



**IN THE CHIEF MAGISTRATE'S COURT AT KAKAMEGA**

**ELECTION PETITION NUMBER 2 OF 2017**

**DENNIS DUNCAN MUHANDA.....PETITIONER**

**VERSUS**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....1S RESPONDENT**

**ELIDA ASHIAMBI OCHIENG**

**RETURNING OFFICER LURAMBI CONSTITUENCY...2ND RESPONDENT**

**MUHATI DAVID SHIKALA.....3RD RESPONDENT**

**(FOR MEMBER OF COUNTY ASSEMBLY MAHIAKALO WARD)**

**RULING**

(On Petitioner's Application dated 14th December 2017 for leave to withdraw the petition.)

This election petition dated 18th August 2017 and filed on 22nd August 2017.

1.The petitioner describes himself as a registered member of Mahiakalo County Assembly,Lurambi Constituency Kakamega County. He says he did not vote because he got arrested on the voting day while at Bukhungu stadium polling station.He blames the 1st and 2nd Respondents for failing to discharge their duties by way of interventions or constraints and thus failing to discharge their duties as enshrined in the constitution and Elections Act.

2.The 1st Respondent is the Independent Electoral Boundaries Commission established under Article 88(1) of the constitution and other Electoral laws

3.The 2nd Respondent was the Returning officer appointed by the 1st Respondent to officiate the conduct of election for Mahiakalo ward

4.The 3rd Respondent was a candidate with others for the position of member of county assembly who was declared winner with majority votes.

5.The petition was filed on 22nd August 2017 within the time frame under the constitution and Election Act.

The grounds upon which the petition was brought are stated on the petition itself under the title:

'SUMMARY OF THE GROUNDS OF THE PETITION ITSELF

There is also the petitioners supporting affidavit dated 18th August 2017.

6. On 24th August 2017 the petitioner filed an application dated 21st August 2017 under a certificate of urgency which was later dismissed when the Applicant's Counsel failed to attend court on the date and time fixed for the hearing of that application.

7. On 13th October 2017 the court that had been gazetted to hear the election petition recused itself from the matter. This file was then placed before my court having been duly gazetted to handle the petition.

8. The petition was fixed for hearing on 14th December 2017. On that day Mr. Khayumbi leaned counsel for the petitioner informed the court that his client had made up his mind not to proceed with the petition. The Respondent did not object to the withdrawal. The matter was adjourned to enable the Petitioner to comply with the laid down provisions of the Election Disputes Rules with respect to an application to have an election petition withdrawn.

9. On 18th December 2017 the Petitioner did lodge his application to withdraw this election petition at the Kakamega Chief Magistrate's Court, election petition registry.

10. That application was brought pursuant to Rule 23(3)(a) of the Elections (Parliamentary And County Elections) petition Rules, 2017 and all the enabling provisions of the law. Filed also was the supporting affidavit of DENNIS DUNCAN MUHANDA the applicant sworn on the same day.

11. The first, second and third Respondents did not file any responses to the said application for withdrawal. 14<sup>th</sup> December 2017 was the date fixed by the court for the hearing of that application.

12. On 14<sup>th</sup> December 2017 leaned Counsel for the third Respondent, Mr. Obilo informed the court that he was also holding brief for the firm of Lubulela for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. There was no appearance on the part of the Petitioner.

13. I have considered the Petitioner's application to withdraw the petition and the grounds put forth for the decision. He has cited Rule 23 of the Petition Rules. I have also noted that the Respondents have supported the application in their oral submissions before court on 14<sup>th</sup> December 2017 when the matter first came up. I am also satisfied that the mandatory procedure and steps stated under Rules 21 and 22 of the Election (Parliamentary and County Elections) Petition Rules 2017 have been complied with. The court has powers under section 80(1)(d) of the elections Act to determine such matters without undue regard to technicalities.

14. No person has come up or applied to be substituted as the petitioner in place of the petitioner who had applied to withdraw the petition. So there being no objection from any party in the petition and having been satisfied that all legal requirements have been complied with, I have no reason whatsoever to deny the petitioner his wish, to withdraw the petition for the reasons stated in his supporting affidavit to his application as captured above.

The application to withdraw this election petition is allowed as prayed.

14. Costs:-

Mr. Mutumbwa learned Counsel for the first and second Respondents told the court that the state, his client will not ask for costs.

Mr. Obilo learned Counsel for the third Respondent urged the court to order that each party to pay its own costs.

The petitioner's Counsel on 14<sup>th</sup> December 2017 submitted that they had all agreed that each party to pay its own costs.

**FINAL ORDERS.**

The petitioner DENNIS DUNCAN MUHANDA is hereby granted leave to withdraw Kakamega Election Petition number 2 of 2017.

Each party to pay its own costs.

A certificate of determination of this petition shall issue in terms of section 86(I) of the Elections Act to the speaker of the County Assembly.

**HAZEL WANDERE**

**PRINCIPAL MAGISTRATE**

The ruling is delivered by me this 25<sup>th</sup> day of January 2018 in open court at Kakamega.

Parties are absent.

Order

The in charge Election petitions registry is to notify the parties of this ruling.

**HAZEL WANDERE**

**PRINCIPAL MAGISTRATE**