



HIGH COURT RULING SPELLS CLARITY IN THE REGULATION OF CAMPAIGN FINANCING IN KENYA

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The High Court of Kenya has today declared that election campaign spending limits in Sections 12, 18 and 19 of the Election Campaigns Financing Act, 2013 (ECF Act) do not call for parliamentary approval, but must be subjected to appropriate public engagement. The Court also declared Section 29 of the Act unconstitutional as it does not promote the values of good governance. Section 29 of the Election Campaigns Financing Act, 2013 required the Independent Electoral and Boundaries Commission (IEBC) to present the regulations on spending limits to the National Assembly for approval before they are published in the Kenya Gazette. The import of the Court's declaration is that IEBC comes up with the regulations, subjects them to public participation and gazettes the regulations. The Court has also declared that the IEBC did not undertake public participation before publishing the election campaigns spending limits and has ordered the Commission to timeously come up with spending limits.

The ruling follows a petition filed in December 2021 by Transparency International Kenya (TI-Kenya), Katiba Institute, Africa Center for Open Governance (AFRICOG) and Philip Nyakundi Gichana, seeking the courts direction on the enforcement of the election campaign financing Act 2013; after the National Assembly on the 28th of September 2021, resolved to reject, and annul campaign financing regulations and the contributions, and spending limits published by the IEBC in the Gazette Notice No.8024 of 9th August 2021.

However, the Court did not fault the National Assembly for annulling and revoking the Election Campaign Financing Regulations, 2020 and the spending limits contained in Gazette Notice No. 8024 for the reason that IEBC did not favour the Court with any proof of Public Participation.

"A ceiling on spending during election campaigns is imperative for good governance as it enhances transparency and reduce incentives for grand corruption and other vices that tempt looting in order to fund political campaigns. The High Court's decision provides clarity on the role of Parliament and the IEBC in regulating campaign financing, and it will bolster the independence of the IEBC in ensuring

candidates have a level playing field in the quest for public office in future elections,” said Sheila Masinde, Executive Director, Transparency International Kenya.

The implementation of the Elections Campaign Financing Act has faced hurdles since its enactment in 2013, raising grave concerns about subversion of the Constitution of Kenya 2010 which requires regulations of the use of money during elections. Therefore, the court’s decision has affirmed that the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the voters for any elective public body or office established under the Constitution is beyond the clasps of the political elite.

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