



Mue & another v Chairperson of the Independent Electoral and Boundaries Commission & 3 others (Presidential Election Petition 4 of 2017) [2017] KESC 5 (KLR) (Election Petitions) (14 November 2017) (Ruling)

Njonjo Mue & another v Chairperson of the Independent Electoral and Boundaries Commission & 3 others [2017] eKLR

Neutral citation: [2017] KESC 5 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
ELECTION PETITIONS
PRESIDENTIAL ELECTION PETITION 4 OF 2017
DK MARAGA, CJ & P, PM MWILU, DCJ & VP, JB
OJWANG, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
NOVEMBER 14, 2017**

BETWEEN

NJONJO MUE 1ST PETITIONER

KHELEF KHALIFA 2ND PETITIONER

AND

CHAIRPERSON OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND RESPONDENT

UHURU MUIGAI KENYATTA 3RD RESPONDENT

NATIONAL SUPER ALLIANCE COALITION 4TH RESPONDENT

Court allows an application for scrutiny of votes in a presidential election petition with certain limits.

Reported by Beryl Ikamari

Electoral Laws - presidential election petition - scrutiny of votes - principles applicable to the grant of orders of scrutiny of votes - circumstances under which the court would grant orders of scrutiny of votes.

Brief facts

The 1st and 2nd petitioners made an application for orders of scrutiny dated October 13, 2017. The application contained 20 prayers in total.



Issues

Circumstances under which orders for scrutiny of votes would be granted.

Held

The principles laid down in *Peter Gatirau Munya* regarding applications and orders for scrutiny would guide the Supreme Court in making its determination. Additionally, the Supreme Court would also be guided by its ruling of October 28, 2017 in *Raila Odinga & Kalonzo Musyoka v IEBC & others* wherein it clarified the grounds upon which an order for scrutiny would be granted or partially granted or declined.

Application allowed.

Orders

- i. *The 2nd respondent was to grant access to all original Forms 34A, Forms 34B, and Forms 34C to the petitioners herein. (Prayer 14).*
- ii. *The 2nd respondent was to avail a certified copy of the Voter Register to the petitioners at the cost of the latter (petitioners).*
- iii. *Prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18 and 19 were declined on the basis grounds which would be elaborated in a detailed version of the ruling to be issued by the Supreme Court at a later date.*
- iv. *Some of the prayers were declined due to the sheer impracticability of their implementation given the short time left for the determination of the petitions at hand.*
- v. *Others were declined because they were not pleaded with sufficient particularity in the petition.*
- vi. *Others were declined on grounds that they were couched in such general terms as to be no more than fishing expeditions.*

Citations

Cases

Kenya

1. *Munya v Kithinji & 2 others* Petition 2B of 2014; [2014] KESC 38 (KLR) - (Applied)
2. *Odinga & another v Independent Electoral and Boundaries Commission & 2 others* Election Petition 1 of 2017; [2017] KESC 31 (KLR) - (Applied)

Statutes

None referred to

Advocates

None mentioned

RULING

1. We have considered the application for scrutiny dated, October 13, 2017, by the 1st and 2nd petitioners in Election Petition No 4 of 2017. The application contains 20 prayers in all. We have also considered the affidavits in support of and opposition to the said application. We have paid due regard to the oral submissions of counsel for the petitioners and the respondents. In arriving at the orders we are about to make, we have been guided by the principles laid down by this court in *Peter Gatirau Munya*; regarding applications and orders for scrutiny. We are further guided by our ruling of October 28, 2017 in *Raila Odinga & Kalonzo Musyoka v IEBC & others*; wherein following an application for scrutiny by the petitioners, this court further clarified the grounds upon which an order for scrutiny may be granted, or partially granted, or declined altogether.



2. Pursuant to the foregoing, by unanimous decision, we hereby make the following orders:
- (i) The 2nd respondent do grant access to all original forms 34A, forms 34B, and forms 34C to the petitioners herein. (prayer 14).
 - (ii) The 2nd respondent do avail a certified copy of the voter register to the petitioners at the cost of the latter (petitioners) (Prayer 17).
 - (iii) Prayers 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18 and 19 are hereby declined. The said prayers have been declined on the basis of very clear grounds which will be elaborated in a detailed version of this ruling to be issued by the court at a later date. Some of the prayers have been declined due to the sheer impracticability of their implementation given the short time left for the determination of the petitions at hand. Others have been declined because they were not pleaded with sufficient particularity in the petition. Yet others, were declined on grounds that they are couched in such general terms as to be no more than fishing expeditions.

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

P. M. MWILU

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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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N. S. NDUNG’U
JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA
JUSTICE OF THE SUPREME COURT JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original
REGISTRAR
SUPREME COURT OF KENYA

