



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Civil Case 136 of 2013

SIMON KIPRONO SANG.....APPLICANT

V

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....RESPONDENT

RULING

The applicant herein, Simon Kiprono Sang, has filed this miscellaneous application against the IEBC seeking that the court do order that the respondent do supply the applicant with the National Assembly ballot paper for Kuresoi South Constituency. The applicant states that he vied for the seat of Member of National Assembly for Kuresoi South Constituency but lost the seat and he attributes his loss to errors made by the respondent in the relevant ballot paper and intends to file an election petition. He contends that he can only be able to file a competent petition if he annexes the said documents and yet they are in possession of the respondent.

The application was opposed for being vague and therefore fatally defective. Mr. Kahiga argued that the applicant has not approached this court properly as he should have filed Judicial Review proceedings or a petition. Counsel also urged that the applicant is on a fishing mission and trying to source for evidence unprocedurally.

I totally agree with the respondent that the law governing challenge to elections is the **Elections Act, 2011** and the **Rules** made there under. What the applicant seems to want to do is to scrutinize the ballot papers for errors. Under **Rule 33(1)** of the **Rules**, a party to the proceedings may at any stage apply for scrutiny of the Elections (Parliamentary and County Elections Petition) Rules for purposes of establishing the validity of the votes cast. Proceedings under this Act and Rules mean an election petition filed under **Section 74** of the **Elections Act**. I believe that the ballot paper is in the ballot box and for one to peruse it,

the ballot boxes would need to be opened. The boxes were sealed during the elections on 4/3/2013 and can only be opened in court if there is a challenge to the election. That is why I agree with the respondent that this application is fatally defective. The applicant wants to take a short cut and avoid filing a proper petition where he can seek scrutiny of the votes as one of his prayers. For the foregoing reasons, I decline to grant the application and dismiss it with costs.

**DATED and DELIVERED this 28<sup>th</sup> day of March, 2013.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Gekonga for the applicant

Mr. Maragia holding brief for Mr. Kahiga for the respondent

Kennedy – Court Clerk