



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
PETITION NO. 20 OF 2017
IN THE MATTER OF THE ELECTIONS ACT, 2011
IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 90 (1) (2),
54 (2), 56 (A), 177(C) 21(3) OF THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF THE ELECTIONS (PARLIAMENTARY
AND COUNTY ELECTIONS) PETITION RULES, 2013
AND
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF REGULATION 54 (1)
AND (3) OF THE ELECTIONS (GENERAL) REGULATIONS 2012

DANIEL MUNYOKI MWANGANGI1ST PETITIONER
EPHRAIM MWIRIGI MBURUGU.....2ND PETITIONER
STEPHEN MUCHENA KIRIGA3RD PETITIONER
NTARANGI DOUGLAS M'MURITHI..... 4TH PETITIONER
BEATRICE MWENDA KIMATHI5TH PETITIONER
GEOFFREY MAWIRA MUGUONGO 6TH PETITIONER

VERSUS

ASENATH KAIMURI NYAMU 1ST RESPONDENT
PARTY OF NATIONAL UNITY2ND RESPONDENT
CLERK MERU COUNTY ASSEMBLY 3RD RESPONDENT
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION4TH RESPONDENT

R U L I N G

1. By a petition dated 5th September, 2017, the petitioners challenged the nomination and election of the 1st respondent to the County Assembly of Meru as the representative of persons living with disability under *Article 177(c) of the Constitution*. The said nomination

followed the August, 2017 general elections.

2. The nomination or election was gazetted on or about 28th August, 2017. By a ruling delivered on the 6th September, 2017, this court declined to stop the swearing in of the 1st respondent into the County Assembly. In the said ruling, this court delivered itself, inter alia, that: -

“This is a Petition challenging the election or nomination of the 1st Respondent to the Meru County Assembly as representative of persons with disability under Article 177 (c) of the Constitution.

The foregoing being the case, the process of such a challenge is to be mounted in the Election Court (see the decision of the Supreme Court in Moses Mwicigi & 14 Others v IEBC & 2 Others (2016) eKLR). That being the case, the question is whether this Court should stop the swearing in of the 1st Respondent as a Member of the Meru County Assembly at this stage pending the hearing and determination of the Petition.

Whilst the Constitution expressly bars a person elected as President in an election from being sworn in as President before a Petition challenging his election is determined, there is no such bar in respect of a Member of the County Assembly. The reason being that public interest requires that the County Assemblies should be left to operate and function normally pending the resolution of any disputes pending on their membership”.

3. The said petition was subsequently listed for hearing but was dismissed for non-attendance on 30th May, 2018. The petitioners applied vide an application dated 9th November, 2018 for the re-instatement of the said petition. That is the application that is the subject of this ruling.

4. It was contended by the petitioners that the matter was erroneously listed for hearing in a different court other than the trial court. That on the material date, the petitioners were in court with their advocate but were referred to the registry. They only discovered later that the matter had been listed in a different court and dismissed.

5. Although the application was served, only the 4th respondent who entered appearance to it and filed a Notice of Preliminary Objection. The objection is to the effect that; the petition as drawn breaches the law; that the time limited for challenging the validity of an election has since passed and that the matter has been filed in the wrong court.

6. Although the court directed that the parties do file submissions, only the 4th respondent filed its submissions which the court has considered.

7. As early as the 6th September, 2017, this court had advised the petitioners vide its ruling of even date that the matter before court was challenging the election of the 1st respondent. That by the authority of the Supreme Court decision in Moses Mwicigi & 14 Others v IEBC & 2 Others (2016) eKLR, they should lodge an election petition as per the law provided.

8. It was expected that the petitioners should have heeded that advice and lodged a compliant petition before an election court within time. As at that date, the petitioners had 19 clear days to lodge a compliant election petition. They did not do so. Such an election petition should have been lodged within 28 days of the declaration of the impugned results.

9. The party lists was published in the gazette on or about 28th August, 2017. The petitioners had until the 25th September, 2017 to lodge an election petition to challenge the impugned election or nomination of the 1st respondent. This they failed to do.

10. In view of the foregoing, there is no compliant petition before court capable of being adjudicated upon. The petitioners were supposed to file an election petition before a Resident Magistrate’s Court designated as an Election Court by the Chief Justice. Time for hearing election disputes for the 2017 election cycle is long gone.

11. In view of the foregoing, the application is without merit and the same is dismissed. Being a matter of public interest, I make no order as to costs.

It is so ordered.

DATED and DELIVERED at Meru this 4th day of July, 2019.

A. MABEYA

JUDGE