



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Constitutional Petition 119 of 2012

IN THE MATTER OF: THE CONSTITUTION OF KENYA

**IN THE MATTER OF: IMPLEMENTATION OF RIGHTS AND FUNDAMENTAL
FREEDOMS**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLE 38, 81(D), 88(4) (C) 89,
94(2) OF THE CONSTITUTION**

**IN THE MATTER OF: THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION
ACT, 2011**

**IN THE MATTER OF: DELIMITATION OF BOUNDARIES OF TINDERET & NANDI HILLS
CONSTITUENCIES AND WARDS**

**IN THE MATTER OF: LEGAL NOTICE NO.14 OF 6/03/2012 THE NATIONAL ASSEMBLY
CONSTITUENCIES AND COUNTY ASSEMBLY WARDS ORDER, 2012**

1. WILSON KIPLAGAT KEMBOI

2. ISAAC KIRWA LETINGPETITIONERS/APPLICANTS

VERSUS

THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSIONRESPONDENT

AND

THE HONOURABLE ATTORNEY GENERAL INTERESTED PARTY

RULING

1. The application before the court is dated 18th October 2012 and it seeks orders to review our judgment delivered on 9th July 2012 in respect of the delimitation of Nandi Hills and Tinderet Constituencies so as to reflect the County Assembly wards to accord with the decision.

2. During the hearing of the petition, we accepted the petitioners' proposal that geographical features, community of interest, accessibility as between the highlands and lowlands were be taken into account in delimiting Nandi Hills and Tinderet constituencies. In the original map, Nandi Hills constituency

comprised the following County Assembly Wards; Chepkunyuk, Nandi Hills, Kapsimotwo and Chemelil/Chemase. Tinderet Constituency comprised the following County Assembly Wards; Ol'Lessos, Kapchorua, Songhor/Soba and Tindiret.

3. In our judgment we delimited the constituencies as follows;

(a) Nandi Hills Constituency with a population of 107,534 shall comprise the following County Assembly Wards; Ol'Lessos, Kapchorua, Nandi Hills and Chepkunyuk.

(b)Tinderet constituency with a population of 100,691 shall comprise the following County Assembly wards; Chemeli/Chemase, Kapsimatwo, Songhor/Soba and Tinderet.

4. We have considered the arguments made by the parties and the only issue for our determination is whether there is an error apparent on the face of the record or a fundamental defect in our judgment which falls within the purview of review. We have read the application, the petition and the judgment. We are satisfied the judgment accords with the prayers sought in the petition.

5. What the petitioners seek in the instant application is the movement of six sub-locations in Kapchorua County Assembly that is; Tereno, Kapsokio, Kapkoros, Tereton, Kisoga and Ainapng'etuny from Nandi Hills constituency to Tinderet constituency. This would be contrary to our decision which did not interfere with sub-locations. For us to allow the application would be tantamount to undertaking a fresh delimitation. This would necessitate the re-ordering of other sub-locations in neighbouring County Assembly wards to ensure that they comply with the Constitutional threshold.

6. The effect of the judgment was to create a right that has now crystallized and taken effect and the nature of the application would have a fundamental effect on the decision.

7. We are alive to the fact that our decision was given on 9th July 2012 and this application has been brought on 18th October 2012. We are mindful of the consequences of adopting such a course as the delimitation process is not only a legal process but a political one within which strict timelines have been set by the Constitution and the statutes governing conduct of elections.

8. In the circumstances, we do not think that this is a matter that calls for us to interfere with our judgment. The application is therefore dismissed with no order as to costs.

DATED, SIGNED and DELIVERED at Nairobi this 30th day of November 2012.

M. WARSAME

JUDGE

R. N. SITATI

JUDGE

H. A. OMONDI

JUDGE

P. NYAMWEYA

JUDGE

D. MAJANJA

JUDGE