



## PRESS RELEASE

FOR IMMEDIATE RELEASE

NAIROBI, KENYA: FEBRUARY 9<sup>TH</sup> 2022

**SUBJECT: RESIGNATION BY MEMBERS OF COUNTY ASSEMBLIES ASPIRING TO CONTEST AS MEMBERS OF PARLIAMENT**

The attention of the Commission has been drawn to public debate on the issue of disqualification of a sitting Member of a County Assembly (MCA) from being elected as a Member of Parliament (MP) on allegations that they need to resign by the 9<sup>th</sup> of February 2022.

This issue was subject of litigation in **High Court Constitutional and Human Rights Petition No. E369 of 2020 Kennedy Irungu Ngodi & Martin Njuguna Ngugi vs Mary Waithera Njoroge & 11 others**, where the Honourable Court on 4<sup>th</sup> May 2021 held inter alia that a sitting President, Member of Parliament, Governor or Member of a County Assembly who intends to vie for any position in the next General Election, upon the expiry of the current electoral cycle, need not resign before that General Election.

Later, on 7<sup>th</sup> October 2020, the High Court in *Constitutional and Human Rights Petition No. 210 of 2020 (formerly Kiambu High Court Petition No. 8B of 2019) Hon. Clement Kungu Waibara vs Hon. Ann Wanjiku Kibe & IEBC*, held that the Election of the First Respondent (*Hon. Ann Wanjiku Kibe*) who contested for the position of Member of Parliament whilst she was a sitting MCA was in violation of Article 99(2) (a) and (d) of the Constitution. On this premise, the Honourable Court proceeded to declare the seat of the Gatundu North constituency vacant. However, the First Respondent moved to the Court of Appeal challenging the judgment of the High Court and obtained orders of stay of execution. The Court of Appeal heard the matter and reserved 18<sup>th</sup> of March 2022 for Judgement.

Therefore, the Commission wishes to clarify that, according to Article 99 (2)(d) of the Constitution of Kenya 2010 as read together with Section 43 (5) and (6) of the Elections Act, MCAs who wish to contest as Members of Parliament should not resign by 9<sup>th</sup> February 2022 but should resign before submitting their nomination papers to the Returning Officers to contest as a Member of Parliament.

The Commission will give further advice once the Court of Appeal delivers the said Judgment.

W.W. CHEBUKATI  
CHAIRMAN