



Mutuku & another v Governor, County Government of Makueni & 2 others (Constitutional Petition E003 of 2024) [2025] KEHC 12038 (KLR) (11 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CONSTITUTIONAL PETITION E003 OF 2024**

TM MATHEKA, J

AUGUST 11, 2025

IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 37, 47, 48, 159, 165, 184, 185, 195, 196, 232, 258 & 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF FAILURE BY THE COUNTY ASSEMBLY OF MAKUENI TO TAKE LEGISLATIVE AND OTHER MEASURES TO IMPLEMENT THE PRINCIPLE THAT NO MORE THAN TWO THIRDS OF THE MEMBERS OF THE ELECTIVE OR APPOINTIVE BODIES SHALL BE OF THE SAME GENDER

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE & PROCEDURE RULES, 2013

AND

IN THE MATTER OF VIOLATION OF THE FAIR ADMINISTRATIVE ACTIONS ACT, 2015 AND THE URBAN AREAS AND CITIES ACT

BETWEEN

JUSTUS MUTUNGA MUTUKU 1ST PETITIONER

JOSEPH KIOKO MUTISYA 2ND PETITIONER

AND

THE GOVERNOR, COUNTY GOVERNMENT OF MAKUENI 1ST RESPONDENT

THE COUNTY ASSEMBLY OF MAKUENI 2ND RESPONDENT

THE MAKUENI COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT



JUDGMENT

1. The undated petition was filed on 19/03/2024 and the prayers sought are;
 - a. A declaration that the process of recruiting the members of Wote Municipality board with disregard of the one third gender rule is unprocedural, unconstitutional, null and void for being in violation of Articles 10 and 27 of *the Constitution* and compel the Respondents to take appropriate administrative, regulatory, good governance and other necessary steps to ensure gender issues are adhered to as provided.
 - b. A declaration that the board members whom have served a 5-year term are not eligible for re-appointment as provided for in *urban areas and Cities Act* of 2011 (amended 2019).
 - c. A permanent injunction to restrain the 1st Respondent whether by themselves, their agents, servants, employees or any person acting for and on their behalf from appointing, swearing in of the nominees of the Wote Municipality board.
 - d. An order of prohibition restraining the 1st Respondent from discrimination in appointment of Wote Municipality board members contrary to Article 27 of *the Constitution* 2010.
 - e. Any other or further order or relief that this honorable court deems fit to grant.
 - f. The costs of this petition be borne by the Respondents.
2. In the undated affidavit in support of the undated application filed on 19/03/2024, the 1st Petitioner stated that he was relying on the affidavit in support of the petition but there is no such affidavit in the physical file and the Judiciary Case Tracking System (CTS). Be that as it may, the omission is not fatal as per Rule 11 of *the Constitution* of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules 2013 (Mutunga Rules) which provides that; '(1) The petition filed under these rules may be supported by an affidavit, (2) If a party wishes to rely on any document, the document shall be annexed to the supporting affidavit or the petition where there is no supporting affidavit.' Clearly, the language used in the rules is permissive and acknowledges that a supporting affidavit can be omitted.
3. The Respondents' opposed the petition through a Replying Affidavit sworn by Dr. Justin Kyambi on 09/05/2024. He deponed that he is the County Secretary of the County Government of Makueni with the full authority of the 1st and 3rd Respondents to swear the affidavit on their behalf. He deponed that on or about August 2023, after the tenure of the previous Wote Municipality Board (the Board) expired, the 1st Respondent initiated the process of recruiting new members. That, letters were sent out to various associations to nominate members as required by the law. A copy of the letter is exhibited as JK1. That, after receiving the names and before appointment, the 1st Respondent sent them to the County Assembly for approval after which the 1st Respondent appointed them and issued a gazette notice. That the County Executive Committee (CEC) member responsible for cities and urban areas was also nominated. The Kenya Gazette extract and nomination letter are exhibited as JK 2 & 3 respectively.
4. He deponed that when the process started, three positions had been filled by the following persons by virtues of their offices;
 - a. Dr. Sonia Nzilani (female)- being the CEC member responsible for cities and urban areas.
 - b. Everlyn Mutua (female) – Municipal Manager.



- c. Daudi Charo (male) – being Chief Officer responsible for urban development.
5. He deponed that the members who were nominated for approval were;
- a. Benjamin Masungwa (male)
 - b. Romeo Ndeveni (male)
 - c. Benjamin Wambua Mutua (male)
 - d. Paul Maundu Mutua (male)
 - e. Everlyn Mulewa Kimuli (female)
 - f. Angela Kiamba (female)
6. He deponed that after approval of the names and appointment, the Board is currently constituted as follows;

Female Members	Male Members
1. Everlyn Mulewa Kimuli (chairperson)	1. Benjamin Masungwa
2. Felistus Kamene Mutune- being the representative as nominee of the CEC member responsible for cities and urban areas.	2. Romeo Ndeveni
3. Angela Kiamba	3. Benjamin Wambua Mutua
4. Everlyn Mutua – Municipal manager	4. Daniel Kisyanga
	5. Paul Maundu Mutua

7. He deponed that the Board is properly constituted with 5 men and 4 women and has surpassed the one-third gender rule. That, the process of constituting the Board is regulated by National Government Legislation where procedure is clearly elaborated. That, the 3rd Respondent was not involved in filling the vacancies which existed at that particular point and is therefore wrongly joined in these proceedings.
8. He deponed that the private sector was involved through the letter inviting them to send nominees by the 1st Respondent. That, had the 1st Respondent used another procedure other than the one stipulated in the Act, it would have violated the very same laws the Petitioners claim to be enforcing.
9. The petition was canvassed through written submissions.

Submissions by the Petitioners

10. It was submitted that under Article 185 of *the Constitution*, the 2nd Respondent (County Assembly) is mandated to vet members of the Board but it has remained mum on the matter. That, the 1st Respondent (the Governor) appointed Mr. Romeo Ndeveni to the Board while in the knowledge that he is already in gainful employment as a protocol officer thus injurious to the conflict of interest as enshrined in chapter six. That, Mr. Romeo Ndeveni was also serving in the previous Board contrary to the terms of engagement in the *Urban Areas and Cities Act*.
11. It was submitted that Mr. Romeo Ndeveni will be earning two separate salaries and other allowances hence not fit to hold any public office as his conduct is short of the provisions of chapter six of *the Constitution*. That, the dual appointment is also contrary to Article 77 of *the Constitution*.



12. It was submitted that the Board is a creature under section 14 of the Urban Area and Cities (Amendment) No. 3 of 2019 hence its composition ought to comply with *the Constitution*. That, as currently constituted, the Board results in discrimination against women, youth and persons with disability. That, the County Assembly failed to fulfill its mandate as it was bound to ensure Constitutional compliance by the Governor while approving the nominations of persons for appointment.
13. It was submitted that the perpetuation of substantive inequality is also a violation of the Wote Municipality Residents right to dignity guaranteed under Article 27 of *the Constitution*. That, human dignity is one of the national values and principles under Article 10. Reliance was placed on William Musembi -vs- Moi Education Centre [2014] eKLR where it was held that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
14. It was submitted that Article 27(8) is an elaboration of article 27(6) which stipulates that the state must take measures including affirmative action to redress past discrimination. That, the state has a duty to ensure full participation of these groups of persons in the affairs of the state which is not limited to counties. That, *the Constitution* is replete with provisions that guarantee persons historically disadvantaged are represented in state organs exercising power for and on behalf of the people of Kenya.
15. It was submitted that there was no proper advertisement for these positions to allow other interested persons to apply and be competitively appointed. That, the Governor has failed to indicate the persons who represent the youth and people with disabilities in the Board hence inflicting injury to Articles 54 and 55 of *the Constitution*.
16. It was submitted that Article 10 of *the Constitution* binds all state organs, state officers, public officers and all persons whenever they apply or interpret *the Constitution*, enact, apply or interpret any law, make or implement any public policy decision, to national values and principles of governance which include participation of the people, human dignity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized, good governance, integrity, transparency and accountability and sustainable development.

Submissions by the Respondents

17. It was submitted that the process of the recruitment of members of the board is set out under the Urban Areas and Cities (Amendment) Act, 2019 where urban areas are categorized into cities, municipalities and towns. That, on 16/09/2022, through Gazette Notice No. 11075, the Governor pursuant to Article 184 of *the Constitution* as read with section 20 of *Urban Areas and Cities Act*, 2011 (amended 2019) and the Wote Municipal Charter, 2018, transferred various functions which were then being performed by respective county departments to the Municipality of Wote with effect from 01/01/2022.
18. It was submitted that in August 2023, after the tenure of the first Board expired, the Governor initiated the process to recruit new members of the Board as guided by section 14 of the Urban Areas and Cities Amendment Act, 2019.
19. The issues for determination were identified to be;
 - a. Whether the board of the Wote Municipality was lawfully and procedurally recruited and appointed; and



- b. Whether the appointment of the members of the board of the Wote Municipality adhered to the two-thirds gender rule.
20. On whether the Board was lawfully and procedurally recruited and appointed, it was submitted that the Governor initiated the procedure laid out in section 14 of the Urban Areas and Cities Amendment Act, 2019 by first sending out requests for nomination to various associations to nominate members for appointment. That, upon receipt of the names of the nominated persons from the various associations, the Governor forwarded the names to the 2nd Respondent for approval as required by law. That, the County Assembly approved the names of the nominated persons and forwarded them back to the Governor. That on 11/03/2024, through Gazette Notice (No. 3058), the Governor appointed the new members of the Board.
21. It was submitted that as at 11/03/2024, three positions had been filled by the CEC member for cities and urban areas, municipal manager and Chief Officer for urban development by virtue of the offices held. That in April 2024, the County Executive Committee was reshuffled and the CEC member for cities and urban areas, Dr. Sonia Nzilani, was moved to a different docket and replaced by Mr. Nicholas Masila Nzioka.
22. It was submitted that in order to honour the two-thirds gender rule, Mr. Nicholas Masila Nzioka appointed Felistus Kamene Mutune to act as his representative in the Board as provided for under section 14 (2) (a) of the Urban Areas and Cities (Amendment) Act, 2019. Consequently, it was submitted that the recruitment and appointment of the members of the board was procedural and lawful.
23. As to whether the appointment adhered to the two-thirds gender rule, it was submitted that after the transfer of Nicholas Masila Nzioka to the department, he nominated Felistus Kamene Mutune as his nominee. That, the Board is properly constituted with five (5) men and four (4) women thereby surpassing the two-thirds gender rule.
24. It was submitted that compliance with the two-thirds gender rule is a mathematical calculation where $1/3$ is 0.33. That, in our case, the ratio is $4/9$ which is 0.44 hence the Respondents surpassed the constitutional threshold of 0.33 by 0.11. Reliance was placed on *Federation of Women Lawyers Kenya (FIDA-K) & 5 Others -vs- Attorney General & Anor* [2011] eKLR where the court stated:
- “...In order to comply with the Constitutional requirements, it is alleged JSC was under a duty to ensure that in the final analysis of its recommendation no gender fell below 33.3% and no gender exceeded 66.7%. It is contended that in the line of mathematical reality, $1/3$ of 7 is 2.3 and $2/3$ of 7 is 4.7 therefore JSC should have considered that to avoid reducing the numbers below the constitutional minimum and avoid exceeding the constitutional maximum, the 2.3 ought to have been rounded off to 3 and 4.7 ought to have been rounded off to 4 which would have resulted in a Constitutionally compliant ratio.”
25. It was submitted that the 3rd Respondent is wrongfully joined in this petition as the process of appointing members of a board of a municipality is clearly stipulated in law hence there is no place where the 3rd Respondent was to be involved in filling the vacancies which existed at that particular point.
26. It was submitted that the Governor and County Assembly have honored the National Values and Principles of Governance that are provided for under Article 10 of *the Constitution* by ensuring that the procedure for recruitment and appointment of the members of the board was above board and was strictly guided by the Urban Areas and Cities Amendment Act, 2019.



27. That the Governor and County Assembly have also honored the provisions of Article 27 (3) of *the Constitution* by ensuring the recruitment and appointment of five (5) men and four (4) women to the board.
28. It was submitted that this matter is not a Constitutional petition in all respects and that despite citing the various provisions of *the constitution*, the Petitioners have failed to specify the manner in which the Respondents have violated those provisions. That, the alleged failure to follow the laid down procedures of law, unlawful recruitment and appointment of the members of the board of the Wote Municipality is a matter of evidential facts requiring proof which has not been provided as held in the case of *Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR.
29. It was submitted that the Petitioners have also failed to provide any form of evidence that Mr. Romeo Ndeveni, who serves as a current member of the board is in gainful employment of the Government of Makueni County. That they did not adduce any proof of this allegation as no material was placed before the trial court to enable it conclude as such. Reliance was placed on *Nyakwana -vs- Cleophas Bwana Ongaro* [2015] eKLR and Section 107 (1) of the *Evidence Act*, CAP 80. It was contended that he who alleges must prove and the said Romeo Ndeveni was not joined in these proceedings hence he cannot be condemned unheard. Reliance was placed on *Evans Otieno Nyakwana -vs- Cleophas Bwana Ongaro* [2015] eKLR where the court stated:
- “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the *Evidence Act* (Chapter 80 of the Law of Kenya).”
30. It was submitted that there has been no prejudice suffered by the people who the Wote Municipality serves by virtue of the recruitment and appointment of the members of the board as alleged by the Petitioners. That the constitutional rights of the residents of Wote have not been infringed in any way the Petitioners have failed to provide any evidentiary proof of the alleged violation.
31. It was submitted that in making a decision to revoke the appointments made by the Governor, the Court should consider whether the decision will be proportional to the rights of the large community of Wote Municipality as opposed to individual rights of the Petitioner.
32. I have carefully considered the Petition, the affidavit in support of the Notice of Motion, the response and rival submissions. The following issues arise for determination;
- a. Whether the Petition raises any constitutional question to warrant intervention by this court.
 - b. Whether the appointment of members of Wote Municipality Board adhered to statutory and constitutional requirements.
 - c. Whether the members of the Board were eligible for re-appointment.

Analysis & Determination

Whether the Petition raises any constitutional question to warrant intervention by this court.

33. The Respondents submitted that this matter is not a Constitutional petition in all respects and that despite citing the various provisions of *the Constitution*, the Petitioners have failed to specify the manner in which the Respondents have violated those provisions.



34. Under Article 165 (d) of *the Constitution*, this court has jurisdiction to entertain any matter that challenges the Constitutionality of actions taken by any person, State or State organ. The article provides;

“Subject to clause (5) the High Court shall have – (d)Jurisdiction to hear any question respecting the interpretation of this Constitution, including the determination of; ii)the question whether anything said to be done under the authority of this Constitution or of any law in inconsistent with or in contravention of this constitution.”

35. The petition has raised questions of whether the appointment of the board members adhered to Constitutional requirements hence the court can entertain it.

Whether the appointment of members of Wote Municipality Board adhered to statutory and constitutional requirements.

36. The composition and appointment process of Board members of a municipality is provided for by section 14 of the *Urban Areas and Cities Act*, Cap 275 Laws of Kenya (the Act) which provides that;

14.

- (1) A board of a municipality shall consist of nine members appointed by the county governor with the approval of the county assembly.
- (2) The members of the board appointed under subsection (1) shall be constituted as follows—
 - (a) the county executive member for the time being responsible for cities and urban areas or his representative;
 - (b) three members who shall be appointed by the county governor, with the approval of the county assembly;
 - (c) four members who shall be nominated by an association and appointed by the county governor, with the approval of the county assembly;
 - (d) the chief officer responsible for urban development; and
 - (e) the municipal manager appointed under section 28 who shall be the secretary of the board and an ex officio member of the board.
- (3) The four members of the board of a municipality specified under subsection (2) (c), shall be nominated by —
 - (a) an umbrella body representing professional associations in the area;
 - (b) an association representing the private sector in the area;
 - (c) a cluster representing registered associations of the informal sector in the area; and
 - (d) a cluster representing registered neighborhood associations in the area.
- (4) The county governor shall, while appointing the members of the board, ensure gender equity, representation of persons with disability, youth and marginalized groups.



- (5) The county governor shall while considering the nominated members identified by the organizations specified under subsection (2), require the organizations to produce—
 - (a) signed minutes as evidence of an accountable process of nomination;
 - (b) evidence of compliance with statutory obligations; and
 - (c) vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.
37. S. 14(3) was to give effect to Article 184 of *the Constitution*
38. Out of the nine members of the Board prescribed by the Act, it is evident that three of them had already been identified as the CEC member for the time being responsible for cities and urban areas, the chief officer responsible to urban development and the municipal manager. It therefore means that the number of members set for appointment by the Governor are seven. Out of the seven members, four are supposed to be nominated by the associations named in section 14(3) of the Act (supra) that is appointees to represent the professionals, the private & informal sectors & neighborhood associations.
39. The Respondents exhibited letters dated 07/08/2023 to show that they contacted the said associations formally and requested them to forward their respective nominations. However, there is no correspondence from the alleged associations with their names of their proposed representatives. The said letters are not even signed or stamped to show that they were actually received by the respective associations. In that regard the 1st respondent did not avail the evidence upon which this court could draw the conclusion that that four of the Board members were nominated by the associations named in section 14(3) of the Act. Consequently, the evidence presented by the Respondents does not show that Section 14 (3) of the Act was strictly adhered to in recruitment of the Board members.
40. According to gazette notice No. 3058 of 11/03/2024, the seven members appointed by the Governor with the approval of the County Assembly were;
 - a. Benjamin Masungwa
 - b. Romeo Ndeveni
 - c. Benjamin Wambua Mutua
 - d. Daniel Kisyinga
 - e. Paul Maundu Mutua
 - f. Everlyn Mulewa Kimuli
 - g. Angela Kiamba
41. The additional two members by virtue of their offices were;
 - a. Felistus Kamene Mutune – CEC for cities and urban areas
 - b. Everlyn Mutua – Municipal Manager
42. Article 27 (8) of *the Constitution* provides for the two- third gender rule principle. In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Article 175(c) states that no more than two-thirds of the members of representative bodies in each county government shall be of the same gender



43. The board has four women and five men; hence this has been complied with.
44. Article 54(2) of *the Constitution* provides that; “The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.” This provision is echoed in section 14(4) of the Act (supra) which mandates the county governor to representation of persons with disability, in appointing members of the Board.
45. Similarly, the law specifically requires that there be representation of youth and marginalized groups. Failure to so would amount to violation of the principle of non- discrimination under Article 27 of *the Constitution*.
46. In the gazette notice that was supplied by the Respondents, except for the gender the appointees, there is nothing before this court to demonstrated compliance with these Constitutional and statutory requirements . There is no knowing whether there is representation of persons with disability, the youth or marginalized groups.
47. The Constitutional implementation of the 1st respondents’ statutory mandate in the appointments required him to take guidance from *the Constitution* from which the principles of gender equity, representation of persons with disability, youth and marginalised groups are drawn. In doing so he was bound by the national values set out under Article 10 (1) &2 of *the Constitution* which provides that;
- “The national values and principles of governance in this Article bind all state organs, public officers and all persons whenever any of them
- a. Applies or interprets this constitution,
 - b. Enacts, applies or interprets any law, or
 - c. Makes or implements public policy decisions
48. “The national values and principles of governance include;
- a. patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
 - b. human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
 - c. good governance, integrity, transparency and accountability; and sustainable development.
49. . There is a reason why the words human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination appear in the same sentence with the protection of the marginalized; and why article 174 (e) provides that one of the objectives of devolution is to protect and promote the interests and rights of minorities and marginalised communities;
50. S. 14(3) of the Act gives effect to Article 184 of *the Constitution* which states inter alia : Urban areas and cities.
- (1) National legislation shall provide for the governance and management of urban areas and cities and shall, in particular—
 - (a) establish criteria for classifying areas as urban areas and cities,
 - (b) establish the principles of governance and management of urban areas and cities; and



- (c) provide for participation by residents in the governance of urban areas and cities (emphasis mine)

51. The Constitutional edict for public participation, transparency and accountability meant that the 1st respondent would be able to demonstrate how the appointees were arrived at and the process that was followed to ensure compliance with *the Constitution*.
52. Consequently, I found no evidence that the Respondents adhered to the principles of transparency and accountability in application of the Act. While it is the burden of the Petitioner to demonstrate the alleged violations of *the Constitution* by the Respondents, I am of the considered view that the 1st respondent being the duty bearer in this matter had the obligation to demonstrated with sufficient evidence that he had complied with *the Constitution* and the statute. That is what *the Constitution* expects.
53. Regarding the issue of Romeo Ndeveni, I agree with the submissions by the respondents that since he was not a party to these proceedings it would unfair and just to deal with allegations issues that were directly personal to him. The Petitioners made allegations against as an individual but did not see it fit to join him in the proceedings. He too has the right to be heard and especially because the issues raised could lead adverse orders against him.
54. I am also in agreement with the Respondents that from the totality of the materials placed before court, the 3rd Respondent has no role play in appointment of the Board. However, the Petitioners may have applied Rule 4(1)(a) of the Mutunga Rules which provides that; “Where the petitioner is in doubt as to the persons from whom redress should be sought, the petitioner may join two or more respondents in order that the question as to which of the Respondent is liable, and to what extent, may be determined as between all parties.”
55. However , the membership of the Board were the subjects of this Petition and any orders regarding them would affect the functioning of the Board. It was safe for the petitioners to join the Board to avoid a situation where the Board would come saying that the orders of this court would affect its functions yet it was not a party.
56. That aside, from the foregoing no evidence was placed before me to show that when the Board was constituted the 1st Respondent adhered to statutory and Constitutional requirements.

Whether the members of the Board are eligible for re-appointment.

57. This is not a constitutional issue per se but in my view, there is no harm in dealing with it so as to exhaust all the issues. Section 15 of the Act provides that; “A member of a board shall hold office for a term of five years, on a part-time basis.” The use of mandatory language in the provision implies that members should hold office for one term only hence not eligible for re-appointment.

Disposition:

58. The Petition sought the following:
- i. A declaration that the process of recruiting the members of Wote Municipality board with disregard of the one third gender rule is unprocedural, unconstitutional, null and void for being in violation of Articles 10 and 27 of *the Constitution* and compel the Respondents to take appropriate administrative, regulatory, good governance and other necessary steps to ensure gender issues are adhered to as provided.



- ii. A declaration that the board members whom have served a 5-year term are not eligible for re-appointment as provided for in urban areas and Cities Act of 2011 (amended 2019).
- iii. A permanent injunction to restrain the 1st Respondent whether by themselves, their agents, servants, employees or any person acting for and on their behalf from appointing, swearing in of the nominees of the Wote Municipality board.
- iv. An order of prohibition restraining the 1st Respondent from discrimination in appointment of Wote Municipality board members contrary to Article 27 of the Constitution 2010.
- v. Any other or further order or relief that this honorable court deems fit to grant.
- vi. The costs of this petition be borne by the Respondents

47. Article 23 (3) of the Constitution provides for the remedies available ;

In any proceedings brought under Article 22, a court may grant appropriate relief, including

—

- (a) a declaration of rights;
- (b) an injunction;
- (c) a conservatory order;
- (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
- (e) an order for compensation; and
- (f) an order of judicial review

48. Having considered everything as above the following are the final orders;

- i. On the first prayer, the same is declined as the evidence shows that the Board consisted of 4 women and five men. Gender equity was complied with.
- ii. The 2nd prayer, a declaration is not required as there is a specific provision of the law, s. 15 that clearly states : A member of a board shall hold office for a term of five years, on a part-time basis.
- iii. The 3rd prayer had been over taken by events .
- iv. Prayer 4 is allowed as prayed. An order of prohibition be and is hereby issued restraining the 1st Respondent from discrimination in the appointment of Wote Municipality board members contrary to Article 27 of the Constitution 2010. The 1st Respondent be and is hereby is directed to comply with the statutory and Constitutional requirements with respect to the said appointments.
- v. For prayer 5: A declaration be and is hereby issued that the process of recruiting the members of the Wote Municipality Board was unconstitutional and unprocedural and is null and void
- vi. Each party to bear its own costs .

DATED, SIGNED AND DELIVERED VIA CTS THIS 11TH AUGUST 2025

MUMBUA T MATHEKA



JUDGE

Petitioners in person

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Respondents' Advocate

Office of the County Attorney

County Government of Makueni

