



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
PETITION NO. 3 OF 2017

CHARLES NJARAMBA MUNUHE.....PETITIONER

versus

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. By this Ruling this court will entertain a preliminary objection raised by the Respondent, that is the Independent Electoral & Boundaries Commission (IEBC). That preliminary objection is in the following terms:-

- *That by dint of the official gazettment and subsequent swearing in of the County Ward Representatives, members of National Assembly and members of the Senate, the Petitioner ought to have moved the court by way of an election petition and the substantive petition filed herein on 31st August 2017 is therefore bad in law, incompetent and fatally defective.*
- *That this honourable court lacks jurisdiction to hear and determine the Constitutional Petition.*
- *That the constitutional petition is an abuse of the court process, it is frivolous, vexatious and designed to unnecessarily protract litigation.*

2. The Respondent in raising the above objection sought that the petition be struck out.

3. The petitioner, Charles Njaramba Munuhe who acts in person, filed this petition seeking two specific prayers, which prayers, even though not clear, seem to contradict the body of the petition.

4. I can do no better other than to reproduce the whole petition for better understanding. The petition is in the following terms:-

“REPUBLIC OF KENYA

IN THE HIGH COURT OF NANYUKI

CONSTITUTION 2010 INTERPRETATION PETITION NUMBER.....OF 2017

BETWEEN

CHARLES NJARAMBA MUNUHE (LAIKIPIA SENATOR)....1ST PETITIONER

VERSUS

IEBC.....1ST RESPONDENT

ATTORNEY GENERAL OF THE REPUBLIC OF KENYA..2ND RESPONDENT

INTERESTED INDEPENDENT CANDIDATE IN LAIKIPIA – 4 CANDIDATES

1. In the matters of discrimination in the conventions of fundamental rights and freedom enshrined in Chapter four of the Constitution Bill of Rights, article preamble, 1, 2, 6, 10, 11, 22, 23, 24,28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38.

2. In the matter of political rights, articles 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 57, 70 and other enabling laws.

3. In the matter of promotion in presentations, article (100 A-E) of women, youth disabled, minorities and marginalized groups.

4. In the matter of discriminations, articles 21(3)

a. All organs and public officers have the duty to address the need of vulnerable groups, within the society, including women, old members of the society, disabilities, youth, minorities and marginalized.

There is no provision that states that only political parties should submit list of nominees to IEBC and other groups of the public being stakeholders in the Kenya Government have deprived of their rights in the nomination.

b. Independent candidates in the issue of supporters are discriminated. They were required to submit 2,000 list of supporters in Excel and pay Kshs.50,000 and both are covering the same areas of representation.

c. Discrimination of minorities and marginalized created by colonial administrators from 1952, enshrined the sessional paper 1955/56 in the election rules. Mau Mau of Mashujaa families of freedom fighters were discriminated by suppression rules which have never been lifted up to now. I am one of those Mashujaas and I was, technically exempted from elections in the month of August.

d. Preamble of 2010 Constitution states Heros of freedom fighting should be honoured and recognised. No implementation has been done up to now. This group is the mother and father of independence in Kenya, yet they are not represented in:-

i. National Assembly

ii. Senatorial seats

iii. County Assemblies and

iv. Parastatals bodies and private sectors

e. In Kenya, political parties, elites and rich people are favoured as far as

elections and judiciary are concerned.

f. In the matter of interpretation of the articles 21(3), 22(1, 2, and 3) and 23 (1) (3 a-f) and 165 and article 100 (a-e).

We therefore pray this Honourable court to give orders as follows:

a. The state organs concerned for implement of the mentioned articles be implement and be given their slot in the government.

b. Those who were aggrieved in the election be either compensated or be given special nomination seats in their seats that were seeking to be elected.

c. Respondents pay the cost of this suit.

Dated this 31st day of August 2017.

Charles Njaramba Munuhe (signed).”

5. The petition was on 18th September 2017 withdrawn against the Attorney General. The only Respondent in this matter therefore is IEBC.

6. Although the petitioner’s pleadings, reproduced above, are not entirely clear the petitioner’s affidavit in support of the petition gives some direction of what the petitioner seeks from this court.

7. The genesis of the petitioner’s grievance, relates to his failure to obtain from IEBC approval of his nomination, for his candidacy of Senator of Laikipia County, during the general elections that took place on 8th August 2017. By his affidavit the petitioner deponed to what occurred on 29th May 2017, when nomination were received for independent candidate, as he was, by IEBC. He deponed that he was present at the appointed place and that by 4 p.m., while still waiting to be attended, because of the many people that were offering their candidacy, he requested an IEBC official to permit him to submit some of the required documents and to later send others that were required to be in the format of excel. The official of IEBC declined to receive part of the documents and the petitioner went to perfect his documents. On his return the petitioner found the IEBC offices closed. He therefore failed to obtain IEBC’s clearance of his nomination, even though, as he deponed, he is a member of the former freedom fighters. That is the gist of the petitioner’s complaint in this matter.

8. Although the petitioner has prayed for interpretation of various Articles of the Constitution, as can be seen above, those interpretations have no bearing to his grievance: that is his failure to have his nomination approved.

9. The Constitution under Article 85 permits any person to stand as independent candidate for election. Any one under that Article includes the petitioner. The Petitioner therefore was not in any way discriminated when he failed to be nominated for the position of Senator of Laikipia County. He simply failed to follow the laid down procedure.

Article 99(1)(c)(ii) of the Constitution provides that anyone seeking to be elected as senator; their nomination must be supported by two thousand registered voter voters in the County. That is a constitutional provision and it does not require any further interpretation. It is clear and unambiguous.

10. What is clear from the petitioner’s affidavit in support of the petition, is that, the main bone of contention is that the petitioner when he visited the nomination centre he found it closed. He was too late to present his nomination.

11. That being so the petitioner’s grievance should have been addressed in an election petition. The IEBC by virtue of **Article 88(4)(e)** is excluded from entertaining an election petition. It can however entertain

electoral disputes including disputes touching on nomination, but that must be before elections takes place.

12. In this court reaching that conclusion, that the Respondent in raising its preliminary objection was right, I am well guided by the decision of the Supreme Court in the case **MOSES MWICIGI & 14 OTHERS –v- INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 5 OTHERS [2016] eKLR**. The case touched on the constitutionality and the legality of nomination list, of Members of County Assembly (MCA) submitted to the IEBC, by The National Alliance of Kenya Party (TNA). The Supreme Court in that case held that once the nomination process and the list of MCA was gazetted it signified the end of election and any dispute thereafter could only be settled through an election petition. The Supreme Courts in part held:-

“The Gazette Notice in this case, signifies the completion of the “election through nomination” and finalized the process of constituting the Assembly in question. On the other hand, an “election by registered voters” as was held in the Joho case, is in principle, completed by the issuance of Form 38, which terminated the returning officer’s mandate, and shifts any issue as to the validity of results from the IEBC to the Election Court.

It is therefore clear that the publication of the Gazette Notice marked the end of the mandate of IEBC, regarding the nomination of the party representatives, and shifts any consequential dispute to the Election Court. The gazette notice also served to notify the public of those who have been “elected” to serve as nominated members of a County Assembly.

..... It is clear to us that the Constitution provides for two modes of election. The first is election in the conventional sense, of universal suffrage; the second is election by way of nomination, through the party list. It follows from such a concept of the electoral process, that any contest to an election, whatever its manifestation, is to be by way of election petition.”

13. It follows that the petitioner having failed to be nominated to stand as a senator of Laikipia County; and the general election having taken place on 8th August 2017, he was required to follow the constitutional provision to address his grievance through an election petition. He was obligated to file his election petition within 28 days after the date of declaration of the result of Senator of Laikipia County: See section 76 of the Election Act No. 24 of 2011.

14. In this court’s view the petitioner erred to file this petition seeking partly the interpretation of various Articles of the Constitution and in that regard seeking the finding that he was discriminated when he did not get nominated. The Supreme Court in MOSES MWICIGI case (supra) cautioned entertaining petitions such as the one filed by the petitioner when they stated:-

“To allow an electoral dispute to be transmuted into a petition for the vindication of fundamental rights under Article 165(3) of the Constitution, in our respectful opinion, carries the risk of opening up a parallel electoral dispute – resolution regime. Such an event would serve not only to complicate, but ultimately, to defeat the sui generis character of the electoral dispute resolution mechanism, and notwithstanding the vital role of electoral dispute-settlement in the progressive governance set-up of the current constitution.”

15. That holding of the Supreme Court sums up the objection raised by the Respondent and it underscores the merit of that objection.

16. Accordingly the finding of this court is that the preliminary objection is hereby upheld. The petitioner should have filed an electoral petition to challenge his non-nomination to stand as a senator of Laikipia County.

17. The order of the court is as follows:

- **The petition is hereby struck out with costs to the Respondent.**

DATED and DELIVERED at NANYUKI this 31st day of JANUARY 2018.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue / Mariastella

Petitioner: Charles Njaramba Munuhe

For Respondent:.....

COURT

Ruling read in open court.

MARY KASANGO

JUDGE