



**Kibet v United Democratic Alliance Party & another (Constitutional
Petition E001 of 2022) [2023] KEHC 19973 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CONSTITUTIONAL PETITION E001 OF 2022**

AC MRIMA, J

JULY 13, 2023

BETWEEN

SAMUEL CHERUIYOT KIBET PETITIONER

AND

UNITED DEMOCRATIC ALLIANCE PARTY 1ST RESPONDENT

KASEUSEU ELIJAH LOKORI 2ND RESPONDENT

RULING

Introduction:

1. This ruling is in respect of two Notices of Preliminary Objection each taken out by the Respondents herein.
2. The 1st Respondent's objection is dated 20th March, 2023 (hereinafter referred to as 'the first objection') whereas the objection by the 2nd Respondent is dated 24th March, 2023 (hereinafter referred to as 'the second objection')
3. Both objections challenged the jurisdiction of this Court on various fronts.
4. The objections were vehemently opposed by the Petitioner.

The Objections:

5. The first objection was tailored as follows: -



1. That this Honourable Court lacks jurisdiction to entertain, hear and determine the Petition and the Application pursuant to the provisions of Section 75(1A) of the *Elections Act*, 2011 which provides that:

“A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate’s Court designated by the Chief Justice.”
2. That this Honourable Court lacks jurisdiction to grant the orders sought in the Petition and Application pursuant to Rule 6(1)(b) of the Elections (Parliament and County Elections) Petition Rules, 2017, which provides that:

“A question of determination of membership can only be determined through an election petition filed in accordance therewith.”
3. That the Petition is bad in law as it violates Rule 2 of the Elections (Parliament and County Elections) Petition Rules, 2017 which provides that :

“A Respondent in relation to a Petition means (a) The person whose election is complained of...(c) the Commission..”
4. That the suit as instituted is fatally incompetent and incurably defective in law and as such cannot stand or be ventilated before this Honourable Court.
5. That the suit contravenes mandatory provisions of law and hence not tenable in law.
6. The second objection yielded as follows: -
 1. This Court lacks the requisite jurisdiction to hear this Petition in light of the fact that the instant Petition is a preserve of the Electoral Court as distinguished from the Constitutional Court as set out in Rule 6(3) of the Elections (Parliamentary and County Elections) Petitions Rules 2017 and ought to be struck out.
 2. The Petition herein is unmaintainable incompetent and misconceived as the same was filed outside the 28 days after the declaration of results prescribed in the Section 76(1) of the *Elections Act*, No.24 of 2011 as well as Article 87(2) of *the Constitution* of Kenya 2010.
 3. The Petition herein amounts to a fishing expedition as the Applicant herein opted to file the instant Petition without exhausting alternative dispute resolution procedures within the party machinery as well as the Political Parties Disputes Tribunal and the Petition ought to be struck out.
7. By the directions of this Court, the objections were heard by way of written submissions. The parties duly filed and exchanged their respective submissions.
8. The Respondents’ main and common position in their respective objections was that this Court lacks jurisdiction to hear and determine the subject matter for want of compliance with Section 75(1A) of the *Elections Act* which provision directs the manner in which any challenge to the validity of the election of a member of county assembly ought to be undertaken.
9. The Respondents filed comprehensive submissions and referred to several decisions in support of their position. They urged the Court to allow the objections and dismiss the Petition.



10. The Petitioner, in opposition to the objections, filed written submissions. He, as well, referred to several decisions in support of his position. The Petitioner contended that the Petition raised broader constitutional issues which were not limited to the impugned nomination.
11. To that end, the Petitioner urged this Court not to allow the objections and, to instead, proceed and hear the Petition on its merit.
12. This Court will not replicate the parties' submissions verbatim in this ruling. However, the Court is grateful to Counsel for the incisive research and presentation of submissions and shall, definitely so, consider their positions in this decision.

Analysis:

13. The Court has carefully considered the Objections, the submissions thereon and the decisions referred to by the parties. The following arise as issues for determination: -
 - a. The propriety of the objections.
 - b. Whether the dispute is an election petition.
14. The issues shall be dealt with in seriatim.

The propriety of the objections.

15. In considering this issue, and since the objections are by way of a Notices of Preliminary Objection, it is imperative to have a look at the law on such objections.
16. The validity of a preliminary objection is considered on the basis that it conforms with the long-standing legal principle that it is raised on a platform of agreed set of facts, it raises pure points of law and is capable of wholly determining the matter.
17. To that end, the locus classicus decision in *Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd* (1969) E.A. 696 at page 700, comes to the fore. In that case, the Court defined a preliminary objection and discussed its operation in the following eloquent manner: -

...so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.

...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.

18. The Supreme Court weighed in on the issue in *Aviation & Allied Workers Union Kenya -vs- Kenya Airways Ltd & 3 Others* [2015] eKLR and stated thus: -

.... Thus, a preliminary objection may only be raised on a 'pure question of law'. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts.



19. Ojwang J, as he then was, emphasized the finding in Mukisa Biscuit -vs- West End Distributors case (supra) in Civil Suit No. 85 of 1992, Oraro -vs- Mbaja [2005] 1 KLR 141 when he observed as follows: -
- I think the principle is abundantly clear. A “preliminary objection”, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed....
20. In John Musakali -vs- Speaker County of Bungoma & 4 others (2015) eKLR the validity of a preliminary objection was considered in the following manner: -
- The position in law is that a Preliminary Objection should arise from the pleadings and on the basis that facts are agreed by both sides. Once raised the Preliminary Objection should have the potential to disposing of the suit at that point without the need to go for trial. If, however, facts are disputed and remain to be ascertained, that would not be a suitable Preliminary Objection on a point of law....
21. Finally, in Omondi -vs- National Bank of Kenya Ltd & Others {2001} KLR 579; [2001] 1 EA 177, guidance was given on what Courts ought to consider in determining the validity of preliminary objections. It was observed: -
- In determining (Preliminary Objections) the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion and therefore the contention that the suit is an abuse of the process of the Court for the reason that the defendant’s costs in an earlier suit have not been paid is not a true point of preliminary objection because to stay or not to stay a suit for such reason is not done ex debito justitiae (as of right) but as a matter of judicial discretion....
22. On whether the issue of jurisdiction is a pure point of law, the Supreme Court in Petition No. 7 of 2013 Mary Wambui Munene v. Peter Gichuki Kingara and Six Others, [2014] eKLR, stated that ‘jurisdiction is a pure question of law’ and should be resolved on priority basis.
23. Returning to the objections at hand, and, without much ado, since the objections impugn the jurisdiction of this Court, then going by the Supreme Court in Mary Wambui Munene v. Peter Gichuki Kingara and Six Others case (supra), the objections are a jurisdictional challenge on a pure question of law and if sustained by this Court, they can terminate the entire matter. Therefore, the objections pass the proprietary test and are for further consideration.

Whether the dispute is an election petition:

24. Having said so, I will now deal with the issue as to whether the dispute ought to have taken the nature of an Election Petition.
25. There is no doubt that the contention in this matter relates to the Special Issue of the Kenya Gazette Vol. CXXIV – No. 186 of 9th September, 2022 Notice No. 10712 (hereinafter referred to ‘the impugned Gazette Notice’) issued by the Independent Elections and Boundaries Commission.



The said Notice declared those who were nominated by various parties to be Members of County Assemblies in Kenya.

26. The question which, therefore, begs for an answer is whether the process of nominating persons to serve in the County Assemblies as Nominated Members of County Assemblies amounts to an election.
27. The good news is that the answer to this question is already well rendered by decisions of superior Courts which are binding to this Court. As such, that makes the work of this Court relatively light.
28. To start off, there is need to remind ourselves of the settled legal principle that elections are a process and not an event. This principle was discussed in details by the Supreme Court of Kenya in various decisions. This Court will consider some of them.
29. In *Raila Amollo Odinga & Another vs. Independent Electoral & Boundaries Commission & 4 Others* (2017) eKLR, the Apex had the following to say: -

(224) On our part, having considered the opposing positions, we are of the view that, the contentions by the 1st and 2nd respondents ignore two important factors. One, that elections are not only about numbers as many, surprisingly even prominent lawyers, would like the country to believe. Even in numbers, we used to be told in school that to arrive at a mathematical solution, there is always a computational path one has to take, as proof that the process indeed gives rise to the stated solution. Elections are not events but processes. As Likoti, J.F. opines

... [e] elections are not isolated events, but are part of a holistic process of democratic transition and good governance...[[101] Incidentally, IEBC's own Election Manual (Source Book)[102] recognizes that an election is indeed a process.

(225) There are many other authorities which speak to this proposition. In *Kanhiyalal Omar v. R.K. Trivedi & Others*[103] and *Union of India v. Association for Democratic Reforms & Another*[104], the Supreme Court of India, for example, stated that the word 'election' is used in a wide sense to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. These stages include voter registration; political party and candidate registration; the allocation of state resources and access to media; campaign activities; and the vote, count, tabulation and declaration of results.[105] Lady Justice Georgina Wood, the former Chief Justice of Ghana, made the same point and added other stages when she stated:

.... The Electoral process is not confined to the casting of votes on an election day and the subsequent declaration of election results thereafter. There are series of other processes, such as the demarcation of the country into constituencies, registration of qualified voters, registration of political parties, the organization of the whole polling system to manage and conduct the elections ending up with the declaration of results and so on [106]

And according to the European Human Rights Committee, the process also includes the right to challenge the election results in a court of law or other tribunal. [107]

(226) Here in Kenya, the issue of elections as a process was discussed in the case of *Karanja Kabage v. Joseph Kiuna Kariambegu Nganga & 2 Others*[108] where the High Court observed that:

... an election is an elaborate process that begins with registration of voters, nomination of candidates to the actual electoral offices, voting or counting



and tallying of votes and finally declaration of the winner by Gazettement. In determining the question of the validity of the election of a candidate, the court is bound to examine the entire process up to the declaration of results....The concept of free and fair elections is expressed not only on the voting day but throughout the election process....Any non-compliance with the law regulating these processes would affect the validity of the election of the Member of Parliament.

55. There is also In the Matter of the Principle of Gender Representation in the National Assembly and the Senate [2012] eKLR where the Supreme Court stated as follows in respect to the electoral process: -
- [100] A Presidential election, much like other elected-assembly elections, is not lodged in a single event; it is, in effect, a process set in a plurality of stages. Article 137 of *the Constitution* provides for “qualifications and disqualifications for election as President” – and this touches on the tasks of agencies such as political parties which deal with early stages of nomination; it touches also on election management by the Independent Electoral and Boundaries Commission (IEBC). Therefore, outside the framework of the events of the day of Presidential elections, there may well be a contested question falling within the terms of the statute of elections, or of political parties. Yet still, the dispute would still have clear bearing on the conduct of the Presidential election.
30. In Petition 2 & 4 of 2017 (consolidated), John Harun Mwau & 2 others -vs- Independent Electoral and Boundaries Commission & 2 others [2017] eKLR, the Supreme Court stated as follows: -
- (231) The nomination process is deeply rooted in *the Constitution*, which recognizes that an electoral contest must be preceded by the nomination of candidates to vie for elective positions.
31. The Court went on further to say that: -
- ...Nomination, therefore, is not just a formality, or an exercise in futility, nor can it be dispensed with, save for lawful cause.
- ...In summary, therefore, at a general level, nomination is depicted as a process through which candidates are identified for participation in an election, subject to them being properly qualified under the law, for the elective seat that they seek. It is a critical component of an electoral process, without which there would be no election.
32. This Court believes that it has said enough to affirm the position that elections are processes and not one-time events.
33. Returning to the issue of nominations, suffice to say that nomination of candidates usually takes two forms. Both forms arise where persons are sponsored by political parties. One form of the nominations involves the clearing of a person by a political party to vie in an election by facing other candidates under the auspices of universal suffrage once an election date is announced. The other form of nomination is by a political party appointing some of its members to join Parliament or the County Assemblies based on the number of seats a political party garners in an election. The latter is the case in this matter.
34. Having settled the fact that elections are broader processes which involve nominations, there is need to ascertain whether nominations by political parties ending up with appointing some of the members to join Parliament or the County Assemblies based on the number of seats a political party garners in an election are also regarded as elections and how disputes arising from such nominations are to be dealt with.



35. The Supreme Court in *Moses Mwigigi & 14 others vs. Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR extensively dealt with the above issues including whether a Constitutional Petition or Judicial Review proceedings before the High Court can be invoked to initiate an election related or party nomination dispute subsequent to gazettement of nominated candidates.
36. The Supreme Court expressed itself as follows: -
- [105] It is clear from the foregoing provisions that the allocation of nomination- seats by the IEBC is a time bound process, that starts with the proportional determination of the number of seats due to each political party. On that basis, IEBC then ‘designates’, or ‘draws from’ the allocated list the number of nominees required to join the County Assembly. To ‘designate’ or ‘draw from’ entails the act of selecting from the list provided by the political party. It is plain to us that *the Constitution* and the electoral law envisage the entire process of nomination for the special seats, including the act of gazettement of the nominees’ names by the IEBC, as an integral part of the election process.
- [106] The Gazette Notice in this case, signifies the completion of the “election through nomination”, and finalizes the process of constituting the Assembly in question. On the other hand, an “election by registered voters”, as was held in the Joho Case, is in principle, completed by the issuance of Form 38, which terminates the returning officer’s mandate, and shifts any issue as to the validity of results from the IEBC to the Election Court. (Emphasis supplied)
- [107] It is therefore clear that the publication of the Gazette Notice marks the end of the mandate of IEBC, regarding the nomination of party representatives, and shifts any consequential dispute to the Election Courts. The Gazette Notice also serves to notify the public of those who have been “elected” to serve as nominated members of a County Assembly. (Emphasis supplied)
- (115) The *Elections Act* confers jurisdiction upon Magistrates Courts to determine the validity of the election of a member of a County Assembly; Section 75 (1A) of the Act provides that:
- “A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate’s Court designated by the Chief Justice.”
- (117) It is clear to us that *the Constitution* provides for two modes of ‘election’. The first is election in the conventional sense, of universal suffrage; the second is ‘election’ by way of nomination, through the party list. It follows from such a conception of the electoral process, that any contest to an election, whatever its manifestation, is to be by way of ‘election petition’.
- (119) To allow an electoral dispute to be transmuted into a petition for the vindication of fundamental rights under Article 165 (3) of *the Constitution*, or through judicial review proceedings, in our respectful opinion, carries the risk of opening up a parallel electoral dispute-resolution regime. Such an event would serve not only to complicate, but ultimately, to defeat the sui generis character of electoral dispute-resolution mechanisms, and notwithstanding the vital role of electoral dispute-settlement in the progressive governance set-up of the current Constitution.”(Emphasis supplied)
37. Going further, the Court of Appeal in *Feisal Shaib Khan & another v Independent Electoral and Boundaries Commission (IEBC) & 5 Others* [2018] eKLR also dealt with the above matter and after considering the above position by the Supreme Court went ahead and stated as follows: -



18. We have also considered dicta in *Thande vs. Montgomery* (1970) EA 341, in which the East African Court of Appeal held that nominations to stand for elections is part of the election process and as such, can only be challenged after the election by way of an election petition. In *Mwihia & another vs. Ayah & Another* [2008] 1 KLR (EP) 450, 456-458 it was held that nominations to stand for elections are part of the election process and as such, they could only be challenged after the elections by way of an election petition. In *Kipkalya Kiprono Kones vs. The Republic & Another Ex-parte Kimani Wanyoike & 4 Others* [2006] eKLR it was held that an election petition was the only valid means of challenging an election and the court would only be seized with the Petition once the election results have been declared.
19. Guided by the foregoing judicial decisions, this Court in *Kennedy Moki vs. Rachel Kaki Nyamai & 2 other* [2018] eKLR, expressed itself as follows:
 56. Notwithstanding the foregoing, we are alive to dicta which state that an election court is the proper forum at which to challenge by way of petition nomination disputes. On our part, having reviewed the case law, we are persuaded that the dicta in *Kipkalya Kiprono Kones vs. The Republic & Another Ex-parte Kimani Wanyoike & 4 Others* [2006] eKLR is good law where it was held that an election petition was the only valid means of challenging an election. All other proceedings before PPDT or Judicial Review are not proceedings challenging the declared results of an election and such proceedings cannot vitiate or validate the declared results of an election. We are also persuaded with dicta in *Mwihia & another vs. Ayah & another* [2008] 1 KLR (EP) 450 where it was held that nominations to stand for elections are part of the election process and as such, they could only be challenged after the elections by way of an election petition. We are further convinced that the decision in *Wamboko vs. Kibunguchi & another*, (2008) 2 KLR 477, is good law where it was held that an election court has jurisdiction to hear and determine a petition where one of the issues is nomination of a candidate - as nomination is a process of election.
38. And, in summing up the issue of the jurisdiction of the High Court in disputes arising from elections by way of nominations, the Court stated as follows: -
 20. In the instant appeal, the issue at hand is whether the trial court had jurisdiction to hear and determine a nomination dispute relating to membership of the Lamu County Assembly. In our considered view, the High Court had no jurisdiction for the following reasons:
 - (a) Party nomination disputes after gazettelement by the IEBC can only be heard and determined by way of an election petition. Neither a judicial review application nor a constitutional petition can resolve or initiate electoral dispute resolution after gazettelement of nomination or election results.
 - (b) As regards membership to the County Assembly, jurisdiction to hear an election petition is vested upon the Magistrate's Court and not the High Court. In the instant case, the petition filed by the appellants at the High Court was not an election petition before an election court presided over by a Magistrate duly gazetted by the Chief Justice.
 - (c) In addition, the prayers sought by the appellants in the Petition before the High Court was de-gazettelement of the 3rd and 4th respondents who had already been gazetted as Members of the Lamu County Assembly. The jurisdiction to deal with any such disputes after gazettelement lies with the Magistrate's court which can only be moved by way of an election petition.



21. In arriving at our decision that the trial court had no jurisdiction to hear the petition filed before it, we are cognizant of the decision by this Court in Hamdia Taroi Sheikh Nuri vs. Faith Tumaini Kombe & 2 Others, Election Petition Appeal No. 27 of 2018 where it was held that this Court lacks jurisdiction to hear appeals relating to membership to the County Assembly. In holding that this Court has no jurisdiction, it was expressed that “it would seem that election appeals by members of the County Assembly to this Court were neither contemplated nor permitted”.
22. In our decision in the instant matter, we are guided and bound by the Supreme Court decision in Moses Mwicigi & 14 others (supra) where the Court stated that any contest to an election, whatever its manifestation, is to be by way of ‘election petition’. Guided by the judicial authorities cited and bound by the Supreme Court, we find that this appeal has no merit.
23. For reasons stated above, we are satisfied that the trial court did not err in upholding the Preliminary Objection. In view of the jurisdictional determination we have made in this appeal, we are satisfied that the other numerous grounds of appeal enumerated in the memorandum must ipso facto collapse. The appeal has no merit and we hereby dismiss it with costs.
39. Guided by the foregoing judicial decisions, and on the basis of the doctrine of stare decisis, this Court affirms the position that disputes arising from elections by way of nominations are a preserve of election Courts.
40. Having made an elaborate discussion on the manner and effect of those nominated by political parties into the membership of County Assemblies, there is the issue which was raised by the Petitioner to the effect that the Petition herein has a broader spectrum and is not limited to the nominations into the West Pokot County Assembly, hence, it cannot be regarded as an election Petition pronto.
41. This Court has carefully considered the Amended Petition. Its title has it that the Petition is made up of four limbs. They are Articles 10, 20, 21(3), 22,23, 56, 90, 100(D) & (E), 174(B) and (E), 177, 197(2)(B), 232(1)(H), (I) (II) and 258 of *the Constitution*, the Elections (General) Regulations, 2012, the Election (Party Primaries and Party Lists) Regulations, 2017 and In the Matter of Creation, Publication of Party Lists for Special Seats, Allocation of such seats to political parties and nomination to the County Assembly.
42. The Petition was brought by the Petitioner as against the United Democratic Alliance Party and one Kaseuseu Elijah Lokori.
43. The Petitioner was described as a citizen so passionate about ethnic minorities and that he has been raising awareness and pushing for the recognition of this Sengwer community which is a recognised as a minority community in Kenya in the social, economic, cultural and political spheres. He posited that the Petition was, therefore, brought on his behalf and also in public interest.
44. Having laid the said background, the rest of the Petition was centred on the impugned Gazette Notice. The Petitioner challenged the manner in which the notice was arrived at and how it infringed *the Constitution* more so in not nominating him into the County Assembly under the special seats’ category thereby infringing the rights of the Sengwer community.
45. In the end, the Petitioner prayed for the following orders in the Amended Petition: -
 - i. A Declaration be issued that the 1st Respondent has violated the rights of the Sengwer Community as a minority and marginalized community contrary to under Articles 10,20,56,174 and 197 of *the Constitution* of Kenya.



- ii. A Declaration be issued that 1st Respondent failed to acted unconstitutionally by failing to comply with Article 90(3) as read with Article 97(1) (c), 98 (1) (c) and (d) of *the Constitution*.
 - iii. A Declaration do issue that the West Pokot County Assembly is not properly constituted in the absence of a member from the Sengwer Community.
 - iv. An Order do issue quashing and/or cancelling the Special Issue of the Kenya Gazette Vol.CXXIV-No.186 of 9th September, 2022, Notice No.10712 to the extent that it failed to list the Petitioner under the Minority and/or Marginalised Category.
 - v. An Order do issue directing the 1st Respondent to within Fourteen (14) days forward the Petitioner's name to the Independent Electoral and Boundaries Commission (IEBC) for publication as a member under the Minority and/or Marginalized category.
 - vi. An Order do issue quashing and/or cancelling the Special Issue of the Kenya Gazette Notice No.15924 dated 16th December, 2022.
 - vii. An Order nullifying the nomination and swearing in of Kaseuseu Elijah Lokori as a Member of the County Assembly of West Pokot.
 - viii. An Order in the form of a structured interdict to issue directing the 1st Respondent to within 90 days publish its policy on the place of ethnic minorities and marginalized communities in its political arrangements.
 - ix. The Costs of this Petition be awarded to the Petitioner.
 - x. Any Further Orders that this Honourable Court shall deem just and fit to grant in the circumstances.
46. In this case, therefore, the allegedly impugned rights of the Sengwer community were centred in the context of the impugned gazette notice and not otherwise. If, for instance, the issue of the said gazette notice is detached from the Petition, then the Petition will remain, but an empty shell. That will be the end of the road to the instant Petition.
47. If the Petition was tailored in such a manner that it would still raise constitutional issues even after negating the issue of the Gazette Notice, then the position would be different. In that case, the Petition would have travelled beyond the confines of the impugned gazette notice.
48. However, the instant Petition stands squarely within the four corners of an action challenging the impugned gazette notice. In that case, the Petitioner's contention ought to be by way of an election petition as provided for under Section 75(1A) of the *Elections Act*, No. 24 of 2011 which states as follows: -
75. County election petitions:
- (1A) A question as to the validity of the election of a member of county assembly shall be heard and determined by the Resident Magistrate's Court designated by the Chief Justice.
49. Resulting from the above, the Petitioner's argument in attempting to distinguish the Petition from an election petition, cannot stand. This is a case where the dispute solely rests on the impugned gazette notice and not otherwise.
50. As a result, this Court finds and hold that the appropriate forum for adjudicating the Petitioner's grievances would be the Court designated under Section 75 (1A) of the *Elections Act*.



Disposition:

51. Deriving from the foregoing analysis, this Court finds that the matter can safely come to an end at this point. A consideration of the other limbs of the objections will add no value to any of the parties. As such, the Court opts to determine the objections accordingly.
52. Consequently, the following final orders do hereby issue: -
 - a. The Notice of Preliminary Objection dated 20th March, 2023 and the Notice of Preliminary Objection dated 24th March, 2023 be and are hereby upheld.
 - b. The Petition is hereby struck out with costs.Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 13TH DAY OF JULY, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Kanyonge, Counsel for the Petitioner.

Dr. Kamotho, Counsel for the 1st Respondent.

Miss Jeruto, Counsel for the 2nd Respondent.

Regina/Chemutai – Court Assistants.

