



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAKURU**  
**PETITION NO.2 OF 2020**

**HASSAN WILLY LESUPEN**

**LOITMEDO MPAINE**

**PHILIP LETUYA LEDIDAH**

**ROSIAN LESANIDO .....PETITIONERS**

**VERSUS**

**THE NATIONAL GOVERNMENT CONSTITUENCIES**

**DEVELOPMENT FUND (NG-CDF) BOARD.....1<sup>ST</sup> RESPONDENT**

**THE SELCTION PANEL OF THE NATIONAL GOVERNMENT**

**CONSTITUENCIES DEVELOPMENT FUND COMMITTEE**

**OF THE BARINGO SOUTH CONSTITUENCY....2<sup>ND</sup> RESPONDENT**

**AND**

**SAMUEL KIPROTICH BURGEI .....1<sup>ST</sup> INTERESTED PARTY**

**GEOFREY KIPKEBUT ..... 2<sup>ND</sup> INTERESTED PARTY**

**ZAKIA JEMUGE KIPTUISANG.....3<sup>RD</sup> INTERESTED PARTY**

**HELLEN CHEPTOO.....4<sup>TH</sup> INTERESTED PARTY**

**CHRISTINE JEPKEMBOI KANDIE.....5<sup>TH</sup> INTERESTED PARTY**

**EUNICE TARKOK KIPROTICH .....6<sup>TH</sup> INTERESTED PARTY**

**JUSTINE KIPRONO CHEBIL.....7<sup>TH</sup> INTERESTED PARTY**

**MARIAMU NTAUSIAN LEKISEMON.....8<sup>TH</sup> INTERESTED PARTY**

**JUDGEMENT**

The petitioners are seeking the following Orders;

1. A declaration that the appointments of the 1<sup>st</sup> process of selection, nomination, co-option and to 8<sup>th</sup> interested parties by the respondents to the National Government Constituencies Development Fund Committee for the Baringo South Constituency and the

determination of the dispute of the petitioners as submitted to the 1<sup>st</sup> respondent on 23<sup>rd</sup> December, 2019 over the selection, nomination and appointments thereto as communicated in the letter dated 6<sup>th</sup> January, 2020 are in breach of articles 10, 47, 56 and 232 of the Constitution of Kenya, 2010 and null and void ab initio.

2. An order of Certiorari do issue to remove into this court and quash the *selections, nominations, co-option and appointment of the 1<sup>st</sup> – 8<sup>th</sup> interested parties* by the respondent to the National Government Constituencies Development Fund Committee for the Baringo South Constituency as submitted to National Assembly on 3<sup>rd</sup> December, 2019 approved on 5<sup>th</sup> December, 2019 embodied and published in the Kenya Gazette Notice dated 30<sup>th</sup> December, 2019 as Notice No.49 of 2020 and the determination of the dispute submitted on the 23<sup>rd</sup> December, 2019 to the 1<sup>st</sup> respondent as embodied in the letter dated 6<sup>th</sup> January, 2020.

3. Costs be awarded to the petitioners.

### **The petition.**

The petition is that the petitioners are adult residents of Baringo South and members of the Ilchamus ethnic group working for gain therefrom. The 1<sup>st</sup> respondent is a body corporate under section 14 of the National Government Constituencies Development Fund Act (the Act), the 2<sup>nd</sup> respondent is constituted under regulation 5(3) of the National Government Constituencies Development Fund Regulations, 2016 by the 1<sup>st</sup> respondent to select candidates for the position of the National Government Constituencies Development Fund Committee for the Baringo South Constituency (the Fund Committee). The interested parties are selected, nominated and appointed persons to the Fund Committee.

The petition is also that the Ilchamus are a minority and marginalised group and fall within the provisions of article 56 of the Constitution, 2010 and they are accorded recognition as such by judicial pronouncements in **Rangal Lemeiguran & others versus AG & others [2006] eKLR**.

The petitioners and other members of the public are served by the Fund Committee as established under section 43 of the Act and with the election of a new member of parliament for Baringo South Constituency in the year 2019 vacancies in the Fund Committee arose. The 2<sup>nd</sup> respondent was constituted by the 1<sup>st</sup> respondent to select candidates for the positions of the Fund Committee and on 9<sup>th</sup> September, 2019 invited applications and also wrote to the umbrella body for persons with disability to nominate a suitable candidate to the committee.

Applications were submitted including from Marigat Sub-County Persons with Disability Organisation who confirmed its nomination to the 2<sup>nd</sup> respondent on 26<sup>th</sup> September, 2019.

The petition is also that the petitioners being from the Ilchamus community learnt that among the applicants from its community were the following;

- a. George Lejason Lekumbe – person with disability
- b. Dalmus Lengwapi Naiweti – male youth
- c. Benedict Bildon Kateiya – male youth
- d. Mariamu Ntausian Lekisemon – female
- e. Julia Letangule – female
- f. Josphat Kitiboi Lesuno Lesenet – person with disability
- g. Jackson Lacombe male
- h. Philistine Sauroki – female

The petitioners then learnt of the appointment of the interested parties and aggrieved by the selection, nomination and appointment process lodged a dispute with the 1<sup>st</sup> respondent pursuant to section 56 of the Act on 23<sup>rd</sup> December, 2019. For interim reliefs, the petitioners filed **Nairobi ELRC Misc. No.166 of 2019** seeking for orders of injunction against the interested parties herein from assuming office and upon hearing the court held that the selection of the interested parties was illegal and the matter be heard at Eldoret on 4<sup>th</sup> February, 2020. While the matter was pending resolution the 1<sup>st</sup> respondent proceeded to gazette the interested parties as members of the Fund Committee via Gazette Notice No.49 of 2020 dated 30<sup>th</sup> December, 2019.

The 1<sup>st</sup> respondent by letter dated 6<sup>th</sup> January, 2020 responded to the petitioners dispute submitted to it by summary dismissal and making conclusions that ethnicity was not a consideration or qualification for assumption of any public office but section 43(2)(g) of the Act the Board has now co-opted the 8<sup>th</sup> interested party to be a member of the committee in order to fulfil the requirements of article 10 of the Constitution, 2010 for being a resident of Ilchamus Ward in Baringo South Constituency.

The 1<sup>st</sup> respondent also made a conclusion that the nominee on disability be the 5<sup>th</sup> interested party because George Olekumbe had submitted

unauthentic documents and failed to demonstrate the irregularity. That the nomination and appointments were transparent, open and fairly competitive as advertisements had been publicly displayed and given the required 14 days for responses. That there was a regional balance in the appointment and the Ilchamus ethnic group had been catered for. That the 1<sup>st</sup> respondent was *functus officio* as the National Assembly had already approved the nomination of the interested parties and the Board could not nullify the nominations as it would be acting *ultra vires* section 56 of the Act.

The petition is also that the petitioners are aggrieved by the actions of the respondents in the selection, nomination, appointment and co-option of the interested parties to the membership of the Fund Committee and for dealing with the dispute lodged over the same on the basis that a breach of the provisions of articles 10, 47, 56 and 232 of the Constitution, 2010 on the reasons that the persons selected and appointed come from one ethnic group being the Tugen while Baringo South Constituency has a composition of several ethnic groups being the Ilchamus, Gikuyu, Turkana, Luo, Kalenjin tribes, Luhya, Pokot among others and hence do not reflect the national diversity contrary to article 10 of the Constitution, 2010; the co-option after complaint to the 1<sup>st</sup> respondent of only Ilchamus community member which are a minority and marginalised group living within Baringo South Constituency as against 7 other members of the Tugen community fails to comply with article 10 of the Constitution, 2010; there was violation of regulation 5(6) of the Fund Regulations by failing to take into account special interest groups such as the Ilchamus; the appointment of Christine Jepkemboi Kandie as representative of persons living with disabilities violates section 43(2)(d) of the Act as she was not the one nominated by the registered group representing persons with disabilities in the constituency and the actual nominee was George Olekumbe; there was no transparency as the notice issued for application was for 14 days instead of 21 days required under clause B.4(1) of the Public Service Commission Code of regulations;

there was violation of article 232(1)(h) of the constitution, 2010 as 7 persons all from the Tugen community and one (1) Ilchamus community member were appointed and the public was never informed of who had applied *vies-a-vies* those selected contrary to article 232 of the constitution.

The selection and appointment of the interested parties failed to meet a regional balance. Baringo South Constituency has 4 wards being Marigat, Mochongoi, Makutani and Ilchamus while the seven out of eight members are from two wards, Marigat and Mochongoi leaving Makutani and only one member from Ilchamus contrary to article 56 of the constitution, 2010.

The outgoing committee had two persons from the Ilchamus community.

The 1<sup>st</sup> respondent breached article 47 of the constitution by failing to hear a dispute submitted by the petitioners. There was no fairness and there were erroneous conclusions and the petitioners seek for declarations that the selection, nomination, co-option and appointment of the interested parties into the Fund Committee be found as null and void and orders do issue quashing the same.

The petition is supported by the affidavit of Hassan Willy Lesupen one of the petitioners.

### **1<sup>st</sup> respondent**

The 1<sup>st</sup> respondent response to the petition is that the petitioners are members of the Baringo South Constituency and are served by the National Government CDF Committee established under section 43 of the Act.

Members of the public made applications to fill the various positions of the Baringo South CDF Committee, the 1<sup>st</sup> respondent and not aware of any nomination by Marigat sub-county persons with disability organisation to the 2<sup>nd</sup> respondent on 26<sup>th</sup> September, 2019.

The 1<sup>st</sup> respondent does not supervise the 2<sup>nd</sup> respondent as Regulation 5(6) of the Fund Regulations gives the selection panel autonomy in conducting the selection exercise. The petition that various members of the Ilchamus Community applied for various positions to the Fund Committee is without evidence.

There is no evidence that the petitioners are members of the Ilchamus community and the court is not able to investigate or confirm such allegations of ethnicity. The selection and appointment and gazettelement of the Fund Committee members is not based on ethnicity but qualifications set out under Regulation 6 of the Act.

The petitioners filed **ELRC Misc. No.166 of 2019** before filing a compliant with the Board contrary to section 56(1) and (3) of the Act and the petition should be struck out. The dispute ought to have been referred to the Board in the first instance. To state that there as arbitration is misleading and the Court Order dated 24<sup>th</sup> December, 2019 only reached the 1<sup>st</sup> respondent on 30<sup>th</sup> December, 2019 and upon a consideration, resolutions were passed which were communicated to the petitioners. The petitioners thus moved the court prematurely and before exhaustion of mandatory dispute resolution mechanisms.

The 1<sup>st</sup> respondent was not involved in the selection of the interested parties as alleged. There is no breach of the constitution and the orders sought cannot issue against the 1<sup>st</sup> respondent as there is no prayers seeking for the cancellation of the gazettelement of the members of the Fund Committee and the suit is in vain and should be dismissed with costs.

### **2<sup>nd</sup> respondent**

The 2<sup>nd</sup> respondent did not enter appearance or file a response.

### **Interested parties**

The interested parties did not enter appearance or file a response.

On 9<sup>th</sup> March, 2020 the petitioners and the 1<sup>st</sup> respondent attended court for hearing directions and agreed to address the petition by way of written submissions. Timeline was agreed upon but only the petitioners complied.

There are no written submissions by the respondents.

The petitioners submitted that article 10 and 232 of the constitution requires all persons to comply with national values and principles of good governance with inclusiveness, non-discrimination and protection of the marginalised as well as ensure the values and principles of public service apply the high standards and representation of diverse community in appointments at all levels in the public service. The respondents failed to adhere to these provisions in the selection and appointment of the interested parties to the Fund Committee.

The co-option of one member of the Ilchamus community was after a complaint was filed with the 1<sup>st</sup> respondent but this is against the appointment of seven members from the Tugen community and which fails the threshold of article 10 of the constitution as held in **Community Advocacy and Awareness Trust & others versus AG Petition No.243 of 2011** and also failed to meet the provisions of Regulation 5(6) which requires the selection to the Fund Committee to take into account age, gender and special interest groups and regional balance in accordance with section 43 of the Act.

The petitioner submitted that the selection, nomination and appointment of the interested parties was not open, transparent as the advertisement done provided less period of 14 days instead of 21 days contrary to Public Service Commission Code of Regulations as held in **Wambua Maithya versus Pharmacy & Poisons Board; Pharmacy Society of Kenya & 2 others (interested parties) [2019] eKLR**

that the appointing authority ought to have taken into account the policies expressed in the relevant regulations, Public Service Commission Code of Regulations.

Article 232 of the constitution was not observed when the respondents allowed the appointment of seven out of 8 members from the Tugen community against a population of several diverse communities with the Ilchamus being the marginalised community. In **Benson Riitho Mureithi versus J. W. Wakhungu & 2 others Petition No.19 of 2014** the court held that in making public appointments the constitutional criteria must apply. In this case there was no balance where Baringo South Constituency has four wards and only two wards comprising the Tugen community were represented with only one person from the Ilchamus community from the third ward and which failed the threshold of article 232 of the constitution.

The petitioners also submitted that the 1<sup>st</sup> respondent breached article 47 of the constitution when it failed to address the complaint submitted to them on the merits and proceeded to dismiss it without giving the petitioners a right to a hearing. As a marginalised community, the Ilchamus community have a constitutional right to participate in the affairs of its community including representation in the Fund

Committee as held in **Rangal Lemeiguran & others versus the AG & Others [2006] eKLR**.

### **Determination**

The issues which arise for determination herein are whether the selection, nomination, co-option and appointment of the interested parties to the Fund Committee should be declared null and void; whether the same should be quashed; and who should pay costs.

As noted above, only the 1<sup>st</sup> respondent attended herein and filed a response.

The 1<sup>st</sup> respondent is defined as the body established under section 14 of the Act and its mandate set out under section 16 thereof to ensure timely and efficient disbursement of funds to every constituency; and receive and address complaints that may arise from the implementation of the Act among other functions.

The 2<sup>nd</sup> respondent is defined in the petition as a body constituted under Regulation 5(3) of the Act but the court reading of the Act is that the 2<sup>nd</sup> respondent is established under the provisions of section 43(3) of the Act and comprising a panel for the selection of members of the Fund Committee at the constituency level such as the Baringo South Constituency. Upon the panel undertaking its role of selecting nominees, the 1<sup>st</sup> respondent body must ensure the selected meet the constitutional and statutory threshold for onward transmission for approval and placement with the National Assembly for gazettelement.

Section 43 (3) of the Act thus provides as follows;

*1. The seven persons referred to in subsection (2) (b), (c), (d) And (e) shall be selected in such manner and shall have such qualifications as the Board may, by Regulations, prescribe*

In this regard, it is the role of the 1<sup>st</sup> respondent to ensure adherence to the statutory requirements for the selection, nomination and appointment of persons from each constituency to the Fund Committee. The criteria of such selection, nomination and appointment is from persons under section 43(2) as follows;

*(2) Each Constituency Committee shall comprise of—*

a. The national government official responsible for co-ordination of national government functions; (b) two men each nominated in

accordance with subsection (3), one of whom shall be a youth at the date of appointment:

c. two women nominated in accordance with subsection (3), one of whom shall be a youth at the date of appointment:

d. one persons with disability nominated by a registered group representing persons with disabilities in the constituency in accordance with subsection (3):

e. two persons nominated by the constituency office established under Regulations made pursuant to the Parliamentary Service Act;

f. the officer of the Board seconded to the Constituency Committee by the Board who shall be an ex officio member without a vote.

g. one member co-opted by the Board in accordance with Regulations made by the Board.

Under subsection 43(3) (2) (b), (c), (d) and (e) of the Act the 1<sup>st</sup> respondent must ensure that the persons/list of persons forwarded to it for onward transmission to the National Assembly for approval and gazettelement comprise;

a. male;

b. male youth;

c. female;

d. Female youth;

e. one persons with disability nominated by a registered group representing persons with disabilities in the constituency;

f. person nominated by the constituency office; and

g. person nominated by the constituency office.

Therefore under the provisions of section 43 of the Act, there must be seven persons comprising two males and two females with each being a youth, a person with a disability and two other persons nominated by the constituency office. The respondent is represented in the selection panel by a seconded officer in an *ex officio* capacity and co-opts a member as well.

The petition thus premised on the alleged violations of articles 10, 47, 56 and 232 of the Constitution, 2010 and section 56 of the Act on the grounds that in the selection, nomination and appointment of the interested parties the respondents failed to ensure national values and principles of good governance, failed to ensure fair administrative action when a dispute was submitted to them following the selection, nomination and appointment of the interested parties, failed to ensure the Ilchamus community as a marginalised community were included in the Fund Committee and also failed to ensure the values and principles of public service were guaranteed in the selection, nomination and appointment of the Fund Committee members. The respondents have the burden of proof to show and demonstrate to the court that the constitutional provisions were not violated and that the complaint submitted by the petitioners pursuant to section 56 of the Act was addressed on the merits.

By letter dated 29<sup>th</sup> November, 2019 the 1<sup>st</sup> respondent wrote to all Fund Account Managers with *Guidelines o Appointment of Members of the National Government Constituency Development Fund Committees* and outlined the provisions of section 43 of the Act and further directed that;

Further, Regulation 6 requires that for one to serve as a member of the NG-CDF Committee, he or she must be (a) a citizen of Kenya; (b) ordinarily resident voter in the constituency; (c ) be able to read and write, and to communicate in English and Kiswahili; (d) meet the requirements of chapter six of the Constitution of Kenya; (e ) is available to participate in activities of a constituency committee; (f) for the youth nominee, he/she must have attained the age of eighteen years but below the age of thirty-five years ...

The eligibility criteria thus set, the procedure for appointment of the Fund Committee members was then addressed starting with the renewal of committee members whose term had expired and were eligible and interested for renewal and based on factors that their previous term of service was good. For appointment of new members, the provisions of section 43(2) were to be followed;

The selection of new members shall proceed as follows;

i. in case of a Person Living with Disability, the Fund Account Manager shall write to a registered group representing persons with disabilities in the constituency requesting for nomination of one person with disability to sit in the NG-CDF Committee. The nominating organisation shall be requested to provide specific description of the disability to enable the Board and NG-CDF to plan for necessary support to facilitate full participation of the nominee to various activities of the Fund.

ii. Invite applications from interested and qualified members of the public for appointment to the Constituency Committee. The invitation (format annexed herewith) shall be widely publicised to reach all parts of the constituency.

iii. The Selection Panel shall consider the applications and select four suitable persons taking into account age, gender, special interest

groups and regional balance.

iv. ...

v. Submit the list of seven nominees (four from the Selection Panel, one from registered group representing person with disabilities in the constituency and two nominated by the Constituency office) to the *Board within seven days* ...

vi. ...

Therefore, under its statutory mandate under section 43(2) of the Act read with subsection (3) thereof, the 1<sup>st</sup> respondent gave the modalities to be followed in the selection and nomination of fund members for appointment and upon which there would be appointment and publication through the Kenya Gazette. The selection panel therefore has delegated mandate flowing from the 1<sup>st</sup> respondent. The primary mandate stems from the 1<sup>st</sup> respondent to ensure the set criteria is adhered to and in accordance with the law.

In undertaking its mandate as public body, the 1<sup>st</sup> respondent and all other persons and offices and its officers are bound by constitutional values and principles pursuant to article 10 and 232 of the constitution, 2010.

In the case of **Institute of Social Accountability & Another versus National Assembly & 4 Others High Court, [2015] eKLR**, the court summed up these principles as follows;

.....this Court is enjoined under Article 259 of the Constitution to interpret the Constitution in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and that contributes to good governance. In exercising its judicial authority, this Court is obliged under Article 159(2) (e) of the Constitution to protect and promote the purpose and principles of the Constitution. ...

The national values and principles of governance set out in Article 10(2) of the Constitution include democracy and participation of the people, good governance, transparency and accountability and non-discrimination. Participation of the people in governance is therefore a constitutional imperative.

The right to information, participation by all diverse communities is imperious. In the case of **Nubian Rights Forum & 2 others versus Attorney General & 6 others; Child Welfare Society & 9 others (Interested Parties) [2020] eKLR**

.. in the conduct of public affairs includes engaging in public debate and dialogue with elected representatives at public hearings. But that is not all; it includes the duty to facilitate public participation in the conduct of public affairs by ensuring that citizens have the necessary information and effective opportunity to exercise the right to political participation. ... Thus construed, there are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation ... The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided. In this sense, public involvement may be seen as ?a continuum that ranges from providing information and building awareness, to partnering in decision-making.? This construction of the duty to facilitate public involvement is not only consistent with our participatory democracy. ... [underline added]

In this petition, the petitioners case that they reside in Baringo South Constituency and are a marginalised community and pursuant to article 56 of the Constitution, 2010 their interests ought to have been taken into account is not contested by the respondents. The fact of one (1) such community members being included in the Fund Committee after a complaint had been submitted with the 1<sup>st</sup> respondent is equally not challenged in any material way save to assert that the available dispute resolution mechanisms were not exhausted a matter since addressed by the court.

As held in the case of **Consortium for the Empowerment & Development of Marginalized Communities & 2 others versus Chairman the Selection Panel for Appointment of Chairperson & Commissioners to Kenya National Human Rights Commission & 4 others [2013] eKLR**, upon the challenge that marginalised communities were not included in the nominated candidates, the court held that the respondents and selection panel was able to submit and make a representation as to the manner and list of persons included in the submitted list and which included persons from marginalised communities, minority communities and persons with disabilities. And hence there was compliance with articles 10, 27, 56 and 232 of the constitution.

In this case, the respondents, despite setting out a criteria upon which the 2<sup>nd</sup> respondent and selection panel for Baringo South Constituency was to apply in the selection, nomination and for the appointment of Fund Committee members have not addressed the adherence to the same in the response to the petition. To claim that the 1<sup>st</sup> respondent mandate ended with receiving the list of persons interviewed and forwarded by the selection panel is not what is contemplated under section 43 of the Act read together with section 57(3) (d) of the Act thereof. The overriding principles outlined at Article 10, 56 and 232 of the Constitution, 2010.

The evidence that Baringo South Constituency comprise four wards of Marigat, Mochongoi, Mkutani and Ilchamus while the seven out of eight members to the Fund Committee are from two wards, Marigat and Mochongoi leaving Makutani and only one member from Ilchamus is not challenged. In its own regulations, the 1<sup>st</sup> respondent failed to ensure *the Selection Panel shall consider the applications and select four suitable persons taking into account age, gender, special interest groups and regional balance.*

In defence, the 1<sup>st</sup> respondent has also not made any submissions with regard to compliance with its regulations as to the Fund Member with disability and on the basis that the selection panel was required to *submit the list of seven nominees (four from the selection panel, one from registered group representing persons with disabilities in the constituency and two nominated by the Constituency office) to the Board within seven days...*

The 1<sup>st</sup> respondent therefore defeats its own mandate donated under the constitution and the Act to remove duty from itself to any other party and assert that it is an independent body and had no control over the 2<sup>nd</sup> respondent's mandate in the selection and nomination of persons to the Fund Committee as members.

Upon the submissions of a complaint to the 1<sup>st</sup> respondent by the petitioners, these matters ought to have been addressed on the merits. By letter dated 23<sup>rd</sup> December, 2019 the petitioners through their advocate lodged a complaint with regard to the selection, co-option, nomination and appointment of the Fund Committee members with the 1<sup>st</sup> respondent. It was contested that Baringo South Constituency has diverse communities and the appointed members did not reflect this diversity as they all belonged to one community, the Tugen. The petitioners noted the Ilchamus as a marginalised community under the provisions of article 56 of the Constitution, 2010 were not included in the list of appointments and the failure to ensure diversity and regional balance violated regulation 5(6) of the 1<sup>st</sup> respondent's regulations, the member with disabilities appointed did not meet the threshold set out under section 43(20(d) of the Act, and that there was breach of article 232 of the constitution, 2010.

This led to filing of **ELRC Misc. Application No.166 of 2019** on 24<sup>th</sup> December, 2019 and upon the court considering the same directed that;

1. The Court has considered the application at the end of the day; the court finds the selection illegal and had the power to set aside the selections.
2. ...

By letter dated 6<sup>th</sup> January, 2020 the complaint by the petitioners to the 1<sup>st</sup> respondent was dismissed.

The background to orders issued on 24<sup>th</sup> December, 2019 stood. The subsequent actions by the respondents in the publication of the Fund Committee members were null and void *ab initio*.

By notice of complaint lodged by the petitioners on 23<sup>rd</sup> December, 2019 the 1<sup>st</sup> respondent was thus made aware of matters therein addressed and to proceed to cause the National Assembly to approve the contested list of Fund Committee members was in violation of Article 47 of the Constitution, 2010.

It is not a defence that the petitioners have not pleaded for the *cancellation of the gazette of the Members of Baringo South Constituency NGCDF Committee* as with knowledge of the complaint pending before it, the 1<sup>st</sup> respondent moved without good basis the same having been declared by the court as illegal and that *the court finds the selection illegal and ... set aside the selections* where the 1<sup>st</sup> respondent felt aggrieved but such orders and directions of the court as of 24<sup>th</sup> December, 2019 they ought to have moved with haste to address the same through the due process. This is not the case here. To proceed and have the Fund Members publicised was without the due process and the same is lost in the illegality.

**The petition is therefore found with merit and is allowed in the following terms;**

- 1. A Declaration is hereby entered that that the selection, nomination, co-option and appointment of the interested parties herein by the 1<sup>st</sup> respondent to the National Government Constituencies Development Fund Committee for Baringo South Constituency was in breach of the Constitution, 2010 and is therefore null and void;**
- 2. The appointment of the interested parties herein to the National Government Constituencies Development Fund Committee for the Baringo South Constituency as submitted to the National Assembly and Published in Kenya Gazette Notice No.49 of 2020 dated 30<sup>th</sup> December, 2019 is hereby quashed and thus revoked;**
- 3. Petitioners are awarded costs.**

**Orders accordingly.**

**Dated and delivered electronically this 12<sup>th</sup> June, 2020.**

**M. MBARU**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship the Chief Justice on 15<sup>th</sup> March, 2020 the Judgement herein shall be delivered to the parties via e-mails this 12<sup>th</sup> June, 2020.

**M. MBARU JUDGE**