



THE SUPREME COURT OF KENYA

CHARLES OWINO LIKOWA VS ISAAC ALUOCHIER & 2 OTHERS

SC PETITION NO. E008 OF 2024

DATE OF JUDGMENT: 16th MAY 2025

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: Appeal Dismissed

Background

Charles Owino Likowa, the appellant herein filed an appeal before the Supreme Court against Isaac Aluochier (1st Respondent), an aspirant for the position of Speaker of the County Assembly of Migori, Valencia Awino Kionge (2nd Respondent), the then Clerk of the County Assembly of Migori and County Assembly of Migori (3rd Respondent). The appeal challenges the decision of the Court of Appeal upholding the High Court's decision that the nomination and declaration of the results of the Speaker of the County Assembly of Migori was opaque and therefore quashing the election of the appellant as the Speaker of the County Assembly of Migori for the 2nd Respondent's failure to comply with *inter alia* Standing Order 5 of the Migori County Assembly Standing Orders.

Isaac Aluoch Aluchier on his part filed a cross- appeal seeking a declaration that he was the only duly nominated candidate for the position of Speaker of the County Assembly of Migori County Assembly having complied with all the legal requirements for election to the office and in accordance with Standing Order 11 of the Migori County Assembly Standing Orders. He also requested to be paid monetary compensation for all the money he would have earned as the Speaker of the County Assembly commencing from the first sitting of the County Assembly on 21st September 2022.

By the time the Court heard the appeal, the appellant had in an unrelated process, been impeached by the members of the County Assembly of Migori on 23rd April 2023 which was followed by the election of a new Speaker on 28th May 2024.

The Court after the hearing delineated the following issues for its determination:

- i. Whether this Court has jurisdiction to hear and determine the appeal and cross-appeal.***
- ii. Whether the issues raised in the appeal are now moot.***
- iii. Whether the High Court had the requisite jurisdiction to hear and determine the petition before it.***
- iv. Whether the process leading to the election of the Speaker of the County Assembly of Migori constituted an administrative action.***
- v. Whether the 1st respondent was entitled to the reliefs sought; and***
- vi. Who should bear the costs of the appeal and cross-appeal?***

Issue 1; The Court finds that the appeal and cross- appeal raise fundamental questions including; the process of nomination, election and declaration of results for the office of the Speaker of a County Assembly; whether the election of a Speaker is an administrative action and whether upon election the Speaker becomes a member of the County Assembly, and, whether, like the elected members, the Speaker is entitled to the same privileges and immunities; whether the High Court has jurisdiction to hear and determine a dispute involving the election of a Speaker of a County Assembly and if it can issue any remedies under Article 23 of the Constitution. These questions warrant the Court's exercise of its jurisdiction under Article 163 (4) (a) of the Constitution.

Issue 2: The context of the alleged mootness of the appeal arises from the fact that the appellant has already been impeached, followed by the election of a new Speaker and the appellant, in the ensuing litigation, has abandoned the prayer to be reinstated as Speaker. The Court however notes that the question whether the 1st respondent was the only candidate validly nominated and therefore ought to have been sworn in as speaker-elect, and whether he is entitled to any monetary compensation for that reason, still remain live issues in these proceedings. The issues it has outlined under Issue 1 also has a bearing on future elections of the position of the Speaker of the County Assembly of Migori as well as other Assemblies. The appeal is therefore not moot.

Issue 3: The Speaker is a member of the County Assembly by the virtue of the office and authority that he/she holds only. The Speaker of the County Assembly does not at any time however obtain the same status as that of an elected or nominated member of the County Assembly. The duties bestowed upon a County Assembly under Section 11 of the County Governments Act (removal of a Speaker from office by not less than seventy five percent of all members of the County Assembly) which mainly occurs upon assumption of the office of the Speaker, any resultant Court process, and the jurisdiction of the High Court under Article 165(3) are distinct. In this case the issues raised by the 1st respondent at the High Court predominantly related to the nomination process and the declaration of the result and not the conduct of the Speaker whilst he was in office. The nomination process and the declaration of the result, along with the constitutional issues raised by the 1st respondent however fell within the mandate of the High Court under Article 165(3) as read with Articles 23 and 47 of the Constitution as opposed to the role of the County Assembly under Section 11 of the County Governments Act.

Issue 4: The nomination process is the preserve of the Clerk of the Assembly. In the conduct of this function, the Clerk issues decisions that affect the interest of candidates in the nomination process. The action and conduct of the Clerk in this process therefore constitutes an administrative action. The Clerk of the County Assembly bore the duty to give reasons for all her actions to the candidates, to ensure transparency in the process. The failure to give reasons, in light of the request by the 1st respondent, left the process as one shrouded in mystery. It was therefore not clear how the appellant was deemed to be the only one who qualified in the nomination to stand for election for the position of Speaker and we agree with the superior courts below that the election of Speaker violated the 1st respondent's rights as claimed and was properly challenged in the High Court.

Issue 5: It is not in dispute that the 1st respondent did not present the following documents in his nomination papers: a tax compliance certificate from KRA; a clearance certificate from a Credit Reference Bureau and a valid certificate of good conduct from the National Police Service. The 1st respondent argues that the said documents were extra- legal and not required of him during the nomination exercise, and that in line with Article 193 (3) he has not been found to be in contravention of Chapter 6 of the Constitution. The Clerk of the County Assembly, in an adopted practice that has now gained wide usage in Kenya, sought to ensure compliance by the candidates on Chapter 6 of the Constitution and we cannot see how her conduct can be said to be unlawful. We therefore agree with the determination by the Court of Appeal that, by failing to present these crucial documents which are expressive of the need to have a person of integrity elected as Speaker of the Assembly, he could not claim to be the only validly elected candidate. We also note that he

has not explained why he was unable to procure those documents which are now routinely issued to deserving candidates for positions such as the one he was seeking.

Consequently, the final orders are as follows:

- i. The Petition of Appeal dated 18th March 2024 and filed on 18th March 2024 is hereby dismissed.**
 - ii. The Cross - Appeal dated 29th April 2024 and filed on 30th April 2024 is hereby dismissed.**
 - iii. We hereby direct that the sum of Kshs. 6,000/= deposited as security for costs herein be refunded to the appellant; and**
 - iv. There shall be no order as to costs.**
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