



**Kawaka & another v Ouma & 3 others (Civil Appeal
E168 of 2022) [2022] KECA 623 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KECA 623 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL E168 OF 2022
PO KIAGE, HA OMONDI & F TUIYOTI, JJA
JULY 14, 2022**

BETWEEN

LOICE AKOTH KAWAKA 1ST APPELLANT

ROSELINE AKOTH AWINO 2ND APPELLANT

AND

OSCAR OLUOCH OUMA 1ST RESPONDENT

ORANGE DEMOCRATIC PARTY 2ND RESPONDENT

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 3RD
RESPONDENT**

RETURNING OFFICER NDHIWA CONSTITUENCY 4TH RESPONDENT

*(An Appeal from the Judgment and Orders of the High Court of Kenya at
Homa Bay (Waweru Kiarie, J.) Dated 6th July, 2022 in Petition No. 1 of 2022)*

JUDGMENT

- 1 We have carefully considered the memorandum of appeal, the record of appeal, the written submissions and authorities filed by the parties herein.
- 2 We have also paid careful attention and given due consideration to the oral arguments made by learned counsel who appeared before us, namely; **Mr. Ochiel Dudley** for the appellants and **Mr. Muganda** for the 3rd and 4th respondents, who also support the appeal, as well as **Mr. Duncan Okatch** for the 1st respondent and **Ms. Masaai**, for the 2nd respondent who are opposed to it.
- 3 Our decision on the appeal is that the learned **Kiarie J**, erred in allowing with costs the petition that was before him, quashing the decision of the 3rd Respondent's Dispute Resolution Committee made on 17th June, 2022 and issuing a *writ mandamus* against the 3rd Respondent.



4 We accordingly allow this appeal and set aside in entirety the learned Judge's judgment and decree dated 6th July, 2022. We substitute therefor an order dismissing the petition, but with no order as to costs. The parties herein shall bear own costs of this appeal.

5 This decision is rendered pursuant to **Rule 34 (7)** of the *Court of Appeal Rules, 2022*, the reasons wherefor shall be given on **29th July, 2022**.

DATED AND DELIVERED AT KISUMU THIS 14TH DAY OF JULY, 2022.

P.O. KIAGE

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JUDGE OF APPEAL

H. OMONDI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL.

I certify that this is a true copy of the original.

SIGNED

DEPUTY REGISTRAR.

