



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELECTION PETITION NO. 2 OF 2017

HON. MARTHA WANGARI KARUA.....1ST PETITIONER

HON. JOSEPH GACHOKI GITARI.....2ND PETITIONER

-VERSUS-

THE INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....1ST RESPONDENT

MR. SEKI LEMPAKA.....2ND RESPONDENT

HON. ANN WAIGURU.....3RD RESPONDENT

HON. PETER NDAMBIRI.....4TH RESPONDENT

RULING

1. In this matter, the Court of Appeal delivered a ruling on 2nd March, 2018 and directed the parties to appear before this Court for directions on hearing and disposal of the petition. The petitioner and her advocate **Mr. Gitobu Imanyara** appeared. The Respondents were represented by their advocates, **Mr. Joe Kathungu** for 1st and 2nd respondents and **Mr. Nyamondi** and **Mr. Kamotho Waiganjo** for 3rd and 4th Respondents. The Petitioners made an application that I recuse myself contending that I had expressed in strong language a view that goes to the root of the judgment. That justice must not only be done but also seen to be done.

2. The Respondents urged the Court that the Petitioner ought to file a formal application in order to give them an opportunity to respond. It was also contended that the issues being raised were raised before the Court of Appeal and a finding was made.

3. For the 3rd and 4th respondent, it was submitted that they had filed a preliminary objection on the jurisdiction of this Court to hear and determine the petition by virtue of **Section 75 (2)** of the **Elections Act** as read with **Article 87 (1)** of the **Constitution**.

4. I have considered all the issues raised. I am also alive to the judgment of the Court of Appeal. I find that since the petitioner made an oral application and the respondents have stated that they would wish to respond, it is only fair that the petitioner moves the Court with a formal application. This would give the respondents that opportunity to consider the issues raised and respond if need be. The application may be filed and determined expeditiously. I therefore direct that the Petitioner shall file a formal application for my recusal and serve the respondents.

5. On the issue of jurisdiction which was raised as a preliminary objection, since it was served in Court without giving the petitioners notice and sufficient time to respond, I direct that it will be given a date and argued on merit. Those are the orders of this Court.

Dated and delivered at Kerugoya this 7th day of March, 2018.

L. W. GITARI

JUDGE

Ruling read out in open Court, Mr. Gitobu Imanyara for Petitioner.

Petitioner – present.

Mr. Joe Kathungu for 1st and 2nd Respondents.

Mr. Nyamondi for 3rd and 4th Respondents this 7th day of March, 2018.

L. W. GITARI

JUDGE

07.03.2018