



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
PETITION NO.7 OF 2015
PATRON INTERNALLY DISPLACED PERSONS &
KISII STEERING COMMITTEE.....PETITIONERS
VERSUS
THE CABINET SECRETARY, MINISTRY OF DEVOLUTION &
PLANNING OF NATIONAL GOVERNMENT.....RESPONDENT

JUDGMENT

Introduction

1. The Petitioner, who describes himself as the Patron of Internally Displaced People (Kisii Steering Committee) claims that the State has violated its members constitutional rights by closing the Internally Displaced Peoples (IDPs) camps at Ekerenyo and Keroka. The Petitioner claims that the State has breached the IDPs rights to freedom from discrimination.
2. The Petition is expressed to be anchored on **Articles 20, 21, 22, 24, 27, 28, 33, 73 and 78** of the **Constitution** together with the **Kenya Gazette Supplement Acts 2012 No.220 (Acts No.56)** which relates to **Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act – 2012**.
3. The Petition, which is not supported by an affidavit makes numerous allegations as follows:
 - *That there was direct and indirect discrimination by the government of the internally displaced people in Gusii and that the respondent used one **James Evans Misali** as a link between the Gusii IDPs and the Special Programmes Department yet the said James Evans Misali was not an IDP.*
 - *That there were allegations of fraud of Kshs.55 million which monies were disbursed by the government to be paid to the Gusii IDPs which allegations had not been investigated by Ethics and Anti-corruption Commission (EACC), Kenya National Commission of Human Rights (KNCHR) and the Commission on Administrative Justice (CAJ).*
 - *That the Respondent paid Kshs.400,000/= to IDPs in other regions, namely Rift Valley and*

Central Provinces, but had not done the same for the Gusii IDPs thereby subjecting them to discriminatory treatment.

- That the rights, fundamental freedom on general provisions of the Bill of Rights of Gusii IDPs fraternity have been denied, violated, infringed or threatened by the government.*
- That the Gusii IDPs had not been paid Kshs.10,000/= notwithstanding the fact that the registers containing the names of the said IDPs had been submitted to the respondent.*
- The Petitioner demanded the payment of Kshs.10,000/=, Kshs.25,000/= for resettlement and Kshs.400,000/= which according to the Petitioner had been paid to other IDPs from Central and Rift Valley Provinces but not paid to the Kisii IDPs.*
- The Petition also sought for the protection of the sovereignty of the Gusii IDPs in order to secure the observance of democratic values and principles of the Constitution.*
- The Petition was signed by at least 13 officials of the Kisii IDPs steering Committee led by one **Rev. Nemwel Momanyi** as the patron of the group.*

4. The Petition is opposed by the Respondent through a detailed replying affidavit dated 5th May 2015 sworn by the Deputy to the Secretary of the National Consultative Co-ordination Committee, Ministry of Devolution and Planning, **Mr. Joseph Macharia**.

5. He depones that following the 2007 - 2008 Post election violence, 663,921 individuals comprising of 295,416 households were profiled throughout the country as having been displaced from their homes. He further depones that considering that the IDPs faced different situations and needs, different solutions and approaches were undertaken for different categories of the affected people who were grouped into 4 main categories as follows:

- 70,000/= IDP household comprising 350,000 individuals agreed to voluntarily return to their farms (homes) through the “**Rudi Nyumbani**” operation and this group was paid Kshs.10,000/= and others Ksh.25,000/= for the construction of their houses that had been destroyed during the violence.
- 8,754 households which included 2,574 Turkana IDPs formed Self Help Groups that were profiled by the Ministry before the deadline that was set at 30th December 2008. This category of IDPs were resettled by the government in Government procured land with the exception of 817 households who were paid Kshs.400,000/= each in lieu of resettlement.
- The rest of the IDPs numbering 165,846 households who were categorized as integrated IDPs living among the various communities in the country were paid Kshs.10,000/= as startup capital to enable them rebuild their lives.

6. He further deponed that the Kisii IDPs were classified as integrated IDPs and those cleared for compensation were 17,385 only to whom the Respondent disbursed a total of Kshs.181,200,000/= to be paid as start-up capital and an additional Kshs.8,025,000/= to be paid for construction of houses that had been burnt down during the post election violence.

7. The Respondent’s deponent further averred that the practice of the ministry was to send funded Authority to Incur Expenditure (AIE) to the District Commissioner with an approved register of the IDPs to be paid and once the payments are finalized returns are filed detailing how many IDPs were paid, how many were not paid and the reasons for such non-payment, if any.

8. The returns also showed the names of the recipients, and their signatures. It is through those returns that the Respondent was able to update its records and that any disbursements that were not supported by the duly signed returns were considered to be funds that were unaccounted for.

9. The Respondent contended that non-payment of IDPs could be occasioned by lack of necessary supporting documents such as National ID cards, death of a beneficiary, non availability of a beneficiary or for one reason or another.

He acknowledged that the Respondent was aware of complaints of non-payment of IDPs emanating from Kisii region which complaints the ministry was unable to resolve as out of the 14,074 names of claimants submitted for vetting and verification to find out if they were genuine claimants, only 414 were found to be eligible for compensation while the vast majority were found to be dubiously attempting to seek recognition.

10. He further contended that profiling forms in respect to complainants from Kisii region were found to have a lot of anomalies ranging from lack of proper and full details of the IDPs, lack of signatures, conflict in dates of profiling and the use of forms that were not ratified by the National Bureau of Statistics.

11. Lastly, the Respondent's deponent contended that the team vetting and verifying the Kisii IDPs recommended that the government should not entertain claims by persons or groups claiming to have been profiled in any other way other than those already existing in the database as at 31st December 2008 registration deadline.

On the claim that Kshs.55 Million meant for the compensation of Kisii IDPs had allegedly been misappropriated, the Respondent stated that it was still awaiting the outcome of the investigations initiated by the Ethics and Anti-corruption Commission (EACC).

12. When the Petition came up for hearing before Justice Nagillah on 6th July 2015, the parties agreed to canvass their arguments by way of written submissions. When the matter came up before me on 10th November, 2015 both parties had filed their written submissions whereupon Mr. Eredi, counsel for the Respondent relied on the Respondent's replying affidavit, the Respondent's written submissions filed on 16th September 2015 and the decision in **Eldoret HC. Petition No.15 of 2012 Saaka Saaka Community Displaced Persons Group vs Ministry of State for Special Programmes & the Attorney General.**

Petitioner's Submissions

13. The Petitioner's submissions focused mainly on the provisions of **Article 27** of the **Constitution** which deals with the right to freedom from discrimination.

14. In his written submissions filed on 9th July 2015, the Petitioner narrated the chronology of events that led him to lodge the Petition and the various government officers and agencies that he made attempts to address his complaint to without any success. He submits and complains that certain amounts of money were unaccounted for by various government officials. He contends that there was fraud committed by certain individuals who handled the monies due to the IDPs and plunder by the Respondent.

15. He concludes his submissions by praying that the replying affidavit filed by the Respondent be struck out and orders sought by the Gusii IPDs be granted.

16. In his oral submissions, the Petitioner referred to **Articles 22** and **258** of the Constitution as the articles that grant him the locus standi to institute the instant application and stated that the court should not be restricted by the rigours/shackles of procedure to deny a party his rights. He urged the court to determine the Petition on its merits.

Respondent's Submissions

17. The Respondent's counsel Mr. Eredi submitted that the Petition is extremely vague and ambiguous as it was not clear, from the said Petition, what orders the Petitioner was seeking since the said Petition did not contain any prayers.

18. The Respondent added that even though the Petition is ostensibly filed by the Petitioner on behalf of other individuals, there is no list of the IDPs on the application, no names of the people the Petitioner is acting for and in what capacity they were making their claims.

19. Mr. Eredi contended that the Respondent had in its replying affidavit, endeavoured to explain in detail, the measures that the government undertook in its bid to settle the daunting issue of the IDPs yet the Petitioner had not supported its Petition with any affidavit thereby leaving the said Petition to ‘*hang in the air.*’ While acknowledging the fact that **Articles 22 and 258** of the **Constitution** had opened up the locus standi space by allowing anyone to file a Petition, the Petitioner’s instant Petition still fell short of the threshold of the said Articles as the Petitioner was not incorporated and therefore was not a known legal entity that could sue or be sued, there was not even one IDP named in the Petition. Therefore coupled with the absence of an affidavit to support the Petition, it was not easy to tell, with certainty, the real persons behind the Petition.

20. Mr. Eredi took issue with a replying affidavit that the Petitioner filed, in response to the Respondent’s submissions by stating that the same was irregularly filed without the leave of the court and thus ought to be struck out.

21. In a nutshell, the Respondent’s case is that the Petition is incurably defective and incompetent; the Petitioner lacks legal capacity to institute the instant proceeding; the Petitioner’s members are unknown; and finally that the State had done all that it could to deal with the problem of the IDPs and had not breached the Constitution. Mr. Eredi prayed for the dismissal of the Petition.

Analysis and determination

22. Upon considering the Petition, depositions, the rival submissions and the authorities cited by the parties, I note that the issues requiring my determination are as follows:

- a. Whether the Petitioner has the locus standi to institute the Petition.
- b. Whether, in the absence of an affidavit in its support, the Petition is fatally defective.
- c. Whether the Petition has raised issues capable of being determined by the court.

23. The Petitioner has referred to himself as “*The Patron, Kisii IDPs Steering Committee*”. The Respondent submitted that the Petitioner lacks standing to sue in its name under **Article 260** of the **Constitution**, a person is defined as follows:

“ ‘Person’ includes a company, association or other body of persons whether incorporated or unincorporated.”

24. **Article 258** of the **Constitution** on the other hand states as follows:

“(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by –

- (a) a person acting on behalf of another person who cannot act in their own name;***
- (b) a person acting as a member of, or in the interest of, a group or class of persons;***
- (c) a person acting in the public interest; or***
- (d) an association acting in the interest of one or more of its members.”***

25. Similarly **Article 22** of the **Constitution** states thus:

“(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-

(a) a person acting on behalf of another person who cannot act in their own name;

(b) a person acting as a member of, or in the interest of, a group or class of persons;

(c) a person acting in the public interest; or

(d) an association acting in the interest of one or more of its members.

(3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that;

(a) the rights of standing provided for in clause (2) are fully facilitated;

(b) formalities relating to the proceedings, including commencement of the proceedings, are kept to the minimum, and in particular that the court shall, if necessary, entertain proceedings on the basis of informal documentation;

(c) no fee may be charged for commencing the proceedings;

(d) the court, while observing the rules of natural justice, shall not be unreasonably restricted by procedural technicalities; and

(e) an organization or individual with particular expertise may, with the leave of the court, appear as a friend of the court.

(4) The absence of rules contemplated in clause (3) does not limit the right of any person to commence court proceedings under this Article, and to have the matter heard and determined by a court.”

26. From the bundle of documents that the Petitioner attached or filed with the Petition, there is a Certificate of Registration of Kisii County IDPs Self Help Group with the Ministry of Gender, Children and Social Development dated 7th January 2013. It is clear that the Petitioner is an incorporated association and that it could bring a Constitutional Petition. However, in order for such an entity to file a suit, it can only do so through its registered officials. The court when confronted with a similar scenario in **Kipsiwo Community Self Help Group –vs- Attorney General & 6 others, Eldoret, High Court E & L Petition No. 9 of 2013** (*unreported*), held as follows:

“It would seem therefore, from a reading of Article 22 and the definition provided in Article 260, that a company, association or other body of persons whether incorporated or unincorporated, may institute proceedings asserting a violation of a right in the Bill of Rights.

I think the issue is not really whether unincorporated entities may commence action but the manner in which unincorporated entities may commence proceedings. A number of individuals may come together and form an identifiable group. They can bring action as the group, but it does not mean that the group is now vested with legal capacity to sue and to be sued. In such instance, the members of the group have to bring action in their own names, as members of the group, or a few can bring action on behalf of the other members of the group,

in the nature of a representative action. Unincorporated entities have no legal capacity and cannot therefore sue in their own names. They can however sue through an entity with legal capacity. Just because the Constitution allows unincorporated bodies to sue, does not vest such bodies with legal capacity and such bodies do not become persons in law, and cannot be the litigants or sue in their own standing. They still have to use the agency of a person recognized in law as having capacity to sue and to be sued.”

27. In the instant case, the party calling itself the patron of Kisii IDPs steering Committee has not exhibited any proof that he is a registered official of the group so as to clothe himself with the requisite capacity to sue or be sued on behalf of the said group.

28. Furthermore, the Petitioner has not shown the list of the IDPs who he claims that he acts for or were affected by the post election violence in order to establish and to validate his claim by confirming the actual existence of the IDPs. The Petition is at the end signed as drawn and filed by 13 other people 9 of whom appear to be officials of the group and the other 4 listed as members.

29. It is also not clear if these listed officials are duly registered as officials of the group and if the members cited constitute the members of the IDP group or the IDPs, in fact, it is also not easy to tell if the so-called officials including the patron himself are IDPs or not or if there are other IDPs not listed among the signatories to the Petition.

30. In a nutshell, this is a Petition brought on behalf of persons, whose number and identity are undisclosed.

31. I find that the Petition, as presented is fatally defective for the reasons stated hereinabove as granting orders in favour of an amorphous and unnamed members of a group whose numbers are unknown would be tantamount to granting a blank cheque to every Tom, Dick and Harry to enter into the fray and join the gravy train by claiming entitlement to benefit from the court order while riding on the banner of being Kisii IDPs.

32. It would have been prudent for the Petitioner to clearly show in his Petition the exact number and identity of the people he claims have been discriminated against by the Respondent in order for the court to make specific orders in respect to such persons should the Petition succeed.

33. The Petitioner's Petition therefore fails not only for his lack of locus standi, but also for failure to disclose the true identity and number of the people he claims to act for. **Article 27(4)** of the **Constitution** prohibits the State from discriminating 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.

34. One cannot surely say that a person has been discriminated against or has been wronged without disclosing the name or identity of the wronged party. In order to benefit from the provisions of **Article 27(4)** of the **Constitution**, the Petitioner needed to demonstrate who its member were, that its members were genuinely displaced persons, and that other persons who suffered similar fate received preferential treatment and assistance from the State. The onus of proof was on the Petitioner to show that there were genuine claimants from Kisii area who were discriminated against by the Respondent the key issue being the violation of the rights of the Gusii IDPs.

35. The question of IDPs, their compensation and/or resettlement is fairly a new matter in our legal system such claims having arisen after the 2007/2008 post election violence. It is not lost to me that a claim for compensation coming up in 2015 almost 8 years after the fateful events cannot be free from infiltration by joy riders seeking to reap from the State even though they may have not been affected by the displacement. From a legal stand point, by assisting the displaced persons, the State merely made ex-gratia payments to the affected people without admitting liability for their claims. Bearing in mind the sheer magnitude of the number of people affected or displaced by the violence, it is possible that some genuine claimants could have been left out of the government payment schedule.

36. If that was the case, then the more reason why the Petitioner ought to have furnished this court with the specific details of the real victims their actual number, where and when they were displaced in order for the court to fairly adjudicate on their claims.

37. In my humble view, even though the government owes a duty to the citizens to protect their lives and property, the victim mentality and ‘*serikali saidia*’ syndrome that has in the recent past been exhibited by persons or groups of people, as a way of seeking government’s assistance every time a calamity strikes must have its limits and time frame. I say so bearing in mind the fact that the Petitioner’s claim has been filed 8 years after the Post Election Violence took place and after the government officially closed its register of claimants’ way back on **31st December 2008**. While I deeply empathize with the real victims of Post Election Violence, I opine that just like in any other case where a calamity strikes humanity, however painful or grave, there comes a time when the affected party has to rise up, shake off the dust and move on with their lives.

38. My findings on the locus of the Petitioner and the lack of list of the IDPs are sufficient to dispose of the Petition. I am however minded to comment on the other issues raised in the pleadings and submissions in order to determine this Petition in a conclusive manner.

Lack of a supporting affidavit

39. The Petition was filed on **2nd February 2015** without a supporting affidavit.

The Respondent has submitted that failure to file an affidavit in support of the Petition meant that the Petition was not based on any evidence at all and that the averments/claims made in the Petition remain just that, mere allegations devoid of any evidentiary proof. The Respondent’s case was that the court could not make a finding on facts that are not backed by evidence.

40. I find that the Respondent’s submissions on this aspect are well grounded in law. The Petition merely lays the facts or claim that the Petitioner seeks to present in court while the affidavit lays down the evidence in support of those claims.

41. The Respondent submitted that the Petition was incompetent for lack of an affidavit in its support.

Rules 12, 13 and 14 of Constitution of Kenya (*Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual*) **High Court Practice and Procedure Rules, 2006** (*The Gicheru Rules*) provide as follows:

“12. An application under rule 11 shall be made by way of a Petition as set out in Form D in the Schedule of these Rules.

13. The Petition under Rule 12 shall be supported by an affidavit.

14. If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit.”

42. The Petitioner argued that the court, in dealing with matter pertaining to violation of fundamental rights such as the present case, should not pay ‘*undue regard*’ to procedural technicalities. This brings to the fore the question of whether the requirement that a Petition be accompanied by an affidavit in its support, to which the documents a party wishes to rely on are annexed, is a ‘*procedural technicality*’ which the court should not pay undue regard to.

43. An affidavit in support of a Petition by its very nature contains the evidence the party wishes to rely on in support of his case. Therefore, without an affidavit, there is no evidence before the court that that would enable a party to prove and maintain his claim. I therefore find that the requirement that a Petition be supported by an affidavit is not a procedural technicality, but a mandatory requirement which goes to the very foundation and substance of the Petitioner’s case without which the Petition cannot stand.

44. In the instant case therefore, I find that the Petition before the court is incompetent as the allegations contained in it are not supported by any evidence (read affidavit). The verifying affidavit annexed to the Petition does not satisfy the mandatory requirements of **rule 13** of the **Gicheru Rules** and the documents filed with the Petition are strictly speaking not annexures to any affidavit and furthermore the same have not been commissioned by the Commissioner for Oaths as exhibits to any affidavit and are therefore not properly before the court.

Under **Order 4 Rule 1(2)** of the **Civil Procedure Rules**, verifying affidavits normally accompany the Plaint and are merely intended to verify the correctness of the averments contained in the said plaint.

45. I concur with the Respondent's submissions that the Petitioner's replying affidavit to Respondent's submissions dated 17th September 2015 was filed without the leave of the court and cannot be considered to be an affidavit in support of the Petition or part of the court record for that matter. This is so because the intention of the rules requiring the filing of an affidavit in support of the Petition together with the Petition is so that the court will have before it the evidence that the party intends to rely on.

46. It is therefore unprocedural and illogical for a party to make allegations of violation of right in February 2015 and file an affidavit in response to submissions, without leave, in September 2015 almost seven months later. In any event, I find that there is no such pleading as, '*replying affidavit to Respondent's submissions.*' What the Petitioner ought to have filed was a reply to Respondent's submissions. Consequently, the Petitioner's so-called replying affidavit to the Respondent's submissions is thereby expunged from the court record as it cannot by any stretch of imagination be deemed to be an affidavit in support of the Petition.

47. The Petitioner could have cured the defect in his Petition (without a supporting affidavit) by seeking leave to amend his pleadings which option he did not exercise despite the said option being pointed out to him by the Respondent during the proceedings.

48. In the end, I find that the Petition is fatally defective for lack of an affidavit in its support. In the same vein, the array documents which the Petitioner attached to the Petition ought to have been properly presented as annexures to the affidavit in which case they, would be identified, marked and treated as exhibits in the case. Consequently, therefore, I find that the said documents have no evidentiary value in this case and are similarly expunged from the record.

49. The court notes that even though the Petitioner acted in person as he was unrepresented in this case, the basic rules on presentation of evidence before the court applies evenly to all parties across the board whether represented or not. A party, whether represented or not, is duty bound to present evidence before the court if he is to obtain the orders he seeks, and the Petitioner cannot plead protection from **Article 159** of the **Constitution** as the requirement of an affidavit in support of a petition is not a mere procedural technicality but a fundamental mandatory requirement in all Petitions and applications.

50. In this respect, I fully associate myself with the findings of Ngugi J, in **Charles Okello Mwanda –vs- Ethics and Anti-Corruption Commission and 3 others [2014] eKLR** when he held:

“It is indeed true that the Constitution at Article 22 enjoins the court, in dealing with matters pertaining to violation of fundamental rights, and at Article 159 (2) (d) in administering justice, not to pay ‘undue’ regard to procedural technicalities. The question is, whether the requirement that a Petition be accompanied by an affidavit in support, to which the documents a party wishes to rely on are annexed is a ‘procedural technicality’ which the court should not pay undue regard to. An affidavit in support of a Petition contains the evidence a party wishes to rely on in support of his case.

Without an affidavit in support of a Petition, there would be no evidence before the court on the basis of which a party can maintain his claim. Consequently, the requirement that the Petition be supported by an affidavit is not a technicality, but relates to the very substance and core of a Petitioner's claim. In the present case therefore, the petition before the court is

indeed incompetent as the allegations contained in it are not supported by any evidence, the verifying affidavit annexed thereto does not meet the requirements of rule 13 of the Gicheru Rules, and the document that the Petitioner relies on are not properly before the court.”

Issues capable of court’s determination

51. The Petition raised the issue of discrimination of IDPs from Gusii land generally whom the Petitioner claimed had not been given equal treatment as IDPs from Central and Rift Valley Provinces. As I have already observed in this judgment, the Petitioner did not attach any affidavit to support his Petition. There was no list of the alleged IDPs availed to the court.

52. The Petitioner accused one **James Evans Misali** of certain impropriety in his dealings with the IDPs issues without making the said James Evans a party this suit. Similarly, the Petitioner accused other bodies such as EACC, KNCHR, and Commission on Administration of Justice of misdeeds without including them as parties to the suit. Allowing the Petition as it currently stands would be tantamount to condemning the said James Evans Misali and the government agencies mentioned, of misdeeds without affording them a hearing, thus condemning them unheard. This would go against the basic principle of natural justice.

53. The above findings notwithstanding, this court is still minded to establish if there is indeed, violation of rights as alleged. As I have already stated earlier in this judgment, the Petitioner’s claim that IDPs from other regions were given better treatment by the government was not founded on any hard evidence or substantiated. The Respondent’s replying affidavit on the other hand provided a detailed breakdown and profiles of all IDPs regardless of their ethnicity or regions of origin. The fact that the Respondent’s averments in the replying affidavit were not rebutted by the Petitioner shows that the payments were purely based on respective classifications of the IDPs which classification was rational. In any event, the Respondent stated the reasons why some claimants from Gusii land were not paid when they claims were found to be fraudulent.

54. The fact that there were no prayers in the Petition makes the Petitioner’s case even more ambiguous. At worst, the Petitioner ought to have disclosed exactly what prayers he seeks from the court. A Petition without specific prayers, leaves the court in an awkward position even if it was to find the Petition to have merit as the court would then be left guessing on exactly what orders to grant.

55. In this instant case, the fact that the Petitioner, lacked the locus standi to file this case, the Petition was unsupported by an affidavit and lacked the prayers sought in my humble view, were factors that totally render the Petition untenable.

56. The Petitioner had all the ample opportunity to cure these defects by seeking leave to amend the Petition and by including the prayers and a supporting affidavit. This was not done. The serious allegations of corruption and misappropriation of funds made by the Petitioner are allegations that fall within the purview of investigations by the EACC and the Criminal Investigations Department of Police as this court cannot make a determination on the same within this Petition.

57. I have reached the conclusion that apart from the merits of the Petition, the Petitioner lacks the legal standing to present the proceedings as he did, coupled with the lack of an affidavit to support the application, the action is incurably defective. I find that the Petitioner has failed to discharge the onus of proof that the Respondent’s violated the rights of the Gusii IDPs who were unidentified. It also follows as a corollary that since there were no orders/prayers sought, the court cannot issue any declarations or reliefs that were not sought.

58. The upshot of my judgment is that the Petition is incurably defective and devoid of merit. It is hereby dismissed with costs to the Respondent.

59. It is so ordered.

Dated, signed and delivered in open court this 26th day of January, 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Nemwel Momanyi, Patron for the Petitioners
- No Appearance for the Respondents
- Omwoyo: court clerk