



**Muhindi & another v Committee & 3 others; IEBC Vihiga
Constituence (Interested Party) (Constitutional Petition E001 of 2023)
[2025] KEHC 17602 (KLR) (27 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17602 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CONSTITUTIONAL PETITION E001 OF 2023
JN KAMAU, J
NOVEMBER 27, 2025**

BETWEEN

LIVINGSTONE OMBODO MUHINDI 1ST PETITIONER

COMMUNITY BASED ORGANIZATION 2ND PETITIONER

AND

MAHANGA MARKET COMMITTEE 1ST RESPONDENT

**CHARLES ANIALE ONGOSE & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2
OTHERS 2ND RESPONDENT**

AND

IEBC VIHIGA CONSTITUENCE INTERESTED PARTY

JUDGMENT

Introduction

1. In their Petition dated 24th October 2023 and filed on 30th October 2023, the Petitioners herein sought an order that this court declares the 1st Petitioner as the elected Chairperson of Mahanga Market Management Committee, un-opposed, since his challenger was barred by law due to his bankruptcy. The said Petition was not supported by any affidavit. However, subsequently, the Petitioners filed Supplementary Affidavit on 31st January 2024. The same was sworn by the 1st Petitioner on even date.
2. The 1st and 2nd Respondents' response (sic) to the said Petition was dated 17th April 2024 and filed on 2nd May 2024. The Interested Party did not file any response and/or submissions to the Petition.



3. The Petitioners' Written Submissions were dated 8th May 2024 and filed on 30th August 2024 while those of the 1st and 2nd Respondents were dated 16th June 2025 and filed on 17th June 2025. This Judgment is, therefore, based on the said Written Submissions which parties relied on in their entirety.

Petitioners' Case

4. It was the Petitioners' case that the 1st Petitioner was a registered trader in Mahanga Market and that in October, 2022, the County Government of Vihiga organised a tri-annual election of Mahanga Market Management Committee. However, the said elections did not take place in the said year but took place on 15th September 2023.
5. They contended that despite the 1st Petitioner having been the only bona-fide candidate for the post of the committee chairperson, the 2nd Respondent was declared the winner. They asserted that the 2nd Respondent had been declared bankrupt by a Kisumu court in the year 1991 and the Presiding Officer allowed the vote of the 2nd Respondent's her daughter, Emma Kedogo, although she was not registered as a voter.
6. They pointed out that the Vihiga County Bills, 2018 were used contrary to the allegations by County Trade Official that Mahanga Market Community Based Organization Rules were used during the market election. They added that since 2019 when previous market election was held and presided over by KNCCI and the Social Services Vihiga County, the 2nd Respondent had never convened any meeting of security, development or/any other yet these cases were prevalent frequently to market traders.
7. They averred that all the four (4) market committee members that were elected on CBO ticket for the first time in 2019 never defended their positions in 2023 because they were segregated by the 2nd Respondent during the tri-annual tenure. They asserted that on 9th September 2023, the pre-election meeting of trade director Mr Owiro was boycotted by the 2nd Respondent deliberately which was an indication of disabling the elections of 15th September 2023.
8. They further contended that the trade department avoided the KNCCI, IEBC and DSDO and solely presided the elections favouring the 2nd Respondent for he had been with them for about forty (40) years. They pointed out several election malpractices alleged to have been committed by the 2nd Respondent and that they had presented an official complaint to the trade office but that when the 2nd Respondent learned of that, he used election disrupters to claim that the 1st Petitioner had insulted him and he reported that the matter at Mahanga Police Post.
9. It was their contention that the 2nd Respondent's relative and the said election disrupters also threatened the 1st Petitioner and he reported the matter at Vihiga Police Station on 5th October 2023 and 11th October 2023 on OB Numbers 51/5/10/2023 and 20/11/10/2023 respectively. They asserted that they were not able to access the secretary form and the member form signed at the polling site as they were denied the same thus violating Article 47 of *the Constitution* of Kenya, 2010.
10. He urged the court to find that he was the sole bona-fide candidate having been elected unopposed and was, therefore, the lawful Chairperson of Mahanga Market Development Committee ab initio.

1st And 2nd Respondents' Case

11. The 1st and 2nd Respondents denied the contents of the Petitioners' Petition and averred that the 2nd Respondent won the election for the position of Chairperson and that the election was fair and just as per the set down rules. They added that no evidence was adduced to show that the 2nd Respondent



had been declared bankrupt. It was their contention that the Petition lacked merit and was based on false evidence. They prayed that it be dismissed with costs.

Legal Analysis

12. Having considered the Petition, the Supplementary Affidavit, the 1st and 2nd Respondents' evidence and the Parties' Written Submissions, it appeared to this court that the issues that had been placed before it for determination were: -
 - a. Whether or not the Petitioners' Petition was competent;
 - b. Whether or not the Petitioners' constitutional rights had been infringed upon;
 - c. If so, what reliefs were they entitled to; and
 - d. Who was to bear the costs of this Petition
13. The court therefore deemed it prudent to address the aforesaid issues jointly in the circumstances of this case.
14. The main focus of the Petitioners' submissions in this application was that the Respondents had not served them with any responses to their Petition. This court was alive to the fact that they were laymen and had no legal representation and may not have been aware that no party could be compelled to file a response to any pleading but that there were consequences for not filing responses to pleadings. Be that as it may, they were clear in their submissions that they should be granted the prayer sought.
15. On their part, the Respondents submitted that the Petition was an abuse of the court process and that the same ought to be dismissed. They pointed out that a look at the pleadings showed that the Petitioners had no substantive suit. They added that the Petitioners had not set out with reasonable degree of precision that of which they complained had been infringed and the manner in which they were alleged to be infringed as held in the case of Kamlesh Mansuklal Damji Pattni & Another vs R Nairobi High Court Miscellaneous Appeal No 322 of 1999 (eKLR citation not given) and Anarita Karimi Njeru vs Republic (1979) KLR 154.
16. They reiterated that the Petitioners had not proved that the 2nd Respondent was bankrupt. They invoked Section 107(1) of the *Evidence Act* and placed reliance on the case of Anne Wambui Ndiritu vs Joseph Kiprono Papkoi & Another (2005) where it was held that the legal burden of proof lies upon the party who invokes the aid of law and substantially asserts the affirmative of the issue.
17. They added that the Petitioners had not demonstrated a prima facie case with a probability of success so as to be granted an injunction. They submitted that for a temporary injunction to be granted, the applicant had to show the following:-
 - a. A prima facie case with a probability of success;
 - b. Suffering of irreparable injury or loss which would not be adequately compensated with an award of damages and;
 - c. That if the court was in doubt, it would decide the application on a balance of convenience.
18. They thus urged the court to dismiss the Petition herein with costs to them.
19. Notably, the Petitioners had filed a constitutional petition. The threshold of demonstrating a constitutional violation, infringement or contravention was well set out in the case of Anarita Karimi Njeru vs Republic (Supra). The principle in that case was that a party that seeking relief for a constitutional violation, infringement and/or contravention was required to set out with precision the



constitutional provisions that had been infringed, contravened and/or violated and how the same had been infringed, contravened and/or violated.

20. Based on the above analysis, the Petitioners were required to show the manner in which the rights they alleged had been infringed. They were also required to set out in a clear manner the basis of each of their grievances.
21. However, the Petitioners herein did not demonstrate what provision of *the Constitution* of Kenya had been violated, infringed and/or contravened. This court was, therefore, not persuaded that they demonstrated the threshold of being granted relief sought.
22. Going further, the Petitioners were required by law to prove their assertions that the 2nd Respondent had been declared bankrupt. Indeed, Sections 107(1), (2) and 109 of the *Evidence Act* Cap 80 (Laws of Kenya) provides that whoever desired any court to give judgment as to any legal right or liability and depended on the existence of facts, he or she had to prove that those facts existed. The Petitioners herein failed to do so.
23. A perusal of the Petition showed that save for mentioning about a bankruptcy, they had not attached any documentation to show that the 2nd Respondent had been adjudged bankrupt. In the absence of any proof, they could not succeed in overturning the impugned election.
24. Having failed to prove what constitutional provision had been contravened, infringed and/or violated, their prayer for an injunction fell by the wayside. In the premises, it was this court's finding that the Petition herein was incompetent in form and thus was not merited.

Disposition

25. For the foregoing reasons, the Petitioners' Petition dated 24th October 2023 and filed on 30th October 2023 was not merited and the same be and is hereby dismissed. The Petitioners will bear the 1st and 2nd Respondents' costs of this Petition.
26. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF NOVEMBER 2025

J. KAMAU

JUDGE

