



IN THE HIGH COURT AT KISUMU

PETITION NO. 20 OF 2016

BETWEEN

VICTOR SHIRIBWA MWANGA 1ST
PETITIONER

FRANK MUSIEGA ADIGA 2ND
PETITIONER

ALFRED AJANGA AHUTA 3RD
PETITIONER

JOSHUA NKOMO 4TH
PETITIONER

AND

HAMISI CONSTITUENCY 1ST
RESPONDENT

HON. CHARLES GIMOSE 2ND
RESPONDENT

NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND BOARD ... 3RD
RESPONDENT

RULING

1. The thrust of the petition before the court is that the Hamisi National Government Constituency Development Fund Committee (“the Committee”) constituted under the *National Government Constituencies Development Fund Act, 2015* (“the Act”) violates the rights of persons with disabilities as the person nominated to represent persons with disabilities under **section 43(2)(d)** of the Act is not a person with disabilities.
2. The 3rd respondent, which is the National Government Constituency Development Fund Board (“the Board”) constituted under **section 14** of the Act objects to these proceedings on account of the provisions of **section 16(e)** and **56(1)** of the Act which require that any disputes concerning the administration of Act be forwarded to the Board for resolution in the first instance.
3. In opposition, the petitioner is of the view that the petition herein is one for the enforcement of

fundamental rights and freedoms protected by the Bill of Rights hence under **Article 165(3)(b)** of the Constitution, the High Court has exclusive jurisdiction to enforce such fundamental rights and freedoms.

4. I take the view that in light of the provisions of **Article 159(2)(c)** of the Constitution, it is not inconsistent with the Bill of Rights to resolve matters even those involving fundamental rights through alternative dispute resolution where appropriate particularly where there is a statutory procedure provided. After all public bodies are bound by the Constitution and the Bill of Rights and must apply the same in making any decisions.
5. This being the case, I decline to uphold the preliminary objection. However, having regard to the subject matter, the need to ensure resolution of this matter and that the Committee is properly constituted in accordance with the Constitution and the law, I direct as follows;
 - a. The National Government Constituencies Development Fund Board shall inquire into and establish whether the Hamisi National Government CDF Committee is properly constituted having regard to the inclusion of persons with disabilities in accordance with the ***National Government Constituencies Development Fund Act, 2015***.
 - b. The Board shall hear all parties including Oscar Buleemi who shall be served with these proceedings and shall proceed to make its findings thereon.
 - c. A report of the findings shall be filed in this court within 45 days from the date hereof.
 - d. This matter will be mentioned on 20th July 2016 for further orders and directions.
 - e. The 1st respondent, Hamisi Constituency and the 2nd respondent, Honourable Charles Gimose are struck off from these proceedings.
 - f. The petition to the extent of any claim by the 4th petitioner, Joshua Nkomo is duly marked as withdrawn with no order as to costs.
 - g. Costs in the cause.

DATED and DELIVERED at KISUMU this 10th day of June 2016.

D.S. MAJANJA

JUDGE

Mr Sore instructed by R. A. Onchuru & Company Advocates for the petitioners.

Mr Ojuro instructed by Otieno, Yogo, Ojuro and Company Advocates for the 3rd Respondent.

Hon. Charles Gimose in person.