



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**PETITION NO. 7 OF 2020**

**PAUL OKUKU MIREGI.....1<sup>ST</sup> PETITIONER**

**PAUL ADIKA .....2<sup>ND</sup> PETITIONER**

**VERSUS**

**THE SPEAKER,**

**HOMA BAY COUNTY ASSEMBLY.....1<sup>ST</sup> RESPONDENT**

**THE CERK,**

**HOMA BAY COUNTY ASSEMBLY.....2<sup>ND</sup> RESPONDENT**

**THE HOMA BAY COUNTY ASSEMBLY.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Paul Okuku Miregi and Paul Adika, the petitioners herein petitioned the court on 14<sup>th</sup> July, 2020 for the grant of the following orders:
  - a) The honorable court do exercise its powers of enforcement of constitutional rights of the petitioner by ordering that fresh advertisement in accordance to Standing Order No.5 Homa Bay County Assembly be issued through and the right procedure be followed in appointing a qualified person to the position of Deputy Speaker and further order that the 1<sup>st</sup> respondent oversees the election process.
  - b) The honorable court be pleased to make order of declaration to the effect:
    - i. That fundamental rights to property of the petitioner as has always been enshrined in the Constitution of Kenya have been violated by the respondents.
    - ii. That the defendant is liable to compensate the petitioner for the aforementioned violation of their constitutional rights.
  - c) The honorable court be pleased to condemn the respondents to pay the costs of this petition to the petitioners.
  - d) The honorable court do make such other or further orders as the court shall deem just.
2. The petition was premised on the following grounds:
  - a) That the advertisement for the position of the position of Deputy Speaker did not comply with law.
  - b) That failure to comply with the was unfair to the petitioners.
3. The petition was opposed on ground that since the respondents advertised the elections afresh, the petition is no longer relevant.
4. I have perused the supporting affidavit of the parties and the following facts emerge:

a) That the petition was prompted by genuine complaints against the respondents.

b) That the petitioners moved to the court on 14<sup>th</sup> July, 2020 and obtained temporary orders.

5. It is evident from the record that the elections went on as had been scheduled on the same day. What is not clear was whether the respondents were served with the stay order.

6. In the submissions filed on behalf of the respondents it was contended that the elections were advertised afresh. This was meant to mislead the court for the said elections were conducted on the same day of the order. This therefore means that the respondents were admitting that the advertisement for the election for the position of deputy speaker, Homa Bay County Assembly had not complied with the laid procedure.

7. The copy of Hansard [POM-3] of 12<sup>th</sup> August, 2020 in the communication by the Speaker of the County Assembly states in part:

**The notification by the Clerk of the vacancy and invitation for [sic]interested persons to submit their nomination papers for election to the office of the Deputy Speaker did not comply with the provisions of Standing Order NO.5 and 14 (5) given that it was not circulated in at least two daily newspapers of national circulation.**

8. I therefore find that the petitioners have proved that they merit for the orders sought. For avoidance of doubts the elections on on 14<sup>th</sup> July, 2020 for the office of the Deputy Speaker are null and void. The respondents to bear the costs of this petition.

**DELIVERED AND SIGNED AT HOMA BAY THIS 16TH DAY OF DECEMBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**