



IN THE HIGH COURT OF KENYA AT KISUMU

KAKAMEGA ELECTION PETITION NO. 14 OF 2017

ELECTION FOR THE MEMBER OF SENATE KAKAMEGA COUNTY

BETWEEN

SETH AMBUSINI PANYAKO.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION...1ST RESPONDENT

THE RETURNING OFFICER KAKAMEGA COUNTY.....2ND RESPONDENT

CLEOPHAS WAKHUNGU MALALA3RD RESPONDENT

RULING

1. When this petition came up for pre-trial conferring on 6th October 2017, this court after hearing oral applications by the petitioner and respondents counsels and granted the following orders:

- a. The Petitioner be and is hereby granted leave to file a supplementary affidavit to the petition*
- b. The 1st and 2nd respondents are hereby granted leave to file a response to the petitioner's application dated 7.9.17*
- c. The 1st and 2nd respondents be bad are hereby granted leave to file supplementary and replying affidavits to the petition*
- d. The 3rd respondent be and is hereby granted leave to file a notice of motion to quash certain affidavits in support of the petition.*
- e. Parties do file submissions to the application dated 7.10.17*
- f. Hearing of preliminary issues on 13.10.17*

2. When the petition came up for hearing of preliminary issues this morning, it was brought to court's attention that the 1st and 2nd respondents replying and supplementary affidavits and submission were file and served this morning. The 3rd respondent's notice of motion to strike out affidavits in support of the petition was served on 10.10.17. The petitioner has not yet filed a supplementary affidavit to the petition

3. I have considered the rival submission by counsels. The 1st and 2nd respondents' counsel argues that he was not able to get the deponents in time to swear the affidavits since they are engaged in the preparation of the forthcoming presidential elections. The 3rd respondent's counsel argues that the

petitioner's supplementary affidavit was not dependent on the replying and supplementary affidavits of the 1st and 2nd respondents and maintains that he is ready to proceed although the application dated 6.10.17 was served 2 days ago. The petitioner's advocate asks for time to file a response to the 1st and 2nd respondent's replying and supplementary affidavits and to the 3rd respondent's application dated 6.10.17.

4. The 1st and 2nd respondent's replying and supplementary affidavits are in response to the petition. In my considered view, and on this I agree with the petitioner's advocate, it would have been imprudent on the part of the petitioner to file a supplementary affidavit to the petition before receipt of the 1st and 2nd respondent's replying and supplementary affidavits and then ask for more time to reply to any issues that may arise therefrom.

5. The 3rd respondent's application dated 6.10.17 was served 4 days after filing and only 2 days ago and the petitioner has not had time to respond. Under the powers conferred on this court by the provisions of rule 20 of the Elections (Parliamentary and County Elections) Petition Rules, 2017, I find that it would be in the interest of justice for purposes of ensuring that no injustice is done to any party, to extend the time within which respective responses may be filed by the parties herein.

6. Consequently, it is hereby ordered:

i. The petitioner is granted 4 days from today's date to file and serve the supplementary affidavit to the petition and replying affidavits to the 3rd respondent's application dated 6.10.17

ii. The 1st and 2nd respondents will have 3 days from today's date to respond to the 3rd respondent's application dated 6.10.17

iii. The 3rd respondent will have 3 days from date of service of response by the petitioner to file a further and/or supplementary affidavit as the case may be if need be

iv. The parties are at liberty to file and serve submissions to the applications dated 7.9.17 and 6.10.17 before the hearing of the preliminary issues

v. Hearing of preliminary issues on 23.10.17

DATED AND DELIVERED THIS 13th DAY OF October, 2017

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant -

Petitioner -

1st and 2nd Respondent -

3rd respondent -