



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



**DR. STEPHEN LEMOMO KIRUSWA v. ONESMO KOIMEREK
NANGOLE & 2 OTHERS**

HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT ARUSHA

(S. S. MWANGESI J.)

MISCELLANEOUS CIVIL CAUSE NUMBER 36 OF 2015

Election Petition – Annulment of Election – Grounds for Annulment – Whether an election can be nullified on grounds beyond those specified in section 108 of the National Elections Act

Election Petition – Sui Generis – Standard of proof – beyond a reasonable doubt - What is the appropriate standard of proof required in an election petition

Election Petition – pleadings – whether petitioner can go beyond pleadings

Election Petition – evidence – weight of evidence – whether failure to report election irregularities under the Electoral Code of Conduct before filing a petition weighs down the evidence

Election Petition – Annulment of Election – Grounds for Annulment – whether irregularities can solely be a ground for annulment of election results.

This is an Election Petition where the Petitioner felt aggrieved by the results, and as a result, he has decided to challenge it by petitioning this Court to avoid the election of Mr. Onesmo Keimerek Nangale as Member of Parliament for the constituency of Longido in terms of the provision of section 112 of the Election Petition Act Cap 343. The petitioner fronted grounds of irregularities as grounds for challenging the election that, the results which were announced by the Returning Officer in the Parliamentary election of Longido constituency for the year 2015, did not reflect the real wishes of the electorate and has therefore, requested this Honorable Court to declare it to have been laden with mismanagement and irregularities and therefore, null and void. Respondents denied the said allegations and paraded witnesses as well as submissions to refute the allegations and submitted that the elections were conducted fairly.

Some of the irregularities pointed out were the words that indicated tribalism used by the 1st Respondent, and that the 1st Respondent had caused altercations/ chaos in the tallying room when the exercise was being carried out.



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Ultimately, the Court was of the view that the irregularities, which were occasioned in the election at issue at the tallying room, to be precise, did fundamentally affect the result of the election. As a result, the election, which was held in October 2015 for the constituency of Longido, was nullified and directed that a by-election be conducted, to enable the electorate to freely and fairly exercise their right to elect a representative of their choice.

Held

- (i) There are other grounds other than those stated in section 108 of the National Election Act for the nullification of election results, which include anything that renders the election unfair, as well as any law which seeks to protect unfree and unfair elections, as such an act would be unconstitutional.
- (ii) An election petition is sui generis, neither purely civil nor purely criminal; its standard of proof is higher than in ordinary civil cases but lower than in criminal cases, requiring the petitioner to establish alleged mismanagement or irregularities beyond a reasonable doubt.
- (iii) Every citizen participates in governance through voting, and courts have a duty to respect the electorate's choice, intervening only in the most compelling circumstances.
- (iv) In an election petition, a petitioner is bound by their pleadings; the court cannot consider evidence on matters not raised in the petition.
- (v) Failure by a petitioner or political party to invoke provisions of the Electoral Code of Conduct does not bar filing an election petition, but it weakens the credibility and strength of the complaint, suggesting it may be an afterthought.
- (vi) An election result is considered affected by non-compliance only if, after adjusting for proved irregularities, the contest becomes significantly closer. If the winning margin remains wide despite the irregularities, the result is not affected.
- (vii) An election petition cannot be dismissed merely because one irregularity alone would not affect the outcome; the cumulative effect of multiple irregularities must be considered in assessing whether the election was conducted fairly.

Election Petition Succeeded, and the Results were Nullified.

Statutory provisions and Laws considered

- (i) Article 21 (1) of the Constitution of the United Republic of Tanzania 1977
- (ii) section 113 (1), section 108 (2) (a) of the Election Petition Act, Cap 343, Revised Edition of 2015 National (Election Petitions) Rules 2010.



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- (iii) National Elections (Elections Petitions) (Amendment) Rules 2012, Government Notice Number 106 of 2012

Case Laws referred to

- (i) Manju Salumu Msambva Vs the Honorable Attorney General and Another Civil Appeal Number 02 of 2007 CAT (unreported),
- (ii) The Honorable Attorney General and Others Vs Walid Amani Kabourou [1995] 2 LRC757
- (iii) Nelson Symphorian Lutter Versus the Honorable Attorney General and Ibrahim Said Msabaha [2000] TLR 419.
- (iv) Phillip Anania Masasi Vs the Returning Officer Njombe North Constituency and Two Others Miscellaneous Civil Cause Number 07 of 1995 High Court Songea Registry (unreported).
- (v) The Honorable Attorney General Vs Reverend Christopher Mtikila Civil Appeal Number 02 of 2007 (unreported)
- (vi) James Funkie Gwaqilo Vs The Honorable Attorney General [2004] TLR 161
- (vii) National Insurance Corporation and Another Vs Seku/u Construction Company Limited [1986] TLR 15,
- (viii) Daniel Nsanuqwaniko Vs the Honorable Attorney General and Zaituni Agripina Buvoqera, Civil Appeal Number 106 of 2012, CAT (unreported),
- (ix) David Zakaria Kafulira Vs Hasna Sudi Mwilima and Two Others Miscellaneous Civil Cause Number 02 of 2015 High Court Tabora Registry (unreported)
- (x) Mbowe Vs Eliufoo [1967] EA 240
- (xi) Rashid Hamid Ahmed Amana Vs L. E. B. C and Two Others EP No. 06 of 2013
- (xii) Prince Baqenda Vs Wilson Masilingi and Another [1997] TLR 22