



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA
CONSTITUTIONAL PETITION 3 OF 2017

SOLOMON P. MUKENION:.....1ST PETITIONER
NGURASIA RUMOT:.....2ND PETITIONER

VERSUS

JOHN MWOK:.....1ST RESPONDENT
EMMANUEL PKERIO LOSHANGOLE:.....2ND RESPONDENT
REGISTRAR OF SOCIETIES:.....3RD RESPONDENT
ATTORNEY GENERAL:.....4TH RESPONDENT

RULING

The petition filed on 17th February 2017 and of which is undated, and the Notice of Motion filed on the said date, arises out of a leadership dispute of Pokot Council of Elders. There was a suit in the lower court involving the same, **civil suit number 16 of 2016**. The court's order dated 5th October, 2016 shows that the parties consented to holding fresh elections and the chairman John Mwok was to issue all relevant notices to all the parties.

The petitioners who were the 3rd and 4th defendants in the lower court suit, now alleges that the 1st respondent did not cooperate with them in arrangement of the fresh elections which were held on 22.12.2016. The 1st Respondent having no opponent was elected unopposed. Petitioners avers that the manner in which the said elections were conducted, without involving them, violated their right to vote and participate in choosing their representatives of which is contrary to **Article 81(a)(d) and (e) of the Constitution**. They pray for orders:-

- a) **A declaration that the petitioners had a right to participate in the elections of Pokot Council of Elders held on 22.12.2016 since they are members of the said Pokot Council of elders.**
- b) **A declaration that the Elections of Pokot Council of Elders held on 22.12.2016 was null and void for not being free, fair and transparent and for lacking credibility.**
- c) **An order directing that a fresh election for Pokot Council of Elders be held within the time frame as the court shall deem fit.**

d) Costs of the petition.

The notice of motion was filed to prevent the 1st and 2nd respondents from presenting their names to the 3rd respondent for registration as the officially elected members of Pokot Council of Elders.

The motion therefore seeks temporary injunction restraining respondents by themselves or any other persons acting for or on their behalf whatsoever, from registering themselves as duly elected officials of Pokot Council of Elders.

The application is objected to by the 1st and 2nd respondents on the grounds that they issued notices to all the relevant parties of the election held on 22.12.2016. Announcements about it were also made through a local radio station, North Rift Radio Station. Petitioners were served with notices through their advocates via registered post. The elections proceeded with their full knowledge.

The 3rd respondent stated they declined to register the outcome of the election as they were made aware of the dispute. The minutes presented to them were also not signed so as to enable them register.

Temporary injunctions whole purpose is to preserve the status quo until the question to be investigated in the suit can finally be disposed of. The case of *NoorMohamed Janmohammed versus Kassamali Virji Madhani [1953], 20 EACA 8*, is to the point.

In the now well celebrated case of *Giella versus Cassman Brown*, requirements for grant of injunction are:-

- 1. The applicant must show a prima facie case with a probability of success.***
- 2. It will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages.***
- 3. If the court is in doubt, it will decide an application on the balance of convenience.***

The 3rd Respondent have stated that they declined to register the outcome of the disputed election as they were made aware of the dispute and the minutes were not signed. The balance of convenience is to have the status quo maintained pending hearing and determination of the petition. The application is therefore allowed. Costs will be in the cause.

S. M. GITHINJI

JUDGE

16.11.2017