



Mukuru v Independent Electoral and Boundaries Commission; Wiper Party Movement & another (Interested Parties) (Petition E003 of 2024) [2024] KEHC 6854 (KLR) (28 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
PETITION E003 OF 2024**

GMA DULU, J

MAY 28, 2024

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS AS ENshrINED UNDER ARTICLES 19, 20, 21, 22, 23,
24, 35, 47, 48, 90, 177, 193 AND 194 OF THE CONSTITUTION OF KENYA**

BETWEEN

ANN WAMBUI MUKURU PETITIONER

AND

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION RESPONDENT**

AND

THE WIPER PARTY MOVEMENT INTERESTED PARTY

THE TAITA COUNTY ASSEMBLY INTERESTED PARTY

RULING

1. The applicant herein filed a Petition dated 9th April 2024 through counsel Mosioma & Company Advocates.
2. Through that petition, she seeks the following orders:-
 - a. A declaration that the respondent does not require quorum to gazette the petitioner as the same is a result of nomination through a party list.
 - b. A declaration be issued that the petitioner is the nominated Member of Assembly following the demise of Cosntance Mwandawiro on 24th August 2023.



- c. A declaration that the statutory timelines provided by the *Elections Act* having lapsed the petitioner be deemed as duly nominated and the Speaker of the 2nd Interested Party the County Assembly of Taita Taveta do swear in the petitioner as a Member of County Assembly.
 - d. An order be issued compelling the IEBC Chief Executive Officer to gazette the petitioner as a Member of County Assembly Taita Taveta under the gender top up list representing the Wiper Democratic Movement within 7 days.
 - e. Failure of the IEBC to comply with (c) above an order be issued compelling the Speaker of the Taita Taveta County Assembly to swear the petitioner as the duly nominated Member of County Assembly.
 - f. Costs of this petition and interest thereto.
3. At the same time, the petitioner filed a Notice of Motion dated 9th April 2024 (which is the subject of this ruling) under Article 19, 20, 21, 22, 23, 24, 35, 47, 48, 90, 177, 193 and 194 of the *Constitution*, as well as Section 19 of the *Elections Act* seeking the following orders:-
1. (Spent).
 2. This court does order the applicant Ann Wambui Mukuru be gazetted by the Chief Executive Officer of the Respondent (IEBC) within 7 days.
 3. (Spent).
 4. The court does order that the applicant Ann Wambui Mukuru is the nominated Member of Assembly following the demise of Constance Mwandawiro on the 24th August 2023 in line with the interests of the 1st Interested Party list published on the respondent website.
 5. The court does order that the statutory timelines provided by the *Elections Act* having lapsed, the applicant/petitioner be deemed as duly nominated and the Speaker of the 2nd Interested Party the County Assembly of Taita Taveta do swear in the petitioner as a Member of the County Assembly.
 6. The costs of the application be in the cause.
4. The application has grounds on the face of the Notice of Motion. It was filed with a supporting affidavit sworn on 9th April 2024 by the applicant Ann Wambui Mukuru.
 5. The application is opposed through a replying affidavit sworn on 2nd May 2024 by Chrispine Owiye the Director of Legal Services of the respondent (IEBC).
 6. On the other hand, the application is supported through an affidavit sworn on 24th April 2024 by Shakila Abdalla the Secretary General of the 1st Interested Party (Wiper Democratic Movement).
 7. The application was canvassed through written submissions, which I have perused and considered.
 8. In my view, this application will not succeed because being a preliminary or interlocutory application, it seeks the grant of substantive orders that will determine the entire petition, which cannot be allowed by a court of law, as if the orders are granted, it will amount to putting the cart before the horse.
 9. In my view, such preliminary applications should be limited to the grant of orders which sustain the cause of action, and allow all parties to ventilate the main action filed in court, and not to pre-empt and determine the substantive matter pending before the court.



10. Granting the orders sought in the application herein will determine the entire petition, which has not even been set down for hearing.
11. On that account therefore, I disallow the application and dismiss the same, and will proceed to give directions for hearing of the petition herein. Costs will follow the determination of the petition.

DATED, SIGNED AND DELIVERED THIS 28TH DAY OF MAY 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Mosioma for petitioner/applicant

Mr. Mokaya holding brief for IEBC

Mrs. Omondi holding brief for Wiper (1st Interested Party)

