



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL PETITION NO 85 OF 2016

In the matter of the Constitution of Kenya of the Republic of Kenya

And

In the matter of Articles 10, 35, 38, 47, 50, 73 and 157 of the constitution of the Republic of Kenya

And

In the matter of alleged contravention of Rights or Fundamental Freedoms

under Articles 1, 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 28, 32, 35,

36, 39, 40, 41, 47, 50 and 51 of the constitution of Kenya

And

In the matter of the Law Society of Kenya Act, 2014

& the Law Society of Kenya Elections 2016

And

In the matter of the Fair Administrative Action Act, 2015

And

In the matter of Doctrines of Legitimate Expectation,

Reasonableness and Proportionality

And

In the matter of the inherent jurisdiction of this Honourable court & the

General Principles of Natural Justice and the Rule of Law

And

In the matter of the constitution of Kenya (Protection of Rights and

Fundamental Freedoms) practice and Procedure Rules, 2013

BETWEEN

Jennifer Shamalla.....Petitioner

Versus

The Law Society of Kenya.....Respondent

And

- Independent Electoral & Boundaries Commission.....1st Interested Party
- Faith Waigwa.....2nd Interested Party
- Getrude Angote.....3rd Interested Party
- Isaac Edwin Nicholas Okero.....4th Interested Party
- Alex Irungu Gatundu.....5th Interested Party
- Dorothy Kimengetech Jemator.....7th Interested Party
- David Njuguna Njoroge.....8th Interested Party
- Jane Masai.....9th Interested Party
- Allan Kosgey.....10th Interested Party
- Harriette Chiggai.....11th Interested Party
- Annet Nyukuri.....12th Interested Party
- Grace Okumu.....13th Interested Party
- Godfrey Kitiwa.....14th Interested Party
- Francis Manthi Masika.....15th Interested Party

JUDGEMENT

Introduction

It will be useful to start this judgement by defining what constitutes a "free" and "fair" election. Though definitions can sometimes be regarded as necessary evils in intellectual discussions, they are however necessary because they help to explain an idea or concept in concise terms. They are evil in that they can be controversial or contentious. There is normally no general agreement on most of them. As such definitions are usually taken to serve the interests of the user and to be restricted to the context and circumstances in which they were propounded. Therefore they have to be accepted though at times with caution. The phrase "free and "fair" elections is no exception.

In determining whether an election is free and fair, it is crucial to look at the entire electoral process, not the polling exercise on polling day alone. The entire election process must be free of bribery, violence, coercion or anything intended to subvert the will of the people. Fairness, integrity and transparency must be adhered to in all stages of the electoral process.

Electoral integrity is defined as "any election that is based on the democratic principles of universal suffrage and equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle.[\[1\]](#)

Thus, integrity refers to "incorruptibility or a firm adherence to a code of moral values." In the context of elections it means an adherence to democratic principles. The term also generally refers to "soundness or an unimpaired condition", so that to speak about an election with integrity means referring to an election "conducted competently and professionally". Integrity also refers to "completeness or the state of being complete", which, in connection with elections, suggests that "soundness and ethical practice must persist over the course of an entire electoral cycle, not just on election day itself."[\[2\]](#)

International law, provides the standard to be achieved namely, that the election produces an outcome which expresses the will of the people. It also prescribes certain obligations of conduct-protection of fundamental human rights – and of adult – universal suffrage, equality and secrecy of the vote – all of which confine and structure the conduct of the actors. The 'free and fair' criteria are a normative background against which to make a value judgment on the electoral process in context.[\[3\]](#) Free and fair means that all people have a safe chance to vote for candidates of their choice, that all candidates who want to run have a safe chance to do so, and all voters have a real chance to have that vote counted and a real chance that their candidate, if

elected will be allowed to serve.^[4]

Election challenges are a fundamental part of the electoral process. It has rightly been stated that, 'the right to vote would be merely abstract if the right to sue to enforce it was not guaranteed in law.'^[5]

Petitioners case

The petitioner unsuccessfully contested the post of vice-president of the Law Society of Kenya in the elections held on 25th February 2016 in which Isaac Okero and Faith Waigwa were elected as President and vice-president respectively. On 27th February 2016, the petitioner wrote to the interested party complaining that the elections were not free, fair and credible and requested that the releasing of the results be halted for the positions of president and vice-president, and for scrutiny of the votes and the voter registers and recount of votes for the two positions.

On 29th February 2016 the petitioner wrote to the Respondent seeking an urgent appointment of an Arbitration Tribunal as provided under *The Law Society of Kenya (Arbitration) Regulations, 1997*^[6] to listen to and adjudicate over her complaint emanating from the said elections. She avers that no substantive response was received on both letters.

The petitioner also avers that the integrity of the said elections is at stake and has serious implications on the political rights of members to participate in free and fair elections. It is averred that the final voter register of IEBC was clustered according to towns as opposed to normal practice of an alphabetical voter register, that there was no voter register for Nairobi raising the question on the rationale for clusters in other towns and that the *voting hall was in disarray creating an environment that could facilitate double voting*. It is also alleged that the interested party's returning officer and his deputy were in constant communication with some of the candidates as well as members of the Respondent and members who *would have had an interest in the outcome of the elections*. It is also alleged that the respondent released results based a process that was substantially vitiated.

The petitioner avers that the constitutional right to a free and fair election under article 38 of the constitution and the free expression of the will of the electors *may have been compromised*. It is also alleged that various stations had unexplained turn out where valid votes cast exceeded the total number of registered voters, hence an urgent scrutiny needs to be undertaken, and that the ink used was not indelible.

Reliefs sought

The petitioner seeks a declaration that the elections were not free and fair, an order for a re-count and a report of the recount be filed in court and circulated to all members, and that names of members who *may have voted* more than once be filed in court and circulated to all members, and if the process is found to be flawed, the results to be nullified. The petitioners also ask for compensation in the event the elections are found to be unfair and for production of telephone record for the returning officer and his deputy and an order that there be no order on costs this being a matter of high level public interest.

Interim orders

On 4th March 2016 Onguto J ordered the interested party to preserve the integrity of all the records inclusive of the voter registers and all used and unused ballot paper booklets and to provide the serialization numbers of all the booklets pending the determination of the application.

Court ordered interested parties to be enjoined

On 11th March 2016 Faith Waigwa and Getrude Angote were enjoined in these proceedings as the second and third interested parties respectively. Also the court ordered that all the candidates in the elections be served with the application as persons likely to be affected by the orders sought in the application.

The application was subsequently heard *inter partes* and dismissed on 5th April 2016 save for the above order that was allowed.

Respondents Response

The Respondents in the affidavit of Mercy Wambua, avers *inter alia* that in conformity with section 20 of the Law Society of Kenya Act, 2014,^[7] the society entered into a contract with the first interested party to conduct the elections in accordance with the memorandum of understanding annexed thereto at a cost of Ksh. 2,974,425/=. She averred that the elections were conducted fairly, professionally and in accordance with the law and that the petitioner was a member of the council of the Respondent and that the council in a meeting held on 15th February 2016 in which the petitioner sat, the council resolved to use one register for both National and Branch elections clustered in towns in order to ease the election process and identification of voters, hence the petitioners complaints are an afterthought because she never raised objections before the elections. Also lawyers were allowed to vote at any polling station for all other positions other than the Nairobi Branch, hence this was not an irregularity, and all the candidates were allowed to have agents at the polling stations and at the tallying centre and that the petitioner had her agents. Also the petitioner was a member of the council that developed the electoral code of conduct.

The Respondent has no objections to the scrutiny sought, but insists that it should be granted in clear circumstances and with good basis and cogent evidence. Also the petitioner has not demonstrated that the results were affected or vitiated in any

manner to warrant scrutiny or recount and or nullification of the entire election, and it is unclear whether the petitioner challenges the entire election or the position she contested.

Regarding the appointment of arbitrators it is averred that there was no valid petition to warrant such appointment, and that the request made was for appointment of arbitrators to listen to an intended complaint, and that by the time the request for appointment of an arbitrator was placed before the council, this petition had already been filed and that on 7th March 2016 the petitioner notified the council that she would not discuss the appointment of an arbitrator since she had already filed this petition.

In a further affidavit filed on 6th June 2016 in response to the amended petition, she averred *inter alia* that the tallying centre was temporarily closed at 4.30am to enable everyone take a break and that tallying proceeded at 9.00am the same day and that all the parties were present and were informed of the break and denied that the outgoing LSK president ever participated in the tallying process.

It is also averred that Getrude Angote and her agents were present at all material times and that there was no restriction as to where any advocate could vote except advocates wishing to vote in Nairobi and Thika and reiterated that the petitioner as a member of the outgoing LSK council was privy to all the decisions made, hence she cannot turn around and fault the same council whose decisions she was privy to.

First Interested party's Response

In an affidavit filed on 23rd March 2016 sworn by Arnold Wekesa, the Returning Officer averred that during the voting process the representatives of all the candidates were present at all polling stations and that the results were announced at each stream in the polling stations and were verified by the candidates agents; that no evidence was tendered to show the eligible voters voted more than once; that indelible ink was used; that the register used was manual based on information provided by the Respondent; and that the entire register of all eligible voters was availed and that the decision to organize the register based on towns was made after extensive consultations with the Respondent and that the petitioner has to demonstrate how the said arrangement affected the integrity and outcome of the elections.

It is also averred that the clustering of the register was meant for the convenience of advocates who may have travelled outside their respective voting stations and that the register for Nairobi comprised of the number of Advocates who ordinarily practice in Nairobi and that the error detected in computing the total number of valid votes cast for the position of coastal representative to the council was explained but it did not affect the individual candidates, and that the petitioner has not explained the threshold upon which the court can be persuaded to grant the orders sought and that the declared results reflected the true will of the members of the Respondent.

In an affidavit filed on 24th May 2016 in response to the amended petition, he denied the allegations of improper telephone contacts save for the normal and ordinary telephone contacts with candidates and their agents reasonably expected in such circumstances and disputed the allegations of double voting and insisted that no evidence was tendered to demonstrate that the number of voters in any polling station exceeded the number of registered voters.

Second Interested Party's Response

In a replying affidavit filed on 21st March 2016, the second interested party avers that she won the post of vice chairperson with 2,705 votes against the petitioners 1,596 and that courts of law ought to make orders on cogent evidence as opposed to allegations. She averred that there was no evidence of double voting and that high turnout of voters is not a ground to nullify elections. She also averred that the Law Society of Kenya (Arbitration) Rules 1997^[8] provide for a dispute settlement mechanism and that there is no proof that the results were affected nor is there any proof of the allegations raised.

In an affidavit filed on 24th May 2016 in response to the amended petition, she denied the allegations of impropriety, and averred that tallying went beyond the voting day but there was no evidence to show that this affected the outcome of the results and dismissed the petitioners allegations as based on conjuncture and speculation.

Third Interested Party's Support for the petition

Getrude Angote Nyausi filed a Replying affidavit on 23rd March 2016 in which she maintained that the elections in question were tainted with anomalies, that the Respondent failed to provide a clear voter register or commit itself to the agreed code of conduct and also failed to secure and maintain the venue throughout the period of use, *that one could vote in one centre and proceed to vote in another centre* because the names of those who voted were not electronically deleted from the register. She questioned the rationale for having a separate voter register in Nairobi and clusters for the towns. She also stated that there was no approval in a general meeting for the first interested party to conduct the elections and that the voting halls were unsecured and in disarray. It is also alleged that IEBC was not impartial, that the Respondent was non-partisan, and some polling stations like Eldoret and Kericho took long to close and that results were announced much earlier instead of first doing a post election audit of registers and that the elections were not free and fair; that the council hurriedly adopted minutes of 15th February 2016 in a desperate attempt to put its house in order; that it is not true that agents were allowed to be present during tallying and that she wrote to the council asking for a tribunal in vain

Fourth Interested Party

Isaac Edwin Nicholas Okero in an affidavit filed on 23rd March 2016 avers that he was duly elected as president of the

Respondent on 26th February 2016; that the petitioners complaints are vague and devoid of particulars; that the petitioner was a member of the governing council of the Respondent; hence directly responsible for all its omissions and decisions relating to the elections; that the petitioner ought to be challenging the post the petitioner contested and not the entire elections and that all the contestants of the presidency accepted the results; and that the petitioner acting in her own selfish interest presented this petition as public interest litigation.

Tenth Interested Party

Allen Kosgey in an affidavit filed on 23rd March 2016 averred that he contested the position of National Council Member of the Law Society of Kenya; that he voted at the Supreme Court Kenya; and later visited the Milimani Courts Voting Centre and later the tallying centre and in the said places he never observed or receive any reports of any irregularities or in appropriate conduct by any of the Respondents in this case.

Petitioners submissions

The petitioner filed written submissions on 28th June 2016 and also made oral submissions before Onguto J on 12th October 2016. She submitted that the elections were not free, fair, credible and transparent and that they fell below the expected standard and that the first interested party did not carry out due diligence; and that the first interested party was bound to be governed by the constitution and relevant laws governing elections and that use of LSK identification cards was un procedural and against the law and that she seeks recount and scrutiny of votes.[\[9\]](#)

Counsel also submitted that the elections in question have a constitutional bearing in that the LSK nominates, elects and appoints its members to several constitutional commissions and that the Respondent is under a duty to uphold constitutionalism, justice and the Rule of Law and uphold the highest ethical standards.

Counsel cited the petitioners legitimate expectation that the elections would be free and fair and that the issue in question is constitutional in that the voters rights were violated and cited article 36 of the constitution; and that the elections were conducted by the interested party without the approval of the Annual General Meeting of the Respondent, and that it matters not that the petitioner was a council member because there cannot be estoppel were the law is clear.

Submissions by counsel for the third Interested party

The third interested party supported the petition, cited legitimate expectation and public interest and urged the court to view the case from the angle of constitutionally guaranteed rights, that is the right to free and fair elections and submitted that the integrity of elections is at stake. Counsel urged the court to order a recount and submitted that election disputes should be seen as public election disputes.[\[10\]](#)

Respondents' submissions

The Respondent filed written submissions on 11th October 2016, which were also highlighted orally in court by Sr. Counsel Paul Muite and Julie Soweto. On jurisdiction, Mr. Muite SC submitted that notwithstanding that LSK is a public statutory body, it is not a constitutional body and therefore matters concerning the affairs of the society are civil not constitutional law matters *per se*, hence this court lacks jurisdiction over LSK elections and further such jurisdiction can only apply to the extent that issues involve or touch on a position created under the constitution, and even then, such jurisdiction would be limited to questions arising under Articles 88 and 171 (2) (f) which touch on the responsibility of the IEBC to conduct the election or LSK'S duty to nominate representatives to the JSC.

Counsel submitted that the petition lacks specificity on the alleged violations, the petition lacks merit and that Article 38 only applies in the context of national/universal elections and that Article 38 is not applicable to elections of a society such as LSK except in the limited context of Article 88 and 172 (2) (f), hence the petitioner is misguided in invoking Article 38.

Counsel submitted that the petitioner failed to show or demonstrate how her rights were violated and that the petition is wanting both in detail and evidence[\[11\]](#) and that the burden of proving on a balance of probabilities that there has been an actual violation of a fundamental right, is on the person alleging such a violation.[\[12\]](#)

Counsel submitted that the petitioner has not made a case for recount, and that the principles for grant an order of scrutiny or recount as laid down by the Supreme Court in *Nicholas Salat vs IEBC & Others*[\[13\]](#) and *Gitarau Peter Munya vs Dickson M. Kithinji & 2 Others*[\[14\]](#) were not satisfied. The right to scrutiny is anchored in section 82 (1) of the Elections Act and Rule 33 of the Elections (Parliamentary and County Elections) Petition Rules, 2013, that the trial court is vested with discretion to make an order on its own motion to enable it to arrive at a just and fair determination of the petition and the court in so doing must have sufficient reasons in the context of the pleadings and the evidence or both and that scrutiny does not lie as a matter of course.

Counsel submitted that[\[15\]](#) the primary basis in determining whether to grant scrutiny are whether there are polling stations with a dispute as to the election results, whether such a state of affairs has been pleaded in the petition, and whether sufficient basis has been laid to warrant the application for scrutiny. Counsel also submitted that no evidence was tendered to demonstrate that the conduct of the elections was fatally flawed, that the allegations made are vague, speculative and ambiguous.

Mr. Muite SC also submitted that the burden to nullify an election is high because if successful, those elected are divested of their positions and no elections can be nullified on the basis of conjecture or speculation, but cogent evidence must be

tendered and that it is not every violation of the law that will lead to nullification, but a fundamental question is, would the results have been different and added that the language in the petition is speculative.

Counsel also submitted that where there is a laid down dispute resolution mechanism, the court should be slow to entertain the case, hence this petition was pre-mature. It was also submitted that lack of authorization by the AGM does not necessarily lead to disqualification and that the AGM subsequently ratified the decision and that the correct position would have been for the petitioner to seek the support of majority of the members to have the elections nullified, hence it would be unfair to nullify elections without producing a list of members supporting the nullification.

On burden of proof, Julie Soweto assisting Mr. Muite, SC submitted that the burden is on the petitioner to prove, not only non-compliance with electoral law, but also that non-compliance affected the results of the election and that the law requires that the petitioner proves the allegations of electoral malpractices to the standard that is higher than that on a balance of probability that is applicable in civil cases but lower than that applicable in criminal cases and that allegations of electoral malpractices must be proved to the satisfaction of the court and that such allegations must be pleaded with sufficient detail.[\[16\]](#)

She also submitted that even though the petitioner was a contestant in the post of vice-chairperson, nowhere does she directly challenge it and that her allegations are general and challenge the entire elections, nor is there evidence that she is suing on behalf of other candidates. Counsel also relied on *Morgan & Others vs Simpson*[\[17\]](#) in support of the proposition that irregularities must be shown to have affected the results of the elections.

Submissions by counsel for the first Interested Party

Counsel for the first interested party associated himself with the submissions made by the Respondents counsel and also submitted that the results declared on 29th day of February 2016 are a true reflection of the will of the Respondents members and that the elections conformed to best local and international practices.

Submissions by counsel for the fourth Interested party

Counsel for the fourth interested party adopted the submissions by the Respondents counsels and added that the petitioner must demonstrate that the elections in question was subject to the elections act and also to sustain a constitutional petition, the petitioner must demonstrate violation of constitutional rights and that the petitioner has not proved that her rights were violated and added that the petitioner never adduced oral evidence, hence the allegations made are premised on hearsay evidence, and that the evidence does not meet the basic threshold and no basis has been laid to justify an order for scrutiny. [\[18\]](#) Counsel also submitted that generalized allegations are not the kind of evidence required in election petitions[\[19\]](#) and that the burden is on the petitioner to prove the allegations[\[20\]](#) and further that the Elections Act has no application in the present case and that in the absence of a tribunal the proper procedure would have been to apply for mandamus to compel the Respondent to constitute such a tribunal.[\[21\]](#)

Submissions by counsel for the second and thirteenth Interested Parties'

Counsel for the second and thirteenth Interested Parties' submitted that the petition is pre-mature in that the petitioner failed to invoke and exhaust the dispute resolution mechanism set out in the Law Society of Kenya (Arbitration Rules) 1997[\[22\]](#) as read with the Interpretation and General Provisions Act[\[23\]](#) and the procedure set out in the Electoral Code of Conduct signed by the petitioner and which bound all the candidates. Counsel also submitted that the petitioner asked for a tribunal to be set but later requested that the same should not be formed and insisted that the petition does not raise constitutional issues.

Counsel submitted that the petitioner ought to have utilized the available procedure established in law and only approach the constitutional court as a last resort and in support of this proposition counsel cited *Boniface Mwangi vs Resident Magistrates Court, Milimani & 2 Others*[\[24\]](#) where it was held that a resort to a remedy by way of a constitutional petition must be a remedy of last resort and that to convert every issue into a constitutional issue is to undermine the importance of the process and that the constitution was not meant to replace statutes that provide remedies to those concerned;[\[25\]](#) and that the petitioner did not discharge the burden of proof or demonstrate that the alleged irregularities affected the results; and that no sufficient basis had been laid to warrant scrutiny.[\[26\]](#)

Submissions by counsel for the seventh and Eighth Interested Parties'

Counsel for the 7th and 8th interested party's adopted the submissions by the Respondents counsels and the first and second interested party.

Petitioners submissions in Reply

In reply, counsel for the petitioner reiterated that this court has jurisdiction and that the challenge to jurisdiction ought to have been raised at the earliest opportunity possible and that this court has unlimited jurisdiction to entertain this case, and that the entire election was a nullity since the involvement of the first interested party was not sanctioned by the AGM and that the alleged subsequent ratification is a nullity in that an illegal act cannot be ratified.

On the issue of Jurisdiction

A Court's jurisdiction flows from either the Constitution or legislation or both. The Supreme Court in *the matter of the Interim*

Independent Electoral Commission,^[27] at paragraphs 29 and 30 discussed the issue of jurisdiction in the following manner; "Assumption of jurisdiction by courts in Kenya is a subject regulated by the constitution; by statute law, and by principles laid out in judicial precedent." Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written laws.^[28]

In the words of Chief Justice Marshall of the U.S.A, in *Cohens vs. Virginia*:-^[29]

"It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is exercise our best judgment, and conscientiously perform our duty."

The Law Society of Kenya, 2014^[30] *inter alia* establishes the Law Society of Kenya, and provides for the objects, and conduct of the affairs of the Society. Section 43 (3) of the Act provides

(3) Any rule or regulation made, order or directive issued, notification given or any administrative act undertaken under the repealed Act, shall be deemed to have been made, issued, given or undertaken under this Act and shall continue in force and have effect as if it had been so made, issued, given or undertaken under this Act.

The Law Society of Kenya (Arbitration) Regulations, 1997^[31] provide that where a dispute arises relating to the management of the affairs of the Law Society of Kenya— (a) between a member or members of the Society and the Society; or (b) between a member or members of the Society and the Council of the Society, such disputes shall be reported in writing to the Council of the Society by the aggrieved party or parties. The Council shall, upon receiving notice from a member that a dispute exists, refer such disputes for determination to an arbitrator or arbitrators appointed by the respective parties to such dispute, the arbitrator or arbitrators shall determine the dispute so referred to him or them in accordance with the Arbitration Act^[32] and that the decision of the arbitrator or arbitrators shall be final and binding on all parties to such dispute. It is also important to mention that under the Interpretation and General Provisions Act,^[33] The Law Society of Kenya (Arbitration) Regulations, 1997^[34] remain in force.

On 29th February 2016, the petitioner wrote to the council of the Respondent stating that:-

"I wish to request for an urgent appointment of an arbitration Tribunal to listen to and adjudicate over a complaint I intend to lodge over the results emanating from the just concluded Law Society of Kenya elections held on 25th February 2016...".....The purpose of this letter is to therefore request you to urgently empanel an arbitration Tribunal to hear the dispute that I shall be lodging within the timelines stipulated by law and the code of conduct."

In a further letter dated 1st March 2016 addressed to the president and secretary of the Respondent, the petitioner wrote as follows:-

"Pursuant to my letter of yesterday, 29th February 2016, I am writing to request the Law Society of Kenya to consider the said letter as my official complaint"

In a response dated 3rd March 2016, the Respondent wrote as follows; " I am instructed by the president to have both letters placed before the council meeting scheduled to take place on 8th March 2016." The following day, that is 4th March 2016 this petition was filed in court and on 7th March 2016, the petitioner wrote to the council members of the Respondent informing them that they should not discuss the issue of appointment of arbitrators owing to the fact that she had already filed this petition in court, hence the council did not discuss the issue of appointment of an arbitrator.

The third interested party who is supporting the petition also wrote to the Respondent on 29th February 2016 requesting for constitution of an internal arbitration mechanism to address the disputed Law Society of Kenya elections for the position of LSK National Council Member (General).

It is instructive to point out that the Memorandum of Understanding between the Respondent and the first Interested party at clause 14.2 & 14.4 provided for arbitration in the event of disagreement while The Electoral Code of Conduct, 2015 to which the petitioner subscribed to at clause 17 provides that:-

"Any voter may contest the validity of the elections of a candidate declared to have been elected by a petition signed by him and supported by an affidavit and delivered to the Secretary personally, within seven (7) days from the date of publication of the results of the elections."

On 18th November 2015 the petitioner signed a declaration of compliance to the said code which declaration reads in part:-

" I, Jennifer Mary Shamalla desirous of contesting the elections to be held on February 2016 or soon thereafter for the position of Vice President and having been validly nominated by.....and.....in conformity with the constitution/Law Society of Kenya Act, 2014.....solemnly swear, affirm and declare that I and my agents will subscribe and observe all

the provisions of the Code of Conduct...."

Special regard needs to be paid the following extract from **Words and Phrases Legally defined**[35] at page 1 are pertinent:-

".....By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

It has been said time without number, that whenever an Act of Parliament provides for a clear procedure or mechanism of redress, the same ought to be strictly followed. Indeed, in the case of the *Speaker of the National Assembly vs Karume* [36] the Court stated:-

"...Where there is a clear procedure for the redress of any particular grievances prescribed by the Constitution or the Act of Parliament, that procedure should be strictly followed....."

In the case of *Mutanga Tea & Coffee Company Ltd vs Shikara Limited & Another*, [37] the court of appeal reiterated the foregoing:-

"....This Court has in the past emphasized the need for aggrieved parties to strictly follow any procedures that are specifically prescribed for resolution of particular disputes." *Speaker of the National Assembly v. Karume (supra)*

In *Kones vs. Republic & Another Ex parte Kimani Wa Nyoike & 4 Others* [38] the court stated that :-

"It is readily apparent that in those cases the Court was speaking to issues of the correct procedure rather than of the correct forum for resolution of a dispute. However, we entertain no doubt in our minds that the reasoning of the Court must apply with equal force to require an aggrieved party, where a specific dispute resolution mechanism is prescribed by the Constitution or a statute, to resort to that mechanism first before purporting to invoke the inherent jurisdiction of the High Court."

The basis for that view is first that Article 159 (2) (c) of the Constitution has expressly recognized alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. The use of the word "including" leaves no doubt that Article (159)(2)(c) is not a closed catalogue. To the extent that the Constitution requires these forms of dispute resolution mechanisms to be promoted, usurpation of their jurisdiction by the High Court would not be promoting, but rather, undermining a clear constitutional objective. A holistic and purposive reading of the Constitution would therefore entail construing the unlimited original jurisdiction conferred on the High Court by Article 165(3)(a) of the Constitution in a way that will accommodate the alternative dispute resolution mechanisms."

Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost effective manner...."

....We are therefore satisfied that the learned judge did not err by striking out the appellant's suit and application which sought to invoke the original jurisdiction of the High Court in circumstances whereas the relevant statutes prescribed alternative dispute resolution mechanisms and afforded the appellant the right to access the High Court by way of appeal, which mechanisms he had refused to invoke. To hold otherwise would, in the circumstances of this appeal, be to defeat the constitutional objective behind Article 159(2)(c) and the very *raison d'etre* of the mechanisms provided under the two Acts....."

The court of appeal in *Samson Chembe Vuko v Nelson Kilumo & 2 others* [39] also adopted the above reasoning as late as 27th May 2016.

The petitioner was fully aware of the arbitration process. She wrote asking for appointment of an arbitrator to hear her complaints. She proceeded to file this petition in court before the arbitrator could be appointed. It is not disputed that the Law Society of Kenya (Arbitration) Regulations, 1997 and the Code of Conduct which the petitioner subscribed to provided for a dispute resolution mechanism procedure.

In my view, the petitioner ought to have utilized the arbitration procedure provided under the regulations and the Code of Conduct and only approach the court as a last resort and in support of this position I find backing in the above cited cases and

also in the decision rendered in *Boniface Mwangi vs Resident Magistrates Court, Milimani & 2 Others*[40] where it was held that a resort to a remedy by way of a constitutional petition must be a remedy of last resort and that to convert every issue into a constitutional issue is to undermine the importance of the process. Also relevant is the decision rendered in *Peter Ochara Anam & 3 Others vs CDFB & 3 Others*[41] where it was held that the constitution was not meant to replace statutes that provide remedies to those concerned. Guided by the above authorities, I find that this petition fails on this ground.

Whether this petition raises constitutional issues

It is convenient to state that a constitutional question is an issue whose resolution requires the interpretation of a constitution rather than that of a statute.[42] This court ought to discourage invocation of the constitutional process where there exists parallel or alternative statutory remedies. In *John Harun Mwau vs Peter Gastrol & 3 Others*[43] the court made the following observation:-

"Courts will not normally consider a constitutional question unless the existence of a remedy is dependent on it.....It is an established practice that where a matter can be disposed of without recourse to the constitution, the constitution should not be involved at all."

A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[44]

On the issue whether or not the petitioner discharged the burden of proof

The setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly, but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has affected the results of the elections. It is presumed that election returns are valid, and the party contesting the election has the burden of showing an irregularity or illegality sufficient to change or place in doubt the result of the election.

As regards the standard of proof which ought to be discharged by the petitioner in establishing allegations of electoral malpractices, there is consensus by electoral courts that generally the standard of proof in electoral petition cases is higher than that applicable in ordinary civil cases i.e. that proof on a balance of probabilities. The standard is higher than proof on a balance of probabilities but lower than the standard of proof beyond reasonable doubt required in establishing criminal cases. Allegations of electoral malpractices require higher proof.[45]

A petitioner is under obligation to discharge the initial burden of proof, before the respondents are invited to bear the evidential burden. The threshold of proof should, in principle, be above the balance of probability, though not as high as beyond-reasonable-doubt. Where a party alleges non-conformity with the electoral law, the petitioner must not only prove that there has been non-compliance with the law, but that such failure of compliance did affect the validity of the elections.[46] *The burden of proof throughout rests on the Petitioner and the quality of evidence that is advanced is to be considered with thoroughness and gravity which is commensurate with the dire consequences that can follow,[47] that is, nullifying the elections. Simply it is clear that in election petitions, the legal burden rests with the Petitioner to succinctly demonstrate that there was non-conformity with the law on the part of the Respondents in engaging in or permitting the commission of electoral malpractices, and in the declaration of results and that the alleged non-compliance affected the validity of the elections. The Petitioner must therefore adduce, before the Court, firm and credible evidence of departure on the part of the Respondents from the prescribed law.*

The threshold of proof in cases relating to election petitions, should in principle be above a balance of probability that is applicable in civil cases though not as high as beyond reasonable doubt that is applicable in criminal cases. Having set out the burden and standard of proof required in election petitions I shall now address the evidence tendered by the petitioner.

The petitioner alleges that the *voting hall was in disarray creating an environment that could facilitate double voting. Getrude Angote Nyausi* in her affidavit in support of the petition alleged that *one could vote in one centre and proceed to vote in another centre* because the names of those who voted were not electronically deleted from the register.

The word "could" is defined in the Free Dictionary as "used to express possibility": That could never be true or "used to express conditional possibility or ability." Could and can are used to talk about ability, awareness, and possibility.[48] The above statements are in my view too speculative to be relied upon by the court. No evidence was tendered even in the slightest manner to demonstrate that anyone voted twice.

The petitioner questioned the rationale for having a separate voter register in Nairobi and clusters for the towns. It has not been demonstrated how this adversely affected the final outcome of the elections. It was also alleged that IEBC was not impartial, that the Respondent was non-partisan, and some polling stations like Eldoret and Kericho took long to close and that results were announced much earlier instead of first doing a post election audit of registers. No details were provided to prove the above allegations or how they affected the final results.

It is also alleged that the returning officer and his deputy were in constant communication *"with some of the candidates as well as members of the Respondent and members who would have had an interest in the outcome of the elections."* To me the phrase *"in constant communication with some of the candidates as well as members of the Respondent and members who would have had an interest in the outcome of the elections"* is too speculative. The words "some" and "could" used in the said statement lack specificity. Above all, no tangible evidence was tendered to support the said allegations and request for telephone records without specifying the person's the officers are alleged to have communicated with amounts to engaging the

court in a fishing expedition.

It is also alleged that the respondent released results based a process that was substantially vitiated. No evidence was tendered to substantiate that the process was vitiated to the extent that the results were affected.

The petitioner avers that the constitutional right to a free and fair election under article 38 of the constitution and the free expression of the will of the electors "may have been compromised." Again, the word "may" has been used. To me, this suggests a mere possibility. It is also alleged that various stations had unexplained turn out where valid votes cast exceeded the total number of registered voters. To me, it would have been more prudent to state the polling stations in question. It was also alleged that agents were not allowed to be present during tallying. An affidavit from at least one of the agents stating that he/she was denied access to the tallying centre could have shed light on this.

Its trite law that an election can only be declared invalid if irregularities in the conduct of the elections have been such that it could not be said that the election had been so conducted as to be substantially in accordance with the law or if the irregularities had affected the results. To my mind, the petitioner has not demonstrated that the results could have been otherwise had the alleged irregularities (if any) not been there.[\[49\]](#)

Where breaches of the election rules, although trivial, affect the result, that by itself is enough to compel the court to declare the election void even though it had been conducted substantially in accordance with the law as to elections. Conversely, if the election had been conducted so badly that it was not substantially in accordance with the election law it was vitiated irrespective of whether or not the result of the election has been affected. Probably no election is perfect in terms of rules and application of the rules. However, the court will only intervene where electoral malpractices alleged, only if the irregularities were not minor but were widespread and did or could have influenced the outcome of the election.

If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated, irrespective of whether the result was affected, or not. If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls – provided that it did not affect the result of the election. There is no material before me to demonstrate that the results could have been different. In *John Fitch vs. Tom Stephenson & 3 Others*,[\[50\]](#) the court upholding the will of the people held that:-

“The decided cases, including those which Lord Denning considered in Morgan –vs- Simpson, established that the courts will strive to preserve an election as being in accordance with the law, even where there have been significant breaches of official duties and election rules, providing the results of the election was unaffected by those breaches. This is because where possible, the courts seek to give effect to the will of the people...”

I reiterate that the burden of Proof lies with the petitioner and I am afraid the obviously speculative evidence tendered does not discharge this burden. As observed above, only generalized allegations were made which are too speculative and the court cannot attach any weight to such speculations. In my view the petitioner failed to discharge the burden of prove to the required standard.

Failure to secure approval of the AGM for the interested party to conduct the elections

The petitioner stated that there was no approval in a general meeting for the first interested party to conduct the elections as provided for under section 20 of the act which provides that:-

20. The elections for the membership of the Council shall be conducted by such body as the Council may propose and approved by the general meeting preceding the election.

It is not disputed that the petitioner was a member of the council that resolved to engage the IEBC to conduct the elections. The petitioner was privy to decision and never raised the objection until she lost the contest. She cannot be heard now to turn round and fault decisions she was privy to. The Respondent states that the decision was subsequently ratified by the Annual General Meeting. Ratification means confirmation of an action which was not pre-approved and may not have been authorized.[\[51\]](#)

It is the duty of the court to give effect to the will of the electorate. The intent of voters is established by the number of votes cast in favour of the winning candidate in an election that is conducted in compliance with the election law. The intention of the voters is determined by reference to the person who garners most votes in a free, fair and credible election. The duty of the court is to strive to preserve the election held in accordance with the law. I find no reason to disregard the will of the members of the Law Society of Kenya as demonstrated in the elections in question.

Whether or not the petitioner has established a case for Recount/scrutiny of the ballot papers

The purpose of scrutiny is to assist the court to investigate if the allegations of irregularities and breaches of law complained of are valid; to assist the court in ascertaining valid votes for each candidate and to assist the court to understand the vital details of the electoral process and gain impression on the integrity of the election process. It is trite law that scrutiny can only be ordered where a petitioner lays sufficient basis and that such basis can only be laid after the petitioner has adduced sufficient evidence to warrant the recount or scrutiny. As stated above, the evidence tendered is speculative and to me does not lay sufficient basis to support a prayer for scrutiny or recount.

In the *Phillip Ogutu vs. Michael Aringo Busia*[\[52\]](#) the court observed that there would be several reasons why scrutiny should not be ordered as a usual course. First, there is a need to guard against an abuse of the process.[\[53\]](#) A party must not be

allowed to use scrutiny as a fishing expedition to discover new or fresh evidence.^[54] The court proceeded to render itself as follows:-

“A Court making an order for scrutiny will define its scope. Whatever that scope, it is invariably a painstaking exercise. This is not a route to be taken without good cause. So this Court, I would repeat, will have to be satisfied that scrutiny is necessary for the just resolution of this Petition. In considering whether or not a justification has been made, I must keep in mind that as an Election Court one of my primary duties is to examine whether an election has been conducted in a free, fair, impartial, neutral, efficient, accurate and accountable manner....”

Whether or not this petition is brought in Public interest

The petitioner prays that there be no order as to costs because this is a matter of public interest. Public interest litigation is not defined in any statute or in any act. In simple words, it means, litigation filed in a court of law, for the protection of "Public Interest."

According to Black's Law Dictionary^[55] "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

The petitioner contested the elections in question. She lost. She wrote the initial letter referred to earlier in this judgement clearly on her own behalf registering her grievances. She swore the affidavit in support of the original petition on her own behalf. There was no indication that she was filing the petition on behalf of other persons or as a matter of public interest. In paragraph 3 of the affidavit filed on 4th March 2016, she stated on oath that "I am an aggrieved party following the elections of 25th February 2016 in which I was a candidate for the vice presidential position." There is no indication that she swore the affidavit on behalf of others or as a matter of public interest but at paragraph 2 she avers that this is a matter of public interest. The list of persons she may have been complaining on behalf was not attached to the affidavit. The amended petition is clearly states "the humble petition ofthe petitioner" at the opening paragraph and there is no mention that it is brought on her behalf and on behalf of the public.

While dealing with the question of "*bona fides*" of a petitioner, especially in the case of a person approaching the Court in the name of Public Interest Litigation, the Indian Supreme Court in the case of *Ashok Kumar Pandey vs. State of West Bengal*^[56] held as hereunder: -

“Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fides and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.”

Relying on the above case, the Supreme Court of India in the case of *Dr. Akhtar Hassan Khan vs. Federation of Pakistan*^[57] held that while holding that the petitions are maintainable, the Court has to guard against frivolous petitions as it is a matter of common observation that in the garb of Public Interest Litigation, matters are brought before the Court which are neither of public importance nor relatable to enforcement of a Fundamental Right or public duty.

In Kenya in *Albert Ruturi, JK Wanywela & Kenya Bankers' Association vs The Minister of Finance & Attorney General and Central Bank of Kenya* (the Ruturi case) being the case which ushered in "a new dawn of Public Law," Justices Mbaluto and Kuloba J stated as follows:-

"In constitutional questions, human rights cases, public interest litigation and class actions...any person or social action groups, acting in good faith, can approach the court seeking judicial redress for a legal injury caused or threatened to be caused to a defined class of persons represented or for a contravention of the Constitution, or injury to the nation. In such cases the court will not insist on such a public spirited individual or social action group espousing their cause, to show his or their standing to sue in the original Anglo-Saxon conception."(Emphasis added)

The Public Interest Litigation was designed to serve the purpose of protecting rights of the public at large through vigilant action by public spirited persons and swift justice.^[58] But the profound need of this tool has been plagued with misuses by persons who file Public Interest Litigations just for the publicity and those with vested political interests. ^[59]The courts therefore, need to keep a check on the cases being filed and ensure the *bona fide* interest of the petitioner and the nature of the cause of action, in order to avoid unnecessary litigations. Vexatious and mischievous litigation must be identified and struck down so that the objectives of Public Interest Litigation aren't violated. The constitution envisages the judiciary as "a bastion of rights and justice.

Public interest litigation is a highly effective weapon in the armory of law for reaching social justice to the common man. It is a unique phenomenon in the Constitutional Jurisprudence that has no parallel in the world and has acquired a big significance in the modern legal concerns. This technique is concerned with the protection of the interest of a class or group of persons who

are either the victims of governmental lawlessness, or social oppression or denied their constitutional or legal rights and who are not in a position to approach the court for the redress of their grievances due to lack of resources or ignorance or their disadvantaged social and economic position.

Former Chief Justice of India A.S. Anand cautioned the over use of Public Interest Litigation and emphasized “Care has to be taken to see that Public Interest Litigation essentially remains public interest litigation and is not allowed to degenerate into becoming political interest litigation or private inquisitiveness litigation.”^[60]

It is the duty of the court to see whether the petitioner who approaches the court has a *bona fide* intention and not a motive for personal gain, private profit or political or other oblique considerations. Considering the facts of this case and the petitioners interest in the elections in question, and in this petition, I find that this petition cannot be said to have been brought as a matter of public interest but it is essentially private interest, hence the prayer that this court does not make an order on costs is declined.

Determination

In conclusion, as pointed earlier, the petitioner ought to have pursued the laid down dispute resolution mechanism, hence this petition was filed prematurely. Secondly, the petition does not raise any constitutional questions as defined earlier in this judgement. Further, the petitioner has failed to discharge the burden of proof in that the allegations of electoral malpractices are purely speculative, they lack specificity and no cogent evidence was tendered to prove the allegations to the required standard.

An election can only be declared invalid if irregularities in the conduct of the elections have been such that it could not be said that the election had been so conducted as to be substantially in accordance with the law or if the irregularities had affected the results. No evidence was tendered to show that irregularities were of such a nature that the results were affected nor was it demonstrated that the results could have been otherwise had the alleged irregularities not been there.^[61] Further, no evidence was tendered to demonstrate that the election was conducted so badly that it was not substantially in accordance with the election law, that it was vitiated irrespective of whether or not the result of the election has been affected.

In view of my analysis of the facts of this case and the law as shown above, I find that the petitioner has failed to prove her case against the Respondent to the required standard. The up short is that this petition is dismissed with costs to the Respondent and the first, second, fourth and tenth interested parties who filed responses and/or participated in these proceedings.

Orders accordingly.

Signed, Delivered, Dated at Nairobi this 12th day of May 2017

John M. Mativo

Judge

^[1]Annan, Kofi A., Zedillo, E., Ahtisaari, M., Albright, M. H., Arbour, L., Helgesen, V. & Wirajuda, H. (2012). Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide. Stockholm: Global Commission on Elections, Democracy, and Security.

http://kofiannanfoundation.org/sites/default/files/deepening_democracy_0.pdf.

^[2] Ibid

^[3] See http://www.ipu.org/press-e/gen_222.html. In a Press Release No. 222 dated 24 March 2006, the Inter-Parliamentary Union in Geneva

^[4] Prof William P. Quigley of Loyola University, see http://www.info/haiti-news/2005/free_fair.html.

^[5]D.Petit, Resolving Election Disputes in the OSCE Area; Towards a Standard Election Dispute Monitoring System, Office for Democratic Institutions and Human Rights, Warsaw, 2000, p. 6. <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019060.pdf>

^[6] L.N. 141/1997.

^[7]Act No. 21 of 2014

^[8]Supra

^[9]Counsel cited Nairobi Law Monthly Company Ltd vs Kenya Electricity Generating Company and Others, {2013}eKLR

[10] Counsel cited Mohamed Ali Mursal vs Saadia Mohamed, iebc & Others, Election Pet No. 1 of 2013

[11] Counsels cited Anarita Karimi Njeru vs R {1979} KLR 154 and Mumo Matemu vs Trusted Society for Human Rights Alliance & 5 Others {2013}eKLR

[12] Githunguri Dairy Farmers Co-operative Society Ltd vs The A. G. {2016}eKLR

[13] {2015}eKLR

[14] {2014}eKLR

[15] As held in Nathif Jama Adam vs Abdikhaim Osman Mohamed & 3 Others {2014}eKLR

[16] Counsel cited the case of Abdikm Osman Mohamed & Another vs IEBC & Others {2013}eKLR

[17] {1974}3ALL ER 722

[18] Counsel cited Charles O. Mogere vs Christopher Mogere Obure {2013}eKLR

[19] Counsel cited Joho vs Nyange & Another {2008}eKLR

[20] Counsel cited Josiah & 4 Others vs Ogutu & Another {2008}1KLR 73

[21] Counsel cited Ringera J in Adero & Another vs Ulinzi Sacco Society{2002} 1KLR 577

[22] Supra

[23] Cap 2 Laws of Kenya

[24] {2015}eKLR

[25] Peter Ochara Anam & 3 Others vs CDFB & 3 Other {2011}eKLR

[26] Counsel cited Rishad H.A. Amana vs IEBC & 2 Others, Malindi EP No. 6 of 2013

[27] Constitutional Application No. 2 of 2011 (unreported)

[28] Samuel Kamau Macharia v. Kenya Commercial Bank and Two others, Civ. Appl. No. 2 of 2011

[29] 19 U.S. 264 (1821)

[30] No. 21 of 2014

[31] L.N. 141/1997

[32] No. 4 of 1995

[33] Supra

[34] Supra

[35] **volume 3: 1-N**

[36] {2008} 1KLR 425

[37] **{2015} eKLR**

[38] {2008} 3 KLR (ER) 296).

[39] {2016} eKLR

[40] {2015}eKLR

[41] {2011}eKLR

[42] <http://www.yourdictionary.com/constitutional-question>

[43] {2014} eKLR

[44] [Board of Optometry vs. Colet](#), 260 SCRA 88, July 30, 1996; [Gozun vs. Liangco](#); citing [Galarosa vs. Valencia](#), 227 SCRA 728, 737, November 11, 1993; [Office of the Ombudsman v. Judge Ibay](#), 364 SCRA 281, September 3, 2001.

[45] **John Kiarie Waweru vs Beth Wambui Mugo & 2 Others {2008}** eKLR 4

[46] **Raila Odinga & Others v. Independent Electoral and Boundaries Commission & Others Petition No. 5 of 2013 (Consolidated with Petition No. 3 and 4 of 2013)**

[47] *Ntwiga v. Musyoka & 3 others* {1947} 2 ALL ER 372, citing *Mohamed Jahazi v. Shariff Nassir A. Taib, Election Petition No. 9 of 1983*

[48] <http://www.thefreedictionary.com/could>

[49] *Morgan v. Simpson* (1974) 3 ALL ER 722

[50] QBD (2008) EWHC 501

[51] <http://legal-dictionary.thefreedictionary.com/ratification>

[52] EP No 1 of 2013 (Unreported), Tuiyott J

[53] *Ibid*

[54] *Ibid*

[55] Sixth Edition

[56] AIR 2004 SC 280

[57] {2012} SCMR 455

[58] **Public Interest Litigation: Use and Abuse**, <http://lawquestinternational.com/public-interest-litigation-use-and-abuse-0>

[59] *Ibid*

[60] **Abuse of Public Interest Litigation - A Major Threat on Judicial Process**, <http://www.legalserviceindia.com/article/l469-Public-Interest-Litigation.html> rice India -use of Public Interest Litigation - A Major Threat on Judicial Procrvice India - Abuse of Public Interest Litigation - A Major Thrat Judicial Process

[61] *Morgan v. Simpson* (1974) 3 ALL ER 722