



REPUBLIC OF KENYA

IN THE SENIOR RESIDENT MAGISTRATE'S COURT AT MANDERA
ELECTION PETITION NO. 4 OF 2017

FEISAL ABDINOOR ISSACK....PETITIONER/APPLICANT

VERSUS

I.E.B.C.....1ST RESPONDENT

RETURNING OFFICER [MANDERA EAST

CONSTITUENCY].....2ND RESPONDENT

HON. ADAN MAALIM ABDULLAH.....3RD RESPONDENT

RULING

The petitioner/applicant moved the court vide a notice of motion dated 30th of October 2017 under Rules 6(2)(b), 3, 15 and 28 (4)(c) of the election petition Rules 2017, Article 35 and 159 of the constitution and all enabling provisions of the law, seeking that the registrar of persons be ordered to produce the form 136A for the following Identity Card Numbers 11551069, 16337708 22695659, 7875797 and 26141022 to the petitioner/applicant and that the court be pleased to issue such orders as it may deem just.

The application is premised on the grounds laid down on the face of the application and more specifically that the documents will enable the petitioner/applicant to demonstrate how the 1st and 2nd respondents presiding officers were relatives of the 3rd respondent and were not impartial in conducting the election of the Member County Assembly Township Ward, that the documents will enable him prosecute his petition.

The application is supported by an affidavit sworn by the petitioner/applicant on the 30th October 2017 which at paragraph 4 states that upon receipt of the 3rd respondents response to his petition he perused the same keenly and got details of the presiding officers together with details of their Identity Cards. At paragraph 5 he states that he wishes to have an order issued to enable him procure the records of the form 136A from the Registrar of Persons to enable him demonstrate the family ties between the 3rd respondent (Hon. ADAN MAALIM ABDULLAHI) and :-

- a. DUBOW M. FARAH Presiding officer Bulla Mpya primary Polling Station
- b. HASSAN H. MOHAMED Presiding officer Geneva White house Polling Station Stream 3
- c. ABBAS AHMED HAJI Presiding officer Geneva White house Polling Station Stream 1

d. ABDIMAJID KHALIF Presiding officer Township Polling Station

e. YUSSUF MAALIM ISSACK Presiding officer Geneva White house Polling Station Stream 2

f. ABDIHAKIM ISSACK ADAN Presiding officer Village Polytechnic Polling Station

The 1st and 2nd respondents (I.E.B.C and ADAN HARAR NOOR) filed grounds of opposition to the application through the law firm of ABDULLAHI GITARI And ODHIAMBO advocates on 17th November 2017. The main grounds of opposition are contained in paragraph 3,4,5,6,7 and 8. The substantive grounds are that the petitioner has lacked evidence to support his petition and is out on a fishing expedition and that if granted the orders will widen the scope of the petition and cause unwarranted delay and in turn defeat justice. The 3rd respondent did not file any response to the application.

The petitioner/applicant's advocates on record and the advocates for the 1st and 2nd respondents filed written submissions to support their stands. The petitioner/applicant submissions is that the petitioner has right to information as provided for under Articles 35(1) (a) and (b) of the constitution and is seeking information to protect that right as provided under Articles 38, 48 and 50 of the constitution. He relied on Nairobi High Court Petition No. 278 of 2011 Nairobi Law Monthly Vs Kenya Electricity Generating Company and Another and Petition No. 459 of 2016 Martha Kerubo Moracha Vs The University of Nairobi.

The 1st and 2nd respondents submission was that the petitioner/applicant has the burden of proof the existence of facts alleged in his petition, the disclosure of the information sought will involve unwarranted invasion of privacy of the individuals concerned and will delay the expeditious conclusion of the petition.

I have carefully analysed and evaluated the pleadings filed by the parties and their submissions, the provisions of the Law and the authorities relied on and I find as follows:

1. That the Registrar of Persons is not a party in this petition/application
2. That the persons whose details are being sought are not parties in this petition/application
3. That the burden to prove that the 1st and 2nd respondents presiding officers were relatives of the 3rd respondent lies on the petitioner/applicant
4. That the is brought under the wrong rules of the election petition Rules 2017,
5. That the application has no legal basis
6. That any petition under Article 35 and 159 of the constitution ought to be made in the High Court
7. That if granted the application will violate Rule 4(1) of the Election (Parliamentary and County) Petitions Rules 2017 and Article 31 of the constitution as far as it relates to the persons whose Registration details is sought to be disclosed therefore the same will be prejudiced to those persons.

For the foregoing reasons I agree with the 1st and 2nd respondents contention that the petitioner/applicant is in a fishing expedition and that the same lacks merit. I dismiss the application dated 30th October 2017 with costs to the 1st and 2nd respondents.

Signed: P.N. Areri (SRM)

21/11/17

Ruling delivered by me in the presence of

Mr. Mugalo for Petitioner/Applicant

Mr. Mwathe holding brief for Mr. Odhiambo for 1st Respondent

Mr. Hassan holding brief for Prof Tom Ojienda for 3rd Respondent

Hon. ADAN MAALIM ABDULLAHI 3rd Respondent

Signed: P.N. Areri (SRM)

21/11/2017