



Makori v Independent Electoral and Boundaries Commission & 3 others (Election Petition Appeal E006 of 2023) [2023] KEHC 21694 (KLR) (4 August 2023) (Judgment)

Neutral citation: [2023] KEHC 21694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
ELECTION PETITION APPEAL E006 OF 2023**

**LN MUTENDE, J
AUGUST 4, 2023**

BETWEEN

RICHARD MASESE MAKORI APPELLANT

AND

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT**

FATUMA IBRAHIM ALIO 2ND RESPONDENT

BRENDAH KERUBO KENGERE 3RD RESPONDENT

KENYA SOCIAL CONGRESS 4TH RESPONDENT

(Appeal from the Judgment and Decree of Hon. C. A. Ocharo, Senior Principal Magistrate, dated and delivered at the Chief Magistrate's Court, Kisii, on the 23rd day of February, 2023 in Kisii Chief Magistrate's Court Election Petition No. E009 of 2022)

JUDGMENT

1. The instant Election Petition Appeal arises from a Judgment and Decree of the lower court presided over by Hon. C.A. Ocharo, SPM, delivered on February 23, 2023 at Kisii Chief Magistrate's Court. The Appellant, Richard Masese Makori, challenged the nomination of the 2nd and 3rd Respondents to the Kisii County Assembly under the Special Interest Gender Top-Up category representing the 4th Respondent, Kenya Social Congress. He argued that he was entitled to be nominated as one of the persons hence sought an order that the 1st Respondent (IEBC) nominates him in place of the 2nd and 3rd Respondent who were not registered voters within Kisii County. The basis of his argument was that the 2nd Respondent, Fatuma Ibrahim Alio hails from Mandera County and a voter at Dololo Primary School while the 3rd Respondent, Brendah Kerubo Kengere hails from Nyamira County and a registered voter at Manga Ward.



2. The trial court considered evidence tendered and reached a finding that the 2nd and 3rd Respondents qualified to be nominated by the 4th Respondent who duly submitted the party list to the 1st Respondent hence dismissed the Election Petition.
3. Aggrieved, the appellant proffered this appeal on grounds that:
 - a. The learned trial magistrate erred in law in failing to appreciate the provisions of Article 90 of the Constitution in allocation of Party lists for County Assembly seats which do not require regional and ethnic diversity.
 - b. The learned trial magistrate erred in law in failing to observe and follow the peremptory formula in drawing the list of such special seat members by the 4th Respondent as mandatorily directed under the Provisions of Section 36(7) of the Elections Act.
 - c. The learned trial magistrate erred in law in holding that the 2nd and 3rd respondents were validly nominated as members of the County Assembly of Kisii yet they are not residents and voters of any ward within Kisii County thereby importing the requirement of ethnic and regional balance which is excluded for County seats.
 - d. The learned trial magistrate erred in law in holding that parties are required to lodge disputes on nomination at their Party first and then the Political Party Dispute Tribunal before a resort to court.
 - e. The learned trial magistrate erred in law in failing to interrogate the rival registration particulars of the 2nd respondent as presented by the petitioner and the 2nd respondent which would have led to an inescapable conclusion that the 2nd respondent was thus registered twice and hence unqualified as a registered voter for elections in issue as spelt out under regulations 13B of Elections (Regulations of Voters) regulations, 2012.
 - f. The learned trial magistrate erred in law in failing to consider the issues framed by the petitioner and in particular the pre-emptory exclusion of County Assembly seats from reflecting regional and ethnic diversity under Article 90(2) (c)
 - g. The learned trial magistrate erred in law by failing to consider submissions of the petitioner in regards to the issue of double registration of the 2nd respondent by making an erroneous finding that it was not disputed that the 2nd respondent is a registered voter.
 - h. The learned trial magistrate erred in law by making erroneous undisputed finding that no male was qualified for nomination on the gender top up category to the County Assembly of Kisii without any legal basis and/or evidence to that effect.
 - i. The learned trial magistrate erred in law in failing to properly apply the decision of *Moses Mwigigi & 14 Others v IEBC (2018) eklr*, which would have led her to a conclusion that the petitioner would not legally refer this matter to internal disputes resolution.
 - j. The learned trial magistrate erred in law in failing to allow the petition on the face of her finding that the list submitted by the 4th respondent to the 1st respondent failed to comply with mandatory provisions of section 36(1)(e) of the Elections Act which would have entitled the petitioner to an award of costs.
4. By consent of all parties the appeal was disposed through written submissions that were subsequently highlighted orally. The background of the matter being that the 2nd and 3rd Respondents were nominated by the 4th Respondent, and, gazetted by the 1st Respondent under party lists pursuant to



Article 177 of the Constitution. The Petitioner who also applied for consideration and was on the list was not considered by the 1st Respondent. Having been disregarded, he moved to the Election Court following his argument that the act of listing was compromised by illegalities and deliberate errors. He contended that the 2nd and 3rd Respondents were not qualified to be nominated.

5. The trial court considered evidence placed before it and opined that the 2nd and 3rd Respondents qualified to be nominated; the Appellant had an obligation to file the complaint before the Political Parties Tribunal (PPDT) and the 1st Respondent (IEBC), internal mechanism, but, he failed hence dismissed the Petition.

Submissions

SUBDIVISION

The Appellant

PARA 6.

On the question of qualification, the appellant submits that nomination for the Gender Top Up seat is founded on Article 90(2)(b) of the Constitution as read with the provisions of Section 36(1)(2) of the Elections Act. That pursuant to Article 177 (1) (b) and (c) of the Constitution, the allocation of seats by the IEBC is determined by the number of seats won by a Political Party and persons qualified for the gender top up list must be registered voters from Wards within the County as there must be representation from each ward and Constituency.

7. The trial court considered evidence placed before it and opined that the 2nd and 3rd Respondents qualified to be nominated; the Appellant had an obligation to file the complaint before the Political Parties Tribunal (PPDT) and the 1st Respondent (IEBC), internal mechanism, but, he failed hence dismissed the Petition....The appellant contends that the 2nd and 3rd respondents were not eligible for nomination as members of the County Assembly, Kisii, as the 2nd Respondent had double registration in Manderu and Kisii Central Ward while the 3rd Respondent was not a registered voter in Kisii County. Arguing that the trial court misdirected itself, reliance was placed on the case of Victoria Cheruto Limo & Another Vs. IEBC and Another (2018) eKLR where Dulu J stated that:

“It can be easily discerned from the above provisions of the Constitution that the operative words are the Ward, the County, the election, the voters in the Wards, and the seats received in the County. It is also important to note that under Article 90 (2) (c) of the Constitution, the party lists for County Assembly seats are not required to reflect the regional and ethnic diversity of the people of Kenya, unlike in the case of the National Assembly and Senate.”

8. The trial court was faulted for relying on the case of Esther Okenyuri Anyieni Vs. Mokumi Edinon Antony & 3 others (2018) eKLR, where Ougo J was of the view that:

“Both Article 193 and Regulation 15 of the Election (Party Primaries and Part Lists) Regulation 2017 have no such requirement that one must be registered voter in the place where they are applying to be nominated and therefore the nomination application form by Jubilee Party cannot supersede the Constitution and written laws since the only requirement provided for under the law is that, one must be a registered voter and the 1st respondent as met this requirement.”

9. Further, the Appellant argues that the nomination list must reflect the community and cultural diversity of the County and it is the duty of the Political Party to ensure it is reflected in the County Assembly as provided by Section 7 (2) (a) of the County Government Act.



10. The appellant also argues that the rationale behind the Gender Top Up seats is to provide a framework for addressing gender inequalities that arise out of elections within specific electoral units. That as was held in the Cheruto case (supra) party lists for County Assembly seats are not required to reflect the regional and ethnicity diversity of the people of Kenya. The trial court was faulted for overlooking Article 193 of the Constitution in that regard.
11. On the question of alleged multiple registration of a voter, it is urged that the 2nd Respondent was registered twice. That IEBC having not clarified and/or disputed the registration details given by both the Appellant and 2nd Respondent that by implication of the law, Regulation 13 B of the Election (General) Regulations, 2012, the 2nd Respondent, Fatuma Alio, was not qualified as a voter having been registered in more than one Constituency.
12. On the issue of jurisdiction, the trial court is faulted for reaching a finding that the matter ought to have been filed at the Political Parties Dispute Tribunal (PPDT). The Appellant contends that the matter herein does not touch on certification or membership of the Respondents or any person on the list submitted by the 4th Respondent. The case of Moses Mwicigi & 14 Others Vs. IEBC & 5 Others (2016) eklr was cited in this respect where the Supreme Court held that:

“Nowhere does the law grant powers to the IEBC to adjudicate upon the nomination processes of a political party: such a role has been left entirely to the political parties. The IEBC only ensures that the party list, as tendered, complies with the relevant laws and regulations. This position has been aptly remarked in the case of National Gender and Equality Commission, where the High Court thus observed (paragraph 50):

“Section 34(6) of the Elections Act, 2011 specifically provides that, ‘The party lists submitted to the Commission under this section shall be in accordance with the Constitution or nomination rules of the political party concerned.’ This role does not extend to directing the manner in which the lists are prepared as these are matters within the jurisdiction of the parties but in considering the lists, the IEBC must nevertheless be satisfied that the lists meet constitutional and statutory criteria. We would hasten to add that in the event there is a dispute in the manner in which the parties conduct themselves in conducting their internal elections then recourse may be had by the aggrieved party members, inter alia, to the Political Parties Disputes Tribunal established under Section 39, Part VI of the Political Parties Act, 2011 or to the High Court in appropriate circumstances”

13. To this end, it is argued that the Election Court had jurisdiction and that the nomination of Party representatives shifts to the Election Court after gazettelement by IEBC.

b)The 1st Respondent

14. It is submitted by the 1st Respondent that Article 177(1) (b) and (c) of the Constitution and Section 36 (7)(8) of the Elections Act envisage nomination of a Gender Top Up category that represent the number of special seat members necessary to ensure that there are no more than two thirds of the membership of the assembly who are of the same gender.
15. The 1st Respondent cited the National Gender Equality Commission vs IEBC and Anor. Nbi Constitutional Petition No.147 of 2013 alluded to in the Mwicigi case(supra) and argued that the party list should be according to the rules of the Political Party. That the primary obligation of the Political Party and IEBC is to comply with the Constitution and the law. That the National Gender Equality Commission Case did not define special interest but found that equality doctrine should be allowed



to develop slowly and hopefully. That courts have declined to set hard and fast rules on persons who qualify to be on the party lists, which leaves parties to develop requirements on the lists.

16. Relying on the Mwicigi case (supra) the 1st Respondent argues that the law does not grant IEBC powers to adjudicate upon the nomination process of a Political Party. That according to the case of Thurania & 4 Others Vs. Attorney General. & 2 Others (2022) KEHC 482 (KLR) Political Parties take charge of nominations while IEBC supervise the process.
17. That looking at Article 193 of the Constitution; Section 36 of the Elections Act; and regulations thereto, It is not a requirement that the candidate should be in a particular County.
18. That the formula for special seats under Section 36(7) of the Elections Act was followed, Articles 177 and 90 of the Constitution and section 37 (2) (7) and (8) of the Elections Act on party lists was followed and reference was made to alternates of both male and female in the priority listed by the party. That out of the 45 Wards 44 were men and only one (1) woman hence the bridging gap required a female nominee to prevent the constitutional crises and no male was eligible for nomination regardless of the position on the list. That the 2nd Respondent was the 1st on the list, the 3rd Respondent was the 3rd nominee but the 2nd nominee being a male was overlooked, and, the Appellant was a distant sixth on the list. Therefore, the 2nd and 3rd Respondents met the requirement of Article 193 of the Constitution and Sections 25 and 31 of the Elections Act.
19. That the 2nd Respondent filed electronic voter registration documents showing her polling Centre, Constituency and Ward and that she was an undisputed member of the 4th Respondent, a fact admitted by the Appellant in the further affidavit.
20. On the question of double registration, it is urged that it is not applicable and that the Appellant has misled the court by attaching the 2017 preliminary voter register. That as at April 23, 2017, the 2nd Respondent was a minor and could not be a voter at Dololo Primary in Mandera County.
21. On the issue of jurisdiction and place of filing the dispute, it is submitted that a party aggrieved by the list submitted was required to file the complaint with the IEBC Dispute Resolution Committee (DRC) and the PPDT, disputes that were to be heard between July 28, 2022 and August 6, 2022, pursuant to a joint Public Notice issued by IEBC and PPDT dated July 27, 2022 under regulation 54(8) of the Elections (General) Regulations.
22. Further, that the internal dispute mechanism ought to have been exhausted which called upon the court not to exercise jurisdiction.

C) The 2nd 3rd & 4th Respondents

23. It is submitted that qualification for nomination of the position of Member of County Assembly (MCA) is provided for under Article 193(1) of the Constitution, conditions that the 2nd and 3rd Respondents met as they were eligible for nomination by virtue of Articles 193 & 177(1) (b) and (c) of the Constitution. That pursuant to the reasoning in the Okenyuri case (supra) what is mandatory is whether one is a registered voter of a particular County.
24. On the question of multiple registration by the 2nd Respondent, it was urged that the screenshots availed by the Appellant in the lower court were inadmissible in evidence as a certificate of electronic evidence was not produced as is mandatorily required by Sections 65,78,78A and 106B of the Evidence



Act. In this regard reliance was placed on the case of Elizabeth Ongoro Amollo Vs. Francis Kajwang Tom Joseph & 2 Others (2017) eKLR where it was observed that:

- “29. Accordingly, whilst photographic evidence is admissible pursuant to Section 78 of the Evidence Act, there is a compelling basis to demand that, unlike traditional photographs, digital photographs must be carefully verified as electronic evidence under Section 78A of the Evidence Act given the distinction expressed by Zechariah, above. To my mind, there are three aspects with regard to PW2s screenshot that must be verified. First is the information of the computer output displayed on the computer screen; second, there is the digital photograph capturing the computer display; and third, there is the medium of storage and transmittal from the digital camera to the receiving computer that then sent the signal to printing medium which printed out the picture.”
25. That being the case, the issue of multiple registration as contended by the Appellant cannot arise as an issue for determination at this stage as it was an issue of fact but not of law as required by Section 75(4) of the Elections Act.
26. That the burden of proof was on the Appellant to adduce evidence of double registration. That all things are presumed to be correctly and solemnly done by public officials until the contrary is proved.
27. That the Appellant had two (2) instances to challenge the party nomination lists at the PPDT and before the IEBC before coming to the court to seek refuge.

Issues for Determination

Following submissions of parties herein; Issues for determination are considered thus:

- i. Who qualifies to be nominated for gender to up list.
- ii. Who is a registered voter and/or was there a multiple registration in respect of the 2nd and 3rd Respondents.
- iii. Was the Petitioner/Appellant obligated to file the complaint with the Political Parties Dispute Tribunal (PPDT)

Analysis and determination.

28. As an overture, it is well appreciated that the jurisdiction of this court at an appellate stage in respect of electoral disputes is espoused in Section 75(4) of the Elections Act that provide thus: (1A) A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate’s Court designated by the Chief Justice. ...(4) An appeal under subsection (1A) shall lie to the High Court on matters of law only ... (Emphasis added)
29. According to that provision of the law, the appellate jurisdiction is restricted to only matters of the law. (See Kitavi Sammy Vs. IEBC & 2 Others (2017) eKLR).
30. What amounts to matters of the law is distinguished from matters of fact which are resolved by the strength of evidence and credibility of witnesses. Matters of law are therefore determined through use of statutes, regulation and interpretation of legal principles. In the case of Gitarau Peter Munya vs- Dickson Mwenda Kithinji & Others (2014) eKLR the Supreme Court set out the three (3) elements that constitute matters of the law thus:
- a. the technical element: involving the interpretation of a constitutional or statutory provision;



- b. the practical element: involving the application of the Constitution and the law to a set of facts or evidence on record;
 - c. the evidentiary element: involving the evaluation of the conclusions of a trial Court on the basis of the evidence on record.”
31. The first issue raised is in respect of qualification for nomination for the Gender Top Up list.
32. Article 193 of the Constitution provides for qualifications for individuals to be elected as members of the County Assembly. It enacts thus:
- 193.
- (1) Unless disqualified under clause (2), a person is eligible for election as a member of a county assembly if the person—
 - (a) is registered as a voter;
 - (b) satisfies any educational, moral and ethical requirements prescribed by this Constitution or an Act of Parliament; and
 - (c) is either—
 - (i) nominated by a political party; or
 - (ii) an independent candidate supported by at least five hundred registered voters in the ward concerned. ”.
33. Article 177 (1) (b) of the Constitution provides for what a County Assembly shall consist of. Relevant to the instant appeal is Sub-Article (1) paragraph (b) that provides thus:
- 177.
- (1) A county assembly consists of—
 - (b) the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;....
 - (2) The members contemplated in clause (1) (b) and (c) shall, in each case, be nominated by political parties in proportion to the seats received in that election in that county by each political party under paragraph (a) in accordance with Article 90. ”
34. Article 90 of the Constitution is in respect of allocation of party list seats. It stipulates that:
- 90.
- (1) Elections for the seats in Parliament provided for under Articles 97(1) (c) and 98 (1) (b), (c) and (d), and for the members of county assemblies under 177 (1) (b) and (c), shall be on the basis of proportional representation by use of party lists.
 - (2) The Independent Electoral and Boundaries Commission shall be responsible for the conduct and supervision of elections for seats provided for under clause (1) and shall ensure that—
 - (a) each political party participating in a general election nominates and submits a list of all the persons who would stand elected if the party were to be entitled



- to all the seats provided for under clause (1), within the time prescribed by national legislation;
- (b) except in the case of the seats provided for under Article 98 (1) (b), each party list comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed; and 55 [Constitution of Kenya, 2010](#)
 - (c) except in the case of county assembly seats, each party list reflects the regional and ethnic diversity of the people of Kenya.
- (3) The seats referred to in clause (1) shall be allocated to political parties in proportion to the total number of seats won by candidates of the political party at the general election. ”
35. Section 25 of the [Elections Act, 2011](#), mirrors Article 193 of the [Constitution](#) in respect of eligibility of election for member of the County Assembly.
36. The appellant urges that the provisions of the County Government Act and Article 90 of the [Constitution](#) exempt the need for regional and ethnic balance in the County Assembly. Looking at the literal interpretation of the provision of the law, the expression of Article 193 of the [Constitution](#) spells out what is required to meet the threshold. The County Government Act and Article 90 of the [Constitution](#) do not spell out the requirement to join the County Assembly and they do not alter the express provision of Article 193 of the [Constitution](#).
37. Statute ought to be interpreted in a manner that promotes the [Constitution](#) since Statute cannot prevail over the [Constitution](#). The rule of interpretation of the [Constitution](#) requires a harmonized, holistic and liberal interpretation but careful enough not to contradict other provisions in the same Constitution (See Katiba Institute Vs. IEBC (2017) eKLR).
38. Article 259 of the [Constitution](#) provides that the [Constitution](#) should be interpreted in a manner that promotes its purpose, values and principles; advances the rule of law, human rights and fundamental freedoms in the Bill of Rights, permits the development of law; and contributes to good governance.
39. The contention put up that the law must always be speaking is not applicable to guide courts on the requirements of joining the County Assembly. There is nothing contradictory in the Statutory or Constitutional requirements calling for interpretation of the law afresh. In event that a contradiction exist, the provision of the law should be read to give effect to the provisions of Article 193 of the [Constitution](#) which intended to allow diversity. According to Article 90(1) of the [Constitution](#), every Political Party is expected to have a national character. Therefore, having only residents and locals stand a chance of being nominated would be discriminatory.
40. In the Cheruto case (supra) the court found that the operative words were the ward, the County, the election of the voters in the wards, and the seats received in the County and that the party lists for the County Assembly seats are not required to reflect regional and ethnic diversity of the people of Kenya.
41. In the Okenyuri case (supra) the court was of the view that the voter to be nominated does not have to be from the specific County.
42. Looking at the provisions of Article 177 of the [Constitution](#), categories spelt out in Article 177(2) of the [Constitution](#), the Cheruto Case is distinguishable.
43. On the question of double/multiple registration, I have perused the petition which shows that the contention of the appellant was that the 2nd respondent and/or persons listed were not residents and/



or voters of Kisii County thereby importing the requirement of ethnic and regional balance which was excluded for County seats. In a further affidavit, the Petitioner acknowledged the 2nd Respondent as a voter at Gusii Stadium. This issue of double registration did not arise in evidence. The allegation of double registration was brought up in submissions which were not pleadings. This culminated into the court holding that what was a requirement to be nominated according to the law was the 2nd and 3rd Respondents to be registered voters. (See Article 177 of the [Constitution](#))

44. The alleged issue of double registration came up at the appellate stage. It is trite that parties are bound by their pleadings. In the case of *Jackton Nyanungo Ranguma Vs. IEBC & 4 others (2018) eKLR*, the court held that a Petitioner is bound to prove the case pleaded. The Petitioner is not permitted to make a case outside the pleadings and his affidavits, and, the testimony must be consistent with, and, support the case pleaded.
45. Further, admissibility of screen shots is a matter of evidence which were considered at trial. This is not a matter of law to be determined by an appellate court.
46. The trial court has been faulted for reaching a finding that the appellant herein disregarded the law by not filing the dispute before the PPDT and IEBC.
47. Article 88 (4)(e) of the [Constitution](#) provides thus:
 - (4) The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for—
 - (e) the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results;”
48. IEBC Dispute Resolution Commission would therefore be seized of jurisdiction to hear and resolve disputes arising from nominations.
49. The Political Parties Disputes Tribunal is established by Statute, the [Political Parties Act](#). Its jurisdiction is provided for in Section 39(1) which stipulate thus:

There is established a Tribunal to be known as the Political Parties Disputes Tribunal.
50. It is a requirement for internal dispute resolution mechanism to be exhausted prior to the PPDT exercising that jurisdiction. This is well captured in the provision of Section 40(1) (2) of the [Political Parties Act](#) which provides that:
 - (1) The Tribunal shall determine— (a) disputes between the members of a political party; (b) disputes between a member of a political party and a political party; (c) disputes between political parties; (d) disputes between an independent candidate and a political party; (e) disputes between coalition partners; and (f) appeals from decisions of the Registrar under this Act.
 - (2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a) (b), (c) or (e) unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms.
51. The Political Party is required to hear and determine all the intra disputes arising from the nominations within 30 days (See Section 13(2)A of the [Elections Act, 2011](#)).



52. Notably, Statute sets out dispute resolution mechanism which means that courts should only intervene after the process set out has been exhausted. This position was accentuated in the case of Peter Ochara Anani & 3 Others Vs. Constituencies Developments Fund Board & 4 others (2011) Eklr, where the court stated that:

“...Jurisdiction we all know is everything and once raised it must be confronted from the onset and if successful the court must down its tools. I have no doubt at all that under article 165(3) of the *Constitution*, I have unlimited and inherent jurisdiction. I am also aware that under article 23(1) of the same constitution this court has jurisdiction, in accordance with article 165 to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the bill of rights ”

53. In the case of Julius Masiva Obuga Vs. Orange Democratic Party & 6 Others (2019) Eklr, it was stated that:

“(14). The above implies that when a person feels aggrieved by a decision of his political party, the issue is first raised to the party to solve before it proceeds to the 5th respondent. The petitioner did not show that he had raised the issue on nomination of the named persons at paragraph 20 of the petition to the respective political parties. Article 165 (3) above has clearly elaborated the functions of this court. ”

54. In the Moses Mwicigi Case (supra) that has been relied on by all parties herein the Supreme Court stated that:

“The Gazette Notice in this case, signifies the completion of the “election through nomination”, and finalizes the process of constituting the Assembly in question.”

55. This is a matter where the appellant moved to court after gazettelement of the nominated members of the County Assembly under the special category. The 4th Respondent submitted names and left it to the discretion of the 1st Respondent which used its discretion to identify female nominees to achieve the two-third gender rule in the County Assembly. For that reason, the applicable provisions of the law informing nomination of members of the County Assembly under Articles 193,177 of the *Constitution* and Section 36 of the *Elections Act* were complied with. The 2nd and 3rd Respondents were Kenyan citizens, registered voters within the republic, they were also members of a political party, the 4th Respondent. Reasons given cannot call the Elections into question. Due to the peculiar nature of the circumstances that transpired, I find the appeal lacking merit.

56. In the result, it is dismissed with costs to the respondents in the sum of Ksh. 100,000/- which shall be capped at Ksh. 25,000/- for each Respondent.

57. It is so ordered.

DATED, SIGNED AND DELIVERED AT KISII,

THIS 4TH DAY OF AUGUST, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Mr. Begi for Appellant



Messrs Shikoli and Kubai for 1st Respondent

Mr. Ocboki for 2nd 3rd & 4th Respondents

Court Assistant – Daniel Oruasa

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