

ONE NCUBE

Versus

TAWANDA MUGARA N.O.

And

ZIMBABWE ELECTORAL COMMISSION

And

NORMAN NDEBELE

ELECTORAL COURT OF ZIMBABWE

NDLOVU J

BULAWAYO 10 NOVEMBER & 14 DECEMBER 2023

Election Petition

Mr. R. Ngwenya for the Petitioner
Mr. Kanengoni for 1st and 2nd Respondents
No Appearance for the 3rd Respondent

NDLOVU J: This is an Election Petition brought in terms of **Section 133** as read with **Section 167** of the **Electoral Act [Chapter 2:13] [the Act]**. The election under challenge relates to the **Local Authority** for **Ward 28** Councilor in **NKAYI SOUTH** Constituency in rural Matabeleland North Province. The Polling took place on 23 August 2023. The results of the election were announced on 24 August 2023. At the commencement of the hearing, the Petitioner withdrew the petition against the 1st and 2nd Respondents. The withdrawal was wisely taken, consensual, and without a tender or demand for costs.

THE CONTROVERSY

The controversy has its genesis in the conduct of the Ward Elections Officer [*the 1st Respondent*]. What happened and birthed this petition is that the candidate who was declared the winner polled an equal number of valid votes to those garnered by the petitioner. Without a clear winner borne by the results, the Ward Elections Officer told the contestants that to break the stalemate he was going to toss a coin, [like soccer referees do before the soccer match begins or a penalty shootout commences]. He duly tossed the coin and the 3rd Respondent was victorious in the coin tossing and was then declared a winner.

Section 129 (1) of the Act provides as follows in part

129 Runoff by-election where votes tied.

“If after the counting of votes has been completed an equality of votes is found to exist between two or more candidates and the addition of one vote would entitle any of the candidates to be declared elected, the Chief Elections Officer shall forthwith declare that a runoff by-election shall be held on the same day as the Presidential runoff would have had to have been held....”

FILING THE PETITION.

The Petitioner submitted/filed this petition on *08 September 2023*. There was no opposition from the Respondent despite service.

Section 168(2) of the Act provides as follows in the relevant part.

168 Provisions governing election petitions.

(1)...

(a)...

(b)...

(2) An election petition shall be presented within fourteen days after the end of the period of the election to which it relates ...”

In the case *in casu* the fourteen days period expired on *07 September 2023* and the petition was filed on *08 September 2023*.

DISPOSITION.

The Election Petition was therefore filed out of time making it improperly before this court.

ORDER;

1. The Election Petition in respect of **Ward 28, NKAYI SOUTH** Constituency in the 23 August 2023 Harmonised Elections against the 1st and 2nd Respondents be and is hereby withdrawn.
2. The Election Petition against **NORMAN NDEBELE** be and is hereby struck off the roll.
3. There is no order as to costs.

NDLOVU J.

T-J Mabhikwa and Partners Petitioner's Legal Practitioners

