



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**HCCHRPET/E291/2020 LEINA KONCHELLAH AND MOHSEN ABDUL MUNASAR VS. HON. JUSTICE DAVID KENANI MARAGA AND (OFFICE OF ATTORNEY GENERAL) AND 2 OTHERS**

**HCCHRPET/E300/2020 THE NATIONAL ASSEMBLY AND THE SENATE VS. THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND THE HONOURABLE ATTORNEY GENERAL**

**HCCHRPET/E302/2020 THIRDWAY ALLIANCE KENYA VS OFFICE OF ATTORNEY GENERAL AND SPEAKER OF THE NATIONAL ASSEMBLY AND ANOTHER**

**HCCHRPET/E305/2020 OFFICE OF ATTORNEY GENERAL VS. SPEAKER OF THE NATIONAL ASSEMBLY AND SPEAKER OF THE SENATE**

**HCCHRPET/E 314/2020 PROF. TOM ODIENDA VS. HON. ATTORNEY GENERAL AND HON. JUSTICE DAVID KENANI MARAGA AND 2 OTHERS**

**HCCHRPET/E317/2020 EDWIN KIMATU SALUNY VS. (OFFICE OF ATTORNEY GENERAL) AND SPEAKER OF THE NATIONAL ASSEMBLY AND 2 OTHERS**

**HCCHRPET/E337/2020 CENTRE FOR RIGHTS EDUCATION & AWARENESS VS.HON. AG & OTHERS**

**PET. 228/2020 NTHAATU NTOOGO VS. THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND ANOTHER**

**PET. 229/2020 CLAIRE AMDANY AND ANOTHER VS. THE CHIEF JUSTICE AND PRESIDENT OF THE SUPREME COURT OF KENYA AND ANOTHER**

**JR E1108/2020 ADRIAN KAMOTHO NJENGA VS. THE HON. CHIEF JUSTICE & 4 OTHERS**

**RULING**

1. The above listed matters were coming up today for mention for directions and this bench noted that there is a Notice of Motion application dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 and a Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 filed in Petition No. E291/2020, that raise the question of the competence of this Bench to hear the two petitions. The issue of the competence of this Bench is a matter that is likely to affect all the listed matters today and for this reason, we sought the views of the Parties on the way forward.

2. Three options were proposed by the parties during the mention. The first proposed by the Petitioner in Petition No. E300/2020 is that its application should be referred back to the Chief Justice without argument for direction that a Single Judge should hear it since it raises the very issue of the constitution of this Bench. The second proposal was that the matter be referred back to the Chief Justice for constitution of a new bench. The third option that was proposed was that the application by the Petitioner in Petition No. E300/2020 and the Notice of Preliminary Objection by the Petitioner in Petition No. E291/2020 should be served on all the other parties and argued *inter partes*.

3. An additional issue was raised during the mention as regards joinder of persons who have made applications to be joined in various capacities, in the various suits herein and there were differing views thereon. First was that such persons should not be joined until the question of the competence of this Bench is resolved. Second, was that those parties should be joined to participate in the proceedings about the competence of this Bench. There was however no objection from the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners in Petition No. E337/2020 to the joinder of the National Gender and Equality Commission as a Co-Petitioner in that Petition.

4. In giving our directions on the way forward, we are guided by the provisions of **Article 159** of the **Constitution** as to the exercise of judicial authority. In particular, the Constitution obliges us to ensure that justice shall be done to all; justice shall not be delayed; substantive justice shall be administered without undue regard to procedural technicalities and this court is also enjoined to promote the purpose and principles of the Constitution. Specifically, with respect to the interest of the parties before us, this court is enjoined to ensure that there is fair administrative action and a fair hearing of all the parties in accordance with **Article 47** and **Article 50** of the **Constitution**.

5. Since the parties are not agreeable on the way forward, we are of the view that we need to hear all the parties before we make a decision on our competence or otherwise.

6. In the premise, we hereby direct and order as follows:

a. The Notice of Motion dated 20<sup>th</sup> November, 2020 filed in Petition E337/2020 by the National Gender and Equality Commission is hereby allowed, and the said Commission is hereby joined as the 3<sup>rd</sup> Petitioner in Petition No. E337/2020. The Petitioners in Petition No. E337/2020 are granted leave to file and serve their Amended Petition within seven (7) days.

b. Petitions No. E291/2020, E300/2020, E302/2020, E305/2020, E314/2020, E317/2020, E337/2020, Nairobi Petition No. 228/2020, Nairobi Petition No. 229/2020 and Nairobi J.R. No. 1108/2020 are hereby consolidated only for purposes of hearing and determination of the issue of this Bench's competence.

c. The lead file for purposes of recording proceedings shall be that of Petition No. E291/2020.

d. In light of the fact that the Notice of Motion application dated 16<sup>th</sup> October, 2020 and the Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 are impugning the decision of the Deputy Chief Justice to constitute this Bench, the Deputy Chief Justice is hereby joined as an Interested Party in Petition No. E300/2020 only for the purposes of the hearing of the Notice of Motion application dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 and the Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 filed in Petition No. E291/2020. Prayer 2 of the Petitioner's Notice of Motion dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 is accordingly dispensed with.

e. Bearing in mind that the subject matter herein is of great public interest, the Kenya Human Rights Commission, Federation of Women Lawyers (FIDA) and Okiya Omtatah are hereby joined as the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> Interested Parties respectively in Petition No. E291/2020 and at this stage, their participation is limited to the hearing of the Notice of Motion application dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 and the Notice of Preliminary Objection dated 19<sup>th</sup> October,

2020 filed in Petition No. E291/2020.

f. The Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 filed in Petition No. E291/2020 and the Notice of Motion application dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 shall be heard and determined together, including the question of whether this Bench can hear the said Notice of Preliminary Objection and Notice of Motion application.

g. The Petitioners in Petition No. E291/2020 and Petition No. E300/2020 shall serve all the parties in the consolidated suits with their Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 and Notice of Motion application dated 16<sup>th</sup> October, 2020 respectively, by close of business on 25<sup>th</sup> November, 2020.

h. All the other parties in the consolidated suits are at liberty to file and serve their responses to the Notice of Motion application dated 16<sup>th</sup> October, 2020 filed in Petition No. E300/2020 by close of business on 2<sup>nd</sup> December, 2020.

i. The Petitioners in Petition No. E291/2020 and Petition No. E300/2020 shall thereafter file and serve their respective written submissions on the Notice of Preliminary Objection and the Notice of Motion application by close of business on 8<sup>th</sup> December, 2020.

j. All the other parties are granted leave to file and serve reply submissions to the said Notice of Preliminary Objection and Notice of Motion application by close of business on 15<sup>th</sup> December, 2020.

k. All the pleadings and submissions shall be filed using the Judiciary's E-Filing system and in addition, the parties in Nairobi Petition No. 228/2020, Nairobi Petition No. 229/2020 and Nairobi J.R. No. 1108/2020 shall send electronic copies via email through [chrnilimani@gmail.com](mailto:chrnilimani@gmail.com).

l. All submissions shall be limited to a maximum of ten (10) pages in Font 14.

m. The consolidated suits herein shall be mentioned on 17<sup>th</sup> December, 2020 at 2.30 p.m. to confirm compliance and set a ruling date on the Notice of Preliminary Objection dated 19<sup>th</sup> October, 2020 and the Notice of Motion application dated 16<sup>th</sup> October, 2020.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2020.**

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**HON. L. A. ACHODE**

**JUDGE**

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**HON. G. V. ODUNGA**

**JUDGE**

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**HON. A. K. NDUNG'U**

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**HON. P. NYAMWEYA**

**JUDGE**

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**HON. J. A. MAKAU**

**JUDGE**

**JUDGE**