



**Isaac Aluoch Polo Aluochier v County Assembly of Migori & 2 others (Constitutional Petition E006 of 2022) [2025] KEHC 6728 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6728 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CONSTITUTIONAL PETITION E006 OF 2022**

**RPV WENDOH, J**

**MAY 28, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 38, 47, 50 AND 88 (4) (E) OF THE CONSTITUTION**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 81, 178 (1) AND(3)AND 226 (5) OF THE CONSTITUTION**

**IN THE MATTER OF SECTION 9A (1) OF THE COUNTY GOVERNMENT ACT**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT**

**BETWEEN**

**ISAAC ALUOCH POLO ALUOCHIER ..... PETITIONER**

**AND**

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

**VINCENSIA AWINO KIOGE CLERK OF THE COUNTY ASSEMBLY  
MIGORI ..... 2<sup>ND</sup> RESPONDENT**

**CHARLES OWINO LIKOWA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This Ruling relates to Notice of Motion applications dated 27/2/2023 filed by the 2<sup>nd</sup> Respondent and 24/2/2023 by the 3<sup>rd</sup> Respondent. Both applications sought orders of stay of execution and review or setting aside of the Judgment of this court dated 21/3/2023.
2. By a Notice of Motion dated 27/2/2023, the applicant seeks the following orders: -
  - a. Spent



- b. Leave if need be and required, be granted to Agnes Awuor, Advocate to come on record and to represent the 2<sup>nd</sup> Respondent, Vincencia Awino Kionge, Acting Clerk, County Assembly of Migori.
  - c. There be Stay of Execution of the Judgment and Order of Declaration issued by the court dated 21<sup>st</sup> February, 2023, quashing the election of the 3<sup>rd</sup> Respondent, Charles Owino Likowa as the Speaker of the County Assembly of Migori, for the 2<sup>nd</sup> Respondent's failure to comply with Standing Order No. 5(2), 5(4), 5(5) of the Migori County Assembly Standing Orders and Article 196 of *the Constitution* and the Order requiring that within 21 days from the date of the judgment, a fresh election for the Speaker of Migori County be conducted starting from submitting of nomination papers of interested persons pending the hearing and determination of this Application.
  - d. The proceedings, processes, judgment dated 21<sup>st</sup> February, 2023 and any resultant Decree of this Court in this Petition, be reviewed, set aside and/or otherwise vacated alongside all consequential orders thereto..
  - e. The Petition dated 8<sup>th</sup> November, 2022 being an electoral dispute challenging the election of the Speaker Count Assembly of Migori, having been commenced and sustained in violation of the provisions of Article 87(1) of *the Constitution*, section 75 (1A) & 76 of the *Elections Act*, the Elections (Parliamentary and County Elections) Regulations, 2017 be struck out with costs to the 3<sup>rd</sup> Respondent/ Applicant.
  - f. The costs of this Application be provided for.
3. The application is premised on the grounds in the body of application, the supporting affidavit of Vincencia Awino Kionge dated 27/2/2023 and a Supplementary Affidavit sworn on the 11/04/2023.
  4. The 1<sup>st</sup> and 3<sup>rd</sup> Respondent on their part did not oppose the Application but reiterated the contents therein and urged the court to allow the same as prayed.
  5. The application was opposed by the Petitioner filed an 83-paragraphed replying affidavit dated and sworn on 10/3/2023, wherein he denied all the allegations made by the 2<sup>nd</sup> Respondent in her Application.
  6. The application was canvassed by way of written submissions. The Petitioner filed his submissions dated 17.4.2023, the 1<sup>st</sup> Respondent filed their submissions dated 26.04.2023, the 2<sup>nd</sup> Respondent/ Applicant filed her submissions dated 24.4.2023 together with authorities while the 3<sup>rd</sup> Respondent filed his submissions dated 25.4.2023 together with authorities, which I have read and taken into account.
  7. The application dated 24/2/2023 was supported by the affidavit of the 3<sup>rd</sup> Respondent on even dated. The grounds and prayers are basically the same as in Notice Motion dated 27/2/2023.
  8. It is imperative to point out that at the time of filing the instant Applications, County Government of Migori also lodged an Appeal at the Court of Appeal in Kisumu vide Civil Appeal No. E038 of 2023 while the Respondent Isaac Aluochier lodged Civil Appeal No. E038 of 2023, against the judgment and decree dated 21<sup>st</sup> February, 2023. Fearing that the Court of Appeal and this court may arrive at different decisions that may embarrass the court, this court decided to defer the Ruling in the above stated applications and gave way to court of Appeal to determine the appeals. Both of the consolidated appeals were dismissed vide the judgment delivered on 17<sup>th</sup> May, 2023 and reasons for dismissal issued on the 23<sup>rd</sup> February, 2024 pursuant to Rule 34(6) of the Court of Appeal Rules 2022. The judgment



of the Court of Appeal upheld the judgment of this Court and dismissed both Appeals with no orders as to costs.

9. I have critically looked at the said Appeals and the grounds therein, whose effect would be to set aside the judgment of this court together with the judgment vis a vis the instant Applications. I note that the parties therein raised similar grounds of appeal as the grounds relied on in the instant Applications. Among the issues arising for determination at the Court of Appeal touched on jurisdiction, evidence adduced by the Petitioner, process of the removal of the Speaker of the County Assembly and the issue of service. These are the same grounds raised in the instant Applications.
10. Consequently, the effect of allowing the instant Application in light of the decision by the Court of Appeal sitting in Kisumu would amount to sitting on Appeal of a decision of a Superior Court. In my view, the applications were an abuse of court process as the applicants were shopping for different forum to grant them suitable orders. In the premises, I find that this court is functus officio and is unable to grant the orders sought.
11. I find no merit in the Notice of Motion dated 27/2/2023 and the same is hereby dismissed. These orders shall apply in the Notice of Motion Application dated 24/2/2023. Each Party shall bear its own costs.
12. Lastly, I wish to apologize to the parties herein for the delay and anxiety occasioned before the delivery of the instant Ruling. The Ruling was deferred as this court was awaiting the outcome of the Appeal filed at the Court of Appeal in Kisumu, to avoid having contradicting/ conflicting decisions touching on the same issues that would cause embarrassment to the court. This court did not have an opportunity to look at the Grounds of Appeal hence the need to wait for the Judgment of the Court of Appeal.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 28TH DAY OF MAY, 2024**

**R. WENDOH**

**JUDGE**

Ruling delivered in the presence of:-

No appearance for the Appellant

Mr. Odero holding brief for Ms. Aron the 1<sup>st</sup> Respondent

and for the 2<sup>nd</sup> Respondent.

Mr. Omondi for the Respondent

Court Assistant - Emma/ Phelix

