



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT KAJIADO
ELECTION PETITION CASE NO.1 OF 2017

HON NIXON SUNTE KARAINA 1ST PETITIONER

VERSUS

HON PAUL KIPAMET MATUYIA 1ST RESPONDENT

RETURNING OFFICER IEBC KAJIADO EAST SUB CO..... 2ND RESPONDENT

THE IEBC 3RD RESPONDENT

RULING ON 1ST RESPONDENTS APPLICATION FOR SCRUTINY OF ELECTION MATERIALS

This Petition comes up for highlighting of submissions by counsel at the close of the petitioner's case and at the close of the Respondents' cases. Mr. Muaka appeared representing the petitioner while at the same time holding brief for Mrs Koech for the 2nd and 3rd Respondents.

Mr. Nyantika appeared for the 1st Respondent. Parties requested for another date to do the highlighting. Mr. Muaka then orally addressed the court making in an application that the court be guided by the Deputy Registrar's Report on original Forms 36A and 35B which the court should order availed before it.

Secondly that the SD cards be read by IT experts from both parties and a report made to court.

He relied on the Election (Parliamentary and County Elections) petitions Rules. He specifically pointed out Rules 18, 21, and 37.

Mr Nyantika for the 1st Respondent of course opposed, pointing out that it is too late in the day as that ought to have been dealt with at the pre trial stage and leave of the court has not been sought.

Mr. Muaka said further that he had no instructions to represent the 2nd and 3rd Respondents in that aspect though he was holding brief for counsel.

Part V of the Elections (Parliamentary and County Elections) petitions Rules 2017 lays down the procedure for handling Election Petitions. This part is to do with case management. It provides for pre trial conference, which under Rule 15 is concerned in mandatory terms.

The aim of the pre trial is to come up with contested issues and plan for Hearing of the petition to conclusion.

At rule 15 (2) it reads;-

“An election court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference, if the interlocutory application could have, by its nature been briefed before the commencement of the hearing of the petition”

The court is being asked at the close of parties case to call up Forms 36A and 35B for scrutiny by the DR.

This was a valid application had it come before pre trial conferencing for the following reasons;

- a. Scrutiny of the Elections documents would have been agreed upon as an issue for determinations,
- b. The examination of CD cards by IT experts could have formed part of the issues for determination.

To allow an application, such as this at this stage would mean going backs to framing issues. Parties had agreed in issues and have had evidence on that. The application is being raised in the absence of the 2nd and 3rd Respondents who would be most affected were the court to grant the request.

What counsel is raising are non issues. He is interfering with the management of the hearing and determination of the petition as earlier planned.

What the petitioner seeks to achieve is not even clear. Such an application cannot be orally made and at this stage. It appears as meant at delaying this petition. The court will not allow it. It is rejected.

Dated this 16th November, 2017, signed and delivered in the presence of Muaka for the petitioner and Nyantika for the 1st Respondent.

S.M SHITUBI – CM

16/11/2017