

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT BUNGOMA

ELECTION PETITION NO.1 OF 2017

SHITANDI EDITH WERE.....PETITIONER

VERSUS

1. HENRY MAJIMBO OKUMU.....1ST RESPONDENT

2. GREGORY ODHIAMBO OUKO.....2ND RESPONDENT

3. I.E.B.C.....3RD RESPONDENT

RULING

The petitioner has sought leave to put in a further affidavit and additional evidence in respect to paragraph 20-23 of the petitioner's supporting affidavit before we proceed to hear the petition submitting that the affidavit will not alter the petition or introduce new evidence or prejudice the Respondents

The 1st Respondent opposes the application on grounds that the 1st Respondent was prepared to proceed today, that it is an afterthought, that the 1st respondent will suffer prejudice, that the application is a fishing expedition and lastly that allowing the application would consume more time as the respondent would need more time to reply.

The 2nd and 3rd Respondents also opposed the application stating that it was not made in good faith as the petitioner had the information before the pre-trial directions. The Respondents seek thrown away costs of Kshs.20,000/- should the application be granted.

In answer to the objections, the petitioner stated that it is the petitioner's wish to have the petition heard and determined expeditiously and if allowed, they would do so in 2 or 3 hours. The evidence sought to be provided is not prejudicial but will assist the court to reach a just decision, the petitioner submitted. Respecting the thrown away costs of Kshs.20,000/- the petitioner considers that unreasonable and offers thrown away costs of Kshs.5000/- to the Respondents should the application be allowed.

I have considered the application, the objections by the Respondents and the petitioner's answer to the objection. It is quite clear order 15(1) (h) of the Election Petitions Rules 2017, that the election court has jurisdiction to allow the filing of further affidavits and admit additional evidence but such an application should be brought before the commencement of the hearing. Rule 15(2) of the Elections (Parliamentary and County elections) petitions rules 2017 in no uncertain terms states:

“An election court shall not allow anyinterlocutory application to be made onconclusion of the pre trial conference,if the interlocutory application could have, by its very nature, been brought before the commencement of the hearing of the petition”.

The petitioner had not filed the application before the pretrial on 6/10/17 and did not make the application then. I would agree with the 1st respondent that the application is an afterthought. The applicant does not state why the application was not made before. I agree it is prejudicial to the respondents who are ready to proceed. It will not do to claim the additional evidence will help the court reach a just decision. Time is of essence in the matter as the petition has to be concluded within 6 months. I therefore find no merit in the petitioner's application, uphold the respondent's objection and thereby disallow the petition's application.

J.Kingori
CM

11.10.17