



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL CASE NUMBER 64 OF 2014**

**NAOMI LEKAIKUM AND 9 OTHERS.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**MALSON LESHOMO & 9 OTHERS.....DEFENDANTS/RESPONDENTS**

**RULING**

1. The applicants who are the plaintiffs in the suit claim to be the validly elected officials of the Maendeleo Ya Wanawake Organization (MYWO) in Samburu County following grassroot and county elections purportedly held on the 2<sup>nd</sup> July 2014 and the 8<sup>th</sup> July 2014 and conducted by the Ministry of Culture, Gender and Social Services.

By a statement of persons elected as found in Form **MYWO/FORM 2** dated 8<sup>th</sup> July 2014 and signed by the Returning Officer, Samuel Muchiri, a list of the elected officials was forwarded to the Secretary of the National office. The list (Form2) was signed by one L. Balanga and bears the stamp of the Ministry. On the strength of the said list, they claim to have been the duly and validly elected officials.

2. The Respondents on their part claim to also have been validly elected during the elections held on the two days, the 2<sup>nd</sup> July 2014 and the 8<sup>th</sup> July 2014. They too have produced a list of the elected officials – Form 2, showing their names and officials. The said Form 2 was forwarded to the National office by one Samuel Muchiri. On the 16<sup>th</sup> July 2014 the National Chairman one Rehab Muiri addressed a letter to the Respondents welcoming them as the elected officials and on that strength, they took office and since then have been in office, performing all duties of the said office.

3. At this point it is important to refer a the letter dated 10<sup>th</sup> July 2014 signed for the County Commissioner, Samburu County, by one S. Muchiri. The letter was addressed to the Secretary, National office **MYWO** Nairobi, and the subject was **MYWO** Election Results for Samburu County.

It reads:

***“Forwarded herewith are the results as forwarded by the Department of Social Services Presiding Officer.***

***An agreement had been reached for Social Services to appoint a Returning Officer for the Parallel Elections following a disagreement on the list of those who are eligible to vote as drawn from 3 Sub-counties ie- Samburu North, Samburu Central and Samburu East.”***

Attached to the said letter were two different sets of statements and lists of persons elected and forwarded to the National Office as stated above, **and there lies the dispute as to which list constituted**

**the validly elected** office bearers of the of **MYWO** Samburu County.

4. The court has considered the application, the supporting Affidavits and annexures and the Replying Affidavits including the annexures, together with the opposing submissions by both counsel.

5. **The applicants case** is that they were the duly elected officials in the elections. Indeed, it is their submission that there were parallel elections as confirmed by the letter quoted above, a fact admitted by the Respondents who too claim to have been validly elected and properly and procedurally in office.

It is submitted for the applicants that the purported agreement to have parallel elections was not evidenced nor were parties to the said agreement given. It is further submitted that the alleged office bearers, the respondents list was a fraud as some of the officials said to have been elected never presented themselves as candidates nor did they participate in the elections. A case in point was one Beneditta Lempii, shown to have been elected as the vice – Treasurer in the Respondents list of officials, and who does not appear in the names of officials as stated by the National Chairman in her letter and confirmation of elected officials dated 16<sup>th</sup> July 2014.

It is stated that the said elections were marred by massive irregularities, and that there were no Returning Officer as shown by the two lists signed by two different persons purporting to be Returning Officers.

6. **For the Applicants**, all the irregularities and fraud created two parallel office bearers which is irregular and unconstitutional rendering the whole process null and void. It is the applicants contention therefore that the Respondents are irregularly and illegally in office and seek for orders that the court grant a conservatory order by barring the respondent office bearers from carrying on with any functions of the office pending hearing and determination of the suit.

The Respondents seek that the application be disallowed on the grounds that they are legally in office having been elected through regular, just and legal means and the results of the election having been open and transparent.

7. In support of the fairness of the Elections, it is urged by the Respondents that the earlier officials handed over the offices to them and the National Chairman welcomed them to office and have since been in office hence the application has been overtaken by events.

In furtherance to their arguments, the Respondents stated that the applicants deponents of the supporting affidavit and the supplementary affidavits are not office bearers hence their averments ought to be disregarded and urge the court to disallow the application.

8. The court has considered the rival arguments. It is not in dispute that there were parallel elections following disagreements on the eligible persons from the three Sub-countries of Samburu County as confirmed by the letter dated 10<sup>th</sup> July 2014 from the Ministry of Interior and co-ordination of National Government.

It is however not clear who was appointed as the Returning Officer for the Parallel Elections as none was indicated. This led to the two lists of elected officials where two Returning Officers forwarding separate lists of officials – on the same day.

9 The questions that then beg answers, in my view are:

(1) Was there a valid elections of the Maendeleo Ya Wanawake Organization officials for Samburu County in July 2014?

(2) If the answer above is in the affirmative, who was the duly appointed Returning Officer for the said election?

(3) There having been Parallel Elections, a fact, not disputed by the parties, then, which officials,

resulting from the Parallel elections could be deemed as having been validly and regularly elected?

(4) Are the Respondents officials properly and regularly in office?

(5) Were the parallel elections as held fair, free and regular and based on the free expression of the will of the people of Samburu County?

(6) Have the applicants made out a case to persuade the court to grant conservatory orders as sought pending hearing and determination of the suit herein?

(7) Has the applicant's application and orders sought been overtaken by events?

10. It has been urged that the Respondents officials have already taken office and performing functions of the said office, and therefore the application for a conservatory order overtaken by events.

A careful analysis of the affidavit evidence as stated confirms massive irregularities which was perpetuated not only by the parties thereof but also by the Ministry of Culture, Gender and Social Services as well as the Ministry of Interior and Co-ordination of National Government by sanctioning parallel elections and thereby coming up with two different sets of officials, one set being the office bearers whereas the other set was left out in the cold. Needless to state that the current scenario was forseen and expected. Documents provided by the parties confirm massive irregularities that go into the root and legality of the parallel elections, to the extent that in my considered view the elections ought to be declared null and void. This court will however not make such pronouncement at this interlocutory stage as to do so would be usurping the function of the trial court which will have a chance to hear and analyse evidence by the two opposing parties in a full trial.

11. Having stated so, and having stated and framed issues that the court ought to consider, (among others), the court makes a finding that the trial court will determine the said issues upon taking and hearing evidence from both parties – at a later stage. To that extent, the court is of the view that the application though merited, was brought to court too late and has been overtaken by events and that the conservatory orders sought by the applicants if granted would plunge the **MYWO** – Samburu County into more chaos. This is not a finding that the current officials, the Respondents are legally in office. They are in office through a flawed irregular and mismanaged election process which resulted into the current mess which is too obvious to all and sundry.

12. In view of my findings and observations as stated above, I decline to issue the conservatory orders sought by the applicants.

In line with the said prayers, I direct that the main suit filed hereof be heard and determined within a period of not more than ninety(90) days from the date of this ruling. The applicants who are the plaintiffs are directed to take all the necessary steps towards prosecution of the suit within the time frame stated above. Penal consequences may apply if compliance is not achieved as directed.

The circumstances of the application and the suit in general dictate that each party do bear its costs of the application.

**Dated, signed and delivered in open court this 9<sup>th</sup> day of November 2015.**

**JANET MULWA**

**JUDGE**