



REPUBLIC OF KENYA

High Court at Nyeri

Election Petition 4 of 2013

RICHARD NCHAPI LEIYAGU.....PETITIONER

versus

INDEPENDENT ELECTORAL BOUNDARIES COMMISSION.....1ST RESPONDENT

ISMAEL HASHIM.....2ND RESPONDENT

MATHEW KIDEME LEMPURKEL.....3RD RESPONDENT

RULING

1. This petition was filed on 10th April 2013 By Mr. RICHARD NCHAPI LEIYAGU against the Respondents herein arising out of the election of 4th March 2013 against the election of the member of the National Assembly LAIKIPIA NORTH CONSTITUENCY and the Respondents filed their responses thereto.
2. On 22nd May 2013 the Advocates for the parties herein appeared before court for pre trial conference when the issues for determination of the mode of hearing, the number of witnesses and the filing of further affidavits and documents were agreed upon by consent.
3. The hearing dates for the petition was also fixed by consent for four (4) consecutive days beginning on 10th to 13th of June 2013.
4. It was further agreed by consent that the petitioner will have two days that is 10th and 11th to present his case while the three (3) respondents will share the remaining two days that is 12th and 13th to present their response.
5. When this matter was called out in court for hearing on the set date of 10th, June 2013 neither the petitioner his advocates nor his witnesses and representatives were present in court.
6. The court therefore in the interest of justice directed the registry staff to call the petitioners Advocate on his cellphone which was provided to court as part of the compliance documents filed with the petition to attend court within the next 30 minutes failure to which the petition would be dismissed for non attendance.
7. At 12.45 pm. when the matter was once more called out for hearing the court was informed that the petitioners advocate had been called and the same indicated that they were prepared for hearing the next day without giving reasons for their absence on the set date of hearing.
8. It was therefore submitted by Mr. Kibunja on behalf of the 1st and 2nd Respondents that the hearing dates were set by consent at the pretrial conference.

9. It was further submitted that at the said pretrial conference the petitioner sought and was given leave to file and serve fresh or further affidavits within the next three days from the date of the said pretrial conference but though filed on the same day were never served upto the 29th May 2013 way beyond the time limits agreed upon and therefore the petitioner was not taking the proceedings seriously. He therefore urged the court to strike out and dismiss the same with cost.

10. Mr. Saitibau for the 3rd Respondent associated himself with the submissions by Mr. Kibunja that the petition was set for hearing for four clear days as stated here and that it was agreed that the first two (2) days be given to the Petitioner while the Respondents would jointly take the last two (2) days.

11. He submitted that the law sets very clearly time lines for determination of the petition within six months which started running from 10th April 2013 incase this petition.

12. It was further submitted that the third Respondent though a member of National Assembly in compliance with the directions of this court had attended the hearing together with his seven witnesses and therefore from the conduct of the petitioner it seems that he is taking the proceedings for a ride and pray that the petition be dismissed with cost.

13. It should be noted that both the constitution and the Election Act have set very strict time lines within which the election petitions must be filed and determined within six months. This is provided for under Article 105(2) of the Constitution and Section 85 of the Election Act.

14. Under overriding objections of the Election (parliamentary and county elections) petitions rule 2013 provides as follows;

4(1) the overriding objective of these rule is to facilitate the just expeditious proportionate and affordable resolution of election petitions under the constitution and the Act.

(3) A party to an election petition or an advocate for the party shall have an obligation to assist the court to further the overriding objective and to that effect to participate in the process of the court and to comply with directions and orders of the court.

15. Under Rule 19(3) the court may on the application of a party or on its own motion for sufficient reasons postpone the commencement of the trial of an election petition to a date specified by this court and under Rule 22 the court shall conduct trial proceedings as far as reasonably practicable on day to day basis until trial is concluded.

16. I have noted that there is no sufficient reason given by the Petitioner and his Advocates for postponement of the commencement of trial herein which was set for 10th June 2013.

17. On the authority of JYOTI BASU & OTHERS vs DEBI GHOSAL & OTHERS AIR 983 SCR(3) 318 it should be noted that this court ought to act within the statutory time limits provided as regards right to settlement of election disputes.

18. The parties ought to note that by virtue of these election disputes the Kenya court has come to almost a stand still and the court will not come to the aid of any party who is out to frustrate speedy disposal of election disputes.

19. The Supreme Court of Kenya had this to say in the election petition No. 4 of 2013 RAILA ODINGA vs INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & ANOTHER.

The Supreme court jurisdiction is also limited in time-span A petition contesting the election of a president does not set-ff an open ended course of litigation without time-frames. The applicable time-frame within which any challenge to the election must be filed, served, heard and determined, is prescribed under the Constitution. (Para 209);

“... The requirements of such a disciplined trial-framework fully justified the unlimited exercise of the court's discretion in making orders that shape the course of the proceedings...” (para 214)

“The rigid time-frame for the resolution of presidential-election disputes was not, in our opinion, conceived in vain at the time of the constitution-making process.. it is clear that expedition is of the essence in determining petitions relating to the Presidential Elections:(para 217).

20. I totally agree with the position taken by the Supreme court as regards timelines for disposition of election petitions and this court having fixed the hearing dates herein in the presence of all parties and by consent and there being no sufficient reason offered by the Petitioner for his none attendance and noting that we are dealing with “*tyranny of time*”, I have no otherwise than to dismiss the petition herein for none-attendance and want of proof.

21. I therefore dismiss the petition with cost to the Respondents herein and direct that the requisite certificate be issued to the Speaker of the National Assembly and the Hon. Chief Justice as required by law and the rules.

Dated and delivered at Nyeri this 11th day of June 2013.

J. WAKIAGA

JUDGE

Delivered in open court in the presence of:

Mr. Korir and Ngigi for the Petitioner.

Mr. S. Kibunja for the 1st Respondent.

Mr. Saitibao for the 3rd Respondent.

J. WAKIAGA

JUDGE