County Assembly Service Board & 2 others;  
Kilinga & another (Interested Parties) (Constitutional Petition  
E005 of 2023) [2025] KEHC 6896 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 6896 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CONSTITUTIONAL PETITION E005 OF 2023**

**JN KAMAU, J**

**JANUARY 28, 2025**

**IN THE MATTER OF THE ARTICLES 1(3), 22(1), 23(1) & (3),  
9 (D)(I) & (II) OF THE CONSTITUTION OF KENYA, 2010  
AND THE ALLEGED CONTRAVENTION OF ARTICLES 25(C), 47(1)  
AND 236 (B) (SIC) OF THE CONSTITUTION OF KENYA, 2010  
AND THE ALLEGED CONTRAVENTION OF COUNTY GOVERNMENT ACT  
AND  
THE ALLEGED CONTRAVENTION OF THE COUNTY  
ASSEMBLIES SERVICES ACT NO 24 OF 2017**

**BETWEEN**

**FRANCIS OTIENO RAKEWA ..... PETITIONER**

**AND**

**THE VIHIGA COUNTY ASSEMBLY SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**THE CLERK COUNTY ASSEMBLY OF VIHIGA ..... 2<sup>ND</sup> RESPONDENT**

**THE SPEAKER COUNTY ASSEMBLY OF VIHIGA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**HON JOAB AMBAKA KILINGA ..... INTERESTED PARTY**

**KENYA COUNTY GOVERNMENT WORKERS UNION**

**VIHIGA ..... INTERESTED PARTY**



## JUDGMENT

### Introduction

1. In his Petition that was dated and filed on 18th May 2023, the Petitioner herein urged this court to declare:-
  1. That an order of certiorari do issue bringing before this Honourable Court the report of the Ad hoc committee dated 16th May 2023 for purposes of quashing recommendations number 1, 3, and 4 thereof for having been made without following the process of the law as required.
  2. Damages for violation of the Petitioner's rights to access information, right to fair hearing and administrative action, and the right to human dignity and the right to equality and non-discrimination.
  3. General damages and costs of the Petition.
2. On 22nd May 2023, Chirchir J granted an order staying the implementation of the Ad hoc Committee Report on the Vihiga County Assembly Car Loan and Mortgage that was dated 16th May 2023 and approved by the House on the same date together with the recommendations therein pending the hearing and determination of the Petitioner's Notice of Motion application dated and filed on 18th May 2023. The interim orders were extended on several occasions when the matter came up in court and were subsisting as at the time this court reserved its Ruling herein.
3. On 7th June 2023, the 1st Respondent herein, Hon Joab Ambaka Kilinga, filed a Notice of Motion application of even date in which he sought to be enjoined as an Interested Party herein on the ground that he had also been adversely mentioned in the said Ad hoc Committee Report. As his application was unopposed, the same was allowed on 19th July 2023.
4. In its Ruling of 29th November 2023, this court allowed the Notice of Motion application dated 14th June 2023 and filed on 16th June 2023 that had been filed by Kenya County Government Workers Union, Vihiga Branch in which it had also sought to be enjoined as an Interested Party in the proceedings herein. This court, however, asked it not delve into other issues that did not concern it so as not to make the matter convoluted.
5. Having been satisfied that the Petitioner had duly served the Respondents and the 2nd Interested Party with a Mention Notice to attend court on 14th March 2023 as was evidenced in his Affidavit of Service that was sworn and filed on 13th March 2023 but they failed to attend court, this court gave directions on the filing of the responses and Written Submissions in respect of the Petition herein. On the said date, the Petitioner was holding brief for the 1st Interested Party.
6. Despite the Respondents and the 2nd Interested Party having been duly served with the said order as was evidenced in the Petitioner's Affidavit of Service that was sworn and filed on 5th June 2024, the Respondents and the 2nd Interested Party herein did not file any response to the Petitioner's Petition and/or file Written Submissions. The 1st Interested Party did not file any response or Written Submissions as he was supporting the Petition herein. The Petition herein was therefore technically unopposed.
7. The Petitioner's Written Submissions were dated and filed on 2nd May 2024. The Judgment herein is therefore based on the said Petitioner's Written Submissions which he relied upon in their entirety.



## The Petitioner's Case

8. The Petitioner herein explained that the aforesaid Ad hoc Committee was established on 12th April 2023 to investigate the Vihiga Car Loan and Mortgage Fund (hereinafter referred to as “the Fund”) with a view to establishing the legality or otherwise of withdrawals and operations of the said Fund, if the withdrawals or operations were irregular and who were the beneficiaries of the irregular or illegal withdrawals from the said fund.
9. He was invited by the Ad hoc Committee to provide information in his capacity as a member of the Fund and Head of the Legal Department of Vihiga County Assembly. However, contrary to the mandate of the said Ad hoc Committee, it issued orders in which it directed the 1st Respondent to remove him from office and commence the recruitment of a competent Principal Legal Counsel.
10. He asserted that he attended the Ad hoc Committee as a witness and not to respond to adverse allegations against him. He was emphatic that he was not served with any adverse information of formal charge or document to enable him to defend himself.
11. He contended that the decision of the Ad hoc Committee was irregular and ultra vires as it already had a pre-determined mind. He added that he was neither a beneficiary of the Fund nor adversely mentioned in the said Ad hoc Committee Report as having withdrawn any monies irregularly. He was emphatic that the 1st Respondent ought not to have been under the control of the County Assembly of Vihiga or third parties.
12. He averred that he was an advocate of the High Court with over ten (10) years post admission and wide experience as a result of which the ultra vires recommendations touched on his professional credibility as it subjected him to public ridicule and was a violation of his right to human dignity.

## Legal Analysis

13. The Petitioner submitted that he was entitled to fair administrative action as was provided in Section 4(3) of the Fair Administrative Act by being given adequate notice of the nature and reason for the proposed administrative action, an opportunity to be heard and to be provided with all the information and material to be relied upon in the making of the decision or taking of the administrative action.
14. In this regard, he placed reliance on the case of *Martin Wanderi & 106 Others vs Engineers Registration Board & 10 Others* [2018] eKLR where it was held that in exercising Article 47(1) of *the Constitution*, it was presumed right at the outset that the authority had the legal authority to exercise administrative power; that once that authority was established, the court could delve into ascertaining if there was a violation of Article 47(1) of *the Constitution* of Kenya; and that if it found that the act was ultra vires the mandate of the administrative authority, it was an outright violation of *the Constitution*.
15. He argued that the Ad hoc Committee flouted the rules of natural justice as it did not comply with Section 4(3) of the Fair Administrative Act and Article 35(1) (b) of *the Constitution* of Kenya that provides that every citizen has a right to access information held by another person and required for the exercise or protection of any right or fundamental freedom.
16. He further submitted that Section 28 of the *County Assembly Services Act* No 24 of 2017 provided for the removal from office removal of staff of the county assembly. He pointed out that the County Assembly Board had full powers and mandate to exercise disciplinary action against the staff establishment and that it could not act under the direction or the control of a third party. It added that Article 236(b) of *the Constitution* of Kenya demanded that the removal from office, dismissal, demotion, or discipline of a public officer had to follow the due process of the law.



17. He submitted that the Ad hoc Committee concluded that he was incompetent and was guilty of dereliction of duty which was a gross violation of his rights as it hampered his career growth and professional life. To support his argument, he relied on the case of *S vs Makwanyane & Another* (CCT3/94) [1995] ZACC where it was held that every human being had a right to be treated with human dignity.
18. He prayed that this court awards him general damages in the sum of Kshs 3,000,000/=. He relied on the cases of *Judicial Service Commission vs Daniel Ochenja* [2020] eKLR and *Shiverenje Simani vs Star Newspaper & Another* [2021] eKLR where courts awarded Kshs 3,000,000/= and Kshs 1,500,000/= respectively for breach of constitutional rights in support of his case.
19. He further submitted that the Constitutional Court was vested with the power to issue an order of certiorari and thus urged this court to issue the said order.
20. This court perused Recommendations (1), (3), and (4) on page 47 of the said Ad hoc Committee Report and noted that they provided as follows:-
  1. We recommend to the Board that the adversely mentioned persons: The Clerk, The Principal Finance Officer and the Principal Legal Counsel be sent on suspension pending appropriate action within 14 days of approval of this Report
  2. ....
  3. The CASB through provisions of Section 129 of the *County Assembly services act* of 2017 (sic), commence proceedings leading to the interdiction, suspension and termination of the Principal legal counsel (sic).
  4. CASB to initiate recruitment process of a competent Principal legal counsel...
21. Notably, the County Assembly Service Board (CASB) for each County was established under Section 12 (1) of the County Government Act Cap 265 (Laws of Kenya). Section 12 (3) of the County Government Act stipulated that the members of the CASB were the Speaker of the county assembly, as the Chairperson, a vice-Chairperson elected by the Board from the members appointed being two (2) members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly and one man and one woman appointed by the county assembly from amongst persons who were experienced in public affairs, but were not members of the county assembly.
22. Section 7 (b) of the County Government Act further provided that the CASB was responsible for constituting offices in the county assembly service and appointing and supervising office holders.
23. Section 27 of the *County Assembly Services Act* Cap 265D (Laws of Kenya) also provided that:-
  1. The Board shall exercise disciplinary control over the officers of the Service.
  2. The Board may terminate the employment of an employee of the Service in accordance with the provisions of this Act and the Regulations made thereunder.
  3. The provisions of Article 236 of *the Constitution* shall apply in relation to the exercise of the powers conferred on the Board under this section.



24. Section 29 (c) of the *County Assembly Services Act* further provides that:-

“The Board shall establish a committee to be known as the Staff Advisory Committee which shall be responsible for advising the Board, through the Committee, on matters relating to staff including-

- a. appointment, including acting appointment, promotion and transfer of employees;
- b. confirmation in appointment of an employee on probation or the extension of the probationary period of an employee;
- c. termination of the appointment of an employee;
- d. compulsory retirement of an employee who has reached the age at which he can lawfully be required to retire from the Service;
- e. retirement of an employee on the ground of ill health;
- f. interdiction of an employee;
- g. suspension of an employee;
- h. stopping, withholding or deferring the normal increment of an employee;
- i. stopping the pay or salary of an employee;
- j. reprimanding an employee; and
- k. reduction in the rank or seniority of an employee.”

25. The Report had been prepared by an Ad Hoc Committee. The same had been established under Section 14(1) of the *County Governments Act* that states as follows:-

A county assembly

- a. may make standing orders consistent with *the Constitution* and this Act regulating the procedure of the county assembly including, in particular, orders for the proper conduct of proceedings; and
- b. subject to standing orders made under paragraph (a), may establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established.

26. Further, Section 13(1) of the County Assemblies Services Act further provided that:-

“The Board may from time to time establish such committees it may consider necessary for the better carrying out of its functions and the exercise of its powers under this Act.”

27. It was evident from the aforesaid provisions that there was an elaborate disciplinary procedure for the removal of employees of the County Assembly. The said procedure had not been commenced against the Petitioner herein. It was the view of this court that the Ad Hoc Committee was not exercising the powers of disciplinary but was merely recommending an action that had to be done in accordance with the *County Assembly Services Act* and *the Constitution* of Kenya. The Ad Hoc was properly constituted to conduct an inquiry into the administration of the Fund and hence its actions were not ultra vires the statute or *the Constitution* of Kenya.



28. The issue of fair administrative action not having been complied with was not applicable in this case because the Petitioner had not been asked to answer any complaint. There was no charge and hence the right to access information had not been infringed upon.
29. He had also not been discriminated against as similar recommendations were made regarding other officers. This court was not satisfied that the rights of the Petitioner had been infringed upon as the Petition herein had not reached the threshold that was set out in the case of *Anarita Karimi Njeru vs Republic* [1979] eKLR where it was held that:-
- “If a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
30. At all given times, courts should restrain themselves from interfering with the mandate of bodies that have been established by statute and *the Constitution* of Kenya. The proceedings herein were premature in view of the elaborate disciplinary process which was yet to commence.
31. The Petitioner was of course at liberty to approach the court to seek protection if his rights were infringed upon during any disciplinary process. Whether there was merit in the disciplinary process was beyond the ambit of this court. Suffice it to state that Article 236 of *the Constitution* of Kenya protected him as it was clear that:-
- “A public officer shall not be—
- a. victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or
  - b. dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”
32. This court was therefore not persuaded that it should grant him the reliefs and/or award the general damages that he had sought.

### **Disposition**

33. For the foregoing reasons, the upshot of this court’s decision was that the Petition that was dated and filed on 18th May 2023 was not merited and the same be and is hereby dismissed.
34. As this matter involved the government, it would be unconscionable to award costs against its citizen and consequently, this court hereby directs that each party will bear its own costs of the Petition herein.
35. Orders accordingly.

**DATED AND DELIVERED AT VIHIGA THIS 28<sup>TH</sup> DAY OF JANUARY 2025**

**J. KAMAU**

**JUDGE**

