



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE’S COURT AT NYAMIRA

ELECTION PETITION NO. 03 OF 2017

**IN THE MATTER OF ELECTIONS/NOMINATIONS FOR COUNTY ASSEMBLY
ELECTIONS/NOMINATIONS FOR NYAMIRA COUNTY LEGAL NOTICE NO. 124 & 133
WITHIN NYAMIRA COUNTY GAZETTED ON THE 28TH AUGUST, 2017, 6TH SEPTEMBER,
2017 AND 8TH SEPTEMBER, 2017**

BETWEEN

DAMARIS NYARANGI

MOUNI=====PETITIONER

AND

**1. WAFULA W. CHEBUKATI, CHAIRMAN IEBC=====1ST
RESPONDENT**

**2. INDEPENDENT ELECTORAL BOUNDARIES COMMISSION (IEBC)=====2ND
RESPONDENT**

**3. IRENE NYAKERARIO MAYAKA=====3RD
RESPONDENT**

**4. CLERK NYAMIRA COUNTY ASSEMBLY=====4TH
RESPONDENT**

RULING

This is a ruling in respect of the issue regarding this court’s jurisdiction before the 6/10/2017, which is the date this court was duly gazette to handle the Election Petitions of which this Petition was one of them.

The first, second and third Respondents’ learned counsel submitted inter-alia that this court was not seized with the requisite jurisdiction to handle the Petitioner/Applicant’s applications dated the 12/9/2017 and 25/9/2017 respectively on the sole ground that this court entertained the said two applications without jurisdiction.

Madam Michama Advocate for the fourth respondent on the other hand submitted the 4th Respondent barred the Petitioner/Applicant from the County Assembly because the Judge did not extend the orders of 25/9/2017.

Secondly, that they have not received any Notice of Appeal from the Petitioner disputing the Judge’s orders of 4/10/2017.

In response to the Respondents' submissions, Mr. Nyambati, Advocate for the Petitioner/Applicant submit inter-alia that; this court had the requisite judicial administrative powers to entertain the Petitioner's applications. That is a precise outline of the learned counsels' oral submissions.

This court has keenly considered the Petitioner's learned submissions on the one hand and the Respondents' learned counsels' submissions on the other hand as it should.

This court has further considered the law regarding the issue of jurisdiction as laid down in the cases of:

1. The owners of Motor Vessel "Lillian S" =VRS= Caltex Oil Kenya Ltd (1989) KLR 1 in which the court observed that; jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds. The opinion that it is without jurisdiction."

2. The court also referred to the case of Macharia and another =VRS= Kenya Commercial Bank Ltd and 2 others Civil Application No. 2 of 2011, in which case the Supreme Court stated thus:

A court's jurisdiction flows from either the Constitution or Legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law...."

This court is further fortified by the provisions of Article 87 Sub-Article (1) of the Constitution 2010 and the Legislation under and/or of the Elections Act that this court got jurisdiction to handle this matter upon the gazette of 6/10/2017 vide the Kenya Gazette Notice Volume CXIX – No. 147 dated the 6/10/2017.

It is in the light of the above stated premises that this court is of the considered finding that this court did not have the requisite jurisdiction to handle the Petitioner's application as it did. This reason is anchored on the main ground that this court had not been gazette as per Law provided as at the 25/9/2017.

Consequently, the proceedings and the orders dated the 25/9/2017 be and are hereby set aside and/or discharged accordingly.

Other than the foregoing premises, this court will proceed to make directions that upon the court's gazette on the 6/10/2017 to handle this Petition, this court is ready to hear and determine the Petition and all the applications in a fair, full, even and judicious manner.

This court will make further directions that the Respondents be and are hereby granted leave for 7 days to file and serve their responses to the applications, requisite pleadings, witness statements and all documents in compliance with the provisions of section 11 of the Elections (Parliamentary and County Elections) Petition Rules, 2017. The said leave for 7 days, shall be from the date hereof.

The Petitioner shall serve all the Respondents with all her pleadings as appropriate, vide as provided under Section 10 of the Elections (Parliamentary and County Elections) Petition Rules, 2017.

The Petitioner be and is hereby granted corresponding leave for 7 days upon receipt of the Respondents' responses.

After the court's receipt of the last response, this matter will be scheduled for a pre-trial conference with the parties. The same will be within a period of 7 days after the court's receipt of the last response.

The pre-trial conference will be in strict compliance of Section 15 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017.

It is key to point out that this Petition will be filed as Nyamira Chief Magistrate Election Petition No. 3 of 2017. The same will start denovo. Those shall be the orders of the court.

Ruling dated at Nyamira this 16th day of October, 2017.

M. O. WAMBANI – CM

16/10/2017

Ruling dated, signed, read and delivered in open court in the presence of Mr. Nyambati for the Petitioner, Madam Michoma for the Respondents.

Court

Ruling delivered accordingly at noon on the 16th day of October, 2017.

M. O. WAMBANI – CM

16/10/2017