



**Gitau & 2 others v Independent Electoral and Boundaries Commission
& 3 others; United Democratic Alliance Party & another (Interested
Parties) (Petition E332 & E336 of 2022 & E335 of 2019 (Consolidated))
[2022] KEHC 11523 (KLR) (Constitutional and Human Rights) (1 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 11523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E332 & E336 OF 2022 & E335 OF 2019 (CONSOLIDATED)**

**HI ONG'UDI, J
AUGUST 1, 2022**

BETWEEN

**DAVID GITAU 1ST PETITIONER
ANTHONY MACHAFU MUTHEE 2ND PETITIONER
TIMOTHY CHRO ODHIAMBO 3RD PETITIONER**

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT
RETURNING OFFICER NAIROBI COUNTY 2ND RESPONDENT
SAKAJA JOHNSON ARTHUR 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

AND

**UNITED DEMOCRATIC ALLIANCE PARTY INTERESTED PARTY
COMMISSION FOR UNIVERSITY EDUCATION INTERESTED PARTY**

RULING

1. This matter is in relation to the 1st, 2nd & 3rd respondent's preliminary objection dated 7th July 2022 and 6th July 2022 respectively in opposition to the petitioners' case.
2. The 1st and 2nd respondents' preliminary objection is based on the grounds that:



- i. The jurisdiction of the Honourable Court has been wrongly invoked in relation to matters for which the Honourable Court cannot sit as a first-instance forum.
 - ii. The Petition and Application offend the doctrine of exhaustion as regards the channels of recourse available pursuant to Article 88(4)(e) of the *Constitution* of Kenya, section 74 of the *Elections Act*, section 4(e) of the *Independent Electoral and Boundaries Commission* and Regulation 13 of the *Rules of Procedure on Settlement of Disputes*.
 - iii. The Petition and Application are incurably defective for failure to the extent that the Petitioner ought to first have sought and obtained exemption in terms of section 9(4) of the *Fair Administrative Action Act*, 2015.
3. The 3rd respondent's preliminary objection is based on the following grounds:
- i. The issues raised for consideration and determination in the petition herein are subjudice and amount to multiplicity of suits in that the same issues are subject for determination in another Petition being Petition E 321 of 2022.
 - ii. That this Honorable Court in Petition E321 of 2022 has already pronounced itself on similar prayers for conservatory orders such as the ones contained in the Notice of Motion herein dated 5th July 2022.
 - iii. That the prayers sought in the application dated 5th July 2022 for conservatory orders have been overtaken by events in that gazettelement of the 1st Interested party as a candidate has already been done and printing of ballot papers commenced.
 - iv. That the dispute touching on the clearance and eligibility of the 1st Interested party to run as gubernatorial candidate for Nairobi City County in the forthcoming elections has already been heard vide Petition E321 of 2022 by this Honourable court and a judgement of the same is scheduled for 8th July 2022.
 - v. That the Petition herein is disguised as a fresh litigation when in reality it is an attempt to litigate the same dispute in instalments through multiplicity of suits albeit by the different busybodies, proxies, mercenaries and guns for hire all of whom are doing so at the behest of the 1st Interested Party's political competitors.
 - vi. That the Petition herein though instituted by a different party is disguised amendment, renovation, expansion, a refurbishment and a mutant of Petition E321 of 2022 which has now been heard and finalized and only pending judgement.
 - vii. That the petition herein is otherwise ill-advised, misconceived, an abuse of the court process and brought in bad faith.

The Submissions

The 1st & 2nd Respondents Submission

4. In support of their preliminary objection the firm of G&A advocates on their behalf filed written submissions and a list of authorities dated 8th July 2022.
5. On the issue of whether the petition is properly before this Court as a first-instance forum, Counsel submits that the applicable legislative framework for pre-election dispute resolution is primarily set out in the [Constitution](#), the [Election Act](#), the [Independent Electoral and Boundaries Commission Act](#) and



the *Political Parties Act*. Accordingly, Article 88(4)e of the *Constitution* mandates the 1st respondent to settle all electoral disputes excluding election petitions and disputes subsequent to the declaration of election results. As such Counsel submits that the petitioner has failed to comply with the prescribed forum for resolution of nomination disputes and consequently that the proceedings before this Court are premature for lack of exhaustion of the prescribed mechanism.

6. In support of this submission counsel relied on the case of *R Vs. Independent Electoral and Boundaries Commission (I.E.B.C) Ex Parte National Super Alliance (NASA) Kenya and 6 others* [2017] eKLR where it was held that where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Additional reliance was placed on the cases of *Samuel Kamau Macharia & another Vs. Kenya Commercial Bank Limited & 2 others* [2012] eKLR, *David Ramogi & 4 Others Vs. The Cabinet Secretary, Ministry of Energy & Petroleum & 7 others* [2017] eKLR and *In the Matter of the Mui Coal Basin Local Community*, [2015] eKLR.
7. Similarly Counsel submits that the Supreme Court while addressing this is in the case of *Sammy Ndung'u Waity Vs. Independent Electoral & Boundaries Commission & 3 others* [2019] eKLR held that when it comes to pre-election disputes, including disputes relating to, or arising from nominations, the Constitution is clear. These are to be resolved by the IEBC (through its Committee on Dispute Resolution as provided for by Section 12 of the enabling Act) or where applicable, by the Political Parties Disputes Tribunal. He notes that this position has been affirmed by the Supreme Court in several authorities being *Mohamed Abdi Mahamud Vs. Ahmed Abdullahi Mohamad & 3 others; Ahmed Ali Muktar (interested party)* [2019] eKLR and *Silverse Lisamula Anami Vs. Independent Electoral & Boundaries Commission & 2 others* [2019] eKLR.
8. To this end counsel submits that the petition is not properly before this Court as the petitioner has neither sought nor obtained leave for exemption from the requirements of Section 9(4) of the *Fair Administrative Action Act*. In support of this point reliance was place on the cases of *James Mweri Kabunyo & 6 others Vs. Commissioner for Co-operative Development & 2 others* [2019] eKLR, *Republic Vs. Kenya Revenue Authority, Commissioner Ex parte Keycorp Real advisory Limited* (2019) eKLR and *Republic Vs. Council for Legal Education Exparte Desmond Tutu Owuoth* [2019] eKLR.
9. On what are the appropriate orders in the circumstances of this case, counsel submits that the appropriate remedy at this point being lacking in jurisdiction is for this Court to down its tools as guided by the case of *Owners of the Motor Vessel "Lillian S" Vs. Caltex Oil (Kenya) Ltd* (1989) KLR 1. Similar reliance was placed on the case of *United Millers Limited Vs. Kenya Bureau of Standards & 5 others* [2021] eKLR.

The 3rd Respondent's Submissions

10. The firm of Mutuma Gichuru & Associate Advocates on behalf of the 3rd respondent filed written submissions dated 11th July 2022.
11. Counsel submitting on whether this suit offends the question of sub-judice states that there exist four matters before this Court, all of which seek to address the same subject matter and issues. These matters are in the original suit Petition E321 of 2022 which suit has mutated and evolved into: Petitions E332, E335 & E336 of 2021.
12. Relying on the opine in the Supreme Court case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020]eKLR counsel submits that the purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject



matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. Additional Reliance was placed on the cases of Kampala High Court Civil Suit No. 450 Of 1993 - *Nyanza Garage vs. Attorney General, Thika Min Hydro Co. Ltd v Josphat Karu Ndwiga* (2013) eKLR, *David Ndiu & others versus Attorney General & Others* 2021 eKLR and *Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others* [2007] eKLR.

13. Counsel submits that in view of this, the doctrine of functus officio is applicable. This is because the functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality as held by the Supreme Court in the case of *Raila Odinga & others vs. IEBC & others* [2013] eKLR. Further reliance was placed on the case of *Mombasa Bricks & Tiles Ltd & 5 Others vs. Arvind Shah & 7 others* [2018] eKLR.
14. As such counsel argues that it is the doctrine of finality that enables the Court to bring litigation to a close. In this case to bring the litigation on the issues raised herein by the petitioners to a finality upon the pronouncement of the judgment by this Court in Petition E321 of 2022. Consequently, Counsel submits that the suits are sub judice and an abuse of the court process. As such should be struck out in accordance to Section 6 of the *Civil Procedure Act*, in the interest of justice.
15. Moving on to the issue of whether the suits intend to re-litigate Petition E321 of 2022, Counsel submits that the petitioners in raising similar issues over the same subject matter intend to re-litigate the issues upon yet been fully litigated in Petition E321 of 2022. As such Counsel asserts that this is an abuse of the court process due to the implication of the endless litigation on new cause of actions yet seeking similar remedies over the same subject matter and same issues.
16. Lastly on the issue of whether the notice of motion applications by the petitioners' have been overtaken by events, counsel submits that the applications are late calls as pertains to the issue of nomination of the 3rd respondent as a gubernatorial candidate yet the nomination process has long since been finalized and all matters relating to the nominations heard and ballot papers printed. It is argued that it is trite that 'Equity aids the vigilant and not the indolent' and hence the petitioners in full understanding of the maxim chose to rush to this Court at the last minute. In view of this the suits lacks merit and bad in law.

The 1st Petitioner's Submissions

17. The firm of Kiragu Waithuta & Company Advocates on behalf of the 1st petitioner in opposition to the preliminary objections filed written submissions dated 11th July 2022.
18. Counsel on the 1st and 2nd respondent's preliminary objection submits that in view of Article 88(4) of the *Constitution*, Section 74 of the *Elections Act* and Section 4 of the *Independent Electoral and Boundaries Commission Act* that the 1st and 2nd respondents by relying on the provisions of the law are of the view that the original jurisdiction in electoral disputes prior to elections is vested in the 1st respondent. According to counsel the provisions of the law requiring electoral disputes to be first submitted to the 1st respondent cannot be read in isolation but must be read together with other Articles of the Constitution. The facts of each case should also be considered.
19. Counsel in this case submits that the question of the 3rd respondent's degree qualification can only be answered after considering the timelines set by the 1st respondent for filing of disputes. It is noted that by the time the 3rd respondent's degree certificate was being revoked on 29th June 2022 by the Council of University Education the 1st respondent's timelines for filing disputes had lapsed and so the



petitioner could not file a dispute with the 1st respondent. In light of this the 1st respondent had no jurisdiction to handle disputes filed after 9th June 2022.

20. Counsel submits that this Court under Article 165(3) of the Constitution as an election court has unlimited original jurisdiction in criminal and civil cases as was noted in the Court of Appeal case of Dr. Thuo Mathenge & another v Nderitu Gachagua & 2 others (2013) eKLR. Further reliance was placed on the case of Mohammed Abdi Mahamud v Ahmed Abdullahi Mohammed & 3 others; Ahmed Ali Muktar (interested party) 2019 eKLR. In view of this he submits that the jurisdiction of this Court has been properly invoked.
21. In response to the 3rd respondent's preliminary objection, counsel while relying on the Supreme Court case of IEBC V Jane Cheperenger & 2 others (2015) eKLR submits that a preliminary objection is based on a pure point of law. Similar reliance was placed on the case of Njowabu Kenya Limited v Jinit Mobanlal (2020) eKLR. As such Counsel submits that the 3rd respondent's preliminary objection only raises averments that should be in an affidavit and supported by evidence. Essentially he notes that the only issue is raised is the doctrine of sub judice.
22. On the issue of sub judice counsel submits that the fact that the pleadings and judgement in Petition E321 of 2022 have not been filed is an indicator that this Court has to look at facts to make a determination and hence not a point of law.

The 2nd Petitioner's Submissions

23. The 2nd petitioner through the firm of Guandarau Thuita & Company Advocates in opposition to the 3rd respondent's preliminary objection filed written submissions and a list of authorities dated 26th July 2022.
24. Counsel on the issue whether the preliminary objection is proper, submits that from the contents of the preliminary objection and the submissions, the 3rd respondent is going deep into factual matters. In essence the 3rd respondent is asking the Court to dig for information outside this suit and find that the case is sub-judice/res judicata. As such he observes that it is settled that a preliminary objection must not be blurred with factual details liable to be contested and to be proved through the processes of evidence. At that juncture the preliminary objection ceases to be proper. In support reliance was placed on the cases of Mukisa Biscuit Manufacturing Co. Ltd – vs- West End Distributors Ltd (1969) E.A. 696, Kimayo Arap Tony-vs- Fredrick Kemei & 4 others [2006 eKLR, Kennedy John Achoki v Secretary General Jubilee Party & 7 others [2017] eKLR, Kimaiyo Arap Tiony Vs. Fredrick Kemei & 4 Others [2006]eKLR and Oraro Vs. Mbaja (2005) eKLR.
25. On the second issue, whether the petitions are sub-judice/ *res judicata* Counsel submits that the matters in the two suits are not identical. The Cause of Action in the present matter arises out of the 1st respondent's rejection of the 2nd interested party's decision dated 29th June 2022 revoking the Certificate of Recognition initially issued to the 3rd respondent. On the other hand, the cause of action in Petition E321 of 2022 was not founded on the 2nd interested party's decision of 29th June 2022. In support of this element reliance was placed on the case of Lillian Njeri Muranja – vs- Virginia Nyambura Ndiba & Another 2014 eKLR which discussed the test for res judicata. Similar reliance was placed on the case of Edward Akongo Oyugi & 2 others v Attorney General [2016] eKLR.

The 4th Respondent's and 2nd Interested Party's Submissions

26. State Counsel Mr. Thande Kuria on their behalf filed written submissions dated 26th July 2022.



27. He submits that the only issue for discussion is whether this Court has jurisdiction to entertain this matter. In view of this he states that parties must exhaust all available remedies before approaching the Court as held in the case of Republic v National Environment Management Authority (2011) eKLR. Additional reliance was placed on the cases of Republic v Zacharia Kabuthu & another (sued as Trustees and on behalf of and as officials of the Kenya Evangelical Lutheran Church) v Jobaness Kutuk Ole Meliyio & 2 others (2020) eKLR
28. From the foregoing Counsel notes that the key issue for determination is whether the 1st respondent's Dispute Resolution Committee, properly cleared the 3rd respondent as a candidate based on his foreign awarded degree certificate whose recognition was been revoked by the 2nd interested party. This is owing to the 2nd interested party's decision contained in its letter dated 29th June 2022.
29. In view of the foregoing he submits that it is only the 2nd interested party who has the statutory mandate under Section 4 of the Universities Act to recognize foreign earned degrees and so Article 88(4)(d) of the Constitution and Section 74 of the Election Act are not applicable to the instant suit since matter revolves around revocation of the 3rd respondent's academic qualification. In addition, he submits on the point of exhaustion of available remedies, that there were none to be explored in the context of this case.
30. In essence it's his submission that the circumstances of this case call for an exemption of the same in view of this Court's original and unlimited jurisdiction under Article 165(3)(a) and (b) of the Constitution. On this point reliance was placed on the case of R v Independent Electoral and Boundaries Commission (I.E.B.C) & others ex parte the National Supper Alliance Kenya (NASA) (2017)eKLR and Night Rose Cosmetics(1972) Ltd v Nairobi County Government & 2 others(2018)eKLR. To this end Counsel submits that the preliminary objections have no merit and as such should be dismissed.

Analysis and Determination

31. I have considered the preliminary objections and the submissions of the parties and find that the main issue for determination is: Whether the preliminary objections as raised are merited
32. To begin with for a preliminary objection to be considered competent, it must meet the threshold set out in the case of Mukisa Biscuit Manufacturing Co. Ltd (*Supra*). Similarly, the Court in the case of Dismas Wambola v Cabinet Secretary, Treasury & 5 others (2017) eKLR noted as follows:

“A preliminary objection must first, raise a point of law based on ascertained facts and not on evidence. Secondly, if the objection is sustained, that should dispose of the matter. A preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but must be on pure points of law.

It may be noted that preliminary objections are narrow in scope and cannot raise substantive issues raised in the pleadings that may have to be determined by the court after perusal of evidence.”
33. Having perused the issues raised, I find that the main contention that is a pure point of law as raised by the 1st, 2nd and 3rd respondent is the jurisdiction of this Court to entertain this petition. As such the preliminary objections in that regard meet the set threshold. These objections revolve around the qualification of the 3rd respondent to vie for the Nairobi gubernatorial owing to his degree qualification that was revoked by the 2nd interested parties vide its letter dated 29th June 2022.



34. That said the next question to be answered is whether the preliminary objection is merited. It has been observed by our Courts that jurisdiction is everything and without it a Court cannot exercise its judicial authority to render a determination in that matter. The Supreme Court in the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR affirmed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

35. This Court’s jurisdiction is found under Article 165(3) (d) of the *Constitution* which states:

- (3) Subject to clause (5), the High Court shall have--
- (a) unlimited original jurisdiction in criminal and civil matters;
 - (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
 - (c) jurisdiction to hear an appeal from a decision of a tribunal appointed under this *Constitution* to consider the removal of a person from office, other than a tribunal appointed under Article 144;
 - (d) jurisdiction to hear any question respecting the interpretation of this *Constitution* including the determination of--
 - (i) the question whether any law is inconsistent with or in contravention of this *Constitution*;
 - (ii) the question whether anything said to be done under the authority of this *Constitution* or of any law is inconsistent with, or in contravention of, this *Constitution*;
 - (iii) any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
 - (iv) a question relating to conflict of laws under Article 191; and
 - (e) any other jurisdiction, original or appellate, conferred on it by legislation.

36. The question to be answered consequently is the scope of this Court’s jurisdiction in the instant suit in respect to the preliminary objections raised. My understanding of the matter before this Court is that the issues raised in as much as prima facie they appear electoral in nature, deeper analysis reveals otherwise. I say so because the key issue is the 2nd interested party’s revocation of the 3rd respondent’s foreign degree. This undoubtedly is outside the 1st respondent’s mandate in the electoral jurisdiction and essentially disqualified as an electoral dispute.

37. As guided by the Supreme Court case of *Samuel Kamau Macharia & another (supra)* this Court can only exercise jurisdiction conferred to it by statute. To answer this question this Court must examine the *University Act*.

38. The *Universities Act* under Section 4 establishes the 2nd interested parties and sets out its functions under Section 5 of the *Act*. Additionally, The *Universities Act* No. 42 of 2012, The *Universities*



(Amendment), Regulations 2019 which provides for recognition of awards provides as under Part XI: Recognition and Equation of a Qualification Awarded by a Foreign University/Institution:

78. Scope of the Service

- (1) Holders of degrees, diplomas and certificates conferred or awarded by foreign universities and institutions may seek recognition or equation of qualifications from the Commission.
- (2) The Commission may recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the Universities Standards and Guidelines.
- (3) The recognition or equation of qualifications issued under this Regulation shall not be deemed to be an award or a replacement of a qualification.

39. Essentially it is appreciated that the mandate and jurisdiction to recognize such awards is bestowed on the 2nd interested party. The Regulations disclose the dispute resolution mechanism as follows:

85. Reviews/Appeals

- (1) Any person or institution who or which is aggrieved by an act or decision of the Commission taken in accordance with any of the provisions of these Regulations, who desires to question that act or decision, or any part of it, may, within thirty days of the date of such act or decision:
 - (a) seek review of the decision in writing to the Commission which shall review and decide on the matter in question and respond within a period of three months; and
 - (b) appeal to the Cabinet Secretary thereafter, if not satisfied with the decision of the Commission following the results of the review. Following the appeal, the Cabinet Secretary may give such orders or instructions as may be deemed necessary within a period of three months.
- (2) Notwithstanding the provisions of Regulation 85(1)(b) the decision of the Cabinet Secretary shall be final unless otherwise provided by the Act.

40. My understanding of this provision is that a party should seek redress as prescribed in the Universities Act Regulations and exhaust this mechanism before approaching this Court. I find the case of William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (interested parties) [2020] eKLR sufficient to expand on this point:

“ 52. The question of exhaustion of administrative remedies arises when a litigant, aggrieved by an agency’s action, seeks redress from a Court of law on an action without pursuing available remedies before the agency itself. The exhaustion doctrine serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is, first of all, diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts...”



41. The Court went on to outline the exceptions to the rule as follows:
- “ 60. As observed above, the first principle is that the High Court may, in exceptional circumstances consider, and determine that the exhaustion requirement would not serve the values enshrined in the Constitution or law and allow the suit to proceed before it. It is also essential for the Court to consider the suitability of the appeal mechanism available in the context of the particular case and determine whether it is suitable to determine the issues raised.
61. The second principle is that the jurisdiction of the Courts to consider valid grievances from parties who lack adequate audience before a forum created by a statute, or who may not have the quality of audience before the forum which is proportionate to the interests the party wishes to advance in a suit must not be ousted. The rationale behind this precept is that statutory provisions ousting Court’s jurisdiction must be construed restrictively. This was extensively elaborated by Mativo J in *Night Rose Cosmetics (1972) Ltd v Nairobi County Government & 2 others* [2018] eKLR.
62. In the instant case, the Petitioners allege violation of their fundamental rights. Where a suit primarily seeks to enforce fundamental rights and freedoms and it is demonstrated that the claimed constitutional violations are not mere “bootstraps” or merely framed in Bill of Rights language as a pretext to gain entry to the Court, it is not barred by the doctrine of exhaustion. This is especially so because the enforcement of fundamental rights or freedoms is a question which can only be determined by the High Court.”
42. From the onset I wish to state that this issue of the 3rd respondent’s degree has been the subject of matters before the IEBC (DRC), Judicial Review division and the Constitutional & Human Rights division. Pet No. E321/2022 of this Division is one of them and it was finalized. Together with this petition we have Pet No. E335/2022 & E336/2022 and Petition E343/2022 all pending. The sub-judice rule does not apply since E321/2022 dealt with the same issue but based on a different document. There must be a determination on whether the degree is genuine or fake.
43. A decision has been made by the 2nd interested party, upon the filing of an Appeal. That decision is not final as per Regulation 85 of the Universities Act. The decision was only made on 22nd July 2022 and the 3rd respondent is not happy with it and he has a right of appeal. As already stated in Petition No. E343/2022 the 3rd respondent should be given an opportunity to exhaust that process of appeal, to the Cabinet Secretary. Petition No. E343/2022 is dealing with more or less the same issue, as this petition in respect of the 3rd respondent’s degree.
44. The petitioners would want to have the 3rd respondent’s name removed from the ballot documents as per the petition. I have noted that the 3rd respondent’s name was included in the list of nominated candidates for governorship following a Court order in Pet No. 321/2022 though not based on the impugned letter of 29th June 2022. That decision has not been overturned. It is only fair that he be given an opportunity to exhaust the due process of Appeal under the [Universities Act](#).
45. This is done bearing in mind the limitations of time. The general elections are just 8 days away and the ballot papers have already been printed. It would cost the tax payers millions of shillings to print fresh ballot papers. The time is not even there. See Court of Appeal Civil Application No. E253 of 2022 [IEBC & another vs. Reuben Kigame Lichete & another](#).



- (ii) The petitioners still have opportunities to challenge the 3rd respondent's election after the general elections should he be successful. The key thing is for the Court to do and be seen to do justice.

46. I therefore order for the stay of these proceedings pending the hearing and determination of the 3rd respondent's Appeal to the Cabinet secretary. The appeal should be filed within 10 days. Mention on 6th October 2022. Parties are at liberty to notify the court of the decision of its released earlier than the mention date.

Orders accordingly.

DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 1ST DAY OF AUGUST 2022 IN OPEN COURT AT MILIMANI NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT

