



REPUBLIC OF KENYA

High Court at Bungoma

Election Petition 7 of 2013

THE ELECTION ACT (2011)

ELECTION FOR THE MEMBER OF THE NATIONAL ASSEMBLY

MARTIN SARAWE WECHULI.....PETITIONER

VERSUS

IEBC.....1ST RESPONDENT

THE RETURNING OFFICER, BUMULA CONSTITUENCY...2ND RESPONDENT

BONIFACE OKHIYA OTSIULA.....3RD RESPONDENT

RULING

MARTIN S. WECHULI (the petitioner) had filed this election petition against Independent Electoral Boundaries Commission (IEBC), the Returning Officer Bumula Constituency and Bonface Okhiya Otsiula (1st, 2nd and 3rd Respondents respectively). He had sought for orders to declare that the 3rd Respondent (BONFACE OKHIYA OTSIULA) was not duly elected, and that the election was void.

He had alleged certain discrepancies and breaches of the Electoral laws at various polling stations, resulting in what he described as elections which were neither free nor fair.

The Respondents filed responses contesting the allegations, saying the elections were free, fair and credible.

On 22/04/2013, the petitioner filed a notice of withdrawal of the Election Petition and applied to withdraw the petition on grounds that:-

a) He has held serious consultations and sought legal advice from his counsel, which has resulted in him concluding that the best decision for him is to withdraw the petition.

b) He has also examined carefully, the decision by the Supreme Court – I suppose he is referring to the recently concluded Presidential **Election Petition No.5 of 2013 (Raila Odinga V IEBC and 3 others)** as consolidated with **Petition No.3 of 2013, (Moses Kiarie Kuria and 2 others V Ahmed Isaack Hassan and IEBC)**, and **Petition No.4 of 2013 (Gladwel Wathoni Otieno and Another V Ahmed Isaack Hassan and 3 others)** where the petitioners challenge election of His Excellency President Uhuru Kenyatta was dismissed. He states that in light of that decision and having continuously followed the mood of his constituents, he has resolved not to pursue the petition further.

The petitioner has also reflected on all the attending circumstances, family ramifications and he has concluded that in the best interest of the people of Bumula Constituency, this petition be withdrawn.

He realizes that his grievances are likely to be properly addressed in future recommendations and changes in the electoral process and by the electoral body as was cited by the Supreme Court decision. This means no serious prejudice will be occasioned to him

The application for withdrawal is not opposed, and an affidavit is sworn on behalf of the 1st and 2nd Respondents by PETER MAUTA KAINDIO (the Returning Officer for the election of the Member of the National Assembly for Bumula Constituency, during the 4th March 2013 General Elections).

He confirms that to the best of the 1st and 2nd Respondent's knowledge (he being an employee of IEBC, there is no agreement or terms of any kind that have been made, and no undertaking has been entered into in relation to the withdrawal of the petition.

The counsel for 1st and 2nd Respondents, Mr. Cyprian Masafui Wekesa has also sworn an affidavit confirming that no agreement or terms of any kind has been made nor is there any undertaking entered into in relation to this withdrawal.

There are also affidavits filed by the 3rd Respondent and his counsel.

I have considered the grounds upon which the petitioner seeks to withdraw this petition bearing in mind that an election petition is not just for the interest of one individual, but affects the interest of the entire public, this is why the notice of withdrawal must be published in the Kenya Gazette, so that in the event that another person is keen on being substituted to pursue the petition in the interest public, such opportunity should not be lost. As at the time of the court ruling, no one indicated a desire to be so substituted.

I have perused the affidavits filed by the respondents and their counsel, who confirm not to have made any arrangement, agreement or undertaking in relation to the withdrawal. I have considered the reasons given for the withdrawal which is as a result of not only personal interest of the petitioner, but the interest of the people of Bumula, his family, and the fact that he recognizes that most of the issues he raised especially with regard to 1st and 2nd respondents have been addressed by the Supreme Court in its ruling in Election Petition No.5 of 2013, and appropriate directions given especially as concerns the electoral body and the conduct of future elections.

Consequently, I am satisfied that the reasons given for the withdrawal are sound and merited and I allow the application. The Election Petition No.7 of 2013 is marked as withdrawn.

Since the respondents have incurred considerable expense and time in preparing the responses to the petition and engaging counsel in attending court and collecting evidence, I am persuaded that they are entitled to costs. I therefore order that costs of this petition shall be borne by the petitioner.

Parties are directed to file their bill of costs for taxation.

Delivered and dated this 15th day of May, 2013 at Bungoma.

H.A. OMONDI
JUDGE

Mr. Sichanyi for Petitioner

Mr. Wekesa for 1st and 2nd Respondents and holding brief Mr. Wangalwa for 3rd Respondent