



**Koto, Speaker of the County Assembly of Isiolo & 9 others v County Assembly of Isiolo & 5 others; Government Printer & another (Interested Parties) (Constitutional Petition E007 of 2025) [2025] KEHC 12464 (KLR) (Civ) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12464 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISILO  
CIVIL  
CONSTITUTIONAL PETITION E007 OF 2025**

**SC CHIRCHIR, J**

**SEPTEMBER 9, 2025**

**IN THE MATTER OF: ARTICLES 1, 2, 10, 22, 23, 73, 174, 185, 196,  
201, 203, 207, AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLES 10, 47, 174, 185 AND 196 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF: THE ISILO COUNTY APPROPRIATION ACT, 2025**

**BETWEEN**

**HON MOHAMED ROBA KOTO, SPEAKER OF THE COUNTY ASSEMBLY OF  
ISILO ..... 1<sup>ST</sup> PETITIONER**

**HON SALESIO KIAMBI, MEMBER OF COUNTY ASSEMBLY, WABERA  
WARD ..... 2<sup>ND</sup> PETITIONER**

**HON PETER LOSU, MEMBER OF COUNTY ASSEMBLY, NGAREMARA  
WARD ..... 3<sup>RD</sup> PETITIONER**

**HON KAMILA WARSAME, NOMINATED MEMBER OF COUNTY  
ASSEMBLY ..... 4<sup>TH</sup> PETITIONER**

**HON ABUBAKAR ABDI GODANA, MEMBER OF COUNTY ASSEMBLY,  
SERICHO WARD ..... 5<sup>TH</sup> PETITIONER**

**HON NICHOLAS LOROT, MEMBER OF COUNTY ASSEMBLY, BURAT  
WARD ..... 6<sup>TH</sup> PETITIONER**



HON DEKHA BONJA, NOMINATED MEMBER OF COUNTY ASSEMBLY ..... 7<sup>TH</sup> PETITIONER  
HON HALIMA GOLE ABGUDO, MEMBER OF COUNTY ASSEMBLY, CHERAB WARD ..... 8<sup>TH</sup> PETITIONER  
HON MEJJA GOLICHA, MEMBER OF COUNTY ASSEMBLY, CHARI WARD ..... 9<sup>TH</sup> PETITIONER  
HON NURA MOHAMED HUKA, NOMINATED MEMBER OF COUNTY ASSEMBLY ..... 10<sup>TH</sup> PETITIONER

AND

THE COUNTY ASSEMBLY OF ISIOLO ..... 1<sup>ST</sup> RESPONDENT  
DAVID LEMNANTILE, DEPUTY SPEAKER, COUNTY ASSEMBLY OF ISIOLO ..... 2<sup>ND</sup> RESPONDENT  
SALAD BORU, CLERK OF THE COUNTY ASSEMBLY OF ISIOLO ..... 3<sup>RD</sup> RESPONDENT  
THE ISIOLO COUNTY BUDGET & APPROPRIATIONS COMMITTEE ..... 4<sup>TH</sup> RESPONDENT  
HON ABDULLAHI JALDESSA BANTICHA, THE COUNTY EXECUTIVE COMMITTEE MEMBER – FINANCE ..... 5<sup>TH</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT

AND

THE GOVERNMENT PRINTER ..... INTERESTED PARTY  
THE CONTROLLER OF BUDGET ..... INTERESTED PARTY

## RULING

### Introduction

1. The Petitioners herein brought the present Petition seeking, among others, a declaration that Isiolo County Appropriation Act, 2025 ( hereinafter referred to as “The Act”) is unconstitutional. Filed alongside the petition was a Notice of Motion dated 28/7/2025 ,brought under certificate of urgency ,seeking a conservatory order staying the operation of the Act pending the hearing and determination of the Petition.
2. The Court granted a temporary conservatory at the first instance. When the Application came up for interpartes hearing, the court, upon taking into consideration the urgency of the matter, directed that the matter proceeds to the hearing Petition. The court further ordered the conservatory order to subsist the hearing and determination of the petition.The parties were further directed to file written submissions in respect of the Petition. The highlighting of submissions is scheduled for 17<sup>th</sup> September 2025.



### **The Notice of Motion dated 27<sup>th</sup> August 2025.**

3. On 27/08/2025, the 5<sup>th</sup> Respondent filed the Notice of Motion dated 27/8/2025 seeking orders as follows:
  1. (spent)
  2. Pending the issuance of further instructions on 01/9/2025, when this case is scheduled for mention, this court be pleased to issue an ex-parte order, allowing the Isiolo County Government to access 50% of the Budget estimates submitted to the County Assembly, and an order directing the controller of budget to issue a written approval for the withdrawal of the County Revenue Fund, of 50% of the estimates submitted to the Isiolo County Assembly.
  3. Pending the hearing and determination of the Petition dated 28/7/2025, this court be pleased to direct the controller of budget to issue a written approval from the County Revenue fund, of 50% of the estimates submitted to the Isiolo County Assembly.
  4. Any other orders as the court may deem fit in the interest of justice.
4. When the Application came up for hearing under certificate of urgency, upon public interest considerations, the urgency of the matter and interest of justice, on its own motion, admitted the controller of budget (COB) to the Petition and designated the said office as 2<sup>nd</sup> Interested Party.
5. The present Application has been brought by the 5<sup>th</sup> Respondent to the petition. However for purposes of this Ruling, the court will refer to the parties to the Application in the order in which they have been designated in the petition. That is, as petitioners and Respondents, respectively.

### **The 5<sup>th</sup> Respondent's case .**

6. The Motion is supported by the Affidavit of Lucy Kagwiria who describes herself as the Acting county executive member (CEC) in charge of Finance. At the county Government. It is the Applicant's case that following the suspension of the operation of the Act by this court, the County Government of Isiolo has been unable to attend to essential and critical services. She cited payment of salaries, provision of healthcare services and emergency response among others, as such essential services. She further states that indeed this court has previously acknowledged the effect of the conservatory order on the County services and further made the observation that the county government could still seek to access up to 50% of the Budget estimates.
7. She further deposes that that the County Assembly has authorized a withdrawal of 50% of the budget estimates but the 2<sup>nd</sup> interested party has failed to authorize withdrawal reportedly on account of the temporary conservatory order in place.
8. The 5<sup>th</sup> Respondent further states that the action and inaction by the 2<sup>nd</sup> interested party undermines devolution; that the withdrawal of 50% is a matter of law and no prejudice will be suffered by any of the parties.
9. It is finally stated that public interest considerations tilts in favour of granting the orders sought.

### **Response by the 1<sup>st</sup> to the 4<sup>th</sup> Respondents**

10. The 1<sup>st</sup> to the 4<sup>th</sup> respondents are in support of the Application. In an Affidavit sworn by Salad Boru Guracha, the clerk of the County Assembly, it is stated that the County Assembly authorized the withdrawal of the 50% of the budget estimates in its sitting of 12<sup>th</sup> August 2025, and the session was



chaired by the Deputy Speaker. The court has been referred to the Affidavits sworn by the Deputy Speaker and a number sworn by some members of the county Assembly, and attached to the 5<sup>th</sup> Respondent's Affidavit, which Affidavits testify to the fact that the Assembly sat on the date given. He avers that the vote on Account was lawfully conducted. He further states that pursuant to a court order made on 15/7/2025 by the Employment and Labour Relations court ( ELRC) in Nairobi Petition No.E139 of 2025, one Jaldesa Banticha was retained as the speaker of the Assembly. He further deposes that the reason why there is a dispute on whether the Assembly sat on 12<sup>th</sup> August 2025 and took a vote on Account arises from the fact that the 1<sup>st</sup> petitioner is running a parallel Assembly , while purporting that he is still the speaker of the county Assembly.

11. He refutes the allegation that he had been dismissed as a clerk of the Assembly and that ELRC court in Nyeri Petition No. E010/2025 issued a preservatory order preserving his status as the lawful clerk of the Assembly. That Section 134 of *Public Finance Management Act*(PFMA) is meant to be a stop-gap measure, where there is a delay in assenting to the Appropriation Act. The Respondent further states that in terms of Article 259, this Court should interpret Section 134 of PFMA in a manner that protects, rather than undermines devolution.

### **Grounds of Opposition by the Petitioners**

12. The Respondents state that Section 134 of the PFMA can only be invoked where the Appropriation Act has not been, or is not likely ,to be assented to; that in regard to the County Government of Isiolo ,the Act has already been assented to.
13. It is further stated that, contrary to the express provisions of Section 134 of PFMA, the certificate of transmission of the vote on Account for the Financial Year 2025/2026 was signed by the clerk of the Assembly. It is finally stated that the figure of Ksh. 2,600,457,223, under the certificate of transmission offends the provisions of Section 134 of the PFMA on the amount allowed to be withdrawn.

### **1<sup>st</sup> Petitioner's Case**

14. The 1st Petitioner filed a Replying Applicant on 2/9/2025. He states that he is the Speaker of the County Assembly ( The Assembly). He refutes that there was a business on vote on account during the sitting of the Assembly on 12/8/2025. To buttress his assertion, he has attached the Assembly's Order paper for 12/8/2025 to the Affidavit. He states that the proceedings of the Assembly are normally streamed live on the County's Youtube channel and points out that a search at the said channel shows that there was no livestream of the alleged vote by the Assembly on the said date. He further states that Section 134 of the PFMA is not applicable in the circumstances of this case as the Appropriation Act had already been assented to by the Governor of Isiolo County.
15. He further deposes that as the Speaker of the county Assembly he did not communicate to CEC Finance about the alleged authorization as required by section 134(3) of PFMA ; that the communication was done by one Salad Boru Garacha in blatant disregard of the law; that the said Salad Boru ceased to be the clerk of the Assembly following his dismissal vide a letter dated 07/8/2025. It is further stated that the provisions of standing order 220 were not complied with. It is stated that as further demonstration of illegalities committed by the respondents, while the Assembly purportedly approved Ksh.2,240,451,223, the figure appearing in the certificate of Transmission was Ksh. 2,600,451,223, leaving Kshs.360,000,000, unaccounted for.
16. The 1<sup>st</sup> petitioner further states that there is no evidence that Lucy Kagwiria was the acting CEC Finance at the time of the vote on Account was taken and that indeed she was only redeployed to be in charge of Finance on 01/9/2025.



17. The 1<sup>st</sup> petitioner further points out that the Hansard report produced by the respondents was not certified and there were inconsistencies on the dates of the meeting . He concludes by asserting that the Hansard report is a forgery.
18. The Application was canvassed by way of oral submissions.

#### **5<sup>th</sup> Respondent's submission**

19. The 5<sup>th</sup> respondent's counsel addressed himself to three issues namely; - whether section 134 of PFMA is applicable to the circumstances of this case ; whether the 50 % of the budget estimates was approved by the Assembly, and lastly the question of public interest.
20. On the first issue, it is the 5<sup>th</sup> Respondent's submission that whereas section 134 of the PFMA applies to a situation where an Appropriation Act has not been assented to, in the circumstances of this case, the Section applies. It is further argued that applying Section 134 of PMFA is in tandem with the objects of devolution, to wit, access to resources by the people.
21. On whether the 50% withdrawal was approved by the Assembly, it is submitted that the Applicant has demonstrated that a sitting of the Assembly took place on 12/8/2025; that it was presided over by the Deputy Speaker; the motion on approval was passed and the Hansard report which has been submitted in evidence indicate as much .It is submitted that the session was presided over by the Deputy Speaker in accordance with Article 178 (2) (b) of *the Constitution*. Further, that according to Standing Order No. 15(1), the Deputy Speaker can preside over the Assembly in the absence of the Speaker , and further when the subject matter of the debate touches the Speaker of the house.
22. It is further submitted that one of the litigants in this case, is the Speaker of County Assembly of Isiolo, who is appearing as one of the Petitioners, and therefore the deputy Speaker had to preside over the vote on Account.
23. On the question of public interest , the Counsel submits that Public interest consideration tilts towards granting the orders sought. In this regard the Applicant has relied on the Court of Appeal decision in the case of Cabinet Secretary , National Treasury & Planning & Ano vs. Okoit & 12 others [2023] KECA 1375 (KLR) where the Court of Appeal was faced with issues similar to the ones present case. That the court of Appeal reasoned that public interest favoured continuity of services and maintaining conservatory orders will disrupt the services. It is further submitted that the Court of Appeal set aside the conservatory order notwithstanding that it eventually nullified the Appropriation Bill, which was the subject of litigation. Counsel further points out that when the final judgement of the Court of Appeal went to the Supreme Court, the court stayed the Court of Appeal judgement upon consideration of the far-reaching effects of setting aside of a Finance Act.
24. It is the 5<sup>th</sup> respondent's further submission that the public interest of the people of Isiolo should take precedence over any other considerations.

#### **Submissions by the 1st to 4th Respondents**

25. Counsel for the above Respondents submits that, in effect, present Application is seeking a variation of the interim conservatory order that was issued by the court , as a measure of continuity of services.
26. It is further submitted that what is primarily before the Court is a dispute which arose within the County Assembly, but whose intended effect was to paralyze the functions of the Executive arm of the County Government, and by extension the provision of services to the residents of Isiolo county.



27. The Counsel invites the Court to consider Section 134 of PFMA as generally, a legislative measure to overcome a situation which prevents the Act from coming into operation; that the drafters under Section 134 had not contemplated a situation where there is an intervention of the Court. He emphasized that the intervening factor in this case is an order of this Court. It is these Respondents' further contention that where the Court has intervened as it did in this case, then it ought to intervene at the instance of the 5th Respondent to give direction on continuity of services.
28. Counsel has urged the Court to only consider whether a case has been made for allowing an interim measure, and that the other issues should be left to the Petition.
29. The Court is further urged, in terms of Article 259 of *the Constitution*, to interpret *the Constitution* in a manner that promotes its values and principles and which principles include devolution.
30. Counsel points out that, in the event, if the Petition succeeds, the only remedy the court can prescribe is re-enactment of the Appropriation Act , and in which case, there will still need to provide services to the people, pending the re- enactment of the Act. It follows, it is argued, that there would be no prejudice occasioned to any party, if access to services by the people is allowed.
31. It is finally submitted that contrary to the apprehension that has been expressed by the Petitioners the withdrawal of the funds would still be subjected to the usual budgetary controls, as provided for in PFMA.

#### **Submissions by the 2<sup>nd</sup> Interested Party**

32. On behalf of the Controller of Budget (COB), its Counsel submits that in terms of Article 228 of *the constitution*, for the 2<sup>nd</sup> interested party to approve withdrawal of the funds, the withdrawal must be authorized by law . The Counsel intimated to the Court that in view of the fact that the Appropriation Act had been assented to, and which Act is under contestation, with the potential of the Act being nullified, the COB is hesitant on approving withdrawal of funds.
33. The 2nd Interested Party further submits that under Section 134(3) of PFMA as read with regulation 36 of the PFMA (County Regulation) the communication to the CEC Finance is supposed to be done by the speaker of the Assembly ; that in this case the communication was done by the clerk of the Assembly and hence their further reservation on the authorization of withdrawals. It is COB's submission that their only concern is the compliance with the law and are seeking directions of this court in that regard.

#### **Petitioners' submissions**

34. It is the petitioners' submission that no vote on account was discussed during the Assemblies proceedings of 12/8/2025; that no such proceedings appear on the County Assembly website and therefore the Hansard that has been presented to the Court is a forgery.
35. On Section 134 of PFMA, it is argued that the Section is not applicable and that the section only applies where the Appropriation Bill has not been assented to or not likely to be assented to .
36. The petitioners argue that for the Respondents to seek to rely on Section 134 of PFMA is tantamount to stating that the Act had not been assented to. It is the petitioners' further submission that there is no ambiguity in Section 134 of the PFMA and that what the respondents are asking for, is for the court to rewrite the law. That the County Government can only access funds in accordance with the law. The respondents urge the court to give a strict interpretation to section 134 of PFMA.



37. On the certificate of transmission , it is argued that it was done by a stranger , one Salat Boru who was purportedly the clerk of the Assembly but who had been dismissed 5 days before the purported vote on Account; that the Certificate of transmission was done by a stranger and therefore was of no effect.
38. On the question of public interest, it is submitted that to allow illegal access to funds at the altar of public interest is a greater evil. Counsel expresses the view that the services of the County Government cannot possibly collapse before the Petition is determined.
39. On the sittings of the County Assembly on 12/8/25, it is pointed out that the Agenda items did not include a vote on Account and the proceedings of the Assembly, usually available on the Assembly’s Youtube channel, indicate that no such deliberations ever took place.
40. On the Hansard report submitted in Evidence by the Respondents, the petitioners cast doubts on the authenticity of the said Hansard. It is pointed out for instance that under Agenda 6, it is recorded that “The Speaker will take the chair on 8/12/2025”; that such a situation could not have been tenable if the sittings had taken place on 12/8/25 as alleged. Further, it is pointed out that the Hansard report concludes by stating that the Assembly sittings had been adjourned to 05/8/2027 which again could not have been tenable if the sittings were on 12/8/2025. The Respondent further points out that the Hansard is not certified and had no stamp.
41. The respondent further submits that, as a further demonstration of illegalities committed by the respondents, the budget estimates allegedly tabled in the Assembly was for Ksh. 2,240,451,223 while the Certificate of transmission had a figure of Ksh.2,600,451,223.
42. On the question of who was the Speaker at the time of the vote on Account it is submitted that by the time the Deputy Speaker went to Court to stay his degazettement as the speaker, he had already been degazetted.
43. On whether Lucy Kagwiria was the Acting CEC Finance at the time of the vote on Account, it is submitted that Lucy was appointed to the acting position on 01/9/2025 and therefore could not have been in charge of Finance at the time the vote was taken.
44. The Petitioners have further taken issue with the fact that crucial as it was , the court was not notified of the alleged meeting of 12/8/2025 during the court sessions of 14th and 15th August 2025.
45. The Petitioners argue that the Court cannot be asked to perpetuate an illegality; that the 2<sup>nd</sup> interested party can only approve withdrawals of funds in accordance with the law and that it is the duty of this Court to protect public funds and *the Constitution*.
46. On the question of public interest consideration, it is submitted that the law envisages a situation where there is transparency, accountability and public participation on matters touching public funds. That to the extent that the vote on Account was communicated by the clerk of the Assembly as opposed to the Speaker, there was no compliance with the law. It is further submitted that an intended withdrawal in excess of Ksh. 360,000,000 cannot be said to be in public interest.
47. It is finally submitted that the Application is an attempt to circumvent the law, that is, to access public funds without regard to the law, accountability and transparency.

**Response by the 5<sup>th</sup> respondent.**

48. In response, counsel for the 5<sup>th</sup> respondent submitted that Section 134 of PFMA is applicable in the circumstances of the case. Counsel urges the Court to be guided by the provisions of Article 259 and Chapter 11 of *the Constitution* on the principle of devolution. It is further submitted that there will be



adequate accountability on the expenditure of funds as Section 103 of PFMA establishes the office of the County Treasurer, and which office is guided by the provisions of the PFMA.

49. It is further submitted that there is no contestation on the fact that the Deputy Speaker, one David Lemantile presided over the Assembly on 12/8/2025.
50. On the question of who was mandated to sign the certificate of transmission, the Court is urged to be guided by Article 159 to resolve the issue of discrepancy, as the issue is purely Administrative in nature.
51. On the public interest question, it is submitted that the courts have been consistent on the need for continuation of public services.
52. Finally, on the variance between the approved sum and the amount appearing on the certificate, counsel submits that the error was typographical; that the amount is still under the 50% threshold and that there are mechanisms of dealing with such discrepancies.

### **Analysis and Determination**

53. I have considered the parties' pleadings and submissions and it is evident that there is consensus on issues that require determination. These issues are:
  - a) Whether Section 134 of the PFMA is applicable to the circumstances of this case.
  - b) Whether there was any deliberation on vote on Account
  - c) Where does public interest tilt?

### **Whether Section 134 of the PFMA is applicable.**

54. Section 134 of the PFMA provides as follows:
  - “(1) Subject to subsection (2), if the County Appropriation Bill for a financial year has not been assented to, or is not likely to be assented to by the beginning of that financial year, a county assembly may authorise the withdrawal of money from the County Revenue Fund.
  - (2) Money withdrawn under subsection (1)—
    - (a) may be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed; and
    - (b) may not exceed, in total, one-half of the amount included in the estimates of expenditure submitted to the county assembly for that year.
  - (3) The Speaker of the county assembly shall, within seven days, communicate the authorisation in subsection (1) to the County Executive Committee member for finance.
  - (4) The money withdrawn under subsection (1) shall be included in the appropriation law, under separate Votes, for the services for which it is withdrawn.”



55. On interpretation of statutes, Justice Mativo had this to say in the case of *Law Society of Kenya v Kenya Revenue Authority & another* [2017] KEHC 8539 (KLR)

“The starting point of interpreting a statute is the language itself. In the absence of an expressed legislative intention to the contrary, the language must ordinarily be taken as conclusive. Thus, when the words of a statute are unambiguous, then this first canon is also the last, judicial inquiry is complete.....In my view, it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court cannot not go to its aid to correct or make up the deficiency. Courts decide what the law is and not what it should be”.

56. A literal reading of the section 134 of PFMA show that the section only applies to situations where the Appropriation Act has not been assented to or is unlikely to be assented to. The Isiolo County Appropriation Act was assented to on 21/7/2025. The Section did not therefore take into consideration a situation where the operation of an enactment is suspended or stayed. I am therefore inclined to agree with the counsels for the petitioners that Section 134 of PFMA does not cover a situation where the appropriation Act has already been assented to. There is no ambiguity in section 134. To read otherwise is to attempt to re-write the law.

**Whether the vote on Account was taken.**

57. I have perused the various annexures that have been filed by the contestants. What emerges from the various documents is that there are two factions in the Assembly, each purporting to have the legitimacy to run the Assembly. I have noted for instance that there were two separate meetings held on the 12<sup>th</sup> August 2025. One presided by Mohammed Roba, described as the Speaker and another by David Lemantile (described as deputy Speaker). The Agenda items of the two meetings and the Hansard reports are completely different.
58. The inquiry as to who ought to have been presiding over the Assembly on 12/8/2025 is outside the jurisdiction of this court. In any event, it is undisputed fact that the inquiry into the right office- holder is pending before the Employment and Labour Relations Court under Petition No. E139 of 2025.
59. On the Hansard report that the Respondents have relied on, I agree with the Petitioner that the Hansard was not certified and there are questionable references to past dates. The Certificate of Transmission was also signed by the clerk to the County Assembly. The official employment status of the said clerk by the County Assembly is also a contested issue. The acting capacity of Lucy Kagwiria as CEC finance is also unresolved.
60. What do the above discrepancies and unresolved issues mean? Owing to the above uncertainties, glaring discrepancies on the dates , the contest who was the legal occupier of the county speaker’s seat at the material time, as well as which faction of the Assembly had the legal mandate to deliberate on the affairs of the Assembly , am not satisfied that, on a balance of probabilities the respondents have proved that there was a valid vote on Account that was taken on 12<sup>th</sup> August 2025.



## Public Interest

61. “Public Interest” is defined in Black’s law dictionary (9th Edition) as “the general welfare of the Public that warrants recognition and protection.” or “something in which the public as a whole has a stake, especially an interest that justifies governmental recognition”.
62. The significance of the Appropriation Act, enacted every financial year, cannot be gainsaid. Its enactment opens the door for the government both on National or County level to access funds, to render services to the public for the given financial year period.
63. The Respondents have urged the Court to consider the curtailment of essential services, like salaries and medical services to the public following the issuance of the conservatory order by this court. On the other hand, the Petitioners argue that public interest consideration cannot override the law.
64. The court had earlier observed that there is a fall-out amongst the members of the Assembly. It has also emerged from the various documents produced in evidence that the two factions are purporting to be running the Assembly affairs separately. I agree with counsels for the Respondent that there is a paralysis at the Assembly, which by virtue of the structure of the devolved government, has had a direct effect on the operations of the Executive Arm of the county government. Thus, should the Court intervene in the circumstances, despite the position it has taken on issue 1 and 2 of this Ruling?
65. Again, as observed earlier, Section 134 of PFMA did not contemplate a situation where an appropriation Act has been assented to, but cannot be operationalized due to other intervening factors such as a stay order from a court, as in this case. Counsel for the 1<sup>st</sup> to 4<sup>th</sup> Respondents has argued that where a Court has become the intervening factor, then it should also be at liberty to intervene, to ensure the continuity of services to the public.
66. In the circumstances of this case, at stake are critical services like medical supplies and treatment of patients, staff salaries, emergency services like fire control and ambulances, among other essential functions, under the jurisdiction of the County Government. These are situations that directly and immediately affect the public. Public interest therefore tilts in favour of allowing the County Government to access at least 50% of the budgetary estimates.
67. In arriving at this decision, I have carefully read the decision of the Court of Appeal in Cabinet Secretary , National Treasury & Planning & Ano vs. Okoiti & 12 others (supra). In my view, the Court of Appeal was not suggesting that there were no illegalities in the passage of the Finance Act. In fact they opted not to address that issue at that stage, but went on to make a finding that public interest demanded that the operation of the Finance Act should be allowed to take effect. Indeed, it is instructive that the same Court, later on, declared the same Act unconstitutional. ( see : National Assembly & another v Okoiti & 55 others [2024] KECA 876 (KLR)
68. Thus in my view, the Petitioners’ argument that public interest cannot override the law , in the light of the court of Appeal decision as aforesaid, is immaterial at this stage.
69. I am further duly guided by Article 10 of *the Constitution* on the National values and Principles of Governance. One of those values and principles is devolution of power. One of the objects of devolution under Article 174(f) is, “to promote social and economic development and the provision of proximate, easily accessible services.” To deny the County Government access to 100% of the budgetary estimates is to negate the said National values and Principles of *the constitution* and objects of devolution.



70. Further under Article 159(e), in exercise of Judicial Authority, courts are to be guided by inter alia, the principle that the purpose and Principles of *the Constitution* should be protected and promoted. One of those principles is devolved power with its attendant purposes, which include, but not limited to, easy access to services by the public.
71. Turning to the question of withdrawals, the 2<sup>nd</sup> Interested Party relies on the approval of the County Assembly to release funds. It is evident that due to the dysfunctionality of the County Assembly of Isiolo at the moment, no valid approval has emanated from the Assembly and there has been no evidence of any likelihood of one emanating therefrom in the immediate future. It is therefore left to this court, in the interest of the public, to make appropriate orders so as to facilitate the approval of the withdrawal of funds by the 2<sup>nd</sup> interested party.
72. I have noted that the committee on Budget, Finance and Appropriation had presented a figure of Ksh. 2,240,451,223 not Ksh.2,600,451,223 appearing on the purported Certificate of Transmission. The Respondent's counsel did concede, and attributed the latter figure to typographical error. In principle therefore, none of the parties is faulting the work or decision of the Appropriation Committee. The court will therefore consider the figure of ksh. 2,240,451,223 as uncontested.
73. In the end, the 5th Respondent's Application partially succeeds, and I hereby proceed to make orders as follows:
- a) That the controller of Budget is hereby Authorized and directed, to approve a withdrawal of ksh. 2,240, 451, 223 ( Kenya shillings Two Billion, two hundred fourty million four hundred fifty one Thousand two hundred twenty three) by the county Government of Isiolo from the County Revenue Fund, not later than 14 days from the date of this Ruling.
  - b) This being a public interest litigation, each party to meet their own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI, VIA MICROSOFT TEAMS THIS 9<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**S. CHIRCHIR**

**JUDGE**

In the presence of :

Roba Katelo- Court Assistant

Mr. Jarso and Mr. Nanyuki for the petitioners

Ms .Riunga f or Mr. Theuri for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

M. Tali Tali for the 5<sup>th</sup> Respondent

Dr. Mutie for the 2<sup>nd</sup> interested party.

