



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAROK

ELECTION PETITION NO. 2 OF 2017

VIOLET SOILA SIKAWA..... PETITIONER

VERSUS

JUBILEE PARTY.....1ST RESPONDENT

THE CLERK NAROK COUNTY

ASSEMBLY.....2ND RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....3RD RESPONDENT

RULING

On 4/1/2018 the 3rd Respondent filed a Notice of Preliminary Objection in the matter.

It states as follows:-

1. That this Honourable Court lacks jurisdiction to hear and determine this petition as per the Constitution.
2. That the Petitioners petition is misconceived, incompetent and legally untenable in view of the provisions of Article 88 (4) (e), Article 177 of the Constitution 2010, section 74 (1) of the Election Act and section 40 of the Political Parties Act which vest the 1st and 3rd Respondents and Political Parties Tribunal with powers to settle nomination disputes.

The third point is that the petition is incompetent and has failed to follow the Rules of procedure and therefore should be struck out.

Lastly, that the petition is null and void.

The petitioner filed grounds of opposition pointing out that;

1. The Notice of Preliminary Objection filed herein is bad in law, misconceived, incompetent, unwarranted, ill advised, frivolous and should therefore be dismissed in limine as it is only based on a complete misunderstanding of the law.
2. That it is mischievous, the same having been brought in complete bad faith, considering that the

same has been filed after the 3rd Respondent's application and attempt to file a response to the petition out of time was

decline.

(do) by this court. The 3rd Respondent is therefore seeking to respond to an election petition through a notice of Preliminary Objection, a procedure unknown to law.

3. That the 3rd Respondent filed a Preliminary Objection dated 14/12/2017 based on the exact grounds as the ones in this as and the Respondent voluntarily withdraw it. Purporting to file it again is a waste of court's time and amounts to an abuse of the court process and the same should be dismissed with costs.

The Learned Counsels filed submissions and in highlighting, the same I find the arguments to be more or else what was included in the submissions.

Article 88 of the Constitution establishes the IEBC Article 88 (4) (e) specifies that IEBC is responsible for settlement of electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.

Is the petitioners' suit relating to matters before or subsequent to declaration of election results.

Article 177 of the of the Constitution deals with membership of County Assembly. The Article deals with special seats which the Petitioner herein is interested in.

Nominations come after elections and distribution of nominations are through party lists filed with IEBC.

The question here should be that of whether the petitioners dispute is that between her and her political party and filing of party lists, or it deals with nomination.

Section 74 (1) of the Elections Act, reiterates the powers of Article 88 (4) (e) of the Constitution.

Section 40 of the Political parties Act sets out the jurisdiction of the Political Parties Tribunal.

The tribunal will handle matters which have already gone through the internal political party dispute resolution mechanism.

The court has gone through the submissions made by the 3rd Respondent, and the Petitioner. I have also looked at the pleadings herein.

I have looked at the pleadings and prayers sought and I am satisfied that the Petitioner's grievances relate to a post political party process and post IEBC dispute resolution process.

Disputes relates to the post – nomination period. The dispute as filed herein is an Election dispute arising out of an electoral process. This court has jurisdiction to hear and determine this dispute.

The court did not believe that the 3rd Respondent wanted to merely participate in the petition for having failed to have their response to the petition and that is why the court gave them a hearing on the Preliminary objection.

The objector gave a passing line that the Petitioner did not follow "the rules of procedure" it will be for the trial court to determine matters relating to the claim herein. Matters raised over whether or not the petitioner tackled her issues before this gazette came up is a matter of evidence which cannot be disposed of by a Preliminary Objection.

According to the law the Magistrates Court has jurisdiction to deal with petition as it arises out of a

realization of what was contained in the Kenya Gazette No. 8380 of 28/8/2017.

The Preliminary Objection is dismissed and petition to proceed to full hearing. Costs to the Petitioner.

Hon. W. Juma

Chief Magistrate

Court Ruling read in open court in presence of Wanjala for Petitioner, Mr. Masolia, Petitioner, Court Clerk Nicholas.

Hon. W. Juma

Chief Magistrate

Court

We take directions as to the hearing of the petition.

Mr. Wanjala

We pray for 25 minutes for my client. Mr. Masolia will take 30 – 40 minutes cross examination. I will require 10 minutes to re – examine.

I will put in submissions within 3 days and Mr. Masolia will put his in 3 days after service.

Order

Directions taken as follows:-

1. Petition hearing be done on 6/2/2018. Starting 10:00 a.m.
2. According to the proposal by Learned Counsels the court to be through with the petition hearing by 11:30 a.m.
3. Petitioner to file her submissions by 9/2/2018, by close of business.
4. The 3rd Respondent if served on time, that 9/2/2018, to put in their submissions by 14/2/2018.
5. Judgement on 28/2/2018 at 12:00 noon.

Hon. W. Juma

Chief Magistrate

2/2/2018