

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (CENTRAL REGISTRY)

CONSTITUTIONAL AND JUDICIAL REVIEW DIVISION)

PETITION NO. 69 OF 2011

ERIC BARARE ORINA..... PETITIONER

V E R S U S

INTERIM INDEPENDENT ELECTORAL COMMISSION..... RESPONDENT

R U L I N G

1. The Petition before this court dated 4th May, 2011 seeks among other orders, a declaration that the failure by the Interim Independent Electoral Commission to register Kenyans living outside the country as voters is a denial of their political rights provided for in Article 38 of the Constitution.
2. On 19th October, 2011, and pursuant to directions of the Chief Justice in his Practice Note dated 25th September, 2011, I directed the parties to file written submissions on why this matter should be placed before a 3-judge bench pursuant to the provisions of Article 165(4) as raising a substantial question of law. The Petitioner had applied for the matter to be referred to the Chief Justice for Constitution of a 3-judge bench.
3. Both the Petitioner and the Respondent have filed their submissions. In his submissions dated 19th October, 2011, the Petitioner sets out what he says are substantial questions of law for determination by the court which are raised by the Petitioner. He does not state why these questions are substantive and why they cannot be determined by a single judge.
4. On its part, in its submissions dated 3rd November, 2011, the Respondent submits that the Petitioner does not raise a substantial question of law to warrant the constitution of a 3- Judge Bench by the Chief Justice. It submits that the novelty of a legal matter does not and cannot be construed to be a substantial question of law. It submits that the petition can be adequately handled by a single judge of the High Court.
5. I have considered both the prayers sought in the Petition and the respective submissions of the parties. The Petition relates to the right to political participation by Kenyans living outside the country. While the issue of registration and participation of Kenyans living outside is new and has not been the subject of judicial determination, there is nothing so novel or complex in the matter, or the issue for determination by the court, that cannot be handled adequately and expeditiously by a single judge of the High Court.
6. I therefore decline to certify the matter as raising a substantial question of law requiring to be heard by an uneven number of judges.
7. I direct that the parties take a date for hearing of the

petition before a single judge of the High Court.

Dated and delivered at Nairobi this 21st day of November, 2011.

Mumbi Ngugi
Judge.