



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CONSTITUTIONAL PETITION NO. 40 OF 2019

AND

IN THE MATTER OF VIOLATIONS OF THE FUNDAMENTAL RIGHTS OF THE PETITIONER UNDER ARTICLES 2, 3, 10, 20, 22, 27, 47, 50, 165, 179, 258 AND 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE COUNTY GOVERNMENT ACT, 2012, SECTIONS 14, 31 AND 40

AND

IN THE MATTER OF STANDING ORDER NO. 73(9) AND 74(I) (b) AND (2) OF THE SIAYA COUNTY ASSEMBLY STANDING ORDERS

IN THE MATTER OF IMPEACHMENT OF THE PETITIONER FROM OFFICE AS COUNTY EXECUTIVE COMMITTEE MEMBER FOR HEALTH

AND

IN THE MATTER OF PRINCIPLES OF NATURAL JUSTICE

DOROTHY OWINO.....PETITIONER

VERSUS

THE COUNTY ASSEMBLY OF SIAYA.....1ST RESPONDENT

THE SPEAKER,COUNTY ASSEMBLY OF SIAYA.....2ND RESPONDENT

GOVERNOR,COUNTY GOVERNMENT OF SIAYA...3RD RESPONDENT

RULING

1. I have perused the pleadings in this Petition, the responses thereto by the Respondents and the applicable law. In my humble view, the subject matter of the dispute relates to Employment and Labour Relations.
2. **Article 162 (2) (a) of the Constitution** contemplates the establishment of **Employment and Labour Relations Court** to hear and determine disputes relating to Employment and Labour Relations. This was followed by the enactment of the Employment and Labour Relations Court Act and the Court is empowered to hear and determine not only ordinary disputes of the nature of Employment and Labour Relations but also Constitutional Petitions and Judicial Review Jurisdiction is vested in the Court as stipulated in **Section 12 (1) and (7) of the Act**.
3. **Article 165 (5) (b) of the Constitution** too expressly bars this Court from hearing and determining disputes whose jurisdiction is exclusively reserved for the **Supreme Court and the Courts of Equal Status Contemplated in Article 162 (2) of the Constitution**.
4. That being the case, I find and hold that this Petition ought to have been filed before the Employment and Labour Relations Court.
5. Accordingly, I decline to hear the Petition and direct that this file shall be placed before Employment and Labour Relations Court,

Kisumu for further directions and disposal.

6. In line with **Article 48 of the Constitution** on access to justice, as the parties have paid Court fees to one and the same institution being the Judiciary, they shall not be required to refile the Petition and responses. The entire file shall be transmitted to Kisumu ELRC for re-allocation of a case file member and parties to appear before the said **Court for directions on 2.12.2019** since the Petition was filed under certificate of urgency.

7. Orders accordingly.

Dated, Signed and Delivered at Siaya this 20th day of November, 2019

R.E. ABURILI

JUDGE

In the presence of:

Mr. Osiemo Adv. for the Petitioner

Mr. Amolo Adv. for the 1st and 2nd Respondents

Mr. Que Adv. for the 3rd Respondent