



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**PETITION NO. 163 OF 2019**

**(FORMERLY MACHAKOS PETITION 7 OF 2019)**

**BETWEEN**

OKIYA OMTATATH OKOITI.....1<sup>ST</sup> PETITIONER  
NYAKINA WYCLIFF GISEBE.....2<sup>ND</sup> PETITIONER  
CHARLES OMBOKO.....3<sup>RD</sup> PETITIONER  
DAVID MUNYAO MWANZIA.....4<sup>TH</sup> PETITIONER  
VINCENT MUILI MUINDI.....5<sup>TH</sup> PETITIONER

**VERSUS**

THE HON. ATTORNEY-GENERAL.....1<sup>ST</sup> RESPONDENT  
KENYA LAW REFORM COMMISSION.....2<sup>ND</sup> RESPONDENT  
THE NATIONAL ASSEMBLY.....3<sup>RD</sup> RESPONDENT  
THE HON. JUSTIN BEDAN NJOKA MUTURI.....4<sup>TH</sup> RESPONDENT  
THE HON. KENNETH MAKELO LUSAKA.....5<sup>TH</sup> RESPONDENT  
CABINET SECRETARY, MINISTRY OF INFORMATION  
COMMUNICATION AND TECHNOLOGY.....6<sup>TH</sup> RESPONDENT

**AND**

THE COUNCIL OF GOVERNORS.....1<sup>ST</sup> INTERESTED PARTY  
THE KATIBA INSTITUTE.....2<sup>ND</sup> INTERESTED PARTY  
THE LAW SOCIETY OF KENYA.....3<sup>RD</sup> INTERESTED PARTY  
CHILD WELFARE SOCIETY OF KENYA.....4<sup>TH</sup> INTERESTED PARTY  
COMMUNICATION AUTHORITY OF KENYA...5<sup>TH</sup> INTERESTED PARTY

**RULING NO. 2**

This Petition was scheduled for hearing today. Before commencement of the hearing, Mr. Njoroge Regeru for the 2<sup>nd</sup> Respondent made an oral application to vacate the hearing date and stay the hearing of this Petition. The application by the 2<sup>nd</sup> Respondent was supported by the other Respondents and the interested parties who support them. We also heard the submissions in opposition by the Petitioners and the 2<sup>nd</sup> Interested Party.

We are being asked to vacate today's hearing date and to stay the hearing of this petition pending the finalization of the hearing of the consolidated Petitions No, 56, 58 and 59 of 2019, which have been substantially heard by this Bench, and in which the issues raised are similar to some issues in this petition. The Petitioners and 2<sup>nd</sup> Interested Party oppose the application on the grounds that this is not a good reason to adjourn the hearing, and that the application for stay of this petition is not grounded in law.

We take the view that the hearing of this Petition cannot be dependent on the determination of the consolidated Petitions No, 56, 58 and 59 of 2019. This is because in our view, this petition raises important issues that merit hearing. We are however cognisant of the fact that there are issues relating to the National Integrated Identity Management System (NIIMS) that are raised in this Petition that are also raised in the consolidated Petitions, as argued by Mr. Regeru. This is what has informed our previous decisions to hear this petition immediately after the consolidated Petitions, so as to avoid a situation in which conflicting decisions are given on the cross-cutting issues. It is for this reason that the hearing date of this Petition has always been given in tandem with the hearing dates of the Consolidated Petitions.

As submitted by Mr. Regeru, it was indeed envisaged that the hearing of the consolidated Petitions would be concluded on 26<sup>th</sup> September 2019, and this petition then heard today. The intention of the court was to consider and determine both petitions simultaneously to save on time, and to avoid giving conflicting decisions on the cross-cutting issues as aforesaid. Now that the consolidated Petitions are yet to be concluded, and noting Mr. Regeru expressed intentions to file supplementary submissions on the cross-cutting issues as a result of developments at the hearing of the consolidated Petitions this week, we find that these are justifiable reasons for an adjournment.

On the application for stay of this petition, we reiterate that this petition requires to be heard on its merits. It is only the timing of the hearing that shall be affected by the hearing of the consolidated Petitions as indicated in the foregoing paragraphs. We accordingly decline to stay this petition.

We however, vacate today's hearing date, and direct that this petition shall be mentioned on 3<sup>rd</sup> October 2019 at 3.30pm, when we shall give appropriate directions, including on a new hearing date.

It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2019**

**P. NYAMWEYA**

**MUMBI NGUGI**

**W. KORIR**

**JUDGE**

**JUDGE**

**JUDGE**