



REPUBLIC OF KENYA

IN THE PRINCIPAL MAGISTRATE’S COURT OF KENYA

IN MARALAL

PETITION NO. 1 OF 2013

LEURA LODUNGOKIOK.....PETITIONER

VERSUS

LESOIPA SHADRACK NAKINI.....1ST RESPONDENT

GEORGE GOVANDO.....2ND RESPONDENT

DAVID NJIRU NJAGI.....3RD RESPONDENT

PETER KIAWA MUSAU.....4TH RESPONDENT

EPUR RAPHAEL.....5TH RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC)....6TH RESPONDENT

RULING

This petition was filed on 28/3/2013. Section 76(1) (a) of the Elections Act 2011 requires that the petition be served on the Respondents within 15 days. From the affidavits of service on record, this appears to have been done on time. The 1st Respondent was served on 5th April, 2013. The 6th Respondent was served on 2nd April, 2013.

The 2nd to 6th Respondent filed their joint response on 26th April, 2013. However only the 2nd and 4th Respondent filed Replying Affidavits. Their advocate Mr. Ouma feels that the others should be allowed to file their Replying Affidavits out of time.

As regards the 1st Respondent, he has filed an application dated 30/4/2013 seeking that the court be pleased to extend time within which to file his response and answer to the petition and the Response annexed to the application be deemed to be duly filed.

The court made an order that the application be served and be dealt with today during the pre-trial conference. The advocates for the parties have appeared before me and they are unable to agree on how the application should be dealt with.

Under Rule 14(1) of Elections (Parliamentary and County Elections) Petition Rules 2013, all the Responses ought to have been filed within 14 days of service. For the 1st Respondent, he ought to have

filed his Response by 18th April, 2013 for the 6th Respondent, the last date of filing the Response was 15th April, 2013.

On a prima facie basis, the Response by the 2nd – 6th Respondent has been filed out of time. The 1st Respondent is also clearly out of time hence the application for extension of time. Counsel for the petitioner feels that he should be given time to respond to the application. Counsel for the 2nd – 6th Respondents also concedes that the response by the 2nd – 6th Respondents was filed out of time.

In the interest of justice and considering that the overriding objective of the Election petition Rules 2013 is to facilitate the just, expeditious and proportionate resolution of election disputes, all the parties should be given time to make whatever applications they deem appropriate before the hearing can take off. The court must however be alive to the fact that election disputes must be determined within strict time lines. The court therefore makes the following directions:

1. As regards the application dated 30/4/2013, the petitioner is given 4 days to file and serve his response within the next 4 days. For the avoidance of doubt and for clarity, the last day of filing his response to the application is Monday 6th May, 2013. The last day of serving the same on all the other parties is Tuesday 7th May, 2013.
2. All the other parties are at liberty to file whatever applications they deem appropriate equally within the time frame specified in (1 above). Service should also be effected within the same time frame and any responses thereof filed and served by Friday 10th May, 2013.
3. No other application will be filed after 7th May, 2013.
4. All the other interlocutory applications will be heard together on Monday 13th May, 2013.
5. The pre-trial conference to identify the issues for determination and all the other issues specified in Rule 17 (1) of the Election petition Rules will be held on Tuesday 14th May, 2013.

Orders accordingly. Right of appeal 30 days.

C.N NDEGWA-Ag. SPM

2/5/2013

Dated signed and delivered at Maralal at 12.38 p.m on 2/5/2013 in the presence of Mr. Seda for the petitioner, Mr. Sato for the 1st Respondent and Mr. Ouma for 2nd to 6th Respondents.

C.N NDEGWA-Ag. SPM

2/5/2013