



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

ELECTION PETITION NO. 1 OF 2017

**IN THE MATTER OF THE CHALLENGE OF THE VALIDITY OF THE EMBU COUNTY
GOVERNOR ELECTION, 2017**

LENNY MAXWELL KIVUTI.....PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION (IEBC)...1ST RESPONDENT

THE EMBU RETURNING OFFICER.....2ND RESPONDENT

MARTIN NYAGA WAMBORA..... 3RD RESPONDENT

DAVID KARIUKI.....4TH RESPONDENT

RULING

1. I am invited to determine a Motion by the petitioner dated 28th December 2017, essentially seeking the scrutiny and recount of the ballots cast in the gubernatorial election for Embu County held on 8th August 2017, scrutiny of various electoral materials, re-tallying of ballots in respect of Gategi Primary School Stream 1, among other prayers. The petitioner would like the exercise of scrutiny and recount to be conducted with respect to all the polling stations within Embu County, but he has specified certain polling stations as of being of significant interest.

2. The grounds upon which the application is premised are set out on the face of the application. It is stated that the 3rd respondent was declared winner by garnering 985 more votes than the petitioner, the Forms 37A placed on record by the 2nd respondent as the ones used to declare the results had discernible errors on the face of the said documents and the same cannot therefore be ascertained and deemed as the results for the election. The forms of several polling stations are identified as having issues relating to either cancellation, alterations, among other concerns. It is also stated that there were discrepancies in the transposition of results from Forms 37A to Form 37B, with the outcome that the candidates were prejudiced and an examination of the discrepancies could alter the final result. It is argued that the said results cannot be ascertained and deemed to be the result for the gubernatorial election. The polling stations affected have been listed. It stated further that there was a variance of over ten thousand (10, 000) votes in the total votes cast in elections conducted in Embu County for the position of Governor and that of Woman Representative and Senator, and a case is made for scrutiny of the electoral materials to account for the variance. The polling stations where the alleged variances occurred are listed. It is also

alleged that some polling stations posted similar results with neighbouring polling stations and in respect of some the forms released to the petitioner's agents were unstamped, with the suggestion that the results for those polling stations cannot be ascertained. The petitioner swore an affidavit on 28th December 2017, along similar lines. He asserts that all the issues that are highlighted in the application seriously prejudiced him and affected his results. He avers that he has made a case for the orders sought, so that it can be ascertained as to whether the elections were fair, free, credible, transparent, verifiable and accountable, and were conducted in line with the constitutional principles enunciated in Articles 1, 2, 3, 10, 38, 81 and 86 of the Constitution.

3. The 1st and 2nd respondents replied to the application through an affidavit sworn on 8th January 2018 by the 2nd respondent. Their case is that sufficient basis has not been laid for the orders sought, and they accuse the petitioner of venturing on a fishing expedition. For the re-tally of the ballots cast at Gategi Primary School, they argue that that issue should not arise as there was no tally in the first place, and in any event the error at that polling station was admitted but did not affect the overall result. They further state that the petitioner can only rely on the documents that he filed in court, and should not be allowed to rely on the documents that they themselves filed in court. They further state that the petitioner ought to be bound by his pleadings which do not raise the issues of alteration of forms and declaration of altered results. They concede that there were discrepancies between the results entered in Forms 37A and Forms 37B, but say that the said discrepancies were explained by their witnesses and affected all the candidates, and attributed the errors to fatigue and disruptions by the petitioner. They further state that the alterations alleged on Forms 37A were not in fact alterations, but re-pressing of digits to make the numbers more visible. They add that no numbers were altered, and where there was correction of clerical errors the same were countersigned by the election officials in the presence of the candidates' agents. On agents, they state that failure by agents to sign forms did not affect the validity of the results. They explain that the forms given to the agents could have been faint or illegible as they were produced by carbon copy. It also stated that the variance between the results for the elections for the Governor, Senator and Woman Representative was attributable to stray ballots. On the results of polling stations located in the same premises being the same or similar, it is argued that the same is not strange, and that that should not be a basis for ordering scrutiny and recount.

4. The 3rd respondent swore an affidavit on 9th January 2018 in response. He concedes that there may have been errors and unintended mistakes in the transposition of the results from Forms 37A to Forms 37B, but asserts that such errors did not affect the final result. He further states that the petitioner did not lead any evidence on any improper counting. He avers that the petitioner did not take advantage of Regulation 80 of the Elections (General) Regulations to request for recounts at the polling stations, and therefore he should be estopped from calling for a recount at this stage. He emphasises that the results in Forms 37A are final, and the results of the election are ascertainable from the said forms. On the alleged alterations, he states that the petitioner should not offer parole evidence therefor; instead he should have relied on expert evidence to prove the alterations. On fake agents, he avers that the issue was disproved during trial. On the variance between the votes of the different positions, he states the same unnecessarily stretches the boundaries of the petition to touch on other elections. On the KIEMS Kits, he avers that no evidence was led on this. On similarity of results from neighbouring polling stations, he pleads that the same can be resolved by reference to the Forms 37A of the polling stations in question. His other substantial argument is that scrutiny and recount should not be permitted as the electoral materials were fundamentally interfered with by the petitioner after he got orders to preserve them.

5. The 4th respondent did not file a reply to the application.

6. Both sides filed bundles of the authorities that they sought to rely on. These include *Apungu Arthur Kibira vs. Independent Electoral and Boundaries Commission & 2 others* Kakamega High Court Election Petition No. 6 of 2017, *Suleiman Said Shahbal vs. Independent Electoral and Boundaries Commission & 3 others* (2013) eKLR, Civil Appeals Nos. 5710 of 2017 *Arikala Naras Reddy vs. Venkata Ram Reddy Reddygari & another, Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others* (2014)eKLR, *George Mbogo Ochilo Ayako vs. Independent Electoral and Boundaries Commission & 2 others* (2017) eKLR, *Jackton Nyanungo Ranguma vs. Independent Electoral and Boundaries*

Commission (2017) eKLR, Peter Gichuki King'ara vs. Independent Electoral and Boundaries Commission & 2 others (2013) eKLR, Chris Munga N. Bichage vs. IEBC & 2 others (2017) eKLR, Zacharia Okoth Obado vs. Edward Akong'o Oyugi & others (2014) eKLR, and Henderson vs. Maley 1991 OK 8 806 P 2D 626 62 OBJ 550 Case Number 76639, among others.

7. The Motion was argued orally on 10th January 2018. Mr Nyamu stated the case for the petitioner, while Mr Ngige urged the case for the 1st and 2nd respondents. Mr Ahmednassir Abdullahi presented the case for the 3rd respondent, and Mrs Rugaita for the 4th respondent adopted the arguments of counsel for the 3rd respondent. Counsel addressed me extensively on the matters averred in the affidavits of the parties that they represent and pointed me to the law as stated in the authorities that they relied on.

8. The law on scrutiny and recount is set out in the Elections Act (No. 24 of 2011) at sections 80(4)(a) and 82 and in the Elections (Parliamentary and County Elections) Petitions Rules, 2017 at Rules 28 and 29. The terms 'scrutiny' and 'recount,' although often used interchangeably, refer to different exercises. Recount, according to the court in *Justus Gesito Mugali M'Mbaya vs. Independent Electoral and Boundaries Commission & 2 others* Kakamega Election Petition No. 6 of 2013, is limited to establishing the number of votes garnered by the candidates in an election and the tallying of such votes. It is provided for in section 80(4) (a) of the Elections Act and Rule 28 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017. The effect of the two provisions is that a petitioner may apply for a recount or examination of the tallying of the votes and the election court may, upon a winner being apparent from the recount, direct the Independent Electoral and Boundaries Commission to issue such winner with a certificate of election. Scrutiny on the other hand goes beyond recount and tallying, and extends to deal with the question of validity of the votes. Scrutiny, often, includes a recount of the votes. Scrutiny is provided for in section 82 of the Elections Act and 29 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017. The effect of these provisions is that an election court may, *suo moto* or on application, order scrutiny in the course of the hearing of a petition and the same may be carried out in such manner as the court may direct under the supervision of the Deputy Registrar. The provisions also delineate the votes which may be struck out during scrutiny. It was said in *Sammy Kemboi Kipkeu vs. Independent Electoral and Boundaries Commission & 2 others (2017) eKLR*, that scrutiny is intended to interrogate fully any malfeasances, irregularities and breaches of electoral law. It was also said that it assists the court deal with disputed votes or tallies. Rule 29 goes on to provide that scrutiny and recount are to be confined to particular polling stations in which the results are disputed and the same may include examination of the election materials specified in that provision.

9. The Supreme Court has, in *Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others*, given guiding principles on applications for scrutiny and recount, which in effect is a summary of the law as is stated in in the Elections Act, No. 24 of 2011, at sections 80(4)(a) and 82, as read with Rules 28 and 29 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017. The said guidelines can be summarised as follows –

- (a) That any party to the election petition is entitled to make a request for a recount and/or scrutiny of votes at any stage after the filing of the petition and before determination thereof;
- (b) That the trial court is vested with discretion under section 82(1) of the Elections Act, to make an order for recount or scrutiny of votes either on its own motion or on application for reasons to be recorded;
- (c) That the right to scrutiny or recount does not lie as a matter of course and the party making the application must establish a basis for such a request from the pleadings, affidavits and recorded evidence; and
- (d) That the scrutiny or recount is to be conducted in specified polling stations in respect of which the results are disputed or the validity of the vote is called into question.

10. The general rule is that the party seeking scrutiny or recount must establish a basis for grant of the order, however there are exceptions. It was held, in *Charles Ong'ondo Were vs. Joseph Oyugi Magwanga*

& 3 others Homa Bay Election High Court Petition No. 1 of 2013, that such an order may be made without establishing a basis where the margin of victory or loss is narrow. It was further stated that the narrower the margin the higher the likelihood that the court would order scrutiny or recount without requiring that the applicant establishes a basis for it. There is also the decision in *Hassan Ali Joho vs. Hothan Nyange & another* Mombasa High Court Election Petition No. 1 of 2005, to the effect that even where margins are wide and the election court is satisfied that the scrutiny or recount would facilitate an expeditious disposal of the election petition it can still order scrutiny and recount without requiring that a basis be laid for it. It was held in *Richard Kalembe Ndile & another vs. Patrick Musimba Mweu & 2 others* Machakos High Court Election Petitions Nos. 1 and 7 of 2013 that scrutiny or recount may be ordered where there are numerous errors, alterations or omissions on the relevant election results forms.

11. Having perused all the pleadings, heard the parties' witnesses and having perused all the documents presented in court, I shall proceed to determine the Motion on the foundation of the guiding principles that I have cited above.

12. The petition seeks two principal orders that are relevant to the Motion before me: that is to say a re-tally of the votes cast in Gategi Primary School Polling Station Stream 1 and New Site Market Polling Station in Mbeere South Constituency, and a scrutiny and recount of the ballots cast in all polling stations within Runyenjes and Manyatta Constituencies, and more particularly those listed in that prayer in the petition. The body of the petition and the affidavits sworn in support carry details of the alleged malfeasance that purportedly tainted the election according to the petitioner. The alleged acts and omissions are detailed in paragraphs 101 to 113 of the petition. It is, for example, alleged at paragraph 101A that results were inflated in favour of the 3rd respondent in fifteen polling stations listed therein, being Kamiu Primary School, St Andrews Primary School, Karau Primary School, District Public Works Majimbo, Embu Urban Primary School Stream 4, Embu Municipal Stadium, Embu County Primary School, Kianjokoma Primary School Stream 1, Muchagori Primary School Stream 1, Gichera Primary School Stream 1, Kanduri Primary School, Ena Primary School, Kagaari Primary School Stream 1, Mwenendega Primary School Stream 1 and Gategi Primary School. In paragraph 101B of the petition it is alleged that there was swapping of results with the consequence that what was reported and submitted differed from the true position as reflected in Embu County Primary School, Kathangari Nursery School, Kivangua Coffee Factory, Ngimari Primary School, Kamiu Primary School, Kithunguriri Tea Buying Centre and New Site Market polling stations. It is alleged in paragraph 101C that some results were doctored and fraudulent, with the polling stations alleged to have been affected being Kithegi Coffee Factory, District Public Works Majimbo, Kianjokoma Primary School Stream 1, Ena Primary School Stream 3 and Gategi Primary School Stream 1.

13. From the evidence recorded from the witnesses it emerged that there were errors that resulted in candidates being attributed results that exceeded what they had actually garnered according to Forms 37A and cases where some candidates lost votes. The polling stations where these errors were noted include Kithunguriri Tea Buying Centre, Embu County Primary School, Gategi Primary School Stream 1, Karau Primary School, Embu Municipal Stadium, St Andrews Primary School, Kivangua Coffee Factory, Kamviu Primary School, Kathangari Nursery School, Mikimbi Full Gospel Church, Nthambo Primary School, Marimari Primary School, Munyori Primary School, Kamutwanjiru, New Site Market, Kaweru, Ugweri Stream 3, Igumo Catholic Church Grounds and Gichera. The election officials who testified conceded to those errors, and according to them, the petitioner, from the errors identified, lost some 234 votes in five polling stations, while the 3rd respondent was said to have lost some 273 votes in three polling stations and had extra 733 votes attributed to him from seven polling stations. It also emerged that a third candidate lost 358 votes in three polling stations and had 33 extra votes awarded to him in one station. All these errors arose from the tallying process. The election officials attributed their errors to fatigue, explaining that they had to deal with six elections on the same day and the votes for the gubernatorial elections were the last of the six to be counted, tallied and results declared. The 3rd respondent also conceded to those errors, but argued that the same did not affect the overall result.

14. There are also averments in the petition concerning doctored results and amended or altered figures. In others it was alleged that the forms were not stamped. Evidence was led on this, and the petitioner pointed out what he described as alterations made to Forms 37A for the following stations listed in his

papers, that is to say Kairuri, Githangare, Ndatu Catholic Church grounds, Thikima Coffee Factory, Kauga Tea Buying Centre, Itabua, Kimangaru Stream 1, Water Project Offices, Embu Urban, Embu Municipal Stadium Stream 4, Jua Kali offices grounds, Kathunga, Runyenjes Municipal Hall, among others. The election officials who testified denied altering any documents, and when the Forms 37A lodged on record by the 2nd respondent were placed before them, especially to the returning officer for Manyatta Constituency, Faith Mugo, it was stated that there were overwrites to emphasize the figures, but otherwise the figures had not been interfered with. I have perused through the entire bundle of Forms 37A and noted overwrites and alterations, some of which are countersigned. The forms are carbon copies, and not original. It was argued for the 3rd respondent that there has been no strict proof of the alterations.

15. There is also the issue of many neighbouring polling stations returning similar results for all or most of the candidates. The petitioner pointed at the results from Karau, Embu Urban, Munyori, Kanjeru, Ugweri Streams 1 and 2, Kirigi, Kamiu, Gatunduri, Ndumari, Rukwiri, Ng'utu, Kanothu, Kavengero and Ciagara polling stations as some of the centres which returned similar results. The petitioner argued that statistically that raised suspicion and asserted that statistics do not work that way. The respondents' response to this was that there was nothing untoward about that. The other grounds advanced in the petition relate to the agents for the petitioner or his political party. It is alleged that there were fake agents who signed Form 37A at the polling stations, purporting to be the petitioner's agents. It is also claimed that the petitioner's legitimate agents were intimidated, denied opportunity to witness the vote counting and tallying, and that they were not given an opportunity to sign Form 37A or were denied a copy thereof, among other allegations. Several agents testified. Some stated that the whole exercise went smoothly and they were able to participate in the vote counting and to sign the necessary forms. Some claimed to have been denied opportunity to sign the forms or to be given copies thereof. Generally, however, the petitioner was not, in my view, able to demonstrate that his agents were intimidated or ill-treated or even denied the opportunity to be present at vote counting.

16. The other ground is that the votes for the gubernatorial election far exceeded those cast for other positions, particularly for Senator and Women Representative positions, which, it was averred, ought to be a matter that should raise suspicion. The petitioner did not file the final results from the Senator's election, but filed one from the Woman Representative election out of time and without leave of court, and the same was struck out. However, during cross-examination, the 2nd respondent conceded that it was indeed true that the final results for the gubernatorial election exceed the total votes cast in the Woman Representative election by over 10 000 votes. He attributed this to stray votes. During submissions, I was urged not to take this ground seriously as the petitioner had not filed any evidence to support this assertion, and further that the material he sought to rely on had not been filed in court by him and that he could only rely on his own material. That is a correct statement of the law as it is. However, the court cannot turn a blind eye to material that is on record and which can aid it in determining the matter one way or the other.

17. The margin between the winning candidate and the runner-up according to the declared results was 985 votes. From the oral evidence of the elections officials at the hearing that margin came down from 985 to 299 votes or thereabout. Guided by the law on recount and scrutiny in cases where the margin of difference between the result of the declared winner and the runner-up is very close or narrow or small – as stated in such cases as *Charles Ong'ondo Were vs. Joseph Oyugi Magwanga & 3 others*, *Richard Kalembe Ndile & another vs. Patrick Musimba Mweu & 2 others* and *Hassan Ali Joho vs. Hothan Nyange & another* - it is my finding that there is sufficient basis for ordering scrutiny and recount in the polling stations set out in the prayers in the petition. The spirit of Rule 28 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 in my understanding is that where the petition is essentially about the count or tallying, such as in the present case, the petitioner would be justified to apply for recount or for examination of the tallying, and from the authorities above the petitioner need not have to lay basis for a recount where the difference between the votes garnered by the winner and the runner-up is very narrow, as is the case herein. From the pleadings and the oral testimony, it has emerged that the petition herein is more about the number of votes garnered by the candidates, and less about the validity of the ballots themselves. It has been demonstrated from the material on record that the margin of victory has narrowed considerably, and that should be reason enough to examine the materials afresh for the court to be satisfied as to what the candidates actually garnered in the polling stations in dispute. Where the

outcome is as close as is the case in this matter the logical thing should be to recount the ballots and revisit the tally. That should take care of prayers 2 and 3 of the Motion.

18. The 3rd respondent informed the court that he had no problem with an order for a scrutiny of the Forms 37A, 37B and 37C for the purpose of re-tallying; but was vehemently opposed to a recount. He argued that the electoral materials had been interfered with during the exercise that the petitioner undertook in execution of the orders that he had obtained herein in August 2017. Evidence was led on that aspect of the matter, and it is an issue that I will have to determine in the final judgment. I have, however, taken into account the evidence of the election officials on the matter. I can only observe that during recount the Deputy Registrar would take note of the state of the ballot boxes and the materials held in them. That should no doubt aid in the final determination with respect to that aspect of the matter.

19. Regarding prayer 4, on the re-tallying of the votes cast in relation to Gategi Primary School Stream 1, I would agree with the respondents that the question of re-tallying should not arise. It was conceded that the 3rd respondent was wrongly awarded 400 extra votes at this polling centre. The best approach to this would be to have the votes recounted and thereafter the results for Mbeere South re-tallied to accommodate the outcome of the recount. Prayer 5 is on the Secure Digital Memory (SD) Cards for the KIEMS Kits used in that election. No evidence was laid with regard to the SD cards and KIEMS Kits generally, and therefore no basis whatsoever was laid for grant of this prayer. I shall therefore make no order relating to the same.

20. The final orders that I shall make in the circumstances are as follows-

(a) That there shall be a partial scrutiny of votes limited to a recount and ascertainment of the number of votes each candidate garnered in the following polling stations in Mbeere South Constituency - Gategi Primary School Stream 1 (code 009) and New Site Market (code 136);

(b) That there shall be a partial scrutiny of votes limited to a recount and ascertainment of the number of votes each candidate garnered in the following polling stations in Manyatta Constituency – Gachiigi Tea Buying Centre (code 001), Gakundu Coffee Factory Streams 1 and 2 (code 003), Gichugu Coffee Factory (code 005), Kairuri Primary School Streams 1 and 2 (code 007), Karuriri Primary School (code 009), Kathugu Tea Buying Centre (code 010), Kenga Primary School (code 011), Keria Tea Buying Centre (code 012), Kiamiatu Tea Buying Centre (code 013), Kiangai Tea Buying Centre (code 014), Kiangoci Primary School (code 015), Kigari Primary School (code 017), Kiriari Primary School (code 019), Kirigi Primary School Streams 1, 2 and 3 (code 020), Kithunguriri Primary School (code 021), Kivangua Coffee Factory Stream 1 (code 022), Manyatta Tea Buying Centre Streams 1 and 2 (code 023), Mukangu Primary School Streams 1 and 2 (code 024), Ngimari Primary School (code 025), Kianjugu Tea Buying Centre (code 028), Kithunguriri Tea Buying Centre (Code 029), Kanorori Polytechnic (code 031), Kiriari Day Secondary School (code 032), Manyatta Open Air Market Streams 1 and 2 (code 033), Ithangawe Primary School Streams 1 and 2 (code 036), Kamuthatha Primary School (code 037), Kiandundu Primary School (code 038), Kithegi Coffee Factory (code 039), Kithegi Primary School (code 040), Kithimu Primary School Streams 1 and 2 (code 041), Minai Coffee Factory (code 042), Rukira Primary School Streams 1 and 2 (code 043), St Andrews Primary School (code 044), St Joseph’s Allamano Primary School (code 045), ACK Grounds – Kithimu Market Streams 1 and 2 (code 046), Full Gospel Church Ground – Kiandundu (code 047), Kiandundu Catholic Church Grounds (code 050), Kithegi Day Secondary School (code 051), Mvangua-Kanindi Pond (code 052), Ndatu Catholic Church Grounds (053), Rukira Day Secondary School (code 054), St Benedict’s Day Secondary School Streams 1 and 2 (code 055), New Apostolic Church – Kwa Amos (code 056), Gachuriri Tea Buying Centre (code 057), Gati-Iguru Tea Buying Centre (code 058), Gatwe Primary School Streams 1 and 2 (code 059), Gicherori Primary School Streams 1 and 2 (code 060), Gikirima Coffee Factory Streams 1 and 2 (code 061), Kagumori Primary School Streams 1 and 2 (code 062), Karau Primary School (code 063), Kathuniri Primary School Streams 1 and 2 (code 064), Kibugu Primary School Streams 1 and 2 (code 067), Mbuvari

Primary School (code 068), Mugurumari Tea Buying Centre (code 069), Mukongoro Tea Buying Centre (code 070), Muramuki Coffee Factory Streams 1 and 2 (code 071), Muthigi Tea Collecting Centre (code 072), Muvandori Primary School Streams 1 and 2 (code 073), Ndunduri Tea Buying Centre Streams 1 and 2 (code 075), Ngerwe Tea Factory (code 076), St Francis Primary School (code 078), St Hellen Karimari Primary School Streams 1 and 2 (code 079), St John Karumiri Primary School Stream 1 (code 080), St Joseph Ndunda Primary School (code 081), Mbuvari Tea Buying Centre Streams 1 and 2 (code 082), Kibugu Tea Buying Centre (code 083), Mbuvari Tea Buying Centre Stream 2 (code 084), Kiandome Tea Buying Centre (code 085), Kauga Tea Buying Centre (code 087), Mwiria Coffee Factory (code 088), DEB Iveche Primary School (code 089), Itabua Primary School (code 090), Kambo Market (code 091), Kamiu Primary School streams 1, 2 and 3 (code 092), Kanjikeru Coffee factory Stream 1 (code 093), Kiangima Primary School Streams 1, 2 and 3 (code 094), Kimangaru Primary School Streams 1 and 2 (code 095), Municipal Slaughter House (code 096), Muthatari Coffee Factory Streams 1 and 2 (code 097), St Peters Gatituri Primary School Streams 1 and 2 (code 098), Ware Project Offices Streams 1 and 2 (code 099), African Inland Pentecostal Church (code 100), Catholic Church Grounds – Gicegeri (code 101), District Public Works Majimbo (code 102), Gatunduri Primary School Streams 1 and 2 (code 103), PCEA Sunrise Offices Streams 1 and 2 (code 104), St Paul’s Gakinduriri Primary School Streams 1 and 2 (code 105), Solid Rock Church Grounds – Karurina (code 106), AIPCA Church Ground – Majimbo Market Streams 1 and 2 (code 107), Catholic Cathedral Grounds – Mugoya (code 109), ASK Showground – Njukiri (code 110), DEB Kangaru Primary School (code 111), St Michael Primary School Streams 1, 2 and 3 (code 113), Plan Social Hall Streams 1, 2 and 3 (code 114), Nthambo Primary School Streams 1 and 2 (code 115), Kipingazi Coffee Factory Streams 1 and 2 (code 118), Gituri Primary School (code 120), Gatoori Primary School (code 121), Embu Urban Primary School Streams 1, 2, 3 and 4 (code 122), Embu Municipal Social Hall Streams 1, 2 and 3 (code 123), Embu Municipal Stadium Streams 1, 2, 3 and 4 (code 124), Embu County Primary School Streams 1 and 2 (code 125), District Registrar of Persons Ground (code 126), Embu County Council Chambers (code 127), Embu County Day Secondary School Streams 1 and 2 (code 128), Embu Cultural Centre Streams 1 and 2 (code 129), Embu Municipal Council Town Hall Streams 1 and 2 (code 130), Jamia Bright Star Academy Streams 1, 2 and 3 (code 131), Gatoori Day Secondary school (code 132), Kirimari Boys Secondary School Stream1 (code 133), ACK Ground – Gituri (code 134), Mosque grounds – Dallas Streams 1, 2 and 3 (code 135), Jua Kali Offices Grounds – Sewage (code 136), St Andrews ACK – Old Stadium Streams 1 and 2 (code 137), Mikimbi Full Gospel Church Grounds (code 138), Full Gospel Church Ground – Njukiri (code 139), Igumo Primary School (code 141), Kihumbu Primary School Streams 1 and 2 (code 142), Mbukore Primary School (code 143), Nembure Polytechnic Streams 1 and 2 (code 144), Nembure Primary School (code 145), Njagairi Coffee Factory (code 146), Rung’ang’a Primary School (code 147), Tende Primary School (code 148), Family Worship Grounds – Kairungu (code 151), Full Gospel Church Grounds – Gicegeri (code 152), Kagumori Catholic Church (code 153), Kwa Douglas Bus Stage (code 154), Mirundi Coffee Factory (code 156), Nembure Social Hall (code 157), Full Gospel Church Grounds – Kivue Streams 1 and 2 (code 159), Living Saints Church Grounds – Kivue Stream 3 (code 160) and Full Gospel Church Grounds – Gititu (code 161),

(c) That there shall be a partial scrutiny of votes limited to a recount and ascertainment of the number of votes each candidate garnered in the following polling stations in Runyenjes Constituency – Muranga Tea Buying Centre Streams 1 and 2 (code 001), Kianjokoma Primary School Stream 1 (code 002), Ngurueri Coffee Factory (code 003), Kamugere Tea Buying Centre (code 004), Makengi Health Centre Streams 1, 2 and 3 (code 006), St Joseph’s Primary School (code 008), Karue Primary School (code 009), Kevote Primary School Streams 1, 2 and 3 (code 011), Keruri Primary School (code 012), Karitiri Coffee Factory (code 013), Muchagori Primary School Stream 1 (code 015), Kavutiri Primary School Streams 1 and 2 (code 016), Kithangari Tea Buying Centre (code 021), Kibogi Tea Buying Centre (code 022), Gaikiro Tea Buying Centre (code 025), Gichera Primary School Streams 1 and 2 (code 026), Matururi Nica Primary School (code 027), Kathambaiconi Primary School

Streams 1 and 2 (code 028), Ndumari Primary School Streams 1 (code 030), Kangondi Primary School (code 031), Kanduri Primary School Stream 1 and 2 (code 032), Macumo Primary School (code 033), Ugweri Primary School Streams 1, 2 and 3 (code 034), Ena Primary School Streams 1, 2, 3 and 4 (code 035), Kithunguthia Primary School Stream 2 (code 036), Ngeniari Primary School (code 037), Kathugu Primary School (code 038), Nthagaiya Primary School Streams 1, 2 and 3 (code 039), Hami Academy (code 040), Kagaari Primary School Streams 1 and 2 (code 041), Mwenendega Primary School Streams 1 and 2 (code 042), Kiarimui Primary School Streams 1 and 2 (code 043), Gichiche Primary School Streams 1, 2 and 3 (code 044), Gikuuri Primary School Streams 1, 2, 3 and 4 (code 045), Ngarari Primary School (code 046), Ithemutiki Coffee Factory (code 047), Kigaa Primary School Streams 1 and 2 (code 048), Gatinda Primary School (code 049), Gitare Primary School Streams 2 and 3 (code 050), Kathuriri Primary School (code 052), Moi High School – Mbiruri (code 053), Kang’onde Coffee Factory (code 054), Runyenjes Municipal Hall Streams 1, 2 and 3 (code 055), Nduuri Primary School Streams 1 and 2 (code 056), Kanja Primary School Streams 1, 2, 3 and 4 (code 057), Munyutu Primary School (code 059), Soweto Tea Buying Centre Streams 1 and 2 (code 060), Ndamunge Tea Buying Centre (code 061), Muragari Primary School Streams 1 and 2 (code 062), Kirimiri Coffee Factory (code 063), Gaikama Tea Buying Centre (code 064), Thigingi Primary School (code 065), Mbuinjuru Primary School Stream 2 (code 066), Mugui Primary School Stream 1 (code 067), Kararitiri Tea Buying Centre (code 068), Irangi Primary School (069), Kairungu Tea Buying Centre (code 070), St Thomas Primary School - Kamugere (code 071), Kathande Primary School Streams 1 and 2 (code 072), Mugaari Tea Buying Centre (code 074), Kanyavyeri Tea Buying Centre (076), Kiandong’o Tea Buying Centre Streams 1, 2 and 3 (code 080), Kathari Primary School Streams 1 and 2 (code 081), Kyeni Girls Secondary School Stream 2 (code 082), Kiaragana Primary School Stream 1 (code 084), Kivuria Primary School (code 085), Kathageri Youth Polytechnic Streams 1 and 2 (code 086), Njeruri Primary School Stream 1 (code 087) Mufu Primary School Streams 1, 2 and 3 (code 088), Kiangungi Primary School Streams 1, 2 and 3 (code 089), Gatumbi Primary School Streams 1 and 2 (code 090), Iriari Primary School Streams 1 and 2 (code 091), Kithare Primary School (code 092), Rukuriri Primary School Streams 1, 2 and 3 (code 093), Ciamanda Primary School Streams 1 and 2 (code 094), Kigumo Boarding Primary School (code 095), Magacha Primary School (code 096), Mukuria Primary School (code 097), Gakwegori Primary School Streams 1 and 2 (code 098), SA Kyeni Primary School (code 099), New Kyeni Farmers Hall (code 100), Kiamboa Primary School (code 103), Kathugu Coffee Factory (code 102), Kathunguri Primary School Streams 1 and 2 (code 104), Kathunguri Youth Polytechnic (code 105), Kariru Primary School Streams 1 and 2 (code 106), Canon Hebert Primary School (code 107), Kaveti Primary School (code 108), Karurumo Youth Polytechnic Streams 1, 2 and 3 (code 109), Kasafari Primary School (code 110), Karurumo Primary School Streams 1 and 2 (code 112), Kinthithe Primary School Streams 1 and 2 (code 113), Kathanjure Primary School Streams 1 and 2 (code 114), Nyagari Primary School (code 116) and Mikundu Coffee Factory Streams 1 and 2 (code 117);

(d) That there shall thereafter be a partial scrutiny of Forms 37B for Mbeere South, Manyatta and Runyenjes Constituencies as against Forms 37A limited to the polling stations specified in (a), (b) and (c) above for the purpose of re-tallying;

(e) That the said exercise of partial scrutiny shall be undertaken under the supervision of the Deputy Registrar of the court and shall commence on Monday 22nd January 2018 at 9.00 am and shall proceed on a daily basis until 2nd February 2018;

(f) That the exercise shall be conducted at the premises of the 1st respondent in the respective constituencies where the materials have been preserved;

(g) That the petitioner, the 3rd and the 4th respondents shall not be present at the exercise, neither shall their advocates, but they are entitled, as shall the 1st respondent, to have two (2) agents or representatives at the venue of the scrutiny;

(h) That the Deputy Registrar shall at the conclusion of the exercise, prepare and place on the record a detailed report of his findings, which report shall form part of the proceedings of the court;

(i) That the matter shall be mentioned on 7th February 2018 at 10.00 am for the purpose of receiving the Deputy Registrar's report, and for fixing of a date for judgment and/or for the giving of any other or further directions; and

(j) That the costs of the application shall be in the cause.

DATED, SIGNED and DELIVERED at EMBU this 18TH DAY OF JANUARY, 2018.

W. MUSYOKA

JUDGE