



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**OF KISII**

**Miscellaneous Civil Application 69 of 2008**

**IN THE MATTER OF: AN APPLICATION BY JOHN KIRANGAS KORINKO, DAVID REMPU OLE  
MOISITE, LEPOSO KOROROM, DANIEL LEURU OLE KALASINGA & NICHOLAS BETT FOR  
JUDICIAL REVIEW (PROHIBITION & MANDAMUS)**

**AND**

**IN THE MATTER OF: CONSTITUENCY DEVELOPMENT  
FUND ACT,**

**AND**

**IN THE MATTER OF: CONSTITUTION OF THE  
LOCATIONAL COMMITTEE**

**AND**

**IN THE MATTER OF: CONVENTION OF LOCATIONAL MEETINGS**

**AND**

**IN THE MATTER OF: KILGORIS CONSTITUENCY**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE CONSTITUENCY DEVELOPMENT COMMITTEE,  
KILGORIS CONSTITUENCY ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL CONSTITUENCIES DEVELOPMENT**

FUND MANAGEMENT COMMITTEE ..... 2<sup>ND</sup> RESPONDENT  
HON. GIDEON KONCHELLA, MEMBER OF PARLIAMENT,  
KILGORIS CONSTITUENCY ..... 3<sup>RD</sup> RESPONDENT

**EX-PARTE:**

JOHN KIRANGAS KORINKO  
DAVID REMPU OLE MOISITE  
LEPOSO KOROROM  
DANIEL LEURU OLE KALASINGA  
NICHOLAS BETT

**RULING**

After delivery of this court's ruling dated 2<sup>nd</sup> March, 2009, this matter was forwarded to the High Court Central registry, Nairobi. But following variation of Gazette Notice No. 300 of 2007 that required all judicial review matters to be heard at Nairobi, this file was returned to this court.

Mr. Ochwangi for the applicant urged this court to give its ruling in respect of the preliminary issues that had been raised by Mr. Bosire for the respondent on 19<sup>th</sup> February, 2009. The issues had been highlighted in the earlier ruling aforesaid.

I have considered the submissions made by counsel. The **Constituencies Development Fund Amendment Act No. 16 of 2007** abolished the National Constituencies Development Fund Management Committee and replaced it with a Development Fund Board. The Board is a corporate entity and capable of suing and being sued, unlike the abolished committee.

In that regard, the second respondent is non-existent and cannot therefore be sued.

As regards the first respondent, the Constituency development Committee, it is trite law that the members of that committee can only be sued in their specific names, not generally as a Committee.

The third respondent is the patron of Kilgoris Constituency Development Fund Committee. In the absence of the first and second respondents who have wrongly been sued, the ex-parte applicants' application cannot be sustained against the third respondent alone.

The application is bad in law and is struck out with costs to the first and third respondents.

**DATED, SIGNED AND DELIVERED AT KISII THIS 3<sup>RD</sup> DAY OF DECEMBER, 2009.**

**D. MUSINGA  
JUDGE.**

**3/12/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Oguttu for the Applicant

N/A for the Respondent

**Court:** Ruling delivered in open court.

**D. MUSINGA  
JUDGE.**