



REPUBLIC OF KENYA

Petition 3 of 2013

BETWEEN

ABDINOOR ADAN ABDIKARIM.....PETITIONER

AND

**INDEPENDENT ELECTROL AND BOUNDARIES COMMISSION.....1ST RESPONDENT
MOHAMED MOHAMUD OSMAN.....2ND RESPONDENT**

RULING

The application and reply thereto is noted in a nutshell Mr. Mwangi and Mr. Kuloba for the 1st and 2nd Respondent/Applicants raised issues regarding gazette notice no 5381 that the Gazette indicates that all ward assembly election petitioners are being heard in Courts that have territorial jurisdiction except this petition.

Secondly that the gazette notice at page 2301 on electoral area is described as County Assembly ward Representative, Daanyere ward, Mbalambala Constituency Garissa County INSTEAD of County Assembly Representative Adamasajide ward, Wajir West Constituency.

That the issue of Gazette notice may be trivial but it should not be wished away as a minor issue, for it may mutate to something else since the gazette notice does not even mention the relevant ward on which this petition is all about.

And that it is dismaying that a ward which is in Wajir County does not fall within the jurisdiction of that Court, and that petitioner filled, this petition intentionally in this Court (Garissa) with their own motives without good reasons at all, the cost of transporting election materials from Wajir may be high if the petitioner were to ask for them that the Court should give directions if not this anomaly be brought to the attention of the Honourable Chief Justice for proper directions.

While Mr. Mutua for the Petitioner/Respondent refuted these claims and submitted that the reasons why the respondent filled this matter at Garissa Chief Magistrate's Court is because directions were given that ward matters be filled at the Chief Magistrate's Court, while Wajir is not a Chief Magistrate's Court and there is no other motive at all, that jurisdiction is properly conferred to this Court by the Honourable Chief Justice vide gazette notice no 5382 the only error being the misdescription of the ward (Electoral area) in the Gazette notice and that this ought to be brought to the attention of the Chief Justice or Government printer.

Having considered the issues raised it is my finding that this is an election Court which is properly Constituted, whose jurisdiction was conferred to by the Honourable Chief Justice pursuant to the Kenya gazette notice no 5382 and in the exercise of his lordships powers as conferred by section 75 of the elections Act and Rule 6 of the elections petitions Rules 2013.

To me it is not in doubt that from the gazette notice the only error is the misdescription of the electoral area only, the rest is OK, i.e the election petition number Name of parties, Election Court and the Court station all is alright and the intent of this gazette notice is clear, even with the misdescription of the electoral area.

I am yet to understand and appreciate how such an error is likely to prejudice any party herein or how it will touch on the core issues herein or even overrule the overriding objective as stipulated under rule 4 (1) (2) (3) (5). However since jurisdiction is conferred to this Court vide the same Kenya Gazette notice which seems to have omitted to mention the ward on which the election is being contested. To the extent that this error be brought to the attention of the Chief Justice, I concur with the Applicant/Respondents, may be for purposes of strict compliance with the election petition Rule 6 of 2013. To me from the gazette notice, this is a competent court with proper jurisdiction to hear and determine the matter even if it emanates from Wajir because from the rules, questions of designation and conferment of jurisdiction to Court is not within the province of any part.

The question of jurisdiction having been settled, there is no need for me to deal with the issue of territorial jurisdiction as raised, even then I personally do not see any ulterior motive on the part of the petitioner in filling this petition at Garissa Chief Magistrate's Court whether he was misled by the directives or not again clearly the petition is filled in Garissa, which has a High Court Registry and which High Court has both territorial and supervisory jurisdiction over Wajir magistrate's Court, just like Garissa Chief Magistrate's Court, for they both fall under the Garissa High Court District, may be just to draw a parallel from the same gazette notices. Garissa High Court petition no 6 of 2013 involving a member of parliament from the same constituency of Wajir West is designated to Court station in Nairobi.

I shall invoke article 87 of the constitution of Kenya, section 80 (d) of Elections Act 2011 on jurisdiction and powers of the Court to determine matter before it without undue regard to technicalities, Rules 4(1) on the overriding objectives Rule 34 and deal with issues of cost as they emerge during hearings and, Rule 38 (b) on timeliness of the Election Petition Rule 2013 and give the following directions.

(a) Meanwhile this petition to proceed in this Court as gazetted unless we are directed otherwise.

(b) The error in gazette notice no 5382 at page 2301 is misdescription of the electoral area be brought to the attention of the Chief Justice at this early stage of hearing, for further directions if any.

(c) Cost in the cause.

I drew great insight and made references on the question of jurisdiction conferred to Court by the constitution Vis – a – visa jurisdiction conferred by the statute law, on the following cases: **Civil Application No. 2 of 2011 Samuel Kamau Macharia Vs. Kenya Commercial Bank and two others** and **in the matter of the interim Independent Electoral Commission Constitutional Application No. 2 of 2011.**

B. J. NDEDA SPM
23/5/13

COURT: Ruling delivered in open Court in the presence of Mr. Mutua for the petitioner and Mr. Mwangi for 1st Respondent also holding brief for Mr. Kuloba for 2nd Respondent.

B. J. NDEDA SPM
23/5/13