



IN THE HIGH COURT OF KENYA AT KISUMU

ELECTION PETITION NO. 2 OF 2017

IN THE MATTER OF ELECTION FOR COUNTY WOMEN MEMBER OF THE NATIONAL ASSEMBLY FOR KISUMU COUNTY

BETWEEN

GRACE ADHIAMBO AKUMU.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....1ST RESPONDENT

JOHN COX LORIONOKOU (RETURNING OFFICER KISUMU

COUNTY).....2ND RESPONDENT

ROSA AKINYI BUYU.....3RD RESPONDENT

JUDGMENT

Introduction and background

1. The petitioner **GRACE ADHIAMBO AKUMU** contests the results of Election for County Women Member of the National Assembly for Kisumu County in which the 3rd Respondent, **ROSA AKINYI BUYU**, was declared winner by the 2nd Respondent and subsequently gazetted as the duly elected County Women Member of the National Assembly for Kisumu County.

2. According to the Petitioner, the results as declared by the 2nd respondent were as follows:-

CANDIDATE	VOTES
ROSA AKINYI BUYU	385,952
GRACE AKUMU	42,199
BEATRICE OKALO ONYANGO	4,202
HULDA ODHIAMBO	2,982

The Petitioner's Case

3. The detailed grounds upon which the petition is premised are to be found at paragraphs (a) to (o) of the petition and paragraph 12 to 24 of the petitioner's affidavit in support of the petition as follows:

- a. That the officials of the 1st respondent denied the agents of the petitioner an opportunity to access the results transmission system both at the polling stations and County Tallying Centre and to witness their safe transmission**
- b. That the 3rd respondent and her party, Orange Democratic Party(ODM), had more than one agent at Rabongi Kawil, Angira, Ogangs and Ngere polling stations**
- c. That ODM agents for the 3rd respondent wore party badges at the polling stations**
- d. That most of petitioner's agents were not issued with copies of Forms 39A**
- e. That the Presiding Officer and agents of the 3rd respondent marked ballot papers and stuffed them in boxes in favor of the 3rd respondent**
- f. That the results were not relayed electronically**
- g. That Forms 39A used were fake as they did not have security features consisting of names and signatures of Presiding officers, IEBC official stamp, Barcodes and watermarks compromising the integrity of the elections**
- h. That one Dr. Matthews Owili bribed voters at Agai Primary School polling station to influence them to vote for the 3rd respondent**
- i. That the officials of the 1st respondent at the polling stations failed and/or refused to give copies of the results of the poll to the agents of the petitioner and further failed to affix the same at the doors of the polling stations**
- j. That an agent of the 3rd respondent at Waki Primary School Polling Station attempted to influence petitioner to vote for the 3rd respondent**
- k. That there was double voting in favor of the 3rd respondent**
- l. That the officials of the 1st respondent tampered with the results of the poll by changing the results in favor of the 3rd respondent to the detriment of the petitioner**

4. The Petitioner's case rests entirely on her evidence and that of her chief agent one SAMWEL OTIENO OYAMO. In her testimony, the petitioner raised the following 13 grounds on which she is contesting the impugned election and gave examples of the affected polling stations.

- i. THAT Forms 39A did not have barcodes**
- ii. THAT Forms 39A did not have official IEBC Rubber stamp**
- iii. That the 3rd respondent and her party Orange Democratic Party(ODM) had more than one agent at some polling stations such as Alang'o Primary School, Wandiege Primary School and Manyatta B Centre polling stations**
- iv. THAT 3rd respondent's agents who were not on the list of agents signed Forms 39A**
- v. THAT some Forms 39A were neither dated nor signed by the Presiding Officers**
- vi. THAT 2nd respondent allowed some unauthorized agents into the polling centres**

vii. THAT some Forms 39A provided to the petitioner's agents were different from the ones filed by the 1st and 2nd respondents

viii. THAT some Forms 39A had some alterations that were countersigned

ix. THAT the results of the election were not transmitted electronically

x. THAT petitioner was not provided with all Forms 39A

xi. THAT 1st respondent failed to affix all Forms 39A on the doors at the polling stations

xii. THAT petitioner's agents were denied entry into some polling stations

xiii. THAT 3rd respondent's agents wore ODM party badges at the polling stations

5. The petitioner contends that the election of the 3rd Respondent as County Women Member of the National Assembly for Kisumu County was characterized by irregularities and malpractices; that the election was not administered in an impartial, neutral, efficient, accurate and accountable manner, contrary to Articles 1, 2, 3, 81 and 86 of the Constitution and Section 25 (e) of the IEBC Act and that the results declared by the 1st and 2nd Respondents lacked verifiability.

6. The petitioner therefore prays that:

a. This Honourable court determines that the 3rd Respondent was not duly elected and the election results announced in favor of the 3rd respondent be nullified

b. This Honourable court do declare the petitioner as the winner of the election for the County Women Member of the National Assembly for Kisumu County

c. In the alternative, this Honourable court do order fresh election for the County Women Member of the National Assembly for Kisumu County

d. The Respondents be condemned to pay costs of this petition

e. This Honourable court grant such other and further orders as it may deem mete and just

1st and 2nd respondents' Case

7. The 2nd respondent testified on behalf of himself and IEBC and denied the allegation that they committed any irregularities or malpractices and maintained that the election was free, fair, transparent and credible and that the results declared were a true reflection of the will of the people of Kisumu County. As regards the petitioner's contention concerning lack of security features on the statutory forms, the witness testified that all Forms 39A and 39B issued had serial numbers, barcodes and the IEBC watermarks. In addition, he told court that Forms 39A were carbonated to ensure that only one Form was filled by the presiding officer to generate 6 copies.

8. On the allegation that petitioners' agents were barred from accessing some polling stations, it was the respondents' case that none of these claims are substantiated and no particulars whatsoever were provided as required by law. It was submitted specifically that the allegations made by petitioner's chief agent Samwel Otieno were false, of a general nature and were not reported to the police. That the petitioners in any event neither identified the agents who were allegedly ejected nor the presiding officer(s) who allegedly ejected them.

3rd respondent's Case

9. The 3rd respondent told court that the election was free and fair. She conceded that there were more

than one ODM agents at the polling centers due to the fact that each of the 6 ODM candidates for the 6 positions had an agent. The 3rd respondent conceded that the presiding officer allowed her to substitute 2 of her agents after those on the list of agents failed to turn up on the polling day and further that there were minor hiccups but denied that they affected the outcome of the results. The 3rd respondent's agent at Waki Polling station Suzzane Achieng Ohando stated that she was at polling station Stream 2 and denied any knowledge that her colleague at polling station Stream 1 tried to influence the petitioner to vote for the 3rd respondent.

LEGAL PRINCIPLES

10. The legal principles governing the conduct of elections are contained in Constitution, the Elections Act (*The Act*) and the Subsidiary Regulations thereto. **Article 1** of the Constitution pledges the Sovereignty of the will of the people which may be exercised through their democratically elected representatives. Article 2 declares the Constitution to be the supreme law of the Republic while Article 3 obligates every person to respect, uphold and defend this Constitution.

11. The provisions of **Article 38** of the Constitution safeguard the peoples' political rights of self-expression as follows:

“38(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for-

(a) any elective public body or office established under this Constitution.

(b) any office of any political party of which the citizen is a member.”

12. The General Principles for the electoral system under the provisions of Article 81 of the Constitution require that the electoral system shall comply with the following principles:

(a) freedom of citizens to exercise their political rights under Article 38;

(b) not more than two-thirds of the members of elective public bodies shall be of the same gender;

(c) fair representation of persons with disabilities;

(d) universal suffrage based on the aspiration for fair representation and equality of vote; and

(e) free and fair elections, which are—

(i) by secret ballot;

(ii) free from violence, intimidation, improper influence or corruption;

(iii) conducted by an independent body; (iv) transparent; and

(v) administered in an impartial, neutral, efficient, accurate and accountable manner.

13. Political rights are protected by Article 38 of the Constitution which provides that:

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

(a) any elective public body or office established under this Constitution; or

(b) any office of any political party of which the citizen is a member.

14. On voting, **Article 86** of the Constitution places an obligation on IEBC to ensure that—

(a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;

(b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station;

(c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and

(d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.

15. From the foregoing, there is no doubt that Elections emphatically demonstrate the sovereign will of the people, which merits safeguard by the process of the law. An election Petition is therefore not an ordinary civil dispute. It is a special dispute which calls upon an Election Court to determine whether the political rights of citizens under *Article 38* have been upheld. For that reason, it's now trite law that the standard of proof in an election petition is beyond the balance of probability but lower than beyond reasonable doubt that is applicable in criminal cases.

16. The Supreme Court of Kenya re-affirmed this position in the case of *Raila Odinga and Another v. The Independent Electoral and Boundaries Commission and Others [2017] eKLR* wherein it held:-

“In many other jurisdictions including ours, where no allegations of criminal or quasi-criminal nature are made in an election petition, an “intermediate standard of proof”, one beyond the ordinary civil litigation standard of proof on a “balance of probabilities”, but below the criminal standard of beyond reasonable doubt”, is applied. In such cases, this court stated in 2013 Raila Odinga case that the threshold of proof should in principle be above the balance of probability, though not as high as beyond reasonable doubt ...”.

17. Having established the standard of proof, Section 107 of the Evidence Act, places the burden of proof on the person who alleges in the following terms:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

18. The burden is therefore on the petitioner, to prove to the satisfaction of the court, that there was not only non-compliance with the Constitution and other electoral laws, but also that the said non-compliance affected the outcome of the election.

ISSUES FOR DETERMINATION

19. The issues for determination agreed upon by the parties on 12th October, 2017 are as follows:

a. Whether there were election irregularities and illegalities in the election of County Women Member of the National Assembly for Kisumu County in the election conducted on 8th August, 2018 and by whom

b. If so, whether the irregularities affected the results of the said election

c. Whether the 3rd respondent was validly elected as County Women Member of the National Assembly for Kisumu County

d. What is the order on costs

ANALYSIS AND DETERMINATION

20. Before delving into the issues, I have summarized the issues admitted by the petitioner as follows:-

- a. Electronic transmission of results applies only to presidential elections.**
- b. The total number of votes cast did not exceed the number of registered voters.**
- c. The petition and the supporting affidavit contain details of Rabongi Kawil, Angira, Ogango, Ngere ,Agai Primary School and Waki Primary School polling stations as stations where malpractices were witnessed**
- d. Agents that were allegedly locked out of Shauri Moyo/Kaloleni Ward and Kodum and Kogolla Polling Stations were neither named nor called as witnesses**
- e. There was no evidence on the manner in which the Respondents influenced the elections held on 8th August, 2017 in favor of 3rd respondent**
- f. There was no evidence that Dr. Matthews Owili bribed voters at Agai Primary School polling station to influence them to vote for the 3rd respondent**
- g. There is no evidence that Presiding Officer and agents of the 3rd respondent marked ballot papers and stuffed them in boxes in favor of the 3rd respondent**

21. I have also summarized the 1st and 2nd Respondents' case as follows:-

- a. The original Forms 39A had barcodes with anti-copy features**
- b. IEBC watermarks and barcodes were identified on Forms 39A, 39B and 39C presented by the respondents.**
- c. Signing and stamping of the forms though necessary, was not mandatory.**
- d. ODM agents did not wear badges at the polling stations but wearing of such badges is not illegal.**
- e. Petitioner did not identify her agents who were barred from accessing polling stations nor the presiding officer(s) who allegedly barred them**
- f. It is regular for a candidate to have more than one agent in a polling station**
- g. An agent can be substituted on the polling day.**
- h. The results for the impugned election were not required to be submitted electronically.**
- i. There existed minor irregularities which the witness stated were not deliberate**
- j. No votes were stuffed in favor of the 3rd Respondent or any other candidate**

22. I have similarly summarized the 3rd respondent's case as follows:

- a. 3rd respondent did not have more than one agent in any pulling station**

b. The 3rd respondent's witness and agent at Waki Polling Station was not on the stream where the petitioner was voting and did not attempt to influence the petitioner or anyone else to vote for the 3rd respondent

c. The presiding officers officially allowed 3rd respondent to substitute some of her agents who were on the list of agents but did not turn up on polling day

d. There were a few anomalies witnessed on the polling day

23. I have considered the evidence on record and the submissions filed on behalf of the parties. In her submissions, the petitioner introduces figures and numerous other issues that were not pleaded. Faced with a similar scenario, the court in the case of **Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 Others [2013] eKLR stated as follows:**

“It is established law that parties must confine themselves to their pleadings. A court of law will be seen to deviate from disputed issues if it engages in matters that are not specifically pleaded in the plaint. The court is therefore not bound to render any opinion on any new issues raised in the submissions”.

24. The Supreme has guided the Courts on this legal principle in the case of **Raila 2017 (Supra)**, the Court cited the Supreme Court of India in the case of **Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr, Civil Appeal Nos. 5710-5711 of 2012; [2014] 2 S.C.R** and stated:

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.....”

25. For proper consideration therefore, this court will only address its mind to the disputed issues that are specifically pleaded.

26. In addressing the issues in question, this court will be guided by the principle under section 83 of ***the Act*** which provides in respect of challenges to an election as follows:

“No election shall be declared to be void by reason of non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution and in that written law or that the non-compliance did not affect the result of the election”.

27. Section 83 of ***the Act*** undoubtedly creates a rebuttable presumption that elections are generally conducted in accordance with the provisions laid down in the Constitution and other electoral laws. A petitioner seeking to nullify an election should therefore clearly and decisively discharge the burden of proof by demonstrating that the conduct of the election was so devoid of merits and so distorted as not to reflect the expression of the people's electoral intent and the evidence should also disclose profound irregularities in the management of the electoral process. (See **Raila Odinga and Others v Independent Electoral and Boundaries Commission and 3 Others SCK Petition No. 5 of 2013 [2013]eKLR** and **George Mike Wanjohi v Steven Kariuki & 2 Others, Supreme Court Petition No. 2A of 2014**).

28. In the recent case of **Raila 2017 (Supra)**, the Supreme Court underscored the burden of proof in electoral disputes and held inter alia, that:

[131] Thus a petitioner who seeks the nullification of an election on account of non-conformity with the law or on the basis of irregularities must adduce cogent and credible evidence to prove those grounds “to the satisfaction of the court. That is fixed at the onset of the trial and unless circumstances change, it remains unchanged.

29. The wheels upon which the allegations of irregularities turn is therefore whether in the conduct of elections, breaches, if any, had been such that it could not be said that the elections had been conducted as to be substantially in accordance with the law or if the irregularities, if any, had affected the results.

30. The Supreme Court in the recent case of **Raila 2017(Supra)** reaffirmed the logic under Section 86 and stated thus:

[209] Therefore, while we agree with the two Lord Justices in the Morgan v. Simpson case that the two limbs should be applied disjunctively, we would, on our part, not take Lord Stephenson’s route that even trivial breaches of the law should void an election. That is not realistic. It is a global truism that no conduct of any election can be perfect. We will also go a step further and add that even though the word “substantially” is not in our section, we would infer it in the words “if it appears” in that section. That expression in our view requires that, before vitiating it, the court should, looking at the conduct of the whole election, be satisfied that it substantially breached the principles in the Constitution, the Act and other electoral law. To be voided under the first limb, the election should be what Lord Stephenson called “a sham or travesty of an election” or what Prof. Ekirikubinza refers to as “a spurious imitation of what elections should be.

31. Back to the issues for determination, I will consider the first issue of whether there were election irregularities and illegalities, by whom they were committed, together with the second issue of whether the irregularities affected the results of the said election.

32. The petitioner conceded that Forms 39A produced by all the parties were similar in that they had IEBC watermark and logo, a serial number and an anti-copy feature. The 2nd respondent explained that the security features in some of forms 39A filed by the petitioner were not visible because Forms 39A are prepared in 6 copies (sextuplet) and the copies filed by the petitioner were copies taken from other copies. The petitioner did not identify any polling station where Forms 39A without security features were used. I therefore find that petitioner’s allegation on this issue is generalized and unfounded.

33. The petitioner identified 37 Forms 39A that lacked official IEBC rubber stamp. I have had a chance to go through the record and I have noticed that some of the 37 listed forms have IEBC rubber stamps. Examples include the Forms at page 361, 408 and 486 of the response to petition by the 1st and 2nd respondents. The correct position on unstamped statutory forms, which I wholly approve, was rendered in the case of **John Murumba Chikati v Returning Officer Tongaren Constituency & 2 others [2013] eKLR** by Gikonyo J, as follows:

[42] What about Form 35 which had not been stamped" The court takes the view that affixing the official stamp is important, but, lack of it does not invalidate the Form. The requirement of the law under regulation 79 of the Elections (General) Regulations, 2012 (hereafter General Regulations) is that the Presiding Officer signs the statutory Form. Under Regulation 5 of the General Regulations, Presiding Officer includes the Presiding officer and Deputy Presiding Officer duly appointed by IEBC. The statutory Form is valid once it has been signed by the Presiding officer; both the Presiding Officer and the Deputy Presiding Officer or by either of them. The Forms were signed by the Presiding Officers appointed for the polling stations in question and therefore, lack of the official rubber stamp does not invalidate the Form or the results thereto.

From the record, there is no evidence that the results for the 37 polling stations were invalid or that their exclusion would affect the overall results.

34. Concerning Forms 39A that were allegedly neither dated nor signed by the presiding officer or the deputy presiding officer, this issue was neither pleaded in the petition nor in the affidavit in support of the petition and this court therefore declines the invitation to render any opinion on it.

35. As regards Forms 39A not signed by the petitioner's agents, the petitioner failed to satisfy the court that she had agents in those polling stations or that the agents were present at the time the results of the voting at the particular polling stations were announced. In any case, the petitioner has conceded that she does not dispute the results as announced at the said polling stations. In the case of *Odalo Makojwando Abuor v Dalmas Otieno Anyango & 2 others [2013] eKLR*, the court reiterated the provisions of **Regulation 79(6)** of the Elections (General) Regulations which provides as follows:-

“The refusal or failure of a candidate or an agent to sign a declaration form under sub regulation (4) or to record the reasons for their refusal to sign as required under this regulation shall not by itself invalidate the results announced under the sub regulation (2) (a).”

36. As to the signing of Forms 39A by more than one agent, the petitioner does not dispute the correctness of the results in the polling stations in issue nor has she demonstrated that the signing of Forms 39A by more than one agent was for any other purpose other than to verify the correctness of the election results in the respective polling stations. In this regard, I wholly associate myself with the holding in the case of *Paul Gitenyi Mochorwa v Timothy Mosei E. Bosire & 2 others [2013] eKLR*, where Muriithi J, held:

“It is an issue of first principles: the object of agents signing the Form 35 is to confirm the results contained therein. If it is signed by agents in other elections taking place alongside the particular election, there cannot be a valid objection to such ‘over-confirmation’ unless it can be shown to have affected the result adversely in some way”.

37. Before I conclude on the issue of irregularities, I wish to distinguish the present case from the case of *Reuben Nyanginja Ndolo V Dickson Wathika Mwangi & 2 others [2010] eKLR* cited by the petitioner for the reason that the evidence in that case demonstrated that among other irregularities, there were arithmetical errors in calculation of the votes cast. In the present case, the votes cast and the results thereof are not disputed and the *Reuben Ndolo* case is therefore not applicable.

38. There is no denying that courts have acknowledged that the legal sufficiency that an election was conducted in a free, fair and credible manner would not necessarily mean that the election was devoid of errors, mistakes or irregularities. (*See Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 Others, Kericho High Court Petition No. 1 of 2013*).

39. The Supreme Court concisely pronounced itself on this issue in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji and 2 Others SCK Petition No. 2B of 2014[2014] eKLR* and held thus:

[216] It is clear to us that an election should be conducted substantially in accordance with the principles of the Constitution, as set out in Article 81(e). Voting is to be conducted in accordance with the principles set out in Article 86. The Elections Act, and the Regulations thereunder, constitute the substantive and procedural law for the conduct of elections.

[217] If it should be shown that an election was conducted substantially in accordance with the principles of the Constitution and the Election Act, then such election is not to be invalidated only on ground of irregularities.

[220] Where an election is conducted in such a manner as demonstrably violates the principles of the Constitution and the law, such an election stands to be invalidated.

40. It is therefore not every non-compliance or every act or omission in breach of the election regulations or procedure that invalidates an election for being non-compliant with the law. This position was upheld

by the Supreme court in *Raila 2017* (Supra) when at page 71 it held:-

”Where a party alleges nonconformity with electoral law, the petitioner must not only prove that there had been non-compliance with the law but that such failure and non-compliance did affect the validity of an election. It is on that basis that the respondent bears the burden of proving the contrary. This emerges from a long standing common law approach in respect of alleged irregularity in the acts of public bodies *Ominia Praesumuntur rite solemniter esse acta* (All acts are presumed to have been done, rightly and regularly). So, the petitioner must set out by raising firm and credible evidence of the public authority’s departures from the presumption of the law“.

41. My finding on the first issue is that the Petitioner has succeeded in establishing that there were some irregularities in the election which were committed by the petitioner through her agents and the 1st respondent through its servants and/or agents. The evidence on record from the above analysis however reveals that the irregularities are minor and did not in the least affect the true reflection of the will of the people of Kisumu County as to their choice of the Women Member of National Assembly.

42. Having said that, my finding on the third issue therefore is that the 3rd respondent was validly elected as County Women Member of the National Assembly for Kisumu County.

Costs

43. At the close of these proceedings I directed the parties to orally submit on the fourth issue of costs. Mr. Emukule, advocate for the petitioner urged the court to award an all-inclusive sum of Kshs. 2,000,000/- to the successful party. Mr. Yego for the 1st and 2nd respondents submitted that Kshs. 5,000,000/- would suffice due to the complexity of the matter and the tremendous legal research involved. Mr. Awele, advocate for the 3rd respondent submitted that this petition was meant to vex the 3rd respondent and urged the court to award an all-inclusive sum of Kshs. 5,000,000/- each to the respondents.

44. An election Court has power under Section 84 of the **Act** and rule 30 of the **Rules** to award the costs of, and incidental to a petition and such costs shall follow the cause. I have considered the holding in the case of *Rishad Hamid Ahmed Amana v IEBC and Others Malindi [2013] eKLR* and the case of *Martha Wangari Karua & another v Independent Electoral & Boundaries Commission & 3 others [2017] eKLR* cited by the 1st and 2nd respondents where the court capped costs at Kshs. 2.5 million and Kshs. 10 million respectively. I have also considered the case of *Paul Gitenyi Mochorwa v Timothy Moseti E. Bosire & 2 others (Supra)* cited by the 3rd respondent where a sum of Kshs. 2,000,000/- was awarded. The petition was heard in full, though with only five witnesses. The pleadings and the evidence show that the issues for determination were not intricate.

Consequently, the instructions fees costs are capped at 1,500,000/- for the 1st and 2nd respondents and Kshs. 1,500,000/- for the 3rd respondent.

Final Orders

45. In conclusion, the court makes the following orders:

i. The petition herein has no merit and it is hereby dismissed.

ii. Instructions fees costs are capped at 1,500,000/- for the 1st and 2nd respondents and Kshs. 1,500,000/- for the 3rd respondent.

iii. Part of the costs will be paid out of the security deposit at Kshs. 250,000/- to the 1st and 2nd respondents and Kshs. 250,000/- to the 3rd respondent.

iv. In accordance with Article 105 (1)(a) of the Constitution, this court determines and confirms that ROSA AKINYI BUYU, the 3rd respondent, was validly elected as County Women Member of the National Assembly for Kisumu County.

v. Accordingly, the Certificate of the Court as to the validity of the election, will, pursuant to section 86 of the Elections Act, issue to the Independent Electoral and Boundaries Commission and the Speaker of the National Assembly, forthwith.

DATED AND DELIVERED THIS 25th DAY OF January 2018

T. W. CHERERE

JUDGE

Read in open court in the presence of-

Court Assistant - Felix & Carol

Petitioner - Mr. Odhiambo instructed by the firm of M/s Ken Omollo & Company Advocates

1st and 2nd Respondent - Mr. Chanzu h/b for Mr. Yego instructed by the firm of M/s Z.K.Yego & Company Advocates

3rd respondent - Mr. Awele instructed by the firm of M/s Murumba & Awele & Company Advocates