



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELECTION PETITION NUMBER 14 OF 2017

**IN THE MATTER OF THE ELECTION ACT, NUMBER 24 OF 2011 LAWS OF KENYA AND
THE ELECTION (GENERAL) REGULATIONS, 2012 AND ELECTIONS (PARLIAMENTARY
AND COUNTRY) PETITION RULES, 2017**

AND

**IN THE MATTER OF THE GURBERNATORIAL ELECTIONS FOR WAJIR COUNTY, NO.
008, HELD ON 8TH AUGUST, 2017**

BETWEEN

AHMED ABDULAHI MOHAMAD.....1ST PETITIONER

AHMD MUHUMMED ABDI.....2ND PETITIONER

AND

HON. MOHAMMED ABDI MAHAMUD.....1ST RESPONDENT

GICHOHI GATUMA PATRICK.....2ND RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION..... 3RD RESPONDENT

RULING:

The Respondents have objected to the witness being questioned on an Affidavit sworn by one Abdikadir Sheikh in a different Petition. The bias is that that is tantamount to introducing new evidence not contained in any of the Affidavits on record or the Petition. Mr. Omuganda also objected on the basis that since the Affidavit is not sworn by R₂W₁ he should not be questioned on it.

The Court has been referred to **paragraphs 67 to 70 of the Petition**. They relate to an alleged Commission of an election offence by the Returning Officer of Wajir East Constituency. The same allegation was repeated by Ahmed Muhumed Abdi in **paragraph 49** of his Supporting Affidavit sworn on 6th September, 2017.

In his response, R₂W₁ categorically denied that allegation in paragraph 42 of his Affidavit sworn on 18th September, 2017. Not only did he deny the allegation but he stated:-

“I rely on the Affidavit by Constituency Returning Officer for Wajir East, Mr. Abdikadir Sheikh Abdi and I put the Petitioners to strict proof thereof”.

Having specifically responded to the allegation and put the Petitioner’s to strict proof, this Court’s view is that any evidence that will go to answer the denial by proving the allegation is relevant. He did not state in his Affidavit that he swore on information by the said Abdikadir or any other person. This is so since **in paragraph 59** he has stated that wherever he stated matters on information he disclosed the sources. Had he disclosed that the information in paragraph 42 of his Affidavit was on information, then it would not be right to put questions to him that go to show the position taken by Abdikadir.

Secondly, this is cross-examination. The law of evidence as I understand it is that in cross-examination, a witness can be asked any question provided it is relevant. Further, it is meant to test the credibility of a witness. How else can evidence of a witness be tested except on cross-examination when the veracity of what he has stated is shaken.

In this regard, I am told that the Affidavit which the witness has sought to be shown was sworn by his own Returning Officer in a matter pending before another Election Court. It is evidence in that Court. It is a matter which the Court can take judicial notice of. It is in my view, relevant in so far as it relates to the issue in question in **paragraphs 67 to 70 of the Petition.**

Accordingly, the objection is dismissed.

DATED and **DELIVERED** at Nairobi this 22ND day of November, 2017.

A MABEYA

JUDGE