



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 78 of 2013

EVANS M. SWANYA.....PETITIONER

AND

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....1ST
RESPONDENT**

THE COMMISSION FOR HIGHER EDUCATION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The Notice of Motion is dated **6th February 2013** and filed in Court on **7th February 2013**. It is expressed to be brought under **Article 23 (3) (a)** of the Constitution of Kenya. It is seeking for orders that;-

1) Spent

2) That this Court be pleased to grant an order compelling 1st and 2nd Respondent to release the information sought by the applicant/petitioner herein requesting the academic credentials of all the presidential candidates in the March 2013 Election.

3) That this court be further pleased to grant an order compelling the 2nd Respondent to disclose to the applicant/petitioner all information with regard to the verification and certification of academic qualifications as set out in the constitution relating to all presidential candidates for the 2013 General Election.

4) That this honourable court be further pleased to grant an order compelling the 2nd Respondent to disclose to the applicant/petitioner details for all criteria for recognition of the universities at which all presidential candidates for the 2013 election attained their academic qualifications as required by the Constitution.

5) That this honourable court be further pleased to grant an order compelling the Respondent to release to the applicant/petitioner all details of the universities attended by all presidential candidates for the 2013 general election and which issued their academic certificates for purposes of compliance with the mandatory nomination requirements.

6) That this court be pleased to grant an order compelling the 3rd Respondent to discharge his

constitutional duty to advise the 1st and 2nd Respondent on their legal mandate of ensuring access to information within its mandate by the petitioner herein, and by extension to all members of public.

7) That the costs of this application be provided for.

2. The Application is predicated on the grounds stated on the face of the application and is supported by the affidavit of **EVANS M. SWANYA** sworn on **6th February 2013**.

3. The Petitioner avers that he sought information from the 1st and 2nd Respondent regarding the academic credentials of the Presidential candidates who were cleared by the said Respondents to run for the March 2013 elections. It is the Petitioner's case that the Respondents have blatantly and with utter impunity denied his request to supply the information. It is further the Petitioner's case that he is aggrieved by the denial of the said information and the infringement of his fundamental and inalienable right to access information guaranteed by the Constitution.

4. The 1st Respondent opposed the application by filing Grounds of opposition on **11th February 2013**. The said grounds are that the Petition is premature and that the 1st Respondent has not breached or contravened the Petitioner's fundamental rights and freedoms.

5. The 2nd and 3rd Respondents did not file any responses.

6. I have considered the application herein, the affidavit in support and the Grounds of opposition filed by the 1st Respondent. I have also considered the authorities filed and can now take a view on the matter.

7. From the onset, I wish to state that I agree with the 1st Respondent on the ground that the Petitioner's application is premature. The Petitioner first wrote to the 1st Respondent on 1st February 2013 seeking information regarding the academic credentials of the presidential Candidates who were cleared by the Respondent to run for the March 2013 elections. This was followed by two other letters from the Petitioner on 4th February and 6th February 2013. This application was filed in court on 7th February 2013, which is three working days from the time the Petitioner first placed his request with the 1st Respondent. It is evident from the foregoing that the Petitioner did not give the Respondents adequate time to respond to his request.

8. It is common knowledge that all the presidential candidates have been cleared by the 1st Respondent to run for the forthcoming General Elections. This can only mean, *prima facie*, that the said candidates met the stipulated requirements to run for presidency including the academic qualifications. The qualifications of the said candidates, academic or otherwise, have not been successfully challenged.

9. The above notwithstanding, this Court is alive to the fact that the Petitioner is guaranteed a right to access of information under **Article 35** of the Constitution. However, it is only fair that the Respondents be given sufficient time to respond to the Petitioner's request. There is no evidence by correspondence or otherwise that the said Respondents have refused to honour the Petitioner's request for information. In that case, it cannot be concluded that the Petitioner's right to access information as guaranteed under the Constitution has been infringed.

10. If the said information is provided after the general elections and it happens that the successful presidential candidate was not qualified to run for the said seat, the Petitioner still has a remedy. The election of the said candidate can still be challenged in a court.

11. In the upshot, I hereby dismiss the Petitioner's **Notice of Motion** dated **6th February 2013**.

DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF FEBRUARY 2013

E. K. O. OGOLA

JUDGE

Present:

Atsieno – for the Petitioner

Munyi for 1ST Respondent (IEBC)

Teresia – court clerk