



**Rajput & another v Independent Electoral & Boundaries Commission & another;
Principal Registrar of Persons Ministry of State for Immigration & Registration
of Persons & 2 others (Interested Parties) (Constitutional Petition E260 of 2022)
[2022] KEHC 10187 (KLR) (Constitutional and Human Rights) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10187 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E260 OF 2022**

**AC MRIMA, J
JUNE 30, 2022**

BETWEEN

**NAZLIN OMAR FAZALDIN RAJPUT 1ST PETITIONER
CAUCUS FOR PEACE & INDEPENDENT CANDIDATS OF
KENYA 2ND PETITIONER**

AND

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 1ST
RESPONDENT
ATTORNEY GENERAL 2ND RESPONDENT**

AND

**THE PRINCIPAL REGISTRAR OF PERSONS MINISTRY OF STATE FOR
IMMIGRATION & REGISTRATION OF PERSONS INTERESTED PARTY
THE DIRECTOR OF CRIMINAL INVESTIGATIONS INTERESTED PARTY
OFFICE OF THE DATA PROTECTION COMMISIONER INTERESTED PARTY**

RULING

1. The Petition in this matter is dated May 31, 2022. It challenges the constitutionality and legality of several legislative provisions as well as many issues on the electoral laws in Kenya. In the end, the Petition sought for a record of 65 prayers.
2. Together with the filing of the Petition was an application by way of a Notice of Motion on even date.



3. The application sought the following 36 prayers: -

1. This Application be declared urgent and be heard ex-parte in the first instance.
2. All deadlines for clearance by the 1st respondent for Presidential candidates including for submissions, clearances of support forms for nominations for the petitioners and Independent Presidential candidates be and are hereby suspended pending hearing of this application inter-parties.
3. All deadlines for clearance by the 1st respondent for Presidential candidates including for submissions, clearances of support forms for nominations for the petitioners and Independent Presidential candidates be and are hereby suspended pending hearing and full determination of the petition
4. That an Order do and is hereby issued restraining the 1st Respondent from clearing and/or processing the names of any and all Candidates for the Presidency in the 2022 general elections who have submitted copies of Identity cards of alleged supporters until the Identity card copies they have submitted for presidential elections have been publicly audited and verified as been voluntarily given by the owners of the identity and not stolen or poached against their knowledge and free will, pending hearing of this application inter-parties.
5. That an Order do and is hereby issued restraining the 1st Respondent from clearing and/or processing the names of any and all Candidates for the Presidency in the 2022 general elections until the Identity card copies they have submitted for presidential elections have been publicly audited and verified as been voluntarily given by the owners of the identity and not stolen or poached against their knowledge and free will, pending hearing pending hearing and full determination of the petition.
6. That an Order do and is hereby issued restraining the 1st Respondent from clearing and/or processing the names of any and all Candidates for the Presidency in the 2022 general elections pending hearing of this application inter-parties.
7. That an Order do and is hereby issued restraining the 1st Respondent from clearing and/or processing the names of any and all Candidates for the Presidency in the 2022 general elections pending hearing and full determination of the petition.
8. That an Order do and is hereby issued ordering the 1st Respondent to publish all the copies of Identity cards of alleged supporters submitted for presidential elections for public audit and verification by the public as been voluntarily given by the owners of the identity and not stolen or poached against their knowledge and free will, pending hearing of this application inter-parties.
9. That an Order do and is hereby issued ordering the 1st Respondent to publish all the copies of Identity cards of alleged supporters submitted for presidential elections for public audit and verification by the public as been voluntarily given by the owners of the identity and not stolen or poached against their



knowledge and free will, pending hearing and full determination of the petition.

10. That an Order do and is hereby issued suspending all 1st Respondent deadlines, regulations and processes pending the hearing of this Application inter-parties and/or until further orders by the court.
11. That an Order do and is hereby issued suspending all 1st Respondent deadlines, regulations and processes pending the hearing and full determination of the petition and/or until further orders by the court.
12. That an Order do and is hereby issued compelling the Director of Criminal Investigations to investigate the identity cards collected by all the Presidential Candidates to verify if they were legitimately obtained directly from alleges supporters or sourced/stolen from protected data bases and report back its findings to this honorable court as well as make public its findings pending hearing of this application inter-parties.
13. That an Order do and is hereby issued compelling the Director of Criminal Investigations to investigate the identity cards collected by all the Presidential Candidates to verify if they were legitimately obtained directly from alleges supporters or sourced/stolen from protected data bases and report back its findings to this honorable court as well as make public its findings pending hearing and full determination of the petition.
14. That an order of status quo ante do issue restoring the status quo that prevailed in 2017 & 2013 in regards to the collection of signatures by independent candidates minus the requirement on identity cards pending hearing of this application inter-parties.
15. That an order of status quo ante do issue restoring the status quo that prevailed in 2017 & 2013 in regards to the collection of signatures by independent candidates minus the requirement on identity cards pending hearing and full determination of the petition.
16. That an order be issued for the file be sent to the chief justice to urgently constitute a bench to hear the petition expeditiously as a matter of public interest and urgency.
17. That an order do and is hereby issued of auditing of the photocopies of IDs and signatures be issued, since there has been no established transparency or integrity by presidential candidates offering copies of IDs that may have been stolen from collated data, and forging signatures pending the hearing of this application inter-parties.
18. That an order do and is hereby issued of auditing of the photocopies of IDs and signatures be issued, since there has been no established transparency or integrity by presidential candidates offering copies of IDs that may have been stolen from collated data, and forging signatures pending the hearing and determination of the petition.
19. An Order do and is hereby issued to that the 1st respondent is hereby compelled to include the 1" Applicant and her names and symbols in all the processes of



elections and gazettelement for 2022 to vie for the president of the Republic of Kenya pending hearing of this application inter-parties.

20. An Order do and is hereby issued to that the 1st respondent is hereby compelled to include the 1st Applicant and her names and symbols in all the of elections and gazettelement for 2022 to vie for the president of the Republic of Kenya pending full hearing and determination of the petition.
21. A restraining order do and is hereby against the 1st respondent not to bar nor restrict the Applicant towards her bid to vie for the office of President of the Republic of Kenya in any way at all howsoever pending the hearing and determination of this application interparties.
22. A restraining order to and is hereby issued against the 1st respondent not to bar nor restrict the Applicant towards her bid to vie for the office of President of the Republic of Kenya in any way at all howsoever pending the hearing and full determination of the petition.
23. An Order do and is hereby issued that the 1st respondent shall NOT demand a degree qualification from the 1st Applicant or any other Kenya vying for the presidency of the Republic of Kenya, pending the hearing of this application inter-parties.
24. An Order do and is hereby issued that the 1st respondent shall NOT demand a degree qualification from the 1st Applicant or any other Kenya vying for the presidency of the Republic of Kenya, pending the full hearing and determination of the petition.
25. An order do issue compelling the 1st respondent to admit the 1st Applicant's original education certificates as already on record with it and in its possession as she was already cleared and vied for the presidency of the Republic of Kenya in the 2007 general elections pending hearing of this application inter parties.
26. An order do issue compelling the 1st respondent to admit the 1st Applicant's education certificates as already on record with it and in its possession as she was already cleared and vied for the presidency of the Republic of Kenya in the 2007 general elections pending hearing and full determination of the petition.
27. An order that the 1st respondent desists from making unconstitutional demands upon the Applicant that violates and infringe on her constitutional rights and fundamental freedoms from seeking to be elected as the President of Kenya pending the hearing and full determination of the petition.
28. An order that the 1st respondent desists from making unconstitutional demands upon the petitioners that violates and infringe on their constitutional rights and fundamental freedoms from seeking to be elected in Kenya pending the hearing and full determination of the petition.
29. An order that the 1st Respondent illegal self-made punitive rules of dates/ deadlines for submission of supporters for nomination as president is hereby extended for 14 days more days pending the hearing of this application inter partics.



30. An order that the 1st Respondent illegal self-made punitive rules of dates/ deadlines for submission of supporters for nomination as president is hereby extended for 14 days more days pending the hearing and full determination of the petition.
 31. 31. That an order do and is hereby issued to temporarily restraining the 1st respondent from implementing regulations 18 (2) (c), 24 (2) (c), 28 (2) (c), 32 (2) (c) and 36 (2) (c) of the Election (General) Regulations, 2017 requiring independent candidates for the various elective positions in the August 2022 General Elections to submit copies of identity cards of their supporters to the 1st Respondent for clearance purposes to vie for elective posts, but allow and accept the candidates to submit just the signatures and the requisite forms with the registered voters details pending the hearing and determination of this application inter-parties.
 32. An order do and is hereby issued temporarily restraining the 1st Respondent from implementing regulations 18 (2) (c), 24 (2) (c), 28 (2) 1c), 32(2) (c) and 36 (2) (c) of the Election (General) Regulations 2017 requiring independent candidates for the various elective positions in the August 2022 General Elections to submit copies of identity cards of their supporters to the 1st Respondent for clearance purposes to enable vie for elective posts, but allow and accept the candidates to submit just the signatures and the requisite forms with the registered voters details pending the hearing and full determination of the petition.
 33. An Order do and is hereby issued that the 1st Respondent is hereby restrained from collecting or demanding any fees from any candidates for elective office or a minimal token fee that court deems fit to grant pending the hearing and determination of this application inter-parties.
 34. An Order do and is hereby issued that the 1st Respondent is hereby restrained from collecting or demanding any fees from any candidates for elective office or a minimal token fee that court deems fit to grant pending the hearing and full determination of the petition.
 35. That costs of this application and Application be provided for.
 36. Any other order that this honorable court may deem just to grant in favour of and in the interests of the Applicants and this Application filed under public interest.
4. The Petition and the application were vehemently opposed by the Respondents and the 1st and 2nd Interested Parties. One of such initiatives was through the Notices of Preliminary Objections which objections were heard and disallowed vide a ruling rendered on June 20, 2022.
 5. At this point in time, this Court must point out that, with a view to expedite the earliest determination of this matter, Learned Counsel Mr. Nura and Mr. Thande Kuria had implored upon the Petitioners to deal with both the application and the Petition at the same time. However, the Petitioners were adamant that the application was to be first heard and determined despite the strict timelines surrounding the upcoming General election.
 6. This Court then directed that the application be heard in the first instance.



7. The application was eventually heard yesterday where the 1st Petitioner herein appeared in person and also on behalf of the 2nd Petitioner, Mr. Nura, Learned Counsel appeared for the 1st Respondent whereas Mr. Thande Kuria, Learned Counsel representing the Hon. Attorney General appeared for the 2nd Respondent and the 1st and 2nd Interested Parties while Mr. Odhiambo, Learned Counsel appeared for the 3rd Interested Party.
8. In view of the nature of the matters raised in the Petition and the application, the respective responses thereto so far filed coupled with the fact that the Independent Electoral & Boundaries Commission, the 1st Respondent herein, operates on stringent timelines, this Court will, at this point in time, only give it's finding on the application. The reasons thereof shall be in the judgment.
9. In doing so, it is the Court's observation that the issues raised and the prayers sought in the application go to the heart of the Petition and in such an instance, this Court is called upon to exercise restraint save it risks to irregularly deal with the main issues at an interlocutory stage. (See *Muslim for Human Rights & 2 others vs Attorney General & 2 others* (2011) eKLR, *Centre for Rights Education and Awareness (CREAW) & 7 Others v. Attorney General* (2011) eKLR, *Platinum Distillers Limited vs. Kenya Revenue Authority* (2019) eKLR and *Kenya Association of Manufacturers & 2 others vs. Cabinet Secretary – Ministry of Environment and Natural Resources & 3 others* (2017) eKLR).
10. In fact, given the nature of the prayers sought in the application and the Petition, it was prudent that both be heard together. However, and as said above, the Petitioners opted otherwise. Perhaps had the application and the Petition been heard together, this Court would by this morning be instead rendering its judgment on the entire matter.
11. Having said so, and in exercise of the restraint aforesaid, it is the finding of this Court that the prayers sought in the Notice of Motion dated May 31, 2022 ought not to issue at such an interlocutory stage.
12. In that case the Notice of Motion dated May 31, 2022 is unsuccessful. It is dismissed with costs in cause.
13. With a view to expedite the hearing and determination of the Petition, the following orders do hereby issue: -
 - a. The Respondents and the Interested Parties shall file and serve responses to the main Petition within 2 days of today.
 - b. The Petitioner to file and serve supplementary responses, if need be, together with written submissions within 3 days of service.
 - c. The Respondents and the Interested Parties to file and serve written submissions within 3 days of service.
 - d. Highlighting of submissions on July 11, 2022.
 - e. Costs of the application to abide the outcome of the Petition.
15. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JUNE, 2022.

A. C. MRIMA

JUDGE

