



Ongadi & 8 others (Suing on their own behalf, on behalf of the Luo Council of Elders, on behalf of the elders and other residents of Siaya, Kisumu, Homabay and Migori Counties, and in public interest) v Orenge, Governor of Siaya County & 7 others; Randa (Interested Party) (Constitutional Petition E002 of 2023) [2024] KEHC 1845 (KLR) (28 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CONSTITUTIONAL PETITION E002 OF 2023
DO OGEMBO, J
FEBRUARY 28, 2024**

BETWEEN

**NYANDIKO ONGADI 1ST PETITIONER
THOMAS ACHANDO 2ND PETITIONER
SIALAS OLALA ABONG' 3RD PETITIONER
OKEYO ABEBE 4TH PETITIONER
MARGARET NYAMBOK 5TH PETITIONER
ODUOGO GWENA 6TH PETITIONER
FELIX OKAL 7TH PETITIONER
PIUS ODOTE WANGA 8TH PETITIONER
STEPHEN OLUDHE 9TH PETITIONER**

SUING ON THEIR OWN BEHALF, ON BEHALF OF THE LUO COUNCIL OF ELDERS, ON BEHALF OF THE ELDERS AND OTHER RESIDENTS OF SIAYA, KISUMU, HOMABAY AND MIGORI COUNTIES, AND IN PUBLIC INTEREST

AND

**JAMES AGGREY BOB ORENKO, GOVERNOR OF SIAYA COUNTY 1ST RESPONDENT
PETER ANYANG NYONG'O, GOVERNOR OF KISUMU COUNTY 2ND RESPONDENT
GLADYS WANGA, GOVERNOR OF HOMABAY COUNTY .. 3RD RESPONDENT**



**GEORGE MBOGO OCHILO AYAKO, GOVERNOR OF MIGORI
COUNTY 4TH RESPONDENT
COUNTY GOVERNMENT OF SIAYA 5TH RESPONDENT
COUNTY GOVERNMENT OF KISUMU 6TH RESPONDENT
COUNTY GOVERNMENT OF HOMABAY 7TH RESPONDENT
COUNTY GOVERNMENT OF MIGORI 8TH RESPONDENT**

AND

ODUNGI RANDA INTERESTED PARTY

RULING

1. I have considered the submissions of the learned counsel involved in this matter.
2. By its nature, this Petition goes to the roots of the Culture of Luo Community. This court has in the past expressed its opinion that despite the apparent differences that exist between the different parties involved in this matter, and whatever the outcome of this case if it were to proceed to full hearing, there is still the need to retain and maintain the unity of the community. After all, this matter is of concern, not only to the parties involved in this matter, but to probably million other persons who belong to the Luo Community. This court therefore, must be at the forefront of propagating the unity of the community. And any orders that this court may give must be geared towards this realization.
3. The court should therefore be hesitant to issue any orders (even rightly so) that would further widen the differences between the parties. It is for this reason that I am persuaded by the submissions of the Respondents that before this matter can proceed to hearing before the court, the parties ought to be accorded the opportunity to first pursue any possible settlement through an Alternative Dispute Resolution Mechanism by way of Court Annexed Mediation.
4. Yes, there are already two applications filed before this court on alleged disobedience of this court's orders. They touch on contempt of this court. There is no doubt that contempt of court is a serious issue which the court cannot tolerate. However, it is in my view feasible to proceed with the ADR mechanism even as the applications for contempt are placed in abeyance. Should the ADR mechanism be successful, at the end of it, the issue of contempt of court orders would have been canvassed and settled in the process. If not, the parties would still have the opportunity to resurrect the same and pursue the same to their logical conclusion.
5. In the circumstances, I order that the proceedings herein before the court be stayed. This matter be referred for Court Annexed Mediation.
6. I also order that the appointed mediator would summon and convene the parties involved and give the necessary directions and guidance. I shall fix this matter for mention in 60 days for confirmation of the extent that the Alternative Dispute Resolution process would have progressed to and for any other directions that would be suitable in the circumstances. It is so ordered. Mention on 8/5/2024.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 28TH DAY OF FEBRUARY, 2024

D.O. OGEMBO

JUDGE



28/2/2024

Mr. Okanda:

We apply for certified copies of the ruling.

Court:

Certified copies of the ruling to be supplied to the parties.

D.O. OGEMBO

JUDGE

28/2/2024

