

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E685 OF 2025

BETWEEN

HON. MOHAMEDIN MOHAMED.....
...PETITIONER

VERSUS

**AHMED MAALIM HASSAN ALIO a.k.a. AHMED
MAALIM HASSAN a.k.a. ALI BARRE SHETTO...
.....1ST RESPONDENT**
**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION.....2ND
RESPONDENT**
**RETURNING OFFICER BANISA
CONSTITUENCY.....3RD RESPONDENT**
AND
**UNITED PROGRESSIVE ALLIANCE
PARTY.....INTERESTED PARTY**

JUDGMENT

Introduction

1. The Petition dated 23rd October 2025 is supported by the Petitioner’s affidavit in support of even date.
2. The Petition challenges the 2nd Respondent’s dispute proceedings that resulted into 2nd Respondent’s Dispute Resolution Committee (DRC)’s decision of 21st October 2025

in which the Petitioner's case against the 1st Respondent was dismissed.

3. The dispute concerned the 1st Respondent's eligibility to be nominated for election **for Banisa Constituency** in which the Petitioner alleged that he holds dual citizenship.
4. Consequently, the Petitioner prays for the following reliefs against the Respondents:

- i. A declaration that the decision of the Independent Electoral and Boundaries Commission (IEBC) Dispute Resolution Committee delivered on 21st October 2025 in Complaint No. 7 of 2025 was made in violation of Articles 10, 27, 47, 50(1), and 159(2)(d) of the Constitution for failure to accord the Petitioner a fair hearing, for elevating procedural technicalities over substantive justice, and for acting in a manner that was unreasonable, irrational, and ultra vires its constitutional mandate.*
- ii. A declaration that Article 78(1) of the Constitution bars any person who is not exclusively a Kenyan citizen from contesting or being elected to a state office, and that Article 99(2)(a) of the Constitution expressly disqualifies any person who owes allegiance to a foreign State from being elected as a Member of Parliament.*
- iii. A declaration that the 1st Respondent having been found to hold and use multiple identities and valid travel documents from foreign jurisdictions, and to owe allegiance to the United Kingdom of Great Britain and*

Northern Ireland, is constitutionally disqualified from vying for or holding the position of Member of the National Assembly for Banisa Constituency or any other State office in Kenya.

- iv. A declaration that the clearance and nomination of the 1st Respondent by the Independent Electoral and Boundaries Commission to contest for the Banisa Constituency Parliamentary By-Election was unconstitutional, null and void ab initio, for contravening Articles 78, 99(2)(a), 10, and 73(1)(a) of the Constitution and Section 24 of the Elections Act, 2011.**
- v. A declaration that the sovereignty of the people of Kenya under Article 1 of the Constitution cannot be delegated to or exercised by any person who owes allegiance to a foreign State, and that permitting such participation in elections is a direct affront to the national values of patriotism, integrity, and rule of law under Article 10.**
- vi. A declaration that the conduct of the 2nd and 3rd Respondents in clearing the 1st Respondent despite available information of dual nationality amounts to a breach of their constitutional duty under Articles 88(4), 249(1), and 73(2) of the Constitution and constitutes administrative action that is unreasonable, procedurally unfair, and unconstitutional within the meaning of Article 47 of the Constitution and the Fair Administrative Action Act, 2015.**
- vii. An order of certiorari to remove into this Court and quash the decision of the IEBC**

Dispute Resolution Committee dated 21st October 2025 dismissing Complaint No. 7 of 2025, for being unconstitutional, irrational, and procedurally unfair.

- viii. An order of prohibition restraining the 2nd Respondent and the 3rd Respondent whether by themselves, agents, servants, or any person acting under their authority, from including, gazetting, publishing, or allowing the name of the 1st Respondent to appear as a validly nominated candidate in the Banisa Constituency By-Election or any subsequent election pending determination of this Petition.**
- ix. An order of mandamus compelling the 2nd and 3rd Respondents to revoke and cancel the clearance and nomination of the 1st Respondent as a candidate for the Banisa Constituency By-Election forthwith.**
- x. An Interim Conservatory Order suspending any ongoing or intended election processes relating to the Banisa Constituency Parliamentary By-Election insofar as they pertain to the 1st Respondent, pending full hearing and determination of this Petition.**
- xi. Costs of this Petition be borne by the 1st Respondent.**

Petitioner's Case

5. The Petitioner states that he is a registered voter in Kenya and is aggrieved by the nomination of the 1st Respondent to vie for Banisa Constituency in the upcoming Parliamentary by-elections.

6. He depones that on 9th October 2025, the 1st Respondent presented his nomination papers to the 2nd Respondent and was cleared to contest. He claims that the 1st Respondent was unlawfully and irregularly cleared because he does not meet the eligibility criteria set in law since as a dual citizen, he is not eligible to vie by virtue of Article 78(1) & (2) and 99(2)(a) of the Constitution.
7. The Petitioner avers that the 1st Respondent possesses a British Passport wherein his name is **Ali Barre Sheto**, a Somali born on 1st January 1976. On the other hand, he possesses a Kenyan National Identity card and passport wherein his name is Ahmed Maalim Hassan born in Mandera on 4th April 1974. He as well alleges that the 1st Respondent's Identity Card bears a number in the range of 34 million which belongs to recent registrations, yet he was born in 1974. On this basis, he alleges that this Identity Card was acquired fraudulently in an attempt to conceal his foreign nationality.
8. Consequently, the Petitioner states that as per Section 22(1) (a) of the Election Act, a person can only be nominated as a candidate for an election if they are qualified, which the 1st Respondent is not. He points out that the 1st Respondent failed to disclose his dual citizenship to the 2nd and 3rd Respondent thereby misleading them. Equally that, the 1st Respondent in presenting himself under different names and

identity documents, committed identity fraud and has therefore undermined the integrity of the electoral process.

9. On this premise, the Petitioner lodged a complaint with the 2nd Respondent's DRC on 16th October 2025 in **Compliant No.7 of 2025**. In the end, the impugned decision dated 21st October 2025 was rendered. The Petitioner's complaint was dismissed on the basis that the same had been ***filed beyond 24 hours in breach of Rule 8(1) of the Rules of Procedure for Settlement of Disputes***.
10. It is contended that the 2nd Respondent in dismissing his claim acted in breach of the duty conferred upon it to handle and resolve disputes impartially and without bias.
11. The Petitioner additionally argues that the decision was made as if they were party to the actual time the dispute could have occurred and in the absence of the 1st Respondent's response in the matter.
12. For this reason, the Petitioner argues that the 2nd Respondent's decision was unreasonable, irrational, biased and that the same was tainted with procedural impurities and in violation of the Articles 10, 27, 47, 50(1), and 159(2) (d) of the Constitution.

1st Respondent's Case

13. The 1st Respondent filed his Replying Affidavit sworn on **27th October 2025**. He asserted that the Petition lacks merit.
14. Revisiting the facts in **Complaint No.7 of 2025**, he deponed that he filed his Replying Affidavit in the said matter on 17th October 2025 alongside a Notice of Preliminary Objection which had been filed on 16th October 2025.
15. He avers that the 2nd Respondent's DRC found that the Petitioner's complaint was time barred.
16. He states that the *resolution of electoral disputes such as these are vested in the 2nd Respondent by virtue of Article 88(4) (e) of the Constitution as read with Section 74 of the Elections Act and the Rules of Procedure on Settlement of Disputes.*
17. He notes that Rule 8(1) in the Rules guides that complaints are to be lodged with the 2nd Respondent within 24 hours of the occurrence of the dispute and that under Rule 10, a returning officer is allowed to decline to accept a dispute if it does not comply with the Rules of Procedure. He avers that the 2nd Respondent even issued a public notice on 9th October 2025 directing that any dispute in relation to the nominations will be determined within 10 days.
18. He reasons that the dispute herein arose when his nomination was declared on 9th October 2025 and thus the

Petitioner ought to have lodged his complaint by 10th October 2025. He avers that the Petitioner however lodged his complaint 6 days later on 16th October 2025. On this premise, the 1st Respondent argues that the 2nd Respondent acted well within its mandate and exercised its jurisdiction properly.

19. Further to that, he argues that the operation of Article 159(2) (d) of the Constitution is not absolute as in electoral matters, procedural rules and timelines are essential to the integrity of the process thus not mere technicalities. He notes that this provision is codified under Articles 87(1) of the Constitution, Section 74 of the Elections Act and Rules 8 (1) and 10 of the Rules of Procedure on Settlement of Disputes which prescribe strict and non-extendable times in electoral matters and so this Court has no jurisdiction to expand these timelines.
20. Furthermore, the 1st Respondent asserts that the Petition herein does not meet the threshold set out in **Anarita Karimi Njeru v Republic (1979) 1 KLR 154.**
21. The 1st Respondent as well contends that the jurisdiction of this Court has been invoked improperly as it was affirmed by the Supreme Court in **Mahamud v Mohamad & 3 others; Muktar (Interested Party) (Petition 7 of 2018) [2019] KESC 70 (KLR)** that once a pre-election dispute has been determined by the 2nd Respondent a party can only approach

the High Court as a judicial review court in exercise of its supervisory jurisdiction under Article 165(3) and (6) of the Constitution.

22. On the Petitioner's allegation on his eligibility, he argues that no law bars a person with dual citizenship from vying as a Member of the National Assembly. He notes that this position was adopted by the Court in **Mohamed & 2 others v Ibrahim & 4 others (Petition 1BB of 2023) [2024] KEHC 10683 (KLR)** and further clarified and upheld by the Court of Appeal in **Bishop Donald Kisaka Mwawasi v Attorney General & others (Civil Appeal No.280 of 2013)**. In the matter, the Superior Court noted that a dual citizen can vie for an election seat, however must renounce the second citizenship before assuming office or being elected to office, otherwise will be disqualified.
23. That said, he depones that the Petitioner's allegations are false as he is solely a Kenyan citizen birthed by Kenyan citizens as evidenced in his birth certificate and additional documents annexed to his affidavit. He depones that he is not a Somali and neither is he called Ali Barre Sheto as claimed. He depones that he surrendered his old generation National Identity Card and applied for the new generation wherein he was issued with number 34694672. He avers that the National Bureau of Registration upon his enquiry of the same, informed him that his identity card number was

always 34694672 and not 11550493 as shown in the old identity card and thus necessary changes required to be made to reflect the same across board. As such, he asserts that the Petitioner's claims are malicious and geared towards having his legitimate nomination revoked.

24. To this end, he avers that the constituents of Banisa Constituency stand to suffer great prejudice if the Petition is allowed as they have remained unrepresented for a long time. He urges therefore that the Petition be dismissed.

2nd and 3rd Respondents' Case

25. In reaction to the Petition, these Respondents filed Grounds of opposition dated 29th October 2025 on the premise that:
- i. The impugned decision rendered by the Dispute Resolution Committee of the 2nd Respondent on 21.10.2025 was in compliance with Article 88 (4) (e) of the Constitution, Section 74 (1) & (2) of the Elections Act, 2012, Rules 4, 8 & 10 of the Rules of Procedure on Settlement of Disputes (L.N 139 of 2012, Revised by 24th Annual Supplement (L.N 221 of 2023)) and Gazette Notice No. 14541 of 9.10.2025.*
 - ii. The nomination dispute in issue arose on the 9.10.2025 when the 1st Respondent, a Kenyan Citizen, a Member of the UDA Political Party and a registered voter in Banisa Constituency was cleared as a Candidate for election of the Member of Parliament for Banisa Constituency by the 2nd and 3rd Respondents and any aggrieved person ought to have lodged a formal complaint within 24 hours in compliance with Rule 8(1) of the Rules of*

Procedure on Settlement of Disputes (L.N 139 of 2012, Revised by 24th Annual Supplement (L.N 221 of 2023)).

- iii. The impugned decision made by the 2nd and 3rd Respondents was in compliance with Article 87 (1) of the Constitution and Section 74 of the Elections Act, 2012 on adherence to the dictates of timeous resolution of electoral disputes which is a Constitutional imperative enshrined under Rule 8(1) of the Rules of Procedure on Settlement of Disputes (LN 139 of 2012) that has constitutional underpinning.*
- iv. The Petitioner's formal complaint lodged on 16.10.2025, six (6) days after the lapse of the statutory timelines, was determined expeditiously, efficiently, lawfully and in a procedurally fair process within the premises of Article 47 and 50 of the Constitution and Section 4 of the Fair Administrative Action Act, with both parties to the dispute being heard and the reasons for the decision being published within 10 days of the day the dispute arose.*
- v. The dilatory conduct of the Petitioner of filing the formal complaint about six (6) days after the dispute arose is not excusable as a mere violation of a subsidiary law or an act of undue regard to a technicality of procedure under Article 159 (2) (d) of the Constitution since the issue of adherence to the strict and sensitive timelines has its origins under Article 87 (1) of the same Constitution, and it is a substantive jurisdictional concern that goes to the substratum of the electoral dispute.*
- vi. The nomination of the 1st Respondent by the UDA Party and the subsequent clearance as a candidate by the 2nd and 3rd Respondent was lawful and within the provisions of Article 78 (1) & (2) and*

Article 99 of the Constitution, Section 22 (1) of the Elections Act, 2012, Regulation 22 of the Elections (General) Regulations, 2012 (L.N 128 of 2012) and Section 31 (2) of the Leadership and Integrity Act, since the nominee is a Kenyan Citizen and was not a State Officer at the time of the impugned nomination.

- vii. *The 1st Respondent demonstrated to the 2nd and 3rd Respondents that he is a Kenyan Citizen but the Petitioner who mala fides is alleging multiple citizenships has not provided any cogent and unimpeachable evidence in prove of dual or multiple citizenship in satisfaction of their legal burden of proof under Section 107, 108, 109 and 112 of the Evidence Act.*
- viii. *In any event, a dual citizen is eligible to seek nomination for election as a Member of Parliament and to stand in such an election subject to the provisions of Article 78 (2) and 78 (3) (b) of the Constitution and Section 31 (2) of the Leadership and Integrity Act, on denunciation of foreign citizenship before assumption of the office as a State Officer as was held by the Court of Appeal in **Bishop Donald Kisaka Mwawasi v Attorney General & 2 others [2014]eKLR.***
- ix. *The instant Petition is anticipatory in character, premature and it is not ripe for determination since no dispute has crystalized under the provisions of Article 78 (2) and (3) of the Constitution and Section 31 (2) of the Leadership and Integrity Act on the question of a dual citizen holding a State Office as an elected Member of Parliament in Kenya.*

26. Additionally, these Respondents through the 2nd Respondent's Secretary to the DRC, Ruth Kavuo Makuthu filed a Replying Affidavit sworn on 31st October 2025.
27. She states that the 1st Respondent was cleared as a candidate on 9th October 2025 as he demonstrated to the 3rd Respondent that he is a Kenyan Citizen. She informs that this clearance was a public process that was undertaken by the 3rd Respondent on this date. This was done so as to afford any person desirous of challenging any nomination to do so within 24 hours in line with Rule 8(1) of the Rules of Procedure on Settlement of Disputes. She states that Section 74(1) and (2) of the Elections Act requires that any dispute arising from the same be determined within 10 days and thus in this matter, the deadline was set for 21st October 2025.
28. She avers that the Petitioner lodged his complaint with the DRC on 16th October 2025 and the 1st Respondent filed his Replying affidavit on 17th October 2025. In due course, the DRC dismissed the Petitioner's Complaint under Rule 10 of the Rules of Procedure on Settlement of Disputes, for non-compliance with the strict timelines for lodging a complaint under Rule 8 (1) of the Rules.
29. She stresses that filing of complaints within the set statutory timelines is a jurisdictional issue and so the DRC was well within the law in dismissing the Petitioner's complaint.

Additionally, she maintains that the impugned decision was in compliance with Article 87 (1) of the Constitution and Section 74 of the Elections Act. Considering this, she argues that the nomination of the 1st Respondent by the UDA Party and subsequent registration as a candidate by the 2nd and 3rd Respondent, was lawful.

30. Nonetheless, she points out that the Petitioner's challenge at this juncture is premature as the issue of dual citizenship if at all will only come alive and actionable after the conclusion of the election and declaration of the results. For this reason, she argues that the Petition is not yet ripe for determination.
31. Furthermore, she avers that while the Petitioner alleged discrimination, he did not demonstrate how he was treated differently in the determination of his complaint and how such differential treatment was unlawful or occasioned him any prejudice. She equally notes that the allegations of identity theft are criminal in nature and not within the jurisdiction of the 2nd and 3rd Respondents. To this end, she urges that the Petition be dismissed.

Interested Party's Case

32. The Interested Party's Secretary General, Jacob Barongo Bagaka filed a Replying Affidavit sworn on 31st October 2025 in response to the Petition.

33. He alleges that it is evident from the Petition that the 1st Respondent held dual citizenship at the time of his nomination since as held citizenship in both Kenya and the United Kingdom.
34. He asserts that the 1st Respondent did not adduce any evidence that he had renounced this citizenship in line with Article 78(3) of the Constitution as read with Section 10 of the Kenya Citizenship and Immigration Act. For this reason, he argues that the 1st Respondent was not qualified to be nominated or elected as a member of the National Assembly.
35. He as well claims that it is evident that the 1st Respondent holds multiple identity cards which creates uncertainty about his true identity. For this reason, he alleges that the 1st Respondent made false statements while applying for his nomination, with the intention of concealing his true identity.

Petitioner's Submissions

36. The Petitioner through Ndegwa and Ndegwa Advocates filed submissions dated 3rd November 2025 and highlighted the key issues as: *Whether this Court has jurisdiction and ought to entertain the Petition despite the electoral dispute resolution timeline and the claim of prematurity, whether, on the merits, a person holding dual citizenship was disqualified from being nominated and elected as a Member of Parliament, whether the 2nd and 3rd Respondents complied*

with or breached their constitutional and statutory obligations in clearing the 1st Respondent to run.

37. On the first issue, Counsel submitted that clearance of the 1st Respondent as an unqualified candidate was unconstitutional and thus issue ripe for determination. Counsel submitted that the 1st Respondent's nomination clearance was in violation of Article 78 and Chapter six of the Constitution. Counsel relying in **Trusted Society of Human Rights Alliance v. Attorney General & others (Mumo Matemu case) [2012] eKLR**, where the Court nullified the appointment of an official on integrity grounds, argued that the mere fact that an appointment or election has not yet occurred does not bar the Court's jurisdiction if the process leading to it is already unconstitutional.
38. Further to this, Counsel submitted that the Petitioner's case before the 2nd Respondent's DRC was not determined on merit but dismissed due to lack of jurisdiction. Counsel stated that following this decision and it being final, there was no further internal remedy that the Petitioner could explore before filing this suit considering the substance of the matter was never heard. For this reason, Counsel stressed that the Petitioner's only recourse was to file this Petition.

39. Reliance was placed in **Republic v. Independent Electoral & Boundaries Commission (Ex parte Wavinya Ndeti) [2017] eKLR**, where the Court entertained a judicial review of the 2nd Respondent's nominations dispute even though it was argued that the matter was filed out of time.
40. Counsel additionally noted that the Petitioner had legitimate reasons for filing the complaint late being that acquisition of evidence of the 1st Respondent's British Passport and double identity came to light after community reports and investigations in the days following the nomination. Be that as it may, Counsel argued that the issue of timeline is a technicality that goes against the dictates of Article 159(2) (d) of the Constitution. Reliance was placed in **Odinga v Independent Electoral and Boundaries Commission & 3 others [2013] KESC 2 (KLR)** where it was held that:

“Our attention has repeatedly been drawn to the provisions of article 159 (2) (d) of the Constitution which obliges a court of law to administer justice without undue regard to procedural technicalities. The operative words are the ones we have rendered in bold. The article simply means that a court of law should not pay undue attention to procedural requirements at the expense of substantive justice...”

41. Counsel in light of this argued that this Court has jurisdiction to entertain this matter.

42. On the second issue, Counsel submitted that at the heart of this case is the interpretation of the constitutional dictates on qualification for office as light of dual citizenship. It was asserted that the Constitution is clear under Article 78(2) of the Constitution that *a state officer or a member of the defence forces shall not hold dual citizenship*. Counsel noted that this is also echoed in Section 31 of the Leadership and Integrity Act.
43. In his view, these provisions imply that the burden is on the candidate to clear the issue before assumption of office. That is, by proving to the 2nd Respondent that he has denounced the second citizenship before being cleared to vie. It was submitted that this constitutional safeguard is to ensure that Kenyan public offices are not held by individuals with divided loyalty. Counsel submitted that the Petitioner had proved that the 1st Respondent is a dual citizen yet was unlawfully cleared to vie by the 2nd Respondent.
44. In light of this, Counsel submitted that although the 2nd Respondent asserted that the DRC's decision was lawful and in line with the law, a decision can be procedurally proper yet substantively irrational such as in this case. Counsel submitted that Article 47 of the Constitution as read with the Fair Administrative Action Act allows the Court to review such decisions which are made in defiance of the law and Constitution.

45. Counsel added that the 2nd and 3rd Respondents' were under constitutional duty to ensure compliance with Article 2, 3, 10, 78 and 99 of the Constitution as well as the Leadership and Integrity Act but failed to do so. On this premise, Counsel urged the Court to find that the late filing of the complaint is not fatal to this Petition.

1st Respondent's Submissions

46. Jamal Bake and Associates Advocates for this party filed submissions dated 4th November 2025 and outlined the issues as: *whether the Petition is merited, whether the 2nd Respondent's DRC decision was lawful and whether the nomination of the 1st Respondent should be nullified.*

47. On the first issue, Counsel submitted that the Petition is not merited as the Petitioner had improperly invoked the jurisdiction of this Court. Counsel stated that Supreme Court in the case of **Mahamud** (supra) affirmed that where the 2nd Respondent or the Political Parties Disputes Tribunal has determined a pre-election dispute, any aggrieved party may only approach the High Court sitting as a judicial review court in exercise of its supervisory jurisdiction under Article 165(3) and (6) of the Constitution. Counsel noted that the Supreme Court equally upheld this position in **Waity v Independent Electoral and Boundaries Commission and 3 others [2019] KESC 54(KLR).**

48. On the second issue, Counsel submitted that the 2nd Respondent's DRC rightly found that the Petitioner's complaint had been filed out of time contrary to the strict timelines provided in law and deliberately envisaged in the Constitution. Counsel submitted that Article 88(4)(e) of the Constitution vests the 2nd Respondent with jurisdiction over nomination disputes while Article 87(1) obligates the Parliament to enact legislation for timely settlement of electoral disputes and Parliament did so through the Elections Act and Rules of Procedure on Settlement of Disputes. In addition, Counsel submitted that the 2nd Respondent has repeatedly and publicly directed that nominations complaints must be lodged within 24 hours to enable determination within the statutory 10 days. This notice was issued on 9th October 2025 in this matter.
49. Considering this, Counsel submitted that the Petitioner's complaint having been filed 6 days later was clearly time-barred and thus incompetent as per Rule 10 of the Rules of Procedure. Reliance was placed in **Raila Odinga** (supra) where it was held that Article 159(2)(d) is not a license to disregard procedural timelines, as compliance with prescribed timeline is mandatory. As such, this Article cannot be invoked to sanitize non-compliance with clear constitutional or statutory requirements.

50. Counsel further argued that that Petitioner had not provided any evidence of any differential treatment he alleged to have received and neither did he plead with specificity the provisions alleged to be infringed, the nature and extent of the violation and manner it occurred as set out in **Anarita Karimi** (supra).
51. Counsel further submitted that the Petition was not in public interest as no other person filed a similar complaint and so the same purely advances a private political agenda. Moreover, Counsel stressed as deponed that the allegation of dual citizenship is false and baseless. In sum, Counsel maintained that the 2nd Respondent's DRC acted lawfully.
52. On the final issue, Counsel submitted that no law bars any party from contesting as member of the National Assembly or Parliament on account of having dual citizenship. Counsel submitted that Articles 78, 99(2)(a) and 260 of the Constitution as read with Section 31(2) of the Leadership Integrity Act only impose this bar on assuming office after the election. Counsel reiterated that this position was affirmed by the Court of Appeal **Bishop Donald Kisaka Mwawasi** (supra).
53. Like dependence was placed in **Mohammed & 2 others v Ibrahim & 4 4 others [2024] KEHC 10683 (KLR)** and **Charles Omanga & another v IEBC & another [2013] eKLR**.

54. Even so, Counsel emphasized that the Petitioner's allegations of dual citizenship and multiple identity cards are malicious as are false. Counsel underscored that the 1st Respondent had adduced evidence to support this fact. On the flipside, Counsel submitted that the Petitioner had not adduced any evidence to demonstrate the alleged fraud. In Counsel's view, these claims are sensational allegations for political mileage.

2nd and 3rd Respondents' Submissions

55. On 5th November 2025, Mwiti and Partners Advocates LLP for these Respondents filed submissions and outlined the issue for discussion as: *whether the Court has jurisdiction and ought to determine the Petition despite the electoral dispute resolution timeline and the claim of prematurity.*

56. On the onset, Counsel underscored that jurisdiction is everything and it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it as was held by the Court in **Benson Makori Makworo v Nairobi Metropolitan Services & 2 others [2022] KEHC 26937 (KLR)**. Like dependence was placed in **Omondi & another v Attorney General & 2 others; Ethekeon & 6 others (Interested Parties) [2025] KEHC 7463 (KLR)**

and **Owners of Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Limited [1989] KLR.**

57. Counsel rehashing the facts of this case submitted that it was not in dispute that the Petitioner had lodged his complaint 6 days after lapse of the 24-hour deadline set in Rule 8 (1) Rules of Procedure on Settlement of Disputes. For this reason, the Petitioner’s complaint was dismissed by the 2nd Respondent’s DRC. In view of the foregoing, Counsel submitted that the law that guides the determination of the pre-election dispute relating to the impugned nomination is encapsulated under Article 88 (4) (e) of the Constitution, Section 74 (1) & (2) of the Elections Act, and Rules 4, 8 and 10 of the Rules of Procedure on Settlement of Disputes. Counsel emphasized that timelines in electoral dispute resolution matters have their origins under Article 87(1) of the Constitution and have also been upheld by the Supreme Court. Having acted within the law, Counsel submitted that the 2nd and 3rd Respondents cannot thus be deemed to have violated Articles 10, 47 and 50 of the Constitution.
58. To buttress this point reliance was placed in **Ferdinand Waititu v Independent Electoral and Boundaries Commission, (IEBC) & 8 others (2013) eKLR** where it was held that:

“These timelines set by the Constitution and the Elections Act are neither negotiable nor can they be

extended by any Court for whatever reason. It is indeed the tyranny of time, if we may call it so. The Elections Act and the Rules made there under constitute a complete code that governs the filing, prosecution and determination of election petitions in Kenya.”

59. Comparable reliance was placed in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others, Supreme Court Petition No. 2B of 2014, Joho & another v Shahbal & 2 others (Petition 10 of 2013) [2014] KESC 34, Lemanken Aramat v Harun Meitamei Lempaka & 2 others [2014] eKLR** and **Evans Odhiambo Kidero & 4 others v Ferdinard Ndungu Waititu & 4 others, SC Pet. No 20 of 2014.**
60. Furthermore, Counsel submitted that the Petitioner’s complaint is overall pre-mature, as he purports to have the 1st Respondent’s citizenship status investigated before he even wins the stated election. Counsel argued that this position would not only violate such candidates’ political rights but also result in prejudice for dual citizens who denounce their citizenships and lose elections.
61. Dependence was placed in **Attorney-General & 2 others v Ndi & 79 others; Prof. Rosalind Dixon & 7 others [2022] KESC 8 (KLR)** where it was held that:

“The doctrine of ripeness focused on when a dispute had matured into an existing substantial controversy deserving of judicial intervention. The doctrine of ripeness prevented a party from approaching a court

before that party had been subject to prejudice, or the real threat of prejudice, as a result of the legislation or conduct challenged. 63. Ripeness discouraged a court from deciding an issue too early. It therefore required a litigant to wait until an action was taken against which a judicial decision could be grounded and a court was able to issue a concrete relief. That approach shielded a court from dealing with hypothetical issues that had not crystalized.”

62. Counsel stressed that as per the 2nd Respondent’s account, the 1st Respondent’s clearance as a candidate was lawful since as per the evidence adduced in the process it was confirmed that he is a Kenyan citizen and not a state officer. At that juncture, Counsel noted that the 2nd and 3rd Respondents were not required to interrogate the issue of multiple citizenship and even if they did, there would be no basis to bar the cleared nominee from vying in the scheduled by-election.
63. Counsel maintained that the Court of Appeal in **Bishop Donald Kisaka Mwawasi** (supra) guided that a dual citizen is eligible to seek nomination for election as a Member of Parliament and to stand in such an election subject to the provisions of Article 78 (2) and 78 (3) (b) of the Constitution and Section 31 (2) of the Leadership and Integrity Act, on denunciation of foreign citizenship before assumption of the office as a State Officer.

64. Additional dependence was placed in **Sammy Ndung’u Waity v IEBC & 3 Others, Supreme Court Petition 33 of 2018, Clement Kung’u Waibara v Anne Wanjiku Kibeh & Another, Nairobi Civil Appeal No. 431 of 2019, Silverse Lisamula Anami v IEBC & 2 Others, Supreme Court Petition 30 of 2018, Waity v Independent Electoral & Boundaries Commission & 3 others [2019] KESC 54 (KLR), Musyoka v Returning Officer, Independent Electoral and Boundaries Commission, Machakos County & 3 others (Constitutional Petition E004 of 2021) [2022] KEHC 160 (KLR), Benson Riitho Mureithi v J. W. Wakhungu & 2 Others, Nairobi High Court Petition No. 19 of 2014 and Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamad & 3 others [2018] eKLR.**

Interested Party’s Submissions

65. Anyoka and Associates Advocates filed submissions for the Interested Party dated 5th November 2025. Counsel highlighted the issues for discussion as: *whether the 1st Respondent holds dual citizenship in contravention of Article 78 of the Constitution, whether, by virtue of holding dual citizenship, the 1st Respondent is disqualified from being nominated for election as a Member of Parliament, whether the 1st Respondent’s possession of multiple national identity cards contravenes the Constitution and relevant statutes,*

whether the 1st Respondent's conduct demonstrates lack of integrity and renders him unfit for nomination as a Member of Parliament and whether the nomination of the 1st Respondent is unconstitutional, illegal, and void.

66. Counsel submitted that owing to the Petitioner's evidence, the 1st Respondent holds more than one national identity card, a British Passport and a Kenyan passport. It was stated that the 1st Respondent had not renounced his foreign citizenship as required under Article 78 of the Constitution as read with Section 31 of the Citizenship and Immigration Act thus renders him a dual citizen.
67. On the second issue, Counsel submitted that owing to the 1st Respondent's dual citizenship, the same renders disqualifies him from nomination or election. Counsel stressed that the mandatory requirement under Article 78 of the Constitution is intended to secure national loyalty and security, avoid conflict of interest, ensure integrity and accountability and equality before the law. Counsel in light of this stated that the Court held in **Wycliffe Ambetsa Oparanya v Clerk of the National Assembly & Others (2020) eKLR** that loyalty and national allegiance are the core constitutional values behind Article 78 of the Constitution.

68. Considering this, Counsel submitted in the following issue that the 1st Respondent's nomination is unconstitutional and so his nomination is a nullity. Reliance was placed in **John Harun Mwau v IEBC & Another (2013) eKLR** where the Court affirmed that Article 78 is categorical that holders of dual citizenship cannot be elected or appointed to state offices unless they renounce their foreign citizenship.
69. Like dependence was placed in **International Centre for Policy and Conflict & 5 Others v. Attorney General & 5 Others [2013] eKLR** and **Patrick Ngethe Wanjohi v. IEBC & Another [2013] eKLR**.
70. Counsel in addition argued that the 1st Respondent's possession of multiple national identity cards contravenes the Constitution under Articles 10, 73, 75, 78, and 99(2) 78 and further Section 14 National Registration Bureau Act and Section 13(1)(c) of the Leadership and Integrity Act. Counsel stressed that possession of multiple identity cards amounts to fraudulent misrepresentation of personal identity, which undermines the constitutional values of integrity, honesty, and accountability, rendering the 1st Respondent ineligible to hold an elective State office. Reliance was placed in **International Centre for Policy and Conflict & 5 Others** (supra) where it was held that:

“Chapter Six of the Constitution requires State officers to exhibit the highest level of integrity and honesty in both private and public life.”

Analysis and Determination

71. It is my considered view that the issues that arise for determination in this matter are as follows:

- i. Whether this Court has jurisdiction to entertain this Petition.***
- ii. Whether the 2nd and 3rd Respondents acted unlawfully in breach of their public mandate.***
- iii. Whether the Petitioner's rights were violated by the 2nd and 3rd Respondents.***
- iv. Whether the Petitioner is entitled to the relief sought.***

Whether this Court has jurisdiction to entertain this Petition.

72. Jurisdiction connotes the competence of a Court to hear and determine a matter and this power flows from the Constitution, the Statute or even judicial precedents (refer to **Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR).**

73. The Court of Appeal in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR)** tersely summed up the concept of jurisdiction as follows:

“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 down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

“By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”

See Words and Phrases Legally defined - Volume 3: I - N Page 113”

74. In considering whether this Court can assume jurisdiction, it is necessary to consider what the law provides concerning resolution of disputes of this nature as well as the relevant jurisdictional principles. For instance, Court will not, under justiciable principle, rush to assume jurisdiction if a matter has not matured into an actionable legal controversy particularly if there exists other forms of intervention that have been overlooked.
75. In the **County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya ([2021] KEHC 304 (KLR)** the Court underscored thus:

“171. The Ripeness doctrine is one facet of the larger principle of non-justiciability. It is a jurisdictional issue that bars a Court from considering a dispute whose resolution has not crystallized enough as to warrant Court’s intervention. Its operation is informed by the idea that there exist other fora with the capacity to resolve the dispute other than Court process...”

107. The doctrine focuses on the time when a dispute is presented for adjudication. The Black’s Law Dictionary 10th Edition, [supra] at page 1524 defines ripeness as:

The state of a dispute that has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made

108. Courts should therefore frown upon disputes that are hypothetical, premature or

academic which have not fully matured into justiciable controversies.”

76. **Ndii & 79 others; Prof. Rosalind Dixon & 7 others [2022] KESC 8 (KLR)** stated as follows:

“325. Justiciability was the quality or state of being appropriate or suitable for adjudication by a court. For a matter to be justiciable, it had to be ripe for it to be properly before the court. Ripeness was the state that a dispute had reached, but had not passed, when facts had developed sufficiently to permit an intelligent and useful decision to be made.”

77. In **Benjamin v Gitiri & 4 others; Chairman Council of Legal Education & 4 others (Interested Parties) [2025] KEHC 17026 (KLR)** this Court observed asserted thus:

“93. In adjudication of constitutional disputes, the court ensures that it does not usurp the powers and responsibilities of other constitutional or public bodies hence under the justiciable principle, the court can examine if the matter properly falls within its scope or is a mandate of another constitutional organ or public body.

94. If it is apparent to the Court that the matter deserves to be considered elsewhere rather than before the Court, it will decline the invitation to entertain the matter as the court does not exist in Constitutional vacuum.”

78. To determine if this matter is properly before this Court or not, it necessary therefore to critically examine the relevant Constitutional and legal provisions.

79. Article 87 of the Constitution provides as follows on electoral disputes:

Electoral disputes

Electoral system and process

- (1) *Parliament shall enact legislation to establish mechanisms **for timely settling of electoral disputes.***
- (2) *Petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission.*
- (3) *Service of a petition may be direct or by advertisement in a newspaper with national circulation.*

80. On the 2nd Respondent's mandate, Article 88 (4) (e) of the Constitution affirms that the 2nd Respondent:

“ the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results”

81. Further, Section 74 of the Elections Act provides that ***pursuant to Article 88 (4) (e) of the Constitution, the***

Commission shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.

82. The Section provides that an electoral dispute under subsection (1) shall be determined within seven days of the lodging of the dispute with the Commission and further notwithstanding subsection (2), where a dispute under subsection (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.
83. Furthermore, the Rules of Procedure on Settlement of Disputes provides follows in this regard:

Rule 8(1):

Initiation of a complaint

A party to a dispute may, within twenty-four hours of the occurrence of a dispute, notify the Commission and any adverse party of the dispute, in writing.

Rule 10:

Declining to accept a dispute.

The returning officer or the Commission acting on appeal may decline to accept a dispute if that dispute—

- (a) *does not raise an issue under the constitution or the nomination rules of the party concerned or the Constitution, the Act or the Regulations:*
- (b) *does not conform with these rules of procedure;*
- (c) *is trivial, frivolous or vexatious.*

84. It is thus crystal clear that pursuant to the Constitution, Article 88 (4) (e), as read with Section 74 of the Elections Act settlement of nomination disputes is vested with the Independent Electoral and Boundaries Commission and not this court. That procedure was adopted by the Petitioner but it appears he is not was upset by what transpired, he accuses the Respondent of having dismissed his complaint prematurely without giving him a chance to air his grievances by elevating rules of procedure over substance. He thus filed this Constitutional Petition.

85. The Supreme Court in **Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others [2016] KESC 2 (KLR)** had the following to say in regard to converting electoral disputes into constitutional petitions:

119.To allow an electoral dispute to be transmuted into a petition for the vindication of fundamental rights under Article 165 (3) of the Constitution, or through judicial review proceedings, in our respectful opinion, carries the risk of opening up a parallel electoral dispute-

resolution regime. Such an event would serve not only to complicate, but ultimately, to defeat the sui generis character of electoral dispute-resolution mechanisms, and notwithstanding the vital role of electoral dispute-settlement in the progressive governance set-up of the current Constitution.”

86. Furthermore, the Court of Appeal in **Kennedy Moki v Rachel Kaki Nyamai & 2 others [2018] KEHC 8722 (KLR)** guided as follows:

“52. Upfront, we wish to point out that the jurisdiction of the High Court in Electoral Disputes Resolution is a special jurisdiction conferred by the Constitution and the Elections Act. This special jurisdiction should not be confused with the High Court and unlimited jurisdiction in civil and criminal matters or the High Court’s supervisory jurisdiction over inferior bodies and tribunals. ...

Bearing in mind the foregoing, whether or not a candidate has been nominated is a question of fact. Whether the nomination itself and the process leading to the nomination is valid is a question of law. Equally whether a court has jurisdiction in any matter is a matter of law...To this extent, we affirm the principle that where there exists sufficient and adequate mechanism to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the court should not be invoked until such mechanisms have been exhausted.”

87. It thus apparent that jurisdiction to determine nomination disputes lies with the 2nd Respondent but what happens when one disagrees with the decision as is apparent in the instant case. Is the solution to file a Constitutional Petition alleging violation of Constitutional rights? The Supreme Court in **Waity (supra)** guided inter alia as follows:

“... Where the IEBC or PPDT has resolved a pre-election dispute, any aggrieved party may appeal the decision to the High Court sitting as a judicial review Court, or in exercise of its supervisory jurisdiction under Articles 165(3) and (6) of the Constitution. The High Court shall hear and determine the dispute before the elections and in accordance with the Constitutional timelines.”

88. In the instant case, the dispute was properly presented to the 2nd Respondents Dispute Resolution Committee and a decision was made dismissing the complaint because it was not presented within the prescribed regulatory electoral timelines. The Petitioner seeks to overturn that decision on the basis that it is violated his rights and fundamental freedoms under Article 27, 47 and 50 (1) among others.

89. A challenge to the decision of the IEBC Dispute Resolution Committee can only be done by specifically invoking this Court’s supervisory jurisdiction through judicial review pursuant to Article 165 (6) of the Constitution. In my view, the impugned decision was made in accordance with the election regulations. The 1st Respondent neither acted ultra

vires nor unreasonably for enforcing strict adherence to the regulatory timelines as this is a fundamental requirement prescribed for an election processes in this country. Article 88 (1) of the Constitution underscores the need for legislation to be enacted by Parliament that provides for mechanisms for ensuring timely settling of electoral disputes hence the provision of strict timelines is justified by the Constitution itself.

90. Further, I am also persuaded that, even assuming that the candidate holds dual citizenship (which has not been proved anyway), requiring the candidate to denounce his or her dual citizenship prior to elections is pre-mature and thus offends the doctrine of ripeness as he not a state officer yet and there is no provision of law that strictly bars a dual citizen from contesting the election; if anything, the prohibition is against one serving as State Officer, meaning the dispute is premature and speculative as the 1st Respondent has only offered himself as a candidate, he is not a State Officer so as to attract the application of the provision barring State Officers from being dual citizens. Why not wait until the fact crystalizes? Won't compelling the candidate to denounce his dual citizenship be too early also be prejudice his right to hold dual citizenship if he fails in the election?

91. The prohibition under Article 78 (2) in my view applies, to a person who is already a state officer, not a prospective candidate for State Office, meaning that prior to assuming the office insistence on denunciation is not necessary as dual citizenship is also constitutionally sanctioned. (See Article 16).
92. A dual citizen who is a Kenyan citizen is eligible for nomination, election or appointment but once he assumes office, he or she cannot be a dual citizen meaning renunciation has to be made before formally assuming the office of the State Officer.
93. This position resonates with the Court of Appeal decision in **Bishop Donald Kisaka v Attorney General & 2 Others (2014) KECA 561 (KLR)** where the court stated thus:

“Parliament while enacting Section 32 of the Leadership and Integrity Act interpreted Article 78 (2) correctly. The proscription in Article 78 (2) is not against dual citizen being elected as State Officer. The restriction is against leadership by dual citizen in the specified state offices, and it does not all apply unless and until a person is elected and/ or appointed to a State Office. That is a material fact which must be borne in mind. A dual citizen is eligible to seek nomination for election as a member of Parliament or member of County Assembly or County Government in an election and also eligible to hold any state office. However, dual citizen is disqualified upon election or appointment to a state office from

assuming office before voluntarily and officially renouncing his other citizenship howsoever granted in accordance with Kenya Citizenship and Immigration Act unless Article 78 (3) provides he has no ability under the laws of the other country to renounce citizenship of the other country....”

94. Having regard to ratio in the Court of Appeal authority above; it means the substratum of this Petition rests on quick sand, and considering also my previous findings on jurisdiction, it is crystal clear that this is completely devoid of any merit.
95. I need not even bother addressing any other issue in this Petition.
96. I dismiss the same in its entirety with costs to the respondents.

Dated, signed and delivered virtually at Nairobi this 20th day of November, 2025.

.....
L N MUGAMBI

JUDGE