

**OFFICE OF THE DATA PROTECTION COMMISSIONER**

**LEGAL DIVISION**

**LITIGATION STATUS REPORT**

**AS AT 16TH AUGUST 2022**

**EXECUTIVE SUMMARY**

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| --- | --- | --- | --- | --- | --- | --- |
|  | **DIVISION** | **NO.** | **ACTIVE** | **CLOSED** | **ALLOCATION** | |
| **INTERNAL** | **EXTERNAL** |
|  | COURT OF APPEAL | 2 | - | 2 | 1 | 1 |
|  | CONSTITUTIONAL AND HUMAN RIGHTS | 6 | 4 | 2 | 3 | 3 |
|  | JUDICIAL REVIEW | 1 | 1 | - | - | 1 |
|  | EMPLOYMENT AND LABOUR RELATIONS | 1 | 1 | - | - | 1 |
|  | **TOTAL** | **10** | 6 | 4 | 4 | 6 |

**DETAILED REPORT**

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| --- | --- | --- | --- | --- | --- | --- |
| **S/NO** | **CASE NUMBER AND CITATION** | **NATURE OF THE CASE/CAUSE OF ACTION** | **ISSUES FOR DETERMINATION** | **ODPC INTERNAL ACTION** | **CASE ATTENDANCE OUTCOME** | **CURRENT STATUS** |
| **COURT OF APPEAL** | | | | | | |
|  | NAIROBI CIVIL APPEAL (APPLICATION) NO. E241 OF 2022  ;ODPC-23RD RESPONDENT  [ODPC/LEG/8/6 (8)] | The same was an Application for under Rule 5(2)(b) of the Court of Appeal Rules, for stay of execution of the Judgment of the High Court delivered on 5th July 2022 by Hon. Justice A.C. Mrima in Const. Petition No. E160 of 2022 as consolidated with Petition No. E219 of 2022, E255 of 2022 and Petition No. 12 of 2022 | Whether the Applicant, IEBC has satisfied the twin principles for grant of the order of stay of the decision of the High Court | Being an Appeal arising out a matter J.K. Kibicho & Co. Advocates were handling at the Superior Court, they represented the Office in the matter | Parties argued the Application for Stay on 19th July 2022  On our instructions, our Advocates on record opted to take a neutral position, leaving the matter to the Court | **Closed**  Upon hearing the submissions, the Court, Okwengu, Makhandia & Omondi, JJ.A issued an order for stay of execution of the Judgment of the High Court delivered on 5th July 2022 on 19th July 2022 pending the delivery of their Ruling on 29th July 2022. |
|  | NAIROBI CIVIL APPEAL NO. E462 OF 2022  STEVE BIKO OYUGI VS THE IEBC & 8 OTHERS; ODPC- 4TH RESPONDENT  [ODPC/LEG/8/6 (9)] | The Appellant filed an interlocutory appeal challenging a Ruling delivered on 14th July 2022 by the High Court (A.C. Mrima,J) under Articles of the CoK in the face of the Petition & Section 361 of the Penal Code | Whether the Appeal is meritorious and meets the threshold to warrant the setting aside of the Superior Court’s Ruling delivered on 14th July 2022  Whether Pet. No. E279 of 2022 should proceed to full hearing | Assigned to Eugene Odhiambo, LO for further action on 25th July 2022 | Appeal was heard on 3rd August 2022  None of the Respondents took part in the CoA proceedings | **Closed**  Judgement delivered by Asike-Makhandia, J. Mohammed & Omondi, JJ.A on 8th August 2022 dismissing the Appeal. |
| **CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITIONS** | | | | | | |
|  | NAIROBI HCCHRPET/E219/ 2022  PETER MACHARIA GITONGA AND LUCY GAKENIA MAKUTHO & 4 OTHERS VS PRINCIPAL REGISTRAR OF PERSONS AND THE ODPC & 2 OTHERS  [ODPC/LEG/8/6 (4)] | The consolidated Petitions challenge the legal requirement that for an independent candidate to be eligible to vie or stand for an election, such must submit copies of identification documents of their supporters to the 1st Respondent, IEBC (the Commission) | Whether Regulations 18(2)(c), 24(2)(c), 28(2)(c) & 36(2)(c) of the Elections (General) Regulations, 2012 (as amended in 2017) are in contravention of Articles 2(4), 10, 27, 38(3), 83(3), 99(1)(c), 137(1)(d) & 193(1)(c) of the Constitution and Article 31 of the Constitution and the Data Protection Act. | Forwarded to J.K. Kibicho Advocates for further action on 6th June 2022 | Matter was consolidated with Const. Pet. No. E160, E225 & No. 12 of 2022.  \*Pet. No. 12 of 2022 was formerly HC at Kakamega Pet. No. E010 of 2022) | **Closed**  Judgment delivered by Hon. Justice A.C. Mrima on 5th July 2022 declaring that Regulations 18(2)(c), 24(2)(c), 28(2)(c) & 36(2)(c) of the Elections (General) Regulations, 2012 (as amended in 2017) are in contravention of Articles 2(4), 10, 27, 38(3), 83(3), 99(1)(c), 137(1)(d) & 193(1)(c) of the Constitution and Article 31 of the Constitution and the Data Protection Act.  IEBC, the 1st Respondent, appealed against the said declaration. |
|  | NAIROBI HCCHRPET/E260/ 2022  HON. NAZLIN UMAR RAJPUT AND ANOTHER VS STATE LAW AND IEBC; ODPC- 3RD INTERESTED PARTY  [ODPC/LEG/8/6 (5)] | The Petitioner seeks amongst other reliefs, orders restraining the 1st Respondent, IEBC from clearing and/or processing the names of any and all Presidential candidates in the 2022 P.E. until the ID copies of the voters nominating them have been publicly audited and verified as voluntarily been given by the said owners;  Further that through the IEBC’s impugned Regulations, has and continue to place unreasonable constraints and hurdles on candidates vying for various political seats hence should be declared unconstitutional | Whether the impugned IEBC Regulations, 2012 (as amended in 2017) meet the threshold for declaration of unconstitutionality | Eugene Odhiambo, LO was assigned the matter on 8th June 2022. | Parties highlighted their submissions on the Notice of Motion Application dated 31st May 2022 before Hon. Justice A.C. Mrima on 29th June 2022.  Parties highlighted their submissions on the Petition dated 31st May 2022 before Hon. Justice A.C. Mrima on 18th July 2022. | **Active\***  Application dated 31st May 2022 dismissed with costs to the Respondents on 30th June 2022.  (Eugene Odhiambo, LO following up on the copy of the Ruling delivered on 30th June 2022)  Judgment on the Petition dated 31st May 2022 to be delivered on Notice. |
|  | NAIROBI HCCHRPET/E279/ 2022  STEVE BIKO OYUGI VS STATE LAW AND INSPECTOR GENERAL OF POLICE AND 7 OTHERS; ODPC- 4TH RESPONDENT  [ODPC/LEG/8/6 (6)] | The Petition was effectuated by the Respondents’ (ORPP’s & ODPC’s) failure to act on the Petitioner’s complaint of Identity theft, forgery and fraudulent registration by the UDA and other political parties lodged on diverse dates by the Petitioner | Whether the Petitioner’s complaint of Identity theft, forgery and fraudulent registration by the UDA and other political parties constituted his Constitutional rights under Articles 10, 91, 19, 20, 21, 31 & 38 of the CoK | Eugene Odhiambo, LO was assigned the matter on 22nd June 2022. | Parties highlighted their submissions on 7th July 2022 before Hon. Justice A.C. Mrima | **Closed**  Judgment delivered by Hon. Justice A.C. Mrima on 14th July 2022 upholding the POs filed and dismissing both the Application and Petition dated 7th June 2022 on the doctrine of *res judicata* with costs to the Respondent  Petitioner appealed as against the said order. |
|  | NAIROBI HCCHRPET/E125/ 2022  ELIUD KARANJA MATINDI VS THE OFFICE OF THE DATA PROTECTION COMMISSIONER-3RD RESPONDENT  [ODPC/LEG/8/6 (2)] | Related to JR No. E058 of 2022 | Related to JR No. E058 of 2022 | Forwarded to J.K. Kibicho Advocates for further action on 6th June 2022 | The matter was last in Court on 29th June 2022 before Hon. Lady Justice H. Ongúdi | **Active\***  Reach out to J.K. Kibicho & Co. Advocates for Update (s) |
|  | NAIROBI HCCHRPET/E345/ 2022  SKETCHERS LTD VS ETHICS AND ANTI-CORRPUPTION COMMISSION AND CONSOLIDATED BANK OF KENYA LTD & 2 OTHERS; ODPC- 4TH RESPONDENT  [ODPC/LEG/8/6 (7)] | The Petitioners allege that their right to consumer protection and right to privacy under the CoK and Section 26 of the DPA have been violated by virtue of certain employees of the 1st Respondent (Consolidated Bank of Kenya) using false and misleading information allegedly presented by persons posing as the 1st Petitioner’s directors to open an illegal bank account, resulting in the loss of Kshs.3,666,000/= | Whether the ODPC is properly enjoined in the said proceedings | Forwarded to J.K. Kibicho Advocates for further action on 22nd July 2022 | The matter was mentioned for directions on 25th July 2022.  The Court was not sitting. The matter was subsequently mentioned before the Deputy Registrar for allocation of new dates  Legal Opinion also shared on 25th July 2022 | **Active\***  The matter shall be mentioned on 30th November 2022 for further directions. |
|  | NAIROBI  HCCHRPET/E379/2022  JUANITA ROXANNA BOSIBORI SIAGI VS OFFICE OF THE DATA PROTECTION COMMISIONER KENYA AND KENYA MEDICAL PRACTITIONERS AND DENTIST BOARD AND 4 OTHERS  (NOW MILIMANI FAMILY MISC. CASE NO. 15 OF 2022)  [ODPC/LEG/8/6 (10)] | The matter emanates from the Chief Magistrates Children’s case No. E787/2022 whereby the Respondent therein has moved the High Court as the Petitioner seeking amongst others, a declaration that her right to privacy was violated when the Respondent attached her medical records to an affidavit. | Was the Petitioner’s right to privacy was breached by attachment of her medical records to an affidavit in the lower court which saw her lose custody of her child. | The matter was served upon ODPC on Friday 12th August, 2022 at 4:46 pm vide [info@odpc.go.ke](mailto:info@odpc.go.ke) and forwarded to the Legal Division on the next day.  Instructions issued to Wycliffe Jaketch. | Counsel to obtain next date | **Active\***  Draft Response prepared. |
| **JUDICIAL REVIEW** | | | | | | |
|  | NAIROBI HC JUDICIAL REVIEW NO. E058 OF 2022  REPUBLIC VS SAFARICOM LTD EX PARTE KATIBA INSTITUTE; ODPC-2ND INTERESTED PARTY  [ODPC/LEG/8/6 (3)] | The Ex Parte Applicants are seeking to challenge the Respondent’s (Safaricom Ltd.) unilateral decision requiring subscribers to submit photos of themselves during either the registration or verification exercises contrary to the Kenya Information and Communications (Registration of SIM-Cards) Regulations 2015 and the Communique by the Communications Authority of Kenya issued on 10th April 2022. | Whether the Judicial Review orders sought as against the Respondent are meritorious | Forwarded to J.K. Kibicho Advocates for further action on 6th June 2022 | The matter was last before Court, on 19th July 2022 whereupon the same was mentioned to confirm the status of the consolidation of this matter with Petition No. E125 of 2022.  Parties informed the Court that there was an order issued by Hon. Lady Justice H. Ongúdi on 18th July 2022 directing that the said Petition be mentioned alongside the above referenced matter for directions on consolidation or otherwise.  Requested for a Legal Opinion from J.K. Kibicho & Co. Advocates on 20th July 2022 | **Active\***  The Court pointed out that it did not have the Petition No. E125 file and as such, could not issue any orders.  The matter will be mentioned on **29th September 2022** for further directions on both files. |
| **EMPLOYMENT AND LABOUR RELATIONS** | | | | | | |
|  | NAIROBI ELRC CONST. PET. NO. E071 OF 2022  DANIEL MOTAUNG VS SAMASOURCE KENYA EPZ LIMITED T/A SAMA & OTHERS; ODPC-7TH INTERESTED PARTY  [ODPC/LEG/8/6 (1)] | The Petitioner is a former contracted employer of the 1st Respondent.  The 1st Respondent is alleged to have illegally terminated the Petitioner’s Contract after spying into their WhatsApp group a forum through which the Petitioner together with others anonymously mentioned, aired their grievances, occasioning the Petitioner mental anguish and psychological complications | Whether the Petitioner had locus standi to institute the said proceedings?  Whether the petition as filed meets the requisite threshold for Constitutional Petitions | Forwarded to J.K. Kibicho Advocates for further action on 6th June 2022 | Matter was last in Court on 28th July 2022.  J.K. Kibicho shared a Legal Opinion on the same date | **Active\***  Highlighting of submissions on the POs filed on **22nd September 2022**. |

**PREPARED BY:**

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**SUSAN WAWERU**

**HEAD OF LEGAL**

**17.08.2022**