



**Opiyo v Scrutineer & 8 others (Constitutional Petition 126 of 2019)  
[2023] KEHC 2820 (KLR) (Constitutional and Human Rights) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2820 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION 126 OF 2019**

**HI ONG'UDI, J**

**MARCH 30, 2023**

**BETWEEN**

**GAD OMONDI OPIYO ..... PETITIONER**

**AND**

**PETER KIBINDA, SCRUTINEER ..... 1<sup>ST</sup> RESPONDENT**

**ROBERT KARIUKI, SCRUTINEER.....2<sup>ND</sup> RESPONDENT**

**JULIUS KIBWAGE, SCRUTINEER ..... 2<sup>ND</sup> RESPONDENT**

**JULIUS KIBWAGE SCRUTINEER ..... 3<sup>RD</sup> RESPONDENT**

**EMMA MILOYO , THE PRESIDENT OF THE ARCHITECTURAL  
ASSOCIATION OF KENYA ..... 4<sup>TH</sup> RESPONDENT**

**JACOB MWANGI, THE CEO OF THE ARCHITECTURAL ASSOCIATION OF  
KENYA ..... 5<sup>TH</sup> RESPONDENT**

**INFOTRACK RESEARCH AND CONSULTING LIMITED ... 6<sup>TH</sup> RESPONDENT**

**CREATIVE DIGITAL LAB LIMITED ..... 7<sup>TH</sup> RESPONDENT**

**MUGURE NJENDU ..... 8<sup>TH</sup> RESPONDENT**

**ARCHITECTURAL ASSOCIATION OF KENYA (AAK) ..... 9<sup>TH</sup> RESPONDENT**

**RULING**

1. A perusal of the record reveals that the Petition dated March 28, 2019 was filed on the same date. The respondents by then were eight (8) in number. The 9<sup>th</sup> respondent filed an application dated April



- 15, 2019 seeking injunction as a respondent. It was enjoined as the 9<sup>th</sup> respondent vide the ruling by Makau J dated October 24, 2019.
2. The Court was again moved by the 9<sup>th</sup> respondent vide an application dated October 30, 2019 seeking orders that:
    - i. That the proceedings herein be stayed pending arbitration.
    - ii. That the dispute between the parties be referred to arbitration.
  3. In the meantime the contested election proceeded as the Court did not issue any restraining orders against the respondents.
  4. Vide its ruling dated November 5, 2020 Makau J stayed all the proceedings herein pending the arbitration that the Court had referred the parties to.
  5. It is not disputed that the arbitration did not take place. The Court has also been informed that since the election that was being contested proceeded, the petition has been overtaken by events.
  6. Considering all these facts, it would not be just to condemn any party to pay costs. The 9<sup>th</sup> respondent was never sued by the petitioner. It applied to be enjoined and was allowed. I have noted that the proceedings herein were stayed because of the referral to arbitration which is encouraged by our own Constitution. The referral to arbitration had again been successfully sought for by the 9<sup>th</sup> respondent.
  7. In all fairness I find that an order for costs to be paid to the 9<sup>th</sup> respondent by the petitioner would not be fair. Following the petitioner's request to withdraw the petition I make the following orders:
    - i. The Petition dated March 28, 2019 is hereby withdrawn.
    - ii. Each party to bear their own costs.
    - iii. File closed.

Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF MARCH, 2023 IN OPEN COURT AT MILIMANI, NAIROBI.**

**H. I. ONG'UDI**

**JUDGE**

