

RULING

The 2nd and 3rd respondents through an application dated 15th April, 2013 brought under Article 159(2) (d) of the Constitution of Kenya, 2010, Section 80(1),(d) and 80(3) of the Election Act and Rules 15 and 20 of the Elections(Parliamentary and County Elections) Petition Rules, 2013 seek that court do extend the time for filing and service of the answer to petition and replying affidavits by 2nd and 3rd respondents and that the answer to the petition and replying affidavits filed in court out of time be deemed as duly filed. The application is based on the grounds on the face of the application and is supported by affidavit of Abdi Sheikh Mohammed dated 19th April, 2013.

The application is opposed. The petitioner swore an affidavit in opposition dated 20th April, 2013.

When the application came up for hearing I heard oral submissions of Mr. Nyaburi learned Advocate for 2nd and 3rd respondents, Mr. Muthomi appearing jointly with Mr. M.Kariuki, learned Advocate for the petitioner and Mr. Gachugi, learned Advocate for the 1st respondent. I have considered the said oral submissions very carefully, the authorities relied upon by the advocates for the petitioner as well as the relevant provisions of the law relied upon by the parties.

The delay in filing the answer and replying affidavit is mainly due to the fact that the 2nd and 3rd respondents' Returning Officer, Tigania East Constituency Mr. Abdi Sheikh Mohammed, had been taken ill and the respondents could not make sufficient answer to the petition and replying affidavit in absence of an affidavit of the said officer as most of the allegations in the petition touched on Tigania East Constituency . Mr. Abdi S. Mohammed in his affidavit has confirmed having been taken ill and that he was not available when 2nd and 3rd respondents needed him to make an affidavit. This fact has not been controverted by the petitioner in his replying affidavit. The delay in filing answer and replying affidavit is of three days. Three days in failing to file answer and replying affidavit is not inordinate delay. The 2nd and 3rd respondents have filed the answer and replying affidavit and have shown diligence in their moving to court to seek extension of time.

Under Article 159(2),(d) of the Constitution of Kenya, courts are obliged to administer justice without undue regard to procedural technicalities.

Further under Section 80(1) (d) of the Election Act Courts are obliged to decide all matters that come before it without undue regard to technicalities.

Under the Elections(Parliamentary and County Elections) Petition Rules 2013 it is provided Under Rule 14 and 20 as follows:-

“Upon being served with an Election Petition under Rule 13, the respondent may oppose the petition by filing and serving a response within a period of not more than fourteen days upon service of the petition.”

Under Rule 20 it is provided:-

“Where any matter is to be done, within one time provided for in these rules or granted by court, the court may, for purposes of ensuring there is no injustice is done to any party, extend the time within which the thing shall be done on such terms and conditions as it may consider fit even though the period initially provided as granted may have expired.”

In view of the foregoing court has discretion to grant or not to grant extension of time for the purposes of ensuring that no injustice is done to any party. This is an election matter in which the members of public and more specifically the people of Meru County have interest in having the same determined fairly and

in accordance with the provisions of law. Justice demands that no party should be condemned unheard and that each party to a suit be offered an opportunity to adduce evidence and challenge evidence. I find by refusing to grant this application would amount to doing injustice to all parties concerned. The delay in filing answer in time has been explained and the same is not inordinate. The 2nd and 3rd respondents have shown their desire to have this matter disposed expeditiously by having filed their answer and replying affidavit together with their application dated 15th April, 2013.

The authorities referred to me can be distinguished as they dealt with service of petitions under the National Assembly and Presidential Election Act which Act has since been repealed. The authorities do not reflect the current position as regards law under Rule 20 of the Elections(Parliamentary and County Elections) petition Rules 2013 as regards extension of time.

In the circumstances the 2nd and 3rd respondents' application dated 15th April, 2013 is allowed. I extend the time for filing and service of the answer to the petition and replying affidavits by the 2nd and 3rd respondents. The answer to petition and replying affidavits filed in court out of time be and are hereby deemed as duly filed.

The 2nd and 3rd respondents are given 2 days to file and serve affidavits sworn by their witnesses whom the 2nd and 3rd respondents intended to call at the trial(if any). Costs of the applications shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF MAY, 2013.

J. A. MAKAU
JUDGE