



**REPUBLIC OF KENYA**

**IN THE RESIDENT MAGISTRATE'S COURT AT LAMU**

**ELECTION PETITION NO. 2 OF 2017**

MUSLIMS FOR HUMAN RIGHTS.....1<sup>ST</sup> PETITIONER  
RAYA FAMAU AHMED.....2<sup>ND</sup> PETITIONER  
MOHAMED ALI OMAR.....3<sup>RD</sup> PETITIONER  
MOHAMED ABDULKADIR.....4<sup>TH</sup> PETITIONER

**VERSUS**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**  
**FESTUS WANJIKU NDIRANGU.....2<sup>ND</sup> RESPONDENT**  
**JANE WANJIKU NDUNGU.....3<sup>RD</sup> RESPONDENT**  
**SEITA RIMOINE.....4<sup>TH</sup> RESPONDENT**  
**KENYA AFRICAN NATIONAL UNION.....5<sup>TH</sup> RESPONDENT**  
**PARTY OF DEMOCRATIC UNITY.....6<sup>TH</sup> RESPONDENT**

**RULING**

**A. INTRODUCTION**

1. This is an amalgamated ruling in response to various applications filed by the parties in this election petition. It arises from an election petition filed by the four petitioners and there are six respondents.
2. Briefly and by way of background, the Petitioners filed this petition on September 25, 2017. With the exception of the 5<sup>th</sup> Respondent, all the other respondents entered appearance and the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents filed their responses.
3. There were also various applications filed which are the substance of this ruling and shall be addressed comprehensively in this ruling. On 1<sup>st</sup> November 2017, this court issued a notice that the Pre-Trial Conference would take place on November 14<sup>th</sup>, 2017 at 2:00pm to all those who had entered appearance.

It was done in line with Rule 15(1) and (2) of the Elections (Parliamentary and County Elections) Petition Rules, 2017.

4. At the Pre-Trial Conference, the Petitioners were represented by Mrs. Mwanakitina while Mr. Wetaba appeared for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents. Mr. Wetaba also held brief for Mr. Kadima for the 1<sup>st</sup> Respondent. Mr. Olaba held brief for Mr. Muinde for the intended interested party.

5. The application to have the intended interested party join the suit was argued and the court delivered its ruling on November 15, 2017 dismissing the application.

6. With that background, I will proceed to address each of the applications filed and the responses thereto according to the dates filed before giving a decision.

## **B. APPLICATIONS**

### *1. PRELIMINARY OBJECTIONS ON JURISDICTION*

7. The 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents filed a Notice of Preliminary Objection on October 9<sup>th</sup>, 2017. The 3<sup>rd</sup> Respondents filed a Notice of Preliminary Objection on October 10<sup>th</sup>, 2017. All four respondents are represented by the same law firm and the essence of their application is the same. Thus, they shall be dealt with together.

8. Both Notices of Preliminary Objection have identical prayers. They seek:

a. That this court lacks jurisdiction to hear the application filed here in as far as the issues raised and prayers sought are clearly of the nature of nomination disputes that are within the exclusive jurisdiction of the I.E.B.C disputes resolution committee as provided for under Article 88(4)(e) of the Constitution of Kenya, Section 4 of the I.E.B.C. Act and section 74(1) of the Elections Act, 2011.

b. That this application is incurably defective and should therefore be struck out.

c. That this application has been overtaken by events as the 1<sup>st</sup> Respondent herein has already been elected.

d. That the application is hopelessly misconceived, frivolous, totally devoid of merit and mala fides for the reason inter alia, that the petitioner has not exhausted the I.E.B.C mechanisms as the law stipulates.

9. In opposition to the 3<sup>rd</sup> Respondent's preliminary objection, only the petitioners filed Grounds of Opposition. Their grounds state:

a. Article 87 and 88(4)(e) of the Constitution of Kenya, 2017 read together with section 75 of the Elections Act, 2011 and Regulations 54 (8) of the Elections (General) Regulations, 2017 as amended in 2017 clothes this Honourable Court with jurisdiction to hear and determine this petition.

### *SUBMISSIONS – PRELIMINARY OBJECTION ON JURISDICTION*

10. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondent's filed their submissions on November 14, 2017. They identified the following issues for the court to determine:

a. Whether the petitioners have locus to institute this suit.

b. Whether the petitioner has exhausted the dispute resolution mechanisms.

c. Whether this honourable court has jurisdiction in regard to the above matter.

11. I have considered the submissions and I am grateful to counsel for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents for the industry employed in gathering the authorities as well as in compiling the submissions.

12. The petitioners only filed Grounds of Opposition to the Notice of Preliminary Objection by the 3<sup>rd</sup> Respondent; they did not file submissions. The first respondent did not file any pleadings in opposition to these two Notices of Preliminary Objection. Therefore, the Notice of Preliminary Objection by 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents is unopposed. Nevertheless, this court is obligated to give due thought to the law before rendering a decision, and not just allow an application because it is unopposed.

13. The Preliminary Objection refers to the election of the 1<sup>st</sup> Respondent but that cannot hold because the 1<sup>st</sup> Respondent is the I.E.B.C who cannot be elected. Yet page 2 of the submissions filed by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents states as follows:

**The petition is being objected to by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents on the grounds that:**

**This court lacks jurisdiction to hear the application here in as far as the issues raised and prayers sought are clearly of the nature of nomination disputes that are within the exclusive jurisdiction of the I.E.B.C disputes resolution committee as provided for under Article 88(4) (e) of the Constitution of Kenya, Section 4 of the I.E.B.C. Act and section 74(1) of the Elections Act, 2011.**

**This application is incurably defective and should therefore be struck out.**

**This application has been overtaken by events as the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents herein have already been elected.**

**This application is hopelessly misconceived, frivolous, totally devoid of merit and mala fides for the reason inter alia that the petitioner has not exhausted the I.E.B.C mechanisms.**

**We wish to submit as follows:**

**Issues**

**Whether the petitioners have locus to institute this suit.**

**Whether the petitioner has exhausted the dispute resolution mechanisms.**

**Whether this honourable court has jurisdiction in regard to the above matter.**

#### *CASE LAW & ANALYSIS – PRELIMINARY OBJECTION ON JURISDICTION*

14. The law on what constitutes a preliminary objection is settled. The starting point as always for this court is the law. The substantive issue for determination by this court is if this court has jurisdiction. But before considering this fact, it is important to consider how the superior courts - which guide this court – have described a preliminary objection.

15. The classical case on this point is **Mukisa Biscuits Manufacturing Company Limited -vs- West End Distributors (1969) EA 696**. Judge Law, Judge of Appeal had the following to say: -

**“...So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which raises by clear implication out of pleadings, and which if argued as a**

**preliminary point, will dispose of the suit. Examples are an objection to jurisdiction of the court, a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the matter to arbitration.....”**

16. Judge Mrima in **Nancy Anyango Orina vs. I.E.B.C & Four [2016] eKLR** quoting Judge Mwita in **John Musakali vs. Speaker County of Bungoma & 4 others (2015) eKLR** re-stated the position above on what constitutes a preliminary objection in 21<sup>st</sup> Century terms where Judge Mwita emphasized that a preliminary objection should not have any facts in dispute and he posited:

**“...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...”**

17. The Notices of Preliminary Objection filed by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents address specifically the jurisdiction of this court. But the submissions raise points that are not points of law but rather facts in issue.

I find that the Preliminary Objections as raised by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents are not based on points of law because they touch on facts.

18. In any event, the question of jurisdiction of this court was addressed definitively by the Supreme Court in **Moses Mwigigi and 14 others vs. I.E.B.C & 5 others [2016] eKLR**. The court held that an election by the ballot and an election by nomination are elections and therefore, any dispute arising from this ought to be settled by the respective election court. Therefore, the petitioners have come to the right forum which is this court to challenge the nomination of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. The Supreme Court judges held and (and I quote at length):

**...[114] By virtue of legislation as envisaged under Article 87 of the Constitution, the Election Court is recognized as the Judiciary’s forum of resolution of electoral disputes. “Election Court” is defined in the Elections Act as: the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3) (a); or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution, and the Resident Magistrate’s Court as designated by the Chief Justice in accordance with Section 75 of the Act. Appeals from the High Court on election matters lie to the Court of Appeal, by virtue of Section 85 A of the Elections Act; while appeals therefrom lie to the Supreme Court, if admitted by the latter, pursuant to Article 163 (4) (a) or (b).**

**[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.”***

**[116] The Act, in addition, provides for the appropriate remedies that Courts may grant, in the following terms (Section 75):**

***“(3) In any proceeding brought under this section, a court may grant appropriate relief, including—***

***(a) a declaration of whether or not the candidate whose election is questioned was validly elected;***

**(b) a declaration of which candidate was validly elected; or**

**(c) an order as to whether a fresh election will be held or not.”**

**[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’...**

19. The position that an election court handling petitions on a member of county assembly has been adopted most recently in the rulings delivered by Hon. Virginia Karanja in the Chief Magistrate’s Court in Kisii in **Rose Moturi Mwene vs. I.E.B.C and 3 others [2017] eKLR**, Hon. Dickson Onyango in the Senior Principal Magistrate’s Court in Kimilili in **Justin Chemtai vs. Winnie Atieno Nyambok (Federal Party of Kenya Party Leader) & I.E.B.C. [2017] eKLR** and by Hon. Charles Obulutsa in the Chief Magistrate’s Court in Eldoret in **Regina Chemkemboi Chumba vs. Jubilee Party & 18 others [2017] eKLR**.

20. Therefore, I dismiss the Notices of Preliminary Objection filed on October 9<sup>th</sup>, 2017 for the 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents and that of the 3<sup>rd</sup> Respondent filed on October 10<sup>th</sup>, 2017.

## *2. ENLARGING TIME*

21. The 1<sup>st</sup> Respondent filed a Notice of Motion on November 13<sup>th</sup>, 2017 seeking to have time enlarged to allow it to file a response. This application was allowed unopposed by the Mrs. Mwanakitina for the petitioners and Mr. Wetaba for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents. Mr. Wetaba made the application on behalf of the 1<sup>st</sup> Respondent because he was holding brief for Mr. Kadima. The court granted the application and allowed the Response annexed to the Notice of Motion to be deemed as duly filed. Mr. Wetaba made an oral application for the Returning Officer of the 1<sup>st</sup> Respondent to file and served. Mrs. Mwanakitina did not oppose the application and the court granted it allowing the Returning Officer - Lamu West to file and serve his response within 7 days. That was on November 14, 2017. As at November 27, 2017 when the petition came up for mention, there was no response from the 1<sup>st</sup> Respondent’s Returning Officer.

## *3. FURTHER AFFIDAVIT*

22. The 6<sup>th</sup> Respondent filed a Notice of Motion on November 14, 2017 with the following prayers:

That leave be granted by this honourable court to allow filing of a further affidavit by Isaiah Gichu Ndirangu and the same be deemed to be properly on record and served.

That costs of this application be provided for in the main petition.

23. The application to have the further affidavit allowed was based on the following grounds:

- a. That part of this evidence came to the 6<sup>th</sup> Respondent after response had been already filed.
- b. That to avoid delay in case leave is granted the affidavit annexed to this application be deemed to have been filed.
- c. That it is in the interest of justice that this application be allowed.
- d. That the petitioner will not be prejudiced if the application is allowed.

24. At the pre-trial conference Mrs. Mwanakitina asked for time to file a response to the 6<sup>th</sup> Respondent's Notice of Motion to allow a further affidavit. In response to this and to set timelines, the court allowed the petitioners until November 16, 2017 to file their response and submissions. Corresponding leave was granted to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents to file their responses and submissions by close of business on November 21<sup>st</sup>, 2017.

25. The petitioners did not file any response or submissions. The 6<sup>th</sup> Respondent filed his submissions as part of the submissions for the preliminary objection to strike out the petition for not paying costs. At page 5 of their submissions filed in court on November 20, 2017 they made reference to Rules 15(6) and (7) as well as Rule 21 of the Elections (Parliamentary and County) Petition Rules, 2017 as well as **Bwana Mohamed Bwana vs. Silvano Buko Bonaya [2013] eKLR** and **Raila Odinga vs. I.E.B.C [2013] eKLR**.

26. I find that it is only proper to allow the Further Affidavit filed by the 6<sup>th</sup> Respondent. The application is unopposed and I find merit in the reasons put forward on behalf of the 6<sup>th</sup> Respondent.

### **C. SECURITY FOR COSTS NOT DEPOSITED**

27. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents filed an application to strike out the petition. Their application states that the petition is dated September 5, 2017. However, the court record confirms that the petition is dated September 20, 2017 and was filed in court on September 25, 2017.

28. The grounds in support of this application are listed as follows:

- a. That the Petitioners herein filed petition dated 5<sup>th</sup> September 2017 challenging the nomination of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
- b. That as stipulated by law the Petitioners were to deposit a sum of Kshs 100,000/- (One Hundred Thousand Kenya Shillings) with the Registrar at Lamu Law Courts within a period of seven days of filing the petition.
- c. That there is no record of the same being done by the Petitioners here in and as a matter of fact it has emerged that the Petitioners have failed/refused to make the said requisite deposit.
- d. That it is in the interest of justice that the Petition be dismissed with costs.

29. The origin of this application is the pre-trial conference while going through the check-list in Rule 15(1) of the Elections (Parliamentary and County Elections) Petitions Rules, 2017, specifically rule 15(1) (f) on outstanding issues. Mr. Wetaba asked for leave to file an application on the fact that the petitioners had not deposited security for costs. This was after Mrs. Mwanakitina asked for 7 more days to comply with the deposit the security for costs. The court gave directions that Mr. Wetaba was granted leave to file an application on this issue before November 20, 2017. The Petitioners and the 1<sup>st</sup> Respondent were granted leave to file their responses and submissions by November 23, 2017. Mr. Wetaba filed the application on November 15, 2017 and filed submissions on November 20, 2017. By the time the matter came up for mention on November 27, 2017 to confirm compliance with the directions of the court and give a ruling date, the Petitioners and the 1<sup>st</sup> Respondent had not filed any response or submissions; indeed, the Petitioners had not paid the security for costs.

#### *1. SUBMISSIONS – SECURITY FOR COSTS*

30. The submissions filed by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents make reference section 78 of the Elections Act. The applicable provision in relation to a member of county assembly is section 78(c) of the Elections Act which provides that Kshs 100,000/- in the case of a petition challenging a member of county assembly. The submissions also refer to rule 11 of the Elections (Parliamentary and County

Elections) Petitions Rule 2017. The correct citation should be rule 13 which provides that the security deposit should be paid within ten days of filing the petition. It states:

**13. (1) Within ten days of the filing of a petition, a petitioner shall deposit security for the payment of costs in compliance with security for costs' section 78 (2) (b) and (c) of the Act.**

**(2) The security for costs deposited under sub-rule (1) shall**

**(a) be paid to the Registrar;**

**(b) be for the payment of costs, charges or expenses payable by the petitioner; and**

**(c) subject to the directions of an election court, be vested in, and drawn upon from time to time by, the Registrar for the purposes for which security is required.**

**(3) The Registrar shall**

**(a) issue a receipt for the deposit under this rule;**

**(b) shall file the duplicate of the receipt issued under paragraph (a) in a record kept by him or her;**

**(c) keep a record of deposits in which shall be entered from time to time the amount of a deposit and the petition to which the deposit relates; (d) allow any person concerned with the petition to examine the record of deposits.**

31. The Petitioners ought to have deposited the security for costs by October 5, 2017. They had plenty of time to file an application if they wanted requesting leave from the court to enlarge time to make the deposit between time the Respondents filed their responses and the pre-trial conference. The court granted them time to file a response and submissions objecting to the application by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. They have not taken any step towards ensuring that the security for costs is deposited. In essence, the application by the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents is unopposed.

32. Mr. Wetaba relied on the decision of **Esposito Franco vs. Amazon Kingi Jeffah and two others** to buttress the position that this is a fatal omission on the Petitioners. He also relied on **Evans Nyambaso Zedekiah and another vs. I.E.B.C and two others [2013] eKLR**.

33. In the just concluded general election held on August 8, 2017, the courts have had occasion to consider what happens to a party that has not paid costs. Judge Matheka sitting in Nyeri in Election Petition No. 1 of 2017 – **Robert Mwangi Kariuki vs. I.E.B.C and two others** delivered a ruling on security for costs. In the case before her, the Petitioner filed the petition but failed to attend the pre-trial conference. One of the respondents filed a Notice of Motion seeking among other prayers to have the petition dismissed for the petitioner's failure to deposit security for costs within time. Judge Matheka said:

**...In this case the petitioner did not make the slightest effort to pay or seek the court's indulgence to make a delayed payment. He made NO payment bringing himself squarely into the description...of busy bodies who needed to be kept out of these expensive proceedings, and for whom the rule was made...There can only be one outcome, failure to make the deposit in time is fatal to the petition with costs to the respondents...**

I associate myself with Judge Matheka's views above that failure by the Petitioners in the case before this court, to make a deposit is fatal to their petition.

34. Judge Joel Ngugi sitting in Kiambu in Election Petition No. 2 of 2017 – **Milton Kimani Watinga vs. I.E.B.C and two others** - faced a similar application to the one before this court. In the case before Judge

Ngugi, the Petitioner's advocate made an oral application to have seven more days to be able to pay the security for costs. Judge Ngugi cited the law regarding the payment for security for costs, that is section 78 of the Elections Act and Rule 13 of the Elections (Parliamentary and County) Petitions Rules, 2017. He also made reference to case law including the authorities cited by Mr. Wetaba for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents. He referred to **Evans Nyamboso Zedekiah and another vs. I.E.B.C and two others**.

35. Judge Joel Ngugi said (and I quote at length)

**[13] ...Consequently our decisional law has consistently concluded that the requirement that a Petitioner pays security for costs is not a technical requirement but a substantive question that goes to the root of the court's jurisdiction. Courts have explained that the purpose of the requirement to deposit security for costs is to discourage frivolous or vexatious litigants from challenging the results of elections (See Esposito Franco vs. Amazon Kingi Jeffah and 2 others). The security so deposited also ensures that Respondents recover some of their costs from defending unsuccessful petitions...**

**[17] In the circumstances, given the clear stipulation of section 78(2)(b), Rule 13 and our decisional law, it follows that the Notice of Motion dated 21/9/2017 must succeed. The clear requirement for the statute and subsidiary legislation is that a Petitioner is required to deposit security for costs within ten days of filing their Petition. This did not happen here. Indeed, more than 37 days later (at the time of arguing the application), the petitioner had not paid the security deposit. The Petitioner had, also, not made any efforts to get the leave of the Court to deposit security for costs out of time. What is more is that in this case the Court had instructed the Petitioner to respond to the Application seeking to strike out the Petition and he failed to do so. The clear indication is that the Petitioner is not serious about Prosecuting the Petition. There is simply no good reason to keep this Petition alive. As I have already indicated, failure to pay security deposit in election petitions goes to the root of the jurisdiction of the Court to hear the Petition. The logical conclusion, then, is that the Court has no jurisdiction to take any further action in the Petition...**

36. I fortify myself with these views by Judge Joel Ngugi in light of the circumstances in the petition before this court. The Petitioners filed their petition on September 25, 2017. When the pre-trial conference took place on November 14, 2017 – more than fifty days later – the Petitioners had not paid the security for costs. They also did not file any application seeking time to make payment of the security of costs. Mrs. Mwanakitina for the four petitioners made an oral application to have the security deposit paid within seven days from the Pre-Trial Conference which was held on November 14, 2017. When the matter came up for mention on November 27, 2017 no deposit had been made for the security for costs. This court has no choice but to reach the conclusion that the petitioners have no interest in pursuing this petition. But more importantly, this court in light of the binding decisions from the high court, is not able to proceed with the petition.

37. The decision to strike out petitions for failing to deposit security for costs has been made by Hon. Terry Odera in the Senior Principal Magistrate's Court in Mumias - **Election Petition 1 of 2017 - Jane Naicar Eshuchi vs. Maurice Sakwa and two others** and by Hon. Juliet Kasam in the Chief Magistrate's Court in Mombasa – **Election Petition 1 of 2017 - David Mutua Malii vs. Tobias Otieno Samba and two others**. In Mumias, the petition was dismissed by Hon. Odera for failure to deposit security for costs despite the parties entering a consent on how they will proceed. In Mombasa, the 1<sup>st</sup> Respondent filed an application to have the Petition dismissed for failing to comply with the statutory requirements to deposit the security for costs.

#### **D. COSTS**

38. On the issue of costs, I stand guided by the decisions of the superior court. In this my views are buttressed by opinions expressed by Judge P.J. Otieno in **Jacob Thoya Iha vs. I.E.B.C and two others [2017] eKLR**. He said:

...[59] On costs, the law provides that costs shall follow the event. The event that emerges from my decision in this matter is that the petitioner has failed in his challenge of the 4<sup>th</sup> Respondents election as presided over and declared by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. The converse is that the Respondents have succeeded against the petitioner by successfully defending that election.

[60] Section 84 of the Act mandates that the costs shall follow the cause. In addition, Rule 30 of the Rules gives the court the power to specify the total amount of costs payable, the maximum amount of costs payable and the persons to pay and be paid...

39. In this regard, I award costs to the 1<sup>st</sup> Respondent capped at Kshs 30,000/- while the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents are awarded a capped global sum of Kshs 150,000/-; for the avoidance of doubt, let me clarify that this sum is not for each respondent but a global sum. I make no award for the 5<sup>th</sup> Respondent.

**E. CONCLUSION**

40. Therefore, the petitioners having failed to comply with the statutory requirements to deposit the security for costs, this petition is struck out.

41. Costs are awarded as follows, the 1<sup>st</sup> Respondent is awarded costs capped at Kshs 30,000/- while the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents are awarded a global sum capped at Kshs 150,000/-.

42. A certificate of this determination in accordance with section 86 of the Elections Act shall issue to the Independent Electoral and Boundaries Commission and Speaker of the Lamu County Assembly.

**DATED AND DELIVERED IN LAMU THIS 1<sup>st</sup> DAY OF DECEMBER 2017.**

**NJERI THUKU**

**PRINCIPAL MAGISTRATE**

In the presence of:

Court Assistant.....

1<sup>st</sup> to 4<sup>th</sup> Petitioners.....

1<sup>st</sup> Respondent.....

2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents.....