



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A.C. Mrima, J.)

CONSTITUTIONAL PETITION NO. E438 OF 2020

-BETWEEN-

FERDINARD WAITITU.....PETITIONER

-VERSUS-

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

THE OFFICE OF THE ATTORNEY GENERAL.....2ND RESPONDENT

THE ETHICS AND ANTI-CORRUPTION COMMISSION.....3RD RESPONDENT

JUDGMENT

1. The Petitioner herein, *Ferdinard Waititu*, is a former Governor of Kiambu County.
2. His reign was cut short by successful impeachment proceedings. The Petitioner instituted High Court proceedings challenging the impeachment. That was vide *Nairobi High Court Constitutional Petition No. 29 of 2020*. The proceedings are still pending.
3. The Petitioner also faces corruption related charges.
4. Following the yet again successful impeachment of the immediate former Governor of Nairobi County, *Hon. Mike Mbuvi Sonko*, the Independent Electoral and Boundaries Commission took steps to discharge its mandate by issuing a roadmap to conducting a by-election.
5. Amid allegations that the Petitioner herein was not eligible to vie for the position of the Governor of Nairobi County on the basis of his impeachment from Kiambu County, the Petitioner instituted the current Petition. It is dated 31st December, 2020.
6. In the main, the Petitioner sought the following prayers: -

a) A declaration that the Petitioner's fundamental rights and freedoms as enshrined In the Constitution were fundamentally violated and willfully compromised by the 1st and 2nd Respondents.

b) This Honorable court do permanently restrain the 1st, 2nd and 3rd Respondents from any/future interference of the Petitioners exercise of his political rights in vying for the position of Nairobi County Governor.

c) That an order for exemplary damages be and is hereby issued against the 1st, 2nd, 3rd and 4th Respondents jointly and severally, in their individual personal and official capacities, on account of their gross violation of the Petitioner's fundamental freedoms and rights as enumerated in the Petitioner.

d) Any further orders, writs, directions as the Court may deem appropriate.

e) Costs of the suit plus interests.

7. Contemporaneously with the filing of the Petition was an even dated application by way of a Notice of Motion. The application sought for the following orders: -

1. This application be certified urgent and service be dispensed with in the first instance.

2. That this Honourable court be pleased to direct that the 1st Respondent do allow the Applicant's candidature in the Nairobi by election slated for the 18th February, 2021 upon presentation of requisite pre-qualifications by the Applicant pending the hearing and determination of the Application.

3. That this Honourable court be pleased to direct that the 1st Respondent do allow the Applicant's candidature in the Nairobi by election slated for the 18th February, 2021 upon presentation of requisite pre-qualifications by the Applicant pending the hearing and determination of the Petitioner.

4. That this Honourable court be pleased to grant a temporary injunction restraining the 1st and 3rd Defendant/Respondent herein either by themselves, their agent and/or employees or whosoever is acting on their behalf from disseminating mis-information through media pending the hearing and determination of this application.

5. This Honourable court do issue any further orders in the interest of Justice.

6. That costs be in the cause.

8. The Independent Electoral and Boundaries Commission and the Ethics and Anti-Corruption Commission, sued as the 1st and 3rd Respondents herein, opposed the Petition and the application. The 2nd Respondent did not participate in the matter.

9. Upon proposal by the parties and the concurrence of this Court, several directions were issued by the Court. They included that the Notice of Motion be subsumed into the Petition, the matter be heard by way of reliance on the pleadings and written submissions and that parties were to file and exchange written submissions within defined timelines. Parties were also given an opportunity to highlight on their submissions.

10. Whereas the 1st and 3rd Respondents complied with the filing of submissions, the Petitioner did not. The Petitioner and his Counsel, as well, did not attend Court thereafter.

11. The matter was eventually fixed for judgment in the hope that the Petitioner will file his submissions. That never was.

12. There are high chances that the Petitioner may have lost interest in the matter. That may have been so since the proceedings were filed with an eye on the gubernatorial contest in Nairobi County. However, several developments took place and the intended by-election was not conducted.

13. This Court further notes that despite the fact that the Petition raised a serious constitutional issue as to whether an impeached Governor may still be eligible to vie for any other Gubernatorial position in another county, the Petitioner lost interest in the matter and did not pursue it any more.

14. As a result, this Court cannot attempt to take over the position of the Petitioner and prosecute the matter. The matter has to come to an end.

15. In the end, the following orders hereby issue: -

(a) The Petition and the Notice of Motion both dated 31st December, 2020 are hereby dismissed for want of prosecution.

(b) The Petitioner to shoulder the costs of the Petition.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 18th day of November, 2021

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Swaka, Learned Counsel for the Petitioner.

Mr. Anyoka, Learned Counsel for the 1st Respondent.

Miss. Kenduiwo, Learned Counsel for the 3rd Respondent.

Elizabeth Wanjohi – Court Assistant.