



**REPUBLIC OF KENYA**

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

**CONSTITUTION PETITION NO. 4 OF 2016**

**IN THE MATTER OF ARTICLES 1(2), 1(4)(b), 2(5), 2(6), 10, 22, 45, 53, 73, 75, 165, 193, 194 & 258 OF THE CONSTITUTION OF KENYA, 2010**

*AND*

**IN THE MATTER OF RULES 10(1), 11(1) & 13 OF THE CONSTITUTION OF KENYA  
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)**

**PRACTICE AND PROCEDURE RULES, 2013**

*AND*

**IN THE MATTER OF THE LEADERSHIP AND INTERGRITY ACT, THE COUNTY  
GOVERNMENTS ACT, THE CHILDREN'S ACT, THE SEXUAL OFFENCES ACT AND THE  
PROHIBITION OF THE FEMALE GENITAL MUTILATION ACT**

*BETWEEN*

**LTODIYAN LEKANOI.....1<sup>ST</sup> RESPONDENT**

**MASULANI LEKALASIMI.....2<sup>ND</sup> RESPONDENT**

**LEGIRA LEMELEN.....3<sup>RD</sup> RESPONDENT**

**MPERESU LOMOTIN .....4<sup>TH</sup> RESPONDENT**

**EMET LENTIPO.....5<sup>TH</sup> RESPONDENT**

**NAITAMANY LEPETA.....6<sup>TH</sup> RESPONDENT**

**LTARIANA LEKUPE.....7<sup>TH</sup> RESPONDENT**

**KOASI LENTIPO .....8<sup>TH</sup> RESPONDENT**

**SIMIITE LESHIMPIRO.....9<sup>TH</sup> RESPONDENT**

**NGAMOLE LEKENIT.....10<sup>TH</sup> RESPONDENT**

**MALINDIN LEKUPE.....11<sup>TH</sup> RESPONDENT**

NGOLON LEPARPURE.....12<sup>TH</sup> RESPONDENT  
GIRO KEKURAO.....13<sup>TH</sup> RESPONDENT  
NACHOIYE LENGIJI.....14<sup>TH</sup> RESPONDENT  
BEATRICE LESHIMPIRO.....15<sup>TH</sup> RESPONDENT  
DICKSON LEIPELE.....16<sup>TH</sup> RESPONDENT  
MR ATITAL LESORIA .....17<sup>TH</sup> RESPONDENT  
SAMBI LENTILEIYE.....18<sup>TH</sup> RESPONDENT  
MOSES NABUNI OLE SEYI.....19<sup>TH</sup> RESPONDENT  
JOSEPH LOSEK LENGURO.....20<sup>TH</sup> RESPONDENT  
EAST AFRICA CENTRE FOR  
LAW AND JUSTICE..... 21<sup>ST</sup> RESPONDENT

*(Suing on their own behalf and on behalf  
of ANGATA – NANYUKIE WARD RESIDENTS)*

**VERSUS**

HON. JOHN LEPIL LOLKILE.....RESPONDENT  
THE ETHICS AND ANTI-CORRUPTION  
COMMISSION.....1<sup>ST</sup> INTERESTED PARTY  
THE INDEPENDENT ELECTORAL AND  
BOUNDARIES COMMISSION.....2<sup>ND</sup> INTERESTED PARTY  
THE ATTORNEY GENERAL.....3<sup>RD</sup> INTERESTED PARTY

**JUDGMENT**

1. This court directed on 15<sup>th</sup> June 2017 that the petition filed in this matter be heard by oral and affidavit evidence on 27<sup>th</sup> July 2017. On that date however neither party tendered oral evidence and because this court declined to grant an adjournment the delivery of judgment was fixed for today.

2. The twenty one petitioners have through the present petition sought on their own behalf and on behalf of residents of Angata – Nanyukie ward in Samburu County the prayers in the petition. The respondent was in the years 2013 to 2017 a members of the county assembly in the Samburu County. The petitioners seek from this court the following orders:-

***(a) A declaration be issued that the respondent has contravened the constitution of Kenya and is not fit to hold public /state office;***

**(b) A declaration that the representation of the people of Angata – Nanyukie Ward has been violated by the respondent;**

**(c) A declaration that the right of the minor girls have been violated by the respondent;**

**(d) That the court make such further orders as it deems just and expedient to meet the ends of justice; and**

**(e) That respondent do pay costs of the petition.**

3. The only evidence before this court on which the petition relies upon is affidavit evidence by Ltodiyan Lekanoi. The deponent describes himself as a resident and a voter of Angata – Nanyukie Ward. The deponent deponed in his affidavit that:-

- **The respondent failed to maintain close contact with the electorate and that he does not consult the electorate or present their views, opinion or proposals before the county assembly;**
- **The respondent does not have professional knowledge experience or specialized knowledge of the issues discussed at the county assembly;**
- **The respondent does not reside nor does he have an office within the ward he represents;**
- **The respondent does not have integrity for his office because he lies and cheats, misleads the electorate, abuses people, drinks, behaves aggressively and has impregnated under age girls;**
- **The respondent does not inform the electorate of matter concerning the ward;**
- **That the respondent had impregnated 5 minors girls; and**
- **That the respondent had committed the offence of bigamy.**

4. Needless to say that the issues stated in the affidavit in support o the petition are very weighty and serious. Because they are weighty and serious the petitioners needed to prove the same and more importantly to adduce oral evidence to give the respondent opportunity to test the evidence by cross examination. In the absence of that evidence the petition remains hollow with no substance to lead to the granting of far reaching prayers sought. The petition was not proved on the required standard of proof. It is for that reason that it fails.

5. The 1<sup>st</sup> interested party had sought by a Notice of Motion dated 21<sup>st</sup> June 2017 for an order to cease participating in the hearing of petition. However since the finding of the court is that the petition must fail it would be in vain to order the 1<sup>st</sup> interested party to cease participating in this matter that has failed. I am however of the view that the 1<sup>st</sup> interested party is entitled to the costs of that application.

6. In the end the orders of the court are:-

**(a) The petition is hereby dismissed with costs to all the parties.**

**(b) The 1<sup>st</sup> interested party is awarded costs against the petitioner on the Notice of Motion dated 21<sup>st</sup> June 2017.**

**DATED and DELIVERED at NANYUKI this 21<sup>st</sup> day of SEPTEMBER 2017.**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Petitioners: .....

For Petitioners .....

For the Respondents: .....

COURT

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**