



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

ELECTION PETITION NO. 1 OF 2013

LEONARD KIKPNGENO KORIRPETITIONER

VERSUS

1. IRENE JEROP CHEBOI

2. FIDELIS KITILI KIVAYA

3. INDEPENDENT BOUNDARIES AND ELECTION COMMISSIONRESPONDENT

RULING

This is a Ruling on costs prompted by the withdrawal of the petition by consent of all the parties on

22nd August, 2013. The 1st Respondent filed her draft Bill of costs and the 2nd and 3rd Respondents followed suit jointly. The Petitioner addressed the two drafts in his submissions and the parties highlighted the contents on 22nd August, 2013.

That it is the Petitioner who lodged the petition after the 1st Respondent was declared the winner of Mauche Ward County representative is not for contesting.

The 1st Respondent in her Response and Affidavit in Support contested the cancellation of her declaration as the winner and prayed that she be confirmed the winner.

The 2nd and 3rd Respondents admitted that there was an error in tallying the results which misled them to declare 1st Respondent the winner but upon discovery of the mistake the 2nd Respondent cancelled the certificate issued to the 1st Respondent and issued a fresh one to the petitioner who was then gazetted as the validly elected county representative of the ward in question.

The Respondents had no objection to the withdrawal of the petition which the Petitioner averred was overtaken by events when his wish to be declared the winner of the ward seat county Representative was acceded to.

The 1st Respondent seemed to concede defeat when she agreed to the withdrawal otherwise she would have insisted on the petition proceeding to full hearing for her to establish that she should be confirmed the winner as initially announced by the 2nd Respondent.

The 2nd and 3rd Respondents cannot escape blame for making the mistake which they conceded during the tallying and which resulted with the declaration of the 1st Respondent as the initial winner only to cancel the original results thereafter.

The Petitioner cannot be faulted for filing the petition as he could not be sure who would be eventually gazetted the winner taking into account the fact that the 1st Respondent had been issued with a certificate also declaring her the winner.

That the Petitioner proceeded to file and serve the notice of withdrawal of the petition after being gazetted the winner is proof of his good intention of avoiding the Respondents incurring unnecessary costs after he had secured his right of being declared the winner.

The conflict between the Response of the 1st Respondent and that filed by the co-Respondents jointly is sufficient proof that had the Petition proceeded to full hearing the onus would have weighed more heavily on the former to prove that she was the winner of the election and not the Petitioner and further that the results had been “doctored” to the advantage of Petitioner by the co-Respondents.

The Petitioner submitted that the Respondents proceeded to file their Responses after they were served with the application of withdrawal of the Petition to justify their claim for costs. They contested the exact time of service of the said application but the record is clear that the said application was filed on 21st March, 2013. When the Respondents appeared to file their Responses, it was already in the court file and this should have informed them not to file their Responses and therefore save on costs.

Further had the 1st Respondent complied with the request of the 2nd Respondent to promptly return the certificate declaring her the winner this petition should not have seen the light of day.

The costs are guided by schedule VII of the Advocates (Remuneration) order, 2009 which is clear under note 2 that the party and party costs should only exceed the scale on special ground arising out of the nature and importance or difficulty or urgency of the case. In short the complexity of the case can justify the increase of the costs.

In the instant case the issue was whether there was any error in tallying votes of only one voting centre and the mistake was admitted. The Response of the 2nd and 3rd Respondents running to only six paragraphs attest to the fact that there was no complexity in the issues.

The parties appeared in court only for mentions which barely lasted fifteen (15) minutes and the only issue which was in contention was the amount of costs.

It is not denied that parties have incurred costs but this should also be viewed viz a viz their respective roles before and after the filing of this petition as enumerated above.

Considering the issues highlighted above and the particular circumstances of this unique case where only the issue of costs invited determination, I am satisfied that the Petitioner acted in good faith and very fast in his bid to mitigate the costs and he should only be condemned to pay minimal all inclusive costs to the Respondents who also contributed respectively in having this petition filed.

I therefore direct the petitioner to pay the 1st Respondent costs of twelve (12) thousand shillings and to the 2nd and 3rd Respondents jointly a sum of eighteen (18) thousand shillings.

S. M. MUNGAI

CHIEF MAGISTRATE

30/8/2013

Ruling delivered, signed and dated in open court today 30th August, 2013 before Mrs. Wanderi for Petitioner, Mr. Odhiambo holding brief for Mr. Olonyi for 1st Respondent and Mr. Sigei for 2nd and 3rd Respondents and Peter court clerk

Odhiambo: We apply for copies of the ruling

Court: Parties to be supplied with copies of the ruling

S. M. MUNGAI

CHIEF MAGISTRATE

30/8/2013



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