



CHIRIKO HARUNI DAVID v. KANGI ALPHAXARD LUGORA AND 2 OTHERS

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 36 OF 2012

(Msoffe, J.A., Kileo. J.A., Kimaro, J.A., Massati, J.A and Mandia)

(Appeal from the judgment and decree of the High court of Tanzania, Chocha J.)

Election law – security for costs in Election petition – Whether it is mandatory for a petitioner to make an application for security for costs.

The appellant, Chiriko Haruni David, filed an election petition at the High Court challenging the parliamentary election results for Mwibara Constituency. In the course of the proceedings, a legal issue arose regarding Section 111 of the National Elections Act [Cap 343 R.E. 2010]—specifically, whether it is mandatory for every petitioner to file an application for determination of security for costs, or whether such application applies only to indigent petitioners.

A previous decision of the Court of Appeal in *Katani A. Katani v. The Returning Officer, Tandahimba District & 2 Others*, Civil Appeal No. 115 of 2011 (unreported) had held that it is mandatory for every petitioner to apply for determination of security for costs. However, counsel for the appellant, Mr. Herbert Nyange, urged the Court to depart from the Katani decision.

The ordinary bench (Rutakangwa, Luanda, and Orioya JJA) referred the issue to a Full Bench of five Justices under Article 118(1) of the Constitution for determination, recognizing the potential for conflicting interpretations on Whether, under Section 111 of the National Elections Act, every election petitioner must file an application for determination of the amount payable as security for costs, or whether this requirement applies only to petitioners unable to afford the full statutory amount.

Held:

- (i) We are of the firm view that the law as it now stands confers distinct and separate procedures for depositing security for costs. The first procedure covers a petitioner



THE UNITED REPUBLIC OF TANZANIA OFFICE OF THE SOLICITOR GENERAL



- (ii) who is willing and able to deposit the maximum amount; this one does not need to make an application for the determination of the amount payable as security for costs. To require such a petitioner to make an application is unnecessary and would only lead to a delay in the disposal of an election petition.
- (iii) The second procedure applies to indigent petitioners, the court in exercise of its discretionary power may direct the petitioner to give such other form of security which does not exceed 5,000,000/= or grant total exemption from payment of any form of security.

Order accordingly

Statutory provisions referred

- (i) Section .111 of the Elections Act
- (ii) Written laws (Miscellaneous Amendments) Act No.25 of 2002
- (iii) Section .53(2) of the Interpretation of Laws Act (CAP 1 R.E 2002)

Case referred

- (iv) Katani A. Katani vs The Returning Officer, Tandahimba District & 2 others, Civil Appeal No. 115 of 2011(Unreported)
- (v) Mussa Arbogast Mutalemwa vs Republic, Criminal Application for Review No.5 of 1996(Unreported)
- (vi) Julius Ishengoma Francis Ndyanabo vs Attorney General (2004) TLR 14

Book referred

- (vii) Legal Method; Cases and Materials, 1st Edition (1998) by Mukoyogo M.C

Adv. Mr. Herbert Nyange for Appellant.

Adv. Sangalell Lutema for 3rd Respondent.

Mr Obadiah Kameya, Principal State Attorney.