



REPUBLIC OF KENYA

IN THE HIGH OF KENYA COURT AT NAROK

ELECTION PETITION NO. 5 OF 2017

JAMES KINGANGIR NAKOLAPETITIONER

VERSUS

THE INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION1ST RESPONDENT

HON. SAMUEL TUNAI2ND RESPONDENT

RULING

1. This is an application by the petitioner, who is a registered voter to withdraw the election petition against the two respondents. He has deponed to a seven paragraph affidavit in support of the withdrawal. He has deponed to the following major matters. In paragraph 4, he has deponed that he lodged at the office of the Registrar of the High Court at Narok a notice of intention to withdraw his election petition dated 19/9/2017. He thereafter heard the same matter gazetted in terms of Rule 21(3)(a) of the Elections (Parliamentary and County Elections) Petition Rules of 2017. Furthermore, he has deponed that as a result of his notice of intention to withdraw, the issue of withdrawal was in the public domain, a matter in respect of which he has annexed a copy of the Daily Nation (Newspaper) of Tuesday 19/9/2017.

2. Furthermore, the notice of intention to withdraw was published in the Kenya Gazette Notice No. 9340 of 22/9/2017. Finally, he has deponed that there is no agreement made and no undertaking has been entered into in relation to the withdrawal of this petition.

3. Ms. Maritim, counsel for the petitioner made a short oral submission in support of the withdrawal. She pointed out that the withdrawal application is unchallenged. She also submitted that all the procedural requirements of the law have been complied with.

4. Ms Nungo, counsel for the 1st Respondent also submitted that she was instructed by her client namely the 2nd Respondent not to oppose the withdrawal application. More importantly, she submitted that the petitioner in paragraph 1(b) of his application to withdraw the election petition has confirmed that there were no irregularities in the conduct of election in respect of the gubernatorial election in which the 2nd respondent was declared the winner of the Narok County gubernatorial seat.

5. Mr. Kemboy, counsel for the 2nd Respondent also made a short submission in support of the withdrawal. He submitted that they did not file any response to the petition because of the intended

notice of withdrawal application which was published as required. He further submitted that no person has come forward to be substituted in place of the petitioner within seven days of the publication dated 22/9/2017. It is for those reasons that he does not oppose the withdrawal application. Finally, he also does not seek costs of this withdrawal because the withdrawal was sought in its infancy.

6. It is important to point out that the petitioner in his petition in particular in paragraph 10, stated that he did not accept that the counting and tallying of the votes cast at the election were correct. He also stated that the tallying of the votes from the polling stations was not transparent, credible and accurate as required by the constitution and the law. In paragraph 11 of his petition, he has also stated that the election was marred by grave errors, flows, fraud, illegalities and irregularities, which were committed by the respondents and in his view constituted fundamental contravention of the 2010 Constitution of Kenya and the Elections Act No. 24 of 2011. He has finally stated, amongst other grounds, that the election did not represent the will of the people of the County of Narok. For purposes of withdrawal, these are the most important complaints which he investigated and found that he relied on information of 3rd parties. The result of his investigation revealed that there were no such irregularities or malpractices. He has also stated that he has no evidence to support the averments in his petition. More importantly, he has stated that he believes that the election of the 2nd respondent as Governor is an expression of the sovereign will of the people of the Narok County. These are the major grounds upon which he seeks to have the election petition to be withdrawn.

7. I find from the affidavit evidence of the petitioner, the submissions of all counsel and the applicable law that the petitioner has complied with all the procedural legal requirements in respect of his application to withdraw, in terms of Rule 21 (3) (a) of the Elections (Parliamentary and County Elections) Petition Rules of 2017. I also find that following the gazettelement of this intention to withdraw, no person has come forward to be substituted in his place.

8. As regards costs, I agree with Mr. Kemboy that this petition is being withdrawn at its infancy. And for that reason, I will make no order as to costs.

9. In the light of the foregoing, I allow the petitioner to withdraw his petition and which is hereby ordered withdrawn.

Ruling delivered in open court this 11th day of October, 2017 in the presence of Ms Maritim for the Petitioner, Mr. Chelang'a for the first Respondent and Mr. Kemboy for the second Respondent.

J. M. Bwonwonga

Judge

11/10/2017



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