



Imanyara v Independent Electoral & Boundaries Commission; Orange Democratic Movement (Interested Party) (Constitutional Petition E297 of 2022) [2022] KEHC 12252 (KLR) (Constitutional and Human Rights) (29 June 2022) (Ruling)

Neutral citation: [2022] KEHC 12252 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E297 OF 2022**

AC MRIMA, J

JUNE 29, 2022

BETWEEN

MUGAMBI IMANYARA PETITIONER

AND

**INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION RESPONDENT**

AND

ORANGE DEMOCRATIC MOVEMENT INTERESTED PARTY

RULING

1. The constitutionality of the non-inclusion of the photographs or images of persons taking part in elections as Deputy Presidents and Deputy Governors in the ballot papers during elections in Kenya has been variously contested in the petition in this matter.
2. Pending the determination of the petition, the petitioner filed an application by way of a notice of motion dated June 20, 2022 seeking the following orders: -
 - a) That this application be certified as extremely urgent and service be dispensed with in the first instance.
 - b) That pending the hearing and determination of this application, this Honourable court be pleased to issue interim conservatory orders restraining the respondent either by itself, their servants, agents, contractors and or employees and all persons. claiming under them from printing of both the presidential and gubernatorial ballot papers for the August 9, 2022 general elections without the photos of the Deputy President and Deputy Governor



as per the sample ballot paper for Presidential/County Governor in tender number IEBC/OIT/002/21/2021/2022 for supply and delivery of ballot papers amongst other election materials;

- c) That pending the hearing and determination of this application and petition, this honourable court be pleased to issue interim conservatory orders restraining the respondent either by itself, their servants, agents, contractors and or employees and all persons claiming under them from printing of both the presidential and gubernatorial ballot papers for the August 9, 2022 general elections without the photos of the Deputy President and Deputy Governor as per the sample ballot paper for Presidential/County Governor in tender number IEBC/OIT/002/21/2021/2022 for supply and delivery of ballot papers amongst other election materials;
 - d) That this honourable court be pleased to issue a permanent injunction precluding the respondent either by their servants, agents, contractors and or employees and all persons claiming under them from printing of both the presidential and gubernatorial ballot papers for the August 9, 2022 general elections without the photos of the Deputy President and Deputy Governor as per the sample ballot paper for Presidential/County Governor in tender number IEBC/OIT/002/21/2021/2022 for supply and delivery of ballot papers amongst other election materials;
 - e) That the honourable court be pleased to order the respondent to take all such measures as are reasonably practicable by observing the rule of law and abiding by the constitutional and statutory provisions and include the photographs/images of Deputy President and the Deputy Governor in a printed form on the presidential and gubernatorial ballot papers in forthcoming August 9, 2022 general elections, so as to prevent the violation of the fundamental rights as depicted in the Constitution;
 - f) That costs of this application be provided for.
3. The application was supported by the interested party and vehemently opposed by the respondent.
 4. In view of the nature of the matters raised in the petition and the notice of motion, the respective responses thereto so far filed coupled with the fact the general election is fast approaching and the Independent Electoral & Boundaries Commission, the respondent herein, operates on stringent timelines, this court will, at this point in time, only give it's finding on the notice of motion. The reasons thereof shall be in the judgment.
 5. Having said so, it is the finding of this court that the notice of motion dated June 20, 2022 is merited.
 6. I will also give directions on the hearing of the main petition.
 7. As a result, the following orders do hereby issue: -
 - (a) Pending the hearing and determination of the petition herein, the Independent Electoral & Boundaries Commission shall include the photographs or images of the persons who were nominated as Deputy Presidents and Deputy Governors in the ballot papers to be used in the general election to be held on August 9, 2022.
 - (b) The respondent and the interested party shall file and serve responses to the main petition within 5 days of today.
 - (c) The petitioner to file and serve supplementary responses, if need be, together with written submissions within 5 days of service.



- (d) The respondent and the interested party to file and serve written submissions within 5 days of service.
- (e) Highlighting of submissions on July 14, 2022.
- (f) Costs of the application to abide the outcome of the petition.

8. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JUNE, 2022.

A. C. MRIMA

JUDGE

