



Ouma & another v Orengo & 11 others (Constitutional Petition E007 of 2022) [2025] KEHC 10363 (KLR) (18 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CONSTITUTIONAL PETITION E007 OF 2022**

DK KEMEL, J

JULY 18, 2025

IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 73, 75, 124, 159, 165, 179, 196, 232, 258 AND 259 OF CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTIONS 3, 4, 7, 8, AND 9 OF THE LEADERSHIP & INTERGRITY ACT NO. 19 OF 2012

AND

IN THE MATTER OF SECTIONS 30(2) & (3) AND SECTION 35 OF THE COUNTY GOVERNMENT ACT, 2012.

AND

IN THE MATTER OF SECTIONS 4, 5 AND 10 OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) ACT, 2015.

AND

IN THE MATTER OF SECTIONS 8, 10, AND 11 OF THE PUBLIC APPOINTMENT (COUNTY ASSEMBLY APPROVAL) ACT, 2017

BETWEEN

EVERLYNE AOKO OUMA 1ST PETITIONER

EUGENE TOBBY OTIENO 2ND PETITIONER

AND

HON. JAMES ORENGO GOVERNOR COUNTY GOVERNMENT OF SIAYA 1ST RESPONDENT

COUNTY ASSEMBLY OF SIAYA 2ND RESPONDENT

HON. GEORGE OKODE THE SPEAKER, COUNTY ASSEMBLY OF SIAYA 3RD RESPONDENT



BENEDICT ABONYO OMOLLO	4 TH RESPONDENT
DR. CAROLINE P. ADHIAMBO AKINYI ONYANGO	5 TH RESPONDENT
GEORGE ODHIAMBO NYING'IRO	6 TH RESPONDENT
SYLVESTER ODHIAMBO K'OKOTH	7 TH RESPONDENT
DR. EDGAR OUKO OTUMBA	8 TH RESPONDENT
GRACE AGOLA	9 TH RESPONDENT
ANJELINE ATIENO ODUOR	10 TH RESPONDENT
MAURICE OTIENO MCOREGE	11 TH RESPONDENT
CS AGUNDA OCHANDA	12 TH RESPONDENT

JUDGMENT

1. The Petitioners herein filed the present application dated 15/12/2022 which is as follows:
 1. That the Petitioners are female and male Kenyans of sound mind and residents of Siaya County.
 2. That the 1st Respondent is the Governor of Siaya County County Government. He is joint to this Petition as the Respondent pursuant to the provisions of Article 179 of *the Constitution* of Kenya and in his capacity as;
 - a. A public officer is bound by National Values and Principles of Governance as per Article 10 of *the Constitution* of Kenya, 2010.
 - b. The person in charge of management of affairs of Siaya County Government including the appointment of the County Executive Committee Members with the approval of the 2nd Respondent.
 - c. A public officer under duty to promote and uphold the Principle Values and principles of Public Service as per Article 232 of *the Constitution* of Kenya, 2010.
 3. That the 2nd Respondent is the Occupant of the position of the Speaker of Siaya County Assembly an office established under Article 178 of *the Constitution* of Kenya, 2010 as read together with the Provisions of the County Government Act.
 4. That the 3rd Respondent is the occupant of the position of the Speaker Siaya County Assembly an office established under Article 178 of *the Constitution* of Kenya, 2010.
 5. That the 14th and 12th Respondents are adult of sound mind who have been appointed by the 1st Respondent at Siaya County Executive Committee members in various portfolios.

Legal Foundation Of The Petition

6. Article 1(1) of *the Constitution* of Kenya provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with *the Constitution*.
7. Article 1(2) of *the Constitution* states that the people may exercise their sovereign power either directly or through their democratically elected representatives.



8. Article 2(1) of *the Constitution* of Kenya pronounces the Supremacy of *the Constitution* and provided that *the Constitution* binds all persons and all state organs at both levels of government.
9. Article 2(4) of *the Constitution* provides among other things that any act or omissions in contravention of *the Constitution* is invalid.
10. Article 3 of *the Constitution* obligates every person to respect, uphold and defend *the Constitution*.
11. Article 10 of *the Constitution* sets out the National Values and principles of Governance that state officers, state organs, public officers and all persons whenever they apply or interpret any law, make or implement policy decisions.
12. Amongst the National values and principles of Governance are national unity, the rule of law, Participation of the people, equity, social justice, inclusiveness, equality, human rights, non-discrimination, good governance, transparency, accountability and sustainable development.
13. Article 73 (2) (a) of *the Constitution*, provides for the Principles of Leadership and Integrity to include inter alia selection on the basis personal integrity, competence and suitability, or election in a free and fair elections.
15. Article 179 of *the Constitution* provides that the Executive authority of the County is vested in, and exercised by, a County Executive Committee which shall consist of the County Governor, the Deputy Governor, and members appointed by the County Governor, with the approval of the Assembly, from among persons who are not members of the Assembly.
16. Article 232 of *the Constitution* provides for the Principles and values of Public Service to include inter alia fair competition and merit as the basis of appointments and promotions.
17. Article 258 of *the Constitution* of Kenya which provides that person has the right to institute court proceedings claiming that this Constitution has been contravened, or is threatened with contravention.
18. Article 259 of *the Constitution* of Kenya which provides that *the Constitution* must be interpreted in a manner promotes its purposes, values and principles; advances the rule of law and human rights and fundamental freedom in the bill of rights, permits the development of the law and contributes to good governance.
19. Section 3 (3) of the County Government Act 2012 provides that subject to *the Constitution*, the Governor shall appoint with approval of the County Assembly, the County Executive Committee in accordance with Article 179 (2) (b) of *the Constitution*.
20. Section 35 of the County Government Act, 2012 states that in performing the function under Sub section 2, the governor shall inter alia promote democracy, good governance, unity and cohesion within the County.
21. Section 35 of the County Government Act, 2012 provides that a person may be appointed as a member of the County Executive committee if that person satisfies the requirements of Chapter Six of *the Constitution* and has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.
22. Section 7(8) of the Public Appointment (County Assemblies Approval) Act, 2017 provides that approval hearings shall focus on a candidate's academics credentials, professional training and experience, personal integrity and background.



23. Section 8 of the Public Appointment (County Assemblies Approvals) Act 2017 provides that the issues for consideration by the relevant County Assembly in relation to any nomination shall be inter alia Constitutional or statutory requirements relating to the office in question and the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination being made.
24. Section 10 of the Public Appointments (County Assemblies Approvals) Act 2017 provides that where nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.
25. Section 10 of the *Public Service (Values and Principles) act*, 2015 provides for the Principles and values of Public Service to include inter alia fair competition and merit as the basis of the appointment and promotion.

The Facts

26. That the Petitioners herein are Kenyan Citizen and Resident of Siaya County and that the 1st Petitioner has deponed to the facts in support of the petition as hereunder.
27. That the Petitioners are registered voters in St. Teresa's Primary School, Yala Township Ward, Gem Constituency in Siaya County.
28. That the Respondent was elected as the Governor of Siaya County on 9th August 2022 and has taken oath of Office to execute his mandate as per *the Constitution* of Kenya and the relevant laws.
29. That pursuant to Article 179(2) (b) of *the Constitution* and the provisions of Section 5(1) of the Public Appointments (County Assembly Approval) Act, 2017, the H.E the Governor placed an advertisement for the position of the County Executive Committee members.
30. That key among the requirements were that the Applicants should:
 - a. Be in possession of a first degree in the relevant field from a recognized university in Kenya.
 - b. Have knowledge, experience and distinguished career of not less than ten (10) years in relevant filed to the portfolio of the departments to which the candidate is seeking to be appointed.
31. That pursuant to Section 6(1) of the *public Appointments (County Assemblies Approval) Act*, 2017, the 1st Respondent submitted the names of the ten persons nominated to wit; the 4th to 12th Respondents to the 2nd Respondent for vetting and approval.
32. That 3rd Respondent then submitted the list of nominees to committee on appointments, which is one of the select committees established under standing order No. 195 of the County Assembly of Siaya, for consideration and for approval by the 3rd Respondent as per the provisions of Article 179(2) (b) of *the Constitution* of Kenya.
33. That the committee on appointments under the Chairmanship of the 3rd Respondent conducted its vetting and approval of the ten nominees and on its report rejected all the ten nominees submitted by the 1st Respondent and made, inter alia; the following recommendations:
 - a. Pursuant to the provisions of Section 35(4) of the County Government Act, 2012 which states that a member of the County Executive Committee shall not hold any other state or public office, the committee advises the appointing authority to ensure that any nominee who is currently holding a public or state office provides evidence of resignation before appointment.



- b. The appointing authority is further counselled to refrain from appointing any nominee who may be having any pending judicial issues until verifiable conclusions of such matter is presented.
 - c. The committee recommends that where a nominee is found to have laid under oath, no substantive appointment by the governor should be made until the nominee is cleared of such offence.
 - d. The committee strongly recommends that where there were skills and experience gaps observed in any nominee, the appointing authority should strive to realign the nominee's knowledge and experience to relevant portfolio.
34. That the aforesaid report was tabled and debated before the membership of the 2nd Respondent and the same was approved in its entirety.
35. That despite the aforesaid recommendations by the select Committee of the 2nd Respondent and adoption of the same by the full membership of the 2nd Respondent, the 1st Respondent proceeded to appoint and swear in as Siaya County Executive Committee members the 4th to 12th Respondent on 28/11/2022,
36. That the aforesaid nomination, approval and appointment of the 4th to the 12th Respondents by the 1st Respondent and the 2nd Respondent did not only contravene the key requirements but was also the provisions of Section 35(3) and 35(4) of the County Government Act, 2012 for the following reasons:
- i. The 4th Respondent, Benedict Abonyo Omollo nominated, approved and appointed CEC for Finance and Economic Planning despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than ten (10) years and or five (5) years in the relevant field to the portfolio of the department to which the candidate is seeking appointment. Further, the 4th Respondent was dismissed from office as the Director for Finance at the judiciary of Kenya in 2014 for misappropriation of Public Funds.
 - ii. The 5th Respondent Dr. Caroline P Adhiambo Akinyi Onyango nominated, approved and appointed CEC for water, Environment, Natural Resource and Climate Change despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than ten (10) and or five (5) years in the relevant field to the portfolio of the department to which the candidate is seeking appointment. Further, the 5th Respondent while under oath did, according to the findings of the Committee on Appointment of the 2nd Respondent, gave false and misleading information to during approval hearing thus bringing into question her personal integrity.
 - iii. The 6th Respondent, George Odhiambo Nying'iro nominated, approved and appointed CEC for Public Works, Roads, Energy and Transport despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than 10 or 5 years in the relevant field to the portfolio of the department to which the candidate is seeking appointment.
 - iv. The 7th Respondent, Sylvester Odhiambo K'okoth nominated approved and appointed CEC for Agriculture, Irrigation, Food, Livestock and Fisheries despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than 10 years and or 5 years in the relevant field to the portfolio of the department to which the candidate is seeking appointment.



- v. The 8th Respondent Dr. Edgar Ouko Otumba nominated, approved and appointed CEC for Education, Youth Affairs, Gender and Social Services despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than ten (10) years and or five (5) years in the relevant field to the portfolio of the department to which the candidate is seeking appointment.
- vi. The 9th Respondent Grace Agola nominated, approved and appointed CEC for Trade Enterprise and Industrial Development despite not having the first degree in the relevant field and or knowledge, experience and distinguished career of not less than 10 years and or 5 years in the relevant field or portfolio of the department to which the candidate is seeking appointment. Further, the 9th Respondent nomination and subsequent appointment did contravene the provisions of Section 35 (1) (a) of the County Government Act, 2012 which makes it mandatory for the 1st Respondent to, when nominating members of the Executive Committee, ensure that to that his appointments reflects the community and cultural diversity of the County.
- vii. The 10th Respondent Anjeline Atieno Oduor nominated, approved and appointed CEC for Tourism, Culture, sports and Arts despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than 10 years and or 5 years in the relevant field to the portfolio of the department to which the candidate is seeking appointment. Further, the 10th Respondent was, at the time of appearing before the Committee on Appointment of the 2nd Respondent, still employed at the State Department as the Senior Assistant Secretary – State Department for social protection, Senior Citizen Affairs. Thus, her appointment contravened Section 35 (4) and 35 (2) (c) of the County Government Act, 2012.
- viii. The 11th Respondent, Maurice Otieno McOrege nominated, approved and appointed CEC for land, Physical Planning, Housing and Urban Development despite not having a first degree in the relevant field and or knowledge experience and distinguished career of not less than 10 years or 5 years in the relevant field to the portfolio of the department to which the candidate is seeking appointment.
- ix. The 12th Respondent, CS Agunda Ochanda nominated, approved and appointed CEC for Governance and Administration despite not having a first degree in the relevant field and or knowledge, experience and distinguished career of not less than 10 years and or 5 years in the relevant field to the portfolio of the department to which the candidate is seeking appointment. Further, the committee on appointment of the 2nd Respondent observed that the 12th Respondent had applied for the position of CEC member of Enterprise, Trade and industrialization and not CEC member for Governance and Administration which he had been nominated and appointed.

Violations of *the Constitution* and Fundamental Rights and Freedom

- 37. The Respondents are in violation of the provisions of Article 10 of *the Constitution* of Kenya that sets out the national values and principles of governance that binds all state officers, state organs, public officers and all persons whenever they apply or interpret any law, make or implement public policy decisions.
- 38. That the 1st Respondent's action violates national values and principles of governance which advocates for national unity, the rule of law, participation of the people, equity social justice, inclusiveness,



equality, human rights, non-discrimination, good governance, transparency and accountability, sustainable development.

39. That the 1st Respondent's action of appointing the 4th to 12th Respondents contravenes the hallowed principles of leadership and integrity under Article 73 of *the Constitution* which includes selection on the basis of personal integrity, competence and suitability; objectivity and impartiality in decision making, and ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practises and accountability to the public for decisions and actions.
40. That the appointment of the 4th to 12th Respondents by the 1st Respondent violates Section 35 of the County Government Act, 2012 which provides that a person may be appointed as a member of County Executive Committee if that person satisfies the requirements of Chapter Six of *the Constitution* or and has knowledge, experience and a distinguished career of not less than five years in the relevant field to the portfolio of the department to which the person is being appointed.
41. That the appointment of the 4th to 12th Respondents by the 1st Respondent violates section 8 of the Public Appointments (County Assemblies Approvals) Act, 2017 which provides that the issues for consideration by the relevant County Assembly in relation to any nomination shall be inter alia; Constitutional or statutory requirements relating to the office in question and the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.
42. That based on the aforesaid, the Respondents have collectively acted in an opaque manner by denying the Petitioners, and the entire residents of the County of Siaya their sovereign rights granted and guaranteed under *the Constitution* of Kenya 2010.
43. That the Respondents have collectively acted towards the Petitioners in a manner that is manifestly irresponsible and perniciously to good leadership and governance.
44. The Petitioner sought for the following reliefs:
 - a. A declaration that the 4th Respondent herein, Benedict Abonyo Omollo, is unsuitable to hold the position the County Executive Committee member for Finance and Economic Planning, Siaya County.
 - b. A declaration that the 5th Respondent herein, Dr. Carloyine P Adhiambo Akinyi Onyango is unsuitable to hold the position the Count Executive Committee member for Water, Environment, natural Resources and Climate member for Public Works, Roads, Energy and Transport, Siaya County.
 - c. A declaration that the 6th Respondent herein, George Odhiambo Nyangiro is unsuitable to hold the position the County Executive Committee member for Public Works, Roads, Energy and Transport Siaya County.
 - d. A declaration that the 7th Respondent herein, Sylevester Odhiambo K'okoth is unsuitable to hold the position the County Executive Committee Member for Agriculture, Irrigation, Food, Livestock and Fisheries, Siaya County.
 - e. A declaration that the 8th Respondent herein, Dr. Edgar Ouko Otumba, is unsuitable to hold the position of the County Executive Member for Education, Youth Affairs, Gender and Social Services, Siaya County.



- f. A declaration that the 9th Respondent herein, Grace Agola, is unsuitable to hold the position of the County Executive Committee member of Trade, Enterprise and Industrial Development, Siaya County.
 - g. A declaration that the 10th Respondent herein, Anjeline Atieno Oduor is unsuitable to hold the position the County Executive Committee member for Tourism, Culture, sports and Arts, Siaya County.
 - h. A declaration that the 11th Respondent herein, Maurice Otieno Mcorege is unsuitable to hold the position of the County Executive Committee member for Lands, Physical Planning, Housing and Urban Development, Siaya County.
 - i. A declaration that the 12th Respondent herein, CS Agunda Ochanda, is unsuitable to hold the position of the County Executive Committee member for Governance and Administration, Siaya County.
 - j. Costs of this Petition be paid by the Respondents.
 - k. Any other further relief this Honourable Court may deem fit to grant.
45. The application was vehemently opposed by the Respondents. Vide a replying affidavit of Phillip Richard Owade dated 3rd January 2023 on behalf of the 1st, 4th – 12th Respondents, he stated inter alia; that he is the County Attorney and Acting County Secretary of the County Government of Siaya and therefore well conversant with the matter pertaining to the Petition hence competent to swear the affidavit; that the Petition as filed is frivolous, vexatious, irredeemable, incompetent, legally and factually unfounded, hopelessly misconceived and ought to be dismissed in limine; that the burden of proof of the allegations advanced by the Petitioners rests with them and that there is no iota of evidence adduced by them in support of the allegations upon which they seek the court to declare the 4th to 12th Respondents unsuitable to hold their respective offices; that the Petitioners have in the circumstances failed to discharge the burden of proof; that in any event, the Petitioners are calling upon this court to declare the 4th – 12th Respondents unsuitable to hold the dockets to which they were nominated, approved for appointment and appointed; that the power to determine suitability or otherwise of a person to serve as a county executive committee member is exclusively vested in the County Assembly; that the 4th -12th Respondents were all vetted and approved by the County Assembly of Siaya for appointment into the dockets to which they were appointed by the Governor and that this court cannot be called upon to conduct another vetting in the guise of this Petition; that the manner and style with which the Petitioners have fashioned reliefs is such that they are inviting this court to undertake a vetting exercise of the 4th – 12th Respondents suitability to hold office; that the only mechanism available in law for determining the suitability or otherwise of the 4th to 12th Respondents to hold office is by way of a vetting process which is legally within the domain of the County Assembly and not through a judicial process; that the County Assembly of Siaya having found the 4th – 12th Respondents suitable to hold office in the respective dockets to which they were nominated and subsequently appointed, this court cannot be way of this Petition adjudge them unsuitable to hold office; that this is not a matter that is within the jurisdiction of this court; that the fact that the Petitioners are not challenging the Assembly’s exercise of its vetting powers or process by which the vetting and approval of the 4th – 12th Respondents was conducted by the County Assembly, then the petition is without any basis; that any temptation by the court to look into the merits of the decision of the County Assembly or suitability or otherwise of the said Respondents to serve in their respective dockets would be nothing but a violation of the principles of separation of powers; that once the County Assembly has exercised its Constitutional and statutory powers of approval of the 4th-12th Respondents for appointment as



County Executive Committee members, this court cannot interrogate the decision of the Assembly pursuant to which the 4th to 12th Respondents were approved; that in the event that the court makes a determination that 4th – 12th Respondents are unsuitable to hold office, then that determination would have the effect of removing the said 4th -12th Respondents from office, a matter which would not only be in violation of the principles of separation of powers but also outside the jurisdiction of this court; that the process of removal of a member of the County Executive Committee from office is well laid out in law and at no point does it begin with courts; that no evidence has been adduced to demonstrate that the County Assembly either exercised its powers of approval improperly, illegally or unprocedurally or that it considered irrelevant matters or ignored the issues raised by the Petitioners in this Petition in the course of vetting; that in any event, the vetting process was done in an open and transparent manner and that the Petitioners were aware when the said vetting exercise was being conducted and that they had the opportunity to ventilate their views before the County Assembly’s appointments Committee; that the fact that the Petitioners did not submit their said concerns before the County Assembly appointments committee and which they now raise in this Petition means that they are in breach of the exhaustion principle and therefore underserving of any audience before this court; that in the circumstances, the vetting and approval of the 4th -12th Respondents by the County Assembly and their subsequent appointment by the Governor into the dockets to which they were nominated was open, transparent, regular, procedural and legal and that the Petition is only an attempt by disgruntled elements to derail service delivery to the detriment of the people of Siaya County; that it is in the interest of justice and the people of Siaya who are the consumers of the services delivered by the 1st, 4th to 12th Respondents that the Petition be dismissed; that being that the court cannot take the position of the County Assembly in vetting the 4th – 12th Respondents with a view of determining their suitability or otherwise to serve in the office of the County Executive Committee Member, this court is without any jurisdiction to either entertain the Petition or even grant the reliefs sought by the Petitioners; that for the foregoing reasons, the instant Petition dated 15th December, 2022, is incompetent, frivolous, vexatious and lacks merit and that this Honourable court should dismiss it forthwith.

46. The petition was canvassed by way of written submissions.
47. Petitioners submissions are dated 17/3/2025 while the 1st, 4th – 12th Respondent are dated 6/5/2025 and those of the 2nd and 3rd Respondents are dated 22/4/2025.
48. The Petitioners vide their submissions reiterated their prayers in the petition and seek that this court should grant them in their entirety.
49. Learned counsel for the Petitioners raised two issues for determination.
 - i. Whether this court has jurisdiction to determine the issues raised in the instant petition.
 - ii. Whether the 1st, 2nd and 3rd Respondents were in violation of any provisions of *the Constitution* or any written law with regard to the nomination, vetting and approval of the 4th – 12th Respondents to various positions of the County Executive Committee members, Siaya County and if so, whether the 4th to 12th Respondents are suitable to hold their respective positions as County Executive Committee members, Siaya County.
50. As regards the first issue, it was submitted that the doctrine of separation of powers postulates that each organ of government is independent and none should interfere with the functions of the other. That this doctrine also holds that each organ is to act as a check and balance of the other to ensure that each organ functions within the provisions of *the Constitution* or statute and that it is only the High Court, which is a creature of *the Constitution*, that is empowered to determine the Constitutionality or otherwise the functions of the other state organs. Reliance was placed on Article 165 (d) of *the*



Constitution of Kenya 2010 which vests on the High Court the jurisdiction to hear and determine any question in respect to the interpretation of the Constitution including the determination of inter alia; the question whether any law is consistent with or in contravention of the constitution; the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with or in contravention of, the constitution or any matter relating to the constitutional powers of the state organs in respect of county governments; any matter relating to the constitutional relationship between levels of government.

Further, it was submitted that Article 23 of the Constitution of Kenya 2010 empowers the High Court to hear and determine applications for redress of a denial, violation or infringement of, threat to, a right or fundamental freedom in the bill of Rights.

51. It was submitted that all persons and institutions are subject to review by the High Court in exercise of its jurisdiction to safeguard the principles and values of the Constitution and to uphold its supremacy.

Reliance was placed on the case of John Mining Temoi & Another v Governor of Bungoma County & 17 others [2014] eKLR, where the court while referring to the case of John Kipng'eno Koech & 2 Others Vs. Nakuru County Assembly & 5 Others [2013] eKLR, held that:

“As such the court has jurisdiction to determine the constitutionality of the process of selection, nomination, approval as well as any appointment by the County Public Service Board, the Governor or by the County Assembly. The scope of the court’s jurisdiction extends to the procedural improprieties, as well as the legality of the appointment decision to determine whether they accord with the constitutional threshold.”

52. Basing on the above citations, the Appellants submitted that this court is constitutionally clothed with the jurisdiction to hear and determine the present petition and urges the court to find as such.

53. As regards the second issue, it was submitted that the petitioners are challenging the appointment of the 4th -12th Respondents as members of the County Executive Member Siaya County on grounds that the appointments were done without adherence to the laid down procedures in that the persons appointed did not qualify and or meet the statutory requirements for such appointment. Further it was submitted that it is a requirement under the Constitution that state organs, state officers and in all their decisions, or activities must reflect the national values and principles of governance stipulated under Article 10 of the Constitution of Kenya 2010 which states:

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- (1) The national values and principles of governance in this article bind all state organs, state officers, public officers and all persons whenever any of them....
 - (a) applies or interprets this constitution,
 - (b) enacts, applies or interprets any law; or
 - (c) make or implements public policy decisions.
- (2) The national values and principles of governance include - patriotism, national unity, sharing and devolution of power, the rule of law, democracy, participation of the people;



- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
- (c) good governance, integrity, transparency and accountability.”

It was the view of counsel that based on the aforementioned values, it is imperative that any state officer/ public officer must adhere to the above guidelines if they do not want to run afoul of *the Constitution* and that before delving on or whether the impugned appointments infringed *the Constitution*, first look in the nomination process, approval and subsequent approval and appointments of the County Executive Committee member and check out If the same was done in accordance with the relevant statutes. That Article 179 of *the Constitution* of Kenya, 2010 provides that the Executive authority of the County is vested in and exercised by a county executive committee which shall consist of the County Governor, the Deputy Governor, and members appointed by the County Governor, with the approval of the Assembly from among persons who are not members of the Assembly.

Reliance was further placed on Article 30 (2) of the County Government Act, 2012 which provides that subject to *the Constitution*, the Governor shall appoint, with approval of the County Assembly, the County Executive Committee in accordance with Article 179(2) of *the Constitution* which states that it is mandatory that any appointment of the County Executive Committee shall be guided by the following;

- i. The said appointment shall be subject to *the Constitution*.
- ii. Be with approval of the County Assembly.
- iii. In accordance with Article 179(2) of *the Constitution*.

The same is expounded by the provisions of Section 30 (3) of the County Government Act 2012, which states that in performing the functions under Subsection 2 the governor shall inter alia promote democracy, good governance, unity and cohesion within the County.

Further, Section 35 of the County Government Act, 2012 provides that a person may be appointed as a member of the County Executive committee if the person is a Kenyan Citizen, is a holder of at least a first degree from a University recognized in Kenya and satisfies the requirement of Chapter Six of *the Constitution*; has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

Further, Section 6(1) of the Public Appointment (County Assembly Approval) Act 2017, states that an appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant County Assembly accordingly and upon notification, the County Assembly through the Committee of Appointments established under the Standing Orders of the County Assembly to wit; Standing Order No. 195 of the County Assembly of Siaya shall vet, approve and or reject the said nomination.

Section 7(8) of the *Public Appointments (County Assemblies Approval) Act*, 2017 provides that approval hearings shall focus on the candidates’ credentials, professional training and experience, personal integrity and background.

Section 8 of the Public Appointments (County Assemblies Approvals) Act, 2017 provides that the issues for consideration by the relevant County Assembly in relation to any nomination shall be: -



- a. The procedure used to arrive at the nominee including the criteria for short listing the nominees.
- b. Constitutional or statutory requirements relating to the office in question and;
- c. The suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.

Further, Section 9(2) of the Public Appointment (County Assemblies Approvals) Act, 2017 provides that at the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to the public office.

Section 10 (1) of the Public Appointment (County Assemblies Approval) Act 2017 states where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate and the procedure for approval specified in this Act shall apply accordingly.

In the alternative, Section 10 (1) of the Public Appointments (County Assemblies Approvals) Act, 2017 the appointing authority shall upon the approval of the nominees for appointment by the County Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under Section (1).

Learned counsel contended that basing on the above outlined procedure and requirements, the question that arises and which this court should concern itself is whether the 1st, 2nd and 3rd Respondents did adhere to the said constitutional and statutory requirements and procedures in nominating, vetting/approving and appointing the 4th to 12th Respondents to various positions of County Executive Committee members.

It was submitted that the 1st Respondent pursuant to Article 179(2) (b) of *the Constitution* and the provisions of Section 35(3), 36 and 46 of the County Government Act 2012 caused to be placed on the Daily Nation Newspaper of 14/9/2022, and advertisement inviting suitable applicants for the positions of the County Executive Committee members. Key among the requirements and competencies were that the Applicants should: -

- a. Be in possession of a first degree in the relevant field from a recognized university in Kenya.
- b. Have knowledge, experience and distinguished career of not less than 10 years in relevant field to the portfolio of the departments to which the candidate is seeking to be appointed.

54. Learned counsel for the Petitioners went ahead in his submissions to raise issues affecting some of the nominees. For instance, in compliance with Section 6(1) of the Public Appointments (County Assemblies) Approval) Act, 2017, the 1st Respondent did vide a letter dated 26/10/2022 notifying the 3rd Respondent of the appointment of the 4th – 12th Respondents to various positions of County Executive Committee members, Siaya County and that upon receipt of the aforesaid notification, the 3rd Respondent then submitted the list of nominees to the 2nd Respondent wherein in compliance with Standing Order No. 195 of the County Assembly of Siaya, a committee on appointments was established to vet and approve the nomination of the 4th – 12th Respondents. That the committee on appointments under the Chairmanship of the 3rd Respondent conducted its vetting and approval



hearing of the 4th -12th Respondents and on its report submitted to the 1st Respondent the following adverse observations on each of the Nominees as follows:

i. 4th Respondent – Benedict Abonyo Omollo (CEC Member, Finance and Economic Planning)

That in line with Article 73(2) (a) of *the Constitution* and Section 7(8) of the Public Appointments (County Assemblies Approvals) Act, 2017, the committee made the following observations on the nominee’s integrity.

The committee noted that the nominee was dismissed from office as the Director Finance at the Judiciary of Kenya in 2014. The nominee informed the committee that he had moved to court to challenge his dismissal and that the matter was still pending in court.

The committee further noted that in a report of the National Assembly’s Public Accounts Committee tabled on 11/1/2016, it was documented that the nominee had conceded to making irregular payments of some allowances.

The National Assembly Public Accounts Committee further documents in the same report that the nominee made advanced payments to contractors totalling to kshs. 126,703,827. Some of the payments were made to Timsales Limited and further Kshs26,469,832 to Economic Housing Group contrary to Section 14(7) of the Government Finance Regulations and procedure which provides that payments to contractors should be made on the basis of signed contracts and a payment voucher that is supposed to be certified and certificate of goods delivered work or services.

The report further documented that the nominee also approved payments of Kshs106,702,049 to Containerized Data Centre which was not operational several months later. It stated that Mr. Omollo approved payments of Kshs 29,934,975 to Mr. Simiyu Werunga without requisite accompanying documents like requisite accompany documents like a property signed contract, payment certificate, delivery note and a proper invoice.

Based on the Public Accounts Committee findings the nominee approved payments contrary to Article 226 (5) of *the Constitution* of Kenya. This placed direct liability on him.

The committee acknowledged the provisions of Article 75 (3) of *the Constitution* of Kenya 2010 which provides that:

“A person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause (2) is disqualified from holding any other state office.”

Based on this provision, and in line with the fact that the nominee has been dismissed from a public office, it was necessary for the appointing authority to undertake due diligence prior to appointing the nominee.

ii. 5th Respondent Dr. Caroline P Adhiambo Akinyi Onyango (CEC Member, Water, Environment, Natural Resources and Climate Change)

Relevant of the Nominee Bachelor’s degree to the Portfolio

The nominee possesses a first degree as per the requirement of Section 35 (3 (b) of the County Government Act, 2012.

The Committee noted however that the nominee’s claim of work experience and other assertions before making any substantive appointments.



- iii. 6th Respondent – George Odhiambo Nying’iro (CEC Member, Public Works, Roads, Energy and Transport)

Relevance of the Nominees Bachelor’s Degree to the Portfolio:

The nominee possesses a first degree as prescribed by Section 35(3)(b) of the County Government Act, 2012.

The first degree of Bachelor of Arts is not relevant to the portfolio of Public Works, Roads, Energy and Transport contrary to the Provisions of Section 35(3) (d) of the County Government Act, 2012 that requires the candidate to have 5 years’ experience relevant to the portfolio.

Other key findings on the Nominee’s career and experience.

Contrary to the provisions of Section 8 (c) of the Public Appointment (County Assemblies Approval) Act, 2017 Mr. Nying’iro stated that he did not need to have statutory requirements of knowledge, experience and distinguished career to manage the department. According to him, what mattered in execution of his duties would be providing leadership and coordination. He further, said that he would rely on technical expertise of other employees working under him if appointed. The committee observed this as direct disregard of the legal frameworks which guide operations of key institutions in the County.

- iv. 7th Respondent – Sylevester Odhiambo K’okoth (CEC Member, Agriculture, Irrigation, Food, Livestock and Fisheries)

Relevance of the Nominees bachelor’s degree to the Portfolio:

The nominee holds a bachelor’s degree in Arts from the University of Nairobi.

The committee further observes that the nominee’s first degree in Bachelors of Arts was not relevant to the portfolio of CEC Member for Agriculture, Livestock and Fisheries which he had been nominated to as was required in the advertisement calling for Applicants which stated that the Applicants should: be in possession of relevant first degree from university recognized in Kenya.

Relevance of Knowledge, Experience and Career to the Portfolio:

The committee observed that the bulk of the nominee’s work experience was domiciled in the field of sales and marketing as was evidenced in the documents which he submitted to the committee and as confirmed through his oral submissions.

It was therefore the findings of the committee that the nominee did not satisfy the requirement stipulated in the advertisement calling for applicants for the positions of CEC members which stipulated that the Applicants should have knowledge, experience and distinguished career of not less than 10 years in the relevant field to the portfolio of the departments to which the candidate is seeking to be appointed.

8th Respondent – Dr. Edgar Ouko Otumba (CEC Member, Education, Youth Affairs, Gender and Social Services)

Relevance of the Nominees Bachelor’s degree to the portfolio

The nominee has a first degree and therefore meets the requirement of Section 35(3)(d) of the County Government Act, 2012.



The degree of Bachelor of Science in Mathematics is however not relevant to the portfolio of education, Youth Affairs, Gender and Social Services as per the provisions of Section 35(3) (d) of the County Government Act, 2012 and those of the advertisement.

Relevance of knowledge, experience, and career to the portfolio.

The committee noted that the nominee does not have ten years relevant experience as per that requirements of the advertisement.

- v. 9th Respondent – Grace Agola (CEC Member, Trade, Enterprise and Industrial Development)

Relevance of knowledge, experience and career to the portfolio.

The committee further noted that the nominee’s work experience did not directly met the threshold indicated in the advertisement calling for the applicants for the position of CEC members which stipulated that the applicants should have knowledge, experience and distinguished career of not less than ten years in relevant field to the portfolio of the departments to which the candidate is seeking to be appointed.

The committee also noted that the nominee who currently serves as the vice chairperson of Siaya Municipal Board were to give evidence of her resignation before appointment as the CEC member in line with Section 35(4) of the County Government Act, 2012.

- vi. 10th Respondent Anjeline Atieno Oduor (CEC member, Tourism, Culture, Sports and Arts)

Relevance of the Nominees Bachelor’s degree to the Portfolio

The nominee possesses a Bachelor’s degree in Mass Communication from Kampala University Uganda.

The Committee noted that however that nominee’s degree is not relevant to the portfolio of Tourism, culture, sports and Arts as per the advertisement.

The relevance of the degree does not further meet the requirements of Section 35(3)(d) of the County Government Act, 2012 which states that a person may be appointed as a member of the county executive committee if that person has knowledge experience and distinguished career of not less than five years in the filed relevant to the portfolio of the department to which the person is being appointed.

Relevance of knowledge, experience and career to the portfolio:

Based on the above, the committee noted that the nominee does not have knowledge, experience and distinguished career in the portfolio of Tourism, Culture, Sports and Arts pursuant to Section 35(3)(d) of the County Government Act, 2012.

Other key findings on the Nominee’s career and experience.

When asked with the committee if she was conversant with the provisions of Section 35(4) of the County Government Act that prohibits a CECM from holding any other state or public officer, the nominee told the committee that she would not resign as this would take about 3 months to be effected, but would seek secondment if appointed. The committee therefore observed that by not resigning the nominee would be violating provisions of Section 35(4) of the County Government Act, 2017 as she would be holding two positions simultaneously.

The commission further recommends that the nomination should show evidence of resignation from public office to the appointing authority before taking up the appointment in case she is considered.



- vii. 11th Respondent – Maurice Otieno McOrege (CEC Member Lands, Physical Planning Housing and Urban Development)

Relevance of the Nominee bachelor's degree to the Portfolio

It was observed that the nominee had two degree, one in Arts and second in Philosophy Economics.

Both degrees did not have relevance on the issue of Lands, Physical planning, housing and urban development docket where he had been nominated.

The committee therefore found that the nominee did not satisfy the requirement stipulated in the advertisement for the position of CEC members which stipulated that the applicants should be in possession of a first degree in the relevant field from a recognized university in Kenya.

Relevance of knowledge, experience and career to the portfolio

Based on the nominee's work experience as indicated in his CV and testimonials submitted, the committee found that the nominee had not built relevant career to the docket of lands, physical planning, housing and urban development to which he had been nominated.

The committee found that the nominee did not satisfy the requirement of the advertisement for the advertisement for the position which stated that a candidate applying for the position should have knowledge, experience, and distinguished career of not less than 10 years in the relevant field to the portfolio of the departments to which the candidate is seeking to be appointed.

The committees further noted that the nominee did not satisfy the provisions of Section 35 (3) (b) of the County Government Act, 2012 which states that a person may be appointed as a member of the county executive committee if that person has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

- viii. 12th Respondent – CS Agunda Ochanda (CEC Member, Governance and Administration)

Relevance of the Nominees Bachelor's degree to the portfolio.

The committee noted that CS Agunda did not have a first degree as required by Section 35 (3) (b) of the County Government Act, 2012 which states that: - a person may be appointed as a member of the county executive committee if that person is a holder of atleast a first degree from a university recognized in Kenya.

He therefore did not meet the requirement stated in the advertisement that an applicant should have a first degree in a relevant field from the university recognized in Kenya.

That notwithstanding, during the approval hearing, the nominee intimated that in CPC qualification is equivalent to a Bachelor's degree. The claimed equation however was not authenticated by any official documents from Kenya National Qualification Authority.

To prove the CPS first degree equivalence claim, the nominee relied on a Daily Nation newspaper cutting dated 31/10/2022 where it had been reported that a CPA III, CPS and a Higher Diploma from Kenya Medical Training College are comparable to Bachelor's degree.

That while appointing the 2nd Respondent, the committee made the underlisted general recommendation.



That the committee recommends to the appointing authority that future appointments should be strictly guided by provisions of relevant Articles of *the Constitution* of Kenya 2010, Section 35 of the County Government Act, 2012, Section 7 & 8 of the *Public Appointments (County Assemblies Approval) Act*, 2017 and any other applicable statutes.

That the committee therefore approves the nomination of the candidates to their respective portfolios.

That the aforesaid report was tabled before the 2nd Respondent and upon debate, the same was approved and the said approval communicated to the 1st Respondent who appointed the 4th to 12th Respondents to various positions of member of County Executive Committee, Siaya County.

That based on the content of the said report of the committee on appointment, it should be noted that the 1st Respondent contravened the principles of leadership and integrity of *the Constitution* of Kenya as relates to exercise of authority of a state officer which applies to the members of county assemblies as state officers in appointing 4th – 12th Respondents as members of County Executive Committee, Siaya County and that under Article 73 of *the Constitution* these principles include selection on the basis of personal integrity competence and suitability, objectivity and impartiality in decision making, and ensuring that decisions are not influenced by nepotism, favourism, other improper motives or corrupt practises and accountability to the public for decisions and actions.

It was further submitted that that the 2nd Respondent in adopting the report violated the letter and spirit of Article 73 of *the Constitution* of Kenya as relates to exercise of authority of a state officer which applies to members of the county assemblies as state officers. Accordingly, their actions were contrary to the objectives set out in Section 3 of the Public Appointment (County Assemblies Approval) Act, 2017. They further failed to exercise their functions to the fullest extent with the requirements of the enabling law rendering their findings ultra vires to section 35 of the County Government Act.

It was further submitted that the 1st, 2nd and 3rd Respondent were in violation of any provisions of *the Constitution* or any written law with regard to the nomination, Vetting and approval of the 4th to 12th Respondents to various positions of the County Executive Committee members, Siaya County and hence the 4th to 12th Respondents are not suitable to hold their respective positions as County Executive Committee members, Siaya County.

Based on the report which was placed before the 2nd Respondent, it's quite evident that the 4th to 12th Respondents do not possess the key requirements and or qualifications contained both in the advertisement in the Daily Nation of 14th September 2022 and or in the provisions of Section 35(3) and 35(4) of the County Government Act, 2012 and as such, their continuous holding of the aforesaid positions contravenes the provisions of Article 73(2)(a) of *the Constitution* of Kenya which provides for the principles of Leadership and integrity to include inter alia selection on the basis of personal integrity, competence and suitability or election in a free and fair elections.

55. The Petitioners' counsel finally urged this court to allow the petition with costs.
56. Learned counsel for the 1st and 4th – 12th Respondents relied on the contents of the replying affidavit sworn by Phillip Richard Owade the County Attorney on 3/1/2023. Learned counsel raised one issue for determination namely whether the petition dated 15/12/2022 is merited.
57. It was submitted that the petition ought to be viewed from the point of view of the role of the County Assembly in the process of vetting and appointment of County Executive Committee members and



therefore the court, in determining the petition, ought to be satisfied that the County Assembly observed strict adherence to the law in understanding the vetting process. This is so because the law places exclusive obligation upon the County Assembly to determine suitability for appointment of an individual as County Executive committee members through the power of vetting as conferred upon them by law. Learned counsel referred to the procedure for appointment of county executive committee members as follows:

- a. Vetting and approval of County Executive Committee members.

That the relevant laws in respect of vetting and approval of the County Executive Committee members are outlined clearly in Article 179(2)(b) of *the Constitution*, Section 35 (3) of the County Government Act and Section 4,5,6, 7,8,9, 10 and 11 of the *Public Appointments (County Assemblies Approval) Act* 2017.

Article 179(2) (b) of *the Constitution* provides that: -

- (2) The County Executive Committee consist of
 - (b) members appointed by the County Governor, with the approval of the Assembly, from among persons who are not members of the Assembly.

Section 4 and 11 of the *Public Appointments (County Assemblies Approval) Act*, 2017 provides as follows:

4. An appointment under *the Constitution* or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

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- (1) The Clerk shall notify the appointing authority of the decision of the County Assembly within fourteen days of the decision.
- (2) The appointing authority shall, upon the approval of the nominees for appointment by the County Assembly and subject to applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under subsection (1)

From the above provisions, it was submitted that the power to vet and approve for appointment persons nominated to the position of CEC is exclusively vested in the County Assembly. This court therefore cannot wear the shoes of County Assembly.

The County Assembly having approved all the nominees for appointment in their respective dockets, it was incumbent upon the Governor to effect the appointments as approved by the County Assembly. Section 9(2) of the Public Appointments (County Assemblies Approval) Act speaks to this issue in the following terms;

“At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the committee may consider necessary,



including a recommendation on whether or not the nominee should be approved for appointment to the public office.”

Reliance was placed in the case of Faith Syokau Wathome Kithu (MBS) & Others v Machakos County Assembly & 3 Others [2018] eKLR, Odunga, J as he then was held as follows:

“Whereas that decision may well be frowned upon some quarters, that was clearly a threshold issue. This court cannot clearly prescribe to the County Assembly what it considers necessary as the appropriate threshold in order to determine whether or not a nominee ought to be approved for appointment. Similarly, the court cannot prescribe what marks to award in respect of a particular bead of evaluation because the decision as to whether a nominee merits the appointment is a matter purely within the powers of the County Assembly and this court cannot direct the Assembly on what constitutes merit or otherwise. In the vein this court cannot interrogate the decision of the Assembly whether the material presented before it was sufficient to prove mismanagement of some of the nominees so as to arrive at a decision whether the said decision was correct or not.”

Also, in the case of Francis Maliti v County Assembly of Machakos & 2 others Governor Machakos County (Interested Party) [2019] Eklr, Odunga J as he then was, held:

“.....it is however for the County Assembly to determine such suitability. For this court to embark on a determination clearly amount to usurpation of the powers of the County Assembly and a clear violation of the doctrine of separation of powers.”

It was submitted that the court cannot make a declaration that the 4th to 12th Respondents are unsuitable to occupy their respective offices as County Executive Committee members invited to do by the Petitioners unless it has undertaken an exercise and which can only be undertaken by the County Assembly. In the case of Judges and Magistrates Vetting Board and 2 Others v. Centre for human Rights & Democracy & 11 Others [2014] eKLR as “thorough examination to determine suitability for a particular office of function.”

That considering the fact that Petitioners are calling upon this court to make a declaration that the 4th to 12th Respondents are unsuitable to occupy the respective positions to which they were appointed without providing evidence, proof or particulars of the reason for such a desire, it was submitted that this court has an obligation to decline such an invitation and disallow the petition. The Petitioner clearly does not plead and, or demonstrate how the proceedings of the County Assembly in conducting the approval process was either flawed and, or in violation of the law and Constitution.

Learned counsel further relied on the case of Simon Wachira Kagiri v County Assembly of Nyeri & 2 Others [2013] eKLR which held that courts can only delve into proceedings on decisions of the County Assembly where such proceedings are demonstrated to have been conducted in a manner that violates *the Constitution*.

58. It was further submitted that interference by court on the proceedings or decisions of the County Assembly are only legally and Constitutionally tenable in instances where court has been expressly moved by way pleadings on the specific nature and character of such legal and constitutional violations. In other words, a party seeking for the court to interfere or delve into the proceedings or decisions of the County Assembly must specifically plead so and demonstrate how such proceedings or decisions



have abrogated *the Constitution*. This position is informed by a well settled principle of law that parties are bound by their pleadings. This position is further fortified by the decision of court in Independent Electoral and Boundaries Commission & Another Vs Stephen Mutinda Mule & 3 others [2014] eKLR which cited the decision of the Malawi supreme Court of Appeal in Malawi Railways Ltd vs. Nyasulu [1998] MWSC 3, in which the learned Judges quoted with approval from an article by Sir Jack Jacob entitled “The Present Importance of Pleadings.” The same was published in [1960] current legal problems at P174 whereof the author had stated;

“..... The court itself is as bound by the pleadings of the parties as they are themselves. It is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court will be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation....”

It was also submitted that the Petitioners contention that the 4th – 12th Respondents are unsuitable to hold offices which they were nominated, approved and appointed, they did not provide proof or particulars of their said allegations and hence the court cannot suo moto delve into the merits of such approval as that would be a clear violation of the principles of separation of powers. It was urged therefore that the petition before court is incompetent as it is not backed up by any evidence and that the same therefore ought to be dismissed with costs.

Learned counsel in penning off, pointed out that the 4th and 5th Respondents ceased working for the County Government of Siaya way after the petition had progressed substantially.

59. Learned counsel for the 2nd and 3rd Respondents raised one issue for determination namely whether the 2nd and 3rd Respondent were in violation of any provisions of *the Constitution* or any written law with regard to the Vetting and Approval of the 4th to 12th Respondents to various positions of the County Executive Committee members, Siaya County and if so, whether the 4th to 12th Respondents are suitable to hold their respective Positions as County Executive Committee members, Siaya County.
60. It was submitted that the Respondents’ replying Affidavit, outlined step by step, the process they undertook from the point of receiving the names of the 4th to 12th Respondents as nominated members of the County Executive Committee, Siaya County from the 1st Respondent to the Point of notification of the Approval of the said names by the 3rd Respondent. Learned counsel enumerated the various provisions of the law regarding the process of appointment as follows:
- a. Article 179(1) of *the Constitution* of Kenya provides that the executive authority of the county is vested in, and exercised by, a county executive committee.
 - b. Article 179(2)(b) of *the Constitution* of Kenya provides that the County Executive Committee consists of members appointed by the County Governor, with the approval of the Assembly, from among persons who are not members of the Assembly.
 - c. Section 30(2) of the County Government Act, 2012 provides that subject to *the Constitution*, the Governor shall appoint, with approval of the County assembly, the county executive committee in accordance with Article 179(2) (b) of *the constitution*.
 - d. It was submitted that in approving the County Executive Committee members appointed by the Governor, The County Assembly is not only Governed by *the Constitution* as read together with Section 35(2) of the *County Governments Act* but also by the Provisions of the Public Appointments (County Assemblies Approvals) Act, 2017.



- e. Section 7(8) of the Public Appointments (County Assemblies Approvals) Act provides for the scope of the Assembly in approval hearing. It states;
 - “An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.”
 - f. Section 8 of the Public Appointments (County Assemblies Approvals) Act provides for the issues to be considered during the Approval hearing. It provides that;
 - “The issues for consideration by the relevant County Assembly in relation to any nomination shall be—
 - i. the procedure used to arrive at the nominee including the criteria for the shortlisting of the nominees;
 - ii. any constitutional or statutory requirements relating to the office in question; and
 - iii. the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.”
 - g. Section 9(2) of the Public Appointment (County Assemblies Approvals) Act, 2017 provides that at the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to public office.
 - h. Section 10(1) of the Public Appointment (County Assemblies Approvals) Act, 2017 states that where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.
 - i. Section 10(1) of the Public Appointment (County Assemblies Approvals) Act, 2017 the appointing authority shall, upon the approval of the nominees for appointment by the County Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under subsection (1).
61. It was submitted that having outlined the requirements and process of nomination, vetting and Appointment of County Executive Members, the question therefore is whether the 2nd and 3rd respondents did adhere to the said constitutional and statutory requirement and procedures in vetting/ approving and appointing the 4th to 12th respondents to various positions of County Executive Committee Members. It was submitted that the 2nd and 3rd Respondents diligently adhered to the laid down Constitutional and statutory requirements in approving the appointments of the 4th to 12th respondents as outlined hereunder;



On or about 26th October 2022, the 1st Respondent did, in compliance with Section 6(1) of the *Public Appointments (County Assemblies Approval) Act, 2017*, notify the 3rd Respondent of the names of Persons nominated to the various offices of Siaya County Executive Committee.

That upon receipt of the aforesaid notification, the 3rd Respondent did notify members of the 2nd Respondent of the same. However, the same was not referred to the committee on Appointments as the said notice was not accompanied with information on the nominees as per the requirements of Section 6(4) of the *Public Appointments (County Assemblies Approval) Act, 2017*.

That in response to letter dated 27th October 2022, the 1st Respondent did, vide letter dated 28th October 2022, provide the information of all the nominees.

That upon receipt of the 1st Respondent's letter dated 28th October 2022, the 2nd Respondent did notify the Members of the 3rd Respondent of the same where after a notice for public hearing was published on the Star Newspaper of 2nd November 2022.

That the Committee on Appointment of the 2nd Respondent proceeded with the vetting and approval of the nominees to the Position of the members of the County Executive Committee and prepared a report dated 22nd November 2022 which report was presented, debated and approved by the 2nd Respondent

It was submitted that in approving the 4th to 12th Respondents the committee, in compliance with Section 9(2) of the Public Appointments (County Assemblies Approvals) Act made the following recommendations to the 1st Respondent;

“The Committee recommends to the appointing Authority that future appointments should be strictly guided by the provisions of relevant Articles of *the Constitution* of Kenya, 2010, Section 35 of the *County Governments Act, 2012*, Section 7 and 8 of the Public Appointments (County Assemblies Approvals) Act and any other applicable statutes.”

That the aforesaid resolution of the 2nd Respondent was communicated to the 1st respondent on 23rd November 2022.

62. Learned counsel placed reliance in the case of Faith Syokau Wathome Kithu (MBS) & others v Machakos County Assembly & 3 others [2018] eKLR where Odunga J, (as he then was) observed as follows;

“To the Petitioners, since the issue of relevancy of the degree held by the nominee to the position to which one is nominated is not an express requirement under section 35(3)(b) of the County Assemblies (Approval) Act, 2017, by stating that the Petitioners did not have a first degree related to the department the Respondents considered a matter which they were not required to consider. It is however not in dispute that under section 8 of the County Government Act the County Assembly is obliged to vet and approve nominees for appointment to county public offices as may be provided for in the Act or any other law. The question that arises is whether a consideration by the County Assembly of the relevancy of the nominee's degree to the position to which he/she has been nominated is outside the powers of the County Assembly conferred upon it by Article 185(1) of *the Constitution* as read with section 8 of the County Government Act. It is worth noting that section 35(3)(a) aforesaid does not state that a person who meets the criteria thereunder must be appointed



to the post to which he is nominated. The word used is “may”. Therefore, notwithstanding the fact that a person meets those minimum requirements, he/she may still fail the approval test if for example he/she fails to meet other criteria for appointments. For example, Article 232(1)(g) of *the Constitution* provides that the values and principles of public service include fair competition and merit as the basis of appointments and promotions. Under Article 232(2)(a) the values and principles of public service apply to public service in all State organs in both levels of government.

It is therefore my view that a County Assembly is obliged to take into account whether the Governor’s nominee merits appointment to the position to which he/she has been nominated. It is therefore my view that even going by the constitutional provisions where the degree held by a nominee is not suitable for the purposes of performance of the duties the nominee is intended to perform, County Assembly is properly entitled to decline to approve the nomination. My view is reinforced by the provisions of the *Leadership and Integrity Act*, specifically sections section 3(2)(g) which provides that a State officer shall respect the values, principles and the requirements of *the Constitution*, including in so far as is relevant, the values and principles of Public Service as provided for under Article 232 of *the Constitution*.”

The Court further observed as follows;

“According to the Petitioner, in computing experience under section 35(3)(d) of the County Government Act, it should be construed as an experience acquired cumulatively in a management, policy making and/or leadership position held and not experience in a particular professional field. However, section 35(3)(d) provides that the person being nominated ought to have: knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

If the County Assembly interpreted this provision to mean that the experience should be in a particular professional field, that view cannot be faulted by this Court as that is a matter that goes to the merit of its decision.”

63. Learned counsel therefore urged the court to dismiss the petition with costs.
64. I have considered the petition as well as the rival submissions. It is not in dispute that the 4th – 12th Respondents were nominated for appointment by the 2nd Respondent and after a vetting process were eventually appointed by the 1st Respondent and that they resumed their positions in the selected offices. It is also not in dispute that the Petitioners who have reservations about the appointments of 4th – 12th Respondents bore the burden of proof wherein they were required to present sufficient evidence showing that the said Respondents were unsuitable to hold the offices for which they had been appointed. It is also not in dispute that vide a ruling of this court dated 12th day of April 2023 it was held that this court has jurisdiction to entertain the petition. I find the issue for determination is whether the 1st, 2nd and 3rd Respondents were in violation of any provisions of *the Constitution* or any written law with regard to the nomination, vetting and approval of the 4th -12th Respondents to various positions of the County Executive Committee members, Siaya County and if so, whether the 4th – 12th Respondents are suitable to hold their respective positions as County Executive Committee members, Siaya County.
65. As the issue in contention relates to the appointment of persons to occupy offices of County Executive Committee of a County Government, *the Constitution* as well as the County Government Act 2012,



Public Appointments (County Assemblies Approvals) Act provide for the procedure for the said exercise as follows:

- i. Article 179(1) of *the Constitution* of Kenya provides that the executive authority of the county is vested in, and exercised by, a county executive committee.
- ii. Article 179(2)(b) of *the Constitution* of Kenya provides that the County Executive Committee consists of members appointed by the County Governor, with the approval of the Assembly, from among persons who are not members of the Assembly.
- iii. Section 30(2) of the County Government Act, 2012 provides that subject to *the Constitution*, the Governor shall appoint, with approval of the County assembly, the county executive committee in accordance with Article 179(2) (b) of *the constitution*.
- iv. It was submitted that in approving the County Executive Committee members appointed by the Governor, The County Assembly is not only Governed by *the Constitution* as read together with Section 35(2) of the *County Governments Act* but also by the Provisions of the Public Appointments (County Assemblies Approvals) Act, 2017.
- v. Section 7(8) of the Public Appointments (County Assemblies Approvals) Act provides for the scope of the Assembly in approval hearing. It states;

“ An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.”

Section 8 of the Public Appointments (County Assemblies Approvals) Act provides for the issues to be considered during the Approval hearing. It provides that;

“The issues for consideration by the relevant County Assembly in relation to any nomination shall be—

- iv. the procedure used to arrive at the nominee including the criteria for the shortlisting of the nominees;
- v. any constitutional or statutory requirements relating to the office in question; and
- vi. the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.”
- vii. Section 9(2) of the Public Appointment (County Assemblies Approvals) Act, 2017 provides that at the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to public office.
- viii. Section 10(1) of the Public Appointment (County Assemblies Approvals) Act, 2017 states that where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.
- ix. Section 10(1) of the Public Appointment (County Assemblies Approvals) Act, 2017 the appointing authority shall, upon the approval of the nominees for appointment by the County



Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under subsection (1).

- x. Further, Section 35 of the County Government Act, 2012 provides that a person may be appointed as a member of the County Executive committee if the person is a Kenyan Citizen, is a holder of at least a first degree from a University recognized in Kenya and satisfies the requirement of Chapter Six of *the Constitution*; has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.
- xi. Further, Section 6(1) of the Public Appointment (County Assembly Approval) Act 2017, states that an appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant County Assembly accordingly and upon notification, the County Assembly through the Committee of Appointments established under the Standing Orders of the County Assembly to wit; Standing Order No. 195 of the County Assembly of Siaya shall vet, approve and or reject the said nomination.
- xii. Section 7(8) of the *Public Appointments (County Assemblies Approval) Act*, 2017 provides that approval hearings shall focus on the candidates' credentials, professional training and experience, personal integrity and background.
- xiii. Section 8 of the Public Appointments (County Assemblies Approvals) Act, 2017 provides that the issues for consideration by the relevant County Assembly in relation to any nomination shall be: -
 - a. The procedure used to arrive at the nominee including the criteria for short listing the nominees.
 - b. Constitutional or statutory requirements relating to the office in question and;
 - c. The suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.

Further, Section 9(2) of the Public Appointment (County Assemblies Approvals) Act, 2017 provides that at the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to the public office.

- xiii. Section 10 (1) of the Public Appointment (County Assemblies Approval) Act 2017 states where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate and the procedure for approval specified in this Act shall apply accordingly.
- xiv. In the alternative, Section 10(1) of the Public Appointments (County Assemblies Approvals) Act, 2017 the appointing authority shall upon the approval of the nominees for appointment by the County Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under Section (1).

66. Going by the above outlined procedure and requirements, the question that arises and which this court should concern itself is whether the 1st, 2nd and 3rd Respondents did adhere to the said constitutional



and statutory requirements and procedures in nominating, vetting/approving and appointing the 4th to 12th Respondents to various positions of County Executive Committee members.

67. Upon perusal of the Petitioners' petition, it is noted that the Petitioners have not provided documentary evidence to support their averments. Indeed, the 2nd and 3rd Respondents filed a replying affidavit through an acting clerk giving the processes they undertook in the vetting and approval. However, the Petitioners did not file any counter response challenging the same. What the Petitioners have annexed in their petition is a copy of Star Newspaper wherein the allegations against the 4th -12th Respondents had been made. Indeed, newspaper reports require corroboration since they are stories meant for the public consumption. It was incumbent upon the Petitioners to avail the requisite evidence showing that the nominees were not qualified for appointment by the 2nd Respondent herein. Since petitions are always heard or canvassed by way of submissions, it was necessary for the Petitioners to avail sufficient evidence through affidavits for the court's considerations. Hence, this court was not given sufficient material for consideration as to whether the 1st, 2nd and 3rd Respondents complied with the provisions of the law as enumerated herein above. It is also noted that the Petitioners have claimed that the information challenging the nomination of the 4th -12th Respondents was duly presented to the 2nd Respondent for consideration but which was rejected by the said 2nd Respondent and went ahead to approve the nomination and forwarded it to the 1st Respondent to appoint them. If that was the position, it was therefore necessary for the Petitioners to avail such evidence to this court for consideration. I find no reasons were given by the Petitioners for that failure yet the burden of proof lay with them to discharge on a balance of probabilities.
68. It is noted from the foregoing provisions of the law, the process of appointment of a member of the County Executive Committee to office is well laid out and that it was the duty of the Petitioners to show that the process was not carried out as by law required. It is also instructive that the Petitioners were at liberty to challenge the nomination process at that stage since the views of public and interested parties were required for consideration before the 4th – 12th Respondents could be nominated for office. It is clear that no evidence has been adduced to demonstrate that the County Assembly either exercised its powers of approval improperly, illegally or unprocedurally or that it considered irrelevant matters or ignored the issues raised by the Petitioners in this Petition in the course of vetting; that in any event, the vetting process was done in an open and transparent manner and that the Petitioners were aware when the said vetting exercise was being conducted and that they had the opportunity to ventilate their views before the County Assembly's appointments Committee; that the fact that the Petitioners did not submit their said concerns before the County Assembly appointments committee and which they now raise in this Petition means that they are in breach of the exhaustion principle.
69. From the foregoing provisions of the law, it is clear that the process for appointment of county executive committee members regarding the vetting procedure is outlined clearly in Article 179(2)(b) of *the Constitution*, Section 35 (3) of the County Government Act and Section 4,5,6, 7,8,9, 10 and 11 of the *Public Appointments (County Assemblies Approval) Act* 2017.

Article 179(2) (b) of *the Constitution* provides that: -

- (2) The County Executive Committee consist of
- (b) members appointed by the County Governor, with the approval of the Assembly, from among persons who are not members of the Assembly.

Also, under Section 4 and 11 of the *Public Appointments (County Assemblies Approval) Act*, 2017 provides as follows:



4. An appointment under *the Constitution* or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

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- (1) The Clerk shall notify the appointing authority of the decision of the County Assembly within fourteen days of the decision.
- (2) The appointing authority shall, upon the approval of the nominees for appointment by the County Assembly and subject to applicable written law, appoint the nominee within a period of seven days from the date of notification of the decision of the Assembly under subsection (1).

From the above provisions, it is clear that the power to vet and approve for appointment persons nominated to the position of CEC is exclusively vested in the County Assembly.

The County Assembly having approved all the nominees for appointment in their respective dockets, it was incumbent upon the Governor to effect the appointments as approved by the County Assembly. Section 9(2) of the Public Appointments (County Assemblies Approval) Act speaks to this issue in the following terms;

“At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to the public office.”

70. In the case of Faith Syokau Wathome Kithu (MBS) & Others v Machakos County Assembly & 3 Others [2018] eKLR, Odunga, J as he then was held as follows:

“Whereas that decision may well be frowned upon in some quarters, that was clearly a threshold issue. This court cannot clearly prescribe to the County Assembly what it considers necessary as the appropriate threshold in order to determine whether or not a nominee ought to be approved for appointment. Similarly, the court cannot prescribe what marks to award in respect of a particular bead of evaluation because the decision as to whether a nominee merits the appointment is a matter purely within the powers of the County Assembly and this court cannot direct the Assembly on what constitutes merit or otherwise. In the vein this court cannot interrogate the decision of the Assembly whether the material presented before it was sufficient to prove mismanagement of some of the nominees so as to arrive at a decision whether the said decision was correct or not.”

Also, in the case of Francis Maliti v County Assembly of Machakos & 2 others Governor Machakos County (Interested Party) [2019] eKLR, Odunga J as he then was, held:

“.....it is however for the County Assembly to determine such suitability. For this court to embark on a determination clearly amount to usurpation of the powers of the County Assembly and a clear violation of the doctrine of separation of powers.”

It is noted that the Petitioners are seeking this court to declare that the 4th – 12th Respondents are unsuitable to occupy the offices of County Executive Committee members owing to the claim by the Petitioners that the vetting was flawed. However, the court notes that the Petitioners did not



avail the requisite evidence in that regard and further did not explain why they did not approach the County Assembly during the vetting process and make their representation to it. As noted above, the Petitioners are barred by the Exhaustion Doctrine from approaching the courts before utilizing the available Dispute Resolution Mechanism. A party seeking for the court to interfere or delve into the proceedings or decisions of the County Assembly must specifically plead so and demonstrate how such proceedings or decisions have abrogated *the Constitution*. This position is informed by a well settled principle of law that parties are bound by their pleadings. This position is further fortified by the decision of court in Independent Electoral and Boundaries Commission & Another Vs Stephen Mutinda Mule & 3 others [2014] eKLR which cited the decision of the Malawi supreme Court of Appeal in Malawi Railways Ltd vs. Nyasulu [1998] MWSO 3, in which the learned Judges quoted with approval from an article by Sir Jack Jacob entitled “The Present Importance of Pleadings.” The same was published in [1960] current legal problems at P174 whereof the author had stated;

“..... The court itself is as bound by the pleadings of the parties as they are themselves. It is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court will be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation....”

71. Finally, it is noted that the Petitioners’ main grouse with the nominees (4th -12th Respondents) is that they are not academically suitable for the positions to which they have been appointed. Indeed, the 2nd Respondent carried out a vetting process wherein it approved the nominees and forwarded their names to the 1st Respondent who duly appointed them. The Petitioners pursuant to the Exhaustion Doctrine were under obligation to present their grievances to the 2nd Respondent during the vetting process. There is no evidence that the Petitioners presented such grievances. The 2nd Respondent was guided by the provisions of the law and its needs while scouting for persons to serve in the County Executive Committee. It is therefore believed that the persons so recruited were up to the task. In the case of Faith Syokau Wathome Kithu (MBS) & Others Vs. Machakos County Assembly [2018] eKLR Odunga J,(as he then was) observed as follows:

“To the Petitioners, since the issue of relevancy of the degree held by the nominee to the position to which one is nominated is not an express requirement under section 35(3)(b) of the County Assemblies (Approval) Act, 2017, by stating that the Petitioners did not have a first degree related to the department the Respondents considered a matter which they were not required to consider. It is however not in dispute that under section 8 of the County Government Act the County Assembly is obliged to vet and approve nominees for appointment to county public offices as may be provided for in the Act or any other law. The question that arises is whether a consideration by the County Assembly of the relevancy of the nominee’s degree to the position to which he/she has been nominated is outside the powers of the County Assembly conferred upon it by Article 185(1) of *the Constitution* as read with section 8 of the County Government Act. It is worth noting that section 35(3)(a) aforesaid does not state that a person who meets the criteria thereunder must be appointed to the post to which he is nominated. The word used is “may”. Therefore, notwithstanding the fact that a person meets those minimum requirements, he/she may still fail the approval test if for example he/she fails to meet other criteria for appointments. For example, Article 232(1)(g) of *the Constitution* provides that the values and principles of public service include fair competition and merit as the basis of appointments and promotions. Under Article



232(2)(a) the values and principles of public service apply to public service in all State organs in both levels of government.

It is therefore my view that a County Assembly is obliged to take into account whether the Governor's nominee merits appointment to the position to which he/she has been nominated. It is therefore my view that even going by the constitutional provisions where the degree held by a nominee is not suitable for the purposes of performance of the duties the nominee is intended to perform, County Assembly is properly entitled to decline to approve the nomination. My view is reinforced by the provisions of the Leadership and Integrity Act, specifically sections section 3(2)(g) which provides that a State officer shall respect the values, principles and the requirements of the Constitution, including in so far as is relevant, the values and principles of Public Service as provided for under Article 232 of the Constitution."

The Court further observed as follows;

"According to the Petitioner, in computing experience under section 35(3)(d) of the County Government Act, it should be construed as an experience acquired cumulatively in a management, policy making and/or leadership position held and not experience in a particular professional field. However, section 35(3)(d) provides that the person being nominated ought to have: knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

If the County Assembly interpreted this provision to mean that the experience should be in a particular professional field, that view cannot be faulted by this Court as that is a matter that goes to the merit of its decision."

72. From the foregoing observations, it is my finding that the Petitioners have not discharged the burden of proof against the Respondents on a balance of probabilities as they have mainly presented allegations without the requisite evidence to back them up. Again, the Petitioners failure to exhaust available Dispute Resolution Mechanisms weakened their claim against the Respondents.
73. In the result, it is my finding that the Petitioners' petition lacks merit. The same is dismissed. Each party to bear their own costs.

DATED AND DELIVERED AT SIAYA THIS 18TH DAY OF JULY 2025.

D. KEMEI

JUDGE

In the presence of:

N/A Maua.....for Petitioners.

Okanda.....for 1st, 4th -12th Respondents.

Okoyo Omondi.....for 2nd and 3rd Respondents.

Okumu.....Court Assistant.

