



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAJIADO
ELECTION PETITION CASE NO.1 OF 2017

MARK NKONANA SUPEYO.....1ST PETITIONER

MESHANA OLE SIMEI.....2ND PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

THE KAJIADO WEST CONSTITUENCY,

RETURNING OFFICER.....2ND RESPONDENT

SUNKUYI GEORGE RISA.....3RD RESPONDENT

RULING

The Petitioners herein filed this petition on 6th September 2017 and the 3rd respondent filed their response on the 17th September 2017.

However, the 1st and 2nd respondents did not file their response in time culminating to an application dated 21st September 2017 for leave to file response out of time which was allowed by consent on 29.9.17.

Thereafter, the matter was scheduled for pretrial conference on 9.10.17 and a hearing date fixed for the petitioner's case on 16th and 17th October 2017.

However, on that day, the 3rd respondent was not ready on the basis that they wanted to file an application to challenge filing of further affidavits by the petitioners on grounds that they had introduced new issues. The court granted leave and application was filed and ruling delivered on 24/10/17 on the same day.

Unfortunately, the matter could not proceed as the 1st and 2nd respondents had not submitted all forms 35A and SD cards as had been directed earlier. The court then adjourned the hearing to 27.10.17 to enable the 1st and 2nd respondents to comply. Hearing was once again adjourned on grounds that resealing of ballot boxes had not been done and that six forms 35A and fifteen SD cards had not been availed. The court again allowed an adjournment for the resealing exercise to be completed and the 1st and 2nd respondent to avail the missing forms and SD cards.

The court went further and summoned the returning officer to show cause why the missing forms and SD cards could not be availed. Subsequently the matter was fixed for hearing on 30th October 2017.

Surprisingly, today the 30th October 2017, a new application dated 29th October 2017 was filed by Yano & Company Advocates seeking to come on record as additional counsel for the 3rd respondent and also leave to file further affidavits be granted.

The court granted the petitioners a short time to file a reply which they did and hearing proceeded.

Basically, there was no objection for Yano coming on record. As to filing of further affidavits, the petitioners argued that after pre-trial conference no more interlocutory applications should be entertained hence a delaying tactic.

The applicant relied on Article 50 and 159 of the Constitution arguing that his client is entitled to legal representation and that the court should not entertain any undue technicalities.

I have considered application herein, affidavit in support sworn by the 3rd respondent on 29th October 2017. I have also considered replying affidavit sworn by the 1st petitioner on the 30th October 2017.

There is no dispute that the 3rd respondent is entitled to legal representation of his choice.

Nobody has opposed the same and accordingly that prayer is allowed and the firm of Yano and company advocates are admitted as counsels for the 3rd respondent.

Regarding the prayer to file further affidavit, rule 15 (2) of the parliamentary election petitions 2017 is clear on this aspect as it provides

“an election court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference if the application could have by its nature been brought before the commencement of the hearing of the petition”.

In my view there is no good reason given why this application could not have been filed before pre-trial conference. This is indeed a delaying tactic a trap this court is not ready to fall into. On that ground alone application is hereby rejected.

As to legal representation, the 3rd respondent has had three more advocates before all competent lawyers Mrs. Yano can join and catch up with them.

For those reasons, application dated 29th October 2017 is hereby dismissed with costs to the petitioners save for admission of Yano advocates.

Ruling signed, dated and delivered at Kajiado this 30th day of October 2017.

J. N. ONYIEGO, (Judge)

30/10/2017

In the presence of

.....Counsel for the Petitioners

.....Counsel for the 1st and 2nd respondents

.....Counsel for the 3rd respondent

.....Court Assistant