



**Nthesi & 8 others v Nyakundi & 7 others (Petition E464 of 2021)
[2022] KEHC 11076 (KLR) (Constitutional and Human Rights) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 11076 (KLR)

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

PETITION E464 OF 2021

HI ONG'UDI, J

MAY 31, 2022

**IN THE MATTER OF RULES 23 AND 24 OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF ARTICLE 10 CLAUSE 11(B), (F), (G), (H), (I) REGULATION 4
CLAUSE 22(A) OF THE NATIONAL PARENTS ASSOCIATION CONSTITUTION
2015 AND IN THE MATTER OF KENYA GAZETTE NOTICES NO. 7624 OF 30TH
JULY, 2021, 8188 OF 13TH AUGUST, 2021 AND 8777 OF 27TH AUGUST, 2021**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10,
22, 27, 36(1) AND 47(1) OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

**MOSES NTHESI 1ST PETITIONER
EPHRAIM WAIGI 2ND PETITIONER
ROBERT GICHANA 3RD PETITIONER
NATIONAL ELECTIONS BOARD 4TH PETITIONER
ESKIMOS KOBIA KIRUBI 5TH PETITIONER
SAMMY MUSAU WILSON 6TH PETITIONER
AMOS MUNYIRA 7TH PETITIONER
GENARD NJIRU 8TH PETITIONER
MWANAHAMA SALIM 9TH PETITIONER**



AND

JEREMIAH NYAKUNDI	1 ST RESPONDENT
NICHOLAS KIBITOK MAIYO	2 ND RESPONDENT
SARAH KAGENDO MITAMBO	3 RD RESPONDENT
ONESMUS JOHNES KAUWI	4 TH RESPONDENT
PATRICK LUMUMBA OLALI	5 TH RESPONDENT
ROSE OTIAK	6 TH RESPONDENT
MOHAMMED AWADH OMAR	7 TH RESPONDENT
NATIONAL PARENTS ASSOCIATION	8 TH RESPONDENT

JUDGMENT

1. The petition dated November 1, 2021 was filed under articles 10, 22, 27(4), 36(1) and 47(1) of the *Constitution of Kenya* and rules 23 and 24 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*. The petition seeks the following orders: -
 - i. A declaration do issue that, the elections of Nicholas Kibitok Maiyo, Sarah Kagendo Mitambo, Onesimus Johnes Kauwi, Patrick Lumumba Olali, Rose Otiak and Mohammed Awadh Omar on August 20, 2021 as officials of the 8th respondent were not free, fair and transparent and so violated the petitioners' fundamental rights and freedoms guaranteed under article 10(2)(c), 36(1) and 47(1) of the *Constitution of Kenya*, and therefore null and void for all intents and purposes.
 - ii. A declaration do issue that, the 1st respondent's action of organizing and presiding over elections of the officials of the 8th respondent on August 20, 2021 without involving the petitioners violated the national values and principles of governance which include good governance, integrity, transparency and accountability guaranteed under article 10(2)(c) of the *Constitution of Kenya*.
 - iii. An order do issue quashing Kenya Gazette Notice Number 8777 of August 27, 2021 which declared Nicholas Kibitok Maiyo, Sarah Kagendo Mitambo, Onesimus Johnes Kauwi, Patrick Lumumba Olali, Rose Otiak And Mohammed Awadh Omar as officials of the 8th respondent.
 - iv. An Order do issue authorizing the National Elections Board of the 8th respondent to organize and preside over fresh elections of the National Parents Association within 45 days from the date of judgement and the OCS – Kamukunji Police Station do provide security during elections.
 - v. An order do issue restraining permanently the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th respondents from conducting or participating in any future elections of the 8th respondent.



- vi. Any other order that this honourable court deems fit and just to grant in the circumstances.
- vii. Costs of and incidental to this petition.

The Petitioners' Case

2. The petitioners' case as enunciated in the petition is that their right to freedom of association as guaranteed under article 36(1) of the Constitution was violated by the 1st respondent. This they claim is because the 1st respondent took over the 8th respondent's election process. This is in spite of him being aware that the 1st petitioner was the one duly authorized to issue notice of the national election on behalf of the 8th respondent.
3. The petition is supported by the 1st petitioner's sworn affidavit dated November 1, 2021. He avers that he is the chairperson of the 8th respondent's National Elections Board. That according to article 10 clause 11(G)(i) of the 8th respondent's constitution, the National Elections Board is the one mandated to organize and preside over all the 8th respondent's national elections.
4. He deposes that sometime in August 2021 he received credible information asserting that the 1st respondent had issued a notice calling for a meeting to amend its constitution vide Gazette Notice No 7624 dated July 30, 2021. This was to be done on August 9, 2021 at Astorian Hotel in Naivasha.
5. He avers that in reaction to this he wrote a letter dated August 7, 2021 to the 1st respondent protesting the manner in which the amendments were to be done. This was notwithstanding the well laid down procedure on the same. There was no response to the letter. Soon thereafter, the 1st respondent in total disregard of article 8 clause 9(h)(i) of its constitution proceeded to announce that the 8th respondent's national elections would be held on August 20, 2021. This was through Gazette Notice No 8188 dated 13th August 2021. He avers that this action usurped the powers of the 8th respondent's National Election Board. He again wrote a protest letter to the 1st respondent dated August 16, 2021 highlighting this breach. It was not responded to.
6. The 1st respondent proceeded to publish Gazette Notice No 8777 dated of August 27, 2021 which contained the names of the 2nd, 3rd, 4th, 5th, 6th and 7th respondents as the newly elected officials of the 8th respondent.
7. He avers that the 1st respondent's intention was to ruin the Board's organization. That the 5th petitioner informed him that the gazette notices were a façade since the purported meeting and election were never conducted, as claimed. He informs that, the operations manager of Astorian Hotel – Naivasha, Mr George Cendu Njoroge swore an affidavit stating that there were no meetings that took place at their hotel either on 9th or August 20, 2021. He averred that the 1st respondent conducted the elections on August 20, 2021, with only 7 delegates leaving out over 1000 delegates. Further, that the impugned elections were unlawful and un-procedural thus in breach of article 47(1) of the Constitution.
8. The petitioners filed a further supporting affidavit also dated 1st November 2021 sworn by Eskimos Kobia Kirubi, the 5th petitioner and chairman of Nakuru County Parents Association. He deposes that following Gazette Notice No 8188 dated August 13, 2021 which called for the 8th respondent's elections he on August 17, 2021 sent an email to the supplied address ceo@npa.ke requesting to be included in the list of delegates from Nakuru County. There was no response to the email from the 1st respondent.



9. He deposes that he went to Astorian Hotel at Naivasha at 10am on August 20, 2021 the date the elections were scheduled to take place. He was informed by the security guard that no meetings were taking place in their hotel on that day. This fact was later on confirmed by the hotel's operations manager, George Cendu Njoroge. Following this, he called around 50 delegates across the county to enquire about the meeting. The delegates informed him that they had not been invited for the purported meeting.
10. He deposes that the 1st respondent then issued Gazette Notice No 8777 dated August 27, 2021 which contained the names of the allegedly elected officials. He makes known that when he visited the 8th respondent's official website <http://npa.ke>, he realized that the particulars of the impugned officials had been published. He however points out that they had concealed their identity by posting photos of foreigners above their names. Owing to the case made out he deposes that the other petitioners and delegates were denied an opportunity of participating in the 8th respondent's elections for the national officials. He as such urges this court to nullify the elections of the 1st to 7th respondents as officials.

The Respondents' Case

11. The record reflects that although served, none of the respondents in this matter filed any grounds of opposition, replying affidavit or submissions to the petitioners petition dated November 1, 2021.

The Petitioners' Submissions

12. On behalf of the petitioners, the firm of Njeri Ngunjiri and Company Advocates filed written submissions dated December 16, 2021. The following are the issues identified for determination:
 - i. Whether the High Court has jurisdiction to interfere with the internal management of an Association;
 - ii. Whether it is only public entities that can be said to be in violation of fundamental rights or whether the Bill of Rights can be enforced against private citizens;
 - iii. Whether the elections of the 8th respondent held on August 20, 2021 were free, fair and transparent; and
 - iv. Whether the respondents violated provisions of the Constitution and whether the petitioners are entitled to the reliefs sought.
13. On the final issue counsel submits that under articles 23 and 165(3) of the Constitution, this Court has the requisite jurisdiction to determine the petitioners' matter in as far as a breach of the bill of rights is concerned. Additionally counsel submits that article 2(1) of the Constitution provides that the Constitution is the supreme law and accordingly binds all persons. She notes that article 260 of the Constitution defines a person to include a company, association or other body of persons whether incorporated or unincorporated.
14. In view of this, counsel submits that the courts although reluctant to interfere with the internal management of an association will only do so where the Constitution of the association is breached or there is a contravention of the rules of natural justice as it was held in the case of Zaburi Musa Hamisi & 3 others v Ishmael Hillon & 4 others [2015] eKLR. Additional reliance was placed on the case of Tanui & 4 others v Birech & 11 others [1991] KLR 510.



15. On the second issue Counsel submits that the Bill of rights can be enforced against private citizens and thus not limited to a state organ as held in the case of *Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railway Staff Retirement Benefits Scheme & 3 others* [2013] eKLR. Further reliance was placed on the case of *Isaac Ngugi v Nairobi Hospital & 3 others* [2013] eKLR.
16. Turning to the third issue counsel submits that there were flaws and notable irregularities in the process leading up to the elections of the officials of the 8th respondent in that;
- i. The 1st respondent was both the returning officer as well as the presiding officer which was a clear conflict of interest.
 - ii. The 1st respondent did not provide any evidence to this court in form of delegate's register to confirm the genuineness of the delegates who purported to have attended and participated in the elections.
 - iii. The purported elections were secretive in that no one knew where the venue of the election was, and the 1st respondent did not provide any evidence to court in form of an attendance list, to confirm whether a meeting took place on that material day.
 - iv. The 1st respondent did not publish the names of the candidates who had presented themselves for the elections and the number of votes that each candidate secured during the purported elections.
 - v. The 5th to 8th petitioners were prevented from submitting their application forms, because there was no alternative means of submitting their applications since the 1st respondent only provided his email address making it difficult to confirm if the mails were going through as there was no acknowledgement of the mails.
 - vi. The 1st respondent did not provide any evidence in court to confirm whether he verified the names of the persons who were elected as the national officials as to whether they were genuine or fake delegates and whether from the county and Sub County level or not.
 - vii. There was no evidence provided by the 1st respondent on the number of delegates, who attended the purported elections because according to the 2015 constitution, 1202 delegates should have participated in the elections because each County was required to nominate 7 delegates per county and 3 delegates per Sub County bringing a total of 1202 delegates.
 - viii. No elections took place in Naivasha on August 20, 2021 because the operations manager of Astorian Grand Hotel-Naivasha, Mr George Cendu Njoroge swore an affidavit on August 30, 2021 confirming that no meeting took place at their hotel on August 20, 2021.
17. In light of this, counsel submits that the arbitrary actions of the 1st respondent in handpicking 7 delegates to participate in a stage managed national election, locked out votes of over 1200 County and Sub County delegates. This in essence was discriminatory and a violation of their constitutional rights to freely participate in the activities of their association.



18. Additionally Counsel notes that it is obvious that the process and outcome of the elections did not conform to the 8th respondent's Constitution. She urged this Court to be guided by the decision in the case of *Frankline Kaburu Kinoti & 3 others v University Academic Staff Union [Uasu] Executive, Kenyatta University Chapter & 3 others; Kenyatta University (Interested Party)* [2021] eKLR where the court nullified the election results of UASU due to the glaring irregularities.
19. On the fourth issue, Counsel submits that the respondents violated article 10(2)(c) of the *Constitution* on national values by failing to uphold the principles of governance. In particular, the principles of good governance, integrity, transparency and accountability. Likewise, article 36(1) of the *Constitution* by denying the petitioners an opportunity to participate in the national elections of their association. Similarly, article 47(1) of the *Constitution* was violated by the respondents taking over the administrative action of organizing the 8th respondent's elections. Counsel submits that this was unlawful and procedurally unfair. She argues therefore that the 1st respondent's actions caused an injury to the petitioners and they are therefore entitled to the reliefs sought.

Analysis and Determination

20. On a preliminary note, I deem it prudent to first dispense with the respondents' lack of appearance in the instant petition. From the record, this petition remains unopposed by the respondents. The respondents were served severally as can be seen from the affidavits of service dated November 8, 2021, November 25, 2021 and February 7, 2022. All the affidavits of service were sworn by Stephen Njonjo, the court process server.
21. The court in the case of *Nesco Services Limited v CM Construction (EA) Limited* [2021] eKLR while speaking to the importance of service to the opposing party opined as follows:-

“29. I agree with the position adopted in *Mohamed Bwana Bakari v Abu Chiaba Mohamed & others Mombasa HCEP No 3 of 2003* [2003] KLR 557 that the purpose of service is to let the other party involved in the litigation upon whom orders are sought to know that the dispute is before the Court and that way he has a right to take action he may deem right to defend his rights or take any position he deems necessary as it is fundamental requirement in keeping with the principles of rules of natural justice and the practice of the rules of law. I agree with the holding in *Mariambai Chand Gulam v Zerakhanu Remtulla Ebrahim* [1953-1957] 2 TLR 168 that the object of all service is only to give notice to the party on whom it is made, so that he may be aware of, and able to resist, that which was sought against him, and where that has been done, so that the court might feel perfectly confident that service has reached him, everything has been done that could be required.

30. It was therefore held in *Parminder Singh Sagoo and another v Neville Anthony Dourado* [1983] KLR 365 that if a notice arrives at the address of the person to be notified at such a time and by such a means of communication that it would in normal course of business come to the attention of that person on its arrival, that person cannot rely on some failure of himself or his servants to act in a normal business-like manner in respect of taking cognisance of the communication, so as to postpone the effective time of the notice until some later time when in fact it comes to his attention.”



22. The *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* under rule 16(1) guides as follows where no response is filed:

If the respondent does not respond within the time stipulated in rule 15, the court may hear and determine the petition in the respondent's absence.

23. Evidently, the respondents were notified at each and every stage of what was coming up in court but nevertheless failed to file any reply or even appear before the court. In view of this, this court takes cognizance of the fact that the petition is one that requires the court to consider the issues raised in the absence of a response by the respondents. Having given the respondents' ample time to file their responses this court will proceed to determine the issues raised on merit and make an appropriate pronouncement at the end. In doing so, the court will place reliance on the materials and pleadings placed before it.
24. From the foregoing account, the issues that arise for determination are:-
- i. Whether the petitioners' right to freedom of association under articles 10(2)(c), 36(1) and 47(1) of the *Constitution* were violated by the respondents; and
 - ii. Whether the petitioners are entitled to the reliefs sought.

Whether The Petitioners' Right To Freedom Of Association Under Articles 10(2)(c), 36(1) And 47(1) Of The *Constitution* Was Violated By The Respondents

25. To begin with it is imperative to note that although the respondents did not file any response to this petition, the petitioners are still required to discharge their burden of proof of their claims. Owing to this the court in the case of *Leonard Otieno v Airtel Kenya Limited* [2018] eKLR held that:-

“64. Whether one likes it or not, the legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by Rajah JA in *Britestone Pte Ltd v Smith & Associates Far East Ltd* [52] :

“The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him”

65. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. Decisions on violation of constitutional rights should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Constitution* and inevitably result in ill considered opinions. The presentation of clear evidence in support of violation of constitutional rights is not, a mere technicality; rather, it is essential to a proper consideration of constitutional issues. Decisions on violation of constitutional rights cannot be based upon the unsupported hypotheses.”

26. Further on the burden of proof sections 107(1) & (2), 108 and section 109 of the *Evidence Act* provide as follows:-



Section 107 of the *Evidence Act*:

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

Section 108 of the *Evidence Act*:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Section 109 of the *Evidence Act*:

109. Proof of particular fact the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
27. Turning over to the issue at hand the petitioners principal contention is that the respondents actions blatantly disregarded the 8th respondent's governing principles hence robbing them of their constitutional right to participate in the activities of their association and benefit from a fair administrative action. Additionally, their right to the national values and principles, was violated.
28. To start with article 36(1) of the *Constitution* provides that:

Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.
29. The three judge bench in the case of *EG v Non- Governmental Organisations Co-ordination Board & 4 others* [2015] eKLR while discussing the right to freedom of association as envisaged in the *Constitution* noted as follows:-

- “ 86. Freedom of association is universally accepted as fundamental to a democratic society. The principles of pluralism and democracy necessitate that all citizens be free to assemble and express their opinions, and be limited in their ability to do so only by very narrow and specific circumstances. Within the Kenyan context, Mbondenyi, Morris Kiwinda, Ambani & John Osogo state in “The New Constitution of Kenya: Principles, Government and Human Rights”:

“The right to freedom of association has been violated with impunity in a number of occasions. These violations were manifested in the banning of political parties, persons being arrested because of their political belief and the prohibition of any assembly for a political purpose in a private or public space. Because of such incidents the 2010 Constitution appears to provide some safeguards for the enjoyment of this right by organisations or groups by ensuring that their registration is not withheld or withdrawn unreasonably.”



30. The Court of Appeal in the same matter when it went on appeal *ie Non-Governmental Organizations Co-Ordination Board v EG & 5 others* [2019] eKLR observed as follows concerning this right:-

“ Article 36 of the Constitution extends to every person’s right to form an association of any kind. This right can only be limited in terms of law to the extent that the limitation is reasonable and justifiable in an open and democratic society as provided for in article 24(1) of the Constitution. Subject to the limitations, a person’s rights under Article 36 extends to all human beings without discrimination, whatever their ethnicity, religion, sex, place of origin or any other status such as age, disability, health status, sexual orientation or gender identity. I agree with the High Court’s finding that Article 36 extends to all individuals and juristic persons and that sexual orientation does not in any way bar an individual from exercising his right under article 36 of the constitution. In *Civil Liberties Organisation v Nigeria*, Communication No 101/93, the African Commission found that the freedom of association is an individual right. The state has an obligation to refrain from interfering with the formation of association and there must be mechanisms that allow citizens to join without state interference in associations to enable them attain various ends.”

31. Guided by the above findings, it is accurate to deduce that the right to freedom of association as an individual right should not be limited without any justification by the individual or entity purporting to do so. In light of this it is important that this court ascertains whether the material placed before this court demonstrates a violation of article 36(1) of the Constitution.

32. The contention in this matter finds its origin in the Basic Education Act, 2013. One of the Act’s objectives is found under part VIII which provides for the governance and management of basic education and training. Accordingly, the National Parents Association (8th respondent) is one of the entities established under a school’s Board of Management to contribute to this purpose.

33. In view of that, section 55 of the Act provides as follows:-

(1) There shall be a Board of Management for every public –

- (a) pre-primary institution;
- (b) primary school;
- (c) secondary school;
- (d) adult and continuing education centre;
- (e) multipurpose development training institute; or
- (f) middle level institutions of basic education.

(2) Notwithstanding subsection

(1) every school shall have a parents association which shall be constituted in the manner set out in the third schedule.

(3) Every private school shall establish a parents’ teachers association.

The Cabinet Secretary shall be responsible for the overall governance and management of basic education.

(2) Subject to the provisions of this Act, the Cabinet Secretary shall by regulation entrust the governance or management of any aspect of basic education and



training to any agency, body, organ or institution as may be appropriate for the purposes of this Act.

34. Further the third schedule of the Act provides as follows:

"Establishment and functions of parents association

- (3) The Parents Association shall hold such number of meetings at such places and at such times as the Association shall consider necessary for the proper discharge of its functions.
- (4) Subject to the provisions of this Schedule, the Parents Association shall regulate its own procedure.
- (5) There shall be established National Parents Associations, County Parents Associations and Sub County Parents Associations elected by Parents Associations from schools through a delegate system.

35. From the foregoing, the petitioners submitted that the 8th respondent is governed by its own Constitution which contains the rules of its procedures. They contend that the 1st respondent in seeking to amend the 8th respondent's Constitution, calling for and conducting its elections without involving them and other members acted in contravention of their rules of association.

36. The election process as stipulated under regulation 5, clause 29 of the 8th respondent's constitution states as follows:-

- a. All notices of the national elections shall be issued by the National Elections Board of the association.
- b. The notices issued for the National elections shall not be less than 21 days.
- c. The National Elections Board shall have power under this regulation to develop rules and regulations that shall govern the national elections.
- d. The notices for the elections of the School, Zonal, Sub County and County Associations shall be issued by the General Secretary in consultation with the National Chairperson.
- e. A branch of the association shall not be allowed to replace an official without a written approval of the National Executive Committee.
- f. Any official who shall be voted out by any branch of the association and the process confirmed by the National Management Board the person occupying the position shall cease from being an official of the association and shall vacate and handover his/her office within 7 days from the date of removal.
- g. The National Elections shall be supervised by the National Election Board.
- h. The County, Sub County elections shall be supervised by officers appointed by the National Executive Committee.
- i. The zonal and school parent's association elections shall be supervised by officers of the county and sub county executive committee.



- j. No person including education officers shall replace or suspend any official of the association without the approval of the National Executive Committee.
- k. The National Management Board may call off, postpone or cancel any branch election if from their point of view the said elections were not transparent and accountable.
- l. When the branch elections are called off, cancelled or postponed, the National Management Board shall call fresh elections within 45 days.
- m. In case the second attempt aborts then the National Management Board shall have power to appoint an interim committee to run the affairs of the branch for a period not exceeding one year.
- n. In the case where an interim committee is in place in any branch, the former branch committee of the affected branch shall cease to operate.
- o. For any elections to be held, the required quorum shall be two thirds of the delegates.
- p. In case the elections of the first instance aborts due to quorum hitch, the second instance meeting shall meet within a period of 45 days and shall not be bound by the rule of two thirds but the simple majority rule.

37. A perusal of the material placed before this court reveals that the 1st respondent issued Gazette Notice No 7624 dated July 30, 2021 calling for the inaugural meeting to deliberate on the 8th respondent's constitution and other business. Secondly he issued Gazette Notice No 8188 dated August 13, 2021 calling for the election of the 8th respondent's officials. He issued the final Gazette Notice No 8777 dated August 27, 2021 that notified members of the appointment of the new officials.
38. My interpretation of the third schedule is that whereas section 1 establishes the composition of the Parents Association, section 5 defines and establishes the various parents associations. In this regard, section 5 informs that 'there will be established National Parents Associations, County Parents Associations and Sub County Parents Associations elected by Parents Associations from schools through a delegate system'. In my view the third schedule sets out the broad framework upon which these Parents Associations are formed. Reasonably this does not include the associations internal rules and regulations. Considering this Section 4 then directs that the Parents Association has to be regulated by its own procedures.
39. In the context of this case the petitioners submitted that the National Parents Association, (the 8th respondent) is governed by the rules and regulations of the National Parents Association (December 2015) which they refer to as their constitution. This constitution details these rules including the election rules as outlined herein above. With this in mind, it is apparent from reading the Gazette notices at a glance that the 1st respondent disregarded the 8th respondent's governing constitution. This runs afoul section 4 of the Act's third schedule. Evidently it is reasonable to infer that the rules and regulations as spelt out in the 8th respondent's constitution were not adhered to by the 1st respondent.
40. In the same way, an examination of the evidence produced by the petitioners shows that while the purported inaugural meeting and elections were to take place at the Astorian Hotel in Naivasha at 10:00am in line with section 3 of the third schedule, the same never took place at the said venue.
41. Furthermore, in issuing the final Gazette Notice the 1st respondent stated that the notice had been authorized by section 55(2) of the Act and paragraph 3 and 4 of the Act's third schedule. I find reliance



on this to be deceitful since the 1st respondent failed to adhere to the very principles that govern the Parents Association in the third schedule and the 8th respondent's constitution. Moreover the Act does not bestow the 1st respondent with such powers, as he purported to exercise.

42. In addition to this, the 1st respondent failed to respond to the petitioners correspondence in questioning his actions. He also failed to involve the petitioners in the process as demonstrated by the 5th petitioner's averment that his request to be one of the delegates did not elicit any response.

43. This brings this court to the question as to the legality of the administrative action taken out by the 1st respondent. As demonstrated above the 1st respondent did not involve the petitioners in the process and neither did he answer their concerns when challenged. The whole process was conducted secretly. Article 47 of the Constitution provides:-

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

44. The importance of the right to a fair administrative action cannot be overstated. It's prominence was underscored by the court in the case of President of the Republic of South Africa and others v South African Rugby Football Union and others (CCT16/98) 2000 (1) SA 1, where it was held that:-

“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...”

45. In the circumstances of this case, I take the view that the 1st respondent essentially made it difficult if not impossible for the petitioners and other interested parties to participate in the business and elections of the 8th respondent. In addition to this the respondents failed to indulge the petitioners in the process essentially failing to grant them a fair administrative action.

46. Article 2 of the Constitution binds all persons and state organs to the dictates of the Constitution. One of the dictates is the national values and principles as envisaged under article 10 of the Constitution. In this regard I find that the 1st respondent failed to adhere to the principle of good governance, integrity, transparency and accountability as provided in article 10(2)(c) of the Constitution. In view of this, I find that the petitioners have proven their case against the respondents.

Whether The Petitioners Are Entitled To The Reliefs Sought

47. Drawing from the above conclusion I find that the rights of the petitioners under article 10(2)(c), 36(1) and 47(1) of the Constitution were violated. The petition has merit and the following orders are made:-



- i) A declaration do issue that, the elections of Nicholas Kibitok Maiyo, Sarah Kagendo Mitambo, Onesimus Johnes Kauwi, Patrick Lumumba Olali, Rose Otiak and Mohammed Awadh Omar on August 20, 2021 as officials of the 8th respondent were not free, fair and transparent and so violated the petitioners' fundamental rights and freedoms guaranteed under article 10(2) (C), 36(1) and 47(1) of Constitution of Kenya, and therefore nullthe and void for all intents and purposes.
- ii) A declaration do issue that, the 1st respondent's action of organizing and presiding over elections of the officials of the 8th respondent on August 20, 2021 without involving the petitioners violated the national values and principles of governance which include good governance, integrity, transparency and accountability guaranteed under article 10(2)(c) of the Constitution of Kenya.
- iii) An order do issue quashing Kenya Gazette Notice Number 8777 of August 27, 2021 which declared Nicholas Kibitok Maiyo, Sarah Kagendo Mitambo, Onesimus Johnes Kauwi, Patrick Lumumba Olali, Rose Otiak And Mohammed Awadh Omar as officials of the 8th respondent.
- iv) An order do issue authorizing the National Elections Board of the 8th respondent to organize and preside over fresh elections of the National Parents Association within 45 days from the date of judgement and the OCS – Kamukunji Police Station do provide security during elections.
- v) Prayer (v) is declined.
- vi) The respondents to pay costs.

DELIVERED VIRTUALLY, SIGNED AND DATED THIS 31ST DAY OF MAY, 2022 IN OPEN COURT AT MILIMANI, NAIROBI.

HI ONG'UDI

JUDGE OF THE HIGH COURT

