



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
ELECTION PETITION 14 OF 2008

**IN THE MATTER OF: THE NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS
ACT (CHAPTER 7, LAWS OF KENYA) AND THE REGULATIONS MADE THEREUNDER,
THE NATIONAL ASSEMBLY ELECTION (ELECTION PETITION) RULES AND THE
ELECTION OFFENCES ACT**

AND

**IN THE MATTER OF: ELECTION FOR KAJIADO NORTH PARLIAMENTARY
CONSTITUENCY**

AND

IN THE MATTER OF: THE PETITION OF MOSES SOMOINE OLE SAKUDA

BETWEEN

MOSES SOMOINE OLE SAKUDA PETITIONER

VERSUS

HON(PROF.) GEORGE SAITOTI 1ST RESPONDENT

ELECTORAL COMMISSION OF KENYA..... 2ND RESPONDENT

GOERGE MORARA OKENYE 3RD RESPONDENT

RULING

The Petitioner Moses Somoine Ole Sakuda filed a Notice of Motion dated 12th February, 2009 pursuant to Rules 23, 24, 25 and 27 of the National Assembly Elections (Election Petition) Rules 1993 (hereinafter referred to as the “**Elections Rules**”).

By the said application, the Petitioner prayed for orders that he be granted leave to withdraw his petition and also for issuance of any further orders deemed just and expedient by this court.

The aforesaid motion was supported by the grounds set forth on its face and the affidavit sworn on 12th February, 2009 by the Petitioner and that of Mr. Dismass Omondi Odhiambo Wakla, the learned counsel for the Petitioner respectively as required under the provisions of Rule 23 of the Elections Rules.

After due presentation of the application herein before the Registrar of the High Court of Kenya, a Notice as prescribed by Rule 25 of the Election Rules was published in Gazette as evident from the Affidavit of service sworn by the learned counsel for the Petitioner on 8th July, 2009. The Notice was published in the Kenya Gazette of 13th February, 2009 bearing gazette No.1385.

I am thus satisfied that the presentations of application, its service and publication in gazette were done as prescribed under Rules 24 and 25 of the Elections Rules.

It is further submitted and is borne from the record of the court that subsequent to the publication of the application herein, no application has been received by any person for substitution as evinced under Rule 26 of the Election Rules, and that no opposition or objection has been received from any of Respondents herein challenging the orders sought for by the Petitioner.

After satisfying to all the aforesaid facts, the court proceeded to hear the application in presence of and with consent of the counsel representing the three Respondents.

Mr. Odhiambo the learned counsel for the Petitioner, submitted that it is the wish of the Petitioner to withdraw his petition which wish is expressed on his own volition.

He further stressed that the Applicant's main reason for seeking to withdraw the petition is that the subsistence of this petition before the court is causing unnecessary partition politics in his constituency which is North Kajiado Constituency which result in hindering the development thereof. In ground No. (c) it is stated that the subsistence of this petition is causing conflicts and disagreements among the constituents which are affecting the making and implementation of various policy decisions for the benefit of the constituency like creation of a new district, the Nairobi Metropolitan demarcation and other crucial matters of common interest.

The second ground in support is of a personal nature. The Petitioner intends to revert to his missionary and evangelical works which he concentrates in the U.S.A., and Kenya. The pendency of the petition is hampering his plans of travel out of the country.

In any event, it is stressed that if the petition is allowed to be withdrawn, it shall bring in reconciliation, harmony and peaceful co-existence among the voters of the constituency.

He has further averred that no agreement or terms of any kind whatsoever, has or have been made or no undertaking has been entered as regards withdrawal of the petition.

In the affidavit sworn by Mr. Odhiambo, it is averred that the Petitioner evinced his desire to withdraw the petition and thereupon he explained in detail all relevant provisions of laws and consequences thereof. He also averred that according to best of his knowledge no term or agreement has been made and no undertaking has been entered in relation to the withdrawal of the petition.

He reiterated that the Petitioner's wish to withdraw was voluntary and on grounds mentioned by the Petitioner.

Mr. Odhiambo agreed that as per Rule 28 (5) of the Election Rules, the court lacks discretion in respect of the award of costs. The said sub-rules provides, namely:

“If a petition is withdrawn, the Petitioner shall be liable to pay costs of the Respondent.”

In view of the above provisions, Mr. Odhiambo conceded that the court may not grant any further order prayed for in prayer No.2 of the application.

Mr. Kilukumi appearing for the 1st Respondent did not oppose the application save as to the order of the costs in favour of the 1st Respondent.

Ms. Kamende the learned counsel appearing for 2nd and 3rd Respondents reiterated the comments made by Mr. Kilukumi.

Upon considering the application and relevant facts deponed by the Petitioner, I am satisfied that the application was filed by the Petitioner on his own volition and that the grounds upon which he intends to withdraw are valid grounds. I am further satisfied that no term or agreement has been made by the Petitioner or no undertaking is made in relation to the withdrawal of the petition.

In view of the premises aforesaid, I do tend to agree with the Petitioner that allowing the application and granting him leave to withdraw shall augur the benefit of the constituents and is likely to bring reconciliation, harmony and peace amongst the voters of the constituency.

I thus grant leave as prayed and order that **the petition** be and is hereby **marked as withdrawn**, with costs to the three Respondents.

I further direct that whole or part of any moneys deposited by way of security under Rule 13 of the Election Rules may be applied in the payment of taxed costs.

A certificate to the result of the petition herein be sent to the Speaker of National Assembly.

Dated, Signed and Delivered at Nairobi, this 14th day of July, 2009.

K.H. RAWAL

JUDGE

14.7.09