



Aoko & another v County Government of Uasin Gishu & 8 others (Constitutional Petition E008 of 2023) [2025] KEHC 11801 (KLR) (7 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11801 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION E008 OF 2023
RN NYAKUNDI, J
AUGUST 7, 2025**

BETWEEN

EVANS ODHIAMBO AOKO 1ST PETITIONER

DANCAN ODHIAMBO ARUM 2ND PETITIONER

AND

THE COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

**THE MEMBER OF COUNTY ASSEMBLY KIPLOMBE
WARD 2ND RESPONDENT**

ENOCK MUTAI 3RD RESPONDENT

DICKSON KIPTANUI 4TH RESPONDENT

MARY WANJIKU 5TH RESPONDENT

JOSEPH MELLY 6TH RESPONDENT

JACKSON KEMBOI 7TH RESPONDENT

TITO KOIYET 8TH RESPONDENT

REUBEN SERONEY 9TH RESPONDENT

RULING

1. Before court is a petition dated 17th July 2023 seeking the following remedies against the Respondents:
 - a. A declaration that the nomination process conducted on 26/06/2023 was unconstitutional and therefore null and void.



- b. An Order compelling the 1st and 2nd Respondents to prepare, schedule and conduct fresh nominations.
 - c. An Order prohibiting the 1st and 2nd Respondents and their agents and/or any persons howsoever acting under their instructions from vetting, appointing and/or swearing the 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents to serve in the office of Project Identification Committee Member-kiplombe Ward.
 - d. An Order quashing the vetting, approval, appointment and swearing of 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents in the office Project Identification Committee Member-kiplombe Ward.
 - e. Costs be provided for.
 - f. Any other relief, orders, writs, declarations and directions that this Honorable court may deem appropriate, fair just and fit to grant
2. The petition is based on the following Articles of *the constitution*:
- a. Article 1(1) of *the constitution* of Kenya pronounces the supremacy of *the constitution* and provides that sovereign power belongs to the people of Kenya and shall be exercised only in accordance with *the Constitution*.
 - b. Article 2(1) of *the constitution* of Kenya pronounces the supremacy of *the constitution* and provides that *the constitution* binds all person and state organs at both levels of government.
 - c. Article 3 of *the constitution* stipulates that every person has an obligation to respect, uphold and defend *the constitution*.
 - d. Article 6 of *the constitution* stipulates that the territory of Kenya is divided into Counties which are distinct and independent and shall conduct mutual relations on the basis of consultation and cooperation.
 - e. Article 10 sets out a myriad of national values and principles of governance in Kenya which includes;
 - a. The rule of law.
 - b. Participation of the people.
 - c. Human dignity.
 - d. Human dignity.
 - e. Equity social justice.
 - f. Human rights.
 - f. Article 19(1) & (2) of *the Constitution* of Kenya asserts that the Bill of Rights is an integral part of Kenya's democratic state and is the framework of social, economic and cultural policies and 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 protection of all human beings.
 - g. By a dint of the provisions of Article 20(1) of *the constitution*, bill of rights applies to all laws and binds to all state organs and all persons.



- h. Article 20 (2) *the constitution* of Kenya stipulates that every person shall enjoy rights, shall enjoy the rights and fundamental freedoms in the bill of rights to the greatest extent consistent with the nature of the right and fundamental freedoms.
- i. Article 22 as read with Article 258 of *the Constitution* of Kenya asserts that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by a person acting on behalf of another person who cannot act in their own name, a person acting as a member of, or in the interest of, a group or class of persons, a person acting in the public interest or an association acting in the interest of one or more of its members.
- j. By dint of Article 23(1) as read with provisions of articles 22 and 258 of *the constitution*, this High court has the authority, power, jurisdiction and mandate to enforce and protect rights and fundamental freedoms in the bill of rights and that in doing so the Honorable court is empowered under sub article 3 of Article 23 of *the constitution* to grant appropriate reliefs stated above.
- k. Article 27 of *the Constitution* of Kenya asserts that every person is equal before the law and has the right to equal protection and equal benefit of the law which includes full and equal enjoyment of all rights and fundamental freedoms, it further asserts that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social sphere.
- l. Article 33(1) of *the Constitution* of Kenya stipulates that every person has the right to freedom of expression which includes the freedom to seek, receive or impart information or ideas and in the exercise of the right to freedom of expression.
- m. Article 35 of *the Constitution* of Kenya further provides that every person has the right of access to information held by the state and held by any other person and required for the exercise or protection of any right or fundamental freedom
- n. Article 38 of *the Constitution* of Kenya states that every citizen has a right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under this Constitution.
- o. According to Article 47 of *the Constitution* of Kenya, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair and if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- p. By dint of Article 48 of *the Constitution* of Kenya 2010, The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.
- q. Article 50(1) of *the Constitution* of Kenya provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
- r. Article 54 (2) of *the Constitution* further 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.



Decision

3. This decision is based on the provisions of the constitution being Art 50 on fair trial rights which includes that a trial must begin and be concluded without unreasonable delay the same constitution on Art 159 states that justice shall not be delayed for delayed justice is justice denied. The legal frame on exercise of discretion to dismiss a suit or a petition for want of prosecution hinges on the principles on the cases of Paul Wanjohi Mathenge v Duncan Gichane Mathenge [2013] eKLR the Court of Appeal while referring to other authorities observed as follows:

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In Henry Mukora Mwangi v Charles Gichina Mwangi-Civil Application No. Nai 26 of 2004, this Court held: -

“It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in Mwangi v Kenya Airways Ltd. [2003] KLR 486 in which this Court stated:-“Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in Leo Sila Mutiso-Vs-Rose Hellen Wangari Mwangi - Civil Application No Nai. 255 of 1997 (unreported), the Court expressed itself thus: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

4. The record before this court speaks volume on the inordinate delay which is an excusable and unjustified on the part of the petitioner to continue indulging and issuing dates of adjournment since 17th July 2023. The judicial discretion has to be exercised fairly and proportionality considering the legislative scheme which sets very clear timelines on adjudication of disputes for the rules of court and associated substantive provisions of any legislation are devised in the public interest to promote the fair administration of justice across all branches of the law and established levels of court by the constitution.
5. This petition in accordance to reason and justice should be dismissed for want of prosecution and with no orders as to costs.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 7TH AUGUST 2025

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R. NYAKUNDI

JUDGE

