



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT LODWAR

ELECTION PETITION NO. 2 OF 2017

IN THE MATTER OF ARTICLES 2, 10, 39(2),50(1),88(4) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION ACT NO.9
OF 2011**

AND

IN THE MATTER OF: THE ELECTIONS ACT NO. 24 OF 2011

AND

**IN THE MATTER OF: THE ELECTION FOR THE MEMBER OF THE
NATIONAL ASEMBLY FOR TURKANA NORTH CONSTITUENCY (NO.123)**

AND

IN THE MATTER OF: THE ELECTIONS (GENERAL) REGULATIONS 2012

(L.N 128 OF 2012 AND L.N 72 OF 2017)

AND

IN THE MATTER OF: INTERNATIONAL CONVENTIONS, PROTOCOLS, AND/OR GOOD PRACTICE

BETWEEN

PAUL EKUWON NABUIN.....PETITIONER

VERSUS

CHRISTOPHER DOYE NAKULEO.....1ST RESPONDENT

NGEITELEJIO EKALALE DANSON.....2ND RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....3RD RESPONDENT

RULING

This is an application by the Respondent Christopher Nakuleo brought under **Rule 4,6,17©, 20,22,37 of the Elecions (parliamentary and County Elections) Petition Rules 2017, Sections 75, Elections Act, Sections 1A, 1B,1C, 3 and 3A. Civil Procedure Act, Sections 3 and 4 Judicature Act, Article 159 of the Constitution**, and all other enabling provisions of law seeking orders that:

- 1. The venue for the hearing of this petition be anywhere else howsoever, in the honourable judge's discretion, other than Turkana County including Lodwar High Court.**
- 2. Without prejudice to any other prayer, and if it is deemed warranted, the applicant's prayer for change of venue from Lodwar County to wherever else as this court and or the Chief Justice may deem fit and just for the hearing of this Petition, be forwarded to the Chief Justice without necessarily staying the proceedings herein.**

Which is provided in the grounds that

a. The trial at Lodwar High Court, and at any other place in Turkana County might be very problematic on account of:

- (i) Security for everybody including the 1st Respondent and his advocates, and other parties.**
- (ii) Security of witnesses**
- (iii) Fair trial rights and welfare of witnesses including their non-interference.**

b. The Applicant/1st Respondent has received communication from third parties as to threats that for as long as the petition would be in Lodwar he will be prejudiced.

c. Witnesses proposed to be called in the petitions have received invitations to recant and others threatened. There is information that infact already some witness(es) in the Governor's petition, Lodwar high court petition No.1 of 2017 have been persuaded and caused to alter their position.

The application is supported by the affidavit of Hon. Christopher Doye Nakuleo sworn on 17th day of October, 2017 reiterating the grounds of the application. Mr. Katwa in urging the application submitted that the reason for request for transfer of the sitting of this court from Lodwar in Turkana to any other place outside Turkana is due to security concerns expressed by the applicant/Respondent. He submitted that if the trial is held in Lodwar his security and that of his witnesses and also the likely intimidation of his witnesses by the petition. He submitted that he has information that efforts has been made decline to testify or recant what they had sworn.

He alluded to a witness in petition No.1 who had sworn an affidavit to disown the earlier affidavit sworn. Counsel submitted that many supporters of the parties will attend court at time of hearing and this may pose a security challenge incase violence between them erupts. He submits that the Lodwar law courts is not fenced and crowd control will not be effective and that the court should take judicial notice that 70% of residents in Turkana have weapons including guns, and alluded to the recent incident in

Lokichogio Secondary School and at Kakuma police station, where the school and police station respectively were invaded. He acknowledged that any transfer of the sitting of this court will occasion additional costs, but that the applicant is prepared to consider the same. Finally he submitted that pending the decision of this court or the Hon Chief Justice on his transfer, the hearing of the petition should proceed as scheduled, and should not be changed.

Mr. Kinuthia for the 1st Respondent opposes the application. He submitted the security issues raised have not been supported by evidence, and in particular there is no affidavit of the witness who has allegedly been intimidated; that reference to petition No.1 to support this application is misplaced. He submits that transfer of the sitting of this court from Lodwar will greatly inconvenience the witnesses some of whom are elderly and that it is the responsibility of the court to take steps to ensure security of the proceedings. Finally he submitted that each party in the proceeding and particularly the petitioner and Respondent have a duty to assist the court in maintaining security by reigning on their supporters. He urged the court not to interfere with the administrative decision of the chief justice in appointing the venue of the hearing of this petition.

From the submissions, this court can discern that the issue of security in this application is premised on two areas **1)** personal security of the petitioner, witnesses, advocates and staff of Lodwar Law Courts during the hearing of the petition and petitioners witness intimidation if the sitting is held in Lodwar.

Mr. Katwa for the applicant submitted that if the hearing is done in Lodwar the witnesses are likely to be intimidated. He did not adduce any evidence of any such attempts in this file. It is imported to note that all the witnesses in the petition and for Respondents all come and reside in Turkana. They are all known by the parties as they have filed witness affidavits. It has not been established how any transfer of the sitting of this court would prevent any intimidation if any. This is particularly so as no effort has been made in this application to obtain any affidavit or evidence of intimidation or any named witnesses who has been harassed.

2) Security for advocates, witnesses and staff of Lodwar court.

An issue of security for advocates, witnesses, staff of the court is an important issue which this court takes seriously.

Mr. Katwa has alluded to general incidents of insecurity in Turkana and the assertion that the same is aggravated by easy access to weapons. This is obviously a serious issue but it has not been demonstrated that it is peculiar Turkana and not a general incident of insecurity in Kenya. It is the duty of the Government to provide security for all its citizens. When the issue as this arises, it is the responsibility of this court to take adequate shape including liaising with security agencies to provide adequate security. I am convinced that the judiciary administration in Lodwar will take steps to ensure adequate security measures are in place before, during and after hearings of the petition.

In the result, I find that no sufficient material has been placed before me to advise the Hon. Chief Justice to transfer the sitting of this court from Lodwar to any other station. At the moment I do not find merit in the application which is hereby dismissed.

Dated and signed this 1st day of November, 2017.

S N RIECHI JUDGE



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