



MS. PRISCILLA NYOKABI KANYUA PETITIONER
AND
ATTORNEY GENERAL 1ST RESPONDENT
INTERIM INDEPENDENT ELECTORAL COMMISSION..... 2ND RESPONDENT

RULING

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M/s Priscilla Nyokabi Kanyua an advocate of the High Court of Kenya and an Executive Director of Kituo Cha Sheria, a Legal and Human Rights' Organization in Kenya filed the petition Review on behalf of paralegal convicts at Shimo Law Tewa prison.

In her petition she prays that this court do make a finding that Sec. 43 of the Constitution of Kenya does not exclude inmates from voting in a referendum, but explicitly provides for their exclusion in voting for presidential and National Assembly elections.

That the Honourable Court, do make a finding that the Interim Independent Electoral Commission's (2nd Respondent) exclusion of prisoners from voter registration exercise was illegal given their mandate under Section 41(d) of the Constitution of Kenya Review Act 2008 to undertake fresh registration of voters and create a new voters register for upcoming referendum without expressly prescribed limitations to exclude any categories of people.

Further that the Honourable Court do make a finding that the disqualification of prisoners to register to vote under current exercise of the IIEC should not be implied within the meaning of Sec. 43 of the

Constitution of Kenya.

She sets eight other grounds in her petition. She attached a Supporting Affidavit to the petition and a letter of Authorization to act from the Directors of Kituo Cha Sheria among other documents which included a certificate of urgency dated 20th May, 2010.

When this matter came for hearing under certificate on 20th May, 2010 it was apparent that there was no application filed, upon which the court could make any orders. M/s Kanyua therefore sought to be given time to file the necessary application as is required by the rules of this court.

The leave to do so was duly granted and an application was duly filed on 21st May, 2010.

M/s Kanyua in her application prays that:-

- 1. This matter be certified as urgent and**

- 2. That the court do instruct the Interim Independent Electoral Commission (IIEC) to create a new voters register for the upcoming referendum and to do so by including the inmates in prison for the purpose of the upcoming referendum on 4th August, 2010.**

- 3. That the Interim Independent Electoral Commission (IIEC) to extend the period for voter registration for the purposes of including the excluded inmates.**

M/s Kanyua supports her prayers by her affidavit sworn on 21st May 2010. She states in her affidavit that this matter is urgent since the voter registration will end on 21st May, 2010. Further that the 2nd respondent (IIEC) has an express mandate to create a new voter registration for the referendum set for 4th August, 2010. Further that the respondent has excluded the applicants from the above new voter register

in spite of Kituo Cha Sheria's petition to the respondent vide Kituo's letter dated 29th April, 2010 to facilitate registration of the applicants.

The matters raised by M/S Kanyua are no doubt serious and weighty. Her application was ably argued by M/s Angote Gertrude and Osoro Laban Advocates. The Court is grateful to them for their able submissions.

The right to vote in a referendum is important and of serious concern for all Kenyans.

I therefore certify this matter urgent in view of the time lines set by the Law for the referendum.

As for prayer No. 2 in the application I find that it is only fair to give the respondents a chance to reply to the matters set out in the application. Indeed to give orders as prayed in paragraph 2 would be tantamount to determining the application and the petition before all the parties are heard and this would definitely occasion an injustice to some of the parties.

M/S Kanyua through her counsels argued that the electronic voter registration ends today and that the inmates she represents were never included in the manual registration. They were indeed not supposed to be affected by the extension of electronic registration which ends today. So, for the inmates extension of the registration time would appear meaningless unless a voter registration is actually opened for them. This is an issue that shall be canvassed in the inter-parties hearing of the application or indeed the petition itself.

M/S Kanyua through her counsels stated that today's date of i.e. 21st May, 2010 extension of electronic voter registration notwithstanding, this court has power to hear the application inter-parties and further to determine, the petition and make the necessary orders. This would therefore mean that the 21st of May,

2010 deadline would be of no consequence to the inmates.

The Court therefore makes the following orders:-

- 1. That this applications allowed in terms of prayer I**
- 2. That the applicant do serve the respondent with the pleadings herein and the application be heard in Court inter-parties on Tuesday 25th May 2010 at 9.30 a.m.**

Costs shall be in the cause.

Dated at Nairobi this 21st day of May, 2010.

S.N. MUKUNYA
JUDGE