



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
ELECTION PETITION NO. 6 OF 2017
IN THE MATTER OF PARLIAMENTARY ELECTION FOR TARBAJ CONSTITUENCY
(WAJIR COUNTY)

BETWEEN

IDRIS ABDI ABDULLAHI.....PETITIONER

VERSUS

AHMED BASHANE.....1ST RESPONDENT

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION (IEBC).....2ND RESPONDENT

SIYAT MAHAT SABUL.....3RD RESPONDENT

RULING (4)

OBJECTION

On 13th December 2017, the 2nd & 3rd Respondents' through Counsel raised objection to the Petitioner's testimony that when the Petitioner received information of the varying votes of Kajaja 2 he raised the issue with the Returning Officer. The 1st Respondent associated himself with the 2nd & 3rd Respondents' objection.

The Petitioner through Counsel relied on **Section 6 of the Evidence Act** that relates to facts which though not in issue are also connected with facts in issue so as to form part of the same transaction are relevant, whether they occurred at the same time or place or at different times and places.

COURT

This Court is guided by the **Election (Parliamentary & County Election) Petition Rules 2017. Rule12 (8)** which states;

Except with leave of the Election Court and for system cause, a witness shall not give evidence unless an affidavit sworn by the witness is filed as required under this rules.

The **Evidence Act Cap 80** binds all Courts in all proceedings but in addition the **Election (Parliamentary & County Elections Petition Rules) 2017** are specific to conduct of the instant election

petition.

The Petitioners Petition and Supporting Affidavit do not confirm any meeting and/or communication between the Petitioner and Returning Officer in relation to matter raised in regard to the election in Kajaja II. To spring the same examination -in -chief is to prejudice the 1st, 2nd & 3rd Respondents as they have not had the opportunity to prepare and address the pertinent issue as it is not pleaded anywhere in the pleadings.

Parties are bound by pleadings and he who alleges must prove. Each party at the commencement of the hearing is aware of the case and ought to prepare for the case at hand and not on upcoming issues. For these reason, the aspect of communication between the Returning Officer and the Petitioner on the issues raised with regard to Kajaja II Polling Station is hereby expunged from the Court record.

M. W. MUIGAI

JUDGE

13.12.2017

IN THE PRESENCE OF:

MR OMWENGA FOR PETITIONER

MR WANJOHI FOR 1ST RESPONDENT

MR OLAHA FOR 2ND & 3RD RESPONDENTS