REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NO. 1 OF 2019

NATIONAL GENDER AND EQUALITY COMMISSION.....PETITIONER

VERSUS

MAJORITY LEADER, COUNTY ASSEMBLY OF NAKURU.....1ST RESPONDENT

CLERK, COUNTY ASSEMBLY OF NAKURU.....2ND RESPONDENT

HON. SPEAKER, COUNTY ASSEMBLY OF NAKURU..... 3RD RESPONDENT

HON. STANLEY KARANJA .....4TH RESPONDENT

SALARIES AND RENUMERATION COMMISSION.....5TH RESPONDENT

JUBILEE PARTY .....1ST INTERESTED PARTY

HON. CATHERINE KAMAU..... 2ND INTERESTED PARTY

JUDGMENT

1. On 17/10/2018, the Majority Leader of the County Assembly of Nakuru moved a motion before the County Assembly of Nakuru that the Assembly "adopts the Report of the Selection Committee on Harmonization of Membership of Sectoral and Select Committees" (the "Report"). That Report had been tabled at the Assembly earlier that morning. The motion was debated and the County Assembly passed a Resolution adopting the Report ("Impugned Resolution").

2. The Report itself was quite sparse of content. In its entirety, the prosaic part of the Report read as follows:

> The Committee on Liason in a bid to implement proposed committee budgets, these necessitated the harmonization of membership of sectoral and select committees. Each member was therefore required to have at most two sectoral committees.
>
> Noting that there were eleven sectoral committees, it was necessary to introduce a new sectoral committee to ensure equity in terms of membership.
>
> The Committee on Selection put into consideration these parameters in the process of harmonization.
>
> Honourable Speaker, it is important to note that Assembly committees are engines of this house. Effective committees will ensure prompt and efficiency (sic) delivery to the people of Nakuru County.
>
> Honourable Speaker, Members were placed in three clusters i.e. Cluster A, B and C where total membership adds to 78 members.
>
> Honourable Speaker, further aware that resources have been allocated to all County Assembly Committees, it was therefore prudent to ensure membership in all committees was harmonized to achieve equity.
>
> Mr. Speaker, the rest of the Report indicates how members have been distributed in both Select and Sectoral Committees.

3. As the Report promises, the rest of it contains lists of members to the various Committees. It would appear that shortly after the re-constitution of the Committees as per the Report, members proceeded to elect Chairpersons and Vice-Chairpersons to the Committees.

4. The Petitioner is persuaded that the objective, intent and effect of the Impugned Resolution as well as its implementation was to de-whip twelve (12) nominated Members of the County Assembly (MCAs) serving as Chairpersons and Vice Chairpersons in different committees in the Assembly. The Petitioner is further persuaded that the overall effect of the action by the County Assembly is to undermine the constitutional principle and spirit of gender equality. The overall effect the Petitioner complains against is that some of the re-constituted Committees do not comply with the constitutional two-thirds gender rule.

5. Additionally, the Petitioner is persuaded that a circular issued by the 4th Respondent, the Salaries and Remuneration Commission (hereinafter, "SRC") Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 ("SRC") has the similar effect of perpetuating discrimination against nominated MCAs with the further similar effect of undermining the gender equality provisions of the Constitution. In short, the circular asserts that Nominated MCAs have no defined geographical constituency and proceeds on that logic to cap heir mileage allowance. Unlike the case for the elected MCAs, the SRC Circular provides no option for additional mileage for nominated MCAs.

6. Consequently, the Petitioner brought the present Petition in which it has sought the following prayers:

> i. A declaration be issued that the resolution of the County Assembly of Nakuru on 17th October, 2018 approving a report of the Committee on Selection on Harmonization of Membership of Sectoral and Select Committees of the Assembly to the extent that it de-whipped nominated members as Chairpersons and Vice Chairpersons in different Committees of the House was unconstitutional, null and void.
>
> ii. A declaration be issued that nominated and elected members of the County Assemblies have equal status and are entitled to equal opportunities, responsibilities and privileges.
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> iii. A declaration be issued that all committees of the County Assembly shall comply with the two-thirds gender rule at all times with a chairperson and vice chairperson being of the opposite gender at all times.
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> iv. A declaration be issued that the 4th Respondent's circular Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 on remuneration and benefits for Members of County Assembly and as clarified by a letter to the Clerk, Homa Bay County Assembly, to the extent that it asserts that nominated members have no defined geographical constituency, is erroneous, unlawful, unconstitutional, null and void.
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> v. A declaration be issued that nominated Members of County Assemblies are entitled to obtain extra mileage allowance per kilometer covered in serving Special Interest Groups within the County.
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> vi. A declaration that the constituency for nominated members of County Assemblies is their special interest group they represent in the entire county.
>
> vii. Any further orders that this Honourable Court shall deem just and fit to grant in the circumstances.

7. In addition to the Petition, the Petitioner had filed a Notice of Motion asking for temporary relief in the nature of conservatory orders. With the parties' concurrence, the Court directed that the interlocutory application be compromised and that the main Petition be heard immediately. The Petition was heard by way of written submissions with the parties orally highlighting.

8. The Respondents filed a Replying Affidavit dated 22/02/2019 and a Notice of Preliminary Objection of even date. The Preliminary Objection was in the following terms:

> i. That the Court has no jurisdiction to interfere with the internal operations of the County Assembly in accordance with the County Assemblies Powers and Privileges Act.
>
> ii. That the application and the entire Petition offends the principles of separation of powers.
>
> iii. That the Application and the entire Petition are in contravention to section 10 of the County Assemblies Powers and Privileges Act No. 6 of 2017.
>
> iv. That the application and the entire Petition are bad in law.
>
> v. That jurisdiction for the application and the entire Petition lies with the Political Parties Disputes Tribunal in accordance with section 40 of the Political Parties Act.

9. Having read all the written submissions filed and the oral highlights by the Parties' respective counsels, I have delineated four issues raised by the Petition for analysis and determination:

> i. Is the Petitioner Improperly Before the Court by Virtue of Immunity Provisions of the County Assemblies Powers and Privileges Act and the Doctrine of Separation of Powers?
>
> ii. Is the Court Divested of Jurisdiction by the Doctrine of Exhaustion?

iii. Has the Petitioner Proved the Alleged Constitutional Violations to the Required Standard?

iv. What Reliefs, if any, are Available if (iii) is in the affirmative?

I. Does the Court Have Jurisdiction to Entertain the Present Petition?

10. As I understand it, the Respondents' arguments in support of the position that the Court lacks jurisdiction is two-fold:

i. First, the Respondents argue that determination of the Petition, as filed, would run afoul section 10 of the County Assemblies Powers and Privileges Act.

ii. Second, the Respondents argue that determining the Petition would violate the doctrine of separation of powers.

11. The two arguments are related: section 10 of the County Assemblies Powers and Privileges Act was enacted, in part, to safeguard the principle of separation of powers as preserved in the Constitution of Kenya, 2010.

12. Section 10 of the County Assemblies Powers and Privileges Act provides as follows:

> No proceedings or decision of a County Assembly or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any Court.

13. The Respondents argue that the impugned resolution of 17/10/2018 was a proceeding and a decision of a County Assembly which, they believe, is immunized under section 10 of the County Assemblies Powers and Privileges Act. This is because, they argue, the approval of the motion leading to the impugned resolution was a proceeding and a decision of the County Assembly of Nakuru which cannot be questioned in a question of law by dint of section 10 of the County Assemblies Powers and Privileges Act.

14. Similarly, the Respondents argue that the impugned resolution was a product of the County Assembly of Nakuru conducting its internal official business. As such, the resolution is not amenable to the Court's jurisdiction as that would be "tantamount to interfering with the internal matters of the County Assembly." The Respondents are adamant that "the election of chairperson and vice chairpersons of the various Committees of the County Assembly are internal matters of the County Assembly subject to election by members of the County Assembly in their respective Committees and the same are regulated and governed by the applicable standing orders as well as the powers and privileges enjoyed by the County Assembly."

15. The Respondents cite Article 175(a) of the Constitution of Kenya, 2010 which provides that "County Governments shall be based on democratic principles and separation of powers" to urge the Court to down its tools and not consider the Petition any further. They also cite two decisions of the High Court which, they say, support the interpretation they have assigned to the provisions of the law they are relying on.

16. In ***Samson Vati Musembi & 6 Others v Makueni County Assembly & 2 Others [2014] eKLR***, the Learned Muriithi J. considered the application of the doctrine of separation of powers in a controversy of a similar nature before him and rendered himself thus:

> As I understand it, the doctrine of separation of powers in relation to the legislature and the judiciary provides that the legislature and the judiciary should respect each other's sphere of competence with the court respecting the legislative mandate of Parliament and Parliament the adjudication role of the Courts. In the circumstances, the court may only interfere with legislative matters including the selection of members of committees through which the legislative agenda is carried out, where it is shown that the Assembly has acted, is acting or has threatened to act in contravention of the constitution which the Judiciary must defend in accordance with its delegated sovereign judicial mandate of the people of Kenya. See Article 1 (3) of the Constitution of Kenya.

17. In ***Dominic Ndonye Maithya & 3 Others v Machakos County Assembly Speaker & 2 Others [2017] eKLR***, the Learned Kemei D. reasoned as follows:

> From the aforegoing analysis and observations, it is the finding of this court that it has no jurisdiction to entertain the Petition as the Petitioner's removal and or discharge from the committees were exclusively internal matters within the Machakos County Assembly. It is also the finding of this court that the removal of the Petitioners from the 1st Respondent's committees did not amount to violation of their individual rights under the constitution because their membership to those committees was at the pleasure of their political parties through the leaders of majority and minority as well as the whip at the Machakos County Assembly.

18. In both the ***Samson Vati Musembi Case*** and the ***Dominic Ndonye Maithya Case***, the Petitioners complained about removal from various committees of the County Assemblies of Makueni and Machakos respectively. The ***Samson Vati Musembi Case*** was a ruling delivered at the interlocutory stage. The Learned Judge had trained his eyes on the question whether conservatory orders should issue or not. The ***Dominic Ndonye Maithya Case*** was a ruling on a Preliminary Objection based on the doctrine of separation of powers.

19. In neither cases did the Judge rule that County Assemblies are inoculated from judicial challenge when they make resolutions or act in ways which are counter to the Constitution. Both Judges paid obligatory obeisance to the venerated principle of Separation of Powers but both indicated that the doctrine has its outer limits. Indeed, this is my understanding of the decision by the Court of Appeal in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR*** where the Judges of Appeal pronounced themselves thus:

> It is not in doubt that the doctrine of separation of powers is a feature of our constitutional design and a pre-commitment in our constitutional edifice. However, separation of powers does not only proscribe organs of government from interfering with the

other's functions. It also entails empowering each organ of government with countervailing powers which provide checks and balances on actions taken by other organs of government. Such powers are, however, not a license to take over functions vested elsewhere. There must be judicial, legislative and executive deference to the repository of the function.

20. In enunciating this position, the Judges of Appeal approved the High Court's statement of the application of the doctrine of separation of powers to constitutional controversies before the Court. The High Court had said that:

> [Separation of powers] must mean that the courts must show deference to the independence of the Legislature as an important institution in the maintenance of our constitutional democracy as well as accord the executive sufficient latitude to implement legislative intent. Yet, as the Respondents also concede, the Courts have an interpretive role - including the last word in determining the constitutionality of all governmental actions...

21. In the ***Mumo Matemu Case***, the Court of Appeal was explicit that the doctrine of separation of powers can never mean that decisions and processes of the other two arms of government are immunized from judicial interrogation. It is the standard utilized by the Court's for such interrogation that determines whether the Courts are have sufficiently applied the doctrine of separation of powers. Hence, the Court of Appeal prescribed a standard of review which it described as "rationality standard" distinct from "reasonableness standard" to be utilized in such cases. The Court explicated the standard thus:

> We note here that the rationality test is a judicial standard fashioned specifically to accommodate the doctrine of separation of powers, and its application must generally reflect that understanding. This much has been noted by the South African Constitutional Court in **Democratic Alliance v The President of the Republic of South Africa & 3 Others, CCT 122/11 [2012] ZACC 24**, where it stated that:
>
> "[42] It is evident that a rationality standard by its very nature prescribes the lowest possible threshold for the validity of executive decisions: it has been described by this Court as the "minimum threshold requirement applicable to the exercise of all public power by members of the Executive and other functionaries." And the rationale for this test is "to achieve a proper balance between the role of the legislature on the one hand, and the role of the courts on the other."
>
> [43] "The rational basis test involves restraint on the part of the Court. It respects the respective roles of the courts and the Legislature. In the exercise of its legislative powers, the Legislature has the widest possible latitude within the limits of the Constitution. In the exercise of their power to review legislation, courts should strive to preserve to the Legislature its rightful role in a democratic society."

This applies equally to executive decisions." *(Footnotes omitted).*

22. In the present case, the Petitioner claims that the intent, purpose and effect of the impugned resolution by the County Assembly of Nakuru would be to perpetuate constitutionally impermissible discrimination. This is a precisely stated complaint which, if true, would yield the Constitution that the Respondents violated the Constitution. The only question, then, would be whether such a conclusion can be reached by applying the "rationality standard" prescribed by the Court of Appeal, and not whether the Courts have been rendered powerless to consider such a controversy. I would therefore hold that the Court has jurisdiction to consider the matter at hand.

II. Is the Court Divested of Jurisdiction by the Doctrine of Exhaustion?

23. The Respondents also argue that the Court is denied jurisdiction by operation of the doctrine of exhaustion. The argument is that the appropriate forum for the affected nominated Members of County Assembly to ventilate their grievance is the Political Parties Disputes Tribunal and not the Court. The Respondents primarily rely on section 40(1)(a) of the Political Parties Act. It reads thus:

> The Tribunal shall determine: disputes between members of a political party.

24. The Respondents argument is that the dispute is really between certain nominated Members of the County Assembly qua members of the 1st Interested Party (Jubilee Party). The members concerned took the grievance to the political party and failed to get a redress. The Respondents argue that their next port of call should have been the Political Parties Tribunal before they approached this Court. They rely on the famous ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR***.

25. There is no doubt that the doctrine of exhaustion of local remedies is one of esteemed juridical ancestry in Kenya. In ***Republic v IEBC Ex Parte NASA-Kenya & 6 Others [2017] eKLR***, the High Court – a three-judge bench -- described our jurisprudential policy on the doctrine of exhaustion which the Respondents raised in a bid to preliminarily swat away the Applicants' suit in the following words:

> ***42.*** This doctrine [of exhaustion] is now of esteemed juridical lineage in Kenya. It was perhaps most felicitously stated by the Court of Appeal in **Speaker of National Assembly v Karume [1992] KLR 21** in the following oft-repeated words:-
>
> > 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. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.
>
> ***43.*** While this case was decided before the Constitution of Kenya, 2010 was promulgated, many cases in the Post-2010 era have found the reasoning sound and provided justification and rationale for the doctrine under the 2010 Constitution. We can do no better in this regard than cite another Court of Appeal decision which provides the Constitutional rationale and basis for the doctrine. This is **Geoffrey Muthinja Kabiru & 2 Others – vs – Samuel Munga Henry & 1756 Others [2015] eKLR**, where the Court of Appeal

stated that:-

> It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews….. The exhaustion doctrine is a sound one and 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. The Ex Parte Applicants argue that this accords with Article 159 of the Constitution which commands Courts to encourage alternative means of dispute resolution.

45. We have read these cases carefully and considered the salutary decisional rule of law they announce…..

26. In the same case, the High Court bench, after reviewing out case law, identified two exceptions to the doctrine of exhaustion.

i. First, where the forum is not suitable for determination of weighty constitutional matters especially if they are previously untested. In this regard, the Court stated:

> [T]he High Court may, in exceptional circumstances, find that exhaustion requirement would not serve the values enshrined in the Constitution or law and permit the suit to proceed before it….This exception to the exhaustion requirement is particularly likely where a party pleads issues that verge on Constitutional interpretation especially in virgin areas or where an important constitutional value is at stake.

Hence, Court of Appeal in ***R vs National Environmental Management Authority [2011] eKLR*** where the Court explained that:

> The principle running through these cases is where there was an alternative remedy and especially where Parliament had provided a statutory appeal process, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the Court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it….

ii. Second, the doctrine of exhaustion does not apply where the alternative forum does not give critical litigant audience before it. As the Court explained:

> The second principle suggested by case law for limiting the applicability of the doctrine of exhaustion in appropriate cases is that a statutory provision providing an alternative forum for dispute resolution must be carefully read so as not to oust the jurisdiction of the Court to consider valid grievances from parties who may not have audience before the forum created, 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. This situation arises where, as here, the right to approach the statutory forum created (in this case the Review Board) is limited to certain parties who are aggrieved in a particular manner defined by the statutory scheme and where the particular party seeking to bring the suit does not fit into any of the categories defined by the Statute.

27. In the present case, the Petitioner is the National Gender Equality Commission (NGEC). This is a constitutional commission established pursuant to Article 59(4) and (5) of the Constitution. Its overall mandate is to promote gender equality and freedom from discrimination in accordance with the Constitution. Indeed, its overarching goal is to contribute to the reduction of gender inequalities and discrimination against all: women, men, persons with disabilities, the youth, children, minorities and marginalized communities.

28. The Petitioner has a duty under Article 249(1) of the Constitution of Kenya, 2010, to protect the sovereignty of the people, secure observance by all State organs of democratic values and principles and promote constitutionalism. It is empowered by the Constitution, among other things, to "receive and investigate complaints about alleged abuses of human rights and to take steps to secure appropriate redress where human rights have been violated. It is also charged with the responsibility of taking remedial action where an appropriate complaint is reported to it.

29. There can be no doubt that the NGEC is an appropriate Petitioner regarding the complaints presented in the present Petition. The complaints center on gender and minority-based discrimination. Were we to take the Respondents' complaint on exhaustion on board, the effect would have been to shut out the Petitioner from pursuing the complaints espoused here. This is because the Petitioner would have no audience before the Political Parties Tribunal. This in itself is a good reason to permit the Petition to move forward under the exception to the application of the doctrine of exhaustion.

30. There is a second reason for overlooking the application of the doctrine of exhaustion in the present case: the controversy has moved beyond the political party. At the moment the County Assembly approved the resolution whose provenance was the impugned discriminatory action by members of the Jubilee Party, the controversy widened in scope beyond the jurisdiction of the Political Parties Dispute Tribunal.

31. It is therefore my finding that the Petition is not bad by reason of the application of the doctrine of exhaustion.

III. Has the Petitioner Proved the Alleged Constitutional Violations to the Required Standard?

32. As presented in the preamble to this judgment, there are twin substantive issues for determination:

i. First, whether the impugned motion adopting the Report of the Selection Committee on Harmonization of Membership of Sectoral and Select Committees is unconstitutional to the extent that it de-whipped nominated members as Chairpersons and Vice Chairpersons in different Committees of the County Assembly. I shall refer to this as the "de-whipping controversy."

ii. Second, whether the SRC's circular Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 on remuneration and benefits for Members of County Assembly and as clarified by a letter to the Clerk, Homa Bay County Assembly is unconstitutional to the extent that it asserts that nominated members have no defined geographical constituency and therefore caps their mileage allowance. I shall refer to this as the "Mileage Controversy."

33. I will deal with the two issues sequentially.

III(A). The De-whipping Controversy

34. The Petitioner's argument respecting the De-whipping Controversy is straightforward. It is based on the provision of the Constitution at article 27. As the central constitutional provision in question, I will produce it here. It reads as follows:

(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

35. The Petitioner argues that men and women are entitled to equality and fair access to opportunities in all political, economic, cultural and social spheres under Article 27(3) of the Constitution. The Petitioner submits that the overall goal of Article 27(3) of the Constitution is the attainment of gender parity "which is the goal reflected in Article 232 of the Constitution that demands adequate and equal opportunities for appointment, training and advancement, at all levels of the public service of men and women."

36. The Petitioner further submits that the Respondents are bound by the principle of substantive equality under Article 27(3) and 232(1) of the Constitution as well as Article 8(e) of the Maputo Protocol to allocate to either gender equal opportunities.

37. The Petitioner submits that while Article 27(1) and (2) guarantee formal equality, Article 27(3) of the Constitution guarantees substantive equality or equality of results. The substantive equality is manifested, argues the Petitioner, in equal opportunities for men and women in all spheres and is underpinned by a recognition that formal equality is often not sufficient to ensure women enjoy the same rights as women because of biological and socially-created differences which normalize a gender-discriminatory socialization processes.

38. The Petitioner argues that Article 27(6) requires affirmative action by all State Organs (including the Respondents) to ensure that there is substantive equality and equity between the genders as part of the mandatory obligations under Article 21(1) of the Constitution to observe, respect, protect, promote and fulfill all the rights and fundamental rights in the Bill of Rights including Article 27 of the Constitution.

39. The Petitioner argues that the substantive outcome of the adoption of the impugned resolution by the County Assembly was to strip off the women nominated Members of the County Assembly of their leadership positions in Assembly Committees and that is would run counter to the Obligations of the Assembly as a State Organ under Article 27 of the Constitution. To demonstrate the substantive impact of the Resolution, the Petitioner points out the following:

a. In the Agriculture Committee, the Chairperson and Vice Chairperson both of the male gender and elected were retained after the Impugned Resolution.

b. In the Committee on Implementation, the Chairperson and the Vice Chairperson both of the male gender and elected were retained after the Impugned Resolution.

c. In County Assembly ICT Committee, both the Chairperson and the Vice Chairperson both of whom are nominated members and female were removed.

d. In the County Assembly Security Committee, the Chairperson and Vice Chairperson, female and male and elected were retained.

e. In the County Procedures, Rules and Delegated Legislation Committee, the Chairperson and Vice Chairperson both of the male gender were retained.

f. In the Early Childhood Education and Vocational Training Committee, the Chairperson and Vice Chairperson, both of the male gender and elected were retained.

g. In the Finance Committee, an elected male was retained as a Chairperson while a nominated, female Vice Chairperson was removed.

h. In the Justice and Legal Affairs Committee, an elected male was retained as a Chairperson while a nominated, female Vice Chairperson was removed.

i. In the Planning, Trade, Tourism and Cooperatives Committee, an elected male was retained as a Chairperson while a nominated, female Vice Chairperson was removed.

j. In the County Assembly – Powers and Privileges Committee, the Chairperson and Vice Chairperson, female elected and male nominated were retained.

k. All members of the Committee on Appointment chaired by the Speaker were retained.

40. The Petitioner is categorical that this outcome is, in itself, unconstitutional and betrays a failure by the County Assembly to observe, respect, protect, promote and full the fundamental rights and freedoms contained in Article 27 of the Constitution. The Petitioner further points out that none of the Committees of the County Assembly meets the two-thirds gender rule.

41. The Respondents' response to the De-whipping Controversy is two-fold. First, they argue that the Impugned Resolution was not purposed to de-whip nominated women members from their leadership positions. Rather, the motion was for the re-organization of the Committees of the Assembly in terms of membership and leadership. This, in turn, led to the vacancies in leadership positions in the Committees of the Assembly. These vacancies, in turn, led to new elections for the positions of Chairperson and Vice Chairpersons of the Committees.

42. The Respondents insist that the elections of the various Committees were held openly, democratically, and in accordance with the Assembly rules; and that all members were free to offer themselves for leadership positions. It is from this process that the present leadership positions were filled. The Respondents therefore insist that they did not violate any constitutional provisions as alleged or at all in carrying out the elections. This is because, the Respondents argue, they carried out the elections in accordance with the Standing Orders in force and with the full participation of the members of the County Assembly of Nakuru which, they point out, included the nominated female Members of the County Assembly who feel aggrieved.

43. The Respondents argue that there was no malice or ill will in the elections of the Chairs and Vice-Chairs and that, in their opinion, no evidence has been tendered to demonstrate that the Impugned Resolution was unconstitutional and that it violated the rights of the female nominated Members of the County Assembly.

44. The Respondents argue that the Petitioner has failed to tender any evidence to show that Article 177(1)(b) of the Constitution was in any way violated. They argue that it was incumbent upon the Petitioner to prove its case to a reasonable degree of probability but it failed to do so. They cite Kiambu County Tenants Welfare Association v Attorney General & Another [2017] eKLR on the requisite standard of evidential proof in constitutional cases. In that case, the Court stated:

> In my view the petitioner has failed to discharge the burden of prove to the required standard. To my mind the burden of establishing all the allegations rests on the Petitioner who is under an obligation to discharge the burden of proof. All cases are decided on the legal burden of proof being discharged (or not). **Lord Brandon** in Rhesa Shipping Co SA vs Edmunds[15] remarked:-
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> > "No Judge likes to decide cases on the burden of proof if he can legitimately avoid having to do so. There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course to take."
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> Whether one likes it or not, the legal burden of proof is consciously or unconsciously the acid test applied when coming to a decision in any particular case. This fact was succinctly put forth by **Rajah JA** in Britestone Pte Ltd vs Smith & Associates Far East Ltd[16] **:-**
>
> > "The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him"
>
> With the above observation in mind, the starting point is that whoever desires any court to give judgement as to any legal right or liability, dependant on the existence of fact which he asserts, must prove that those facts exist. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. The burden of proof as to any particular fact lies on that person who wishes the court to believe its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

The standard determines the degree of certainty with which a fact must be proved to satisfy the court of the fact. In civil cases the standard of proof is the balance of probabilities. In the case of Miller vs Minister of Pensions, **Lord Denning** said the following about the standard of proof in civil cases:-

'The …{standard of proof}…is well settled. It must carry a reasonable degree of probability…..if the evidence is such that the tribunal can say: 'We think it more probable than not' the burden is discharged, but, if the probabilities are equal, it is not.'

45. The Respondents argue that the Petitioner has failed to discharge the standard of proof required to demonstrate that the Articles of the Constitution they have cited in the Petition have been violated since each Committee held its elections and everybody was given an opportunity to view for a leadership position. They dispute the allegations that the adoption of the Impugned Report by the County Assembly discriminated in any way against nominated members of the house terming them "baseless".

46. The Petitioner rebuts that the admission by the Respondents that Female Members of the Assembly were given equal treatment is not only a violation of Article 27(6) of the Constitution but is also a violation of Kenya's obligations under Article 4 of Convention of the Elimination of all Forms of Discrimination Against Women (CEDAW). The article guarantees that adoption of temporary special measures (affirmative action) aimed at accelerating de facto equality between men and women is not considered discrimination as long as those measures are discontinued when the objectives of equality and opportunity and treatment have been achieved. The Petitioner relies on ***R v Independent Electoral and Boundaries Commission Ex Parte Councillor Eliot Lidubwi Kihusa [2012] eKLR*** for the proposition that the inadequacy of uniform treatment must be interpreted in this context to mean that the Respondents failed to play their constitutional role to ensure that there was substantive equality between the genders.

49. It is common between the parties that the Impugned Resolution led to the re-constitution of the Committees and the replacement of all nominated female Members of the County Assembly as Chairperson or Vice-Chairpersons of the Committees. As I understand it the Respondents insist that this was a by-product of the interplay between democracy and the Rules and Regulations and Standing Orders of the County Assembly. As such, I understand the Respondents to be saying that they cannot be found to have violated the Constitution. On the other hand, the Petitioner insists that the Respondents must be responsible for the outcome of the process that led to the removal of all nominated female Members of the County Assembly because that outcome is substantively violative of the Constitution.

48. I have anxiously considered the facts before me as well as the rival submissions by the parties. As aforesaid, the outcome of the Impugned Resolution and its implementation is not disputed:

i. Immediately preceding the Impugned Resolution and its implementation, there were twenty leadership positions in the ten County Committees (excluding the Committee on Appointments). Out of the twenty leadership positions, five (5) or twenty-five percent (25%) were held by female nominated Members of the County Assembly. Overall, the number of women in leadership positions at the County Assembly Committees was seven (7) or thirty-five percent (35%).

ii. After the Impugned Resolution and its implementation, none of the leadership positions in the Nakuru County Assembly Committees were held by a female nominated Member of the County Assembly. Hence, the number of female nominated MCAs in leadership positions at the County Assembly Committees reduced from twenty-five percent (25%) to zero percent (0%).

iii. At the same time, the total number of women in positions of leadership positions at the County Assembly Committees reduced from thirty-five percent (35%) to ten percent (10%).

49. Is this drastic reduction in the number of female MCAs in leadership positions in general, and those of female nominated MCAs constitutionally permissible?

50. I have come to the considered conclusion that it is not. In doing so, I have considered both the outcome as well as the process in which the impugned results were achieved.

51. The Respondents claim that due process was followed and that, therefore, no constitutional violation occurred. However, while the formal resolution of the County Assembly seems to be neutral and not actuated by the objective of de-whipping the nominated female MCAs, I believe the tale-tell signs psychedelically tell a different story. It seems clear that the decision to re-organize the County Assembly Committees was informed by the view taken by the Majority leader that Nominated MCAs should not have any leadership positions in the Assembly. The evidence for that is in the letter written by the Party Leadership dated 15/10/2018. This was two days before the Impugned Resolution of the County Assembly. The female Nominated MCAs had raised a complaint with the Party leadership about the problematic position taken by the Majority Leader. The Party Director of Political Affairs then called the Majority Party leader to inform him that the question of de-whipping nominated MCAs was not the party's position. From the letter, the Majority Leader insisted on proceeding with de-whipping action nonetheless. Hence, the Director of Political Affairs writes to him in the following terms:

[F]ollowing my discussion with you [Majority Leader] on the same, may I inform you of the following:

I. You do not have any authority from the Party to de-whip nominated MCAs based on the argument you advanced on the phone.

II. I have been directed to inform you as such and any action to the contrary will not be accepted by the Party Headquarters

52. Clearly, the advice and threat by the Party Headquarters fell on deaf ears. Two days later, the Leader of the Majority moved the motion which led to the Impugned Resolution.

53. There is no doubt that the Party Headquarters interpreted the action by the County Assembly (of passing the Impugned Resolution) as de-whipping the nominated MCAs (who are predominantly female). Consequently, the Party Secretary General penned off a letter dated 13/11/2018 to the following effect:

> Following the de-whipping of 12 nominated Nakuru County Assembly women MCAs from house leadership positions, Jubilee Party states as follows:
>
> > i. The Party has done its best to reverse the situation but to no avail.
> >
> > ii. The Party summoned the Leaders of the majority and Chief Whip but claimed that it was a decision reached by the whole house.
> >
> > iii. The Chief Whip has since written to the Clerk of the County Assembly asking for a response.

54. Given these sets of interactions between the Party Headquarters and the mover of the County Assembly action, it seems that the Impugned Resolution was, in fact, just a pretext for de-whipping the nominated MCAs. The fact that it was couched in neutral-sounding language is immaterial to the extent that the true animus of the motion can be gleaned from these communications. As the United States Supreme Court remarked recently, Judicial Review is nothing if…..

55. However, even if these tale-tell signs of discriminatory animus clothed in neutral raiment were absent, the Impugned Resolution would still be constitutionally infirm in its effect. A perfectly neutral measure can still run afoul of our Equal Protection Article in the Constitution if its substantive effect is to perpetuate or entrench discrimination or move in retrogression to the constitutional goal of achieving gender parity in leadership and public service opportunities.

56. In the present case, it is not denied that the County Assembly has a constitutional obligation to ensure substantive equality in access to leadership positions in the County Assembly Committees. The Respondents are obligated by Article 27(6) to put in place legislative and other measures to ensure a discernible movement in that direction. Bearing in mind that Kenya has domesticated a number of international human rights instruments which breathe meaning to the phrase "to take legislative and other measures" and bearing in mind that international law, including international human rights treaties, are part of the law of Kenya under Article 2(5) and 2(6) of the Constitution, the question arises what concrete meaning could be assigned to that phrase in the Kenyan context regarding the De-whipping Controversy. As per decisions from comparative jurisdictions and international law – including international human rights instruments, this obligation must, in our Kenyan context mean two things:

> i. First, it must mean that all State organs have an obligation to ensure, at a minimum, that there is no retrogression; that the position of women regarding substantive equality in terms of access to leadership positions (in this case in the County Assembly Committees) does not regress from existing conditions. Even with the realization that the substantive equality between the genders will be achieved progressively, the Constitution imposes a categorical obligation against non-regression. This is because regressive steps are a definitional contradiction to the principle of progressive realization of human rights. This may be termed the duty of non-regression.
>
> ii. Second, while the full realization of the relevant rights (including substantive equality between the genders) may be achieved progressively, State organs must take positive steps towards that goal within a reasonably short period of time. These positive steps are necessary to reverse the history of negative discrimination that has impeded gender equality. This may be termed as a duty to take immediate steps towards the realization of the rights in question.

57. In the context of the present controversy, the County Assembly and the Respondents were obligated to both ensure non-regression in the goal towards achieving substantive equality between the two genders but also to take positive steps to ensure that there is a forward march towards substantive gender parity and equity in affording County Assembly leadership opportunities between the two genders. Consequently, it is not enough for the Respondents to state that the actions they took were gender-neutral. If the substantive effect of the actions are negative in terms of substantive equality of the two genders, then the actions may be constitutionally infirm even if they are facially or formally neutral. In other words, the test for State action under Articles 27(3) and 27(6) of the Constitution is what the Canadian Supreme Court has called a "*substantive contextual approach with a corresponding repudiation of a formalistic treat likes alike approach*." *See* ***Withler v Canada (Attorney General)*** 2011 SCC 12.

58. In the ***Withler Case***, the Canadian Supreme Court explained the need to go behind the facial or formal presentation of State actions or laws in determining their substantive impact on equality in the following words:

> The first way that substantive inequality, or discrimination, may be established is by showing that the impugned law, in purpose or effect, perpetuates prejudice and disadvantage to members of a group on the basis of personal characteristics within *s. 15(1)*. *Perpetuation of disadvantage typically occurs when the law treats a historically disadvantaged group in a way that exacerbates the situation of the group. Thus judges have noted that historic disadvantage is often linked to s. 15* discrimination. In R. v. Turpin, [1989] 1 S.C.R. 1296, for example, Wilson J. identified the purposes of *s. 15 as "remedying or preventing discrimination against groups suffering social, political and legal disadvantage in our society"*

59. The Canadian Court explained that the test for substantive equality must travel outside the formal characteristics of the action or law that is being challenged:

> Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the facade of similarities and differences. It asks not only what characteristics the different treatment is predicated upon, but also whether those characteristics are relevant considerations under the circumstances. The focus of

> the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group. The result may be to reveal differential treatment as discriminatory because of prejudicial impact or negative stereotyping. Or it may reveal that differential treatment is required in order to ameliorate the actual situation of the claimant group.

60. Here at home, the Supreme Court alluded to the need for this kind of substantive contextual approach in its remarks in the **Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR** in the following words:

> This Court is fully cognisant of the distinct social imperfection which led to the adoption of Articles 27(8) and 81(b) of the Constitution: that in elective or other public bodies, the participation of women has, for decades, been held at bare nominal levels, on account of discriminatory practices, or gender-indifferent laws, policies and regulations. This presents itself as a manifestation of historically unequal power relations between men and women in Kenyan society. Learned counsel Ms. Thongori aptly referred to this phenomenon as "the socialization of patriarchy"; and its resultant diminution of women's participation in public affairs has had a major negative impact on the social terrain as a whole. Thus, the Constitution sets out to redress such aberrations, not just through affirmative action provisions such as those in Articles 27 and 81, but also by way of a detailed and robust Bill of Rights, as well as a set of "national values and principles of governance" [Article 10].

61. The dissenting Opinion of Mutunga, CJ in that case was even more trenchant:

> I am in agreement …that the Constitution's view to equality, as one of the values provided under the constitution, in this case is not the traditional view of providing equality before the law. Equality here is **substantive**, and involves undertaking certain measures, including affirmative action, to reverse negative positions that have been taken by society. Where such negative exclusions pertain to political and civil rights, the measures undertaken are immediate and not progressive. For example, when after struggles for universal suffrage Kenyans succeeded in getting that right enshrined in the Bill of Rights of the 1963 constitution, nobody could be heard to argue that we revert back to the colonial pragmatic progressive realization of the right to vote!

62. To return to the De-whipping Controversy, it seems clear that the Impugned Resolution was discriminatory in intent as demonstrated above: the intent is disclosed in the two letters written by the Jubilee Party after interactions with the Majority Leader who moved the motion in the County Assembly. Since the contents of the letters were not contested by the Respondents, they probatively establish that the argument of rationalizing Committees of the Assembly was merely pretextual; the real aim was to de-whip the nominated MCAs. Since, by constitutional design (under Article 177), the majority of the nominated MCAs are female, it follows that the intent of the Impugned Resolution was, in fact, to negatively discriminate against female nominated MCAs, and hence against women in County Assembly leadership positions.

63. Secondly, as analyzed above, the Impugned Resolution was, also, discriminatory in effect and substance. It was discriminatory in effect because it led to the substantive effect of reducing the number of women in County Assembly leadership positions by more than twenty percentage points as illustrated above: From seven (7) to two (2).

64. As demonstrated above, this absolute reduction in the number of women in County Assembly Committees leadership positions amounts to retrogression in terms of realizing the goal of substantive gender equality. Additionally, it amounts to the actionable failure by the County Assembly and the Respondents to take mandatory positive steps to eliminate practices which perpetuate discrimination against women in leadership and public service positions. While the County Assembly and the Respondents are obligated by Article 27(6) to take measures to achieve substantive equality between the genders, the actions they took, while facially neutral, entrenched rather than ameliorated discriminatory practices in affording women leadership positions in County Assembly Committees. In both senses, the action by the County Assembly and the Respondents in adopting the Impugned Resolution runs afoul the Constitution and must be declared to be so.

III(B). The Mileage Controversy

65. The Mileage Controversy is far less complicated. The 5th Respondent issued a Circular Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 on remuneration and benefits for Members of County Assembly. It provided that all Members of the County Assembly (including Nominated MCAs) be paid a monthly mileage allowance at the rate of Kshs. 109.80 per kilometer up to a maximum of 45 kilometres return journey (90 kilometres).

66. The SRC followed up the Circular with a letter dated 28/01/2014 (Ref. No. SRC/TS/CGOVT/3/6) which sought to give a clarification on mileage allowance. In the impugned part of that letter, the SRC states as follows:

> The Nominated Members of the County Assembly represents a defined populace namely, minorities and special interest groups whose geographical representation is not defined unlike that of elected Members whose area of representation is distinct. As a result, the mileage allowance payable to the Members of County Assembly is limited to the monthly mileage of Kshs. 39,528 payable to all Members of County Assembly (calculated as follows: Kshs. 109.8*90*4 = 39,528.

67. Following this clarification, the Nominated Members of the County Assembly's mileage allowance is capped at Kshs. 39,528/-. Their counterparts who are elected are allowed to extra mileage above the capped amounts where they can demonstrate that their areas of representation is beyond the presumed 45 kilometers in a week allowance. The SRC's circular allowed as followed:

> Members whose areas of representation are situated beyond the 45 kilometers in a week (return journey 90 kilometers) to make a weekly claim for the extra mileage at applicable AA rates per kilometer subject to a maximum of 52 weeks in a year.

68. The Petitioner argues that it is a fundamental error for the SRC to assert that Nominated MCAs have no defined geographical constituency and, on the basis of that, to cap their mileage allowances with no option for additional mileage like their elected counterparts. The Petitioner's argument is that SRC's policy effectively denies Nominated MCAs facilitation mileage to cover the entire county where

special interests are represented.

69. The Petitioner finds the SRC policy to be discriminatory and in violation of the law. This is because, argues the Petitioner, both Nominated and Elected MCAs play the same role in the County Assemblies. The role of MCAs as provided in section 9 of the County Governments Act is the same for both Nominated and Elected MCAs.

70. While the Elected MCAs maintain close contact with the electorate in their wards and consult them on issues before or under discussion, the Petitioner argues that the Nominated MCAs surely play the same role respecting the special interests that they represent. The Petitioner argues that Nominated MCAs represent their constituency of women, youth, PWDs and minorities from their counties. Since it is the responsibility of these Nominated MCAs to promote vulnerable groups to participate in the deliberations at either levels of representation, proper engagement involves visits to different communities and arranging meeting with the vulnerable groups in fulfillment of their right to participate. It is, therefore, not correct to presume that these Nominated MCAs do not need to travel throughout the County in order to effectively fulfil their roles. In this regard, the Petitioner argues that it is plainly discriminatory to cap the mileage allowance for Nominated MCAs while allowing their Elected counterparts to claim extra mileage on a case by case basis.

71. The SRC entered appearance but filed no responses or submissions in the suit.

72. The simple question presented for determination is whether the announced policy by the SRC to cap mileage allowance for Nominated MCAs while allowing Elected MCAs the option to file for extra mileage on a case by case basis dependent on their area of representation is discriminatory and constitutionally impermissible.

73. The test for determining the constitutionality of that question is the rationality test expounded above: any action or policy by a State Organ or body or State Officer or Public Official must be rationally connected to the legitimate government purpose for which the action was taken or law or policy passed. The test, as stated by the Court of Appeal in the ***Mumo Matemu Case***, is an objective one. Perhaps, the rationality test and its rationale was most felicitously stated by Justice Ackerman of the South African Constitutional Court in ***S v Makwanyane*** **1995 3 SA 391 (CC) para 156** in the following words:

> The idea of the constitutional state presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrariness, by its very nature, is dissonant with these core concepts of our new constitutional order. Neither arbitrary action nor laws or rules which are inherently arbitrary or must lead to arbitrary application can, in any real sense, be tested against the precepts or principles of the Constitution. Arbitrariness must also inevitably, by its very nature, lead to the unequal treatment of persons. Arbitrary action, or decision making, is incapable of providing a rational explanation as to why similarly placed persons are treated in a substantially different way. Without such a rational justifying mechanism, unequal treatment must follow.

74. Applying that test to the SRC Policy on mileage allowances for MCAs, can the differential policy between Nominated MCAs and Elected MCAs be said to be rational in the constitutional sense?

75. I think not. As the Petitioner has argued, the factual basis for the policy is fallacious: the Policy is based on the argument that Elected MCAs have a geographical constituency where the electorate resides. It is therefore reasoned that the Elected MCAs will need to travel to those wards to consult their electorate. By dint of that reasoning, an erroneous assumption is made that Nominated MCAs do not have to travel to consult their constituents since they do not represent a geographical constituency. The fallacy is easily demonstrable: Nominated MCAs represent special interests especially vulnerable, minority and historically marginalized groups such as women, the youth, Persons with Disabilities, and racial minorities. These populations tend to be dispersed throughout the various counties. Since a Nominated MCA is expected, by law, to consult her constituents in order to effectively represent them at the County Assembly, it follows that such a Nominated MCA must be able to travel throughout the county in order to constructively engage the special interests she represents. It is, therefore, plainly irrational to cap the mileage allowance of Nominated MCAs on account of the argument that they would not need to travel for consultations with their electorate. Since there is no rational basis for the distinction drawn between Elected MCAs and Nominated MCAs, the SRC Policy, as drawn, is not rationally related to legitimate governmental objectives or function. It therefore violates the legality principle and must be struck down. I hereby do so.

IV. What are the Appropriate Reliefs?

76. The Petitioner has largely succeeded in the two substantive claims it pressed in this Petition. The question that remains is what appropriate reliefs should flow from the above determinations. To recap, the Court's findings are as follows:

> i. The Court has concluded that it has not been divested of jurisdiction to hear the Petition by operation of the doctrine of separation of powers since the pleaded issues verge on determination of the question whether the Impugned Resolution by the County Assembly of Nakuru was in accordance with the Constitution. That is a question which is uniquely within the province of the High Court of Kenya.
>
> ii. The Court established that its jurisdiction was, similarly, not divested by the operation of the doctrine of exhaustion since the controversy herein is wider than one between members of a Political Party or a Political Party and its members. Besides, the polycentricity of constitutional issues pleaded makes the High Court the appropriate forum for the issues presented.
>
> iii. On the two substantive constitutional questions presented, the Court found as follows:
>
> > i. The Court found the Resolution of the County Assembly of Nakuru on 17/10/2018 approving a Report of the Committee on Selection Harmonization of Membership of Sectoral and Select Committees of the Assembly to be discriminatory both in intent and effect and to be in violation of the Equal Protection provisions of the Constitution of Kenya, 2010.

ii. The Court found the Salaries and Remuneration Commission Circular Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 to be impermissibly discriminatory against Nominated Members of the County Assemblies for establishing a cap on mileage allowance for Nominated Members of County Assemblies only on the basis of the argument that they have no geographical constituency they represent. The Policy by the Salaries and Remuneration Commission in this regard does not meet the rationality and legality test to pass constitutional muster.

77. The reliefs which recommend themselves flowing from these findings are the following:

i. A declaration does hereby issue that the resolution of the County Assembly of Nakuru on 17th October, 2018 approving a report of the Committee on Selection on Harmonization of Membership of Sectoral and Select Committees of the Assembly to the extent that it de-whipped Nominated Members of the County Assembly as Chairpersons and Vice Chairpersons in different Committees of the House was unconstitutional, null and void.

ii. A declaration does hereby issue that nominated and elected members of the County Assemblies have equal status and are entitled to equal opportunities, responsibilities and privileges including opportunities for leadership positions in the County Assembly Committees.

iii. In view of this Court's decision, the County Assembly of Nakuru shall, within ninety (90) days of the date hereof take appropriate measures to re-constitute County Assembly Committees and their leadership teams to bring them in line with the Equal Protection Article of the Constitution.

iv. For avoidance of doubt, this judgment shall not have any retroactive effect and the validity of any actions taken by the County Assembly Committees since the Resolution of 17/10/2018 are not affected.

v. A declaration does hereby issue that the 4th Respondent's circular Ref. No. SRC/TS/CGOVT/3/16 dated 15/11/2013 on remuneration and benefits for Members of County Assembly and as clarified by a letter to the Clerk, Homa Bay County Assembly, to the extent that it asserts that nominated members have no defined geographical constituency, is erroneous, unlawful, unconstitutional, null and void.

vi. The 4th Respondent is hereby directed to re-formulate the applicable mileage allowance for Nominated Members of County Assemblies with the guidance of this Judgment including that the constituency for nominated members of County Assemblies is their special interest group they represent in each county.

78. Each party shall bear its own costs in this litigation.

79. Orders accordingly.

Dated and delivered at Nakuru this 29th day of July, 2019

…….

JOEL NGUGI

JUDGE