



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome; CJ & P, Ibrahim, Wanjala, Lenaola & Ouko, SCJJ)

PETITION (APPLICATION) NO. E008 OF 2024

– BETWEEN –

CHARLES OWINO LIKOWA.....PETITIONER/RESPONDENT

– AND –

ISAAC ALUOCH

POLO ALUOCHIER.....1ST RESPONDENT/APPLICANT

VINCENSIA AWINO KIONGE.....2ND RESPONDENT

COUNTY ASSEMBLY OF MIGORI.....3RD RESPONDENT

(Being an application for leave to adduce additional evidence)

Representation:

Mr. M. M. Omondi for the Petitioner
(Omondi Abande & Company Advocates)

Mr. Isaac Aluochier appearing in person
(Appearing in person)

Ms. Agnes Awuor for the 2nd Respondent
(Agnes Awuor Advocate)

Mr. Kennedy Okong'o for the 3rd Respondent
(Okong'o Wandago & Company Advocates)

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion dated 30th July 2024 by the 1st respondent, filed on 31st July 2024 and seeking the admission of additional evidence; and

[2] UPON PERUSING the grounds on the face of the application, the affidavit sworn by the 1st respondent on 30th July 2024 in support thereof, and the submissions of even date, wherein it is asserted that the present application is a reiteration of a previous one filed on 20th May 2024, to which the Court has allegedly not rendered a decision; that the request for the admission of additional evidence is made pursuant to Section 20 of the Supreme Court Act, Cap 9B, the said evidence comprising of the returned nomination papers of eight (8) candidates who duly submitted their papers within the nomination period, which closed at 9:00 a.m. on 19th September 2022; that the proposed additional evidence is directly relevant to the issues before the Court and has the potential to influence or materially impact its decision; that the additional evidence emerged following the parties' engagement in an out of court settlement; that this evidence removes any ambiguity or uncertainty surrounding the case, is credible, has merit and was previously withheld by the 2nd and 3rd respondents and furthermore, it reveals deliberate deception to the Court; and

[3] TAKING INTO ACCOUNT the petitioner's grounds of opposition dated 20th August 2024 and submissions of even date to the effect that the jurisdiction of the Court to admit additional evidence has not been properly invoked, as a similar application dated 20th May 2024, was dismissed with reasons provided in a ruling dated 26th July 2024; consequently, the subsequent Motion amounts to an appeal against that ruling and therefore, the 1st respondent's remedies lie solely within the Court's review jurisdiction; and in any case, the issues intended to be addressed

through the additional evidence have been rendered moot, as there is no ongoing dispute between the petitioner and the 1st respondent, the petitioner having vacated the office of Speaker of the County Assembly of Migori, and Christopher Odhiambo Rusana elected to the position on 28th May 2024; and

[4] NOTING the written submissions of the 3rd respondent dated 20th August 2024 wherein they reiterate the sentiments of the petitioner save to add that the application constitutes a gross abuse of the court process; that no additional evidence is required for this Court to render a merit-based decision on the remaining issues in the present appeal, particularly in light of the changed circumstances; that the 1st respondent, failed to present any evidence before the trial court to support his constitutional petition and consequently, the matter of introducing additional evidence does not arise; that while the Court has powers under Rule 26 of the Supreme Court Rules 2020 to admit and or call for additional evidence, that power is exercised sparingly and on a case by case basis and a party must lay a basis for the same; that the Court can still pronounce itself on the issues which the 1st respondent had raised without resorting to the additional evidence; that the appeal dated 18th March 2024, along with the cross-appeal, constitute second appeals, wherein only issues of law may be raised, however, the so-called additional evidence is being introduced in a second appeal and pertains to matters of fact; that therefore the Motion is frivolous, vexatious and ought to be dismissed with costs; and

[5] APPRECIATING that pursuant to Section 20 of the Supreme Court Act, Cap 9B as read with Rule 26 of the Supreme Court Rules, 2020, this Court may admit or call for additional evidence in determining an appeal;

[6] WE NOW OPINE as follows:

- i. We take cognizance of the fact that the present application is a replica of the one dated 20th May 2024, which this Court conclusively determined by its ruling dated 26th July 2024. In the circumstances, the instant

application is a disguised appeal against the said ruling and as such the application is a blatant abuse of court process. In any event, having already declined to grant the 1st respondent leave to adduce additional evidence, the subject matter of the present application, is spent.

- ii. Furthermore, we can only reaffirm our findings in the ruling dated 26th July 2024, emphasizing that the petitioner having been impeached by the Members of the County Assembly of Migori on 23rd April 2024 followed by the election of a new Speaker on 28th May 2024, the 1st respondent's application has been overtaken by events. It is also clear that the issues raised in the present application do not relate to the appeal before us. The Motion raises a whole new cause of action arising from the *Standard Newspaper* advertisement dated 15th May 2024 calling for the election of a new Speaker for the County Assembly of Migori following the impeachment.

[7] CONSEQUENTLY, and for the reasons aforesaid, we make the following Orders:

i) The Notice of Motion dated 30th July 2024 and filed on 31st July 2024 is hereby dismissed.

ii) The 1st respondent shall bear the costs of this application.

It is so Ordered.

