



Institute for Democratic Governance v Odinga & 4 others; Independent Electoral and Boundaries Commission & another (Interested Parties); Oganga (Applicant) (Election Petition 3 of 2017) [2017] KESC 44 (KLR) (Election Petitions) (14 November 2017) (Ruling)

Institute for Democratic Governance v Raila Amolo Odinga & 7 others [2017] eKLR

Neutral citation: [2017] KESC 44 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
ELECTION PETITIONS**

ELECTION PETITION 3 OF 2017

**DK MARAGA, CJ, PM MWILU, DCJ & VP, JB OJWANG,
SC WANJALA, N NDUNGU & I LENAOLA, SCJJ**

NOVEMBER 14, 2017

BETWEEN

INSTITUTE FOR DEMOCRATIC GOVERNANCE PETITIONER

AND

RAILA AMOLO ODINGA 1ST RESPONDENT

STEPHEN KALONZO MUSYOKA 2ND RESPONDENT

MUSALIA MUDAVIDI 3RD RESPONDENT

JAMES AGGREY BOB ORENGO 4TH RESPONDENT

MOSES WETANGULA 5TH RESPONDENT

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION INTERESTED PARTY**

ATTORNEY-GENERAL INTERESTED PARTY

AND

STEPHEN OWOKO OGANGA APPLICANT

Supreme Court had no obligation to take up matters that ran contrary to public interest

Reported by John Ribia



***Election Law** – presidential election petition – public interest - obligation of conscientiousness – obligation of the court to take up matters that don't run contrary to public interest – whether a court could take up causes that ran contrary to public interest*

Brief facts

The applicant (Stephen Owoko Oganga) sought to be enjoined in the presidential election petition as an interested party on grounds that he was a registered voter and that he understood the presidential election procedure considering that he was to vie as an independent presidential candidate and that he was the chairman of the “independent candidates lobby group” that was involved in training agents overseeing the general elections.

Issues

Whether the Supreme Court while determining the presidential election petition could take up causes that ran contrary to public interest.

Held

1. The Supreme Court's time and other resources were gravely strained at the moment of determining the instant presidential election petition; yet they had to be deployed in essential causes of service to the Kenyan people.
2. There was an obligation of judicial conscientiousness, which dictated that the court had to decline to take on those causes that ran contrary to the public interest, and that made none but nominal endowment to the true cause of dispute settlement. The instant application fell squarely in the category of tendencies that negated the court's service commitment.

Application dismissed.

Citations

Cases

None referred to

Statutes

Kenya

Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 22 - (Interpreted)

Advocates

None mentioned

RULING

1. The applicant has moved this court by application, by way of his notice of motion dated November 13, 2017. A citizen and registered voter from Biashara Ward, in Nakuru East Constituency in the Great Rift Valley, the applicant has resorted to the umbrella of a petition that was lodged by a Non-Governmental Organization, the Institute for Democratic Governance, which was making a case against not only the Independent Electoral and Boundaries Commission, as the duly mandated organizer of the presidential election of October 26, 2017, but also against the principals of the political coalition, NASA, which had elected not to take part in the said presidential election.
2. What is the meritorious basis for the applicant calling upon this court to intervene, in relation to the Presidential election of October 26, 2017, and with those associated with NASA as respondents?



3. The applicant asked to be enjoined as a respondent, in the petition by the said Institute for Democratic Governance. He asked to be granted leave to file and serve his papers of support of the Non-Governmental Organization’s petition aforesaid.
4. What are the applicant’s grounds? Firstly, the applicant avers that the Supreme Court (Presidential Election) Petition Rules (in particular, rule 22) are a basis for such an application. Secondly, he avers that he is a registered voter: and therefore, the matter which names certain particular individuals as respondents, “directly affects [him] as [an] individual and as a matter of public interest”. Thirdly, the applicant avows that he “understands the Presidential election procedure, on monitoring and evaluation [and the] whole system [and] how it was supposed to work”, especially as he himself “was to vie as [an] independent Presidential candidate.” Fourthly, the applicant states that he is “the chairman of the independent candidates’ lobby group that was... involved in training....agents....overseeing the general elections.”
5. Such, essentially, are the grounds whereupon rest the applicant’s case, that this court should formally commit itself to entertaining his case as a respondent, alongside that of the various individuals whom the Institute for Democratic Governance had chosen to list down as respondents – without any formal signal of consent from them.
6. As already recorded, the Supreme Court’s time and other resources are at this moment, gravely strained – yet must be deployed in essential causes of service to the Kenyan people. There is, necessarily, an obligation of judicial conscientiousness, which at this time, dictates that the court must decline to take on those causes that run contrary to the public interest, and that make none but nominal endowment to the true cause of dispute settlement.
7. The instant application falls squarely in the said category of tendencies negating the court’s service commitment.
8. Accordingly, the instant application is hereby dismissed, and its costs shall devolve to the applicant.
Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2017.

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D. K. MARAGA
CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT PRESIDENT

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P. M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG
JUSTICE OF THE SUPREME COURT

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S. C. WANJALA
JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

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I. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

Supreme Court of Kenya

