



**Gesicho v Kenyatta & 3 others (Constitutional Petition 321 of 2018)
[2022] KEHC 10935 (KLR) (Constitutional and Human Rights) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10935 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION 321 OF 2018**

AC MRIMA, J

JUNE 23, 2022

BETWEEN

MORAA GESICHO PETITIONER

AND

UHURU MUIGAI KENYATTA 1ST RESPONDENT

RAILA ODINGA 2ND RESPONDENT

SPEAKER OF THE NATIONAL ASSEMBLY 3RD RESPONDENT

SPEAKER OF THE SENATE 4TH RESPONDENT

RULING

1. This ruling relates to the petitioner's application by way of a Notice of Motion dated December 21, 2021. The application seeks the following orders: -
 1. That the application be certified urgent and be heard ex-parte in the first instance.
 2. That this court sets aside the order of dismissal of Petition 321 of 2018 issued on December 15, 2021.
 3. That this court reinstates Petition 321 of 2018, which was dismissed on December 15, 2021.
 4. That Costs for this application be in the course.
2. The application is premised on some 26 grounds appearing on its body. It is also supported by the Petitioner's affidavit and written submissions.
3. The application was duly served. In response thereto, it is only the 2nd Respondent herein who opposed it. The rest of the parties did not participate in the hearing of the application.



4. The 2nd respondent relied on his grounds of opposition dated January 15, 2022, the replying affidavit of one Arnold Ochieng Oginga sworn on January 15, 2022 and written submissions.
5. I have carefully considered the application. The petitioner has, in great detail, narrated the genesis and history of this matter. She, as well, explained the events that led to her non-attendance before Court on December 15, 2021.
6. In opposing the application, the 2nd Respondent posited that the Petition was not only based on the non-attendance, but on merit since the current Petition was *res-judicata* High Court Petition No. 451 of 2018 Third way Alliance & others vs. Attorney General & others, High Court Petition No. E282 of 2020 David Ndii & others vs. Attorney General & Others and Court of Appeal Civil Appeal No. E291 of 2021 Attorney General vs. David Ndii & Others.
7. In their written submissions, the parties rooted for their rival positions.
8. This court has perused the Amended Petition and the responses thereto. The petitioner outlined several issues for the court's determination in the Amended Petition. They included the constitutionality of the invitation which H.E. Hon. Uhuru Kenyatta, as the President of Kenya, extended to Hon. Raila Odinga to assist him govern the Country.
9. The petitioner also sought for several declarations and orders.
10. A careful look at this matter reveals that whereas there may be some issues which might have been settled by previous litigation before courts, there are, as well, some issues which remain unattended to. An example is the constitutionality of the invitation which H.E. Hon. Uhuru Kenyatta, as the President of Kenya, extended to Hon. Raila Odinga, famously referred to as 'the Handshake'.
11. This court is, therefore, called upon to strike a balance between the rival parties with a view of according an opportunity to the parties and the court to deal with the issues which are yet to be determined, to be so settled.
12. In attaining such a bar, and by considering the parties' positions and submissions, this court hereby determines the Notice of Motion dated December 21, 2021 and makes the following orders: -
 - (a) The Order dismissing the Petition made on December 15, 2021 be and is hereby set-aside.
 - (b) The Parties shall take directions on the hearing of the Amended Petition.
 - (c) The extent of the applicability of the doctrine of *res judicata* in this matter shall be dealt with in the course of the hearing of the Petition.
 - (d) The costs of the application to abide the outcome of the Petition.

Orders of the Court.

DELIVERED, DATED and SIGNED at NAIROBI this 23rd day of June, 2022.

A. C. MRIMA

JUDGE

