



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**  
**ELECTION PETITION NO. 3 OF 2017**

**JONAS MISTO VINCENT KUKO.....PETITIONER**

**VERSUS**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION OF KENYA.....1ST RESPONDENT**

**STANLEY KIPKOSGEI KIPKORE**

**RETURNING OFFICER**

**SABOTI CONSTITUENCY.....2ND RESPONDENT**

**CALEB AMISI LUYAI.....3RD RESPONDENT**

**RULING**

1. By a Notice of Motion dated 24<sup>th</sup> October, 2017, the petitioner, *Jonas Misto Vincent Kuko* moved this court seeking one substantive order. He prayed for an order of scrutiny, recount and re-tallying of the votes cast in the polling stations referred to in paragraphs 9, 10, 11, 13, 16 and 17 of the supporting affidavit in the election held on 8<sup>th</sup> August, 2017 for the member of the National Assembly for Saboti Constituency.

2. The application is anchored on grounds that the court has jurisdiction to order scrutiny and recount of votes and that the orders if granted will assist the court in investigating whether the irregularities and breaches of the law complained of in the petition were valid; that the orders will also assist the court determine the valid votes cast for each candidate and to gain impressions on the integrity of the election process.

3. The application is also predicated on the deposition sworn by the petitioner on 24<sup>th</sup> October, 2017 in which he sought to establish the basis for grant of the orders sought.

4. It is the petitioner's case that contrary to the law, there are two sets of form 35 B's one signed on 9<sup>th</sup> August 2017 and the other one on 10<sup>th</sup> August 2017. The two forms emanated from the 2<sup>nd</sup> Respondent who was the Returning Officer for Saboti Constituency in the contested election; that the two sets bore different results; that the existence of the two forms prima facie undermined the validity of the results used to declare the 3<sup>rd</sup> Respondent the winner and allowing the application would enable the court establish the truth regarding the number of votes cast for each candidate.

5. The petitioner further contended that a look at form 35 B dated 10<sup>th</sup> August 2017 (the first form) revealed discrepancies or errors in the tallying of the results yet it is the form that was used to declare the 3<sup>rd</sup> Respondent as the validly elected candidate. It shows that the results for Nekami secondary school polling station stream 1 are similar to those entered for Matisi primary school polling station stream 9; that the same position applied to results in GK Remand Prison polling station streams 1 and 2 and Tuwani primary school polling station streams 1 and 4; and; that neither the petitioner nor his agents were involved in the generation of the second form and that the results in words and figures in that form differed.

6. Other grounds advanced by the petitioner are that the results in 23 polling stations stated in paragraph 13 of the supporting affidavit are suspect since form 35A's for those polling stations did not bear the 1<sup>st</sup> Respondent's stamp; that there were two form 35A's for Nekami Secondary school polling station stream 1 which were signed by different Presiding; Deputy Presiding Officer and agents; that the form 35A's for Matisi primary polling station stream 9 and St. Joseph Boy's Secondary school stream 1 were missing; that the refusal of access or expulsion of the petitioner's agents from the polling stations specified in paragraph 15 of the petition raised questions regarding the integrity of the election results.

For the foregoing reasons, the petitioner urged the court to allow the application as prayed.

7. The application is opposed by all the Respondents. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents relied on a replying affidavit sworn by the 2<sup>nd</sup> Respondent on 13<sup>th</sup> November 2017. In his deposition, the 2<sup>nd</sup> Respondent contended that the petitioner had failed to lay a basis to justify an order for scrutiny as the application had not particularized the polling stations in which scrutiny was to be done and the materials to be scrutinized; that the application is flawed for seeking an order of scrutiny and recount at the same time which is not permissible in law.

8. The 2<sup>nd</sup> Respondent admitted the existence of two sets of form 35B's as alleged by the petitioner but denied the claim that the form 35B dated 10<sup>th</sup> August, 2017 is the one that was used to declare the 3<sup>rd</sup> Respondent the winner of the election. He asserted that the form dated 9<sup>th</sup> August, 2017 is the one that was used to declare the results which results were not disputed by the petitioner in his evidence. He admitted the petitioner's claim that the form 35A's for Matisi primary polling station stream No. 9 and St. Joseph Boy's Secondary school stream 1 were not included in the statutory forms annexed to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's response but averred that the forms existed and their non-inclusion was irrelevant given that the results declared in form 35B dated 9<sup>th</sup> August, 2017 were not disputed by the petitioner.

9. Regarding the petitioner's contention that scrutiny and recount was necessary in this petition as form 35A's in a total of 23 polling stations were not stamped and his agents were denied access or expelled from several polling stations, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents averred that the 23 polling stations were not pleaded in the petition and their inclusion in the application amounted to a fishing expedition; that the petitioner did not adduce cogent evidence to validate his claim that his agents were denied entry or expelled from some polling stations and that in any event, the petitioner's interest was represented by agents nominated by the jubilee party.

10. On his part, the 3<sup>rd</sup> Respondent opposed the motion through a replying affidavit sworn on 6<sup>th</sup> November, 2017. In his deposition, the 3<sup>rd</sup> Respondent substantially replicated the response made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. He emphasized that the court in determining the application should disregard any averments of irregularities made by the petitioner in the application or in his evidence touching on matters or polling stations not pleaded in the petition; that parties are bound by their pleadings and the petitioner should not be allowed to fish for new evidence which might change the nature and content of the petition.

11. He further contended that an order for recount was not merited as the petitioner conceded during cross examination that he was satisfied with the entries and tallying in form 35B presented by the 1<sup>st</sup> Respondent; that there is no evidence that either the petitioner or his agents exercised their right to request for a recheck or a recount of votes cast in any polling station under *Section 80 of the Elections (General)*

*Regulations 2012* and the request was declined. He supported the 1<sup>st</sup> and 2<sup>nd</sup> respondent's contention that the application was devoid of merit and ought to be dismissed with costs.

12. The application was canvassed by way of both written and oral submissions.

Each of the parties filed written submissions together with a list of authorities. Learned counsel for the parties addressed me on those submissions on 24<sup>th</sup> January, 2018 and buttressed the different positions taken by their clients on the matter. *Mr. Kiarie* represented the petitioner while *Mr. Akenga* appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. *Mr. Oluoch* argued the case for the 3<sup>rd</sup> Respondent.

13. I have carefully considered the application, the depositions, the pleadings, the rival submissions made on behalf of the parties and all the authorities cited.

Having done so, I find that two main issues emerge for my determination. These are;

(i) Whether the court has jurisdiction to grant orders of scrutiny and recount if prayed for concurrently in the same application.

(ii) If the answer to issue No. 1 is in the negative, whether the petitioner has laid a basis to warrant the grant of the orders sought.

14. Starting with the first issue, *Mr. Akenga* and *Mr. Oluoch* relying on the persuasive authorities of **Charles Oigara Mogere V Christopher Morege Obore & 2 others (2013) eKLR** and **Justus Gesito Mugali M'mbaya V IEBC & 2 others (2013) eKLR** submitted that the remedies of scrutiny and recount are different and should not be sought in one application; that seeking the two orders together made an application defective and ousted the court's jurisdiction to grant such a prayer.

15. *Mr. Kiarie* while agreeing with the respondents' submissions that the two remedies are different denied the claim that seeking them in one application made the application defective.

16. Whilst I concur with the learned counsel's submissions that scrutiny and recount are two separate and distinct remedies which are conceptually different, the two terms are often used together and interchangeably in the course of litigation in election petitions. The distinction between them lies in the processes employed when executing an order for either of the remedies and their outcomes.

17. A recount is concerned with the number of votes cast in favour of each candidate in an election and the tallying of such votes. It is limited to establishing the number of votes obtained by each candidate. Unlike scrutiny, it does not seek to investigate the integrity of an election process.

18. Scrutiny on the other hand is wider in scope than a recount. It is a tool used by the court to audit the election process. It seeks to establish the validity of the votes cast and the integrity of the election process. Depending on the prayers sought in an application, an order for scrutiny may extend to an investigation of not only the validity of votes cast but may extend to an examination of other election materials like written statements made by returning officers; printed copy of voter registers, copies of results of polling stations in which results are disputed; written complaints of the candidates, packet of spoilt ballots and all the other election materials specified in *Rule 29 (4) of The Elections (Parliamentary and County Elections) Petition Rules 2017* (the Rules).

19. Having enumerated the differences between the two remedies, I must now answer the question whether seeking the two orders in the same application rendered the application defective as alleged by the respondents.

I am alive to the position taken by my sister *Sitati J* in **Charles Oigara Mogere V Christopher Mogere Obore & 2 others** (Supra) and my brother *Ogolla J* in the **Justus Gesito Mugali M'mbaya's case** (Supra) when confronted by a similar question. They took the view that given the different processes involved in carrying out a recount or scrutiny and their outcomes, parties to election petitions must choose whether to

apply for an order for scrutiny or recount and cannot apply for the two orders at the same time. The two learned judges did not however proceed to determine what would be the consequences of seeking the two remedies in one application. They did not find that such an application would be defective.

20. It is common knowledge that the law allows any person who is aggrieved by the conduct of an election to challenge in an election petition both the quantitative and qualitative aspects of an election. *Section 82 (1)* of the *Elections Act* and *Rules 28* and *29* of the *Rules* donates to an election court jurisdiction and discretion to grant orders of scrutiny and recount in cases where sufficient cause is shown for the grant of those orders. In my opinion, this jurisdiction cannot be ousted merely by the manner in which an application is drafted. In any case, the process of scrutiny inevitably leads to a recount of the valid votes cast. I am therefore not persuaded by the respondent's submissions that the application is defective for seeking an order of recount and scrutiny at the same time. I find that the application is competent and properly before the court.

21. Before embarking on a consideration of the second issue, i wish to examine the law relating to scrutiny and recount.

*Section 82(1)* of the *Elections Act 2011* (as amended) provides that;

***“An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine”.***

22. *Rule 29* of the *Rules* entitles a party to apply for “*scrutiny of the votes for purposes of establishing the validity of the votes cast*”. Under *Rule 29 (2)* and *(4)*, an applicant would only be entitled to the issuance of the orders for scrutiny or recount if he establishes sufficient reason for the grant of the orders and such orders should only be confined to polling stations in which the results are disputed.

23. Recount on the other hand is provided for under *Rule 28* of the *Rules*. It states as follows;

***“A petitioner may apply to an elections court for an order to-***

***(a) recount the votes;***

***(b) examine the tallying, if the only issue for determination in the petition is the count or tallying of votes received by the candidates.***

It is important to note here that the issues raised in this petition go far beyond the count or tallying of votes.

24. The principles upon which an order for scrutiny and recount should be granted are now well settled.

The Supreme court in *Peter Gatirau Munya V Dickson Mwenda Kithinji & 2 others, Supreme Court of Kenya Petition 2B of 2014 (2014) eKLR*; *Nicholas Salat V IEBC & 7 others, Supreme Court of Kenya Petition 23 of 2014 (2014) eKLR* and *Raila Amolo Odinga & Another v IEBC & 2 others (2017) eKLR Supreme Court of Kenya Presidential Petition No. 1 of 2017* (hereinafter Raila Odinga case 2017) has had an opportunity to pronounce itself on some of these principles.

25. In the *Peter Gatirau Munya case* (supra), the Supreme Court emphasized that the grant of an order for scrutiny or recount is not automatic; that the party seeking a recount or scrutiny has the onus of establishing the basis for such a request to the satisfaction of the court. Such a basis may be established by way of pleadings and affidavits, or by way of evidence adduced during the hearing of the petition. The court further re-iterated that an application for scrutiny or recount may be made at any stage after the filing of a petition but before its determination. If the application is successful, the order of scrutiny and recount should be made in respect of specific polling stations in which the results are disputed or the validity of the vote is questioned.

26. In the Raila Odinga case of 2017, the Supreme Court re-iterated that a prayer for scrutiny or recount must be founded on the irregularities or breaches of the law alleged in the petition. This is in recognition of the overarching principle that parties are bound by their pleadings. At paragraph 62, the court after reviewing several authorities including the decision of the Indian Supreme Court in *Arika Narasa Reddy V Venkata Rama Reddy Reddygan & Another Civil Appeal Nos. 5710-5722 of 2012 (2014) & S.C.R* expressed itself as follows;

***“Having addressed our minds to the above issues, it is our view that first, we note that as correctly argued by counsel for 3<sup>rd</sup> Respondent, a party must be bound by its pleadings and secondly, any scrutiny of either the forms or the technology must be made for a sufficient reason. A prayer in the application that would seem to be an expansion of the case for the petitioners or which would in effect be a fishing exercise to procure fresh evidence not already contained in the petition would and must be rejected.”***

27. The Supreme Court in the above case was emphatic that in order to be deserving of an order for scrutiny and recount, the order must be based on matters pleaded in the petition. The principle that parties are bound by their pleadings appears to form the rationale for the requirement under *Rule 29(4)* of the *Rules* that an order for scrutiny and recount must be confined to polling stations in which results are disputed. This is so because it is only in a petition that a petitioner can state his grievances regarding the conduct of an election and the polling stations in which results are disputed.

28. The significance of this principle cannot be overemphasized. It prevents the mischief of petitioners of using scrutiny and recount as a means of obtaining new or fresh evidence to enable them expand the scope of their petition through the back door after the time limited for amendment of election petitions have lapsed. This means that in considering whether sufficient basis had been laid to justify the orders sought, any allegation made in the application or any evidence adduced in the trial that falls outside the boundaries of the petition must be disregarded.

29. Applying the above principles to the present application, can it be said that the petitioner has demonstrated sufficient reason or basis to warrant the granting of an order for scrutiny?

30. Before answering that question, it is important to consider the standard of proof required to establish sufficient case in applications such as the one before the court. Is it the standard used in criminal cases of beyond reasonable doubt or the one used in civil cases of a balance of probabilities? Better still, is it the standard applicable to the final determination of the election petitions which hangs above the balance of probabilities but is below beyond reasonable doubt?. My take is that this being an interlocutory application, it would be sufficient for an applicant to provide prima facie evidence of the irregularities or illegalities forming the basis of the application.

31. I must at this juncture point out that I am advantaged to have heard this application at a time when all the parties have concluded their evidence. Therefore, in answering the above question, I will be guided by not only the pleadings, the application and the affidavits sworn by the parties but also by the evidence on record. I however disagree with *Mr. Kiarie*'s submission that in assessing whether the petitioner has made out a case for scrutiny, the court should consider evidence of irregularities adduced in the trial which have not been pleaded in the petition. As stated earlier, since parties are bound by their pleadings, the only evidence that this court shall take into account in determining this application is the evidence that supports the averments in the petition.

32. That said, let me now turn to a consideration of the second issue I have identified for determination.

In his application, the petitioner sought scrutiny, recount and retallying of votes cast in polling stations specified in paragraphs 9, 10, 11, 13, 16 and 17 of his supporting affidavit. The polling stations referred to in the above paragraphs are as follows;

(1) Nakami secondary school polling station stream 1

- (2) Matisi primary school polling station stream 9
- (3) G.K Remand Prison polling station streams 1 and 2
- (4) Tuwani primary school polling station streams 1 and 4
- (5) 23 polling stations where form 35A's were not stamped namely;

- i. Lungai primary school polling station stream 1.
- ii. Manor House Agricultural Centre polling station stream 1.
- iii. Chepkoilel primary school polling station stream 1.
- iv. Matisi primary school polling station stream 4, 6 and 8.
- v. Matisi cattle dip polling station streams 1 and 4.
- vi. Town Hall Polling station streams 2, 6 and 7.
- vii. Grassland primary school polling station stream 1.
- viii. Tuwani primary school polling station streams 2, 4, 5 and 7.
- ix. St. Columbus primary school stream 3.
- x. Trans Nzoia County Social Hall stream 2.
- xi. G.K Remand Prison primary school Polling station stream 1.
- xii. Mango primary school polling station stream 1.
- xiii. Muroki primary school stream 3.
- xiv. Saboti primary school stream 2.
- xv. Koy koy Primary school stream 1.

(6) St. Joseph Boys Secondary school stream 1.

**32.** There are also the polling stations listed in paragraph 15 of the petition in which it is alleged that the petitioner's agents were denied access or expelled from the polling stations. These are;

- (i) Tuwani primary school polling station streams 3 and 7
- (ii) Trans Nzoia primary school polling station streams 4 and 5
- (iii) Social Hall stream 7
- (iv) Matisi Cattle Dip streams 1, 2 and 3
- (v) Matisi primary school streams 1, 2, 4, 5, 8 and 9
- (vi) Muroki Streams 1 and 2
- (vii) Town Hall polling station stream 4 and 5

33. Like I stated earlier, the petitioner's main grievance is the existence of two form 35 B's both signed by the 2<sup>nd</sup> Respondent which bear different results. It is the petitioner's position that the form dated 10<sup>th</sup> August, 2017 attached to the petition (1<sup>st</sup> form) is the one that the 2<sup>nd</sup> Respondent used to declare the 3<sup>rd</sup> Respondent as the winner of the election; that the form had transposition errors or irregularities that casted serious doubts on the credibility of the results; that the results posted for Nakami secondary school polling station stream 1 and Matisi primary school polling station stream 9; G.K Remand polling stations streams 1 and 2 and Tuwani primary school polling stations streams 1 and 4 are exactly the same inferring that the said results were manipulated to achieve a certain outcome.

34. The petitioner also points to the irregularity of having two form 35A's for same polling station (Nakami secondary school polling station stream 1) signed by different IEBC officials and agents and the absence of form 35A for Matisi polling station stream 9. It is also the petitioner's case that the failure to stamp form 35A's for 23 polling stations and the expulsion or refusal of access to 18 polling station made the results in those polling stations suspect; that scrutiny was required to assist the court investigate the veracity and credibility of the said results.

35. In his evidence, the 2<sup>nd</sup> Respondent did not deny the existence of the two form 35 B's. He admitted having signed the two forms but denied that he used the 1<sup>st</sup> form to declare the 3<sup>rd</sup> Respondent the winner of the election. He claimed that he could not have used the said form since it is dated 10<sup>th</sup> august 2017 the day after he had declared the results. He maintained that he declared the results on the basis of the 2<sup>nd</sup> form dated 9<sup>th</sup> August, 2017.

36. It is noteworthy that the 3<sup>rd</sup> Respondent's chief agent who testified as RW5 testified that he was present during the declaration of the results and that he signed the form 35B used to declare the results.

37. I have perused and compared the two forms. I have confirmed that the two forms bear different results. There is no doubt that the complaints of irregularities and breaches of the law in the conduct of the election were based on the entry of results in the first form. The evidence adduced by the 3<sup>rd</sup> Respondent confirms that the results pleaded in his response were picked from the first form. I have also noted that only the first form is signed by RW5. The 2<sup>nd</sup> form is not signed by any agent. It is only signed by the Returning Officer (RW1).

38. Although the 2<sup>nd</sup> Respondent insisted in his evidence that he used the 2<sup>nd</sup> form to declare the results, given the above evidence, it is difficult to tell at this stage which of the two forms was used to declare the contested results. RW5's evidence and the fact that the 3<sup>rd</sup> Respondent used the results declared in the 2<sup>nd</sup> form in his response gives some element of credence to the petitioner's claim that this is the form that formed the basis of the declaration of results. Given this scenario, an order for scrutiny will assist the court determine the correct results obtained by each candidate in the polling stations in which similar results were posted.

39. I have also confirmed from the pleadings that two sets of form 35A's were filed in respect of Nakami secondary school polling station streams 1 and 2 which have different results. The question that arises is how this came about and the criteria used by the 2<sup>nd</sup> Respondent (RW1) to decide which results to post to either of the form 35B's. Form 35A for Matisi primary school stream 9 is also missing from the bundle of Form 35A's presented to the court by either the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. One wonders whether this is a pure coincidence or an indication that the form did not exist.

40. In the petition, the petitioner has disputed the results in Town Hall polling station stream 5 contending that the statutory form had alterations which had not been countersigned. I have examined the said form and I have confirmed that indeed the results entered for the 3<sup>rd</sup> Respondent and the number of valid votes cast appear to have some overwriting which have not been countersigned.

41. On the claim that results in 23 polling stations were suspect as the form 35A's in respect of those stations had not been stamped, the law does not require a presiding officer to stamp form 35 A's. Such

forms are authenticated only by the signatures of the presiding officers and of candidates or their agents. - See *Regulation 79(1) of the Elections (General Regulations) 2012*, (the Regulations); **IEBC V Stephen Mutinda Mule (2014) eKLR; Ndwiga Steve Mbogo V IEBC & 2 others Nairobi Election Petition No. 10 of 2017.**

42. In view of the foregoing, it is my finding that lack of stamping of the statutory forms in the aforesaid 23 polling stations cannot be a legal basis for scrutiny. In any event, most of those polling stations were not pleaded in the petition.

43. With regard to the claim that the 1<sup>st</sup> Respondent's conduct of the election through its presiding officers compromised the integrity of the election process by denying access or ejecting the petitioner's agents from the 17 polling stations enumerated in paragraph 15 of the petition, I find that since this is one of the main pillars of the petition, it would be imprudent of me to make any findings on this issue at this stage. Suffice it to say that through the evidence of the petitioner (PW1), *Priscila Wangui Kiragu* (PW5) and *Joshua Baraza Chebtwey* (PW6) and the evidence of RW1 under cross examination, the petitioner has prima facie, established a basis for scrutiny of the votes cast in Tuwani streams 3 and 7; Matisi cattle dip streams 1 and 2, Matisi primary school streams 1, 2, 5 & 8 and 9; Trans Nzoia primary school streams 4 & 5; Muroki polling station streams 1 & 2 and Town Hall polling station streams 4 and 5. It is my view that it is just, fair and reasonable to order scrutiny as sought in order to remove the doubts expressed by the petitioner regarding the credibility of results in those polling stations.

44. The Respondents have argued that the petitioner has not laid a basis for an order of scrutiny because apart from meandering out of the parameters of the petition, the petitioner admitted in his evidence under cross examination that the results shown in form 35 B filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were correct and reflected the true position on the ground; that in effect the results in the polling stations pleaded in the petition were no longer disputed.

45. A closer look at the petitioner's evidence in its totality however reveals that though he initially conceded that the results in the form 35A dated 9<sup>th</sup> August, 2017 were correct, he later renounced that position and insisted that the results were not credible and the 3<sup>rd</sup> Respondent was unlawfully declared as the winner of the elections. Consequently, as matters now stand, it cannot be said with certainty that the results are not disputed.

46. The court has power and discretion to order for a full or partial scrutiny depending on the evidence presented before it and the circumstances of each case.

From the foregoing analysis and findings, I am satisfied that the petitioner has demonstrated that an order of scrutiny is warranted in this case to enable the court arrive at a just and fair determination of the petition.

47. In the premises, the order that best commends itself to me is that;

(a) There shall be a partial scrutiny of votes cast limited to a recount and ascertainment of the number of valid votes obtained by each candidate in the following polling stations;

(i) Nakami secondary school polling station streams 1 and 2.

(ii) Matisi primary school polling station streams 1, 2, 5, 8 and 9.

(iii) G.K Remand Prison polling station streams 1 and 2.

(iv) Matisi cattle dip streams 1 and 2

(v) Tuwani primary school polling station streams 1, 3, 4, and 7.

(vi) Trans Nzoia primary school streams 4 and 5.

(vii) Town Hall polling station stream 4 and 5.

(viii) Muroki polling station streams 1 and 2.

(b) The partial scrutiny in order (a) shall be undertaken under the strict and direct supervision of the Deputy Registrar of this court.

(c) The exercise shall be conducted at the IEBC (Independent Electoral and Boundaries Commission ) Warehouse in Kitale.

(d) The Petitioner and the 3<sup>rd</sup> Respondent shall not be present at the examination centre.

(e) Each party shall be entitled to be represented by one of its advocates and to appoint two other agents to represent it during the entire exercise.

(f) The Deputy Registrar shall at the end of the exercise prepare a detailed report of her findings. The report shall be filed and served on the parties on or take into account before 7<sup>th</sup> February, 2018.

(g) The costs of the application shall be in the petition.

It is so ordered.

**C. W. GITHUA**

**JUDGE**

**DATED, SIGNED and DELIVERED at KITALE this 31st day of January 2018**

In the presence of:

Mr. Kiarie for the Petitioner/Applicant

Mr. Baraza holding brief for Mr. Akenga for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and holding brief for Mr. Oluoch for the 3<sup>rd</sup> Respondent

Ms. Emily – Court Assistant