



Muka & another v Malala & 12 others; Commission for University Education & 2 others (Interested Parties) (Constitutional Petition E002 & E001 of 2022 (Consolidated)) [2022] KEHC 10062 (KLR) (27 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10062 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CONSTITUTIONAL PETITION E002 & E001 OF 2022 (CONSOLIDATED)
PJO OTIENO, J
JUNE 27, 2022
(FORMELY NAIROBI CONSTITUTIONAL PETITION NO. E264 OF 2022)
IN THE MATTER OF ARTICLES 2(1), 2(4), 3(1), 10(1) & (2), 22(2)
(B), 23,35,38,81(E), 88(4)(F) AND 165 OF THE CONSTITUTION
OF KENYA, 2010
AND
IN THE MATTER OF CHAPTER 6 OF THE CONSTITUTION OF
KENYA, 2010 ON LEADERSHIP AND INTEGRITY
AND IN THE MATTER OF SECTIONS 19,22,23&29 OF THE PUBLIC
OFFICERS ETHICS ACT NO. 4 OF 2003 AND IN THE MATTER OF 22(2)
OF THE ELECTIONS ACT, 2012 NO. 24 OF 2011 AND IN THE MATTER
OF THE GUBERTNATORIAL ELECTIONS FOR KAKAMEGA COUNTY

BETWEEN

FRED MUKA PETITIONER

AND

CLEOPHAS WAKHUNGU MALALA 1ST RESPONDENT
VICE CHANCELLOR UNITED STATES INTERNATIONAL
UNIVERSITY 2ND RESPONDENT
UNITED STATES INTERNATIONAL UNIVERSITY 3RD RESPONDENT
COMMISSION FOR UNIVERSITY EDUCATION 4TH RESPONDENT
KENYA NATIONAL EXAMINATIONS COUNCIL 5TH RESPONDENT



**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 6TH
RESPONDENT**

RETURNING OFFICER, KAKAMEGA COUNTY 7TH RESPONDENT

ETHICS AND ANTI CORRUPTION COMMISSION 8TH RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 9TH RESPONDENT

**AS CONSOLIDATED WITH
CONSTITUTIONAL PETITION E001 OF 2022**

BETWEEN

FRANKLINE SHILINGI ANGUCHE PETITIONER

AND

MALALA CLEOPHAS WAKHUNGU 1ST RESPONDENT

UNITED STATES INTERNATIONAL UNIVERSITY 2ND RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 3RD
RESPONDENT**

**JOSEPH AYATTA-COUNTY RETURNING OFFICER KAKAMEGA 4TH
RESPONDENT**

AND

COMMISSION FOR UNIVERSITY EDUCATION INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

DIRECTOR OF CRIMINAL INVESTIGATIONS INTERESTED PARTY

RULING

1. I am confronted with a number of constitutional considerations here. The first is the court's duty to ensure that the law is complied with. There is then the right of the petitioners to be given a fair hearing together with the undoubted right of the 1st Respondent to contest the desired elective position.
2. To the court, whether or not the 1st Respondent qualifies to contest the gubernatorial position is such a threshold issue that cannot be treated casually unless one was to set on taking the law for granted.
3. I agree with Mr. Malala and Ashitiva that it is upon the duty bearers, being the 4th, 5th and 9th Respondents to provide basic answers to the question presented before the court here. To that list I would not exclude the 8th Respondent. It is for that reason that I think it would be a miss to order the matter to proceed without an input by the 4th, 5th and 9th Respondents.
4. For that reason I do accede to the request by Mr. Nyauma and do grant him a period of seven (7) days to file a response(s) which should include how far those Respondents have processed the Petitioners request for information.



5. Having said so, and reiterating that the question of legal qualification to contest is a threshold issue anchored in the constitution and which the court cannot turn a blind eye to at any time of the election process, I take the view that it should not be the only reason to hold the process by the 6th Respondent in preparing for credible elections. I take it that provided the court is able to conclude the petition before the election date, the 6th Respondent is able to comply with any orders/determinations issued by the court.
6. On that basis and reason, while I adjourn the matter at the instance of the Petitioners and the 4th, 5th and 9th Respondents, I do consider it just that I revisit my orders of 6.6.2022 and lift the bar on gazettelement. I consider that the only way to provide a level playing ground so that the 6th respondent proceeds with his mandate as the Petitioners pursue their rights to access justice while the 1st Respondent is not left to feel excluded from the elections before a final determination on the merits.
7. Let Mr. Nyauma file the responses within seven (7) days from today together with any submissions. Once served, all parties are given three (3) days to file any Supplementary Affidavits in response thereto.
8. Hearing on 11.7.2022 at 2.00 p.m.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27TH DAY OF JUNE 2022.

PATRICK J O OTIENO

JUDGE

In the presence of:

Ms. Okatch for the 2nd Petitioner (Petitioner in No. 2/2022)

Mr. Otsyeno for Udoto for 1st Petitioner

Mr. Malalah for the 1st Respondent with Ms. Mburu

Mr. Ashitiva with Ms. Maobe for the 2nd and 3rd Respondents

Mr. Nyauma for the 4th, 5th & 9th Respondents

Mr. Olendo for the 6th, 7th Respondent

Ms. Maobe holding brief for Yator for the 8th Respondent

Court Assistant: Kulubi

