



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

PETITION JR NO. 166 OF 2010

IN THE MATTER OF SECTION 84(1) AND 84(2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 3 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER SECTION 79(1), 79(2) AND**

SECTION 78(1) OF THE CONSTITUTIONAL REVIEW ACT 2008

AND

IN THE MATTER OF SECTION 37(3) OF THE CONSTITUTIONAL REVIEW ACT 2008

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION
AND PROTECTION OF RIGHTS AND**

**FREEDOMS OF INDIVIDUALS) HIGH COURT PRACTICE AND PROCEDURE RULES 2006
RULES 11, 12, 13, 14 AND 32**

AND

IN THE MATTER OF THE PETITIONERS KAMAU CHEGE DANIEL AND COSMUS
KIPKEMOI NG'ENO KOECH

BETWEEN

KAMAU CHEGE DANIEL.....1ST
PETITIONER

COSMUS KIPKEMOI NGENO
KOECH.....2ND PETITIONER

AND

THE HON. ATTORNEY GENERAL.....1ST
RESPONDENT

THE INTERIM INDEPENDENT ELECTORAL COMMISSION.....2ND
RESPONDENT

THE COMMITTEE OF EXPERTS.....3RD
RESPONDENT

RULING

1. The Petition filed herein seeks the following prayers, inter-alia,
 - i. **THAT Section 37(3) of the Constitution Review Act, 2008 be declared null and void to the extent that it limits the options and or alternatives available to a voter to vote yes or no hence constitutes an infringement on the freedom of expression and or opinion or thought.**
2. The Constitution Review Act, 2008 provided a framework for the review of the former Constitution leading up to the adoption, by referendum and promulgation of the Constitution of Kenya, 2010.
3. Article 2(3) of the Constitution of Kenya, 2010 provides that, “**the validity or legality of this Constitution is not subject to challenge by or before any court or other state organ**”. In my view, to proceed with this matter is to mount a collateral challenge on the validity of the Constitution, a matter which is prohibited by Article 2(3).
4. Further, the Constitution Review Act, 2008, is now exhausted and nothing further can be gained from proceeding with this matter. I, of course, sympathise with the Petitioners who could not be heard urgently on their matter despite having the matter certified as urgent in April 2010. I must dismiss this matter and it is hereby dismissed with no order as to costs.

DATED at NAIROBI this 21st day of October, 2011.

**D.S. MAJANJA
JUDGE**

21.10.2011

Coram: Majanja J

Nazi Court clerk

Mr. K. Muhoro for the Respondent

Order:- Ruling read n open court.

D.S. MAJANJA

JUDGE