



**Mohamed v Hassan & 5 others (Election Petition E003 of 2022)  
[2022] KEMC 12 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEMC 12 (KLR)

**REPUBLIC OF KENYA  
IN THE GARISSA LAW COURTS  
ELECTION PETITION E003 OF 2022  
HM NYABERI, CM  
NOVEMBER 24, 2022**

**BETWEEN**

**SAHLAN SALAT MOHAMED ..... PETITIONER**

**AND**

**ZAMZAM MOHAMED HASSAN ..... 1<sup>ST</sup> RESPONDENT**

**CHAIRMAN NATIONAL AGENDA PARTY OF KENYA ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL AGENDA PARTY OF KENYA ..... 3<sup>RD</sup> RESPONDENT**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION .... 4<sup>TH</sup>  
RESPONDENT**

**THE CLERK GARISSA COUNTY ASSEMBLY ..... 5<sup>TH</sup> RESPONDENT**

**THE SPEAKER GARISSA COUNTY ASSEMBLY ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

- 1 Pursuant to further directions issued on November 10, 2022, this Petition was slated for hearing today November 24, 2022. When the Petition was called out in readiness for hearing, the court was informed by the learned counsel Mr Bosire Advocate for the 1<sup>st</sup> Respondent that the counsel for the Petitioner is absent but was in the process of filing an application to withdraw the petition. The said sentiments were echoed by the learned counsel Mr Enonda Advocate for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent. The Court set aside the file to 11.00 am to confirm the filing of the intended application.
- 2 When the Court resumed shortly after 11.00 am, the learned counsel Mr Nyipolo holding brief for Mr Taliti informed the Court that the application had been filed and with the leave of the Court, the petition may be withdrawn. The learned counsel Mr Bosire for the 1<sup>st</sup> Respondent submit that they were not opposing the application neither they intend to file any affidavit to the application nor



they will be claiming costs. The same position was taken by Mr Enonda Advocate for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.

3 The Notice of Motion is brought under Rule 21 of the *Elections (Parliamentary and County Elections) Petitions Rules, 2017* and Article 159 (2) (c) of the *Constitution* of Kenya. The Petitioner is seeking an order that: -

1. The Honourable Court be pleased to grant leave to the Petitioner/Applicant to wholly withdraw the main petition with no orders as to costs
2. The petition be marked as withdrawn wholly with no orders as to costs.

4 The application is supported by the affidavit of the Petitioner sworn on November 24, 2022. The Petitioner avers that there has been out of court negotiations by Community Leaders which have led to an amicable settlement of the entire dispute and it is in the interest of justice the application be allowed.

5 The application is not opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent. The 5<sup>th</sup> and 6<sup>th</sup> Respondent were represented but their counsel is absent.

6 I have considered the application *visa avis* the reason for withdrawal of the petition. There being no objection by the parties present and who were ready with the hearing, I am satisfied that the application for withdrawal meet the threshold under Rule 21 of *Election (Parliamentary and County Elections) Petition Rules, 2017*.

7 On the issue of cost, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent are not claiming costs for the petition. The 4<sup>th</sup> Respondent has never entered appearance whereas the 5<sup>th</sup> and 6<sup>th</sup> Respondent are represented by the learned counsel Mr Mohamud who is absent in today's proceeding.

8 In conclusion, this court issue the following orders: -

1. The Election Petition No E003 of 2022 with the leave of the Court is hereby withdrawn.
2. Each of the parties to bear its own costs.
3. Security of costs deposited into Court to be released to the depositor.

**RULING DELIVERED, SIGNED AND DATED THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2022**

**HON H M NYABERI**

**CHIEF MAGISTRATE**

**In the presence:**

Mr Nyipolo Advocate holding brief for Mr Taliti Advocate for the Petitioner

Mr Bosire Advocate for the 1<sup>st</sup> Respondent

Mr Enonda Advocate for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent

No appearance for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent.

**HON H M NYABERI**

**CHIEF MAGISTRATE**

