



**Mbiti v Mwilu & others; Kituo Cha Sheria & another (Interested Party) (Constitutional Petition 21 of 2021) [2023] KEHC 1613 (KLR) (Constitutional and Human Rights) (9 March 2023) (Order)**

Neutral citation: [2023] KEHC 1613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION 21 OF 2021**

**AC MRIMA, J**

**MARCH 9, 2023**

**BETWEEN**

**MWONGELA ISAAH MBITI ..... PETITIONER**

**AND**

**HON. LADY JUSTICE PHILOMENA MBETE MWILU & OTHERS ..... RESPONDENT**

**AND**

**KITUO CHA SHERIA & ANOTHER ..... INTERESTED PARTY**

**ORDER**

1. This matter was initially filed in the High Court of Kenya at Meru. It was later transferred to this court for further dealing given that this court had dealt with and rendered itself in two related matters. The matters were heard and determined by an expanded bench of this court in the High Court of Kenya at Nairobi Petition No E245 of 2020 and Petition No E498 of 2020.
2. When this matter came before me for directions, parties submitted on the way forward. There were two opposing sides. The petitioner and interested parties posited that despite the determination of Petition No E245 of 2020 and Petition No E498 of 2020, there were still several issues yet to be determined the instant petition, hence urged this court to give directions on the hearing of the petition.
3. The other side comprised of principally the 1<sup>st</sup> respondent herein, Hon Lady Justice Philomena Mbete Mwilu, was diametrically opposed. It contended that all the issues in the instant petition were settled in Petition No E245 of 2020 and Petition No E498 of 2020 and called for the closure of this matter.



4. This court reserved the matter for a ruling on the way forward and called for the original court files for Petition No E245 of 2020 and Petition No E498 of 2020. It appears that the files were not forwarded accordingly by the time I left the division on transfer.
5. Despite the fact that the judgment by the expanded bench can be easily accessed online, it is imperative that this court satisfies itself on all the proceedings and matters that were dealt with by the expanded bench and even before then. That could not be ascertained from the online decision, hence the inability to give adequate directions on the way forward.
6. It is on that background that this matter is remitted back to the division in Nairobi where the court files in Petition No E245 of 2020 and Petition No E498 of 2020 will be availed before the Presiding Judge for further directions and orders.
7. Consequently, the following orders do hereby issue: -
  - a. The Hon deputy registrar shall avail the original court files in High Court of Kenya at Nairobi Petition No E245 of 2020 and Petition No E498 of 2020 for perusal.
  - b. This matter shall be placed before the presiding judge for further proceedings.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 9TH DAY OF MARCH, 2023.**

**A. C. MRIMA**

**JUDGE**

