

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL PETITION NO. 65 OF 2011
CONSOLIDATED WITH
PETITIONS NOS 123 OF 2011 AND 185 OF 2011

BETWEEN

JOHN HARUN MWAU 1ST PETITIONER
MILTON MUGAMBI IMANYARA 2ND PETITIONER
PROFESSOR LAWRENCE GUMBE 3RD PETITIONER
MARTIN MUTHOMI GITONGA 4TH PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT
COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION 2ND RESPONDENT
INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION 3RD RESPONDENT

PRESS AND PUBLIC SUMMARY

ON THE DATE OF THE FIRST ELECTIONS UNDER THE CONSTITUTION

This is not a copy of the certified judgment. The following explanatory note is provided to assist the public and the media in reporting this case and is not binding on the High Court or any other Court.

After hearing the petitioners in the three consolidated petitions on 15th and 16th December 2011 the High Court (*Hon. Justices Isaac Lenaola, Mumbi Ngugi and David Majanja*) delivered its judgment on 13th January 2012. The Court dealt with seven issues that were framed for determination. The following is a summary of the findings on each issue by the Court.

Whether this court had jurisdiction to determine the matter.

The jurisdiction to determine this matter is founded on two grounds. First, failure to hold the first elections on a date fixed in accordance with the provisions Constitution would be a threat to the Constitution and therefore any party is entitled to move the court under **Article 258(1)** for appropriate relief. Secondly, the Supreme Court in **Constitutional Application No. 2 of 2011** directed the court to determine the petitions before it having been satisfied that the High Court has jurisdiction.

When shall the first elections under the Constitution be lawfully held.

The date of the first elections under the Constitution is determined by reference to **section 9 and 10 of the Sixth Schedule** as follows;

- (a)** In the year **2012**, within sixty days from the date on which the National Coalition is dissolved **by written agreement between the President and Prime Minister** in accordance with **section 6(b)** of the ***National Accord and Reconciliation Act, 2008***; or
- (b)** Upon the expiry of the term of the 10th Parliament on the 5th Anniversary of the day it first sat which is designated by **Legal Notice No. 1 of 2008** as 15th January 2008. The term therefore expires on **14th January 2013**. The elections shall be held within **sixty days** of **15th January 2013**.

Does the President have power or authority to dissolve Parliament under the Constitution?

Following the repeal of the former Constitution and together with it **section 59** thereof and in the absence of a specific provision entitling the President to dissolve Parliament, the President has no power under the Constitution to dissolve Parliament.

Which body under the Constitution has the Constitutional responsibility to fix the date for the first elections.

The body entitled under the Constitution to fix the date of the first elections within sixty days of the expiry of the term of the National Assembly or upon dissolution of the National Coalition by written agreement between the President and the Prime Minister in accordance with **section 6(b)** of the ***National Accord and Reconciliation Act, 2008*** is the **Independent Electoral and Boundaries Commission**.

Can an amendment to the Constitution affecting the term of the President be proposed, enacted or effected into law without a referendum being held under the Constitution.

In accordance with **Article 255** of the Constitution, an amendment to the Constitution affecting the term of the President cannot be effected into law without a referendum.

Does the unexpired term of the existing members of Parliament include terms and conditions of service.

The terms and conditions of service of Members of Parliament are governed by the ***National Assembly Remuneration Act (Chapter 5 of the Laws of Kenya)*** and ***Parliamentary Pensions Act (Chapter 196 of the Laws of Kenya)*** which are saved by virtue of **section 6 and 7** of the **Sixth Schedule** upto the end of the term of the National Assembly or upon dissolution of the National Coalition.

Who should bear the costs of the petitions as consolidated?

The award of costs in matters concerning enforcement of fundamental rights and freedoms protected by the Bill of Rights under **Article 22 and 23** and enforcement of the Constitution under **Article 258** is in the court's discretion and in this particular case the court orders each party to bear its own costs.

DATED AT NAIROBI THIS 13TH DAY OF JANUARY 2012