



**THE SUPREME COURT OF KENYA**

**HAMISI BWENI DZILA VS. KWALE COUNTY ASSEMBLY SERVICE BOARD & 6  
OTHERS**

**SC PETITION NO. E034 OF 2024**

**DATE OF JUDGMENT: 23<sup>rd</sup> May, 2025**

**MEDIA SUMMARY**

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*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.*

***Orders: The Court dismisses the appeal.***

**Background**

The appeal concerns the administrative suspension of the appellant from his position as Clerk of the County Assembly of Kwale. The appellant was suspended on 2<sup>nd</sup> March 2020, pending investigations under Section 22 of the County Assembly Service Act (CAS Act). He challenged the suspension before the Employment and Labour Relations Court (ELRC), alleging bias, bad faith, and procedural irregularities, including claims that the disciplinary process did not comply with the safeguards provided under Sections 22 and 23 of the CAS Act and Articles 232 and 236 of the Constitution on the principles of public service.

The ELRC ruled in his favor, finding the suspension unlawful, amounting to removal without due process under Section 23. However, on appeal, the Court of Appeal overturned the ELRC's findings to the extent that it equated suspension with removal from office. The appellate court clarified that "suspend" under Section 22 of the CAS Act refers to a temporary administrative measure pending investigation, not a removal from office. It held that suspension is an interim step, permissible in law, and distinct from removal, which requires the full disciplinary process under Section 23. The appellant, aggrieved by that decision, appealed to the Supreme Court.

The Supreme Court delineated the following issues for determination:

- i. *Whether the Court has jurisdiction under Article 163(4)(a) to determine the appeal.*
- ii. *Whether the disciplinary process by the respondents against the appellant violated the Constitution.*

Upon consideration, the Supreme Court has dismissed the appeal for the following reasons:

**Issue 1:** The Court found that it had jurisdiction under Article 163(4)(a) to determine the appeal. From the ELRC to the Court of Appeal and before the Supreme Court, the appellant raised claims that the disciplinary proceedings contravened the Constitution and specifically cited Articles 232 and 236.

**Issue 2:** The Court upholds the findings of the Court of Appeal that the disciplinary process was conducted strictly in accordance with the Constitution and the CAS Act. There was no evidence that the suspension, as undertaken by the respondents, violated the Constitution.

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