



REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MIGORI

ELECTION PETITION NUMBER 1 OF 2013

MICHAEL ODOYO NYAKWAKA.....PETITIONER

VERSUS

BOAZ OWITI OKOTH.....1ST RESPONDENT

RETURNING OFFICER NYATIKE CONSTITUENCY.....2ND RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....3RD RESPONDENT

RULING:

Counsels for the Respondents herein have presented their costs for assessment following the withdrawal of the Petition and subsequent ruling thereon.

The 1st Respondents bill is dated 13/8/13 while that of the 2nd and 3rd Respondents is dated 14/8/13. I have considered the said party and party bills as well as the provisions of the Advocates Remuneration order. I have also perused the Court record as from 29/4/13 to 14/8/13. Since there are two bill 1st Respondent. I note that there was no reply from the part of the petitioner and even though Counsels for the Respondents urged me to have the bills assessed as drawn, I shall not take that but proceed to assess each of the items. On item No.1 I am of the considered view that a sum of 300 000/- would be reasonable in the circumstances bearing in mind that election petitions are weighty matters and that the Advocates remuneration order provides for a fee of Shs. 3 million in defending such type of cases.

Moreover matter dully proceeded to full hearing and submissions filed only awaiting Judgement before petitioner withdrew the sum of 15000/- to be reasonable them No.3 item No.4 is found drawn to scale. On item No.5 a sum of 10000/- is found reasonable to cater for travelling costs from Kisumu to Migori. Item No.6 a sum of 1500/- is awarded to cater for travelling costs from Kisumu to Migori. Item No.8 a sum of 1500/- is awarded to cater for attendance item No.9 a sum of 10,000/- is found to be reasonable to cater for travelling costs. Item No. 10 a sum of 11,500/- is awarded for attendance. Items 11 for attendance to take direction a sum of 11,500/- is found reasonable to cater for both attendance and travel to Court on 30/5/13. Item 12 and 13 a total sum of 11500/- is found reasonable for attendance and travel and it was the date when case proceeded to hearing. On item 14 and 15 the sum of 10,000/- is awarded for travel to Court on 25/6/13. Items 16 and 17 a total sum of 11500/- is awarded for attendance and travel, item 18 and 19 a sum of 11,500/- is found reasonable for attendance and travel. Item 20 and 21 a sum of 11500/- is awarded for attendance and travel. Items 22 and 23 a sum of 11500/- is awarded for attendance and travel. Items 24 and 25 are not

awarded as the record does not show any attendances.

On disbursements I find all the items except item No.26(b) drawn to scale. I award 75 shillings on item 26(b), thus total disbursements on items 26 to 33 comes to a sum of 8055 shillings. Hence the gross total comes to a sum of 452555/- which again attracts 16% VAT of 72408/80 thereby giving a net sum of Ksh.524,963/80 being the assessed costs for the 1st Respondent.

As regards the 2nd and 3rd respondents, I find they were represented jointly by one Counsel and bill presented was to cater for both respondents. On item 1 and 2 I find a sum of Kshs.250,000/- to be reasonable since Counsels participated in the trial although no witness was called for the 2nd and 3rd respondents. Item No. 3 a sum of Kshs.1000/- for service is reasonable. And similarly item No 4, item No 5 is found drawn to scale. Item No.6 a sum of Kshs.1,500/- is awarded.

Item No. 7 a sum of Kshs.4,000/- is found reasonable for service in Nairobi. Item No.8 a sum of Kshs.1000/- reasonable for service in Kisumu since both respondents Advocates are based in Kisumu. Item No.9 a sum of Kshs.1000/- is awarded and similarly for item No.10. Item No.11 a sum of Kshs.1,500/- is awarded. Item No.12 a sum of Kshs.1,000/- is awarded and similarly item 13. Item 14 a sum of Kshs.4000/- is awarded for service in Nairobi. Item 15 a sum of Kshs.1000/- is awarded, Item No.16 a sum of Kshs.4000/- is awarded. Item No. 17 a sum of Kshs.1,500/- is awarded and similarly item No.18. Item No.19 a sum of Kshs.1000/- is awarded and likewise item No.20.

On disbursements, Items Nos.22,23,24,25,27 are found drawn to scale but item No.26 a sum of Kshs.75/- is allowed while item No. 28 a total of Kshs.35,000/- is found reasonable to cater for travel expenses on at least five Court appearances. All these add up to a sum of Kshs.313,575/- which again attracts 16% VAT of Kshs.50,172/- thereby coming to a net sum of Kshs.363,747/- as assessed costs for both second and 3rd respondents.

Finally the sum of Kshs.100,000/- deposited by the petitioner herein shall be applied in the first instance towards settlement of the abovestated assessed costs.

Dated and delivered at Migori this 28th day of August 2013.

D.K. KEMEI

SPM.

In the presence of

..... for Petitioner

.....for 1st respondent

..... for 2nd and 3rd Respondent

..... Court Clerk

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SENIOR PRINCIPAL MAGISTRATE