



THE SUPREME COURT OF KENYA

HASSAN MOHAMED ADAM v AHMED ABDULLAHI JIIR & 3 OTHERS PETITION NO. E017 OF 2023

DATE OF REASONS FOR JUDGMENT: 8TH DECEMBER, 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: The petition of appeal is struck out with costs to the respondents.

Dissatisfied with the declaration of the election results for the position of Governor, Wajir County, the appellant, Hassan Mohamed Adam, filed High Court Election Petition No. E008 of 2022 against the respondents. He alleged that the election was tainted with numerous illegalities and irregularities that contravened the Constitution, electoral laws and judicial precedents.

In a judgment delivered on 3rd March 2023, the High Court dismissed the petition with costs and upheld the election of Ahmed Abdullahi Jiir and Ahmed Muhumed Abdi, the 1st and 2nd respondents, as Governor and Deputy Governor of Wajir County respectively.

Aggrieved by the High Court decision, the appellant appealed to the Court of Appeal challenging the same. The 1st & 2nd Respondents took out a preliminary objection challenging the court's jurisdiction on the basis that the notice of appeal filed on 9th March 2023, was flawed and incompetent. They specifically contended that the notice of appeal was filed at the High Court registry in Garissa as opposed to in the Court of Appeal at Nairobi.

Further, they contended that the notice did not comply with law on how to commence an appeal. The IEBC supported the objection.

In opposition, the appellant stated that the preliminary objection had been filed out of time and that there was a valid notice of appeal on record. The appellant urged that the court be guided by the objective of facilitating the just, expeditious, proportionate and affordable resolution of election petitions, not pay undue regard to technicalities, and allow the appellant to file a supplementary record of appeal to formally include the notice of appeal.

In a ruling delivered on the 24th of July 2023, the Court of Appeal (Musinga (P), Omondi & Ngenye, JJA) upheld the preliminary objection and struck out the notice of appeal with costs. The appellant, not satisfied with the Court of Appeal ruling, appealed to the Supreme Court. Opposing the appeal, the 1st and 2nd respondents filed a joint response to the petition and an application to strike out the appeal. The appellant filed a rejoinder to the response to the petition and grounds of opposition to the application to strike out the appeal. Upon hearing this preliminary objection on the 7th of September 2023, the Supreme Court delivered an ex tempore ruling striking out the appeal.

Today's judgement sets out the reasons. This matter turns on two broad issues:

- i. Whether the Supreme Court has jurisdiction to entertain the appeal and if so,
- ii. Whether the Court of Appeal properly exercised its discretion in striking out the appellant's Notice of Appeal and Record of Appeal.

Upon consideration, the Supreme Court determined the issues as follows:

In answer to issue no. 1, the Supreme Court found, as in previous decisions, that it has jurisdiction to hear this matter because issues about notices of appeal concern jurisdiction and are thus suitable for determination by the court.

On issue no. 2, the Supreme Court upheld the Court of Appeal's finding on fact that there was no valid notice of appeal on record and therefore could not be faulted for striking out the record of appeal before it.

The appellant had pleaded with the Supreme Court to remit the matter to the Court of Appeal for the hearing of the appeal on its merits. According to the appellant, the Court of Appeal had until 1st October 2023 to hear and determine the appeal. The Court noted that the High Court delivered its judgement on 3rd March 2023. Accordingly, the Court of Appeal should have heard and determined the appeal by 2nd September 2023 at the latest as that was the last day of the 6-month duration within which the Court of Appeal was constitutionally required to have heard and determined the appeal.

Consequently, the Supreme Court issues the following final order:

The application by the 1st & 2nd respondents seeking to strike out the petition of appeal to this Court is allowed with the result that the Petition of Appeal dated and filed on 31st July, 2023 is struck out with costs to the 1st & 2nd respondents.

