



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CONSTITUTIONAL PETITION NO. 1 OF 2018

**BUSIA COUNTY PERSONS**

**WITH DISABILITY NETWORK.....1<sup>ST</sup> PETITIONER**

**RONALD ONYANGO OBIERO .....2<sup>ND</sup> PETITIONER**

**MICHAEL MAKETSO.....3<sup>RD</sup> PETITIONER**

**GRACE AJUNE ONG'ARIA .....4<sup>TH</sup> PETITIONER**

**GRACE AKULOBA WANGATIA .....5<sup>TH</sup> PETITIONER**

**AND**

**IEBC.....1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN IEBC.....2<sup>ND</sup> RESPONDENT**

**THE CLERK OF ASSEMBLY OF BUSIA.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The issue of jurisdiction has been raised in this matter and the petitioners/respondents admitted that this court lacks jurisdiction to hear and determine the issues therein. This is not new. The same matter was before High Court of Kenya at Kisumu in Petition No.7 of 2017. That petition was struck out for want of jurisdiction. Justice Majanja addressed the issue of jurisdiction adequately. Instead of the petitioners filing the matter in Chief Magistrate's Court, they filed the same in the High court contrary to the ruling of Majanja J.

2. An issue of *res judicata* has been raised by the respondents. This is an issue that can be addressed by the court with the requisite jurisdiction. The Court of Appeal in the case of **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1** (Justice Nyarangi) while addressing the issue of jurisdiction stated:

**I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.**

3. I do not wish to reinvent the wheel. I am therefore making an order that this matter be struck out for want of jurisdiction. Since the petitioners did not heed the previous ruling, they will shoulder the costs herein.

**DELIVERED and SIGNED at BUSIA this 8<sup>th</sup> day of April, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**