



**THE ATTORNEY GENERAL & RETURNING OFFICER OF
IGUNGA CONSTITUENCY & ANOTHER v. JOSEPH
MWANDU KASHINDYE**

COURT OF APPEAL OF TANZANIA

AT TABORA

(Kimaro, J.A., Mandia, J.A., Kaijage, J.A.)

CIVIL APPEAL NO.18 AND 8 OF 2013

(Appeal from the judgment of the High Court at Tabora, Shangali, J., dated 21st August 2012)

Election law – Requirement for depositing the security for costs – whether the court can proceed hearing of the Petition without depositing the security for costs.

In this Appeal, the second Appellant and the Respondent were among the contestants in the elections. The 2nd Appellant was sponsored by CCM and the Respondent by CHADEMA. The 2nd Respondent won the election. As a result of the score in votes, the Returning Officer for the Igunga Constituency declared the Second Appellant the winner of the by-election, hence a member of Parliament for the constituency. Respondent was aggrieved by the result and also by the way the campaign was conducted. He filed the Petition in the High Court challenging the validity and outcome of the election by listing a number of irregularities and misconduct that occurred during the election and campaign, alleging that they made the whole process of the elections not free, fair, and transparent. The petition was filed against the Dalali Kafumu as the 1st Respondent, the Returning Officer, and the Attorney General. Irregularities and misconduct were all denied by the Appellants/Respondents. At the end of the trial Judge made a finding that the petitioner proved some of the irregularities and malpractices he asserted and declared the by-election null and void. The Igunga constituency was then declared vacant. All Respondents were aggrieved by the decision of the High Court. The Attorney General and Returning Officer filed a Civil Appeal faulting the Decision. At the same time, Dalaly Kafumu also filed a Civil Appeal faulting the decision. Two Appeals were consolidated and heard together upon the consent of parties. Appellant filed 19 grounds of appeal but among the contentious grounds that



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were considered to dispose of the matter was ground 1, which was common in both appeals, that the trial court erred in law by proceeding to determine the Petition without ascertaining that the respondent had complied with the mandatory requirement of depositing security for cost, a prerequisite for trials in election petitions. In support of his ground, the Learned Principal State Attorney stated that the Respondent had to deposit in court as security for costs, a right of occupancy or letter of offer within 14 days as a guarantee for 1,000,000/= in terms of Section 112(7) of the National Elections Act [CAP.343 R.E. 2010].

Held:

- (i) It is clear that there was no compliance with the provision of section 111(7) of the National Elections Act. The Registrar could not fix the petition for hearing, and the judge could not proceed with the hearing of the petition without depositing the security for costs.
- (ii) Payment of security for costs is a prerequisite for the hearing of any election petition. Where there is non – non-compliance, the jurisdiction of the High Court to hear any election petition is ousted.

Appeal allowed.

Statutory Provision referred

- (i) Section .111(5), (7) of CAP 343.

Adv. Masumbuko Lamwai for Appellant

Mr. Gabriel Malata (Principal State Attorney) for Respondents