



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

(Coram: P, Mwilu; DCJ & VP, Wanjala, Lenaola, Ouko & Warsame, SCJJ)

REFERENCE NO. E001 OF 2026

**IN THE MATTER OF AN APPLICATION BY THE SPEAKER OF THE
COUNTY ASSEMBLY OF MERU FOR ADVISORY OPINION UNDER
ARTICLE 163 (6) OF THE CONSTITUTION OF KENYA**

-BETWEEN-

THE SPEAKER OF THE COUNTY ASSEMBLY OF MERU...APPLICANT

-AND-

THE INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSIONPROPOSED 1ST INTERVENER

THE ETHICS & ANTI-CORRUPTION

COMMISSIONPROPOSED 2ND INTERVENER

*(Being an application for admission of proposed interveners and whether the
advice of the Attorney General should be sought)*

Representation

Mr. Erick Muriuki for the Applicant

(MKA Law LLP Advocates)

RULING OF THE COURT

[1] UPON CONSIDERING the Reference and the supporting affidavit of the Speaker of the County Assembly of Meru, **Hon. Ayub Bundi Solomon**, both dated 10th April 2026 and filed on 14th April 2026 wherein the applicant seeks constitutional guidance on the application of Chapter Six of the Constitution, particularly the interpretation of eligibility requirements under Articles 99(1) and 193(1), and the disqualification requirements under Articles 99(2) and 193(2) thereof. He notes in that regard that the suspension of public officers and state officers pending appeal or review of such a decision has, in practice, been understood to extend to removals for violations of Chapter Six, including impeachment-based removal, thereby permitting persons removed from public office to contest elections while litigation challenging their suspension or removal is ongoing; and

[2] NOTING THAT the applicant proposes that the Independent Electoral and Boundaries Commission and the Ethics and Anti-Corruption Commission should be admitted as interveners because of their constitutional mandate regarding the integrity and qualifications of candidates for election to certain public offices; and further noting that, during the pre-trial directions, learned counsel for the applicant conceded that he had not sought the Hon. Attorney General's advice before filing the Reference-deliberately so; his submission in that regard being that seeking advice from the Hon. Attorney General, as understood from ***In Attorney General (On Behalf of the National Government) Vs Karua*** [2024] KESC 21 (KLR), is not mandatory; and that, in the scheme of devolution, seeking the advice of the Hon. Attorney General might not be the best route to take in the circumstances of this case; and

[3] NOTING THE PLEADINGS and submissions before us, **WE NOW OPINE** as follows:

- (i) Rule 53 (c) of the Supreme Court Rules, 2020 provides that:

(i) The court may, after giving the parties an opportunity to be heard, reject a reference in whole or in part, if –

...

(c) the matter in respect of which the reference is made can, in the opinion of the court, be resolved by the advice of the Attorney General, and such advice has not been sought.

[Emphasis added]

- (ii) ***In the Matter of Speaker, County Assembly of Siaya County***, (Reference No 4 of 2017) [2020] KESC 40 eKLR and ***Matter of the National Gender and Equality Commission***, Reference No 1 of 2013; [2014] KESC 42 (KLR), we stated that, while it is not a matter of law that an applicant ought to seek the Attorney General's opinion on a matter forming the subject matter of a Reference to this court, as a matter of due process that an applicant, like other government institutions and agents, should adopt the practice of resorting to the office of the Attorney General first and before seeking this Court's opinion. The need to seek an opinion from the Attorney General before approaching this court has also been reiterated ***In the Matter of Speaker, County Assembly of Siaya County***, Reference No 4 of 2017; [2020] eKLR, ***County Government of Nairobi v Attorney General*** (Reference 1 (E001) of 2021) [2023] KESC 65 (KLR). Similarly In the ***Matter of an Application for an Advisory Opinion under article 163(6) of the Constitution of Kenya by the County Assemblies of Kericho and Nandi Counties consolidated with In the Matter of an Application for an Advisory Opinion by the Governor, Makueni County*** Reference No. 3 of 2020 [2021] KESC 61 (KLR) the Court directed the parties to first seek the advice of the Attorney General, and that the Attorney General should give such advice within seven (7) days before the Court could proceed with the matter; and

- (iii) ***In Attorney General (On Behalf of the National Government) Vs Karua*** [2024] KESC 21 (KLR), (*Martha Karua* case), this Court outlined why the Attorney General’s advice could not be sought in the specific circumstances of that case. The Court determined as follows at paragraph 42 of that decision:

“...Taking the above provisions into consideration, it is our considered view that the AG filed this reference pursuant to the authority granted to his office under article 156(4)(a) and (b) of the Constitution. In line with rule 53 of the Supreme Court, Rules 2020, and our reasoning in *Re IIEC (supra)* it is absurd to require the office of the AG to seek a legal opinion from itself. If it had the capacity to resolve the matter on its own then it would have advised the national government expressly and not invoked this court’s advisory opinion jurisdiction....” [Emphasis Ours]

- (iv) Rule 53 of the Supreme Court Rules 2020, together with the list of authorities cited by the applicant, clearly set out the requirement to seek the Attorney General’s advice before filing a Reference. Such advice may resolve the question before us to the applicant’s satisfaction, thus saving precious judicial time. The devolution system as presently designed does not also preclude the Attorney General from giving advice, particularly in a matter of public interest. Further, the present case is distinguishable from the ***Martha Karua (supra)*** case, where the Office of the Attorney General was the applicant and, as such, could not render advice to itself.
- (v) We therefore find no justification for the applicant’s failure to seek the Attorney General’s advice in this case and his reliance on the ***Martha Karua*** case is obviously misguided.
- (vi) For the reasons above, we hereby direct that the applicant ought first to seek the Attorney General’s advice before we proceed to hear the application to

admit the proposed interveners, and the eventual hearing and determination of the Reference, if at all.

- (vii) We also direct that the Reference herein together with this Ruling be served upon the Office of the Attorney General by the applicant for advice which ought to be given within twenty-one (21) days from the date hereof. Thereafter the matter shall be mentioned before the Deputy Registrar of this Court for further directions.

[4] ACCORDINGLY, we make the following orders:

- (i) The applicant is directed to seek the Hon. Attorney General's advice, and such advice is to be given within twenty-one (21) days from the date of this Ruling.***
- (ii) The matter be thereafter mentioned before the Deputy Registrar of the Court to confirm compliance with our directions above.***
- (iii) There shall be no order as to costs.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 17th day of July, 2026

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT

.....
S. WANJALA
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....

W. OUKO
JUSTICE OF THE SUPREME COURT

.....

M. WARSAME
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original.

REGISTRAR,
SUPREME COURT OF KENYA

