



**Toungole v Speaker, County Assembly of West Pokot & 2 others; Krop (Interested Party)
(Judicial Review Application E002 of 2025) [2025] KEHC 11282 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
JUDICIAL REVIEW APPLICATION E002 OF 2025**

RPV WENDOH, J

JULY 31, 2025

**IN THE MATTER OF CONTRAVENTION OF RIGHTS & FUNDAMENTAL
FREEDOMS UNDER ARTICLES 2(1) 2(2); 3(1); 10(1)(A),10(2)
(A);19(2);20(2)38(3)(C);47 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012.

AND

IN THE MATTER OF THE COUNTY ASSEMBLY SERVICES ACT NO. 24 OF 2017

AND

**IN THE MATTER OF STANDING ORDERS OF
THE COUNTY ASSEMBLY OF WEST POKOT**

AND

**IN THE MATTER OF AN APPLICATION BY PKIYACH JACOB TOUGOLE FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW BY WAY OF CERTIORARI TO MOVE
THIS COURT AND QUASH THE DECISION OF THE SPEAKER OF THE COUNTY
ASSEMBLY OF EST POKOT MADE ON 26TH JUNE, 2025 REMOVING THE
APPLICANT AS MAJORITY PARTY REPRESENTATIVE ON THE WEST POKOT
COUNTY ASSEMBLY SERVICE BOARD AND REPLACING THE APPLICANT
WITH FRANCIS LOSIA KROP AS MAJORITY PARTY REPRESENTATIVE**

BETWEEN

PKIYACH JACOB TOUNGOLE APPLICANT

AND

SPEAKER, COUNTY ASSEMBLY OF WEST POKOT 1ST RESPONDENT

CLERK, COUNTY ASSEMBLY OF WEST POKOT 2ND RESPONDENT



WEST POKOT COUNTY ASSEMBLY SERVICE BOARD 3RD RESPONDENT

AND

FRANCIS LOSIA KROP INTERESTED PARTY

RULING

1. On 7/7/2025, this court granted leave to the applicant, Pkiyach Jacob Toungole to commence Judicial Review proceedings by way of Notice of Motion against the Respondents Speaker, County Assembly of West Pokot, Clerk, County Assembly of West Pokot and West Pokot County Assembly Service Board.
2. The substantive Notice of Motion dated 7/7/2025 was filed seeking the following orders.
 - a.
 - b. That pending the inter partes hearing of this Application, the leave granted on 7th July, 2025 to commence these proceedings to operate as a stay of the decision of the Speaker County Assembly of West Pokot made on 26th June, 2025 removing the Applicant from the membership as Majority Party Representative West Pokot County Assembly Service Board and any other further action by the Respondents connected thereto until the hearing and determination of the substantive application;
 - c. That at the inter partes hearing, an order of Certiorari be issued to remove into this court and quash the decision of the Speaker of the County Assembly of West Pokot made on 26th June, 2025 removing the Applicant as Majority Party Representative West Pokot County Assembly Service Board and replacing the Applicant with one Francis Losia Krop;
 - d. That costs be in the cause.
3. In response thereto, the Respondents filed a Notice of Preliminary Objection dated 15/7/2025 as follows: -
 1. that this Hon. Court lacks original jurisdiction to hear and determine the Judicial Review application in view of section 39,40,[1],[a],[b],[c],[e] and [j] 9[a], 40[2] and 41 of the Political Parties Act No. 11 of 2011 as read together under section 4[2] of the Fair Administrative Action No. 4 of 2015 which vests jurisdiction to hear and determine disputes first to the Internal Political Parties Dispute Resolution Mechanism; that the application is a non-starter untenable, incompetent and legally untenable and ought to be struck out with costs.
4. The Respondents also filed a replying affidavit, sworn by the 1st Respondent, Hon. Kaptui Fredrick Plimo, the speaker, County Assembly of West Pokot County.
5. The court directed that the Preliminary Objection be disposed of first and Counsel were directed to file written submissions.
6. The Respondents are represented by Wanyonyi Advocate who submitted that the complaint before the court is the removal of the Majority Party representative of West Pokot County Assembly Board and that the applicant deponed that he was elected as a member of Lomut ward on UDA party ticket as a result of which he was appointed as Majority Party representative to the County Assembly Service Board [CASB] pursuant to section 12, [3] of the County Governments Act as Amended; that by virtue



- of section 12[5] of the [County Governments Act](#), he is to hold office of the Majority Party Representative West Pokot Assembly Board for the life of the third County Assembly; that though the applicant seeks an order of certiorari to quash the decision of the Speaker to remove the applicant as Majority Party Representative, but the 1st Respondent has attached minutes of the UDA party meeting held on 24/6/2025 where the party deliberated on removal of the applicant; that the said decision was communicated to the Speaker who communicated the same to the Assembly for approval and removal under Section 157 [1] of the [County Assembly Standing Orders](#); that the removal of the applicant was a party issue and Article 38 of the [UDA Constitution](#), sets up an internal Dispute Resolution Committee to handle any dispute other than as Electoral dispute, that it also provides for an appeal mechanism .
7. Mr. Wanyonyi, submitted that on Section 39[1] of the [Political Parties Act](#) establishes a Political Parties Disputes Tribunal and section 40 of the same [Act](#) provides various types of disputes that may be handled by the said tribunal which are inter alia, disputes between members of a political party, disputes between a Member of a political party and political party; disputes between political parties, disputes between an Independent candidate and a political party and disputes between coalition parties and lastly appeals from the decision of the Registrar under the Act; that the Tribunal shall not hear or determine any dispute unless it has been subject of the internal political party dispute Resolution mechanism.
 8. Counsel also relied on section 4[2] of the [Fair Administrative Actions Act](#) which provides that reasons have to be given for any Administrative Action, action taken against the person while section 9[2] of the same [Act](#) provides that the High Court or subordinate court under section 1 will not review an administrative action or decision under the Act unless mechanism including internal mechanism for appeal or review and all remedies available under any other written law have been exhausted.
 9. Counsel further submitted that jurisdiction is defined in [Halsbury's Laws of England](#) [4th Edition] Vol.9 as the authority which a court has to decide matters that are litigated before it, or a matter placed before it for decision making. He relied on the decision of Nyarangi JA [Owners of Motor Vessel Lilian S. Vessel v Caltex Oil \[K\] Ltd](#) [1989] KLR 1, where the court held that without jurisdiction, a court cannot undertake any proceedings.
 10. In [Orange Democratic Movement v Yusuf Ali Mohammed & 5 others](#) [2018] eKLR where the court held that jurisdiction is conferred by the law not through pleadings.
 11. It was also submitted that Article 15[9] [c] of the [Constitution](#) entrenches the doctrine of exhaustion which recognizes the use of alternative dispute resolutions mechanisms and the same was addressed in [William Odhiambo Ramogi & 3 others v Attorney General & 4 others](#) [IP] 2020 eKLR.
 12. The other decisions that Counsel relied upon are [Ombeyo v Bismark & 3 others](#) Constitutional Petition E008 of 2022; [Lilian Gogo v Joseph Mboya Mboya Nyamuche & others](#) [2017] eKLR; [Mwangi & 8 others](#) Petition E004/2023; [Clerk of Nairobi County Assembly v Speaker NRB City County Assembly](#) [2019] eKLR; [Gabriel Bukachi Chapia v ODM & Another](#) [2017] eKLR and [Representative v County Assembly of Garissa & 2 others; Farah & 4 otherwise \[Interested Party\] Khalif & 3 others exparte applicants](#) JR E008/2023.
 13. The preliminary objection was opposed and Wekhuyi Advocates filed submissions in response. Counsel urged that the High Court has unlimited jurisdiction in both criminal and civil matter in terms of Article 165[3] of the [Constitution](#); that it is not disputed that the applicant is a representative of the Majority Party to the West Pokot County Assembly Service Board [CASB]; that a difference must be drawn between the committees established under the Standing Orders of West Pokot County Assembly and the County Assembly service Board established under the [County Government Act](#) as read with [County Assemblies Service Act](#) No. 24 of 2017; that [Standing Order 157](#) provides for discharge



of a member from a Committee of the County Assembly and not discharge of a member from CASB; that CASB Is not a committee of the County Assembly but a creature of the County Governments Act and Act No.24 of 2017 and is not subject to *Standing Orders* of the Assembly; that under section 12[5] of the County Government Act, the ex parte applicant is to hold office of majority party representative in West Pokot County Assembly Service Board for the life of the third County Assembly unless he ceases to be a member of the County Assembly.

14. Counsel urged that there are no proceedings initiated before any organ of UDA party against the applicant and that the speaker in the impugned communication did not refer to any such proceedings and hence the applicant could not be required to discharge what did not exist before the UDA party in the first place. He urged that the Political Parties Act is therefore unapplicable in the matter that in any event, the political party UDA becomes Functus Officio once the applicant was nominated on the CASB by virtue of section 12[5] of the County Governments Act and that UDA Party has no role to play in these proceedings. Counsel went on to urge the court to distinguish between the leader of Majority Party in the County Assembly and Representative of the majority Party on the CASB; that whereas the leader of majority party in the County Assembly may be removed from such position, by the sponsoring party, the Representative of the Majority party enjoys security of tenure; that by virtue of section 12 [5] [a] of the County Government Act the applicant is to hold office for the life of the third County Assembly or unless otherwise he ceases to be a member of the County Assembly.”
15. That when the decision to remove the applicant was made on 26/6/2025 he was neither given a hearing nor the reasons for his arbitrary removal from the membership of CASB; that this application therefore questions the legality of the applicant’s removal from the CASB but not the merits of the decision because the applicant has not been removed as member of the County Assembly nor has the third County Assembly term expired.
16. He relied on the decision of Republic v County Assembly of Trans Nzoia & 2 others ex parte Emmanuel Waswa; Forum for Restoration of Democracy Kenya & 9 others [2021] eKLR where the court held that, it had jurisdiction in the matter based on the affidavit evidence; Republic v Speaker of the National Assembly & 4 others ex parte Edward R.O Owoko [2017] eKLR.
17. After considering the submissions of counsel on the Preliminary Objection, the first question this court has determine is what the Constitutes a Preliminary Objection.
18. In the celebrated case of Mukisa Biscuit Manufacturing Ltd v West End Distributors [1969] EA 691 court observed:-

“ “A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point, may dispose of the suit”

Sir Charles NewBold P. stated: -

“ A Preliminary Objection is in the nature of what used to be a demurer. It raises a prime point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of Preliminary Objection does nothing but unnecessarily increase costs and on occasion, confuse the issue and this improper practice should stop”



19. Similarly, in Supreme Court “*Hassan Ali Jobo & Another v Suleiman Said Shebal & 2 others* SCK Petition No. 10/2013 [2014] eKLR held that: -

“ A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit.”

The preliminary objection raised is on the question of jurisdiction and is a point of law that has to be determined before any proceedings can be undertaken. As held by Nyarangi JA in *Owners of Motor Vessel Lilian ‘S’ supra* “Jurisdiction is everything without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuing with proceedings”.

In *Orange Democratic movement case Supra*. The Court of Appeal observed “ 44] A party cannot through its pleading confer jurisdiction to a Court when none exists. In this context, a party cannot through draftsmanship and legal craftsmanship couch and convert an Election Petition into a Constitutional Petition and confer jurisdiction upon the High Court. Jurisdiction is conferred by law not through pleading and legal draftsmanship. It is both the substance of the claim and the relief sought that determines the jurisdictional competence of a court”.

20. It is common ground that the applicant is a member of the County Assembly of West Pokot representing Lomut Ward, elected on a UDA ticket. It is also not in dispute that after the 2022 elections, he was nominated by the UDA party and appointed as the Majority Party Representative to County Assembly Service Board.

21. It is not in doubt that Removal from the CASB is governed by section 12 [5] of the *County Government Act* which provides as follows

“ 12[5]A member of the county assembly service board shall vacate office—

- a. if the person is a member of the county assembly—
 - i. at the end of the term of the county assembly; or
 - ii. if the person ceases to be a member of the county assembly; or
- b. if the person is an appointed member, on revocation of the person’s appointment by the county assembly; or
- c. if the person is the Speaker, when the person ceases to be such Speaker.

22. The above section has been amended by section 46 of the County Assembly Services Act regarding the composition of the CASB. Section 46 of the County Assembly Services Act provides:-

46. Section 12 of the *County Governments Act* is amended by-

[a] deleting subsection 3 and substituting therefor the following new subsections-

[3] The Board consists of—

[a] the Speaker of the county assembly, as the chairperson;

[b] a vice-chairperson elected by the Board from the members appointed under paragraph [c];



- [c] two 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
- [d] one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.
- [b] inserting the following new sub-section immediately after subsection [3]-
 - [3A] The members of the Board appointed under section 12[3d] shall serve on a part-time basis.
- [c] deleting subsection [c] of paragraph [5] and substituting therefor the following new subsection- [c] if the person is the Speaker, when the person ceases to be such Speaker.

23. The applicant was appointed pursuant to section 12 of the [County Governments Act](#) as amended above as amended and nominated by the Political Parties as representative in the County Assembly according to their proportion of members in the County Assembly [section 46].
24. The effect of the amendment was to give the nominees of the Political Parties to the Board security of tenure and give the board some stability. The term of the Assembly has not ended nor has the applicant ceased to be a member of the County Assembly. The Speaker has no mandate to remove the applicant from office.
25. However, I have seen the Hansard of 26/6/2025 in which the speaker of the Assembly communicated the removal of the applicant from CASB. It reads: -

“Communication from the Chair,

The Speaker requests to make a communication to the Assembly..... towards the end of the communication, it reads.

“Additionally, the majority and minority parties have agreed to the following committee changes.....’

..... Hon. Pkiyach Jacob Tuongole has been discharged from the County Assembly Board.”

26. This is the impugned decision.
27. The Respondent filed an affidavit to which minutes of UDA party dated 24/6/2025 were annexed. According to the Respondent, the decision in removal of the applicant was made at the said meeting, which meeting the applicant denies knowledge of. There is a blame game here,
27. The Speaker having placed the ownership of the letter of 24/6/2025 to the feet of UDA party, it is my view that the person that the applicant should blame for his removal is the UDA Party. It means that the dispute is between the applicant and UDA party but not the respondent.
28. It is apparent that the speaker was merely used to communicate a decision and he cannot be held to be the maker of the decision.
29. The UDA Party is not before the court to confirm whether or not it is their decision.
Whether this court has jurisdiction to determine this dispute;



30. Section 40 of the *Political Parties Acts* deals with jurisdiction of Political Parties Dispute Tribunal [PPDT]. The Tribunal is set up under Section 39 [1] of the same *Act*.

Section 40 [1] provides that;

40.

- [1] The Tribunal shall determine—
- [a] disputes between the members of a political party;
 - [b] disputes between a member of a political party and a political party;
 - [c] disputes between political parties;
 - [d] disputes between an independent candidate and a political party;
 - [e] disputes between coalition partners; and
 - [f] appeals from decisions of the Registrar under this Act.

31. Section 40[2] of the *Act* provides that the PPDT shall not entertain disputes listed above under Section 40[1] unless the dispute is, as a first port of call, heard and determined by the internal Political Party Dispute resolution mechanisms;

32. It provides as follows: -

“40 Notwithstanding subsection [1], the Tribunal shall not hear or determine [2] a dispute under paragraphs [a] [b], [c] or [e] unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms”.

33. Political parties have internal dispute resolution mechanisms. The applicant belongs to the UDA party and under Article 38 of the UDA Constitution, the party has set up its own Dispute resolution Committee as required by Section 40 [2] of the *Political Parties Act*. The said Article Provides as follows:-

- i. There is established an Internal Dispute Resolution Committee [IDRC], which shall consist of five [5] members to be delegated one member each by the National Delegates Congress, National Governing Council, National Executive Committee, National Management Committee and the National Policy Committee.
- ii. Any dispute, other than an electoral dispute arising out of party elections and nominations, shall be adjudicated by the IDRC.
- iii. An appeal from IDRC shall lie with the National Executive Committee and the decision of the National Executive Committee shall be final.

34. The applicant must exhaust that process before coming to this court. The courts recognized the doctrine of exhaustion long before the promulgation of the current contribution. In the case of *Njenga Karume v The speaker of National Assembly* [2008] IKLR [CA 92/1992] the court said, “where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure must be strictly followed.”



35. The position has now been entrenched in Article 159 [2] [c] of the Constitution which recognizes and entrenches Alternative Dispute Resolution Mechanism.
36. Consequently, I find that the dispute herein is between the applicant and his party UDA. There is a robust dispute resolution mechanism, set up under UDA's own constitution which can be escalated to the PPDT. This court would only come into the dispute after the due process is exhausted under section 41[2] of the Political Parties Act on appeal on issues of fact and law. I agree with the Respondent that this Judicial Review proceedings are premature and this court lacks jurisdiction to hear and determine them. The application stands dismissed with each party bearing its own costs.

DATED, SIGNED AND DELIVERED AT KAPENGURIA THIS 31ST DAY OF JULY, 2025.

HON. R. WENDOH

JUDGE

Ruling delivered in open court in presence of; -

Applicant – Mr. Ngaiwa

Respondent -

Juma/Hellen- Court Assistants

