

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**PETITION NO. E089 OF 2023**

**BETWEEN**  
**COMMISSIONER IRENE MASIT.....**  
**PETITIONER**

**VERSUS**  
**THE MUCHELULE TRIBUNAL (*Established pursuant to***  
***Article 251 of the Constitution*).....**

**.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup>**  
**RESPONDENT**

**J U D G M E N T**

**Introduction**

1. The Petition dated **23<sup>rd</sup> March 2023** is supported by the Petitioner’s affidavit in support of similar date. At its core, the Petition contests the proceedings undertaken by the 1<sup>st</sup> Respondent which led to the Petitioner’s removal as a Commissioner of the Independent Electoral and Boundaries Commission (IEBC). Accordingly, the Petitioner seeks the following reliefs against the Respondents:

- a) *An order of certiorari do issue to quash the 1<sup>st</sup> Respondent's Report and Recommendations dated 27.02.23 to the***

**President for the removal of the Petitioner as IEBC Commissioner.**

**b) An order of certiorari do issue to quash the President's adoption of the 1<sup>st</sup> Respondent's Report**

**and Recommendations to remove the Petitioner as IEBC commissioner.**

**c) An order of certiorari do issue to quash the Gazette Notice No. 2642 removing the Petitioner as IEBC Commissioner.**

**d) An order of certiorari do issue to quash Gazette Notice No. 2643 declaring vacancy of the Petitioner's position as IEBC Commissioner.**

**e) Declaratory orders do issue that the 1<sup>st</sup> Respondent acted without and/or in excess of jurisdiction.**

**f) A declaratory order do issue that the four Petitions did not meet the constitutional, statutory, legal and established law requirements to disclose a prima facie Case against the Petitioner.**

**g) A declaratory order do issue that the evidence placed before the 1<sup>st</sup> Respondent didn't meet the evidential threshold of impeachment Proceedings.**

**h) A declaratory order do issue that the 1<sup>st</sup> Respondent material proceedings are null & void for violating the Constitution, Statutes and established Law.**

**i) A declaratory order do issue that the material allegations and recommendations against the Petitioner are res judicata.**

- j) A declaratory order do issue that everything that flowed from the impugned four Petitions is null and void ab initio.**
- k) A declaratory order do issue that the Petitioner has legitimate expectation to be IEBC Commissioner upto and including September 7, 2027.**
- l) The Court calls for the 1<sup>st</sup> Respondent's record of Proceedings to review the evidence before it and the Report and recommendations it made with a view of quashing them.**
- m) An order for compensation do issue to the Petitioner for violation of her constitutional rights.**
- n) A declaratory order do issue that the 1<sup>st</sup> Respondent's proceedings were a judicial sham and akin to Nazi Gestapo Police Courts (Sondergericht).**
- o) Costs be provided for.**

### **Petitioner's Case**

2. By way of background, the Petitioner submitted her application to be appointed as an IEBC Commissioner, following declaration of vacancies vide Gazette Notice No.3522 of 2021. She was after that appointed as a Commissioner.
3. Following the 2022 general elections, the Petitioner through a letter dated 18<sup>th</sup> November 2022, four petitions were filed

seeking her removal as an IEBC commissioner. Soon thereafter vide Gazette Notice No.14890 dated 2<sup>nd</sup> December 2022, the 1<sup>st</sup> Respondent was established to hear and determine the petitions seeking her removal.

4. She depones that through her advocate, Donald B. Kipkorir, she raised 4 preliminary objections against the petitions, particularly challenging the jurisdiction of the National Assembly including its Departmental Committee on Justice & Legal Affairs (JLAC). The JLAC begun proceedings over this matter on 24<sup>th</sup> November 2022 and forwarded its Report to the National Assembly on 1<sup>st</sup> December 2022. This corresponded with the time IEBC was required to start review of the general elections. She depones that the 1<sup>st</sup> Respondent was established the following day on 2<sup>nd</sup> December 2022.
5. The 1<sup>st</sup> Respondent conducted its proceedings on 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> December 2022 and on 23<sup>rd</sup> and 24<sup>th</sup> January 2023 and 20<sup>th</sup> February 2023. The Petitioner filed her supporting documents and witness statements during the proceedings. She avers that the advocates highlighted submissions on 20<sup>th</sup> February 2023.
6. The Petitioner avers that before the 1<sup>st</sup> Respondent finalized its proceedings, the President vide Gazette Notice No.1901 of 14<sup>th</sup> February 2023, declared vacancies in the other seats, save hers.

7. She states that it was reported on 27<sup>th</sup> February 2023 that the 1<sup>st</sup> Respondent had finalized its Report and handed the same to the President. She notes that the 1<sup>st</sup> Respondent forwarded her an incomplete Report which only reached page 44. Furthermore, the Report did not have any annexures or the Hansard Report of 20<sup>th</sup> February 2023. She states that the 1<sup>st</sup> Respondent in the email correspondence, indicated that all the material had been issued to the President.
8. She depones that vide Gazette Notice No.2642 dated 1<sup>st</sup> March 2023, the President revoked her appointment as an IEBC Commissioner and simultaneously declared vacancy in her office vide Gazette Notice No.2643.
9. She contends that the 1<sup>st</sup> Respondent's proceedings, recommendations and Report are null and void ab initio. This is since the 1<sup>st</sup> Respondent proceeded without transmittal documents from the National Assembly via the President. Additionally, that no Report of the National Assembly pursuant JIAC's Recommendations was placed before the 1<sup>st</sup> Respondent and that no Articles of Impeachment and or charge was drafted nor read to the Petitioner. She stresses that in the absence of these documents, there was no substratum to the 1<sup>st</sup> Respondent's proceedings and equally,

no nexus between an alleged National Assembly Report and the 1<sup>st</sup> Respondent's establishment.

10. The Petitioner further faults the 1<sup>st</sup> Respondent's proceedings for a number of reasons being:

- a) *The 1<sup>st</sup> Respondent proceeded to review, revise and revive **Supreme Court Judgment No. E005 of 2022, Raila Odinga & Others Vs William Ruto & Others** in contravention of Articles 140, 162 and 163 of the Constitution and Section 87 of the Elections Act.*
- b) *The 1<sup>st</sup> Respondent's Report and Recommendations violate the sacrosanct doctrines of res judicata and stare decisis.*
- c) *The 1<sup>st</sup> Respondent relied on evidence that didn't comply with Sections 106B, 107, 108 and 109 of the Evidence Act.*
- d) *The 1<sup>st</sup> Respondent relied evidence of witnesses whose evidence didn't establish the fact in issue (factum probandum) nor the evidentiary fact (factum probans).*
- e) *The 1<sup>st</sup> Respondent relied on hearing, gossip and bar-talk given by the 11 witnesses.*
- f) *The charge and/or allegation of conspiracy wasn't proven at all.*
- g) *The charges were against Cherera 4 jointly, yet it proceeded against the Petitioner only.*
- h) *The record of the 1<sup>st</sup> Respondent demonstrates a Tribunal driven by political bias and malevolence against the Petitioner and stood against the inevitable conclusion of the 1<sup>st</sup> Respondent.*

- i) *The 1<sup>st</sup> Respondent misapprehended, misunderstood or simply didn't understand or know that impeachment proceedings are criminal in nature and adversarial. The 1<sup>st</sup> Respondent took its role as that of an inquisitional nature and in fact equated its jurisdiction to that of removal of judges under Article 168 of the Constitution.*
- j) *The 1<sup>st</sup> Respondent lowered the bar on the burden of proof in impeachment proceedings under Article 251 of the Constitution.*
- k) *The Tribunal's key witnesses, Wafula Chebukati and Marjan Hussein Marjan are tainted and biased witnesses with Court's pronouncements against their conduct.*
- l) *The four petitions did not meet the constitutional, statutory and legal threshold as pleaded in the Petition.*
- m) *Denial of my legitimate expectation to judicial process that is fair, impartial and transparent.*
- n) *The 1<sup>st</sup> Respondent railroaded the process for a predetermined conclusion.*

11. The Petitioner as well argues that the Petitions against her stem from declaration of the Presidential results on 15<sup>th</sup> August 2022. She notes that the entire allegation which is flawed, is premised on the Cherera 4 tampering with the election results and disowning the result. She emphasizes that at all material times neither her nor the other Commissioners had the results yet. She informs that Article 138 of the Constitution provides a clear procedure on a presidential election.

12. In a nutshell the mandatory procedure involves, filling of Form 34A in the prescribed Form at the polling station and transmitting the same to the Constituency, filling of Form 34B in the prescribed Form at the Constituency level, and electronically transmitting Forms 34A and 34B to the National Tallying Centre. Further, physical delivery of Forms 34A and 34B to the National Tallying Centre, then tallying Form 34C and verifying Form 34C against the Original Form 34A's and complete Form 34C and Print a hard copy of Form 34C. Following this, all the presidential agents are invited to sign the Form 34C before the same is published on the IEBC portal. This copy is then presented to the presidential agents after which the presidential results are declared. Thereafter the Chief Justice is notified of the result and the President elect issued with Form 34D.
13. In light of the foregoing averments, the Petitioner contends that the 1<sup>st</sup> Respondent's proceedings violated established case law, judicial norms and traditions and established international customary law on impeachment Proceedings, as such not sustainable. For this reason, the Petitioner is convinced that the 1<sup>st</sup> Respondent's proceedings is in breach of Articles 2 (1) & (4), 10,20, 22 (1), 23, 25 (c), 32, 33, 47 (1) & (2), 50 (1), (2), (b) ( c) (i), (j),(o), (q) and (4), 75, 138, 140 (2),160, 165, 232,248, 249 251 (1) (a ), (b) and (d), (2) and (3) and 252 (1) (a ) and (b) of the Constitution, Sections 4 (3) (a) (b), (c), (d), (e), (f) (g) and (5), 5(1)(b), (2)(b) and (c ) and

7 (2)(a (ii) (iv), (e ), (b) and (k) of the Fair Administrative Action Act, Sections 8, 91 26 and 30 of the IEBC Act as read with Schedule 2: Regulations 4, 6, 7 and 10 of the IEBC Regulations, Sections 39, 87 (1) and (2) of the Elections Act, Sections 7, 8, 9, 10, n, 16 and 43 (1) (a) (b) and (c) Leadership And Integrity Act, Sections 29 (1) (a), (2) and (3) of the Commission On Administrative Justice Act, Sections 1068, 107, 108, 109 and 110 of the Evidence Act and National Assembly Standing Orders- No. 219, 220, 223 (e), (f) (g) and (h), 227, 230 (1) (a), (h), and (4).

### **Respondents' Case**

14. In opposition to the Petitioner's case, the Respondents' filed grounds of opposition dated 26<sup>th</sup> April 2023 on the premise that:
- i. Vide a special Gazette Notice No. 14890 of 2<sup>nd</sup> December, 2022, the 1<sup>st</sup> Respondent was validly established pursuant to the provisions of Article 251(4) of the Constitution with a mandate to inquire into the petition by Parliament for removal of the Petitioner as a Commissioner of the IEBC.*
  - ii. The 1<sup>st</sup> Respondent legitimately fulfilled its mandate as stated in Gazette Notice No. 14890 of 2<sup>nd</sup> December, 2022 which was validly stated as:*
  - iii. The mandate of the Tribunal shall be to consider the petition for the removal of (1) Juliana Whonge Cherera, (2) Francis Mathenge Wanderi, (3) Irene Cherop Masit and (4)*

*Justus Abonyo Nyang'aya from office as members of Independent Electoral and Boundaries Commission (IEBC) and to inquire into the allegations therein.*

- iv. In the discharge of its functions, the Tribunal shall-
  - a. Prepare and submit a report and its recommendations thereon expeditiously; and*
  - b. Exercise all the powers conferred upon it by law for the proper execution of its mandate.**
- v. The 1<sup>st</sup> Respondent, in exercise of its mandate pursuant to Article 251 of the Constitution published the Tribunal (Practice and Procedure) Rules, 2022 vide Gazette Notice No. 15196 of 5<sup>th</sup> December 2022, in the Kenya Gazette Vol. CXXIV-No. 264 to govern the conduct of its proceedings.*
- vi. There has never been a challenge before any court of competent jurisdiction as to the legal validity of the Gazette Notice No. 15196 of 5<sup>th</sup> December 2022 or the Tribunal (Practice and Procedure) Rules, 2022 hence the same remain sound, valid and effective.*
- vii. Whereas the rule of evidence which encompasses the rules and legal principles that govern the proof of facts in a legal proceeding, the quantum, quality, and type of proof needed to prevail in litigation is paramount, Rule 14 of the Tribunal (Practice and Procedure) Rules, 2022 stipulated that the 1<sup>st</sup> Respondent in its proceedings would not be bound by the strict rules of evidence and its proceedings would be guided by the rules of natural justice.*
- viii. Pursuant to the mandate established vide Gazette Notice No. 14890 of 2<sup>nd</sup> December, 2022, the Tribunal was clothed with investigative powers,*

thus the 1<sup>st</sup> Respondent became a quasi-judicial body vested with inquisitorial powers.

- ix. *The matter before the 1<sup>st</sup> Respondent was sui generis. The standard of proof applicable in the proceedings of the Tribunal was neither that applicable in criminal law (beyond reasonable doubt) nor that applicable in civil cases, (on a balance of probability). Thus, a strict application of standard rules of procedure or evidence could have negated the fundamental policy-object.*
- x. *In the words of sitting Lord Reid in **Ridge vs. Baldwin (1968) All ER 66**, "A man is entitled to have chapter and verse quoted against him and a full opportunity to rebut the allegation." The totality of the Petitioner's annexes marked ICM-4 pg. 63, ICM-11 pg. 468 and ICM-16 pg. 2634 is an indisputable fact that the petitioner was made aware of the allegations against her and was accorded an opportunity to defend herself against those allegations in a full and fair public hearing but chose not to.*
- xi. *Failure by the Petitioner to rebut the allegations levelled against her before the 1<sup>st</sup> Respondent against left the case against her uncontroverted and unchallenged.*
- xii. *The proceedings against the Petitioner and the decision of the 1<sup>st</sup> Respondent recommending the removal of the Petitioner as a Commissioner of the IEBC evince principles of the rule of law, equality before the law, accountability to the law, fairness in application of the law, and procedural and legal transparency. The proceedings and the decision thereto were undertaken within the defined constitutional framework and cannot therefore be challenged on the basis of non-conformity with*

*statutory law or the standing orders of the National Assembly.*

- xiii. The national values and principles of governance as declared at Article 10 to include the rule of law, democracy, equality, human rights, good governance, transparency, integrity, accountability are binding on all State officers whenever they are making or implementing public decisions, the petitioner included.*
- xiv. The petition runs contra to the provisions of Article 10 on national values and principles of governance, and Article 73 on the guiding principles on leadership and integrity which include inter alia, objectivity and impartiality in decision making and ensuring that decisions are not influenced by among others, corrupt practices and improper motives.*
- xv. There cannot be legitimate expectation against clear provisions of the law. Article 251 of the Constitution and section 17A of the IEBC Act, 2011 clearly provide for the procedure for removal of a member of the IEBC such as the Petitioner.*
- xvi. The Petition is at best based on the Petitioner's personal inclinations and observations which do not form an actual controversy warranting intervention by this Court in the form of prayers sought in both the Application and Petition.*
- xvii. Both the Application and Petition are misconceived and unmerited, the Petitioner having failed to demonstrate the unconstitutionality of the proceedings, the illegality of the report of the 1<sup>st</sup> Respondent recommending her removal as a Commissioner of the IEBC and/or the alleged infringement of her fundamental rights and freedoms.*

## **Petitioner's Submissions**

15. KTK Advocates for the Petitioner filed submissions dated 17<sup>th</sup> September 2024.
  
16. Restating the background and facts of this case, Counsel submitted that the entire impeachment process commencing from the National

Assembly to the Petitioner's removal, was unlawful and irregular in violation of the Constitution and her constitutional rights.

17. To support this submission, Counsel pointed out that the four petitions did not have any supporting evidence or exhibits as required under Sections 107, 108, 109 and 110 of the Evidence Act. Counsel added that the petitions did not meet the requirements of Article 50 (2) (b) of the Constitution as read with Section 4 (3) (a) and (g) of The Fair Administrative Action Act. Counsel asserted that the petitions likewise regurgitated issues that had already been dealt with by the Supreme Court in **Presidential Election Petition No. E005 of 2022**, hence issues res judicata and stare decisis. Counsel added that the 1<sup>st</sup> Respondent even went ahead to review the Supreme Court findings, in violation of Article 140 of the Constitution and Section 87 of the Elections Act.

18. Furthermore, Counsel submitted that the four petitions did not establish any constitutional, statutory or legal basis for the reliefs they sought and thus the 2<sup>nd</sup> Respondent lacked jurisdiction and acted in excess of it in contravention of Section 7 (2) (u) of The Fair Administrative Action Act. The petitions were also faulted for failing to comply with the requirements of Standing Orders No.223 and 230 of the National Assembly Standing Orders.
  
19. Counsel also underscored that the 1<sup>st</sup> Respondent proceeded without transmittal documents from the National Assembly in contravention of Article 251 (3) of The Constitution and also without the Articles of Impeachment in violation of Articles 47(2) and 50(2)(b) of the Constitution.
  
20. Counsel further faulted the 1<sup>st</sup> Respondent for relying on TV evidence which was not produced in accordance with Section 106B, 107,108,109 and 110 of the Evidence Act. Similarly, Counsel noted that the 1<sup>st</sup> Respondent's Report relied on evidence that was not tendered during the proceedings in blatant breach of Articles 50(1) (j) and (k) of the Constitution. Reliance was placed in **Garissa HC Criminal Case No. 3 of 2023, Republic -VsIbrahim Bille Jelle [Unreported]** where it was held that:

*“It is thus not enough merely to be trained by the American Embassy to be qualified to produce in evidence information or data from a mobile phone or electronic information or data. There is also need for strict compliance with the above provisions of the Evidence Act. Failure to comply with the legal requirements will mean that the electronic information or data will not be admissible as evidence and will thus be of no evidential value ...*

*No Certificate was produced in Court to support the production of the electronic data herein from the Nokia mobile phone. In effect therefore the electronic data relied upon from the mobile telephone is not evidence which can be relied upon to connect the accused to the offence charged ...*

*Having re-evaluated the evidence on record and considering the law, I am of the view that the Prosecution has not made out a prima facie Case which would require this Court to put the accused person on his defence.”*

21. Similar reliance was placed on **Kisumu Civil Appeal No.17and 18 of 2015: County Assembly of Kisumu & others vs Kisumu County Assembly Service Board and others [Unreported]**.
22. In like manner, Counsel submitted that the Petitioner was charged with conspiracy in that she allegedly conspired with the Cherera 4 to supplant the will of the people. Counsel reiterated that the Supreme Court had already determined this matter. Nevertheless, Counsel argued that the allegation

of conspiracy was not proved. Reliance was placed in **Nairobi Criminal Appeal No.4 and 132, Ian Gakoi Maina and 3 others v Republic [Unreported]** where the Court of Appeal held that:

*“For the 1<sup>st</sup> Count to succeed it must be proven by the prosecution that there was the element of an agreement a meeting of minds of the accused persons and the intention to defraud.*

*These basic elements have not been established ...*

*It was the duty of the Prosecution to proof the role of each of the accused persons and their capacities in their respective offices in the Commission of the offence. This line of evidence is lacking for all the accused so as to establish a nexus lading to conspiracy ... ”*

23. Further reliance was placed on **Kisumu Criminal Appeal No.12 of 2016, Republic v Anne Atieno Adul and others [Unreported]**.
24. Counsel further argued that evidence of the 11 witnesses did not prove the complaints against the Petitioner beyond reasonable doubt. Similarly, it was noted that the 1<sup>st</sup> Respondent heavily relied on the evidence of Wafula Chebukati and Marjan Hussein Marjan yet the Courts have cast doubt on their integrity to the law. Counsel postulated that the entire proceedings were commenced with a pre-determined outcome against the Petitioner and thus she had

no chance of an independent and impartial Tribunal as guaranteed by the Constitution, in line with her legitimate expectation.

25. Reliance was placed in **Republic vs National Cohesion and Integration Commission, Nairobi HC JR. Application No. E057 of 2022** where it was emphasized that:

*“The right to be heard is cardinal and cannot be derogated. This Court appreciates the crucial and sensitive role that the Respondent undertakes in promotion of National Cohesion in an environment of pronounced diversity. The statutory power donated to it, musty be exercised within the law and in strict observance of individual and collective rights enshrined in the Constitution and our laws. However well meaning, the Respondent cannot get away with unilateral decisions that affect the citizenry without regard to their Constitutional and legal rights topmost of which is the right to be heard. This was emphasized in the Case of Leiyagu -V- IEBC & 2 Others where the Court stated;*

*The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law”.*

26. Comparable reliance was placed in Speaker of the **National Assembly v Public Protector and others, CCT 257/21[Unreported]**.
27. Counsel in the same way challenged the 1<sup>st</sup> Respondent’s proceedings as argued that crucial witnesses were not

summoned. Particularly those who were alleged to have issued them the instructions to subvert the will of the people. To buttress this point reliance was placed in **Nakuru Criminal Appeal No. 34 of 2006, Donald Majiwa Achilwa & Others -Vs- Republic [Unreported]**, where the Court of Appeal held that:

*"The law as it presently stands, is that the Prosecution is obliged to call all Witnesses who are necessary to establish the truth in a Case even though some of those Witnesses' evidence may be adverse to the Prosecution Case. However, the Prosecution is not bound to call a plurality of Witnesses to establish a fact. Where, however, the evidence adduced barely establishes the Prosecution Case, and the Prosecution withholds a Witness, the Court, in an appropriate Case, is entitled to infer that had the Witness been called his evidence would have tended to be adverse to the Prosecution Case".*

28. Comparable reliance was placed in **Chuka HC Criminal Appeal No.13 of 2020, Peter Nyamu Mutithi v Republic [Unreported]**.
29. Counsel reasoned that impeachment proceedings are adversarial in nature and thus a party cannot initiate its pleadings from one forum to another. In this case, Counsel stated that what was before the National Assembly is different from what was before the 1<sup>st</sup> Respondent. Further that the pleadings relied on by the National Assembly were charges which were not supported by any evidence. To

buttress this point reliance was placed in **Malawi Railways Limited -VsPTK Nyasulu, MSCA Civil Appl. No. 13 of 1992, [Unreported]** where it was held that:

*“In the adversarial system of litigation therefore, it is the Parties themselves who set the agenda for the trial by their Pleadings and neither Party can complain if the agenda is strictly adhered to. In such an agenda, there no room for an item called "Any Other Business" in the sense that points other than those specified may be raised without notice”.*

30. Counsel additionally challenged the allegation of gross misconduct on the Petitioner’s part. Counsel contended that in addition to lack of evidence to prove this claim, calling of a press conference cannot amount to gross misconduct. Reliance was placed on **Petition No. 4 of 2020, Hon. Justice Martin Mati Muya -Vs- The Tribunal, [Unreported]** where gross misconduct was defined as follows:

*“Clearly, all the words used to describe "gross" express some extreme negative conduct; a degrees of misconduct of such a serious, outrageous and flagrant nature that would warrant removal of a judge from office, those that would render an individual Judge unfit or incapable of performing that duties of his or her office. That is how serious it ought to be ...*

*Equally, we do not think that the conduct of the Petitioner was persistent, or that, considered alone, it was capable of destroying the confidence in the Judge's ability to properly perform his judicial function. There was no discernible pattern of dereliction, but a single act of transgression; a five month's delay. He readily*

*admitted the delay, gave an explanation and expressed remorse."*

31. In sum, Counsel submitted that the 1<sup>st</sup> Respondent did not discharge the burden in the impeachment proceedings being that they are quasi-criminal in nature. Reliance was placed in **Woolmington-Vs-The Director of Public Prosecutions [1935] AC 462** where it was observed that:

*"If at any period of a trial it was permissible for the Judge to rule that the Prosecution has established its Case and that the onus was shifted on the Prisoner to prove that he was not guilty and that unless he discharged that onus the Prosecution was entitled to succeed, it would be enabling the Judge in such a Case to say that the jury must in law find the prisoner guilty and so make the Judge decide the Case and not the jury, which is not the common law. It would be an entirely different Case from those exceptional instances of special verdicts where a Judge asks the jury to find certain facts and directs them on such facts the Prosecution is entitled to succeed...."*

*Throughout the web of English Criminal Law one golden thread is always to be seen, that is the duty of the Prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the Case, there is a reasonable doubt, created by the evidence given by either the Prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the Prosecution has not made out the Case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial. the principle that the Prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."*

32. Reliance was placed on **Nairobi HC Petition No. 174 of 2016, Robert Alai -Vs-The Hon. Attorney General & Others, [Unreported]**.

### **Respondents' Submissions**

33. Senior State Counsel, Christopher Marwa filed submissions dated 21<sup>st</sup> August 2025 and highlighted the issues for discussion as: *whether the Muchelule Tribunal was legally constituted and acted within its mandate, whether the evidence before the Muchelule Tribunal meet the evidential threshold of impeachment proceedings, whether the Petitioner's constitutional rights were violated and whether the actions of the Tribunal infringed on the Petitioner's legitimate expectation.*
34. On the first issue, Counsel submitted that the 1<sup>st</sup> Respondent's composition is provided under Article 251 of the Constitution and that it acted within its mandate as provided under the Special Gazette Notice No. 14890 of 2<sup>nd</sup> December 2022. To discharge its mandate the 1<sup>st</sup> Respondent was empowered to prepare and submit a report and its recommendations and exercise all the powers conferred upon it by law for the proper execution of its mandate. Counsel noted that to do so, the 1<sup>st</sup> Respondent established the Tribunal (Practice and Procedure) Rules, 2022 vide Gazette Notice No. 15196 of 5<sup>th</sup> December 2022, to govern the conduct of its proceedings. As such, in

conducting the proceedings, Counsel submitted that the 1<sup>st</sup> Respondent was acting within the confines of its mandate as espoused under Article 251 of the Constitution.

35. Reliance was placed in **Okiya Omtatah Okioti v National Assembly of Kenya & 4 others Interested Party; Edward Ouko 5 others [2019] KEHC 6978 (KLR)** where it was observed that:

*“The National Assembly is a state organ that exercises constitutional mandate. One of the mandates is to receive and consider petitions for removal of state officers. In the present petition the National Assembly had been moved by way of a petition by the 4th respondent to remove the Auditor General in accordance with Article 251 of the Constitution.*

*Article 251(1) provides for circumstances that can lead to removal of a member of a commission or an independent office. They include serious violation of this Constitution or any other law, including a contravention of Chapter Six; (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise; (c) physical or mental incapacity to perform the functions of office; (d) incompetence; or (e) bankruptcy. Sub Article 2 provides that a person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified sub Article 1, may present a petition to the National Assembly setting out the alleged facts constituting that ground, and (3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President*

*When a petition is filed with the National Assembly for removal under Article 251 (2) the National Assembly*

*would have mandate to consider such a petition and make a determination on it. However, in every case where a constitutional body is to exercise its mandate it should do so in accordance with the Constitution and the law. If such an organ were to ignore or violate the law, the court would be called upon to intervene.”*

36. Counsel further argued that the allegation of res judicata lacks basis since Article 140 of the Constitution provides a challenge to the election of the president elect whereas the main issue before the 1<sup>st</sup> Respondent was whether the Petitioner’s actions amounted to gross misconduct. Counsel noted that the Supreme Court Election Petition was only brought up by a witness as part of their testimony.
37. Counsel underscored moreover that the elements of res judicata are also quite clear and that the Petitioner had failed to prove them. This is since the parties in the Supreme Court suit were different save for the Petitioner and issues before the Supreme Court were distinct from those before the 1<sup>st</sup> Respondent. Reliance was placed in **John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others [2015] KECA 472 (KLR)** where it was held that:

*“From the above, the ingredients of res judicata are firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former*

*suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title and lastly that the court or tribunal before which the former suit was litigated was competent and determined the suit finally.”*

38. Further reliance was placed on **Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] KECA 98 (KLR)**.
39. Turning to the second issue, Counsel submitted that the 1<sup>st</sup> Respondent met the evidentiary threshold. Counsel stated that the Tribunal (Practice and Procedure) Rules, 2022 stipulated that the 1<sup>st</sup> Respondent would not be bound by the strict rules of evidence and its proceedings would be guided by the rules of natural justice. Counsel relied in **Republic v Public Procurement Administrative Review Board & 2 others Ex-Parte Pelt Security Services Limited [2018] KEHC 2068 (KLR)** where the Court guided that:

*“[39] Courts generally grant tribunals a degree of latitude when it comes to dealing with evidence. Courts have said that the weighing of various pieces of evidence is generally a matter for the tribunal, and ‘merely to ignore “relevant material” does not establish jurisdictional error. There is no obligation on decision makers ‘to refer to every piece of evidence and every contention made by an applicant in their written reasons’; and, inferences should not be drawn that an issue or evidence has been overlooked simply because a piece of evidence was not expressly discussed in the course of the reasons for decision.”*

40. Further to this, Counsel submitted that the matter before the 1<sup>st</sup> Respondent was sui generis thus the standard of proof applicable was neither beyond reasonable doubt as seen in criminal cases nor on a balance of probability as in civil cases. For this reason, Counsel argued that the strict rules of procedure and evidence were not applicable as the same would have negated the objective that the 1<sup>st</sup> Respondent had set out to achieve. In Counsel's view, based on the Tribunal (Practice and Procedure Rules) of 2022, the evidentiary threshold had been met.
41. To buttress this point reliance was placed in **Kombe v Karisa & 3 others [2024] KESC 25 (KLR)** where it was held that:

*“Generally, there are two broad standards: proof beyond reasonable doubt in criminal cases and on preponderance of the evidence or balance of probabilities in civil cases. The expression “burden of proof” may refer to either the ‘legal burden’ or the ‘evidential burden.’ In between these standards, the courts have developed different levels of proof, depending on the specific type of case and the allegations, as we are due to explain shortly in respect of electoral disputes, which strictly speaking are not ordinary civil proceedings but sui generis. Depending on the evidence presented by the party who has brought a claim and who bears the legal burden, the evidentiary burden may in certain instances shift to the opposing party.”*

42. In light of the foregoing, Counsel in the next issue argued that the Petitioner's rights were not violated by the 1<sup>st</sup> Respondent as alleged. Counsel recapped that the Petitioner was informed of the charges against her. Equally that the 1<sup>st</sup> Respondent carried out the hearing in accordance with Article 50 of the Constitution. Counsel argued that the Petitioner's choice to avoid the hearing does not amount to a violation of that right. Consequentially, her action left the case against her uncontroverted and unchallenged. Counsel contended that the Petitioner's allegations on violation of Article 50 of the Constitution are thus an afterthought and malicious.

43. Dependence was placed in **Thomas Aluga Ndegwa v Republic (Criminal Appeal 2 of 2014) [2018] KECA 875 (KLR)** where it was held that:

*"We respectfully agree with the reasoning of the first appellate court. While the charge sheet may not have been drafted in the most elegant of terms, it is clear that the appellant understood the charge against him and participated in the trial. For similar reasons, we find that the appellant's right to a fair hearing under Article 50 (2)(b) of the Constitution was not violated, and this challenge to the conviction and sentence also fails and is rejected accordingly."*

44. On the third issue, Counsel submitted that there cannot be a legitimate expectation against clear provisions of the law. Counsel stated that although the Petitioner expected to serve as an IEBC commissioner until September 2027, Article

251 of the Constitution and Section 17A of the IEBC Act visibly provide for the procedure for removal of a member of the IEBC. Reliance was placed in **Henry Muthee Kathurima v Commissioner Of Lands & another [2015] KECA 892 (KLR)** where it was held that:

*“Article 40 (6) of the Constitution clearly stipulates that the right to property does not extend to property that has been found to have been unlawfully acquired. The appellant relied on the doctrine of estoppel urging that the Commissioner of Lands is estopped from denying that he has a good title. It is our view that estoppel cannot be used as shield to protect unlawfully acquired property; estoppel cannot be used to circumvent Constitutional provisions and estoppel cannot override express statutory procedures; there can be no estoppel against a statute. (See Tarmal Industries Ltd. - v- Commissioner of Customs & Excise, (1968) E.A. 471; see also Maritime Electric Co. Ltd. v General Dairies Ltd. (1937) 1 All ER 748). The trial court made a finding of fact that the suit property was unlawfully acquired. Guided by the provisions of Article 40 (6) of the Constitution, it is our finding that the doctrine of legitimate expectation cannot be used to protect property that has been unlawfully acquired. We find that the appellant cannot rely on this doctrine to circumvent the provisions of Article 40 (6) of the Constitution. Further, the doctrine of legitimate expectation cannot oust clear statutory provisions of the Government Lands Act on how to alienate public land. It is our view that Sections 3, 7, 9 and 12 of the Government Lands Act cannot be ousted by estoppel and the doctrine of legitimate expectation. Due process must be followed to alienate public land before legitimate expectation can arise. There cannot be a legitimate expectation without adherence to statutory or constitutional provisions. It has been held in several*

*persuasive authorities, R. v. Devon County Council, ex parte Baker & Another, [1995] 1 All. E.R. 73; R. v. Durham County Council, ex parte Curtis & Another, [1992] 158 LG Rev R 241 (CA) and R. v. DPP ex p.Kebilene [1993] 3 WLR 972, that no legitimate expectation can override clear statutory provisions.”*

45. Comparable reliance was placed in **Kenya Revenue Authority v Export Trading Company Limited [2022] KESC 31 (KLR)**.
46. To this end, Counsel argued that the Petitioner is not entitled to the relief sought as the Petition is not merited.

### **Analysis and Determination**

47. It is my considered take that the issues that arise for determination in this matter are as follows:
- i. Whether the 1<sup>st</sup> Respondent’s proceedings were res judicata.***
  - ii. Whether the 1<sup>st</sup> Respondent’s conducted the proceedings within its mandate and were lawful.***
  - iii. Whether the 1<sup>st</sup> Respondent’s proceedings violated the Petitioner’s constitutional rights.***
  - iv. Whether the Petitioner’s legitimate expectation was violated by the 1<sup>st</sup> Respondent.***
  - v. Whether the Petitioner is entitled to the relief sought.***

***Whether the 1<sup>st</sup> Respondent's proceedings were res judicata.***

48. *Res Judicata* is the legal principle that conclusively bars the re-litigation of disputes or issue that have been previously heard and finally determined on merits by a competent court between the same parties or their legal representatives.
49. This doctrine is provided for under Section 7 of the Civil Procedure Act, CAP 21 as follows:

*No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.*

50. The Supreme Court in **Kenya Commercial Bank Limited & another v Muiri Cofee Estate Limited & 3 others [2016] KESC 6 (KLR)** regarding this doctrine held as follows:

***“[52] Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of***

***all categories, including issues of constitutional rights...”***

51. Correspondingly, the Supreme Court in **John Florence Maritime Services Ltd (supra)** held as follows:

***“54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.***

***It emerges that, contrary to the respondent’s argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of the Constitution, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.***

***The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is***

**subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):**

**The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”**

52. The Court went on to observe that:

**“59. For res judicata to be invoked in a civil matter the following elements must be demonstrated:**

- 1. There is a former Judgment or order which was final;**
- 2. The Judgment or order was on merit;**
- 3. The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and**
- 4. There must be between the first and the second action identical parties, subject matter and cause of action.”**

53. In the instant case, the Petitioner contended that the issues raised and entertained by the 1<sup>st</sup> Respondent were identical to what had been previously canvassed before the Supreme Court in **Presidential Election Petition No. E005 of 2022**, hence were res judicata and stare decisis. Counsel

submitted that the 1<sup>st</sup> Respondent proceeded to review the Supreme Court findings, in violation of Article 140 of the Constitution and Section 87 of the Elections Act.

54. In rebuttal, the Respondent argued that the allegation of res judicata was misconceived since Article 140 of the Constitution provides a challenge to the election of the president elect yet the core issue before the 1<sup>st</sup> Respondent was whether the Petitioner's actions amounted to gross misconduct in the conduct of that election. The Respondent argued that the Supreme Court Election Petition was introduced as evidence through a witness as part of their testimony and that in any event, elements of res judicata are very well defined and the Petitioner had failed to prove them, in that the parties in the Supreme Court suit were different other than the Petitioner and issues before the Supreme Court were distinct from those that were before the 1<sup>st</sup> Respondent.

55. The evidence Act Cap 80 allows admissibility of judgments in judicial or quasi-judicial proceedings subject to certain conditions. In particular, Section 45 of the Evidence Act states:

***“Judgments, orders or decrees, other than those mentioned in Section 44 of this Act are admissible if they relate to matters of public nature relevant to the inquiry, but such judgments, order or decrees are not conclusive proof of that which they state.”***

56. This means that judgments that relate to important matters of public nature are admissible in judicial proceedings or other lawful tribunals or bodies if the relevance to the inquiry under consideration can be established on condition that they should not be treated as conclusive proof of the contents of the state but as evidence that judgment exists and evidence of what was said in the judgment.
57. The results of Presidential election was not a direct fact in issue before the 1<sup>st</sup> Respondent, in the identical manner as it was before the Supreme Court where the issue was the validity of the presidential election. However, the Judgment of the Supreme Court on the Presidential Petition is certainly an important matter of a public nature. Though not a direct fact in issue before the 1<sup>st</sup> Respondent, the judgment was certainly relevant to the inquiry because the alleged misconduct stemmed from complaints relating to the conduct revolving around the manner the Presidential election was conducted whose factual and legal circumstances the Supreme Court had evaluated and rendered its verdict. The judgment of the Supreme Court could thus admissible in evidence and could be introduced through the testimony of a witness as a relevant fact. It was not legally impermissible for the 1<sup>st</sup> Respondent to make references to the contents of the said judgment provided such references were not presented as conclusive proof of

the facts stated therein but as part of evidential material to be evaluated alongside other evidence before the 1<sup>st</sup> Respondent to reach its own independent findings on the issue that was properly before it.

58. The 1<sup>st</sup> Respondent was pursuant to Section 45 of the Evidence Act permitted to admit and refer to the Judgment of the Supreme Court as a relevant fact but not to treat the judgment as conclusive proof of matters stated therein as the 1<sup>st</sup> Respondent was at liberty to evaluate evidential material before it and reach independent findings on the specific question of the Petitioner's alleged misconduct. Making references to the Supreme Court judgment as a relevant fact did not thus amount to review of the judgment of the Supreme Court on the validity of Presidential election. Whereas Article 140 confers jurisdiction on the Supreme Court to determine the validity of Presidential election, it does not take away the jurisdiction of the 1<sup>st</sup> Respondent to independently inquire into the of the removal of the Petitioner in separate proceedings alleging gross misconduct arising from said election process. The issues are thus not identical since the 1<sup>st</sup> Respondent was not an elections Court and was merely exercising jurisdiction concerning removal proceedings in relation to the Petitioner while the Supreme Court strictly dealt with the validity of the Presidential election.

59. The submission that the Petitions for removal of the Petitioner as a Commissioner of IEBC that were before the 1<sup>st</sup> Respondent are res judicata is therefore misconceived and devoid of any legal or factual basis.

***Whether the 1<sup>st</sup> Respondent's conducted the proceedings within its mandate and were lawful.***

60. The Petitioner contended that the entire impeachment process commencing from the National Assembly to the Petitioner's removal, was unlawful and irregular in violation of the Constitution and her constitutional rights. The Petitioner argued that the four petitions did not have any supporting evidence or exhibits as required under Sections 107, 108, 109 and 110 of the Evidence Act. Further that the petitions did not meet the requirements of Article 50 (2) (b) of the Constitution as read with Section 4 (3) (a) and (g) of The Fair Administrative Action Act.

61. Furthermore, Counsel submitted that the four petitions did not establish any constitutional, statutory or legal basis for the reliefs they sought and thus the 2<sup>nd</sup> Respondent lacked jurisdiction and acted in excess of it in contravention of Section 7 (2) (u) of The Fair Administrative Action Act. The petitions were also faulted for failing to comply with the

requirements of Standing Orders No.223 and 230 of the National Assembly Standing Orders.

62. Counsel also underscored that the 1<sup>st</sup> Respondent proceeded without transmittal documents from the National Assembly in contravention of Article 251 (3) of The Constitution and also without the Articles of Impeachment in violation of Articles 47(2) and 50(2)(b) of the Constitution.
63. Counsel further faulted the 1<sup>st</sup> Respondent for relying on TV evidence which was not produced in accordance with Section 106B, 107,108,109 and 110 of the Evidence Act. Similarly, Counsel noted that the 1<sup>st</sup> Respondent's Report relied on evidence that was not tendered during the proceedings in blatant breach of Articles 50(1) (j) and (k) of the Constitution.
64. In response, the 1<sup>st</sup> Respondent's submitted that its composition is provided under Article 251 of the Constitution and that it acted within its mandate as provided under the **Special Gazette Notice No. 14890 of 2<sup>nd</sup> December 2022**. To discharge its mandate the 1<sup>st</sup> Respondent was empowered to prepare and submit a report and its recommendations and exercise all the powers conferred upon it by law for the proper execution of its mandate. The 1<sup>st</sup> Respondent submitted that it established the Tribunal (Practice and Procedure) Rules, 2022 vide Gazette Notice No.

15196 of 5<sup>th</sup> December 2022, to govern the conduct of its proceedings. As such, in conducting the proceedings, the 1<sup>st</sup> Respondent argued that it was acting within the confines of its mandate under Article 251 of the Constitution.

65. On the question of not meeting the evidential standards, the 1<sup>st</sup> Respondent referred to its Tribunal (Practice and Procedure) Rules, 2022 stipulated that the 1<sup>st</sup> Respondent would not be bound by the strict rules of evidence and its proceedings would be guided by the rules of natural justice.
66. Courts have underscored the duty to abide by the law whenever a public body or Officer is bestowed with the mandate to perform or discharge a function as was emphasized in **Daniel Ingida Aluvaala & another v Council of Legal Education & another [2017] KEHC 2775 (KLR) where** the Court held as follows:

***“13. Public bodies, no matter how well-intentioned, may only do what the law empowers them to do. That is the essence of the principle of legality, the bedrock of our constitutional dispensation, which is enshrined in our constitution. It follows that for the impugned decisions to be allowed to stand, it must be demonstrated that the decision is grounded on law.***

***14. As such, the Respondents actions must conform to the doctrine of legality. Put***

***differently, a failure to exercise that power where the exigencies of a particular case require it, would amount to undermining the legality principle which, is inextricably linked to the rule of law. Guidance can be obtained from the South African case of AAA Investments (Pty) Ltd vs Micro Finance Regulatory Council and another where the court held as follows:***

***“(t)he doctrine of legality which requires that power should have a source in law, is applicable whenever public power is exercised . . . . Public power . . . can be validly exercised only if it is clearly sourced in law”[3]***

***15. Courts are similarly constrained by the doctrine of legality, i.e. to exercise only those powers bestowed upon them by the law.[4] The concomitant obligation to uphold the rule of law and, with it, the doctrine of legality, is self-evident. In this regard, the Respondent is constrained by that doctrine to enforce the law by ensuring that its decisions conform to the relevant provisions of the law governing examinations offered at the Kenya School of Law.***

***16. The respondent has not only a statutory duty but also a moral duty to uphold the law and to ensure due compliance with the law and Regulations...”***

67. The Court citing with approval the Indian case of **Maharashtra State Board -vs- Kurmarsheth & Others (1985) CLR 1083** stated as follows:

***“So long as the body entrusted with the task of framing the rules and regulations acts within the scope of the authority conferred on it in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations.....”***

68. In my considered view, looking at the totality of the arguments raised by the Petitioner against the 1<sup>st</sup> Respondent, this Court notes that the irregularities alleged touch mostly on the admissibility and adequacy of the evidence before the 1<sup>st</sup> Respondent. This approach however appears to overlook one critical fact - **the 1<sup>st</sup> Respondent was empowered by the creating instrument to regulate its own procedure.**
69. When the 1<sup>st</sup> Respondent was put in place, it thereafter published the Tribunal (Practice and Procedure Rules), 2022 in which it clearly specified that it was not necessarily bound by formal rules of evidence but underscored that it would be bound by rules of natural justice. It meant that the 1<sup>st</sup> Respondent’s proceedings were governed by its own self-made rules as long as the rules satisfied the Constitutional benchmarks of fairness, not necessarily what ordinarily applies in Civil, Criminal Procedure or the Evidence Act.
70. It had the latitude to develop its own rules as long as they met the standards of reasonableness and procedural fairness

under Article 47 and fair hearing under Article 50 and by extension, the Fair Administrative Action Act as it is meant to give effect to Article 47 of the Constitution. As long as the rules met these standards, the 1<sup>st</sup> Respondents rules of procedure were good to go, because as already guided by judicial precedent cited above, a body that is entrusted with framing its own rules acts validly so long as those rules bear rational nexus to the object and purpose of the enabling statute and do not violate the constitutional dictates. The Rules of the 1<sup>st</sup> Respondent have not been found by any Court to be unconstitutional.

71. The contention that the exhibits did not meet the evidential test, the absence of transmittal documents and articles of impeachment must thus be assessed based on the 1<sup>st</sup> Respondent's own rules and not the external formalities in other instruments provided that the core principle of fairness in dealing with the Petitioner was not compromised, as in- the Petitioner was given sufficient notice of the allegations, adequate time to respond, an opportunity for the hearing and to adduce and challenge evidence and so on. However, the manner of taking evidence, assessment of the evidence and making

independent findings upon it was a matter governed its own rules as long as constitutional standards were not compromised.

72. In considered view, the totality of alleged irregularities against the 1<sup>st</sup> Respondent that the Petitioner cites do not disclose any violation of Article 47 or 50 of the Constitution. The claim that the 1<sup>st</sup> Respondent conducted itself unlawfully is without proof hence the Petitioner has not established proof of either procedural or substantive unfairness regarding the manner the Tribunal conducted these proceedings.

73. There is no material on record to establish any procedural irregularity on the part of the 1<sup>st</sup> Respondent in following its own rules, the Constitution or the Fair Administrative Action Act. There is no proof of irrationality, illegality or any other form of unlawfulness. This finding is sufficient to dispose of this Petition even without going on to consider the remainder of the issues.

74. I find that the Petition lacks merit and is hereby dismissed.

75. I make no orders as to costs.

***Dated, signed and delivered virtually at Nairobi this 16th day of April, 2026.***

.....

**L N MUGAMBI**

**JUDGE**