



REPUBLIC OF KENYA

High Court at Nakuru

Judicial Review 11 of 2013

KUNTAI KOOL.....APPLICANT

VERSUS

**INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION.....RESPONDENT**

RULING

By a chamber summons dated 27/3/2013, the ex-parte applicant, Kuntai Kool seeks the following orders:-

- 1. That the applicant be granted leave to apply to this Honourable Court for an order of prohibition directed to the Ag. Principal Magistrate, Narok (C.A. Nyakundi) prohibiting the said magistrate or any other magistrate from hearing or continuing with the hearing of a Notice of Motion application dated and filed on 25th March, 2013 and filed at the Principal Magistrate's court at Narok, being Election Petition No. 1 of 2013;**
- 2. That the applicant be granted leave to apply to this Honourable Court for an order of certiorari directed to the Ag. Principal Magistrate, Narok (C.A. Nyakundi) quashing the decision and/or interlocutory order issued by the said magistrate on 25th March, 2013 in Narok Principal Magistrate's Court, Election Petition No.1 of 2013 in which the said magistrate restrained the applicant herein from being sworn in, assuming office and/or assuming the roles and responsibilities of the Member of County Assembly, Olokurto Ward until the inter-partes hearing of an application dated 25th March, 2013;**
- 3. That the applicant herein be granted leave to apply to this Honourable Court for an order of mandamus directed to the Interim Clerk of Narok County Assembly and/or the Speaker of the Narok County Assembly to swear in the applicant as by law provided;**
- 4. That the grant of leave hereinabove to apply for the said orders of prohibition, mandamus and certiorari do operate as a stay of proceedings in question, to wit, Narok Principal Magistrate's Court Election Petition No.1 of 2013 (Lambeshua Reuben Moriaso Ole versus Julius Ole Kool & 3 Others) until the hearing and determination of the application. The only question I need to determine at this stage is whether the applicant has an arguable case to**

warrant the grant of leave to commence these Judicial Review proceedings. In doing so, I asked both counsel to address this court on the question of whether or not the Senior Principal Magistrate, Narok, had the jurisdiction to grant an order stopping the swearing in of the applicant herein. **Section 75 of the Elections Act, 2011** donates the jurisdiction to hear and determine County Election Petitions on the High Court within the County or the nearest County. **Rule 6 of the Elections (Parliamentary and County Elections) Petition Rules 2013** provides for **Constitution** of Elections Courts. **Rule 6(1)(b)**, provides that a court shall be properly constituted for purposes of hearing –

(a)

(b) **An Election Petition in respect of an election to a County Assembly if it is composed of a Resident Magistrate designated by the Chief Justice under Section 75 of the Act;**

(c) **The Court shall publish the name of the Judge or Magistrate designated under sub-rule (2) in the Gazette and in at least one Newspaper of national circulation.**

From a reading of the above provisions, before a judge or magistrate hears any petition, they must have been appointed by the Hon. The Chief Justice and gazetted. So far the Hon. The Chief Justice has not designated any Judge of the High Court or Magistrate to hear any petition save for the Supreme Court judges who are hearing the petition relating to Presidential Elections. It follows that the magistrate in Narok had no jurisdiction to touch any election petition coming before her and give substantive orders until appointed by the Chief Justice and gazetted. For that reason, I grant leave to the applicant to commence these Judicial Review proceedings in terms of prayer 1, 2 and 3 and the same shall operate as stay of the order and proceedings in **Narok Election Petition No.1 of 2013**. Notice of motion be filed and served within 14 days hereof.

Costs to abide the determination of the notice of motion. Once the notice of motion is filed, the matter be brought up for mention for purposes of taking directions.

DATED and DELIVERED this 28th day of March, 2013.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Topoti for the applicant

Mr. Otieno for the respondent

Kennedy – Court Clerk