



# COUNTY ASSEMBLY OF KERICHO

## OFFICE OF THE SPEAKER

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In reply please quote Ref: No.  
And date:

13<sup>th</sup> January 2023

### COMMUNICATION TO THE HOUSE

Honourable Members,

On 11<sup>th</sup> January 2023 the County Assembly received a letter dated 9<sup>th</sup> January 2023 from United Democratic Alliance, communicating new house leadership. Since there were 2 pending matters in court relating to house leadership (Leader of Majority and the Majority Whip) I sought legal advice on the next cause of action from the legal representative who is handling the said matters where the County Assembly and the speaker are one of the respondents.

I shall therefore read the legal advice:

"I wish to render my considered legal opinion over the letters in reference to the suits  
Kericho High Court Constitutional Petitions No.s 5 and 6 of 2022 as follows:

a. Facts.

On the 22.9.2022 a Kericho Assembly meeting was held at Ciala Resort, Kisumu wherein HON. VINCENT KORIR, and HON. HARON KIPKEMOI ROTICH, were elected as Majority Leader and Majority Whip respectively.

*Communicated on  
13/01/2023  
[Signature]*





Pursuant thereto and having been satisfied that the correct procedure was followed in the process, the Kericho County Assembly on **4.10.2022** held a session wherein the Speaker made a Communication from the Chair through which he proclaimed the contents of the Minutes of Kericho Assembly meeting held at Ciala Resort on the **22.9.2022** that indicated the position taken by the Assembly Party regarding house leadership.

On the **1.11.2022** a second meeting was held at the Hills Lodge, Kericho wherein the members of the Assembly Party changed the house leadership and the HON. PAUL KIPCHIRCHIR and HON. GILBERT NGETICH were elected as Majority Leader and Majority Whip respectively in place of the HON. VINCENT KORIR, and HON. HARON KIPKEMOI ROTICH.

Pursuant to the second meeting and having been satisfied that the correct procedure was followed in the process, the Kericho County Assembly on **9.11.2022** held another session wherein the Speaker made another Communication from the Chair through which he proclaimed the contents of the Minutes of Kericho Assembly meeting held at the Hills Lodge, Kericho held on the **1.11.2022** that indicated the new position taken by the Assembly Party regarding changes to the existing house leadership.

Aggrieved by the happenings of the second meeting of Hills Lodge and the Kericho County Assembly session of **9.11.2022** HON. VINCENT KORIR, and HON. HARON KIPKEMOI ROTICH filed the **Kericho High Court Constitutional Petition No. 6 of 2022**

Another Petition the **Kericho High Court Constitutional Petition No. 5 of 2022** was also filed by one CHEROTICH KHATHERINE, who described herself as a resident of Bureti Sub County within Kericho County. She claimed that she filed the said Petition as a public interest case in the interest of the residents of Kericho County pursuant to **Article 22 of the Constitution of Kenya**. The United Democratic Alliance Party joined the latter case as an Interested Party.

In the **Kericho High Court Constitutional Petition No. 6 of 2022** dated **15.11.2022** the Petitioners sought the following Orders:

- a. A Declaration that the impeachment proceedings and the resultant resolution reached on **9.11.2022** by the Respondents against the Petitioner violate **Articles 10, 25, 47 and 50 of the Constitution of Kenya**.

A Declaration that the impeachment proceedings and the resultant resolution for removal of the Petitioners from the position of Leader of Majority Leader and Majority Whip of the Kericho County Assembly respectively are null and void for contravening the provisions of the





Constitution and the County Government Act, 2012 and the Fair Administrative Actions Act.

- c. A Declaration that the impeachment proceedings held by the Respondents in relation to the Petitioners were undertaken in an arbitrary and capricious manner besides being in violation of the principles of natural justice and fair hearing.
- d. An order of permanent injunction restraining the Respondents or any member of the 3<sup>rd</sup> Respondent, their agents, servants and or any person whatsoever from declaring a vacancy in the office of the Leader of Majority and Majority whip of Kericho County Assembly respectively by way of Gazettement or otherwise and or in the alternative if so declared or Gazetted, an order suspending any such declaration and or Gazettement.
- e. An order of permanent injunction restraining the Respondents or any member of the 2<sup>nd</sup> Respondent, their agents, servants and or any person whatsoever from appointing, electing and or nominating any person as the acting and or substantive Leader of Majority and Majority whip of Kericho County Assembly in lieu of the Petitioners.
- f. An order of permanent injunction restraining the Respondents by themselves, their agents, representatives or any person whatsoever from preventing and or obstructing the Petitioner from accessing the 2<sup>nd</sup> Respondent's precincts and or from interfering with the Petitioners execution of the lawful duties of their office as the Leader of Majority and Majority whip of Kericho County Assembly respectively
- g. An Order of Certiorari judicial review to quashing the unlawful impeachment proceedings against the Petitioner by the Respondent and any resolution and decision resulting therefrom.
- h. An Order for damages for breach of constitutional rights and fundamental freedoms.
- i. Costs of the Petition.

On the other hand, in the Kericho High Court Constitutional Petition No. 5 of 2022 dated

14.11.2022 the Petitioners sought the following Orders:

1. A Declaration that the procedure followed and the decision by the Respondents to remove the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties herein from the position of a Majority Leader and a Majority Whip respectively is in violation of Articles 10, 47 and 50 of the Constitution of Kenya.





2. A Declaration that the resolution of the **9.11.2022** by the Respondents to remove the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties herein from the position of a Majority Leader and a Majority Whip respectively of the 1<sup>st</sup> Respondent is unconstitutional, null and void and thus of no consequence and the same be and is hereby quashed.
3. A Declaration that the resolution of the **9.11.2022** by the Respondents electing the 3<sup>rd</sup> and 4<sup>th</sup> Respondents Parties herein as a Majority Leader and a Majority Whip respectively of the 1<sup>st</sup> Respondent is unconstitutional, null and void and thus of no consequence and the same be and is hereby quashed.
4. That the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties be reinstated as Majority Leader and a Majority Whip of the County Assembly of Kericho unconditionally with full salary benefits and allowances from **9.11.2022**.
5. A Declaration that the 2<sup>nd</sup> Respondent's Conduct was brazenly unconstitutional, blatantly brutal and unfit to hold public office and thus ceases to hold any public office henceforth.
6. This Honourable Court be pleased to order for compensation of the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties by way of general damages for violation of the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties' rights.

The two said "elections" and or change of house leadership were done and effected, as envisaged by and or in accordance with **Standing Orders No. 1 and 19 of the Kericho County Assembly** at the Assembly Party level.

Prior to the filing of the said Petitions, The United Democratic Alliance Party vide a letter dated **14.11.2022** wrote to the Speaker clarifying the position of the party as regards the House Leadership and at **para. 4** thereof stated that:

*"Please note the Party stands by the initial decision on the House Leadership positions as discussed, agreed and presented to you by the Honourable members vide the minutes held on **September 22, 2022** at Ciala Resort. (Please see attached minutes)"*

During the pendency of the **Kericho High Court Constitutional Petitions No.s 5 and 6 of 2022** the Speaker was in receipt of another letter from The United Democratic Alliance Party dated **9.1.2023** on changes in House Leadership in the Kericho County Assembly expressing the Party's "new" position at **para.s 3 and 4** as follows:

*"Please note the Party has NO OBJECTION on the unanimously agreed Kericho County Assembly House Leadership positions as discussed and agreed and presented to you by Honourable Members as per the minutes from Empolos Hotel held on January 8<sup>th</sup> 2023 (attached herein)"*

*To this end, please note that the recognized House Leadership by the majority is as was determined in the above referenced meeting and as captured in the minutes*





endorsed herewith. Any other position contrary to the same would resultantly be null and void. The following UDA leaders have been nominated to the house leadership:

HON. PHILIP RONO - MAJORITY LEADER (MCA KAMASIAN  
WARD) HON. FANCY CHEPKORIR - DEPUTY MAJORITY  
LEADER (NOMINATED) HON. KIBET PETR KEMOI -  
CHIEF WHIP (MCA KAPSUSER WARD)  
HON. BAVINA SEREM - DEPUTY CHIEF WHIP (NOMINATED)"

The minutes to the said Empolos Hotel meeting were however not attached to the said party communique of 9.1.2023. Neither has any said minutes been hitherto supplied to the Speaker by any other party.

After a series of a number of out of court consultations involving all disputing parties, the suit Kericho High Court Constitutional Petitions No. 6 of 2022 has since been settled and a consent orders dated 11.1.2023 recorded in the following terms:

- "1. The main Petition dated 15.11.2022 be compromised in the following terms:
  - a. The Petitioners herein be reinstated as the Majority Leader and Majority Whip of the County Assembly of Kericho with immediate effect.
2. THAT the Petition herein be marked as settled in terms of number 1 above.
3. THAT each party to bear their own costs."

The Kericho High Court Constitutional Petition No. 5 of 2022 has also since been withdrawn with no Orders as to cost.

It is worth noting however that the positions of Deputy Majority Leader and the Deputy Chief Whip currently occupied by HON. FANCY CHEPKORIR and HON. BAVINA SEREM respectively have never been affected by the above enumerated changes and have remained as suggested by Ciala Resort meeting of 22.9.2022.

b. Issue.

Who are the *bona fide* House Leaders of the Kericho County Assembly as at the date hereof?

c. Analysis.

The Consent Order dated 11.1.2023 recorded in the Kericho High Court Constitutional Petitions No. 6 of 2022 reverted the status of House Leadership back to the position prevailing after and as suggested by the minutes in Ciala Resort meeting of 22.9.2022 and communicated to the house by the Speaker on 4.10.2022.





That in our humble opinion is the position that the Speaker ought to communicate to the house, unless otherwise hereafter lawfully and regularly altered.

What therefore becomes of the new position advanced by The United Democratic Alliance Party in its correspondence dated 9.1.2023?

To answer that question we first have to ask ourselves when that communication was made and the consequences of the timing.

As earlier on observed, the communication was made during the pendency of the suits Kericho High Court Constitutional Petitions No.s 5 and 6 of 2022. It therefore follows that the same was *sub judice*.

*Sub judice*, is Latin for "under judge". It denotes that a particular matter is under trial or being considered by a court. The concept of *sub judice* is a bar on any discussions by other fora, including the Kericho County Assembly, on issues pending before a court of law for adjudication. The question as to the House Leadership of the Kericho County Assembly, as you will note from the background to this legal opinion, was the crux of both Constitutional Petitions. It was generally legally inappropriate for that matter to be dealt with or otherwise commented on as purportedly done by The United Democratic Alliance Party as advised through its letter of 9.1.2023 and by so doing the guilty Party risked being in contempt of court. By the Speaker dealing with the same as was expected he would also have risked being in contempt of court.

This simply means that The United Democratic Alliance Party or its membership ought not to have proceeded with elections of new House Leaders which matter was in dispute and was directly and substantially in issue in the suits Kericho High Court Constitutional Petitions No.s 5 and 6 of 2022. The *sub judice* rule like any other maxims of law has a salutary purpose. Its basic purpose and underlying object is to protect active judicial proceedings and preserve the dignity of court. It also prevents bodies with concurrent jurisdiction over matters from simultaneously entertaining or otherwise adjudicating parallel cases in respect of the same subject matter. This is to pin down the parties to one case so as to avoid the possibility of contradictory verdicts by the institutions and also preventing multiplicity of proceedings and decisions. For the aforesaid reason the Speaker ought to disregard the United Democratic Alliance Party correspondence dated 9.1.2023.

Secondly in answer of the question as to what becomes of the new position advanced by The United Democratic Alliance Party in its correspondence dated 9.1.2023, the Speaker should be guided by the provisions of the **Kericho County Assembly Standing Order no. 19 (7)** which states that:-

*"Upon a decision being made by the Majority Party or Coalition under this Standing Order, the decision of the Party or Coalition shall be communicated to the Speaker in writing, together with the minutes of the meeting at which the decision was*



A handwritten signature in blue ink, located at the bottom right of the page. The signature is stylized and appears to be a cursive representation of a name.



- (a) *in case of removal of County Assembly Leader of Majority or the Deputy County Assembly Leader of Majority, by the County Assembly Majority Whip; and*
- (b) *in case of removal of County Assembly Majority Whip or the Deputy County Assembly Majority Whip, by the County Assembly Leader of Majority."*

As earlier indicated The Speaker has hitherto not received the minutes to the Empolos Hotel meeting 8.1.2023. Neither has any communication been received from the Leader of Majority and Majority Whip, who for avoidance of doubt are, HON. VINCENT KORIR and HON. HARON KIPKEMOI ROTICH respectively or the previous Leader of Majority and Majority Whip HON. PAUL KIPCHIRCHIR and HON. GILBERT NGETICH respectively in contravention of the **Kericho County Assembly Standing Order no. 19 (7)**.

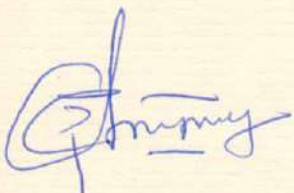
a. **Conclusion.**

Having regard to the chronology of events as above enumerated and in exercise of the discretionary powers of the Speaker as prescribed by the **Standing Order no. 1** of the County Assembly of Kericho which states:-

*"In all cases not hereinafter provided for and subject to the Constitution and other written laws, the Speaker shall decide having regard to the Orders of the Assembly, the usages, forms, precedents, customs, procedures and traditions of the Assembly and the National Parliament and legislative Assemblies from other jurisdictions in view of the constitutional principles, the practices in other parliaments in so far as the same may be applicable to this Assembly."*

It shall be legally sound for the Speaker to make a Communication to the House to the effect that HON. VINCENT KORIR and HON. HARON KIPKEMOI ROTICH are as the date of the Communication, the Kericho County Assembly Majority Leader and Kericho County Assembly Majority Whip respectively, till otherwise determined by the Majority Party in accordance with the Standing Orders of the County Assembly of Kericho."

In view of the well reasoned and sound advice given by our legal representative I therefore rule that Honourable Vincent Korir and Honourable Haron Rotich shall be the Leader of Majority and Majority Whip with effect from today Friday 13<sup>th</sup> January 2023.



Honourable Dr. Patrick C. Mutai  
Speaker to the County Assembly

