



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

ELECTION PETITION APPEAL NO. 2 OF 2018

IN THE MATTER OF THE ELECTIONS ACT, 2011

AND

IN THE MATTER OF ELECTIONS (PARLIAMENTARY AND

COUNTY ELECTIONS) PETITION RULES, 2017

AND

IN THE MATTER OF THE GAZETTE NOTICE NO. 8380

PUBLISHED ON 28TH AUGUST 2017 IN RESPECT TO

GENDER TOP UP LIST FOR WAJIR COUNTY

BETWEEN

MEYMUNA OSMAN GABOW & 16 OTHERS.....APPELLANTS

-VERSUS-

MARIAM ABDI MOHAMUD & 2 OTHERS.....RESPONDENTS

- AND -

PARTY OF NATIONAL UNITY.....INTERESTED PARTY

RULING

[1] On the 14 December 2017, the Learned Senior Resident Magistrate, **Hon. E. Wanjala**, delivered her Judgment in the **Chief Magistrate's Court** in **Election Petition No. 20 of 2017** whereby an order was issued for the nullification of **Gazette Notice No. 8380, Volume No. CXIX No. 124** dated 28 August 2017. That Gazette Notice was in respect, *inter alia*, of the Gender Top Up List for Wajir County. The order was issued after the hearing of a dispute between **Mariam Abdi Mohamud** as the Petitioner and the **Independent Electoral and Boundaries Commission**, the Respondent therein. The **Party of National Unity** had also been enjoined to the Petition as an Interested Party. The court further directed that:

"The Respondent to forthwith reconstitute and gazette the Gender Top Up List of Wajir County, including the name of the Petitioner, Mariam Abdi Mohamud in compliance with the Law..."

[2] Being aggrieved by the decision of **Hon. Wanjala**, the Appellants herein filed this Appeal on **12 January 2018**, contending that they are persons affected by the orders issued in **CMCC Election Petition No. 20 of 2017**. The Appellants are **Meymuna Osman Gabow, Hussein Robley, Abdi Aress Ktra, Asha Hussein Dayib, Sahara Noor Abdi, Shamsa Mohamed Omar, Fatuma Sheikh Abass, Deinaba Omar Salat, Dahaba Yussuf Farah, Lul Saney Mohamed, Nimo Ahmed Saney, Habiba Issack Yussuf, Bash Mohamed Jimale, Meimuna Said Nurkei,**

Haretha Aden Ibrahim, Halima Kunow Yussuf and Hussein Muhamed Yakub. The Appellants cited Mariam Abdi Mohamud, the Independent Electoral and Boundaries Commission and the Party of National Unity as the Respondents in the Appeal; and their grounds of appeal are:

[a] That the Learned Trial Magistrate erred in law by failing to find that a nomination of Member of County Assembly is an election after gazettelement and that the Appellants were necessary parties to the Petition before her.

[b] That the Learned Trial Magistrate erred in law in failing to hold that the participation of the gazetted members of the Wajir County Assembly, including the Appellants, was necessary in the Petition.

[c] That the Learned Trial Magistrate erred in law in holding that only the **Independent Electoral and Boundaries Commission (IEBC)** was a necessary respondent in the Petition before her, thereby condemning the Appellants unheard, contrary to the rules of natural justice.

[d] That the Learned Trial Magistrate erred in law by failing to order service of the Petition and subsequent orders of the court on the Appellants before the hearing of the Petition before her.

[e] That the Learned Trial Magistrate erred in law by revoking the election of the Appellants as members of the County Assembly of Wajir whereas there was no Petition filed against each Appellant as required by law.

[f] That the Learned Trial Magistrate erred in law by failing to hold that she had no jurisdiction to grant the orders sought in the Petition as presented before her.

[g] That the Learned Trial Magistrate erred in law in not appreciating sufficiently or at all that the non-inclusion of the Appellants in the Petition disentitled the 1st Respondent herein to any relief sought in the Petition that had an adverse effect on the vested rights of the Appellants.

[h] That the Learned Trial Magistrate erred in law in failing to appreciate that her judgment and consequential orders therein would have direct adverse consequences on the accrued rights and/or legitimate expectations of the Appellants who were not made parties to the Petition.

[i] That the Learned Trial Magistrate erred in law and in fact by failing to analyze the provisions of the law and the Constitution before arriving at her judgment.

[3] Based on the foregoing grounds, the Appellants prayed for orders that:

[a] The Judgment of **Hon. E. Wanjala (Mrs.) Senior Resident Magistrate**, delivered on **14 December 2017**, as well as all its consequential orders, be set aside;

[b] **Milimani Chief Magistrate's Court Election Petition No. 20 of 2017** be struck out for being incompetent;

[c] Any other or further orders that the Court may deem fit and just in the circumstances, be granted;

[d] The costs of the Appeal be provided for.

[4] Upon being served with the Memorandum of Appeal, Counsel for the 1st Respondent filed a Notice of Preliminary Objection dated **23 January 2018** on even date, seeking the striking out of the Appeal on the following grounds:

[a] That the Memorandum of Appeal is incompetent, defective and bad in law since it violates the clear provisions of **Rule 34(2)** of the **Elections (Parliamentary and County Elections) Petition Rules, 2017**, in that it does not state the order which directly affects the Appellants among the orders made by the Learned Magistrate;

[b] That the Appellants do not have the *locus standi* to bring the Appeal since they were not parties in **Election Petition No. 20 of 2017**; and

[c] That the Learned Magistrate did not make any order which affects the Appellant in any way.

[5] Consequently, directions were given on **21 February 2018** for the Preliminary Objection to be disposed of by way of written submissions, which were thereafter highlighted on **7 March 2018**. Thus written submissions were filed on behalf of the 1st Respondent on **23 February 2018** by Learned Counsel, **Mr. Hussein**, instructed by **Hussein, Mwae & Associates**. The 2nd Respondent's written submissions were filed on **6 March 2018** by **M/s L.M. Kambuni & Associates**; while the Appellants' written submissions were filed on **28 February 2018** by **M/s Kivuva Omuga & Co. Advocates**. **Mr. Walukhe**, Learned Counsel for the 3rd Respondent opted to rely on the 1st Respondent's written submissions.

[6] According to **Mr. Hussein** for the 1st Respondent, the Memorandum of Appeal is incompetent, defective and bad in law, for the reason that it does not comply with **Rule 34** of the **Elections (Parliamentary and County Elections) Petition Rules, 2017** (herein after "**the Elections Petition Rules**"). He submitted that it was not enough for the Appellants to state, in their Memorandum of Appeal, that the Trial

Court's judgment and consequential orders have direct adverse consequences on their rights; for such an averment is not only too general, but also denies the 1st Respondent the chance to properly respond to the Appellants' case. **Mr. Hussein** added that it behooved the Appellants to clearly set out which order or orders directly affect them. As it is, it was submitted, the appeal is merely speculative and is intended only to deny the 1st Respondent the gains of the Judgment delivered in her favour by the Trial Court.

[7] Counsel for the 1st Respondent further submitted that, since the Appellants were neither Respondents nor interested parties before the Trial Magistrate in **Election Petition No. 20 of 2017**, they do not have the *locus standi* to lodge this appeal. Counsel urged the Court to take note that the Appellants never applied to be enjoined in the Petition, despite the fact that the suit was gazetted in the Kenya Gazette vide **Gazette No. 9913 of 6 October 2017**. Moreover, it was submitted, the 1st Respondent was not aggrieved by the conduct of any of the Appellants and therefore she could neither institute proceedings against them nor serve them with pleadings which disclosed no cause of action against them.

[8] According to the 1st Respondent, **Election Petition No. 20 of 2017** was not intended to challenge the election or nomination of the Appellants, but for the enforcement of the 1st Respondent's right to be included as a Member of the Wajir County Assembly in the Gender Top Up List. In effect, it was the contention of the 1st Respondent that what the Appellants are raising by way of the Appeal are not matters that the Learned Trial Magistrate had an opportunity to consider or make a determination on, as they were not pleaded before her. It was further submitted that none of the orders made by the Learned Trial Magistrate is directed at the Appellants; that they had neither been directed to do anything nor ordered to refrain from doing anything; and therefore that their appeal is a non-starter. Mr. Hussein relied on **M.O. Oseko & Another vs. David Awori & 2 Others [2017] eKLR** to support his proposition that the Appellants lack *locus standi* to maintain this Appeal, having not participated in the lower court proceedings appealed from.

[9] On behalf of the 2nd Respondent, **Ms. Olao** supported the 1st Respondent's Preliminary Objection, contending, as did Counsel for the 1st Respondent that none of the Appellants herein participated in the lower court proceedings, notwithstanding that the Petition was advertised along with others and the general public notified of the courts dealing and the places of hearing. She further submitted that the Petition was restricted to the duties of the IEBC as provided for under **Article 90** as read with **Article 177** of the **Constitution of Kenya, 2010**; and therefore the Appellants, having failed to seek joinder as interested parties cannot seek to be parties at the appellate stage. Counsel therefore urged the Court to find that the Appellants lack the requisite *locus standi* to bring or maintain this appeal.

[10] As regards the allegation by the Appellants that they are adversely affected by the orders issued in **Election Petition No. 20 of 2017**, it was the submission of **Ms. Olao** that once the formula prescribed in **Regulation 56(2) of the Elections (General) Regulations, 2012** is applied and the necessary adjustments made, none of the Appellants will be adversely affected. She thus submitted that this appeal is an abuse of the court process and a waste of judicial time, as any order arising from the appeal will not affect the *status quo* in any way. She urged the Court to uphold the Preliminary Objection and have the Appeal struck out.

[11] On behalf of the 3rd Respondent, **Mr. Walukhe** reiterated the posturing that the Appellants lack *locus standi* herein because they were not parties before the Election Court; and that what was in issue before the lower court was whether the IEBC had applied **Article 90(2)** of the **Constitution** as read with **Section 36** of and **52(2)** of the **Elections Act**. He therefore submitted that, as the Court will be bound to consider only matters of law, the Appeal is incompetent in so far as it calls upon the Court to venture into matters of fact, such as whether the Appellants were validly elected by Party Lists; and whether they were served. According to **Mr. Walukhe**, the Court does not have the jurisdiction to go on such a frolic. He also submitted that the Respondents are not aware who the Appellants are; and that this is pivotal in the event they are required to pay costs. Counsel further argued that since there are specific timelines that have been provided for under the Constitution in regard to the resolution of Election Disputes, the issue of *locus standi* is often treated more stringently in such matters. He relied on **Michael Osundwa Sakwa vs. The Chief Justice and President of the Supreme Court of Kenya [2016] eKLR** in support of this argument. He similarly urged the Court to uphold the Preliminary Objection and dismiss the Appeal with costs.

[12] The Appellant was opposed to the Preliminary Objection and in his submissions, **Mr. Malanga** defended the tenor and effect of the Grounds of Appeal as set out in the Memorandum of Appeal, particularly Ground 8 which was impugned by the Respondents for having been framed in violation of **Rule 34(2) of the Elections Petition Rules**. According to **Mr. Malanga**, the Preliminary Objection as well as the Respondents' written submissions were made in misapprehension of Ground 8. He explained that Ground 8 faults the Trial Court for failing to appreciate that its Judgment and consequential orders would have a direct adverse consequences on the accrued rights of the Appellants, irrespective of who had the responsibility of implementing those orders.

[13] It was further the submission of **Mr. Malanga** that there is nothing in **Rule 34(2)** of the **Elections Petition Rules** that requires an appellant to mention the specific order appealed from. He added that even if there was any such requirement, the failure to indicate any of those orders would not, *per se*, be fatal to the Memorandum of Appeal given the provisions of **Rule 5(1) of the Elections Petition Rules**, which give the Court the discretion to determine the effect of any failure to comply with any rule of procedure. To buttress this argument, Counsel relied on **Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR**.

[14] On *locus standi*, it was the argument of **Mr. Malanga** that even this ground was wrongly taken. According to him, *locus standi* to appeal does not stem from the fact that an appellant participated in the proceedings from whose decision an appeal has been preferred or sought to be preferred; but rather from the fact that the Appellant/Intended Appellant is aggrieved by that decision. He cited the case of **Law Society of Kenya Nairobi Branch vs. Malindi Law Society & 6 Others [2017] eKLR** in support of this argument and added that, having been nominated to the County Assembly of Wajir through the **Gazette Notice No. 8380 of 28 August 2017** that has since been nullified through the impugned Judgment, there is no denying that the Appellants are indeed aggrieved persons, granted that their nomination now stands invalidated.

[15] Accordingly, it was the submission of **Mr. Malanga** that **M.O. Oseko & Another vs. David Awori & 2 Others** (supra) that was cited by the 1st Respondent does not aid the 1st Respondent, since, being a pre-2010 decision, it propounds a posturing from which the Courts have moved away after promulgation of the **Constitution of Kenya, 2010**. He urged the Court to instead follow the **Law Society of Kenya Case** (supra), which, he added, is in accord with the viewpoint expressed by the Supreme Court in the case of **Mumo Matemu vs. Trusted**

Society of Human Rights Alliance & 5 Others [2014] eKLR, namely, that the promulgation of **the 2010 Constitution** had since enlarged the scope of *locus standi*, especially by dint of **Articles 22, 23 and 258** thereof.

[16] With regard to the contention that the Appellants cannot purport to appeal in respect of proceedings in which they did not participate, **Mr. Malanga** relied on the case of **Moses Mwicigi & 14 Others vs. Independent Electoral and Boundaries Commission & 5 Others [2015] eKLR** in urging the Court to find that the Appellants were validly elected by way of nomination vide the **Gazette Notice No. 8380 of 28 August 2017** which was invalidated by the Lower Court. He reiterated the argument that, in those circumstances it cannot be argued that they are not aggrieved or affected by the Judgment of the Lower Court.

[17] Having given careful consideration to the 1st Respondent's Preliminary Objection in the light of the Grounds of Appeal, the written submissions made herein as well as the oral submissions made by Learned Counsel, the first issue to determine is whether the Preliminary Objection is valid, granted the submission of **Mr. Malanga** that the first and third grounds raised by the 1st Respondent in her Preliminary Objection are based on contested facts, and therefore do not qualify for canvassing as grounds for Preliminary Objection. What amounts to a preliminary objection was well explained in **Mukisa Biscuits Manufacturers Ltd v. West End Distributors Ltd [1969] E.A 696**, thus:

"... a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration."

[18] Ground 1 of the 1st Respondent's Preliminary Objection was hinged on **Rule 34(2) of the Elections Petition Rules**. That Rule provides that:

"The memorandum of appeal under sub-rule (1) shall concisely set out under distinct heads the grounds of appeal without any argument or narrative from the judgment appealed from and the grounds shall be numbered consecutively."

[19] Whereas there is no provision in the rule to expressly state that an appeal that does not comply therewith ought to be struck out, there is no gainsaying that parties are at liberty to raise issues as to competence or otherwise of an appeal as a preliminary point of law. In **Twaher Abdulkarim Mohamed vs. Mwathethe Adamson Kadenge & 2 Others**, it was recognized, and I entirely agree, that such objections can be taken, and that the same ought to be taken *in limine*, preferably at the Directions stage; which is what the 1st Respondent has done. Needless to say that this is a point which if successfully taken could very well spell doom for the entire appeal, if not ameliorated from the standpoint of **Article 159(2)(d) of the Constitution** as read with **Rule 5 of the Election Petition Rules**.

[20] Thus, I take the view that Ground 1 has been properly raised as a preliminary point. The same applies to Ground 3, which is that there is no order directed at the Appellants, from which an appeal would ensue. This is a point that is so intertwined with the *locus standi* ground as to be inseparable; and there is no dispute that *locus standi* is a valid point for consideration as a preliminary issue, given that it goes to jurisdiction. Indeed, Counsel for the parties were in agreement on this.

[21] The foregoing being my view of the matter, the issues for determination herein can be, and are hereby reduced to the following two:

[a] Whether the Memorandum of Appeal is incompetent for purposes of **Rule 34(2) of the Election Petition Rules**;

[b] Whether the Appellants have the requisite *locus standi* to lodge and/or maintain this appeal.

[a] On the competence or otherwise of the Memorandum of Appeal:

[22] As has been pointed out herein above, it was the argument of **Mr. Hussein** that the Memorandum of Appeal is incompetent, defective and bad in law, and that it does not comply with **Rule 34 of the Elections (Parliamentary and County Elections) Petition Rules, 2017 (herein after "the Elections Petition Rules")**. According to him it was not enough for the Appellants to state in their Memorandum of Appeal that the Trial Court's judgment and consequential orders have direct adverse consequences on their rights; but that they needed to specifically pin-point which order and in what sense they were adversely affected; for otherwise, the 1st Respondent would not be in a position to effectively respond to the Appellants' case on account of the indistinctness. He argued that as it is, the appeal is largely speculative, and therefore amounts to an abuse of the process of the court in so far as it is purely intended to deny the 1st Respondent the gains of the Judgment delivered in her favour by the Trial Court.

[23] In my consideration however, **Rule 34(2) of the Election Petition Rules** merely requires that a Memorandum of Appeal be concise; and that it is good enough if sets out the grounds of appeal under distinct heads, without proffering any argument or narrative from the judgment appealed from. It would further be sufficient if the grounds set out in the Memorandum of Appeal are numbered consecutively. The Memorandum of Appeal dated **10 January 2018** does set out the names of the parties, the decision appealed from and the orders sought. More importantly, it does set out the grounds of appeal in sequential paragraphs which have been appropriately numbered. As to whether **Ground 8** is a valid ground of appeal is a matter that goes to the merit of the appeal and therefore remains to be seen. Thus, I would agree with Counsel for the Appellants that, *prima facie*, the Memorandum of Appeal is valid and competent in terms of form. I would further agree that even if I were to find it deficient somehow, such defects would not warrant the striking out of the Appeal. This is because **Rule 5(1) of the Election Petition Rules** is explicit that:

"The effect of any failure to comply with these Rules shall be determined at the Court's discretion in accordance with the provisions of Article 159(2)(d) of the Constitution."

[24] And in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR, it was held by the Court of Appeal that:

"Deviations from and lapses in form and procedures which do not go to the jurisdiction of the court, or to the root of the dispute or which do not at all occasion prejudice or cause miscarriage of justice to the opposite party, ought not to be elevated to the level of a criminal offence, attracting such heavy punishment of the offending party, who may in many cases be innocent since the rules of procedure are complex and technical. Instead in such instances the court should rise to the highest calling to do justice by sparing the parties the draconian approach of striking out pleadings..."

Thus, even if there was indeed a deviation in the manner in which the Memorandum of Appeal has been drawn, I would not have considered such a lapse to be so serious as to warrant the striking out of the appeal, given that it would not have affected the jurisdiction of the Court to hear and determine the Appeal.

[b] On Locus Standi:

[25] There is no dispute that by being nominated to the County Assembly of Wajir *via* the Gender Top Up List, the Appellants were validly elected as Members of Wajir County Assembly. In Moses Mwigigi & 14 Others vs. Independent Electoral and Boundaries Commission & 5 Others [2016] eKLR this point was clarified thus by the Supreme Court of Kenya:

"It is clear to us that the Constitution provides for two modes of election. The first is election in the conventional sense, of universal suffrage; the second is 'election' by way of nomination, through the party list..."

The Supreme Court further held that:

It is clear from the foregoing provisions that the allocation of nomination seats by the IEBC is a *time bound process*, that starts with the proportional determination of the number of seats due to each political party. On that basis, IEBC then '*designates*', or '*draws from*' the allocated list the number of nominees required to join the County Assembly. To '*designate*' or '*draw from*' entails the act of selecting *from the list provided by the political party*. It is plain to us that the Constitution and the electoral law envisage the entire process of nomination for the special seats, including the act of gazetting of the nominees' names by the IEBC, as an integral part of the *election process*. The *Gazette Notice* in this case, signifies the completion of the "election through nomination", and finalizes the process of constituting the Assembly in question..."

[26] It was in that connection that the 1st Respondent filed **Nairobi Chief Magistrate's Election Petition No. 20 of 2017** to ventilate her grievance on being excluded from the Gender Top Up List for Wajir County. A perusal of the Record of Appeal as well as the Lower Court record confirms that the Petition was between the 1st Respondent and the IEBC; and that the 3rd Respondent was enjoined thereto as an Interested Party. There is further no dispute that the effect of the Judgment in the **Nairobi Chief Magistrate's Election Petition No. 20 of 2017** was the nullification of the election of all those whose names were on the Gender Top Up List vide **Gazette Notice No. 8380 of 28 August 2017**. It is on that basis that the Appellants contend that they are aggrieved by that decision and therefore have a right to file this appeal as they did. The Respondents on the other hand are of the posturing that having not participated in the Lower Court proceedings, it is not open for them to raise their complaint on appeal for the first time.

[27] According to **Black's Law Dictionary**, Ninth Edition, "*locus standi*" means "**the right to bring an action or to be heard in a given forum**". It is imperative therefore for a party initiating any dispute before a court of law for resolution to demonstrate sufficient interest in the matter entitling him/her to the right of approach to the Court for relief. Hence, in M.O. Oseko & Another vs. David Awori & 2 Others [2007] eKLR, Nambuye, J. (as she then was) expressed the view that:

"...The prosecuting counsel in HCCC 2905/93 can only have locus standi over the plaintiffs in HCCC 877/03 if they are brought into HCCC No. 2905/93 as defendants if room exists for this and I think room exists for this...In order for Counsel in HCCC 2905/93 to have locus standi to attack the rights of the plaintiffs in HCCC No. 877/03 his clients must have locus standi in HCCC No. 877/03 to attack the pleading therein...The locus standi to attack any pleading herein has to be gained in the normal way through service of summons to enter appearance and then entry of appearance...In addition counsel prosecuting must be properly on record in the matter sought to be faulted which is not the case herein. In the absence of locus standi the merits of the preliminary objection whether the same is to be upheld however strong it may be cannot be gone into. For this reason it is the finding of this court that counsel for the 3rd defendant in HCCC 870/03 who purported to attack the existence of HCCC 2905/93 has no locus standi to do so as the 3rd Defendant in HCCC 870/03 is not a party in HCCC 2905/93. Likewise counsel prosecuting the preliminary objection on behalf of the plaintiffs in HCCC 2905/93 has no locus standi to attack the proceedings in HCCC 877/03..."

[28] It cannot be gainsaid however that since 2007 when the Oseko decision was made, the operating environment has changed significantly, with the promulgation of the **Constitution of Kenya, 2010**. Thus, in Michael Osundwa Sakwa vs. the Chief Justice and President of the Supreme Court of Kenya [2016] eKLR, Odunga, J. expressed himself thus on the matter of *locus standi* after an analysis of local and international decisions on point:

"It is therefore clear that over time the issue of standing, particularly in public law litigation has been greatly relaxed and in our case the Constitution has opened the doors of the Courts very wide to welcome any person who has *bona fide* grounds that the Constitution has been or is threatened with contravention to approach the Court for an appropriate relief. In fact, since Article 3(1) of the Constitution places an obligation on every person to respect, uphold and defend the Constitution, the invitation to approach the Court for redress as long as the person holds *bona fide* grounds for believing that the Constitution is under threat ought to be welcome. I must however hasten to add that the liberal interpretation does

not mean that the rule on *locus standi* is no longer relevant in constitutional petitions. Where it is clear that the Petitioner has completely no business in bringing the matter to Court to permit such proceedings to be litigated would amount to the Court itself abetting abuse of its process. In this case the Petitioner not only contends that his rights and the rights of others are threatened with violation but that the national values and principles of governance have been violated. In light of such allegations I cannot fault the Petitioner for instituting these proceedings and I hold that he was within his right to commence these proceedings. As to whether his case is merited is another matter. *Locus standi* is a totally different thing from the merits of the petitioner's case."

[29] Similarly, in Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others [2014] eKLR, the Supreme Court held that:

"It is to be noted that the promulgation of the 2010 Constitution enlarged the scope of *locus standi*, in Kenya. Articles 22 and 258 have empowered every person, whether corporate or non-incorporated, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general...The intent of Articles 22 and 23 of the Constitution is that persons should have free and unhindered access to this Court for the enforcement of their fundamental rights and freedoms. Similarly Article 258 allows any person to institute proceedings claiming the Constitution has been violated or is threatened."

[30] Hence, a consideration of emerging jurisprudence in this sphere of the law shows that the enlargement of the scope of *locus standi* is not limited to the enforcement of the Bill of Rights. An example is Law Society of Kenya, Nairobi Branch vs. Malindi Law Society of Kenya & 6 Others [2017] eKLR, in which a question arose as to whether the Respondents, who were not parties to the Petition before the High Court, had the *locus standi* to impugn the Judgment on appeal. The main question for determination in the appeal was whether it was within the powers of Parliament to confer jurisdiction on magistrates courts to hear and determine disputes relating to employment and labour relations, the environment, as well as the use and occupation of and title to land. A preliminary objection was raised in the appeal on whether the branches of the Law Society of Kenya, such as the Nairobi, West Kenya and Mount Kenya Branches, had *locus standi* to ventilate their respective positions on appeal, not having been parties to the High Court dispute, and considering that the Law Society of Kenya was already a party to the Appeal. The Court of Appeal held that:

"It seems to us ...that the issue as to who has *locus standi* before a court of law has now been crystallized. It is any aggrieved party...this creates no doubt in our minds that a person, association, body corporate or an unincorporated body, have the *locus standi*, not only to institute original proceedings but also appellate proceedings provided that such a party is aggrieved by the decision intended to be challenged. The respondent branches asserted that they were aggrieved by the impugned decision as the same had impacted negatively on their legal practice in particular and the general welfare of their members. In our view, such an assertion was sufficient justification for them to intervene irrespective of its ultimate outcome."

[31] In the light of the foregoing, and having shown that they were duly elected as Members of the County Assembly of Wajir vide the **Gazette Notice No. 8380 dated 28 August 2017** which was nullified by **Hon. Wanjala, SRM, on 14 December 2017**, there can be no doubt that the Appellants qualify as "**aggrieved parties**", and therefore have the requisite *locus standi* to lodge and maintain this appeal. It is further my finding that it matters not that there was no specific order by the Trial Magistrate directed at the Appellants as a group or any of them in particular for compliance purposes. It suffices for the Appellants to show that they are aggrieved by the outcome of the Petition. The nullification of the Gazette Notice by which they were elected is bad enough for them, noting that they had acquired justiciable legitimate expectations. The Court takes judicial notice that they were sworn in and have assumed their respective positions as Members of Wajir County Assembly. In the premises, I am satisfied that they have the requisite *locus standi* herein as persons aggrieved by the decision of the **Hon. E. Wanjala, SRM**, that is the subject of this appeal.

[32] In the result, I find no merit in the Preliminary Objection filed herein by the 1st Respondent on **23 January 2018** and would accordingly dismiss it with an order that the costs thereof shall abide the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2018

OLGA SEWE

JUDGE