



THE SUPREME COURT OF KENYA
ISAAC ALUOCH POLO ALUOCHIER VS THE SENATE & 2 OTHERS
SC PETITION NO. E014 OF 2025
DATE OF JUDGMENT: 3RD OCTOBER 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

Following the general election of 9th August 2022, the Clerk of the Senate (2nd Respondent), through Gazette Notice No. 10531, announced that the election of the Speaker would take place on 8th September 2022, inviting interested parties to collect nomination papers from his office and return them duly completed on 7th September 2022. The appellant expressed interest in the position, collected and duly returned the nomination forms within the stipulated time. On 7th September 2022, the 2nd respondent announced that seven (7) candidates had been duly nominated, among them the appellant and Rt. Hon. Amason Jeffah Kingi (3rd respondent). On 8th September 2022, the 3rd respondent secured the majority vote and was declared elected as Speaker of the Senate, subsequently being sworn into office.

Dissatisfied with the outcome, the appellant filed *Constitutional Petition No. E489 of 2022* before the High Court alleging violation of Articles 28, 47, and 106 of the Constitution. The appellant's case was that out of the seven candidates, he was the one who, in law, had been duly nominated as a candidate for the Office of the Speaker of the Senate, and that the other candidate did not fulfil eligibility requirements. Being the sole duly nominated candidate at the close of the nominations, and pursuant to Standing Order 11, he ought to have been declared duly elected Speaker of the Senate. He therefore sought a declaration to quash the election of the 3rd Respondent as Speaker of the Senate and, in his place, he be sworn in as Speaker elect. He also sought monetary compensation equivalent to remuneration he would have earned from the first sitting of the Senate; the 2nd respondent to repay the public all public fund losses on account of the unlawful installation into office of the 3rd respondent as Speaker of the Senate, including but not limited to any remuneration paid to the 3rd respondent and costs of the suit.

The High Court in addressing the appellant's contention that he was the only candidate qualified to be nominated for the Speaker election, noted that, although the appellant requested the 2nd respondent for the nomination papers of the other candidates to pursue his claim, his request was denied. The court, therefore, questioned the basis of his assertion that the other candidates were unqualified when he had never examined their nomination papers. It held in that regard that,

without reviewing those papers, the appellant could not prove that he was the only one qualified or that he ought to have been declared Speaker, without a vote being cast, as allowed under Standing Order 11. The court emphasized that it was insufficient for the appellant to merely allege that the respondents had misapplied Article 99(1)(c); he was required to adduce cogent evidence demonstrating that the other candidates did not meet the necessary legal requirements and that he alone satisfied them. Reaffirming the principle that a party must present all relevant facts and evidence in support of their case, the court found that the appellant had failed to prove any violation of his rights under Articles 38 and 47 of the Constitution. Accordingly, it held that the petition lacked merit and dismissed it with costs.

Aggrieved, the appellant appealed to the Court of Appeal in *Civil Appeal No. E104 of 2023*. The Court of Appeal determined that pursuant to Sections 107 and 109 of the Evidence Act, the burden rested on the appellant, as the party alleging that the other candidates did not meet the qualifications set out in Article 99 of the Constitution, to prove the existence of this fact, and demonstrate through credible evidence that the nominated candidates did not possess the qualifications. It found that the appellant did not present any witness testimonies or documents to support his allegation, and instead invoked the provisions of Section 112 of the Evidence Act to attribute the evidential burden to the 2nd respondent, thereby improperly attempting to shift the burden of proof to the 2nd respondent without first establishing the necessary facts to justify such a presumption.

The court further determined that the principal custodian and repository of the information sought by the appellant was not the 2nd respondent but rather the nominated candidates. As affected persons, the appellant ought to have joined them as parties to his petition and sought, within those proceedings, an order for production of evidence of their qualifications, both to discharge his burden of proof and in the public interest.

The Court of Appeal therefore concluded that the learned Judge of the High Court did not err in holding that the appellant had failed to establish his case, and that there had been no violation of his right to hold political office under Article 38, or to his right to fair administrative action under Article 47 of the Constitution. The Court of Appeal ultimately held that the appeal had no merit and dismissed it with no order as to costs, as the issues raised therein were of public interest.

Undeterred, the appellant filed the instant appeal challenging the decision of the Court of Appeal on ten grounds. The Court delineated the following four (4) issues for its determination:

- i. *Whether the respondents' pleadings are to be expunged for failure to pay the requisite court fees?*
- ii. *Whether this Court has jurisdiction to hear and determine the appeal, and if so;*
- iii. *Whether the appellant proved his claim before the superior courts below to the required standard;*
- iv. *Whether the appellant's constitutional rights were infringed;*
- v. *What reliefs are available to the parties?*

Upon consideration, the Supreme Court determined the appeal as follows:

1. **Issue 1:** The Circular dated 17th December 2015, which sought to exempt state organs from the payment of fees, applied to the respondents. The pleadings filed on behalf of the respondents were therefore properly on record.

2. **Issue 2:** The dispute before the Court relates to the interpretation of Article 99 as read with Article 106 of the Constitution. The appellant has equally alleged violation of Articles 38 and 47 of the Constitution. The Court therefore has jurisdiction to hear and determine the appeal.
3. **Issue 3:** The court agrees with the determination of the High Court to the extent that the provisions of Article 99 apply to the election of the Speaker of the Senate. On the request made by the appellant under the Access to Information Act, the Court concluded that the information (which was nomination papers submitted by a candidate for the election of Speaker) is information that is a public record and does not fall within the exemptions provided for under Section 6 of the Act. The Court, however, determined that the appellant failed to follow the procedure in pursuing the remedies provided under the Act before filing his case in the High Court.

The Court recommended that the Senate consider amending its Standing Orders to include provisions that grant candidates sufficient access to all necessary documentation that they may require prior to and after such an election. The Court also stated that the need for all information relating to the election of the Speaker of the Senate ought to be made public.

The Court, however, ultimately agreed with the determination of the Court of Appeal that the evidentiary burden was always placed on the appellant to prove the allegations made. There being no documentary evidence to support his claim, the appellant had failed to discharge its burden of proof. The Court also agreed that the appellant needed to include all the nominees as parties to the suit, and equally apply for the presentation of documentary evidence well within their possession. The Court considered the steps undertaken by the 2nd respondent and found that due procedure was adhered to.

4. **Issue 4:** The Court reiterated that due procedure was adhered to prior, during, and after the election of the Speaker of the Senate and therefore Article 38 and 47 of the Constitution were not violated. The Court also determined that the appellant was granted ample time to present its case before the High Court and Court of Appeal, and therefore Article 50 of the Constitution was not violated.
5. **Issue 5:** The Court directed each party to bear their own costs.

Consequently, the final orders were as follows:

- i. ***The Petition of Appeal dated 28th March 2025 and filed on 23rd April 2025 is hereby dismissed.***
- ii. ***We hereby direct that the sum deposited as security for costs herein be refunded to the appellant; and***
- iii. ***There shall be no order as to costs.***

.....