



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

*(Coram: A.C. Mrima, J.)*

**CONSTITUTIONAL PETITION NO. 511 OF 2016**

1. KIRWA ARAP BITOK
2. BENJAMIN KIKOECH KIPTANUI
3. HELLEN SAINA
4. DYNALINE JEBIWOT KIBET
5. KIPCHUMBA KIPTOO.....PETITIONERS

-VERSUS-

THE COMMISSION.....1<sup>ST</sup> RESPONDENT

THE CABINET SECRETARY TO THE

MINISTRY OF EDUCATION, SCIENCE.....2<sup>ND</sup> RESPONDENT

-AND-

KISII UNIVERSITY.....PROPOSED 3<sup>RD</sup> RESPONDENT

**RULING NO. 1**

1. Before Court for consideration is an application by the Petitioners by way of a Notice of Motion dated 1<sup>st</sup> March, 2017.
2. The application seeks the following orders: -
  1. *THAT this Honorable Court be pleased to allow the Petitioner herein to amend his pleadings dated 5th December, 2016 by adding Kisii University College as the 3rd Respondent.*
  2. *THAT further to amending the Petition dated 5th December, 2016 this Honorable Court be pleased to give a priority hearing date for the suit herein.*
  3. *THAT the costs of this Application be provided for.*
3. The application is premised on the seven grounds appearing on its body and is supported by the Affidavit sworn by the 1<sup>st</sup> Petitioner herein, Kirwa arap Bitok on 1<sup>st</sup> March, 2017.
4. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as well as by the proposed 3<sup>rd</sup> Respondent.
5. On directions of this Court, parties filed written submissions to the application.

6. Having carefully read and understood the Petition, the responses thereto, the application, rival arguments, the respective submissions and the decisions referred to by the parties, I am of the considered position that the Notice of Motion dated 1<sup>st</sup> March, 2017 is merited.

7. The said decision is arrived at on the basis of the following *inter alia* reasons: -

- (i) The 1<sup>st</sup> Respondent is the regulator of the proposed 3<sup>rd</sup> Respondent;
- (ii) The 1<sup>st</sup> Respondent made decisions leading to the closure of 10 campuses of the proposed 3<sup>rd</sup> Respondent;
- (iii) The proposed 3<sup>rd</sup> Respondent accepted and acted on the decisions by the 1<sup>st</sup> Respondent;
- (iv) The Petitioners were among many other students then in the 10 campuses of the proposed 3<sup>rd</sup> Respondent who allege to have been variously affected by the 1<sup>st</sup> Respondent's decisions to close the said campuses down and which decisions were effected by the proposed 3<sup>rd</sup> Respondent;
- (v) The Petitioners allege several violations of their rights and fundamental freedoms arising from the joint actions of the 1<sup>st</sup> Respondent and the proposed 3<sup>rd</sup> Respondent;
- (vi) Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* define a '**Respondent**' to mean a person who is alleged to have denied, violated or infringed, or threatened to deny, violate or infringe a right or fundamental freedom;
- (vii) The joinder of the proposed 3<sup>rd</sup> Respondent is, hence, necessary for the proper determination of the matters in dispute;
- (viii) The proposed 3<sup>rd</sup> Respondent is, therefore, a necessary party in these proceedings and will aid the Court in the proceedings;
- (ix) There is no demonstration of bad faith on the part of the Petitioners in seeking the joinder of the proposed 3<sup>rd</sup> Respondent;
- (x) The Court has the jurisdiction to allow the application;
- (xi) None of the parties in the Petition shall in any way be prejudiced by the joinder of the proposed 3<sup>rd</sup> Respondent;
- (xii) Case law has established various principles for consideration in joinder applications. The principles are largely in favour of the joinder in this matter;

8. As a result of the foregoing, the following orders do hereby issue: -

- (a) Kisii University is hereby enjoined in this Petition as the 3<sup>rd</sup> Respondent;**
- (b) The Petitioners shall within 14 days' file and serve an Amended Petition;**
- (c) The Respondents shall be at liberty to file and serve their respective responses to the Amended Petition within 14 days of service;**
- (d) The Petitioners shall then file and serve any rejoinder responses, if need be, within 10 days of service;**
- (e) Directions on a date to be agreed upon by the parties and the Court.**

9. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JULY 2021**

**A. C. MRIMA**

**JUDGE**

**Ruling No. 1 virtually delivered in the presence of:**

**Mr. Obae**, Counsel for the Petitioners.

**Miss. Kemboi**, Counsel for the proposed 3<sup>rd</sup> Respondent.

**Elizabeth Wambui** – Court Assistant