



JETHA EDWIN ATHMAN v. MOHAMED SAID SINANI AND 2 OTHERS

THE HIGH COURT OF TANZANIA

AT MTWARA

MISC. CIVIL PETITION APPLICATION NO. 01 OF 2006

(M.S. SHANGALI, J.)

Election law – Application for exemption for security of costs – whether the petitioner can apply exemption before lodging an application for the determination of the amount payable in court as security for costs.

Election Law – Limitation period of time to file an application for determination of amount payable as security for costs – what is the time limit to file the application?

The Applicant Jeth Edwin Athman filed the Election petition before this court seeking for nullification of the election result for Mtwara urban Constituency in the general Election held in 2005, in which the 1st Respondent was declared the winner. His ground supporting his petition was that the said election was tinted with illegal and corruption practices. The petitioner also filed an application under section 111(5) (b) of the Election Act, praying for waiver of the requirement of deposit in court for security of costs. While replying to the Applicant's Affidavit, Counsel for the 1st Respondent filed a notice of preliminary Objection on the point of law to the effect that the Application is misconceived, premature, and incompetent; therefore, it should be struck out. The essence of the respondent's preliminary objection is that the applicant/petitioner filed to comply with the mandatory provision of section 111(3) of the Election Act, which require the petitioner to file an application for determination of amount payable in court as security for costs in his petition within a period of 14 days of filing the petition, as the result that application for exemption has no legs to stand on as it ought to have been filed after the court has determined the exact amount payable in court by the petitioner as security for costs. In reply, counsel for Applicant submitted that the law requires the petitioner to make an application for waiver of deposit of security for costs in terms of the time limit. Counsel for Applicant invited the court to invoke its inherent powers under section 95 of the CPC and proceed to determine the application.



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Held:

- (i) The petitioner has to comply first with the provision of section 111(3) of the Election Act by applying for the determination of the amount to be payable as security for costs before he can venture into an application for the exemption for security for costs under section 111(5) of the Act. Intrinsicly applicant is seeking the court to waive an existing amount not been determined.
- (ii) The petitioner has to make the application for the determination of the amount payable as security for costs within the statutory period of 14 days after filing his petition.

Objection upheld, application marked struck out with costs.

Statutory provision referred to:

- (i) Section 111(3) and 111(5)(b) of the Election Act.

South Law Chamber Advocates for Applicant.

Mr.Mdamu for 1st Respondent.

Mr. Ntwina Learned State Attorney for 2nd and 3rd Respondents.

