



**Kirumba v Speaker, County Assembly of Kiambu & 3 others; Njoroge (Interested Party)
(Constitutional Petition E017 of 2023) [2024] KEHC 8415 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 8415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CONSTITUTIONAL PETITION E017 OF 2023
DO CHEPKWONY, J
JUNE 27, 2024**

BETWEEN

NANCY NJERI KIRUMBA PETITIONER

AND

THE SPEAKER, COUNTY ASSEMBLY OF KIAMBU 1ST RESPONDENT

THE COUNTY ASSEMBLY OF KIAMBU 2ND RESPONDENT

**THE GOVERNOR, COUNTY GOVERNMENT OF KIAMBU 3RD
RESPONDENT**

COUNTY GOVERNMENT OF KIAMBU 4TH RESPONDENT

AND

PETER WAINAINA NJOROGE INTERESTED PARTY

JUDGMENT

1. On 18th April, 2023 the Petitioner filed Notice of Motion application and a Petition both dated 17th April, 2023. In its Directions issued on 27th June, 2023, the court ordered the parties to dispose the Notice of Motion application contemporaneously with the Petition by way of written submissions.

The Notice Of Motion Application

2. The Notice of Motion application is filed pursuant to Articles 41 (1), 47, 50 (1), 165 and 236 (b) of *the Constitution*, Section 4 and 11 of the Fair Administration Act, Section 1, 1A,1B and 3A of the *Civil Procedure Act* and Order 40 (2) and 51 (1) of the Civil Procedure Rules. It seeks the following orders:-

- a. Spent.



- b. That the resolution of the County Assembly of Kiambu passed on 12th April, 2023 investigate with a view to remove the petitioner/ applicant from office as County Executive Member for Finance, ICT and Economic Planning- Kiambu County be stayed pending hearing and determination of this petition.
 - c. That an injunctive order be issued to restrain the 1st, 2nd, 3rd and 4th Respondent from conducting any further proceedings to remove the Petitioner from office as County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Petition.
 - d. That an injunctive order be issued to restrain the 1st, 2nd and 3rd Respondents from taking or conducting any step, decision, action, proceedings or investigations in relation to any resolution of the County Assembly of Kiambu to remove the petitioner/applicant from the office of County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Petition.
 - e. That an order of injunction be issued to restrain the 1st, 2nd and 3rd Respondents from taking or conducting any step, decision, action, proceedings or investigations in relation to any resolution of the County Assembly of Kiambu to remove the petitioner/applicant from the office of County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Application.
 - f. That a conservatory order by way of injunction do issue restraining the grid Respondent from receiving, taking or conducting any step and/or complying with any resolution of the County Assembly of Kiambu recommending the removal of the petitioner as the County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Petition.
 - g. That a conservatory order by way of injunction do issue restraining the 3rd Respondent from receiving, taking or conducting any step and/or complying with any resolution of the County Assembly of Kiambu recommending the removal of the petitioner as the County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Application.
 - h. That costs be provided for.
3. The Application is supported by the Supporting Affidavit of Nancy Njeri sworn on even date and the grounds as set out on its face.
 4. The Petition on the other hand seeks the following orders:-
 - a. A Declaration That the proceedings of the County Assembly of Kiambu to commence the impeachment process of the County Executive Member for Finance, ICT and Economic Planning Kiambu County be declared illegal, null and void.
 - b. That a permanent injunctive order be issued to restrain the 1st, 2nd, 3rd and 4th Respondents from conducting any further proceedings to remove the Petitioner from office as County Executive Member for Finance, ICT and



Economic Planning- Kiambu County pending hearing determination of this Petition on the grounds stated in the Resolution passed on 12th April, 2023.

- c. That an injunctive order be issued to restrain the 1st, 2nd, 3rd and 4th decision, action, Respondents from talking or conducting any step, proceedings or investigations in relation to any resolution of the County Assembly of Kiambu to remove the petitioner/ applicant from the office of County Executive Member for Finance, ICT and Economic Planning- Kiambu County based on the proceedings of the County Assembly of 12th April, 2023 and subsequent proceedings on the said motion and Resolution.
 - d. That a conservatory order by way of injunction do issue restraining the 3rd Respondent from receiving, taking or conducting any step and/or complying with any resolution of the County Assembly of Kiambu recommending the removal of the petitioner as the County Executive Member for Finance, ICT and Economic Planning- Kiambu County pending hearing and determination of this Petition.
 - e. That pending hearing and determination of this petition, the respondents be restrained from making any public comments, giving interviews to the media in relation to the Petitioner and the impeachment.
 - f. That costs be provided for.
5. It is the Petitioner's case that she was appointed as the County Executive Member for Finance, ICT and Economic Planning on 20th January, 2023. That on 12th April, 2023 a motion was tabled before the County Assembly for her impeachment on grounds of incompetence and gross misconduct. She contends that Section 40 of the County Government Act gives the County Assembly Select Committee ten (10) days within which to present a report to the County Assembly on its findings, the grounds of impeachment and that under Standing Orders Number 87(7) (a), the said allegations should be presented during the hearing of the motion. That the motion did not meet these conditions and therefore the same is in breach of Article 47 of the Constitution on the right to fair administrative action.
 6. The Petitioner also contends that in the motion, the particulars of gross misconduct was 'failure to attend Committee sitting while called upon without any valid reason contrary to Kenya Constitution Article 195'. According to the Petitioner, this ground offends Articles 41 (1), 47, 50 (1), 165 and 236 (b) of the Constitution, Section 4 and 12 of the Fair Administrative Action Act since the ground is ambiguous, lacks particularity and the same is only a complaint from a Committee which cannot sit in adjudication of a matter.
 7. Further, the Petitioner states that in the said motion she was blamed for failure to process the supplementary budget in time to capture the unspent balance to be in tandem with the current financial year contrary to Section 130 (4) and (5) of the Public Finance Management ACT. The Petitioner terms the grounds for her impeachment as baseless, lacking in legal character and they should not be allowed to continue at the expense of her constitutional and legal rights. She has therefore urged the court to issue an Order stopping the Respondents from proceeding with the impeachment process. Generally, the Petitioner has urged the court to allow her Notice of Motion application and Petition both dated 17th April, 2023.



The Response

8. The Application and the Petition were opposed through the Replying Affidavit of Hon. Mr Charles Thiongo as the Speaker of the County Assembly of Kiambu on behalf of the 1st and 2nd Respondents. He contends that the Standing Order 87 of the Kiambu County Assembly Standing Orders provides for the procedure of removal from office of a member of the County Executive Committee. He holds that in line with the said provisions, a Motion was prepared and signed by the Interested Party herein which motion was also signed by at least a third of all the members as an affirmation that the particulars of the allegations and claims are true to the best of their knowledge.
9. He stated that the Interested Party also gave notice calling for the dismissal of the member of the County Executive Committee by the Governor and thereafter upon the expiry of seven days after the notice was given, the Motion was to be placed on the Order paper and moved. He stated that the Motion was then passed by at least one third of all the members of the Assembly upon which a committee comprising five members was appointed to investigate the matter but before the same could convene its first meeting it was served with court order and the application which restrained it from proceeding and thus the Petitioner is yet to be impeached.
10. He argues that pursuant to Standing Order 87 (11) and 16 if the Motion as crafted did not meet the requirements of the law, then the Petitioner had an opportunity to raise the same with the Assembly or the committee by putting in a request for particulars or challenge the motion on those grounds which powers she still has but instead she filed the present Petition. He adds that since the investigation proceedings were still ongoing, the issues raised by the Petitioner would have been canvassed in the forum provided by the Assembly.
11. The deponent has argued that the 1st and 2nd Respondents are keen on ensuring that the Petitioners and the public interest are protected by ensuring that the rules of natural justice prevail as well as ensuring that public resources entrusted to the County Executive Committee are lawfully utilised through public accountable means created by law. He holds that the due procedure was followed under the County Governments Act and the County Assembly of Kiambu Standing Orders. He holds that since the Petition as filed does not disclose any cause of action against the 1st and 2nd Respondents and since the issues raised are still properly within the right forum of the Assembly where the Petitioner has an opportunity to raise the issues the court should dismiss the Petition with costs.

Analysis and Determination

12. The court has heard and read the Notice of Motion application, the Supporting Affidavit, the Petition, the Verifying Affidavit and the annexures filed thereto and finds the issue for determination being whether the Petitioner has properly and appropriately invoked this court's jurisdiction.
13. In determining this issue, the court has noted the sentiments of the 1st and 2nd Respondents that the Petitioner moved the court even before the proceedings for her impeachment began. The court is alive to the position that court proceedings should be the last resort particularly where there is internal procedure on resolution of disputes which is recognized under the doctrine of exhaustion. On doctrine of exhaustion, the Court of Appeal in the case of Geoffrey Muthiga Kabiru & 2 Others –vs- Samuel Munga Henry & 1756 Others [2015] eKLR, was of the view that:-

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews... The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial



consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of *the Constitution* which commands Courts to encourage alternative means of dispute resolution.”

14. In this regard, the court finds that the Petitioner, approached this Court as soon as a motion for the impeachment process against her was tabled on what she purports is to protect her right to fair administrative action and avoid her reputation being maligned. The Respondent on the other hand was of the view that the Petitioner’s Petition did not disclose any cause of action against the Respondents since the issues raised had not been ventilated before the right forum which was the County Assembly. Therefore the court finds that the Petition and the Notice of Motion application were prematurely filed as the Petitioner had an avenue under the County Assembly of Kiambu Standing Orders which she ought to have first utilized before moving to this court . This Court relies on the case of Speaker of the National Assembly –vs- James Njenga Karume [1992] eKLR, where the Court of Appeal held that: -

“... In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”

15. In line with the doctrine of exhaustion the court finds that the Petition and the Notice of Motion application both dated 17th April, 2023 be and are hereby dismissed with costs to the Respondent.

It is so ordered.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS ...27TH DAY OF JUNE, 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

Mr. Ndolo holding brief for M/S Kilonzo counsel for Petitioner

No appearance for 1st and 2nd Respondents

Court Assistant - Martin

