



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELECTION PETITION NO. 18 OF 2017**

TOM ONYANGO AGIMBA.....PETITIONER

**VERSUS**

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT

THE RETURNING OFFICER,

EMBAKASI WEST CONSTITUENCY.....2<sup>ND</sup> RESPONDENT

GEORGE THEURI.....3<sup>RD</sup> RESPONDENT

**RULING**

[1] The Petitioner, **Mr. Tom Onyango Agimba**, filed this Petition herein on **6 September 2017** challenging the election, on **8 August 2017**, of the 3<sup>rd</sup> Respondent, **Hon. Goerge Theuri**, the Member of Parliament for **Embakasi West Constituency** in the **Nairobi City County**. It was the contention of the Petitioner that the impugned election was so badly conducted, administered or managed that it failed to comply with the governing principles set out in the **Constitution of Kenya, the Elections Act, No. 24 of 2011** and the **Regulations** made thereunder. Accordingly, the Petitioner sought for a declaration, inter alia, that the 3<sup>rd</sup> Respondent was not validly declared as the Member of Parliament and that the declaration in that regard by the 2<sup>nd</sup> Respondent, who was the Returning Officer for the **Embakasi West Constituency**, be declared invalid, null and void.

[2] The 3<sup>rd</sup> Respondent filed a Notice of Preliminary Objection dated **18 September 2017**, contending that the Petition is hopelessly misconceived, frivolous and totally devoid of merit for the reasons that the Petitioner and the pleadings filed by the Petitioner are incompetent, fatally defective and are therefore incurable by amendment. Pursuant to the directions given herein on **4 October 2017**, the parties filed and exchanged written submissions pertinent to the Preliminary Objection. Hence, the 3<sup>rd</sup> Respondent filed his written submissions on **5 October 2017**; while **Mr. Agimba** filed his Grounds of Opposition and written Submissions on **10 October 2017**.

[3] The Preliminary Objection was urged on **10 October 2017** by **Mr. Maloba** and **Mr. Amalemba**, Learned Counsel for the 3<sup>rd</sup> Respondent, while **Mr. Agimba** acted in person. On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, **Mr. Kitur** indicated his support for the Preliminary Objection and the arguments advanced

by Counsel for the 3<sup>rd</sup> Respondent. For that reason, he did not file any documents in respect of the Preliminary Objection.

[4] **Mr. Maloba's** main argument was that the Petitioner contested for the position of Member of Parliament for **Embakasi West Constituency** against the 3<sup>rd</sup> Respondent and others; and that the 3<sup>rd</sup> Respondent emerged the victor in that contest. However, in his Petition, the Petitioner has put forth the name of one **Hezbon Omondi**, who was the candidate for the **Orange Democratic Movement (ODM) Party** for **Embakasi Central Constituency**, in the preamble to his Petition. Moreover, the Petitioner consistently referred to the constituency in issue in the Petition as **Embakasi Central** and not **Embakasi West**. Counsel for the 3<sup>rd</sup> Respondent singled out several paragraphs in the Petition and the particular prayers that make reference to **Embakasi Central Constituency** and the prayers sought, which, he submitted, have no bearing on the factual position. Accordingly, it was the argument of the 3<sup>rd</sup> Respondent that, with that variance on record, it would be in vain for this matter to proceed to hearing as the ultimate result would be incapable of implementation.

[5] **Mr. Maloba** relied on the cases of **Stephen Kimani Gakenia vs. Francis Mwangi Kimani & 2 Others [2013] eKLR** and **Andrew Kimani Ngumba vs. Paul Boit, EP No. 11 of 1979** for the proposition that mistakes in naming specific places, such as the constituency and polling stations in a petition are fatal; and that it is always paramount that the respondents know exactly where an irregularity or misdeed took place to enable an informed response to the Petition. Counsel urged the Court to find that the Petition herein is so incurably bad that it cannot be saved by way of amendment; more so considering that no amendment had been sought, and that in any event such an amendment would be time-barred by dint of **Section 76(4) of the Election Act**; which requires that amendments be made within 28 days of the date of declaration of the results of the election in question. The case of **Mututho vs. Kihara & 2 Others [2008] KLR 10** was relied on by Counsel in support of the proposition that a petition that does not contain all the essentials of a petition is fatal; and that the furnishing of particulars cannot validate an otherwise incompetent petition.

[6] To augment the submissions of **Mr. Maloba** on behalf of the 3<sup>rd</sup> Respondent, were the submissions of **Mr. Amalemba**, whose posturing was that whereas there is room for amendment of a petition with leave of the Court, such leave is not automatic; and that an applicant would have to demonstrate justifiable cause to warrant an amendment. He argued that **Article 159(2) of the Constitution** cannot come to the aid of a party who had slept on his rights such as the Petitioner herein. He relied on the case of **Charles Kamuren vs. Grace Jelagat Kipchoim & 2 Others [2013] eKLR** to support his argument that a proper foundation must be laid for the exercise of the Court's discretion, which, he submitted, the Petitioner herein had failed to do. He also submitted that the Petition was yet to be served on the 3<sup>rd</sup> Respondent, and is therefore subsisting in abuse of the process of the Court. In this connection, Counsel relied on the case of **Suleman & Others vs. The Returning Officer, Independent Electoral and Boundaries Commission [2013] eKLR** in urging the Court to have the Petition struck out with costs.

[7] **Mr. Kitur**, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, supported the thoughts, arguments, submissions and prayers of the 3<sup>rd</sup> Respondent and added that there are rules that govern the filing of petitions, such as the **Elections (Parliamentary and County Elections) Petition Rules**, of which **Rule 8** makes it mandatory for the petition to state the name of the Petitioner and the Constituency in issue. He argued that in view of the discrepancies in the Petition herein, the Court and the Respondents are unable to tell who the Petitioner is, or which constituency is the subject of this Petition. **Mr. Kitur** accordingly urged the Court to find that, for the foregoing reasons, the Petition is fatally defective; and to have it struck out with costs to all the Respondents.

[8] In response to the Preliminary Objection, **Mr. Agimba** relied on the Grounds of Opposition filed herein on **10 October 2017**. He also relied on his written submissions filed herein along with the Grounds of Opposition, which he highlighted on **10 October 2017**. His contention was that the law firm of **Agimba & Associates** was instructed to act for him as well as **Mr. Hezbon Omondi**, the Petitioner in **Nairobi Election Petition No. 17 of 2017**. The said firm then proceeded to prepare the necessary documentation and caused both the Petitions to be filed at the same time on the night of **6 September**

2017 at about 11.45 p.m. just before the midnight deadline. He accordingly conceded that there could have been a mix-up in the critical parts of the Petition, which the firm of **Agimba & Associates** was unaware of until the Notice of Preliminary Objection was filed.

[9] **Mr. Agimba** further contended that the Petitions that were filed were otherwise in order, but due to the mix up aforementioned, the copies that were placed in the Court file, including the ones that were ultimately served on the Respondents, were filed in error. He purported to annex to the Grounds of Opposition the correct version of the Petition to demonstrate the mix-up. He otherwise attributed the failure to stamp the file copies of the Petition to possible fatigue on the part of the Court Registry staff and the pressure that they were under to ensure that the presented documents were processed and filed before the deadline of 12.00 midnight.

[10] On account of the foregoing, **Mr. Agimba** submitted that the interests of justice could still be met without striking out of a Petition; and urged the Court to the viewpoint that to strike out a Petition is an extreme measure that ought to be resorted to only in exceptional circumstances where the Petition is so hopeless that it cannot be salvaged by way of amendment. He submitted that the error of mis-description of the Constituency is not fatal as it is a matter only of form and not content or substance. He added that, in any event, the face of the Petition as read with the averments in the Supporting Affidavit leave no doubt that the Petition is in respect of **Embakasi West Constituency**; and therefore posited that no prejudice had been suffered by the 3<sup>rd</sup> Respondent, as they had responded to the Petition from the correct perspective and standpoint that the impugned election was in respect of **Embakasi West Constituency**. The Petitioner thus urged the Court to bear in mind that at stake in this Petition is his constitutional right under **Article 38** of the **Constitution**, and that it would be in the interest of justice for him to be accorded a hearing and a determination on the merits rather than on technicalities by deeming the corrections proposed as duly made.

[11] **Mr. Agimba** relied on **Article 159(2)(d)** of the **Constitution** as well as **Section 80** of the **Elections Act** in urging the Court not to dwell on procedural technicalities; and not to visit the errors of Counsel on him as a client. On service of the Petition, **Mr. Agimba** submitted that there was no evidence availed by the Petitioner to demonstrate that the Respondents were not served; and that the Court should move on to the substance of the matter. He was of the view that **the Mututho** and **Gakenia Cases** (supra) may not be helpful to the Court, and are therefore distinguishable, granted that they were decided before the **Constitution of Kenya, 2010** was promulgated. He instead urged the Court to find guidance in the case of **Philip Keiptoo Chemwolo & Another vs. Augustine Kubende [1986] eKLR** and **Belinda Murai & Others vs. Amos Wainaina [1978] eKLR** and excuse the mix-up that may have occurred at the time of filing the Petition. **Mr. Agimba** thus urged for the dismissal of the Preliminary Objection. He also urged the Court to treat the copy of Petition attached to his Grounds of Opposition as the *bona fide* document and proceed to consider the substance thereof.

[12] **Mr. Maloba** in his reply, reiterated the 3<sup>rd</sup> Respondent's case and stressed that parties are adversaries at law; and therefore it is left to each one of them to plead their case in the knowledge that they are bound by their pleadings. He argued that the discrepancies in the Petition are not mere technicalities but are substantive matters of law that go to the substance of the Petition. He urged for the striking out of the Petition with costs.

[13] I have given due consideration to all the arguments advanced by the parties in support of and in opposition to the 3<sup>rd</sup> Respondent's Preliminary Objection, including the authorities cited by Learned Counsel. What amounts to a Preliminary Objection is now well settled, namely, that it should be that point or points of law which, if raised as a preliminary objection, would dispose of the entire Petition. In the case of **Mukisa Biscuits Manufacturers Ltd v. West End Distributors Ltd [1969] E.A 696**, **Law JA** had the following to say in that regard:

“... so far as I am aware, 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.”**

[14] It is therefore plain that any concern about service cannot be an issue for consideration by way of Preliminary Objection; for the obvious reason that an investigation would be thereby entailed for the Court to satisfy itself as to whether or not service was effected in the manner envisaged by **Article 87(3)** of the **Constitution** and **Section 77(2)** of the **Elections Act**. In this regard, it is noteworthy that the authorities relied on by the 3<sup>rd</sup> Respondent in support of the Preliminary Objection, substantive applications had been made for striking out and supported by affidavits. For instance, in **the Ismail Suleman Case**, whose facts are in many respects similar to the facts hereof, the 3<sup>rd</sup> Respondent therein had filed an application for, inter alia, the striking out of the Petition. Similarly in **Stephen Kimani Gakenia vs Francis Mwangi & 2 Others** (supra), an application had been filed on behalf of the Respondents therein by way of Notice of Motion under various provisions of the law, including the **National Assembly Elections (Election Petition) Rules** for the striking out of the Petition for want of service, among other grounds.

[15] The same situation obtained in the case of **Charles Kamuren vs. Grace Jelagat Kipchoim & Others** (supra) wherein two applications were filed by the Respondents seeking the striking out of the petition for failure to comply with the pertinent rules; including failure to serve the petition within the stipulated period. Accordingly, the Petitioner having contested the aspect of service, it is my considered view that such are matters that are best laid before the Court by way of an application for striking out of Plaintiff as opposed to a Preliminary Objection. As aptly put by **Sir Charles Newbold, P** in **the Mukisa Biscuits Case**:

**“... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”** (emphasis ours)

For the foregoing reasons, I take the view that the point about service, or lack of it, was wrongly taken by the 3<sup>rd</sup> Respondent as a Preliminary Point. In the same vein, it was an exercise in futility for the Petitioner to attach documents to his Grounds of Opposition for the Court's consideration.

[16] Thus, the only proper point taken by Counsel for the Respondents, in my view, and which emerges as a pure point of law from the Petition itself, is whether the Petition herein comports well with the provisions of the **Elections (Parliamentary & County Elections) Petition Rules** as to the mandatory requirements; granted the references made therein to **Hezbon Omondi** in the preamble thereof and **Embakasi Central** Constituency as opposed to **Tom Onyango Agimba** and **Embakasi West** Constituency in the body of the Petition. In this respect, **Rule 8** of the **Elections (Parliamentary and County Elections) Petitions Rules, 2017** provides as follows:

**“(1) An election petition shall state---**

- (a) the name and address of the petitioner;**
- (b) the date when the election in dispute was conducted;**
- (c) the results of the election, if any, and however declared;**
- (d) the date of the declaration of the results of the election;**
- (e) the grounds on which the petition is presented; and**
- (f) the name and address of the advocate, if any, for the petitioner which shall be the address for service;**

**(2) The petition shall be divided into paragraphs, each of which shall be confined to a distinct**

portion of the subject, and every paragraph shall be numbered consecutively.

**(3) The Petition shall conclude with a statement setting out the particulars of the relief sought which may include--**

- (a) a declaration on whether or not the candidate whose election is questioned was validly elected;**
- (b) a declaration of which candidate was validly elected;**
- (c) an order as to whether a fresh election should be held;**
- (d) scrutiny and recounting of the ballots cast at the election in dispute;**
- (e) payment of costs; or**
- (f) a determination as to whether or not electoral malpractice of a criminal nature may have occurred.**

**(4) The Petition shall--**

- (a) be signed by the petitioner or by a person authorized by the petitioner;**
- (b) be supported by an affidavit sworn by the petitioner containing the particulars set out under rule 12; and**
- c) be in such number of copies as would be sufficient for the election court and all respondents named in the petition.**

**(5) The Registrar shall acknowledge receipt of the petition in Form 2 set out in the First Schedule."**

[17] In the instant case, it is not disputed that the name of **Hezbon Omondi** has been stated in the preamble to the Petition as the name of the Petitioner. However, the heading of the Petition as well as the supporting affidavit, the annexures thereto and the documents filed therewith, bear the correct name of the Petitioner. For instance, **Form EP1** bears the name of **Tom Onyango Agimba** as the Petitioner. The Petition contains the address for service as that of **Agimba & Associates Advocates**. The date when the election in dispute was conducted, the date of declaration of the results as well as the outcome were also set out at paragraph 4 and 25 of the Petition. The grounds on which the Petition was presented are the subject of Part C of the Petition.

[18] There is further no dispute that the petition has been divided into paragraphs, each of which is confined to a distinct portion of the subject, or that every paragraph has been consecutively numbered. The relief sought is the subject of Section E of the Petition, and they include the aspects set out in **Rule 8(3)** of the **Election (Parliamentary and County Elections) Petition Rules**. Moreover, the Petition was duly signed on behalf of **Agimba & Associates Advocates**; is supported by an affidavit sworn on **5 September 2017** by **Tom Onyango Agimba**, which is otherwise compliant with **Rule 12 of the Elections (Parliamentary and County Elections) Petition Rules**.

[19] It is also indubitable that, while in the heading of the Petition the correct constituency is indicated as **Embakasi West**, in various paragraphs of the Petition, there is reference to **Embakasi Central**. The Petitioner blamed these anomalies on what he called a mix-up by the firm of **Agimba & Associates Advocates**, who were also acting for **Hezbon Omondi**, a candidate for the **Embakasi Central Constituency**. It is noteworthy that in the Supporting Affidavit averments were made in respect, not of **Embakasi Central Constituency**, but **Embakasi West Constituency**; and the same is the case with all the annexures filed in support of the Petition, as well as the affidavits of all the witnesses that the

Petitioner has proposed to call. Accordingly, the issue for determination is whether the error involving the name of **Hezbon Omondi** in the preamble and the references to **Embakasi Central Constituency** in the body of the Petition, is fatal to the Petition, granted the circumstances aforesated.

[20] In the light of the analysis set out herein above, it appears to me that the error was merely typographical; that it was inadvertent and that it has been sufficiently explained by the Petitioner; namely that there was a mix-up given that the firm of **Agimba & Associates** was acting for both the Petitioner herein and **Hezbon Omondi**, who was one of the contenders for the **Embakasi Central Constituency** Parliamentary seat. In **Hosea Mundui Kiplagat v Sammy Komen Mwaita & 2 others [2013] eKLR**, in which a more or less similar issue presented itself, a question arose as to whether the Petition offended the provisions of **Rule 10(1)(a) and (c) of the Election Petition Rules (now Rule 8)** in terms of the prescribed content of an election petition, on account of a typographical error. The Applicant contended that the Petition was non-compliant in so far as it did not provide the correct name of the Petitioner. The Court however held thus:

**The description of a party in a petition, is a substantive and mandatory aspect that if omitted goes to the root of the Petition. A party to any court proceedings must be clearly described. However, in my view, the description of the Petitioner as ‘Hosea Mundui Kiplagat’ on one hand and ‘Hosea Mundui Kiplagati’ on the other hand, creates no doubt that it is one and the same person. It has not been argued that there was another contender in the elections known as ‘Hosea Mundui Kiplagati’ to whom this Petition might refer and therefore raise confusion as to the actual Petitioner. This, again, is an error apparent on the face of the record that has no effect on the substance of the Petition and therefore, this ground does not suffice to render the Petition incompetent.**

[21] Similarly, in **Bosire Ogero v Royal Media Service [2013] eKLR** the Court held that:

**“This court employs the principle that no party who avails himself before the court seeking to ventilate their grievances should be ousted from the seat of justice by reason of a mere typographical error which can be rectified without occasioning the opposite party any prejudice that cannot be adequately be compensated by an award of costs. The right to be accorded a hearing and a fair one at that is embedded in the Constitution, Article 50(1) which right cannot be limited, by virtue of Article 25. In the end, the plaintiff will have been guaranteed the right to access justice as enshrined and guaranteed in Article 48 of the Constitution.”**

[22] **Section 76(4)** of the **Election Act** was relied on by Counsel for the 3<sup>rd</sup> Respondent to support the submission that, in any event, this typographical error ought to have been corrected within the 28 day window provided for under the **Elections Act** for the filing of a petition. However, that provision reads:

**A petition filed in time may, for the purpose of questioning a return or an election upon an allegation of an election offence, be amended with the leave of the election court within the time within which the petition questioning the return or the election upon that ground may be presented. (emphasis supplied)**

It is plain then that, for the purposes of **Section 76(4)** aforesated, the 28 day window provided for in **Section 76(1)(a)** is specific to petitions questioning "...a return or an election upon an allegation of an election offence..." which appears not to be the case herein. Accordingly, **Section 76(4)** of the **Elections Act** cannot avail the 3<sup>rd</sup> Respondent.

[23] Moreover, despite the seemingly stringent timelines within which a party may amend his petition, **Rule 19 of the Elections (Parliamentary and County Elections) Petition Rules** recognizes that:

**(1) Where any act or omission is to be done within such time as may be prescribed in these Rules or ordered by an elections court, the election court may, for the purposes of ensuring that injustice is not done to any party, extend or limit the time within which the act or**

**omission shall be done with such conditions as may be necessary even where the period prescribed or ordered by the Court may have expired.**

**(2) Sub-rule (1) shall not apply in relation to the period within which a petition is required to be filed, heard or determined."**

[24] To the extent then that the Preliminary Objection does not question the competence of the Petition as regards the time of its filing, I would take the view that, when it comes to amendment of pleadings that have nothing to do with extension of the timelines specified in the **Constitution** and the **Elections Act** in connection with the period within which a petition is required to be filed, heard or determined, the Court should consider the larger interest of justice and grant the same if warranted; and that the prescribed time for the amendment of a petition is otherwise extensible by virtue of **Rule 19** aforesaid, in so far as such amendment is not sought in a petition that challenges an election on the ground of an allegation of an election offence. I find succour for this line of thought in the decision of **Odunga, J.** in **Ramadhan Seif Kajembe vs. Returning Officer, Jomvu Constituency & 3 others [2013] eKLR** held thus:

**Whereas it would have been prudent for the respondents to have applied to amend their response, in the circumstances of this case I am not prepared to find that the failure to do so did prejudice the petitioner. That the Court has power to amend pleadings at any stage of the proceedings is trite including at the appellate stage where the amendment was occasioned by inadvertence and no prejudice has been occasioned to the other party.**

[25] And in **Institute for Social Accountability & Another v Parliament of Kenya & 3 others [2014] eKLR**, while pondering the question of whether to allow the petitioner to amend their consolidated petitions, the court observed that:

**The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.**

[26] The Petitioner did mention that the anomalies were only brought to his attention upon being served with the Notice of Preliminary Objection. Obviously, for the reason that the 28 day window provided for in **Section 76(4)** of the **Elections Act** had expired by the time, it is understandable why he was unable to file an application for amendment within the strictures of **Section 76** aforementioned, even if that provision were available to him; and whereas it was the duty of the Advocate he retained to exercise diligence with a view of ensuring that the petition met the requirements set by the Election Rules, it is a recognized fact that blunders do occur even with the best of intentions (see **Philip Keiptoo Chemwolo & Another vs. Augustine Kubende [1986] eKLR**). Thus, where, as in this case, there is no evidence that the Petitioner purposed to overreach, or is merely out on a fishing expedition, coupled with the fact that there was substantial compliance in terms of content, the Court should be inclined to accord the Petitioner the chance to have the typographical errors corrected, to enable a merit hearing. Undoubtedly, it is a constitutional imperative that the Court goes for substance rather than technicalities as mandated by **Article 159(2)(d)** of the **Constitution**; and as pointed out herein above, the Respondents have all filed their responses to the Petition and were in no doubt that the petition challenges the election for the **Embakasi West Constituency**.

[27] Indeed, in **Raila Odinga and others v Independent Electoral and Boundaries Commission and 3 others [2013] eKLR** the Supreme Court held that:

**"The essence of that [Article 159(2)(d)] is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone, and which suits all situations of dispute resolution. On the contrary, the court as an**

**agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case and conscientiously determine the best course."**

[28] **Section 80(1)(d)** of the **Elections Act** is fashioned in similar terms and draws from the constitutional imperative set out in **Article 159(2)(d)** aforementioned. It provides that:

**"An election court may, in the exercise of its jurisdiction--**

...

**(d) decide all matters that come before it without undue regard to technicalities."**

And **Rule 5(1)** of the **Elections (Parliamentary and County Elections) Petition Rules** further reinforces the foregoing provisions by stating 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."**

[29] It is instructive that the foregoing are amendments that were introduced to the electoral laws in the period **2016/2017**. It is for the foregoing reasons that I found the pre-2010 authorities that the Respondents relied on to be distinguishable. Moreover, in the **Mututho Case**, the Petitioner did not provide particulars about the result of the election; which is not the case herein. And in the **Suleman Case** the decision turned on the fact that only one affidavit by 1<sup>st</sup> Petitioner had been filed whereas there were 10 Petitioners, and that there was no authority for the 1<sup>st</sup> Petitioner to sign documents on behalf of the other 9 Petitioners. A lot has changed since, for it is now permissible for an affidavit in support of a petition to be sworn **"...by at least one of the petitioners, if there is more than one petitioner..."** by dint of **Rule 12(1)(b)** of the **Election (Parliamentary and County Election) Petition Rules, 2017**.

[30] In the light of all the foregoing, it is my considered finding that the errors in issue herein are simple typographical mistakes whose amendment would not affect or alter the substance of the Petition. They certainly do not introduce a new or additional cause of action that was not envisaged by the Petitioner as at **6 September 2016** when the Petition was filed. More importantly, no prejudice would be thereby occasioned to the Respondents who have put their respective responses with the full knowledge that this Petition is in connection with the **Tom Onyango Agimba**, who was a candidate in the **Embakasi West Constituency** parliamentary contest in the General Elections held on **August 8, 2017**. I would accordingly dismiss the 3<sup>rd</sup> Respondent's Preliminary Objection for the foregoing reasons, and order, pursuant to **Article 159(2)(d)** of the Constitution, that for the purpose of effectually determining the matters in controversy herein, that any references to **"Hezbon Omondi"** and **"Embakasi Central Constituency"** in the Petition dated **6 September, 2017** be amended to read **"Tom Onyango Agimba"** and **"Embakasi West Constituency"**, respectively. Costs to abide the result of the Petition.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF OCTOBER 2017**

**OLGA SEWE**

**JUDGE**