



**REPUBLIC OF KENYA**

**IN THE SENIOR RESIDENT MAGISTRATE'S COURT AT WAJIR**

**ELECTION PETITION NO.4 OF 2017**

IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010 ARTICLES 2 (2), 3(1) 4(2) 9 (1)(2),  
10,21(1),22(1),23,38,47,48,81,82(2),86,88,165 (3) AND 177

**AND**

IN THE MATTER OF: THE CHALLENGE OF THE VALIDITY OF THE WAJIR COUNTY DADAJA  
BULLA WARD ELECTIONS 2017

**AND**

IN THE MATTER OF: THE ELECTIONS ACT, 2011: SECTIONS 75 (A1), 76(1)(a), (2),  
(3), 77, 79, 80, 82, 84, 86, AND 87 (ACT NO 24 OF 2011) AS AMENDED IN 2016 & 2017

**AND**

IN THE MATTER OF: LEGAL NOTICE NO. 128 OF 2012, THE ELECTIONS (GENERAL)  
REGULATIONS 2012

**AND**

IN THE MATTER OF: LEGAL NOTICE NO. 126 OF 2012, THE ELECTIONS (GENERAL)  
REGULATIONS, 2012

**AND**

IN THE MATTER OF: LEGAL NOTICE NO. 44 OF 2013

**AND**

IN THE MATTER OF LEGAL NOTICE NO. 68 OF 2017 THE ELECTIONS (TECHNOLOGY)  
REGULATIONS 2017

**AND**

IN THE MATTER OF: THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS)  
PETITION RULES, 2017: RULES 3 (B), 4, 5, 6 (1) (A), 8, 9, 10, 11, 12, 13, 21, 22, 33 & 38

**AND**

IN THE MATTER OF: LEGAL NOTICE NO. 72 THE ELECTIONS (GENERAL AMENDMENT)  
REGULATION 2017

AND

IN THE MATTER OF: THE ELECTION OF MEMBER OF COUNTY ASSEMBLY DADAJA BULLA  
WARD IN WAJIR SOUTH CONSTITUENCY WAJIR COUNTY HELD ON THE 8<sup>TH</sup> DAY OF  
AUGUST 2017.

BETWEEN

SAHAL MUGOW MOHAMED .....  
PETITIONER

VERSUS

ADAN BUNOW HUSSEI.....1<sup>ST</sup>  
RESPONDENT

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC) .....  
2<sup>ND</sup> RESPONDENT

THE COUNTY RETURNING OFFICER, WAJIR SOUTH CONSTITUENCY .....  
3<sup>RD</sup> RESPONDENT

RULING

Following a pretrial conference held on 16/10/2017 with Counsel for all the parties present. It was agreed that this matter be heard on three consecutive days namely the 15<sup>th</sup>, 16<sup>th</sup> and 17<sup>th</sup> of November 2017. Today was thus scheduled to be the first day of trial.

This morning however the court received a letter dated 13/11/2017 from Hassan M. Lakicha & Company Advocates for the Petitioner intimating that their clients were no longer keen on pursuing this matter and that the petitioner would therefore be withdrawing the present Petition. The letter further intimates that at today's hearing, Counsel for the Petitioner would be moving the court for more time to initiate the process of withdrawing the petition on the stipulation that all parties bear their own cost.

The matter was duly called out this morning as scheduled and whereas counsels for all the Respondents were present, neither the Petitioner nor his Advocate were present in Court. Just to be certain, the court called out twice for the said parties and received no answer.

Mr. Wanyoike holding brief for Gikandi & Company Advocates for the 1<sup>st</sup> Respondent acknowledged receipt of the letter dated 13/11/2017 and informed the court that Mr. Gikandi for the 1<sup>st</sup> Respondent had no objection to the withdrawal or the terms stipulated within the letter.

Mr. Wachira for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents however asked that this Petition be dismissed for want of prosecution and cited two reasons. First, that the petitioners advocate was absent and secondly, that the proper procedure for withdrawal of Election Petitions had not been followed.

I have looked at the letter dated 13/11/2017 and I have also considered the submissions by counsel and I am inclined to agree with Mr. Wachira.

As stated, the hearing dates in this matter were fixed by consent of all the parties and the Petitioner's counsel reinforces the fact that he could not have forgotten the date when he states in his letter dated 13/11/2017 that he would be attending court today (15/11/2017) to apply for time to initiate withdrawal proceedings. His Absence today cannot therefore be excused on any grounds. The scenario in this case is reminiscent of the one in *Emily Nyabuto Vs. IEBC and 2 others, Kakamega Election Petition No. 7/2017* (unreported) where the court held;

***“ An election Petition is time limited and hence parties must be prepared when the matter is fixed for hearing. In this case since the petitioner denied that she wished to withdraw the matter, I directed that she should avail her advocate and be ready to proceed today. As neither her nor her advocate is present, the only cause available is for me to dismiss the Petition.”***

I find that the circumstances of this case mirror that of the quoted case and therefor adopt the approach taken by the learned Judge in that case. This Petition is accordingly dismissed for non-appearance of the Petitioner and/or his advocate.

As the 1<sup>st</sup> respondent has already indicated that he is amenable to parties bearing their own cost as stipulated in the letter dated 13/11/2017 I order that he shall bear his own costs in line with his own acquiescence. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents are however entitled to costs. As the matter did not take off I award the said 2<sup>nd</sup> and 3<sup>rd</sup> respondents Kshs.50,000/= all inclusive costs to be paid out of the security deposit held in court.

**Ruling** dated signed and delivered in open court on this 15<sup>th</sup> day of November 2017 in the presence of;

N/a for the petitioner

Mr. Wanyoike H/b for Mr. Gikunda for the 1<sup>st</sup> respondent

Mr. Wachira for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Halima:- Court assistants

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**A.K.MOKOROSS**

**SENIOR RESIDENT MAGISTRATE**