



**Okoti v Samboja & 2 others (Petition E078 of 2020) [2026] KEHC 5498 (KLR)
(Constitutional and Human Rights) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E078 OF 2020

LN MUGAMBI, J

APRIL 30, 2026

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

AND

GRANTON GRAHAM SAMBOJA RESPONDENT

AND

KENYATTA UNIVERSITY 1ST INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION . 2ND INTERESTED PARTY

RULING

Introduction

1. The Petitioner in the Petition dated 15th March 2021 challenges the alleged reliance and issuance of false academic certificates by the Respondent in an attempt to deceive the public on his qualifications, so as to advance his ambition to vie for an elective seat in the 2017 general elections.
2. The Petitioner discloses that he had initially filed Constitutional Petition No. 382 of 2017, Ethics and Anti-Corruption Commission v Granton Graham Samboja & Another (Respondents) and Kenyatta University & Another (Interested Parties) which was dismissed by Hon. (RTD) Justice J. A. Makau on the grounds that he had failed to institute the Petition before the election court which has exclusive jurisdiction to hear election disputes.



3. This ruling relates to the Respondent's Notice of Preliminary Objection dated 29th March 2021 against the Petition. The Preliminary Objection is based on the grounds that:
- i. Upon admission by the Petitioner, through his pleadings, the substratum and substantive issues raised in the Application and Petition have recently been adjudicated upon and determined on merit by the Hon. Justice Makau in his ruling delivered on the 11th March, 2021, therefore, this Court does not draw and/or retain jurisdiction to seize and determine this Application and Petition, thus.
 - ii. This Court is a constitutional court and has not been gazetted as an Elections Court under the [Elections Act](#), 2012.
 - iii. Categorical perusal of the reliefs sought derives that the consequential effect thereof is invalidation and/or nullification of the Respondent's gubernatorial election, which is the sole preserve and jurisdiction of special courts mandated to serve as Electoral Courts.
 - iv. Further, the Petition herein seeks interrogation of the qualification and eligibility of the Respondent as an elected gubernatorial candidate this being and comprising of the core issue that was adjudicated and determined by the Hon. Justice Makau.
 - v. Consequently, the Petitioner herein, contrary to the principles and dictates of the principles of stare decisis, purports to by-pass the procedure and provisions of Article 88 (4) (e) of the [Constitution](#), Section 4 (e) of the Independent Electoral and Boundaries Commission's Act as well as Section 74 (1) of the [Elections Act](#) to irregularly seek redress from this Court; in utter disregard to the decision and pronouncement of the Learned Judge in Constitutional Petition 382 of 2017.
 - vi. In this regard, the Hon. Justice Makau, a judge and court of concurrent jurisdiction as this present one, determined and pronounced that this Court does not have jurisdiction to seize and determine such a dispute as it is not properly and legally mandated to exercise the role of an electoral court.
 - vii. Therefore, upon this Court having performed its duty in terms; rendering its determination on the item of jurisdiction to seize and determine an electoral dispute, it draws no further authority or legal competence to re-evaluate this issue by reason that its duties and functions of the original commission have been accomplished unless it is called upon for review or an appeal is preferred.
 - viii. Ideally, the Petitioner, through this present petition, purports to invite this Court to sit on its own appeal contrary to the provisions and tenets of law especially Article 165 (6) of the [Constitution](#).
 - ix. The doctrine of res judicata, an enduring principle of law that prevents the re-opening of a matter before a Court that rendered the final decision thereon, forbids and ousts the jurisdiction of this Court from adjudication and determination of this application.



- x. This Court already exercised its powers in relation to this and in adherence to the principle of finality this Court is bound by its decision which is final and conclusive and cannot be varied by the decision maker.
- xi. At law, merit-based re-engagement by the Court, on a matter that it has already decided or pronounced itself on, is barred.
- xii. Adjustment and variation of one of the parties from the previous Petition to this present one being the Independent Electoral and Boundaries Commission and mere mention of the *Constitution* does not change the nature and character of the suit from an electoral dispute to a constitutional Petition.
- xiii. Essentially, the application and Petition calls upon this Court to sit on appeal of its own decision and determination, by pass a clear laid down procedure for an electoral grievance, items which cannot be allowed to stand as they are bad at law, an abuse of the court process and severe abridgement to procedural substance.
- xiv. Further, such action and/or further action falls afoul of the provision of Article 165 (6) of the *Constitution*.
- xv. In the alternative and without prejudice to the above, to the extent of the item of jurisdiction this Court is functus officio having discharged all its duties and made its determination thereto.

Respondent's Submissions**

- 4. The Respondent in support of its case filed submissions dated 30th April 2021, through its advocate, Ogetto, Otachi and Company Advocates.
- 5. To commence with, Counsel submitted that the Respondent was duly elected and at the time had served over half of his term. Counsel pointed out that while the Petitioner argues that the Petition impugns the validity of the certificate, diploma and decree held by the Respondent as issued by the 1st Interested Party, the real issue in the Petition is predicated upon the gubernatorial electoral process, wherein the Petitioner invites this Court to declare the election of the Respondent as null and void. According to Counsel, this Court cannot consider the issue without applying and referring to the Election Act, thereby rendering the character and nature of the Petition as an election dispute.
- 6. Counsel recapped that this matter was determined by this Court in Constitutional Petition No. 382 of 2017 where it was held that it would be against clear provisions to turn an electoral dispute into a constitutional petition to adjudicate upon the qualification of the Respondent to vie for the gubernatorial seat or overturn the result of an electioneering process.
- 7. Counsel contended that a look at the Petition makes it plain that both its substance and relief sought are election related. On this premise, Counsel argued that this Court lacks jurisdiction to entertain this matter. To buttress this point reliance was placed in *Orange Democratic Movement -vs- Yusuf Ali Mohammed and 5 Others* [2018 eKLR where the Court of Appeal guided that a superior Court that has not been duly designated as an election court does not have jurisdiction to seize and determine a suit pursuant to the provisions of the *Elections Act*.
- 8. Additional reliance was placed on *Owners of the Motor Vehicle "Lilian S" vs Caltex Oil (Kenya) Limited* [1989] KLR, *Kennedy Mold -vs- Rachel Kaid Nyamai & 2 Others* (2018) eKLR, *Mohamed Abdi Mahamud v Ahllled Abdullahi Mohamad & 3 others; Ahmed Ali Muktar* (Interested Party)



- [2019] eKLR and Suleiman Mwamlole Warrakah & 2 others v Mwamlole Tchappu Mbwana & 4 others [2018] eKLR.
9. Moreover, Counsel relying in Section 75(1) of the *Elections Act* as read with Elections (Parliamentary and County Elections) Petition Rules, 2017, argued that designation, gazettment and publishing of a Judge (court) as an election court is the foundation that determines the forum that has jurisdictional competence to hear and determine disputes ensuing from an electoral process. Reliance was placed in Moses Masika Wetangula v Musikari Nazi Kombo & 2 others [2016] eKLR where the Supreme Court guided that the parameters of this jurisdiction are set out in statute (the *Elections Act*) and as such while determining an election matter, a court acts only within the terms of the statute as guided by the *Constitution*.
 10. Further reliance was placed on Jyoti Basu & Others v. Debi Ghosal & Others [1982] AIR 983; [1982] SCR (3) 318 and Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others [2016] eKLR.
 11. Counsel further argued that this Court cannot sit on appeal of its own decision. According to Counsel, the substance of this matter, although the Petitioner seeks to veil and alter the parties, has been adjudicated upon by a Court of similar jurisdiction and rendered itself by stating that this Court does not retain jurisdiction to seize a matter in the nature of an election dispute without proper gazettment by the Chief Justice. As such, Counsel stressed that to attempt to determine this matter, the same would constitute an appeal and not review of an erroneous decision.
 12. Further to this Counsel, argued that the matter is res judicata as the issue has substantially been heard and decided. Thus any recourse therefrom is subject to an appeal and hence not available for reconsideration before the same court that made that determination or one of concurrent jurisdiction. Reliance was placed in Theresa Costabir -vs- Alka Roshanlal Harbanslal Sharma & Another Civil Appeal Number 44 of 2014 where the Court of Appeal held that res judicata seeks to ensure conclusiveness in legal proceedings by barring further legal proceedings based on same issues over the same subject matter, between the same parties or their proxies and this ensures that a party is not vexed twice or forced to fight the same battle twice over the same cause.
 13. Comparable reliance was placed in Sanitam Services (E.A.) Limited v Rentokil (K) Limited & another [2019] eKLR and Mukum Munge v Florence Shingi Mwawana & 2 others [2016] eKLR.

Petitioner's Submissions**

14. The Petitioner filed submissions dated 7th May 2021 and submitted that the preliminary objection is misplaced as the Respondent wrongly avers that the suit is an election petition. The Petitioner asserted that the Petition raises pure constitutional questions not an electoral question.
15. The Petitioner submitted that the Petition primarily revolves around the Respondent's use of false certificates purportedly issued by the 1st Interested Party, to the detriment of an unsuspecting public and in breach of Articles 1, 3(1), 10, 46, 47, 73(2) (a) and 232 of the *Constitution*. Consequently, the Petitioner emphasized that this Court has jurisdiction to entertain this Petition. Reliance was placed in Judicial Service Commission v Gladys Shollei and Another [2014] eKLR where it was held that:

“ [40] Article 23(1) & Article 165(3) (b) of the *Constitution* grants the High Court powers to hear and determine questions involving redress of violations or infringement or threatened violations of fundamental rights and freedoms in the Bill of Rights.”
16. Equal reliance was placed in Nation Media Group Limited vs. Attorney General [2007] 1 EA 261.



17. For this reason, the Petitioner argued that the Court is not functus officio as advanced by the Respondent. The Petitioner pointed out that this Court did not hear the matter on merit in Constitutional Petition No.382 of 2017. Considering this, the Petitioner argued that the Respondent is misleading the Court by stating that he seeks to re-engage the Court to reopen and interrogate a fresh, the merits of Petition 382 of 2017.

18. Reliance was placed in *Bellevue Development Company Limited v Vinayak Builders Limited & Another* [2014] eKLR where it was held that:

“Care should be taken not to inadvertently or otherwise overstretch the application of the concept of functus officio; for, in all senses of the law, it does not foreclose proceedings which are incidental to or natural consequence of the final decision of the court such as the execution proceedings including contempt of court proceedings, or any other matter on which the court could exercise supplemental jurisdiction. Therefore, in determining whether the court is functus officio one should look at the order or relief which is being sought in the case despite that judgment has already been rendered by the court.”

19. Parallel reliance was placed in *Telkom Kenya Limited v John Ochanda* (Suing on his own behalf and on behalf of 996 former employees of Telkom Kenya Limited) [2014] eKLR, *Jersey Evening Post Limited vs Al Thani* [2002] JLR 542 and *Raila Odinga & Others vs. IEBC & Others* [2013] eKLR.

20. The Petitioner as well argued that the Petition is not res judicata based on these facts. Reliance was placed in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, Nairobi CA Civil Appeal No. 105 of 2017 [2017] eKLR where it was held that:

“The bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- a. The suit or issue was directly and substantially in issue in the former suit.
- b. That former suit was between the same parties or parties under whom they or any of them claim.
- c. Those parties were litigating under the same title.
- d. The issue was heard and finally determined in the former suit.
- e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

1st Interested Party’s Submissions**

21. The 1st Interested Party’s submissions are not in the Court file or Court Online Platform (CTS).

2nd Interested Party’s Submissions**

22. The 2nd Interested Party filed submissions dated 24th June 2021 through its Counsel, Jackie Kibogy.

23. Counsel submitted that the nature of the Petition revolves around a question of integrity of the Respondent as a State Officer within the meaning of Chapter six of the *Constitution* due to the use of false academic certificates. Counsel added that existence of the false certificates undermines the principles set out under Articles 10, 27, 35, 43, 46, 47(1), 73 and 232 of the *Constitution*.



24. In light of this, Counsel submitted that the Petition is not an election dispute but based on the Respondent's utilization of false certificates and the danger of their existence to the society. Counsel pointed out that the Petitioner's case was founded on the 2nd Interested Party's investigations.
25. Counsel further rebutted the allegation that the Petition is res judicata as the Petitioner was not in the previous suit. Furthermore, that the issues raised in Constitutional Petition No.382 of 2017 are not the same as those in this suit. That said, Counsel underscored that the issues in the cited suit were not heard and finally determined.
26. Considering this, Counsel argued that the instant Petition does not seek to re-determine the issues. Counsel stressed that the authenticity of the Respondent's certificates and issue of integrity has not been adjudicated upon. Counsel argued that this Court should not leave the parties without a remedy by disposing of the matter without hearing the parties.
27. On this premise, the 2nd Interested Party argued that this Court has the requisite jurisdiction to entertain the matter. As such, Counsel urged the Court to determine the matter.
28. In Counsel's view, the Respondent lacks the personal integrity expected of a state officer owing to the forged academic certificates and is therefore in breach of Article 73(2)(a) of the Constitution.

Analysis and Determination**

29. The singular issue for determination herein is whether the

Whether the Respondents' Preliminary Objection is merited.**
30. The threshold of a Preliminary Objection was summarized in the celebrated case of Mukisa Biscuit Manufacturers Ltd -vs- Westend Distributors Ltd, (1969) EA 696 page 700 where the Court held as follows: -

“So far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary objection may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit, to refer the dispute to arbitration.

A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop.”
31. Likewise, the Court in *Dismas Wambola v Cabinet Secretary, Treasury & 5 others* [2017] KEHC 8777 (KLR) observed as follows:

“...a preliminary objection may only be raised on a “pure question of law.” To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.

In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct



from a question of fact, which must be answered by reference to facts and evidence as well as inferences arising from those facts.”

32. Furthermore, the Court in *Nthia v Kenyatta University* [2025] KEHC 13220 (KLR) summarized as follows:

“24. Going by the case law on what a Preliminary Objection entails, one deduces that a proper Preliminary Objection is identifiable by depiction of the following four major characteristics:

- i. Must be on a pure point of law and not a contest of facts;
- ii. It is argued on assumption that what is pleaded by the opposite side is correct;
- iii. cannot be raised if any fact has to be ascertained by evidence or if what is sought is an exercise of judicial discretion;
- iv. If successful, it must be capable of disposing of the entire suit.”

33. The Respondent’s Preliminary Objection assails the instant Petition on three major fronts, that first, that the Petition before the Court is, in substance an election dispute masked as a constitutional petition; second, that the Petition is res judicata on the basis of Constitutional Petition No.382 of 2017 and third, that the Petition is a disguised appeal before a Court of concurrent jurisdiction.

34. The grounds in my considered view raise proper points of law, because, if successfully argued, they are could be dispositive of the matter without a hearing on merits.

35. The Supreme Court in *Mwiciigi & 14 others* (supra) opined as follows:

“The role of the Independent Electoral and Boundaries Commission (1st respondent) is provided for in article 88(4) of the [Constitution](#), as follows:

“The Commission is responsible for...

- (e) 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....”

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



Supreme Court, if admitted by the latter, pursuant to article 163 (4) (a) or (b).

115. The *Elections Act* confers jurisdiction upon Magistrates Courts to determine the validity of the election of a member of a County Assembly; section 75 (1A) of the Act provides that:

“A question as to the validity of the election of a member of a county assembly shall be heard and determined by the Resident Magistrate’s Court designated by the Chief Justice.”

116. The Act, in addition, provides for the appropriate remedies that Courts may grant, in the following terms (section 75):

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

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

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

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

118. On such a foundation of principle, we hold it to be the case that whereas the Court of Appeal exercised jurisdiction as an appellate electoral court, it had not been moved as such, in accordance with section 85 A of the *Elections Act*, and relevant provisions of the *Constitution*. The respondents had moved the appellate court on the basis that they were aggrieved by the High Court’s decision in judicial review proceedings, in which that court had declined jurisdiction. This in our view, would have been a proper case for the appellate court to refer the matter back to the High Court, with appropriate directions.

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.”

36. 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. This position was affirmed by the Supreme Court at Paragraphs 82 of its judgment in *Lemanken Aramat -v- Harun Meitamei Lempaka & 2 others* [2014] eKLR where it was stated:

“(82) The original jurisdiction of the High Court in criminal and civil matters, by Article 165(3) (a) of the Constitution, is unlimited. In addition, the High Court has a special jurisdiction in electoral matters, conferred by the Constitution, and given effect under the Elections Act: this is the jurisdiction to determine any question as to whether a person has been validly elected as a Member of Parliament (Article 105(1) (a) of the Constitution). This jurisdiction is activated upon a declaration by the authorized electoral body (IEBC) that a particular person has been returned as Member of Parliament, when there is a challenge to that electoral declaration (Article 87(2) of the Constitution).

(84) The very basis of the High Court’s jurisdiction in respect of Parliamentary-election disputes, lies in Articles 87(2) and 105(1)(a) of the Constitution...”

37. The Respondent alleged that although the Petition is presented as an attack on the credibility of his academic certificates, the real issue is the eligibility to vie for the elective post using the alleged questionable academic certificates. As such, the Respondent argued that this is an election dispute hence this Court lacks jurisdiction to entertain it.

38. The Petitioner and 2nd Interested Party on the other hand, refuted this claim stating that the Petition raises authentic constitutional issues touching on the Respondent’s personal integrity as a state officer.

39. By way of a background, the Petitioner in the instant suit relied on the 2nd Interested Party’s investigations and letter dated 30th May 2017 to the Chairman of the Independent Electoral and Boundaries Commission (IEBC). The Petitioner avers that IEBC was notified by the 2nd Interested Party in the letter that the Respondent had falsified a certificate, diploma certificate,



degree certificate, and KCSE result slip and presented forged certificates for enrolment for a master's program at Kenyatta University.

40. Particularly, these were: a Bachelor of Commerce (Human Resource Management) Degree, a Human Resource Management Diploma and a Certificate in Project Management, all allegedly awarded by the 1st Interested Party. The Petitioner also noted that the 2nd Interested Party revealed that the 1st Interested Party during the investigations disclosed that the Respondent was not their student and certifications were fake. The 1st Interested Party however noted that the Respondent had applied for and was admitted for an MBA (Entrepreneurship). In light of this, the Petitioner seeks the following reliefs:
- i. A declaration that the following documents are fakes and of no consequence in law:
 - a. A Bachelor of Commerce (Human Resource Management) Degree (Second Class Honours Upper Division) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the Twenty Sixth Day of June in the year Two Thousand and Nine.
 - b. A Human Resource Management Diploma (Credit) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the fifteenth Day of December in the year Two Thousand and Five.
 - c. A Certificate in Project Management (Pass) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the Sixth day of December in the year Two Thousand and Two.
 - ii. A declaration that any actions or omissions which howsoever and by whosoever have been undertaken based upon or taking into consideration, or on the basis of, or are founded on the fake certificate, or are in any way related to the impugned certificate, diploma, and degree purportedly issued by Kenyatta University to Granton Graham Samboja are invalid, null and void ab initio.
 - iii. A declaration that by uttering the impugned fake certificate, diploma, and degree purportedly issued by Kenyatta University, Granton Graham Samboja violated Articles 1, 3(1), 10, 46, 47, 73(2)(a), and 232 of the Constitution, among others.
 - iv. An order quashing the following documents:
 - a. A Bachelor of Commerce (Human Resource Management) Degree (Second Class Honours Upper Division) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the Twenty Sixth Day of June in the year Two Thousand and Nine.
 - b. A Human Resource Management Diploma (Credit) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the fifteenth Day of December in the year Two Thousand and Five.
 - c. A Certificate in Project Management (Pass) allegedly awarded by Kenyatta University to Granton Graham Samboja at a congregation held at the University on the Sixth day of December in the year Two Thousand and Two.



- v. An order compelling Granton Graham Samboja to pay to the Petitioner the costs of this suit.
 - vi. This Court gives any other orders required to advance the cause of justice and the rule of law in this case.
41. In Constitutional Petition No.382 of 2017, the gravamen of the Petition revolved around the qualification and the 1st Respondent's eligibility to contest in the gubernatorial race as a Governor for Taita Taveta County in the General Elections held on 8th August 2017, and whether the IEBC failed to perform its mandate under the Constitution with respect to the Petitioner's integrity verification Report and in allowing the 1st Respondent to participate in the said elections. The Petitioner therein (EACC) sought the following reliefs:
- i. A declaration that the IEBC in exercising its mandate of managing elections is bound by the Constitution and national legislation.
 - ii. A declaration that Articles 88(4)(f) and 193(1)(b) of the Constitution of Kenya and Section 4(f) of the Independent Electoral and Boundaries Commission Act, 2011 bestow upon the IEBC a duty to inquire into the eligibility of candidates for election and to register only those candidates who meet the legal requirements for the positions that they aspire to hold.
 - iii. A declaration that by dint of Article 193(1)(b) a report in the nature of an integrity verification report submitted by EACC notifying the IEBC that the 1st Respondent does not satisfy the educational requirement prescribed by section 22 of the Elections Act, 2011 bestowed upon the IEBC an obligation to inquire into the veracity of the report or in any other lawful manner satisfy itself of the eligibility of the 1st Respondent as a candidate for the position of Governor, County Government of Taita Taveta in the 2017 General Elections.
 - iv. A declaration that the IEBC failed to discharge its responsibility to undertake further investigations or any other judicious inquiry in respect of the 1st Respondent relative to the integrity verification report submitted to it by the Petitioner.
 - v. A declaration that the IEBC failed to discharge its constitutional obligations under Article 88(4)(f) of the Constitution in the manner envisaged under Article 88(5) of the Constitution by registering the candidature of the 1st Respondent for the position of Governor of Taita Taveta in the 2017 General Elections in the face of the Integrity report submitted to it by the Petitioner
 - vi. indicating that the 1st Respondent did not have a Degree from Kenyatta University or any University recognized in Kenya and consequently did not meet the educational requirements prescribed by section 22(2) of the Elections Act, 2011 law for the said position.
 - vii. A declaration that the 1st Respondent's political rights under Article 38(3)(c) of the Constitution are not absolute and are subject to the eligibility criteria stipulated under Article 193(1)(b) of the Constitution.
 - viii. A declaration that the 1st Respondent is not eligible for election as a Governor in the general elections slated for 8th August 2017.
 - ix. A declaration that any election of the 1st Respondent to the position of Governor of the County of Taita Taveta or of any other County in the Republic of Kenya without meeting the educational and ethical qualifications prescribed by law for candidates for such an office is null and void.



- x. A permanent injunction barring the 1st Respondent to the position of Governor of the County of Taita Taveta or of any other County in the Republic of Kenya without meeting the educational and ethical qualifications prescribed by law for candidates for such an office is null and void.
 - xi. A permanent injunction barring the 1st Respondent from holding any public office for breaching the ethical requirements of Chapter Six of the *Constitution* of Kenya.
 - xii. Such further and other reliefs that the Court may deem just and expedient to grant.
 - xiii. Costs of the Petition.
42. This suit as can be gleaned from the Ruling dated 11th March 2021 was disposed of by a Preliminary Objection, which was upheld by the Court. The Court noted as follows:
- “ 42. Further of great importance and concern the veracity of the documents presented by the 1st Respondent to the 2nd Respondent are yet to be conclusively interrogated and determined, so as to make the matter ripe for determination before the court of law.
 - 43. In view of the findings herein above I find the Petitioner’s failure to institute the Petition before the Election Court is a fundamental omission which goes to the root of the Petition and which cannot be allowed to stand as this court lacks jurisdiction to hear and determine this Petition.
 - 44. The upshot is that the 1st Respondent’s Preliminary Objection dated 24/1/2018 is meritorious and the same is upheld. The Petitioner’s Petition is struck out for want of jurisdiction with costs.”
43. I have examined carefully Constitutional Petition No. 382 of 2017. This Court (differently constituted declined to hear the Petition on the grounds that it ought to have been presented as electoral dispute because the Respondent’s academic certificates touched on his eligibility to contest the gubernatorial seat).
44. The Petitioner herein in the instant case challenges the Respondent’s academic certificates basing his reliance on the 2nd Interested Party’ findings which was a participant and took similar stance in the earlier Petition but which was dismissed because it was not instituted as an election Petition. This is the clearest indication that Petitioner is attempting to re-introduce an electoral dispute that this Court has already declined to entertain for lack of jurisdiction but which this Court is able to unmask. This Petition is, but an electoral ghost meant to haunt this Court for declining the initial Petition. It is a clever attempt to breathe life into the matter that the Court has declined previously on solid legal grounds by merely repackaging it, and even if the parties have changed, end game is not different.
45. The legal position need not overemphasized, once a Court declares that it lacks jurisdiction, it cannot proceed to determine the same matter even if though masked as a fresh issue. The Court cannot arrogate itself powers it has disowned just because the matter is differently presented.
46. The viable recourse, lay not in filing a fresh Petition, but in pursuing an appeal before the Court of Appeal through the 2nd Interested Party, who was the primarily party in Constitutional Petition No. 382 of 2017.



47. It is my considered position therefore that this Court having made a definitive finding that it lacks jurisdiction to entertain a similar Petition, it is divested of any further power to entertain this matter which is identical in character and substance.

48. The Respondent's preliminary objection is upheld. The Petition is hereby struck out.

49. I make no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF APRIL, 2026

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L N MUGAMBI

JUDGE

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Constitution Petition No. E078 of 2021 Ruling

