



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nzioka v County Assembly of Kitui & 3 others (Petition  
E007 of 2023) [2024] KEHC 911 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 911 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
PETITION E007 OF 2023**

**RK LIMO, J**

**JANUARY 31, 2024**

**IN THE MATTER OF ARTICLES 2, 3,10, 20, 22, 47, 50, 165,  
178, 196, 258 & 259 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE COUNTY GOVERNMENT  
ACT NO. 17 OF 2012 SECTION 11A AND 11 (2-8)**

**AND**

**IN THE MATTER OF REMOVAL FROM OFFICE AS DEPUTY SPEAKER OF THE  
COUNTY ASSEMBLY OF KITUI, AND KITUI STANDING ORDERS NO. 14 (6) & (8)**

**AND**

**IN THE MATTER OF PRINCIPLES OF NATURAL JUSTICE**

**BETWEEN**

**HON. CHRISTOPHER NZILU NZIOKA ..... RESPONDENT**

**-VERSUS-**

**THE COUNTY ASSEMBLY OF KITUI ..... 1ST RESPONDENT**

**THE SPEAKER, COUNTY ASSEMBLY**

**OF KITUI ..... 2ND RESPONDENT**

**THE CLERK, COUNTY ASSEMBLY**

**OF KITUI ..... 3RD RESPONDENT**

**HON. BONIFACE MUKWATE KATULA ..... 4TH RESPONDENT**

**BETWEEN**

**HON CHRISTOPHER NZILU NZIOKA ..... PETITIONER**

**AND**



THE COUNTY ASSEMBLY OF KITUI ..... 1<sup>ST</sup> RESPONDENT  
THE SPEAKER, COUNTY ASSEMBLY OF KITUI ..... 2<sup>ND</sup> RESPONDENT  
THE CLERK, COUNTY ASSEMBLY OF KITUI ..... 3<sup>RD</sup> RESPONDENT  
HON BONIFACE MUKWATE KATULA ..... 4<sup>TH</sup> RESPONDENT

## JUDGMENT

### Background

1. The Petitioner herein, Christopher Nzilu Nzioka states that he is the current duly elected Deputy Speaker, Kitui County Assembly after being elected to that office pursuant to the provisions of Section 9 A (2) of the County Government Act No. 17 of 2012 on 21<sup>st</sup> September 2022. He states that on 27<sup>th</sup> September, 2023, the 4<sup>th</sup> Respondent through the 2<sup>nd</sup> Respondent presented a motion to remove him from office on allegations of abuse of office and insubordination of the Assembly. He states that the motion was tabled on 4<sup>th</sup> October 2023 at 9.00am and that forty-two (42) members of the 1<sup>st</sup> Respondent supported the motion.
2. The Petitioner faults the Respondent's actions for inter alia unfair hearing procedural impropriety, bias and impartiality. He claims that the threshold for his removal was not attained and has asked this court to intervene on grounds that his Constitutional rights as guaranteed by *the Constitution* were denied and/or violated.
3. He seeks the following reliefs in this petition namely;
  - i. A declaration that the 4<sup>th</sup> Respondent's motion and proceedings for the removal of the Petitioner from Deputy Speaker was conducted in violation of Article 2,3,20,38,47,50,196 of *the Constitution* of Kenya, 2010, Section 11 of the County Government Act, 2012 and the Kitui County Assembly Standing Orders and hence unconstitutional, illegal, null and void.
  - ii. A declaration that the 1<sup>st</sup> Respondent for purposes of investigating the allegations made against the Petitioner pursuant to the 4<sup>th</sup> Respondent's motion for his removal from the position of Deputy Speaker was not qualified for the task and its sittings were in violation of principles of natural justice hence in violation of Articles 25,47 and 50 of *the Constitution* of Kenya 2010.
  - iii. An order of certiorari to quash the resolution by the 1<sup>st</sup> Respondent on 4<sup>th</sup> October 2023 approving the removal from office of the Petitioner from the position of Deputy Speaker County Assembly of Kitui.
  - iv. A declaration that the notice of motion and proceedings held by the 1<sup>st</sup> Respondent in relation to the Petitioner were undertaken in an arbitrary, erratic, capricious, vindictive manner and therefore a violation of the principles of natural justice and fair hearing.
  - v. A prohibitory order restraining the Respondents from executing or implementing the 1<sup>st</sup> Respondent's resolution dated 4<sup>th</sup> October 2023 removing the Petitioner from the office of the Deputy Speaker of the 1<sup>st</sup> Respondent.
  - vi. An order of compensation of the Petitioner for general damages for the infringement of his fundamental rights and freedoms.



- vii. Any other relief that this Honourable Court may deem appropriate to ensure law, order and constitutionalism.
4. The Respondents on the other hand deny the Petitioner's allegation and insist that due process as provided by the law and their Standing Orders were followed in removing him from his post. They also hold the view that the Petitioner was accorded a fair administrative action and a fair chance to be heard or to defend himself against the listed accusations.
5. This case on the overall is a case of push and pull in a political arena with one side accusing the other for under hand tactic in pushing him out of a coveted political seat with the other side countering that it was right or ripe for the Petitioner to be removed on account of acts of commission and omission which they claim rendered him unsuitable to hold the office.

### **The Petitioner's Case**

6. The Petitioner pleads that the motion to remove him held on 27<sup>th</sup> September 2023 by 4<sup>th</sup> Respondent who is a member of County Assembly Kitui representing Kanyangi Ward cited the provisions of Section 11A of the County Government (Amendment) Act, and accused him for the following grounds namely:
  - a. Insubordination of the operations of the Assembly.
  - b. Abuse of office.
  - c. Gross violation of *the Constitution* and other enabling laws.
7. The Petitioner states that the motion to remove him was done in haste with ulterior motive of greedily removing him from office.
8. He faults his removal from office by the Respondents citing the following grounds;

### **Unfair hearing**

9. Under this head, the Petitioner alleges that his counsel M/S M. M. Kimuli & Co. Advocates wrote several letters to the Respondent requesting for evidence or particulars of the allegations brought against him to enable him prepare for a defence but the requests went unanswered. He claims that he was summoned to answer to the charges levelled against him without the opportunity to check at the evidence proving the allegations against him and that despite protests registered, the protests fell on deaf ears.

### **ii) Bias and lack of impartiality**

10. Under this head the Petitioner claims that prior to the date of hearing, the 2<sup>nd</sup> Respondent had made prejudicial comments on social media and WhatsApp platform regarding impeachment. That in the Petitioner's view revealed that the 1<sup>st</sup> Respondent was impartial, malicious and the invitation extended to the Petitioner to defend himself was just a charade because his removal was a foregone conclusion even before he was heard.

### **Lack of specificity on the grounds of impeachment.**

11. ....
12. The Petitioner claims that the motion to remove him from office of Deputy Speaker lacked specific particulars of the charges levelled against him. He states that the grounds were cloudy making it hard



for him to specifically respond to each of them adding the alleged gross violation of *the Constitution* did not specify which specific provision of *the Constitution* was breached. He says that the allegation of breach of Chapter 6 of *the Constitution* lacks specificity which made it possible for his accusers or anyone for that matter to go into fishing expedition to nail him.

#### **Insufficient notice to respond to allegations.**

13. The Petitioner complains that he was not accorded sufficient time to respond comprehensively to the allegations levelled against him. He claims that he received letter forwarding the motion telling him to appear at the 1<sup>st</sup> Respondent's office and the notice required him to appear at the Assembly on 4<sup>th</sup> October 2023. He adds that when he requested to be supplied with more information or particulars of the allegations, none was supplied to him.

#### **Threshold for removal of the Petitioner.**

14. The Petitioner claims that the motion to remove him was not supported by facts and therefore unsubstantiated in his view. He faults the 1<sup>st</sup> Respondent for dragging personal differences to the motion owing to what he terms as vendetta against him.

#### **Lack of disclosure of material facts.**

15. The Petitioner states that the motion brought against him lacked any evidence and amounted to trial by ambush because he was not supplied with facts to support the allegations.

#### **Discrimination.**

16. The Petitioner contends that over time the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have established a tradition and practice that guides the house when dealing with motions to remove officers from offices. He states that before any motion for removal is tabled for debate, the promoters must be authenticated which he claims was not done. He states that the motion was brought out of spite, witch hunt and aimed at some political interests. The Petitioner has however not stated the particulars of the said interests but insists that the motion to remove violated *the Constitution*.
17. The Petitioner faults the Respondents for violating his Constitutional rights and cites a number of rights under inter articles 2, 25(c), 27, 40, 47 and 50 of *the Constitution* of Kenya 2010. He contends that his removal breached the cited provisions of *the Constitution*.
18. In his written submissions done through learned counsel Kimanthi & Associates, the Petitioner reiterates the above cited grounds and relies on the affidavit sworn on 6<sup>th</sup> October 2023 and 25<sup>th</sup> October 2023. He insists that he learned of the motion to impeach him via WhatsApp forum on 27<sup>th</sup> September, 2023 and since the copy of the motion received was not legible, he was instructed to get a clear copy the following day on 28<sup>th</sup> September 2023 and that is the date he got claims he got a clear legible copy of the motion.
19. He submits that under Section 11A (2) of County Government Act, a person facing a motion of removal is entitled to seven (7) days to file a response upon which the motion can then be slated for debate. He argues that a date for the debate cannot be slated before the time to respond lapses. He relies on the decision of Republic –vs- Speaker of the Senate & Another [2018]eKLR in his contention that the rules of interpretation should be applied in such a way so as to avoid absurdity. He insists that the interpretation of a statute in respect to computation of time should be conventionalized, purposeful and in conformity with *the Constitution*. He contends going by Section 57(a) of *Interpretation and General Provisions Act*, the computation of time when a time to carry out an exercise is limited, should



- exclude the first day. He submits that in that respect the first day of service which he insists was 28<sup>th</sup> September 2023 should be excluded from the computation of the seven (7) days period given to him to respond to a motion of removal of office. According to him, time started running from 29<sup>th</sup> September 2023 meant that he had up to 5<sup>th</sup> October 2023 to file his response.
20. He faults the Respondents for slating the motion prematurely on 4<sup>th</sup> October 2023 adding that he prayed for extension of time because his requests for more particulars fell on deaf ears.
  21. He points out that Article 47 of *the Constitution* of Kenya 2010 stipulates that a person who is likely to be affected by administrative action must be supplied with evidence. He contends that the Respondents not only failed to supply evidence to him but also failed to exhibit any in this court.
  22. He submits that one of the tenets of a fair hearing is to respect the right of one to be represented by an Advocate of his choice. He argues that Section 11(2) of the Act provides that a Speaker facing impeachment has a right to be represented and that Section 11A (2) extends that right to his office and that that right was denied to him as demonstrated by Hansard exhibited in this petition. He has drawn the attention of this court to pages 6 and 7 thereof.
  23. He contends that by the time he tendered a response to the accusations leveled against him, he had not been supplied with adequate evidence and that some members of the 1<sup>st</sup> Respondent had appended their signatures in support of the motion even before the debate of the said motion.
  24. He states that by proceeding on the debate in the absence of his Advocate he was denied the right to be represented and that despite his protests the debate of the motion to remove went on.
  25. On bias and lack of impartiality, the Petitioner submits that the 2<sup>nd</sup> Respondent who presided over the proceedings in respect to the motion at the Assembly was biased against him. He contends that the 2<sup>nd</sup> Respondent harbored ill intentions against him owing to a dispute the two had over a motion to remove the 2<sup>nd</sup> Respondent as the Speaker. He claims that the 2<sup>nd</sup> Respondent targeted him and other members of the County Assembly he deemed supported the motion to impeach him. He claims that the 2<sup>nd</sup> Respondent has divided the Assembly into two and keeps intimidating those seen to be in the opposite political lamp. The Petitioner claims that his removal was part of the alleged orchestra to settle scores.
  26. The Petitioner further submits that the motion to remove him was baseless, lacked specificity and in his view failed to satisfy the criteria set out under Section 11 (2) of the County Government Act. He submits that there was no evidence tendered to demonstrate insubordination or the alleged absenteeism levelled against him.
  27. He contends that the claims or allegations levelled against him on failure to coordinate sectoral/select committees, abuse of office and gross violation of *the Constitution* were all unsubstantiated as no evidence was tendered to demonstrate the alleged wrongs.
  28. He urges this court to invoke its jurisdiction and intervene in order to stop violations of his Constitutional rights and breaches to the law. He cites the decision in Sayre Mati & Another –vs- Attorney General & Another [2011] eKLR to buttress his contention adding that under Article 23 (3) and 165 (3) of *the Constitution* grants this Court jurisdiction to intervene and grant the reliefs sought in this petition.

### **The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Case**

29. In response to this petition the 1<sup>st</sup> and 2<sup>nd</sup> Respondents has sworn a replying affidavit sworn by the Speaker of the County Assembly of Kitui, Kevin Kinengo Katisya on 18<sup>th</sup> October 2023. The 1<sup>st</sup> and



2<sup>nd</sup> Respondent aver that the process leading to the Petitioner's removal as the 1<sup>st</sup> Respondent's Deputy Speaker was in accordance with the 1<sup>st</sup> Respondent's Standing Orders and house procedures. They have rebutted the allegation raised by the Petitioner concerning authenticity of signatures of 42 signatories of the motion and stated that there was no complaint raised on the same. They claim that the signatories were the same members who debated the motion in the assembly and that the Petitioner waited until 3<sup>rd</sup> October 2023 to lodge protests against the authenticity of the signatures. On the allegation that the Petitioner was not accorded sufficient time to respond to the motion, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents aver that the Petitioner was accorded seven (7) days to prepare and present his defense against the allegations. They further aver that the Petitioner participated in the hearing of the motion and further that he did not require approval to have legal representation hence his self-representation was voluntary. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have refuted the claims of biasness, non-specificity of the motion, lack of material disclosure and constitutional violations raised by the Petitioner.

30. The 2<sup>nd</sup> Respondent contends that the removal of the Petitioner as a Deputy Speaker came to an end upon resolution by members passed on 4<sup>th</sup> October 2023 and faults the Petitioner for trying to use the court process to simply advance his political agenda citing an alleged incident where the Petitioner is said to have incited the member of the public to go and eject him forcefully from his office.
31. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent deny accusations levelled against them that they did not supply evidence to support the motion of removal contending that all the materials particularly was shared via WhatsApp forum where the Petitioner is a member and that he had access to any additional information. They however have not specified the nature of access or where the information was placed.
32. They aver that the Petitioner was given seven (7) days which in their view was sufficient period to prepare and present his defence. They claim that the Petitioner was served with the motion of removal on 27<sup>th</sup> September 2023 adding that the motion was debated on the floor of the house with the Petitioner appearing in person and presenting his defence on the floor of the house. They aver that the Petitioner cannot therefore claim that he was not accorded a fair hearing. They dismiss as false the sentiments by the Petitioner that he was denied the right to legal representation.
33. According to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the Petitioner chose not bring or avail his advocates in the sitting of the 1<sup>st</sup> Respondent. They claim that the Petitioner fully participated in the pleadings to remove him and sat in the house throughout and have drawn the court's attention to the copy of Hansard exhibited in the 3<sup>rd</sup> Respondent's replying affidavit stating that the same supports their contention.
34. The 2<sup>nd</sup> Respondent denies the allegations of bias directed at him stating that his role as the Speaker of County Assembly is purely procedural because he presides over proceedings and he does not contribute to debates taking place in the floor of the house. He further claims that the allegations of bias were just made a few hours before the debate began but there was no substantiation from the petitioner arguing that the onus of proving lack of impartiality during the debate laid on him. He further states that forty-one (41) members of the County Assembly voted for his removal and he never casted a vote because he had no right to do so.
35. They claim that the Petitioner has already been removed from office in what in their view was done procedurally and that having been removed, he cannot be imposed upon the members.
36. They take the position that this court should not unduly concern itself with the grounds for removal from office but rather look at the process and have cited the Supreme decision in *Sonko –vs- Clerk County Assembly of Nairobi City & 11 Others* [2022] eKLR to buttress their contention.



37. They submit that the election and removal of a Deputy Speaker is both legal and a political process adding that courts should not interfere unless constitutional and procedural issues arise. They claim that the process of removal of the Petitioner in their view was regular and fair because it was done in accordance with *the Constitution* and relevant laws.
38. In their written submissions dated 30<sup>th</sup> October, 2023 done through learned counsel M/s SKM Advocates LLP, they reiterate that the removal of the Petitioner from office followed due process as provided under the County Government Act.
39. They claim that he was accorded a fair hearing by members of the 1<sup>st</sup> Respondent as well as sufficient time to respond. With regards to timelines, it is submitted that the motion was served on 27<sup>th</sup> September 2023 on the Petitioner who prepared a Memorandum of Response and the same was debated on 4<sup>th</sup> October 2023. In their computation the Petition was accorded eight (8) days. It is submitted that the motion was served upon the members of the 1<sup>st</sup> Respondent before the debate took place. Counsel further submits that there being no prescribed format of response, the defense mounted by the Petitioner before the floor was a sufficient response.
40. They deny that the debate was rushed submitting that the law only prescribed that the debate be conducted within fourteen (14) days from the date of lodging the defence. They hold the view that the Petitioner was granted seven (7) days to present his defence and that the period was sufficient arguing that there is no legal provisions specifying the period a person facing removal should be given to defend himself.
41. On the contention that the Petitioner was denied legal representation, counsel submits that there was no need for approval from the Respondents and that the Petitioner was within his right to bring an advocate along for the hearing if he so wished.
42. Counsel submits that the Petitioner is well aware that the House Business Committee does not discuss or debate motions. On the issue of verification of signatures, counsel submits that there is a rebuttable presumption of authenticity unless evidence is provided to the contrary and in this case, there was no complaint raised by members concerning authenticity of their signatures.
43. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents submit that contrary to the accusation that the impugned motion lacked specificity, it was accompanied by detailed particulars of the allegations adding that the grounds relied upon were well substantiated in their view. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent has invited this court to review the motion with a view to confirming their position but have also thrown a spanner into the works by again stating that this court should not overstep its mandate by putting itself in the shoes of the 1<sup>st</sup> Respondent. It states that the role of testing the veracity of the grounds of impeachment rests in the 1<sup>st</sup> Respondent.
44. According to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, the petition herein does not meet the threshold because in their view, the Petitioner has not demonstrated that his constitutional rights were violated in his removal from office. They submit that the Petition filed lacks specificity on the rights that were violated. They rely on the decision of Njeru –vs- Mumo Matemu –vs- Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR to buttress their contention that there is no basis shown for this court to intervene. They fault the Petitioner for coming to court instead of persuading the members of the County Assembly not to remove him. To this end, they rely on the decision of Nduyo Susan Ngugi –vs- Speaker County Assembly of Tharaka Nithi County & 2 Others where the court found that the court’s role in such cases is to focus on the procedures followed.



### The 3<sup>rd</sup> & 4<sup>th</sup> Respondents' Case

45. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents have equally opposed this Petition with the 3<sup>rd</sup> Respondent (The Clerk to the County Assembly) swearing affidavit sworn on 11<sup>th</sup> October 2023. He reiterates the contentions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
46. He avers that he received a motion to remove the Petitioner from the Office of Deputy Speaker on 27<sup>th</sup> September 2023 from the 4<sup>th</sup> Respondent adding that the motion was signed by 42 members.
47. He states that on receipt pursuant to Standing Order No. 44 (1), he submitted the motion to the Speaker for approval. He adds that the Speaker approved it and the same was forwarded to the County Assembly House Business Committee for purposes of slotting it for business which was done and slotted for the week that commenced on 2<sup>nd</sup> October 2023. According to him the House Business Committee fixed the motion for debate on 4<sup>th</sup> October 2023.
48. The 3<sup>rd</sup> Respondent further states that he wrote to the Petitioner on 27<sup>th</sup> September 2023 notifying him that the House Business Committee had approved the motion for debate and invited him to defend himself. He has exhibited the letter wrote to the Petitioner dated 27<sup>th</sup> September 2023.
49. He avers that the Notice of Motion for removal was published in Order paper of the day on 3<sup>rd</sup> October 2023 to enable members acquaint themselves with the debate.
50. According to him on 4<sup>th</sup> October 2023 at 2.30 pm the 4<sup>th</sup> Respondent tabled the motion for debate and after voting forty-one (41) members voted in favour of removal while three (3) voted against.
51. He avers that the Petitioner was accorded a fair chance to defend himself and that the removal was procedural and done in accordance with the law.
52. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents in their written submissions dated 30<sup>th</sup> October 2023 done through learned counsel MCM Advocates LLP, they have framed three (3) issues which they have asked this court to determine namely;
  - i. Whether this Court has jurisdiction to review a decision made by a County Assembly and whether such a review violates the doctrine of separation of powers.
  - ii. Whether the 1<sup>st</sup> Respondent violated the Petitioner's right to a fair administrative action and,
  - iii. Whether the removal of the Petitioner was lawful.
53. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents submit that due process was followed urging this court not to intervene. They rely on the decisions of Sumo –vs- Clerk County Assembly of Nairobi & 11 Others (supra) in urging this court to be reluctant in questioning the duties and procedures of the County Assembly in view of doctrine of separation of powers.
54. The Respondents reiterates that the Petitioner has no cause to complain because his right to fair administrative action was observed. They further contend that the removal of the Petitioner was done in strict compliance of the standing orders, the County Government Act and *the Constitution*. They deny the Petitioner's claim that his rights under *the Constitution* were violated stating that there was no instance when his rights under *the Constitution* were violated.
55. On the timelines, it is reiterated that the Petitioner was accorded sufficient time to make his response/ defence as the motion was served on him on 27<sup>th</sup> September 2023 while the debate took place on 4<sup>th</sup> October 2023. It is further submitted that the 7 days requirement lapsed once the response from the Petitioner was submitted making the motion ripe for debate.



56. They contend that Section 11 (5) of the County Government Act was fully complied with adding that the Petitioner was given eight (8) days to prepare for the motion to remove him. They have cited provisions of Article 259 (5) in regard to computation of time prescribed under Section 11 (5) of the County Government Act. They argue that the seven (7) days prescribed for the Petitioner to respond included Sundays and public holiday. They contend that the seven (7) days requirement does not bar them from debating the motion so long as the Petitioner submitted his response within the prescribed time. In their view once a response is filed, the motion is ripe for debate any minute thereafter.
57. On the question of authenticity of the signatures of the members supporting the motion, the 3<sup>rd</sup> and 4<sup>th</sup> Respondent contend that there was no issue raised by the Petitioner regarding the authenticity of the signatures prior or during the debate.
58. The 3<sup>rd</sup> and 4<sup>th</sup> Respondent further submit that a Deputy Speaker serves at the pleasure of members of the County Assembly arguing that they have the power to elect and fire as well and have urged this court not to step into the arena that is reserved to them.
59. This court has outlined the positions of the respective parties in this petition. The issues for determination in this petition have been framed by the respondents who have framed three (3) issues which I have crystallized into two main issues namely:
  - i. Whether the removal of the Petitioner from his office was procedural/lawful.
  - ii. Whether this court can interfere with 1<sup>st</sup> Respondent's internal process.

**Whether the removal of the Petitioner from the Office of Deputy Speaker was lawful.**

60. ....
61. The Petitioner's contention is that he was entitled to a period of seven (7) days to file his response to the motion before the same was slated for debate. In his Affidavit in support of the Petition the Petitioner averred that he received the motion on 27<sup>th</sup> September 2023 however in his Further Affidavit sworn on 25<sup>th</sup> October 2023, he averred that he received an illegible version of the motion on 27<sup>th</sup> September 2023 via What's App on 7.45pm and only received a hard copy of the motion on 28<sup>th</sup> September 2023. On this contention, the Respondents insist that the Petitioner was served on 27<sup>th</sup> September 2023 and that he was accorded sufficient time to respond to the motion which he did by submitting a Memorandum of Response before the assembly dated 4<sup>th</sup> October 2023.
62. There is a contest between the Petitioner on one hand and the Respondents on the other as to when the service was effected. The Respondents insists it was 27<sup>th</sup> September 2023 while the Petitioner insists it was 28<sup>th</sup> September 2023 because what was sent to him via WhatsApp was not legible. Before I delve on the contested facts and determination of this aspect, I will first look at the position of the law.
63. The procedure of removal of a Deputy Speaker of a County Assembly is provided for under Section 11 A of the County Government Act provides as follows;
  1. The office of a deputy speaker shall become vacant if,
    - a. the office holder vacates office pursuant to Article 194 of *the Constitution*; or
    - b. the county assembly so resolves by a resolution supported by at least two-thirds of all the members of the county assembly.



2. Section 11(2) to (8) shall, with necessary modifications, apply to the removal of a deputy speaker under subsection (1)(b).
64. Section 11(2) of the County Government Act provides for grounds of removal of a Speaker and the same include gross violation of *the Constitution*, incompetence, gross misconduct, inability to perform and if convicted of an offence that is punishable by more than six (6) months.
65. Section 11(8) of the same statute provides that:
- “The County Assembly shall consider the motion within fourteen (14) days and resolve whether to approve the motion.”
66. The above provisions therefore mean that once a motion is tabled for removal of a Speaker or the Deputy Speaker, the County Assembly has a timeline of fourteen (14) days within which to resolve it.
67. The provisions of Article 194 of *the Constitution* spells out the general grounds upon which a Member of County Assembly can vacate or be removed from office. This includes death, missing eight (8) consecutive sittings of the Assembly, resignation etc.
68. Kitui County Assembly Standing Order 14 (6) provides as follows;
- The office of the Deputy Speaker shall fall vacant if;
- a. The officer holder vacates office pursuant to Article 194 of *the Constitution*; or
  - b. The County Assembly so resolves by a resolution supported by at least two-thirds of all members of the County Assembly.
69. The procedure for removal of a Speaker is provided for under Standing Order No. 58 as follows;
- a. The Speaker may be removed from office by the assembly through a resolution supported by not less than seventy-five percent of all the members of the county assembly.
  - b. A notice of the intention to move a motion for a resolution to remove the Speaker shall be given in writing to the Clerk of the County Assembly, signed by at least one third of all the members of the county assembly stating the grounds for removal.
  - c. A motion for a resolution to remove the speaker shall be presided over by a member of the county assembly elected to act as speaker as contemplated under Article 178 (2) (b) of *the Constitution*.
  - d. Before the debate and voting on a motion under paragraph (3), the Speaker shall be accorded an opportunity to respond to the allegations on the floor of the assembly.
70. My reading or understanding of Section 11A (2) shows that the grounds and procedure of removal of a Speaker of a County Assembly to a large extent also applies the removal of a Deputy Speaker of a County Assembly. Section 11A (2) states:
- “Section 11(2) to (8) (in respect to provisions of Section 11(2) of County Government Act) shall with necessary modifications, apply to the removal of a Deputy Speaker under subsection 1(b) (of section 11A).” The timelines given and the procedures as cited above apply to the offices of both Speaker and the Deputy Speaker. There is a thin time separating the two (2) offices when it comes to removal. The “necessary modifications” under Section 11A (2) relates to word “Speaker” being modified to read “Deputy Speaker.”



71. Having set out the law, I will now look at the facts/evidence presented before in respect to the contested time upon which the Petitioner was served with the motion of removal.
72. While the Petitioner insists that he was served on 28<sup>th</sup> September 2023 with the motion to remove him from office, the Respondents insist he was served on 27<sup>th</sup> September 2023 via WhatsApp. I have looked at the petitioner's affidavit sworn on 25<sup>th</sup> October 2023 and the screen shot of the WhatsApp. It is apparent that the message about the motion was indeed sent to his mobile phone via WhatsApp on 27<sup>th</sup> September 2023 at 7.47 pm.
73. The Petitioner however avers that he only saw the message on 28<sup>th</sup> September 2023 at 4.40am and that the motion was not legible. The averment by the Petitioner was not contested through any affidavit by the Deputy Clerk of the Assembly who sent the message and informed him to collect the hard copy of the motion on 28<sup>th</sup> September 2023. The Respondents have not given any explanation as to why they did not consider it convenient and efficient to serve the Petitioner with the motion via email. In view of the fact that the respondents through the Deputy Clerk of the Assembly has not contested the Petitioner's allegation on oath that the motion sent via WhatsApp was illegible, this court finds that, on a balance of probability, the Petitioner was served with the motion to remove him on 28<sup>th</sup> September 2023 when he was supplied with a legible copy which he confirms was a hard copy.
74. I have looked at the 3<sup>rd</sup> Respondent's Replying Affidavit sworn on 11<sup>th</sup> October 2023 where he deposes that he received a motion of petitioner's removal from the 4<sup>th</sup> Respondents on 27<sup>th</sup> September 2023 and that the same was signed by forty-two (42) members. It is noteworthy that the 3<sup>rd</sup> Respondent received the motion on 27<sup>th</sup> September 2023 and though he does not state at what time, what followed was evidently fast because on the same day he forwarded the motion to the 2<sup>nd</sup> Respondent who in turn approved it same day and the same was referred to House Business Committee again on the same day slated it for debate on the 4<sup>th</sup> October 2023. In my view that was fast but there is nothing wrong with it because perhaps the same bespeak of the efficiency at which the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents conduct their business and their affairs.
75. Suffices to state that the timeline provided for one facing removal of a Deputy Speaker to respond is "within 7 days." The Act expressly state that one facing a motion of removal must do so within seven (7) days. That position is uncontested in this petition because all the parties agree on that position. That means that a debate for removal must be slotted in after expiry of seven (7) days but within the fourteen (14) days timeline by law given to debate and resolve the matter. Computation of time shows that seven (7) day window for the Petitioner began to run upon receipt of the Petition which was 28<sup>th</sup> September 2023. Going by the provisions of Section 57 (a) of the *Interpretation and General Provisions Act* and Article 259 (5) (i) of *the Constitution* of Kenya the first day of service is excluded. So if you count seven (7) days from 29<sup>th</sup> September 2023 expired on 5<sup>th</sup> October 2023 which means that any date from 5<sup>th</sup> October 2023 sufficed in terms of complying with seven (7) day rule for the Petitioner to respond. The Petitioner therefore is justified to feel hard done or rushed when the debate was slated for 4<sup>th</sup> October 2023. The law gave him upto 5<sup>th</sup> October 2023 to respond.
76. This court finds that by slotting the motion for debate on 4<sup>th</sup> October 2023, the Respondents gave the Petitioners only six (6) days to respond which in my view breached the provisions of Section 11 (5) of the County Government Act. The time given to the Petitioner to respond was not sufficient. Of course he also did not do himself any favours by asking for particulars at the eleventh hour.
77. The above omission by the Respondents was exasperated by failure to supply the Petitioner with particulars or facts supporting the motion. The Respondents have maintained that the requests for particulars was received only on 3<sup>rd</sup> October 2023 and I have seen the copies of the letters exhibited



by the Petitioners and it shows that the letters were received at the County Assembly on 3<sup>rd</sup> October 2023 but the letters required the Respondents to push or adjourn the debate to 5<sup>th</sup> October 2023 to enable the Petitioner's counsel time to go through the facts and appear for the Petitioner. Pushing or adjourning the motion to 5<sup>th</sup> October 2023 would not have prejudiced anyone and the request in my view was both legit and reasonable.

78. There is also another issue brought up by the Petitioner which is whether the Respondent's action in the entire process of impeachment violated his right to a fair administrative action. An administrative action is defined under *Fair Administrative Action Act* No. 4 of 2015 as an actions that includes:

- i. The powers, functions and duties exercised by authorities or quasi-judicial tribunal or,
- ii. Any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.”

Guided by the above provision, there is no doubt that a motion brought to any County Assembly like in this instance to remove one from the office of Deputy Speaker is an administrative action and I so find

79. Article 47 of *the Constitution* of Kenya provides that every person has a right to fair administrative action. It states;

- “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

80. It is evident that from Sub article 3 of *the Constitution* that Parliament executed its mandate and role by enacting the *Fair Administrative Action Act* cited above. Section 3 of the said statute is quite explicit on who is bound by the Act. It states:

- “This Act applies to all State and None-State Agencies including any person –
- a. Exercising administrative authority,
  - b. Performing a judicial or quasi-judicial function under the court or any written law or,
  - c. Whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.”

81. A County Assembly in their ordinary course of business assumes many facets. When carrying out its core mandate of legislation, or oversight may not necessarily be bound by the cited statute of Fair Administrative Act but when it is debating a motion of impeachment/removal from office of a Speaker, Deputy Speaker or any other executive member of the County Executive, its character changes from legislative to quasi-judicial tribunal and to that extent, it is bound by Sections 3 and 4 of the said Act.

82. Section 4 of the Fair Administrative Action states as follows:

- “(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.



- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
  - (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
  - (b) an opportunity to be heard and to make representations in that regard;
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
  - (d) a statement of reasons pursuant to section 6;
  - (e) notice of the right to legal representation, where applicable;
  - (f) notice of the right to cross-examine or where applicable; or
  - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.”

Subsection 4 of the same section is even more elaborate on the rights to be accorded to a person facing an administrative action. It states:

- (4). The administrator shall accord the person against whom administrative action is taken an opportunity to–
  - (a) attend proceedings, in person or in the company of an expert of his choice;
  - (b) be heard;
  - (c) cross-examine persons who give adverse evidence against him; and
  - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”

83. Now having set out the law regarding Fair Administrative Action, let me turn my attention to the facts presented before me in that regard. The motion of removal presented by the Respondents to the Petitioner contained grounds that are well covered under Section 11 (2) of the County Government Act. The grounds cited in the motion removal of Petitioner is exhibited in this Petition and the grounds are serious and constitutes grounds upon which a holder of that office can be removed by members of the County Assembly.

84. I have however looked at the Petitioner’s grievances that he wrote to 1<sup>st</sup> and 3<sup>rd</sup> Respondents asking for more particulars of the impeachment motion and in particular through the letters dated 2<sup>nd</sup> October 2023 and 3<sup>rd</sup> October 2023 (exhibited as CNN 3). The letters later dated 2<sup>nd</sup> October 2023 in particular requested for some specific particulars to enable him prepare a defence and also an opportunity to cross



- examine the mover of the motion and other witnesses. The Petitioners was entitled to be supplied with the specific particulars or facts that formed the cited grounds for his removal from office.
85. The Respondents have insisted in this matter that either they did supply the necessary particulars to support the grounds of removal in the motion or that they could not act because the request came rather late and specifically just a day before the motion was scheduled for debate. This court finds the response a bit contradictory because on one hand the Respondents say they supplied the necessary particulars and on the other they are saying the timing of the request made it not possible for them to comply. It is difficult to tell which is which in these two contrasting positions.
86. Be that as it may, this court finds that the Petitioner's request for more or better particulars was anchored in law as stipulated under Section 4 (g) of the Fair Administrative Act which provides for a right to be supplied with information to be relied on in the adverse action to be taken.
87. The Respondent's response in this Petition that they supplied the Petitioner with sufficient particulars is not supported by any document presented. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents were under a legal obligation to comply with the Fair Administrative Action Act by supplying the Petitioner with the requested particulars but they have failed to demonstrate that they did.
88. What is even more glaring is that while the law clearly stipulates that a person facing a motion of removal from office is entitled to be represented by counsel of his choice, the 2<sup>nd</sup> Respondent herein appears to have dilly dallied with that right and in the end denied the Petitioner that basic and fundamental right of legal representation. The basis of this conclusion is the information contained in the copy of the Hansard dated 4<sup>th</sup> October 2023 exhibited by the Respondent in his replying affidavit sworn on 11<sup>th</sup> October 2023. What has caught the attention of this court is the exchanges between the Petitioner and 2<sup>nd</sup> Respondent during the debate of removal at page 7 of the Hansard. It is quite clear from the exchanges that one, the exchanges were heated and two and more importantly, there was a difference of opinion between the two regarding the right of legal representation during the debate. While the Petitioner was clear that he was entitled to one, the 2<sup>nd</sup> Respondent appears to have been of a different and erroneous opinion that he was not. He expressly told the Petitioner that the proceedings in the House was not a court but what he failed to appreciate is that the House (County Assembly) had assumed the character akin to that of a quasi-judicial tribunal which meant that the Petitioner had a right to be represented by an Advocate of his choice or any expert for that matter as stipulated under Section 4 (4(a)) of the Fair Administrative Act.
89. This court finds that based on the evidence presented before me, the Respondents by failing to provide the Petitioner with more information/particulars of the grounds for his removal, denied the Petitioner his Constitutional right under Article 35 of the Constitution of Kenya and further breached the provisions of Section 4 (4) of Fair Administrative Action Act by denying him the right to legal representation.
90. In an open democratic society such as ours under the current constitutional dispensation, it is important for State Officer, State organs and any public officer to breathe life to the national values and principles of governance under Article 10 of the Constitution of Kenya. The principles of good governance, transparency, accountability etc really binds every person mentioned above to be as transparent and accountable as possible. Transparency means that every action must be done openly and above board. There was absolutely no need for example to deny the petitioner the right to legal representation because what was there to hide in the debate to remove him? Members of County Assembly are rational and respectable people who were expected to interrogate all issues raised and make informed decision on either supporting or rejecting the motion. When one is denied legal representation besides the legal position, a perception is naturally formed that there are cards hidden



under the table which may not be actually the case. The principles of fairness require that one is accorded a fair opportunity to be heard and removing someone from a public office through impeachment is a serious matter that must comply with the law strictly.

**Whether this court should interfere with internal process of the 1<sup>st</sup> Respondent.**

91. Closely tied to this issue is the question of whether this court has the jurisdiction to interfere with internal processes of the 1<sup>st</sup> Respondent. The jurisdiction of this court is clearly spelled out under Article 165 (3) (b) (d) and 165 (6) of *the Constitution* of Kenya.
- (c) jurisdiction to hear an appeal from a decision of a tribunal Court of Appeal. High Court. 100 Constitution of Kenya [Rev. 2010 appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
  - (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
    - (i) the question whether any law is inconsistent with or in contravention of this Constitution;
    - (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
    - iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and (iv) a question relating to conflict of laws under Article 191.”
- Article 165 (6) provides;
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
92. The Respondents have submitted and correctly so that this court should be confined in determining this matter only to the allegations of breaches of Constitution, violations of his rights and not the merits of the motion to remove the Petitioner. The focus of this court is the process followed and the alleged as violation of rights. This was decided in *Ndinyo Susan –vs- Speaker County Assembly of Tharaka Nithi County & 2 Others* [2020] eKLR. In that case the court focused on the process and violation of rights. Where a Petitioner demonstrates clear violations of any of his Constitutional rights or show that he was subjected to unfair/unlawful process, this court as cited above has the power or the jurisdiction to interfere. A lawful process is as important as its product. A lawful and fair process is always good and beyond reproach. A right to legal representation during a debate for impeachment in a County Assembly is not a favour but a constitutional imperative.
93. In this instance, the process to remove the Petitioner cannot be said to be fair because as I have observed above the haste in which it was carried out saw some important procedural aspects like sufficient time being overlooked or disregarded altogether. The Petitioner was not accorded sufficient time seven (7) days to respond to the motion of removal as proved under Section 11 (5) of the County Government Act which section 1 have found also applies to the office of Deputy Speaker.
94. The Respondents also failed to supply more information/particulars to the Petitioner to enable him prepare for his defence/response to the motion of removal. It was not enough to accuse him of gross violation of constitution and abuse of office without giving him the specific articles of *the*



Constitution or facts or particulars upon which the accusations were based. The omission by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to respond to the written requests by the Petitioner violated his constitutional right to information and fair administrative action. In such an instance this court has powers to intervene and so find.

95. This court finds that the process of removal of the Petitioner from office of Deputy Speaker was neither transparent or lawful. To that extent this court finds merit in this Petition and the same is allowed in the following terms namely;
- a. A declaration is hereby made that the 4<sup>th</sup> Respondent's motion and the attendant proceedings to remove the Petition from Office of Deputy Speaker was conducted in violation of Article 10, Article 25 (c), Article 35 and Article 47 of the Constitution of Kenya, Section 11A of the County Government Act and therefore unconstitutional, illegal, null and void,
  - b. An order of certiorari is hereby issued to remove the decision reached by the 1<sup>st</sup> Respondent on 4<sup>th</sup> October 2023 to this court to hereby quash the same.
  - c. Costs to the Petitioner to be met by the Respondents.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 31<sup>ST</sup> DAY OF JANUARY, 2024.**

**HON. JUSTICE R. LIMO - JUDGE**

