

**The Verdict issued by the Local Elections Law, authorized to hold this trial in the name of the Palestinian Arab people**

**The judges:**

Judge Rafiq Zuhd, as the president

The Judge Mohannad Al-Arda as member

The Judge: Yasmin Jarad, as member

**The Appealers:**

1. "The City for All" List in its capacity as one of the listing running for the local elections of Beitunia locality and for the membership in the Beitunia municipality, through its legal representative Arafat Mahmoud Ameen Khalaf
2. Arafat Mahmoud Ameen Khalad, holder of ID 9782132, in his personal capacity and his capacity as the head of the list, one of the candidates for Beitunia local elections and one of the voters in the local elections in Beitunia
3. Mustafa Siham Mustafa Kurt, holder of ID 925516635, in his personal capacity and in his capacity of member in the City for All list and one of the candidates and voters for local Beitunia locality elections.
4. Marwan Mahmoud Darwish Barageethi, holder of ID 925516635, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
5. Salman Mahmoud Salman, holder of ID 905608063, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
6. Hamed Hassan Jum'a Abdel Mu'ti, holder of ID 415044114, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
7. Lina Na'eem Ibrahim Al-Tafesh, holder of ID 959133646, in her personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.

8. Imad Odeh Suleiman Qadi, holder of ID 954637385, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
9. Samer Na'eem Ibrahim Bayya', holder of ID 959133687, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
10. Nu'ama Mousa Jum'a Yaseen, holder of ID 936502509, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.
- 11. Hasan Issa Hassan Muheisen, holder of ID 918478520, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.**
12. Anas Mohammed Ibrahim Kurt, holder of ID 850832080, in his personal capacity, and as member of the City for All list, candidate and voter in Beitunia local elections.

And their agent is Lawyer Fadi Abbas, Ramallah

**The respondents:**

- The Palestinian Central Elections Commission, represented by its legal representative
- The Chairman of the Central Elections Commission in addition to his position
- The local district election office of Ramallah and Al-Bireh
- The CEO of the Central Elections Commission in addition to his position

The address for notification: Al-Bireh, Al-Balou'/ the Headquarters of the CEC

**The subject of the Appeal:**

1. The decision of the respondents via the respondent no. 4 on 15/4/2017 comprising the rejection of the objection submitted by the appellars on declining and rejecting the nomination of the "The City for All" list and deleting it from the registered electoral lists running for the local

- elections in Beitunia locality, Ramallah & Al-Bireh locality issued on 9/4/2017 on the argument that the candidate Hassan Issa Hassan Muheisen is not registered or enlisted in Beitunia's voters' list and his name is enlisted in Ramallah district.
2. The decision of the respondents comprising rejecting the nomination of the "City for All" list and not to publish it in the list of the electoral lists running in Beitunia local elections, which carries no. (41) due to the failure to meet all the legal provisions and thus depriving all the candidates of the list to run in Beitunia locality elections, Ramallah and Al-Bireh district.

### **Appeal reasoning and Rules**

On 17/4/2017, the appellers filed this appeal for the following reasons:

**First:** the decisions, subject of this appeal, are deficient since they did not resolve all the reasons stated in the objection submitted by the appellers to the CEC on 9/4/2017 and identifying the legal points that were referred to in (third, fourth and eighth clauses of this objection) in addition to the decision, the subject of this objection, No. 1 issued by the CEO of the CEC that violates the law and fundamental concepts (codes) since it is issued by a body that does not have the capacity or the right to issue it in pursuant to the Local Elections Law No. 10 of 2005 and its amendments.

**Second:** the nomination application of the "The City for All" list via its legal representative fulfils all the legal provisions and was duly submitted and in coherence with the local elections law in terms of nomination provisions and provisions that should apply on each candidate.

**Third:** it is the duty of the CEC and its employees according to the law and regulations, that regulate the work of the CEC and the elections process, to verify and confirm that the nomination applications are complete and meet all the legal requirements. Thus, we cannot say that the CEC's task is only to receive the application, while the responsibility of information verification is on the list and its candidate, since the guarantee of holding intact legal, democratic elections process fails within the top priorities of the CEC and one of its main reasons of establishment and convention and work, hence; in case of any flaw or fault in the provided information in spite of checking it by the CEC employees, assuming there is one in the first place, this should not be a reason to drop the whole list, because if there is a mistake, it is a material

mistake committed by the employees of the CEC not by the representative or candidates of the list itself, not to mention that the notification/receipt of receiving the registration and nomination application handed to the appealing list representative is a binding force of all the documents presented to the CEC are valid and correct in terms of legal provisions.

**Fourth:** The Respondents did not consider principle of good faith which is associated with concepts of justice, fairness, reason and the natural course of matters, as evident in Article 20 of the local elections law no 10 of 2005 and its amendments (the application did not meet the conditions stipulated in this law or data or attachments to the application were proved to be incorrect) referred to by the respondents in the decision the subject of the appeal on 15/4/2017 is irrevocably linked with the ill-will assumed that one list and/or a candidate intended to present misleading information for the purpose of getting around the legal rules regulating the elections process. So, implementing this text on the incident related to the registration of the candidate Hassan Issa Hassan Muheisen as one of the “The City for All” list for Beitunia local elections who is No. 11 in the list on the assumption that there is a mistake in his registration and enlisting in the Ramallah Voters’ Registry not Beitunia’s, is not right due to its link with good faith principle and, on the other hand, the respondents did not present what may confirm the ill-will of the list representatives (the appellers) of submitting misleading and incorrect information.

**Fifth:** the candidate Hassan Issa Hassan Muheisen, the appellant no.11, is one of Beitunia’s people and residents since a long time, and he is committed to paying all his due fees and taxes imposed by the Municipality of Beitunia, which is proven by the attachments submitted with this objection/appeal to the CEC which declined.

Alternately, with the appellers’ upholding to what is stated above:

**Sixth:** The decisions, the subject of this appeal, are violating the Palestinian Basic Law, there is no legal justification that gives the respondents the right to reject the whole list in case one of its candidates has not met the legal provisions for nomination in accordance with article 18 of the local elections law no. 10 of 2005 and its amendments, since the only case stated by law is the one mentioned in article 14, paragraph 5 which says “The number of candidates on one electoral list shall not be less than the majority of the

number of seats allocated to the electoral district”, which is further confirmed in article 15, paragraph 5, “If withdrawal of one or more candidate led to a violation of the provisions of paragraph 5 of article 14, and the list is unable to fill the vacant positions during the nomination period, the list shall be considered null and void”. These articles collectively are clear and aims at restricting the issue of rejecting the whole list to the case where the number of the candidates of the list is less than the number of majority of the number of seats allocated to the electoral district i.e. if the number of candidates is less than 7 for a locality whose number of seats is 13, then the whole list shall be dropped and cancelled. On the other hand, if withdrawal and/or dropping one candidate will not affect this point, then the whole list shall not be rejected.

**Seventh:** Keeping the candidate Hassan Issa Hassan Muheisen, the 11<sup>th</sup> and last appellant in the “City for All” and/or deleting his nomination will not affect the legal order of the other candidates or the legal structure of the list, particularly the article 17 which stipulates a certain order for women representation in the list. Considering law and regulations allow the nomination of Beitunia locality elections with a list consisting of 7 members only, thus, what the respondents referred to in their decision, the subject of the appeal and objection, does not comply with the law or reconcile with the objectives and purposes of the legislator enacted the legal texts mentioned above.

**Eighth:** the decisions, subject of this appeal, do not comply or reconcile with the objections of the Palestinian legislator who sought via articles 14, 15, 17, 18 and 20 of the local elections law no. 10 of 2005 and its amendments, to differentiate between the legal provisions that the candidate shall meet to run in the local elections and the provisions that the list should meet to run in the local elections and by referring to the wording of these articles, we will find that the legislator specifies the cases where the list shall be rejected as a whole as in articles 14 and 15 of this law. On the other hand, the law identifies the cases where one or some candidate(s) can be deleted or dropped from the list but keep the whole list if this withdrawal/deletion won't affect the structure and from of the list or violates the articles 14, 15 and 17 of the local elections law no. 10 of 2005 and its amendments. This is what the Palestinian court's rulings in this regard, which constitute precedents or case laws that cannot be overlooked. For example, the first instance court's decision in Toulkarem in case no. 165/2016 and 166/2016 of electoral objections and the decisions

issued by Ramallah First Instance court in case no. 2/2012 of electoral objections.

**Ninth:** the decisions, subject of this objection, issued by the respondents do not comply with the rules of justice and fairness as well as a gross violation of article 20, paragraph 3 of the Palestinian basic law (Article 26 of the Basic Law 2002) which states the following: “To Vote and nominate for election, representatives among them by ballot in accordance with the law.” This paragraph came to clarify one of the most important ways of how the Palestinians can effectively participate in the political life and the local elections law then enacted to draw the ways and methods to ensure this participation and the full practice of such rights. Hence, the decisions of the respondents’ to reject the whole list of “The City for All” as one of the competing lists for Beitunia local elections is breach of this legal principle and violation of the list candidates to participate and nominate for elections without any legal reason or justification and in a way that contradict with the natural role and primary objective for forming the CEC, which is guarantee and safeguard the Palestinians right to participate in the political life in accordance with the principle of equal opportunities.

**Tenth:** the decisions, subject of the appeal and objections, do not reconcile or comply with the issue of safeguarding the electoral process and decrease the chances for having local council that is competent and strong, in addition to its impact on the national peace and confidence that the elections process must be characterized of especially taking into consideration the social fabric of Beitunia, since the decision of refusing this list and depriving its candidates from participating in the elections process has denied many social sectors from the right of representation in the local council of Beitunia, due to the diversity of candidates of the list who represent several components of the social fabric and sectors of Beitunia, specifically, the marginalized sectors such as laborers, youth and other sectors.

petitioning the results and on the ground of fairness and justice, the appellars through their attorney are appealing to the court to accept this appeal in form and substance and as result to revoke and cancel the decisions that are the subject of the appeal consider it as if they were not issued and to decide to accept the nomination request of “the City for All” list to participate and compete in the local elections of Beitunia- Ramallah and Al-Bireh district,

with all its candidates including the appellant no. 11 alternately and verdict of accepting the accreditation of “the City for All” list as one of the competing lists for Beitunia local elections, after deleting the violating candidate and allow the remaining candidates to practice their legal, natural and constitutional right by participating in the electoral process as candidates in compliance with the Palestinian basic law and the local elections law no .10 of 2005, and to issue the judicial decision to the competent authorities including the respondents for re-accreditation of the “The City for All” list to be one of the competitors in the local elections in Beitunia in accordance with law and order, and implication of the respondents to pay for all the fees, expenses and attorney’s charges.

## **Procedures**

In the ongoing litigation that is taking place in public, the appeal against the second, third, and fourth contestants was limited to the first contestants and the pleadings were raised on the formal acceptance of the parties to the appeal. After examining the documents of the case and the appellate list, we found that they were submitted by the first appellant, the list of the country as a candidate list for the local Beitunia elections, Municipality by its legal representative Arafat Mshmoud Amin Makhlouf against the respondents. Regarding the authenticity of the litigation, and what has been risen by the representative of the respondents and since the litigation is of the general system/order must be addressed before addressing the subject of the appeal; the court finds that the case filed from the first appellant/plaintiff in his capacity as one of the candidates for the local elections in Beitunia which is a capacity proven by the registration and nomination receipt notification submitted by the plaintiff to the CEC and by the deposit receipt of the nomination fees at the CEC bank account that are attached to the plaintiff’s documents portfolio while the plaintiff has no right to file a case in his capacity as the representative of the “The City for All” list because law did not grant the electoral lists the independent legal capacity that authorizes their members to litigate, and it is recognized that any group of individuals does not have legal capacity unless the provision of law grants the legal personality as it in the case of corporations, societies, municipalities...etc. Reinforcing to what is stated above, we find that the legislator has accorded in pursuant with article 55 of the local elections law every voter or candidate or his agent the right to challenge or object the results of the elections, but did not grant the

same right to the electoral lists, Hence, we decide to reject the appeal in form from the first plaintiff due to lack of litigation authenticity.

Referring to the appellars 2 to 12, and after reviewing the objection submitted to the CEC on 9/4/2017 which is an objection filed by the members of the City for All list via its representative Arafat Mahmoud Khalaf, thereof, the appellars are represented in this appeal, since law allowed the list representative to file a complaint/ appeal on behalf of the list, and since he filed an objection to the CEC challenging the cancellation of the list in accordance with powers granted to him, thus the affected of the decision objected-on have the right to hire an attorney to file an objection. Based on what is stated above, we have decided to reject the appeal of the first plaintiff in form and to proceed with the remaining appellars' objection duly. The list of appeal is repeated and the attorney of the respondents repeated his pleas.

The documents portfolio attached with the appealing list and marked with (M/1) and stamping the evidence. The attorney of the respondents presented a copy of the electoral record of the appealing candidate Hassan Issa Hassan Muheisen and his evidence stamps.

### **Hearings**

**The Attorney Fadi said:** "I petition the court to consider the appealing list presented by me as a hearing clarifying to the court that the decision, which is the subject of this appeal, did not consider the basic principles of fairness and justice which is considered as a persistent need of the Palestinians under these exceptional living conditions. Thus, the locality associated with this appeal and in accordance with the wording of the law that consider the electoral lists that consist of at 7 candidates are qualified and sufficient to be accepted in that locality, while informing the court with the merits of this appeal, we find out that the basis for issuing the objected-on decision is that candidate no. 11 in the list "The City for All" has violated his nomination provisions according to the CEC decision. In this context, it must be apparent to the court that: 1) primarily, the nomination of this candidate is basically did not violate and/or exceed the wording of the law since all the main provisions that qualify him to be a candidate for Beitunia local elections were met and fulfilled, and are evident through the documentary evidences that prove the residency of the candidate at the locality and that he considered all the formalities and objective procedures of his nomination. The CEC made its



decision based on the candidate's registration in the voters' list of Ramallah in 2005, and it is not sensible that he will record a plea against him that may deprive him from participate in the elections. On the other hand, which is more critical and dangerous is 2) the CEC based on the nomination of this candidate took the decision to cancel the nomination of a list that represent significant and primary sectors of a locality. Consequently, to sum up, based on what is mentioned above, and since it is allowed legally to nominate a 7-candidate list, this objection on the decision which is a gross violation of the basic principles of justice and fairness and definitely does not reconcile with the living social necessity which require the participation of everyone in the electoral process. Therefore, I petition the court to accept this objection in substance.

**The attorney Khalil said litigating:** I petition to include in my plea the litigation and I would like to add that my colleague throughout the proceedings of this objection did not dispute or question the validity of non-registration of the appellant Hassan Issa Hassan Muheisen in Ramallah locality and that he was not of the voters registered in Beitunia locality; he mainly focused in his allegations and evidences that the appellant resides in Beitunia although that was not subject of dispute or questioning for the CEC since the CEC applies the law and article 18 states relating to the provisions for the candidate's nomination is to be enlisted in the final voters' list of the locality he is running in, the CEC on 4/3/2017 exhibited the voters list of Beitunia locality and the public were able to look at it and check their names or object on the names enlisted in the registry. The name of the candidate was enlisted within the voters' list of Ramallah locality, he accepted that and did not file any objection on his name not enlisted in Beitunia locality voter's list and enlisted in Ramallah's. this indicates that he was not willing to nominate then, and this willingness evolved later, while law states in article 14 that the candidates list is closed, and article 20 says that the CEC can reject acceptance of list registration application if it is evident that the provided information or documents in the applicant is not accurate or correct or if the application did not meet the legal requirements by law, and what kind of correct information included in the application if one of the candidates claim that he is registered in Beitunia locality and sign a written declaration of that effect, i.e. that he provided correct information while he knows in advance that his declaration is not correct and his name is enlisted in Ramallah's voters list; registration is

a personal matter therefore the negligent and delinquent are not rewarded, and the CEC is not a litigation body deciding who wins the locality seats; it is an independent institution that is responsible for safeguarding free democratic integrity elections process, thus, it implements the explicit law and does not have the authority to decide who has the right to nominate and who is not unless by law. Thereby, the CEC decision to reject the appellars' request regarding its decision to decline the list nomination is based on law texts and only the law, considering all that is stated above, I petition the court to reject this appeal in substance and force the appealing parties to pay all the expenses and attorney fees.

**The Court:**

***Following discussion, deliberations and reviewal of the appeal file and what were submitted of facts, closing arguments and referring to the reasons of appealing stated above and the results:***

The court finds it is evident that the CEC by its decision issued on 15/4/2017 of rejecting the "City for All" list nomination as one of the competing electoral lists in Beitunia local elections and membership of Beitunia council via its legal representative Arafat Mahmoud Amin Khalaf because the appealing candidate Hassan Issa Hassan Muheisen is not registered in the final Voters' list of Beitunia where he is running in a violation of paragraph b of article 18 of the local elections law no. 10 of 2005.

And since nomination for localities membership is regulated by defined legal provisions, among which is the candidate's name to be enlisted in the final voters' list of that locality that is prepared by the CEC for each electoral district where elections will take place in pursuant to article 18 of the local elections law no. 10 of 2005. Hence, non-existence of the candidate's name in the voters list of Beitunia locality causes the candidate's loss of his/her eligibility to run in this locality. The CEC, in pursuant with Article 11 paragraph 1 of the same law, published the voters' list in a very accessible place at the electoral district office, and everyone has the right to object on these records to edit or correct any information or enlist or reject a name and since the final voters list is published 60 days before the Elections Day and according to the respondents' attorney, exhibition was for five successive days at the localities centers and the legal period expired for filing complaints or challenge, consequently the voters' list has become final record. Article 11

has defined 5 working days for challenges and the CEC shall issue its decisions within 5 days of the expiration date for objections, in pursuant with article 12. The law has allowed the appellant to appeal or object on his/her registration in the final voters list to the CEC within the relevant electoral district, and since the 11<sup>th</sup> appellant should have objected and challenged his registration in the final voters' list within the legal period mentioned above, and then file an objection on the CEC decision at the competent court, but he didn't and thus he lost his right once the legal period is expired and his request is rejected to be nominated as a candidate.

Whereas, referring to the decision, the subject of the objection, about rejecting the whole list "The City for All" which includes the appellants from 1 to 12, when reviewing article 14, paragraph 5 of the local elections law no. 10 for 2005, this paragraph states that the number of the list candidates shall not be less than the majority of the seats of that locality and after studying the attachments of the electoral list nomination submitted by the first appellant, we find out that the electoral list includes 11 candidates and the fact that one of the candidates does not meet all the legal provisions does not disrupt the majority necessary to be part of the elections process in the capacity of electoral list after excluding the 11<sup>th</sup> appellant for the above mentioned reasons. Hence, the CEC decision not to accept the whole list is considered against the law and what the CEC did in this context is an interpretation not accepted by law. When the law states that dropping an electoral list, it specifies certain cases/circumstance where this is applicable, none of them were mentioned by the CEC among the reasons for not accepting the nomination of the list, moreover, the objection on the candidate's nomination and not accepting him does not mean or imply to cancel and drop the whole list. What the CEC did in this case is expanding the penalty which the law does not accept. Every Palestinian who meets the conditions has the right to nominate in the local elections in accordance with the Basic Law which is the Palestinian Constitution, and do not enjoy the jurisdiction to confiscate this right from anyone without any legal document or justification, thus this is unacceptable and it is apt for cancellation.

**Wherefore,**

based on all that is stated above, the court accepts the appeal presented by the appellants from the second till the twelfth except the eleventh appellant, and

cancel the decision of the CEC related to rejection to accept their nomination in the “The City for All” list in its capacity as one of the electoral lists competing in Beitunia local elections and membership in Beitunia local council if keeping the list won’t affect majority seats stated in article 14, paragraph 5. Thus, we decide of accepting their nomination in Beitunia locality and the remaining candidates after excluding the eleventh candidate from the candidates list, each party shall pay the fees, expenses and the attorney’s fees.

Decision made in presence and majority, and read out publicly in the name of the Arab Palestinian people and well-perceived on 23/4/2017

The Judge

The Dissenting Judge

the president Judge

Yasmin Jarad

Muhannad Al-Arda

Rafiq Zuhd