



ABDALLAH M. MAKONGORO & OTHERS v. THE ATTORNEY GENERAL

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(Mfalila, J.A., Lubuva, J.A., Samatta, J.A)

CIVIL APPEAL NO. 08 of 1996

(From the Ruling of the High Court of Tanzania at Iringa, Mroso, J., Dated 13th June 1996 in Miscellaneous Civil Cause No. 01 of 1995)

Election Law – Election petition – Irregularities and discrepancies in counting and addition of votes – Whether such irregularities materially affected the result of the election.

Delegation of duties by Returning Officer – Judicial power to order recount – Effect of massive non-compliance with electoral laws.

Election law – Returning Officer – Whether the Returning Officer can delegate his functions to the Assistants.

Election Law – Withdrawal of Petition - Whether withdrawal of a successful candidate from an election petition terminates the petition.

The appellants, all registered voters in the Arusha Parliamentary Constituency, were aggrieved by the declaration of Charles Makongoro Nyerere (NCCR-Mageuzi) as the winning candidate in the 1995 General Elections, defeating Felix Mrema (CCM). They filed an election petition in the High Court, alleging numerous irregularities and non-compliance with the Elections Act, 1985, including discrepancies in Forms RF.2, omission of results from seven polling stations in Ngarenaro Ward, unsealed ballot boxes, and unexplained differences in the number of voters between parliamentary and presidential tallies. The High Court (Mroso, J.) acknowledged “many errors and significant discrepancies” but held that these did not materially affect the result. Dissatisfied, the appellants appealed to the Court of Appeal.



THE UNITED REPUBLIC OF TANZANIA OFFICE OF THE SOLICITOR GENERAL



Held:

- (i) We are satisfied that if the Returning Officer delegated some of his functions to his Assistants, then he was perfectly entitled to do so under the Act. If the irregularities which were unearthed were caused by his Assistants, the Returning Officer is fully answerable, and we suppose that is why he was taken to court in this Petition.
- (ii) There are only three situations where a recount can be conducted. First, a candidate or counting agent may require a recount, and this right can be exercised up to 2 times. The second situation arises at the time of adding votes by the returning Officer when there is an equality of votes between candidates. The last situation a polling agent may request a recount, but only if the accuracy of the results from that polling station was disputed by the polling agent or the candidate present at the polling station. The learned trial judge was also right in holding as he did that there is no room for judicial intervention, as the law does not provide recount as a remedy under the Act.
- (iii) For an election to be invalidated, the petitioner must prove both the existence of irregularities and that such irregularities adversely affected the result.
- (iv) In a situation like the Arusha Constituency, where the addition of votes from polling stations is marred by massive foul play and deliberately not complying with the provisions of the law, it is impossible to say that such non-compliances could not have affected the result of the election.
- (v) The Court held that while a Returning Officer may lawfully delegate some of his functions to assistants, he remains fully responsible for any irregularities committed by them. Judicial recounts are impermissible under the Elections Act; recounts may only be conducted under the statutory provisions therein. However, where there are massive non-compliance and irregularities that cast doubt on the authenticity of results, the election cannot stand as reflecting the will of the majority.
- (vi) Withdrawal from the case does not invalidate the election; the candidate remains lawfully elected unless set aside by a competent court. No election shall be declared void by reason of any act or omission unless it appears that the result of the election was affected thereby.”

Appeal allowed with costs

Statutory provisions referred to

- (i) Article 21 Constitution of the United Republic of Tanzania, 1977



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



- (ii) Sections 77(1), 78(1), 79A, 80(3), 91(1), 92 Elections Act, 1985 (as amended)
- (iii) Rule 5(1) Elections (Election Rules)

Case Referred:

- (iv) *yo v. Simeon* (1967) D.A. 229
- (v) *Arusha Ralwa & 5 Others v. Peter Glaa & Another*, Civil Appeal No. 29 of 1997 (CAT, unreported)

Mr. N. Ngo'maryo, Advocate for the Appellants

Mr. Mono, Principal State Attorney for the Respondent (Attorney General).

