



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



JOSEPH LAURENT HAYMU & 2 OTHERS v. ATTORNEY GENERAL AND DR. WILBROAD PETER SLAA

HIGH COURT OF TANZANIA

AT ARUSHA

(R.V. MAKARAMBA J)

Miscellaneous Civil Cause No. 20 of 2005

(an election Petition for the avoidance of the Karatu Constituency Parliamentary election results)

Election Petition – Irregularities and non-compliance – Effect on election results – Alleged issuance of fake Forms No.21B, premature declaration of results, and unsecured ballot boxes – Whether lack of NEC security mark renders Form No.21B invalid – Whether mathematical or administrative errors materially affect results – Standard of proof in election petitions.

This was an election petition filed by Joseph Laurent Haymu, Emmanuel Denis Bura, and Thomas Lulu Irafay, all registered voters in the Karatu Constituency, challenging the results of the 2005 Parliamentary election in which Dr. Wilbroad Peter Slaa of CHADEMA was declared the winner. The petitioners alleged that the election was marred by irregularities and non-compliance with the Elections Act [Cap. 343 R.E. 2002] and directives of the National Electoral Commission (NEC). Specifically, they claimed that the Returning Officer had issued two sets of Form No.21B one genuine with NEC security marks and another fake without them leading to confusion and manipulation of vote tallies; that he hurriedly declared results before receiving all ballot boxes and result forms from all polling stations; that he failed to ensure safe custody of election materials, resulting in unsecured or vandalized boxes from certain wards; and that he denied CCM agents the opportunity to lodge complaints about irregularities and that arithmetical inconsistencies showed the CCM candidate had in fact received more votes than Dr. Slaa. The petitioners contended that these irregularities adversely affected the election outcome and prayed that the election of Dr. Slaa be declared null and void or, in the alternative, that the CCM candidate be declared the lawful winner. The respondents denied the allegations and maintained that the election was conducted lawfully.



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Held:

- (i) A security mark on results from No.21B is not a legal requirement in the electoral laws and regulations, and the lack of a security mark on a result form No. 21 B does not of itself render such forms not to be genuine.
- (ii) There was no credible evidence that the Returning Officer prematurely declared results or failed to secure polling materials.
- (iii) The forms tendered by the petitioners were proven to be cooked, fake, and/or forgeries, as conceded by their counsel.
- (iv) Where a specific irregularity has been proved and the number of votes affected established with some precision, then allowance should be made for that, and if, after adjustments have been made, the successful candidate still retains some margin of victory, then the irregularity has not really affected the result of the election.
- (v) Under section 108(2)(b) of the Elections Act, irregularities must be proved beyond a reasonable doubt and shown to have affected the result; the petitioners failed to meet this burden.
- (vi) For an election to be invalidated, the petitioner must prove both the existence of irregularities and that such irregularities adversely affected the result. Minor or technical defects such as the absence of a security mark, use of translated forms, or mathematical errors do not vitiate an election unless they alter the will of the electorate.

Petition dismissed with costs.

Statutory provisions referred to

- (i) Section 7(1) and (2) of the Elections Act
- (ii) Section 108(2)(b) of the Election Act
- (iii) Section 124(a) of the Act, the National Electoral Commission (hereinafter NEC) made the Elections (Presidential and Parliamentary Elections) Regulations, G.N. No. 231 of 2005
- (iv) 74(1)(a) of the Elections Act
- (v) Regulation 56(1) of the Elections Regulations
- (vi) Regulation 48(1)(c) of the Elections.

Case referred

- (vii) Azim Suleiman Premji v. Attorney General and Dr. Aman Walid Kaborou Civil Appeal No.63 Of 1998 (Ca) At DSM



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- (viii) Philip Anania Masasi Vs Returning Officer Njombe North Constituency The Attorney General And Jackson Misc. Civil Cause No. 7/95 (High Court of Tanzania) at Songea (unreported), Samatta, J.K
- (ix) Abdallah M. Makongoro & Four Others Vs The Hon. Attorney General Civil Appeal No.8 Of 1996 (Ca) At Dar Es Salaam (Unreported)
- (x) Arusha Kai-Wa & 5 Others v. Wilbroad Peter Slaa and Another, Civil Appeal No.29 Of 1977 (Ca) (Unreported)
- (xi) Re K.A. Thabit [1967] E.Å 771 And Chabanga Hassan Dyawale Vs Al Haj Seif Mussa Masomo & Another [19821 Tlr 69

Mr. Ezra Mwaluko and Mr. Mpaya Kamara, learned Advocates for the Petitioners

Mrs. Mary S. Lyimo, Principal State Attorney (PSA) for the 1st Respondent, Mr. Patience K. Ntwina, Senior State Attorney, and Miss Veritas S. Mlay, State Attorney (SA).

Mr. Tundu A. Lissu, learned Advocate for the 2nd Respondent.

