



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT NAKURU
ELECTION PETITION NO 005 OF 2017

Election act 2011

SHEILA CHEBELION.....1ST PETITIONER
MIRIAM NGIMA MUREITHI.....2ND PETITIONER
KEZIA NGINA MBUGUA.....3RD PETITIONER
SAIDA CHENGETICH MUSIA.....4TH PETITIONER
ROSALIN CHEBET KURESOI.....5TH PETITIONER
ANDREW NGANGA NDUNGU.....6TH PETITIONER

VERSUS

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION1st RESPONDENT
JUBILEE PARTY.....2nd RESPONDENT

6/9/2017

Before Hon B Mararo PM

Court Assistant Kemboi

Court: We are yet to be gazette. Mention on 11/9/2017 for further directions.

Hon B Mararo PM

6/9/2017

11/9/2017

Before Hon N Makau RM

Court Assistant Carol/Ojwang

At 10.03 am.

A date to be fixed at the registry before the court that will be gazette to handle Election Petitions.

Hon N Makau RM

11/9/2017

25/9/2017

1st Respondent Notice of Preliminary Objection filed.

13/10/2017

Before Hon B Mararo PM

Court Assistant Philaris

MrNondi for petitioner

MrAkang'o for 1st Respondent.

MrNondi: 2nd Respondent served but have not appeared.

MrAkang'o: We have responded.

MrNondi: We served him.

MrAkang'o: The affidavit of service is executed.

MrNondi: The petitioner tried to Deposit the security after the lapse of the 10 days. They were turned away. We are still in to deposit the security out of time.

MrAkang'o: It is one of our grounds that we seek to dismiss Petition. There is nothing in the rules for extension of time.

The rules are clear there is no provision for the same. It should be struck out for non compliance of rules. It requires no further interrogations. My colleague has admitted. The fate is obvious.

MrNondi: It is in Election court. Court in discretion. We pray for the courts discretion. Court official turned them away.

Court: Ruling on 17/10/2017 at 2.30 pm.

Hon B Mararo PM

13/10/2017

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INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION1st
RESPONDENT

JUBILEE PARTY.....2nd
RESPONDENT

RULING

The petitioner herein filed this petition seeking that this court issue a declaration that the 1st Respondent failed to carry out its duty of ensuring that all persons on the 2nd Respondent list are qualified candidates as required by regulation 54(5) of the Elections (General regulations, 2012) filed on 6/9/2017.

The Honourable court be pleased to find and hold that the decisions, actions and omissions of the Respondent in respect of listing and gazettment of persons not qualified for Nomination to the County Assembly of Nakuru and ignoring the Petitioners including those who properly qualify for nomination as representatives violates Articles 10, 27, 90 and 177 of the constitution section 34 and 36 of the Elections Act and regulation 54 of The Elections (General) Regulations 2012.

The Honourable Court be pleased to nullify the gazettment of persons who are members of the 2nd Respondent in Nakuru County who stand validly nominated to the Nakuru County Assembly conveyed through the Kenya Gazette Notice Vol CDIX – No 124 of 28/8/2017.

The Honourable Court be pleased to issue orders compelling the 2nd Respondent to list the Petitioners as representatives of the special seats they applied for in the County Assembly of Nakuru pursuant to the provisions of Article 177 (1)b), (c), (2) and (3) and to present the same to the 1st Respondent for publishing.

The Honourable Court be pleased to condemn the Respondent to bear the costs of this petition.

This Honourable court be pleased to issue such further relief or orders as it may deem just.

The petition was responded to on 25/6/2017. The petition was listed for pretrial conference on 13/10/2017 when the petitioners counsel informed court that they attempted to deposit the security of kshs 10,000 after the lapse of 10 days but were turned away. They sought to deposit the same out of time. Counsel for 1st Respondent opposed the same and stated that it was on at the points raised in their preliminary objection. He was of the view that the petition should be struck out as there was no provision for extension of time.

Rule 13 of the Election Rules 2013 reads;

13(1) within 10 days of the filing of a Petition, a petitioner shall deposit security for the payment of costs in compliance with section 78 (2) b) and (c) of the act.

In the present case they have not and they claim they were turned away after trying to deposit the same after expiry of the 10 days.

Firstly the said rule is couched in mandatory terms and there is no provision for extension. Petitioners did not inform court as to why the security deposit was not made within the stipulated period of 10 days. I am guided by Kisii HC Election Petition No 10/13 where Lady Justice Sitoti held *inter alia*.

“In the premises and for the reasons given above, I find no reason to validate the late deposit of security in this case”

She proceeded to strike out the petition. AND

Mombasa HC Elec Petition No 4 of 2017 where Justice Thendu stated **inter alia**

“the petitioner failed to comply with the express and mandatory provisions of Rule 8(1) (in this case rule 13) of the Election Petition Rules 2017. It must follow therefore that the petition herein is **incurably** defective and proceeding with the same as currently constituted would be an abuse of the court process”. The same was struck out with costs to the Respondent.

In the present case the petitioner failed to comply with mandatory provisions of Rule 13. I consequently strike out the Petition with costs to the Respondent.

Hon B Mararo PM

17/10/2017

Delivered in open court in the presence of Mr N/A for the Petitioner, Mr Akanga for the 1st Respondent and Mr N/A for 2nd Respondent this 17th day of October 2017.

Hon B Mararo PM

17/10/2017