



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

ELECTION PETITION NO. 2 OF 2017

(FORMERLY NAIROBI MILIMANI ELECTION PETITION NO.15 OF 2017)

IN THE MATTER OF: ARTICLE 1(2), 3, 38, 81, 84 , 86 AND 87 OF THE

CONSTITUTION OF KENYA

AND

IN THE MATTER OF: SECTION 76 OF THE ELECTION ACT (No.24 of 2011)

AND

IN THE MATTER OF: THE ELECTIONS (PARLIAMENTARY AND COUNTY

ELECTIONS) PETITION RULES, 2017

**IN THE MATTER OF: THE ELECTION FOR THE COUNTY GOVERNOR OF MARSABIT
COUNTY**

THE PETITION OF

PIUS YATTANI WARIO.....1ST PETITIONER

DR. NOAH AKALA ODUWO2ND PETITIONER

VERSUS

1. I.E.B.C.....1ST RESPONDENT

2. ARNOLD MUTWIRI NJABANI..... 2ND RESPONDENT

MARSABIT COUNTY RETURNING OFFICER

3. ALI MOHAMUD MOHAMED.....3RD RESPONDENT

JUDGEMENT

INTRODUCTION

The People of Marsabit joined other Kenyans on 8th of August 2017 and exercised their constitutional rights of electing their political leaders. The third respondent was declared the winner for the gubernatorial position. The results for that election as per the form 37C were as follows:

Name of Candidate	Political Party	Number of Votes
Adano Umuro Sora	KANU	6,262
Ali Mohamud Mohamed	Jubilee Party	56,146
Kanacho Ukur Yatani	Frontier Alliance Party	47,929
Wario Ibrahim Dambi	Orange Democratic Movement	346
Total Valid Votes		110,683
Rejected Votes		323
Total votes cast		111,006
Registered Votes		141,708
Voter Turnout		78.33%

Amb. Ukur Yattani, who was the incumbent governor felt aggrieved by the outcome of the Election and filed this petition. Before the petition could be heard, on 15.1.2018 the original petitioner filed an application seeking to withdraw himself from the petition. Pius Yattan Wario and Dr. Noah Akala Oduor applied to be substituted as petitioners. The court granted their request and they inherited the petition.

THE PETITION

The Petitioners maintain that several irregularities, electoral malpractices and offences were committed during the election. These can be summarized as follows:

(a) LAISAMIS CONSTITUENCY

- (i) The agents of Frontier Alliance Party (FAP) on account of not belonging to Jubilee party were denied the right to fully participate in the elections at the polling and tallying centres.
- (ii) Voters who could not read or write were coerced by the presiding officers into being assisted in the absence of the FAP agent and vote for Jubilee candidates.
- (iii) Assisted voters who went to the polling stations with their own assistants were not made to fill the forms 32.
- (iv) Presiding officers counted the votes in rooms that did not have electricity and where lanterns were provided, they were purposely switched off and light from mobile phones was used with the intention of manipulating the results in favour of the third respondent.
- (v) FAP agents were denied the right for a recount when sought and access to forms 37As at the polling stations.

(vi) The returning officer in the constituency was changed a few weeks to the elections and this was influenced by the third respondent.

(B) SAKU CONSTITUENCY

(i) The petitioner's agents were denied access to forms 37As and B. A compromised form 37B was used to declare the results.

(ii) Marked ballot papers were found scattered around.

(iii) Assisted voters were coerced by polling officials to vote for Jubilee party candidates in the absence of the petitioner's agents.

(iv) The petitioner's agents were denied the right to verify the results during counting and tallying of votes.

(v) The form 37B for the constituency lacks any security features and was amended by hand.

(vi) The results on the portal that were transmitted electronically differ from the figures on the form 37B

(C) MOYALE CONTITUENCY

(i) The petitioner's agents were chased away from the polling stations and the doors were closed before counting started thereby giving an opportunity to stuff ballot boxes with votes for the third respondent.

(ii) At various polling stations voters were denied the opportunity to take part in the elections and those who were on the queues after 5.00pm were chased away.

(iii) Rejected votes on the portal were inordinately high at Qalaliwe centre (057) and Odda which information is not reflected in the form 37B.

(iv) The petitioner's agent who allegedly signed the form 37B has indicated that the signature is a forgery as she was not in the area.

(D) NORTH HERR CONSTITUENCY

(i) The rejected votes on the portal differs substantially with the results on the form 37B.

(ii) Despite there being no data available for various Polling stations on the portal including Yaa Algana Polling station, Darade AP post polling station, Tulu Dimtu mobile polling station, Ramata Robi Manyatta pollings station, Shankira Nursery polling station, Toricha Nursery polling station, Warra Manyatta polling station and Selle Haroresa mobile polling station, the final figures contained in the portal align with those contained in the Form 37 despite there being some missing votes.

(iii) Mobile stations in the entire Dukana ward were instead converged in one place being Dukana Primary School polling station instead of traversing the entire ward as required in the following The figures on the portal are not similar to those in the form 37B.

(E) OTHER IRREGULARITIES

(i) The sacred principal of secret ballot was grossly derogated when voters were coerced into voting in an open manner in polling stations that did not have designated polling booths.

- (ii) Where the presiding officer assisted a voter he/she would mark the ballot paper in such a manner that the mark would traverse outside the box so as to make it a rejected vote.
- (iii) Voters who could not be identified biometrically by Kiems kit especially in Saku Constituency were allowed to vote and the requisite forms were not signed.
- (iv) In 246 out of 384 polling stations, there was a mismatch in the final results for the six polls of president, governor, senator, Women Representative, Member of Parliament, and member of County Assembly.
- (v) 31 polling stations had no data entered on the portal for the gubernatorial position thereby affecting 12,358 votes.
- (vi) At Yaa Galbo mobile polling station voters were denied the opportunity to vote as the Kiems kit failed and had to be replaced.
- (vii) Voters at Turbi Primary School were denied the opportunity to vote as they were not properly informed of the electoral process.
- (viii) Illiterate voters were not shown their proper streams and found themselves on the wrong streams after queuing for a long time leading to wide spread disgruntlement and discontent.
- (ix) Most of the statutory forms are fake, forged and in authentic.
- (x) There was violence that was politically instigated during the election
- (xi) There was massive voter importation in Moyale constituency.

RESPONSE BY THE 1ST AND 2ND RESPONDENTS

The two respondents maintain that the election conducted on 8.8.2017 was free and fair and was conducted in compliance with all the electoral laws. There was no infraction, irregularities, unlawful and corrupt actions that can be attributed to the respondents. The petitioners' agents were not denied access to the polling and tallying centres. No voter was coerced to cast his vote in a particular way. The forms 32As for assisted voters were dully filled. No accredited agent was denied the opportunity to verify the votes cast. The counting process was transparent and done in rooms with enough lighting. The petitioner's agents were not denied the right for recount or opportunity to verify the form 37As. It is also stated that there were no marked ballot papers found scattered in Saku constituency. No report was made to the police. The form 37Bs used by the 1st Respondent were authentic and were verified by accredited agents. The forms 37Bs captured the results as indicated in the forms 37As. No voter was turned away. Voters who were on the queues after 5.00pm were allowed to vote. All the data from all the polling stations is available. The election reflects the will of the people of Marsabit.

RESPONSE BY THE 3RD RESPONDENT

The 3rd respondent maintains that the Marsabit county gubernatorial elections held on 8.8.17 were free, fair and transparent and were held in accordance with the electoral laws. The 3rd petitioner was declared the winner with a difference of 8,217 votes between him and the 2nd candidate. The transmission of votes from the polling stations to the constituency tallying centres and to the county tallying centre was properly done through verifiable primary documents. No election irregularities were committed. The petitioner's have not specified in which polling centres their agents were denied access. No assisted voter has sworn an affidavit alleging that he or she was coerced by a polling officer. The petitioners allegations are generalized and not specific. The petitioner's agents signed the forms 37As and Bs. The statutory forms used by the 1st and 2nd respondents contained the security features and were authentic. The

forms 37As contained the primary data and the will of the people of Marsabit County.

It is further stated that the petitioner's agents were not chased away in any polling station. At no single polling station were voters turned away or prevented from voting after 5.00pm. Voters registered to vote at the mobile polling stations exercised their rights and participated in the electoral process. There were no incidents of bribery that were reported during the election.

PETITIONER'S EVIDENCE –

Nine witnesses testified in support of the petition. **PW1 HASSAN MARSA SARBO** was a running mate for the former governor Amb. Ukur Yattani . On the 8.8.2017 he voted at Manyatta primary school in Moyale constituency. He then got information that many people from various polling stations had been denied their rights to vote. He visited St. Mary's polling station and found about 30 people who had not been allowed to vote. He went to Fatul Bahr polling station and saw 20 people who had been denied the right to vote. He moved to Rashidin polling station and found about 25 people had not been allowed to vote. He proceeded to St. Mary's tallying centre and talked to the returning officer. The Woman representative candidate for FAP madam Nasra (PW7) was also present and they presented their grievances since many people had not been allowed to vote. Their FAP agent also complained that people had been denied their right to vote. He told those people to prepare a list. The list of 38 people was annexed to his affidavit.

PW2 SHARU AYALA GHACHO is a registered voter at Fatul Bahr Madrasa polling station. On 8.8.2017 he went to vote very early in the morning. After queuing for some time he was told to wait outside. There were other people who had also been told to wait outside. He was told that he could not vote. Before the voting day he had checked his registration status and confirmed that he was registered to vote at that polling station. He had his registration slip with him. Those who were told to wait outside made noise and the Police went to the polling station. It is his evidence that he was denied his constitutional right to vote.

PW3 JOHN LOTTO SEGELAN was a senatorial candidate on the FAP party. He did cast his vote at Loglogo nursery school polling station. He then visited other polling stations namely: Korr Pry school, Balah Primary School, Tirim Primary school, Boriharamia mobile polling station, Sunyuo mobile , Nomad primary and Halisirwa mobile polling station. In all those polling stations the voting process was very slow. Some voters started going back to their residents claiming that the system being used was very slow, and they had come at the polling stations from 6.00am. In the evening at about 9.00pm he went to Laisamis constituency tallying centre. The constituency returning officer Jaffer Galgalo allowed people to introduce themselves. The returning officer started reading the first results from a paper which he claimed was from a polling station. He was with the FAP chief agent for the constituency Julius Lekorele (PW4). They asked the returning officer to display the results on the screen but he refused. They asked to be allowed to make copies of the forms from the polling stations but once again the returning officer refused. When the results were being brought to the tallying centre none of their agents accompanied the ballot boxes. They were forcefully ejected from the tallying centre and the returning officer told them **"kama hamtaki muende"**. They left the tallying centre and told the returning officer **"see you in Court"**. There were other party agents at the tallying centre. Someone took a video showing how they were ejected from the tallying centre.

PW4 JULIUS LEKORELE was the Chief Agent for FAP at Laisamis constituency tallying centre. The tallying centre was at the Catholic Mission Hall. On the voting day his party agent from Loiyangalani polling station stream 1 **Erastus Londeto** informed him that the presiding officer **David Lotabo** was insisting on assisting illiterate voters even when those voters had their own assistants. The Presiding officer destroyed a form 32 that had been filled by one **Francisca Ngoti Koope** to enable her assist her grandmother to vote. He reported the matter to both the constituency and county returning officers. He then went to the tallying centre. The results started arriving at the tallying centre at about 9.00pm. The returning officer started reading out the results. The agents requested to be given the form 37As to ascertain what was being read was correct as the FAP agents had been denied the forms 37As at the polling stations. The returning officer declined. They then asked the returning officer to project the

results on the screen but he also declined. The returning officer told them that it was not his work to give them the forms 37As as that was the work of the party agents. They asked if they could be allowed to make copies of the forms 37As but once again their request was declined. Together with PW3 they tried to reason out with the returning officer but they were told to leave. He left the tallying centre. On 10th August 2017 at about 5.00pm the returning officer presented to him the form 37B for signing. He declined to sign since he had not witnessed the tallying of the votes. One of the FAP party agent who was based at Laisamis Pry school polling station, Dominic Dabalén, signed the form 37B yet he was not stationed at the constituency tallying centre. It is his evidence that he was chased away from the tallying centre.

PW5 DAUDI KIFILE DALACHE was a FAP agent stationed at Saku primary school polling station. The voting started at around 6.30am and proceeded very well until 9.00am when there was confusion. Voters could not tell which of the two streams they were designated to vote. Once a voter queued on the wrong stream, the presiding officers **JAMES NAWÉ** and **JILLO BIDU** chased them away. The two presiding officers threatened to evict them from the polling centre. Where an illiterate voter mentioned Jubilee, then the presiding officers marked all the ballots papers for Jubilee candidates. When a voter asked for a FAP candidate, he was told to go back and think about his choice. At one time he came out of the polling station and saw voters being bribed by agents of the 3rd respondent. At the polling station Amb. Ukur Yattani got 543 votes but the transmitted results was 541. The presiding officer James Nawe was very harsh to the party agents. There were six FAP agents at the polling station and he was in stream 1.

PW 6 SAMUEL NJUGUNA was the chief agent for the Thirdway Alliance Party at Laisamis tallying centre. On the 8.8.2017 he went to the tallying centre at around 7.00pm. The returning officer for the constituency was Jaffer Galgalo. He witnessed the exchange of words between the FAP chief agent Julius Lekorole together with the FAP Senatorial candidate, John Lotto Segelan, on the one hand and the returning officer. The two wanted the returning officer to allow them to either photocopy the forms he was using to read the results or project the results on the screen but the returning officer refused. When the two insisted on being given the forms, the returning officer told them “**kama hamtaki muende**”. He decided to use his phone and take a video of the exchange of words. There was no any other way of verifying the results. The process was not satisfactory and that is why the agents complained. They did not receive the forms 37As from the polling stations. The Thirdway Alliance party did not have a candidate for the governor in Marsabit County but had MCA candidates.

PW7 NASRA IBRAHIM IBREN is the immediate former Woman Representative of Marsabit County. She was a candidate for the post on a FAP ticket.. On the 8.8.2017 she went to vote at Sessi pry school polling station in Moyale constituency at about 6.30am. Together with PW1, they started to survey several polling stations. They visited Baraza Park and Al Huda polling stations. She witnessed some voters being denied their right to vote. Some polling stations opened at 7.00am instead of 6.00am. The returning officers did not allow those who were on the queues after 5.00pm to vote. At Baraza Park, she found voters protesting that they have been denied their right to vote. She talked to the presiding officer but he could not assist. She then went to the constituency returning officer who also could not assist. She decided to call the county returning officer and make a report. At Al Huda polling, station the FAP agent, Mohamed Nyuko, was denied access to the polling station. He was chased away by the presiding officer. She inquired from the presiding officer why the agent was outside. She was told that the agent was very well known to everyone in the area and was going to influence the voters. It took about 45 minutes for the agent to be allowed back to the polling station. It is her evidence that she found a lady IEBC clerk asking voters to vote six piece suit for Jubilee. She complained and that clerk was transferred from the identification desk.

It is PW7's evidence that the entire electoral process was a sham. When the court issued an order for the preservation of the ballot boxes. Some boxes were found to have no IEBC labelled seals. Some seals were broken some boxes were broken, some gubernatorial boxes were found to have lids for Women Representative or MCA lids. Forms 37As were not stamped. Those that were stamped were faint and not legible. Over 8,000 people were found to have voted after 5.00pm.

PW8 PIUS YATTANI WARIO is the 1st petitioner. He was a candidate for Member of County Assembly, Turbi ward on FAP ticket. He lost the contest to a Party of National Unity (PNU) candidate. During the election, he visited some polling stations. At Wolena Baye Manyatta polling station no form 32s were given out for assisted voters. Those voters who could not be identified by the Kiems Kit and had their national ID cards and IEBC acknowledgement slips were denied the right to vote. He saw five young women denied their right to vote because their fingers could not be detected by the machines. At Turbi Pry school there were two streams. Voters innocently queued without being told which streams they were. One stream closed earlier. Those who were on the other streams were told to go and vote on the 2nd stream that had already closed. At Yaa-Galbo mobile station, the Kiems kits did not function. A replacement was brought at around 3.00pm when some voters had already left. The manual voter register was not used. Most of the voters in Marsabit County are illiterate. Although the manual voters registers were posted outside the polling stations most of the voters are illiterate and there was no IEBC clerk to assist the voters know their specific streams. The IEBC used inauthentic and fake forms. He was at the North Horr tallying centre and did not see Halima Darro at the tallying centre. The same Halima Darro also signed the form 37B for Moyale constituency.

PW9 DR. NOAH AKALA ODUWO is the Orange Democratic Party (ODM) Deputy Director of Campaigns and Elections. He is the 2nd petitioner. He testified that during the 8.8.2017 general elections, technology was used to register, identify voters and transmission of results. The biometric identification was the primary mode of identification of voters. There are complimentary ways of identifying voters. The IEBC had a public portal and the results on the portal were different from those on the forms. The form 37B for Saku constituency is not authentic. A number of security features are missing. The serial number is different. It has no or anti copy features. If one makes a copy, then the photocopy should automatically indicate that it is a copy. There are some alterations on some forms. Halima Daro was the ODM Marsabit county presidential agent and was stationed at the County tallying centre in Saku, Marsabit town. She did not sign the forms 37Bs for Moyale and North Horr. The Court issued orders for the scrutiny of the Kiems kit. He was involved in the exercise. In 19 polling stations, the votes cast exceed the authenticated number of voters. The forms 32 were not filled for assisted voters. The forms 37 are not all original. Others are carbon copies.

It is PW9's evidence that the election did not comply with the electoral laws especially the use of technology. According to him, the declared results cannot be relied upon. Since the results are transmitted electronically to the public portal, the results on the portal should be similar to the results in the statutory forms. Some marked ballot papers were found scattered in Saku constituency. The IEBC servers showed a mismatch in the results for the six polls.

EVIDENCE FOR THE 1ST AND 2ND RESPONDENTS

Twelve witnesses testified for the 1st and 2nd respondents.

DW1 JAMES NAWE was the presiding officer at Saku Primary School polling station stream 1. The polling station opened for voting at 6am and there was no confusion. It is his evidence that no voter was chased away and he assisted the illiterate voters. No extra ballot papers were given to any voter. Daudi Kifile was not a party agent in the stream. About 150 voters were illiterate and were assisted in the voting process. The assisted voters were assisted in the presence of the party agents. There were more than 8 party agents in the stream. FAP had about 3 agents. The list of voters was placed outside so that the voters could know their streams. There was a clerk who was a resident of the area who was directing voters to their proper streams. The polling station was closed at 5pm but those who were on the queue continued voting up to about 8pm. Amb. Ukur yattan got a total of 543 votes in both streams.

DW2 JOSEPHINE JILO BIDU was the presiding officer at Saku Primary school stream 2. She testified that she assisted some of the illiterate voters in the presence of the party agents. As a presiding officer she is not required to fill the form 32 when she assists a voter. She marked the register for every assisted voter. The Kiems Kits were used to identify the voters. There were 8 agents in her stream. She knows Daudi Kifile. She denied that some voters were chased away. The agents did not sign the form

37A in her stream. She did not stop anyone from signing the form. The results in the form are not disputed.

DW3 ABDIRASHID ADISOMO was the presiding officer at Farakoren Pry school polling station in Laisamis constituency. Voting started at 6am and the clerks plus two party agents were the first to cast their votes. There were polling booths at the station. The station closed at about 5.00pm but there were around 50 people still on the queue. Some voters were assisted and the register was marked for those voters. All the ballot papers were counted and put in the boxes. One **FRANCIS LESAS** was there at the polling station and he voted in the morning. Most of the voters are illiterate. Where the voter had his own person to assist him, a form 32 was filled. He was employed in 2015 by the Marsabit County Government.

DW4 JASAN MBUGUA KURIA was the returning officer for Moyale Constituency. He received all the form 37As from the polling stations and prepared the form 37B. Three political party agents signed the form 37B. There was no report made to him that some voters were chased away. All the registered voters were allowed to vote. The voter registration slip cannot entitle someone to vote. The IEBC had conducted voter education. He tallied the results starting with the Presidential Election. The gubernatorial poll is the last to be tallied. He concluded the tallying for the governor poll on 10.8.2017 in the afternoon. The party agents were present at the tallying centre. Sometimes the agents alternate. After tallying the results, he used a chopper with his deputy and went to the county tallying centre in Marsabit town. Halima Darro signed the form 37B. When the presiding officer present the forms 37As, there is a handover process. When the returning officers present their forms 37Bs to the county returning officer, there is also another handing over process. According to him, it is possible that the votes cast can exceed the number of authenticated voters. Although polling stations are to be closed at 5pm, voting can be extended if there are people on the queue. The constituency had 137 polling stations and he got all the forms 37As from the polling stations.

DW5 JUSTUS MWANZA NZOMO was the returning officer for Saku constituency. It is his evidence that he did not receive any complaint that his presiding officers were coercing voters to vote for a particular party. He did not learn of any election material scattered anywhere. When the court ordered for the preservation of the ballot boxes, all the boxes were found in good condition. He prepared the form 37B for Saku constituency and the form has all the security features including serial number, IEBC logo and bar code. Two party agents namely Halake Wako and Hussein Malicha signed the form on the 9.8.2017 although the two agents indicated on the form that it was signed on 10.8.2017. He signed the form on 9 /8/2017. The date of 10/8/17 was indicated erroneously. The tallying for one candidate was changed by hand. The candidate got 51 votes in the constituency but the form had erroneously indicated 48 votes. The deputy returning officer signed the amendment. All the forms 37As for the constituency were taken to the tallying centre. The tallying centre was at Moi Girls High School while the county tallying centre was at the Catholic Hall which is about a kilometer away.

It is his evidence that after he signed the form 37B, he went to the county tallying centre and handed over the statutory forms to the county returning officer. The political party agents were not categorized. Any agent who was accredited by a party could go to the constituency tallying centre. The form 37B is not fake. And it captures the results from the constituency.

DW6 EVANSON GITHINJI NGOMANO was the returning officer for North Horr constituency. He testified that he received the results contained in all the forms 37As for the governor election. All the forms were delivered to him at the tallying centre in North Horr. He prepared the form 37B which has the IEBC logo, bar code and serial number. Three party agents namely: Halima Darro, Hussein and Halake signed the form 37B. The former governor, Amb. Kur Yattani got 17, 037 votes while the current governor Ali Mohamed got 1,211 votes. The results have not been disputed. There were mobile stations in the constituency due to the fact that the residents are pastoralists. The location of the mobile polling stations is made after consultation with the residents. The candidates agreed where to put the merged mobile polling stations. On the 10.8.2017, he completed the tallying of the results before midday. He then took a chopper and went to the County tallying centre. At 10.37pm he handed over the results to the county returning officer. The voters were educated about the mobile stations. Mobile polling stations

were in use during the 2013 elections. The voters and the candidates agreed to merge the mobile polling stations at Dukana centre. At the centre, each specific mobile station had its own tent and IEBC staff.

DW 7 LOTABON KAMBOTI DAVID was the presiding officer at Loiyangalani primary school stream 1 in Laisamis constituency. It is his evidence that an old lady by the name **LOTIAKWANI ERIS** is not blind. She is illiterate and went to the polling station accompanied by her biological granddaughter. He assisted her to vote as the biological granddaughter was below 18 years. The voter was assisted in the presence of the party agents. Voting started in the morning at 6.00am and ended at around 10.00pm. The agents were present during the counting of the results but only one agent signed the form 37A.

DW8 ALI GODANA GALGALO was the presiding officer at St. Mary's primary school polling station stream 2 in Moyale constituency. According to him, no registered voter was denied the right to vote. **ADAN MAULO SHAME** and **MOHAMED RULA MASKO** were not registered voters at the polling station. He checked their identity cards and sent their numbers to the IEBC confirmation of registration No.7000 and found that the two were not registered voters. In his stream Amb. Ukur Yattani got 176 votes while the 3rd respondent also got 176 votes. Seven party agents including a FAP agent signed the form 37A. He knows **HASSAN MARSA** (PW1) who was the running mate for Amb. Ukur Yattani. It is his evidence that Hassan Marsa did not appear at the polling station. He did not use the manual voter register. All those who were eligible to vote are the same ones appearing in the Kiems Kit. The form 37A was signed past midnight although the agents indicated the date as 8.8.2017

OSMAN ABDI was the ninth witness for the 1st and 2nd respondents. He was the presiding officer at Baraza park polling station in Moyale constituency stream 2. Voting started at 6.00am. Hassan Marsa and Nasra Ibrahim went to the station at 6.30pm with some goons and they started jearing them. The polling station was closed and those who were on the queue were allowed to vote. Hassan Marsa and Nasra alleged that their supporters had been denied the opportunity to cast their votes. They went to the station at 6.30pm. The police intervened and dispersed the crowd. No one who went to the polling station late was allowed to vote. The last person voted at around 8.00pm. Five political party agents signed the form 37A.

DW10 JILLO BORU was the presiding officer at Al Huda primary school polling station. He informed the court that there were so many party agents inside the polling room and they agreed to reduce them to one agent per party. He asked the extra agents to step out. He did not chase away Mohamed Nyuko who was the FAP extra agent. Nasra Ibrahim went to the station and complained that Mohamed Nyuko was to be the party agent. He allowed him back in replacement of the other FAP agent. He assisted about three hundred illiterate voters in the presence of the agents. No voter was turned away at the polling station. Nasra went to the polling station with PW1, Hassan Marsa. He did not pick Mohamed Nyuko specifically to be the FAP agent to go out.

DW11 JAFFER GALGALO HALAKE was the returning officer in Laisamis constituency. He announced the results from the original form 37As. The party agents were present at the tallying centre. He received all the form 37As from the constituency. FAP and Jubilee agents signed the form 37B on 10.8.17 when the results were announced. He was initially gazetted as a returning officer for Isiolo North constituency but was later transferred to Laisamis constituency. He did not use the results on the public portal for purposes of announcing the gubernatorial results. He used the original forms 37As from the polling stations to announce the results. The ballot boxes are sealed and the important feature on the seals is the serial number and not the IEBC logo. All the ballot boxes were found to be intact. It is his evidence that he did not chase away Julius Lekorole or John Ito Segelan from the tallying centre. The two wanted to get the forms 37As from the tallying centre yet he was not supposed to give them the forms. The party agents were supposed to be issued with the forms 37As from the polling stations.

DW12 ARNOLD MUTWIRI NJABANI was the County Returning officer Marsabit County. He distributed election materials to the constituency returning officers. He received all the forms 37As and 37Bs from the constituency returning officers. He collated the results and prepared the form 37C. The 3rd respondent was declared the winner having garnered 56,146 votes. The former Governor, Amb. Ukur Yattani got 47,929 votes. He did not rely on the results on the portal to declare the final results. The

results were declared using the statutory forms. All the candidates had been cleared to vie for the respective positions in the county. At one time when the president was in Marsabit, the supporters of FAP and Jubilee clashed. The matter was resolved by the IEBC and the two candidates for those parties were penalized. Most of the forms 37As were signed by the party agents. Sometime the party agents get excited by the results and leave the polling stations before signing the form 37As. The ballot boxes were preserved and no single box was interfered with. All the boxes were found to be intact. The seals can be broken during transportation of the boxes to the warehouses. No ballot box was missing. The election was free, fair, and credible and was conducted in accordance with the law.

It is his further evidence that the 3rd respondent was fined Ksh.1 million while the former governor was fined Ksh.3 million by the IEBC Code of Conduct Tribunal. **Hussein Marsa** and **Halake Wako** signed the form 37C when the results were tallied and announced at the county tallying centre at the catholic Hall in Marsabit town. The results were declared on the 11.8.2017 past midnight. The polling stations and tallying centres are supposed to have political party agents so as to give credibility to the results. The signing of the statutory forms by those party agents gives credibility to the results. Marsabit County has many illiterate voters. The IEBC conducted voter education. Two voter educators were recruited for each ward. There were also other accredited groups who were allowed to educate the voters. Local radio stations also educated the voters. The identification of the voters was through biometric. Alphanumeric identification using the identity cards was also used. If the two methods of identification failed, then a supervisory mode was to be used and a form 32 A filled. If all the three methods fail, then the person cannot vote. The manual printed register is the same register in the Kiems kit. Everyone who voted was identified using the Kiems kits. The manual registers were provided and were posted in the polling stations. The results were also transferred electronically and were being displayed on a screen. However, the results on the screen do not show the polling stations sending them but just give global figures for each candidate.

EVIDENCE FOR THE 3RD RESPONDENT

Nine witnesses testified for the 3rd respondent.

DW 13 HUSSEIN BURJE SAGO was an agent of Maendelo chapchap party at Saku pry school stream1. He was the only agent for the party. He witnessed voters being assisted by the presiding officer. The presiding officer would ask the voter his choice and once the voter picked the choice, the presiding officer would mark the ballot in the presence of the agent. He knows **Daudi Kifile** who was not a party agent in stream 1. He saw him outside the polling station. He did not see any voter being chased away. Voting continued up to about 8.00pm. The voter register was placed outside the polling station. Some voters queued without checking their respective streams. Those voters were later taken to the correct stream. According to him, about 200 voters were illiterate and were assisted to vote.

DW14 OMAR ABDI BADO was the Jubilee party agent at St. Mary's primary school polling station. It is his evidence that no unregistered voters were allowed to vote. The voters were identified using the Kiems kit. He did not see any voter going to the polling station with his own assistant. The presiding officer helped the illiterate voters in the presence of the party agents.

DW15 MOHAMED GALGALO GUYO was a Jubilee party agent at Al Huda polling station. No clerk at the polling station told voters to vote for a particular candidate. Most of the voters were identified by the Kiems Kit. No voter was chased away. About 300 voters were assisted in the voting exercise. The assisted voters told the presiding officer their preferred candidate and they were assisted to vote in the presence of the party agents.

DW16 ABDULATIF MOHAMED AGA was the chief Agent for Jubilee party in Moyale constituency. He was supervising his party agents. He was shown a list of 38 people that was annexed to the affidavit of PW1. He checked the names and found that those appearing are not registered voters. One of them by the name Gadane is registered as a voter in Kiamaiko, Mathare constituency in Nairobi. He visited the tallying centre in Moyale. Halima Daro was there when the form 37B for Moyale was being signed. Halake was the jubilee county chief agent.

DW17 DAVID LEMELIEN TIMADO was the jubilee agent at Laisamis tallying centre. The centre was at the Catholic Mission Hall. He went to the tallying centre at about 6.00pm. The results from the polling stations were taken to the tallying centre and the returning officer used the form 37As from the polling stations to announce the results. Several party agents were present including those from FAP and ODM. No party agent was evicted from the tallying centre. Julius Lekorole and John segalan were also at the tallying centre. The returning officer collected the materials from the presiding officers and asked the party agent to witness the boxes and materials. The returning officer would show them the form 37A before reading the results. The agents asked for a copy of the form 37As. The returning officer told them that they were required to get those forms from their agents. They asked to take a picture of the forms but the returning officer told them to get copies from the party agents. The returning officer told them not to interfere with the tallying process. Segalan and Lokorole left willingly. The process continued very well and he signed the form 37B. Dominic Dabalen signed the form 37B for FAP

DW18 HUSSEIN MARSA UMURO was the chief Agent for KANU party. He voted at Takwa polling station in Saku constituency. He then went round some polling stations. On the 9.8.2017 at about 11am he went to the Saku constituency tallying centre. His party had its own tallying centre at Jirime Hotel. He signed the form 37B at Saku constituency tallying centre. He later realized that he had indicated the date of signing the form 37B as 10.8.2017 yet he signed it on the 9.8.2017. The results for Wario Ibrahim Dambi were wrongly entered in the form 37B. The anomaly was rectified by hand and the deputy constituency returning officer countersigned. On the 9.8.2017 he drove to North Horr in the evening and reached there at about 10.00pm He then went to the North Horr constituency tallying centre at around 11.00pm . The tallying of the results ended on 10th August, 2017 at about midday. Once again he signed the form 37B for North Horr constituency. **Halake Wako** of Jubilee and **Halima Darro** also signed the form 37B. It is his evidence that he then drove back to Marsabit town and went to the county tallying centre. The party had chief agents at the constituency tallying centres and he was in communication with them. He was at the County tallying centre from 11.00pm on 10th August, 2017. The results were announced on the 11th August, 2017 at night. The Kanu gubernatorial candidate **Umuro Adano Sora** got 6,262 votes. He signed the form 37C at the county tallying centre. During the election period he did not sleep and he was not driving himself. Since he was the overall agent, he was permitted to sign any statutory form.

DW19 JAMES PETER KABARE is an Information Technology Expert. His evidence is that during the hearing of the Presidential election petition No.1 of 2017, the supreme court granted “**read only**” access to the IEBC servers. The annexures to the witness affidavit of the 2nd petitioner, Dr. Noah Akala do not reveal the source of the information, the time the information was sourced and the person who authorized access to the servers. Those documents can be typed on a computer on excel. The computer logs could have shown the time of the access and the amount of data that was downloaded. The documents are not from the IEBC data base. When the court issued orders for the scrutiny of the SD cards, he prepared his own report which was not to be filed in court. The scrutiny found that what was in the Kiems kits corresponds with what was in the statutory forms. It is not possible to compare the data given by Dr. Akala because the source is not known.

DW20 WARIO ROBA BARIRE was a jubilee agent at Saku primary school stream 1. He did not see any voter being turned away. He saw several illiterate voters being assisted in the presence of the party agents. He did not see Daudi Kifile who was his student in primary school in stream 1. There were two Jubilee agents in the stream. He did not sign the form 37A for the stream. He estimated the number of illiterate voters in his stream to be about 200.

DW 21 HALAKE WAKO HALAKE was the Jubilee Chief agent in Marsabit county. He signed the forms 37Bs for Saku constituency and North Horr constituencies. He also signed the form 37C when the results were declared at the county tallying centre. It is his evidence that he signed the Saku constituency form 37B on 9.8.2017 at around 3.00pm. However, the form indicates that it was signed on 10.8.17. He attributes the difference in dates to human error. When he was signing, the KANU agent Hussein Marsa was also present. He then traveled by way of a chopper on the 10.8.17 at about 9.30am to North Horr. He reached there at about 10.00am. He was in contact with his party agents there. He went to the North Horr tallying centre at Elma Girls school. The Kanu chief agent Hussein Marsa was also there and they

signed the form 37B.

He signed the North Horr form 37B on 10/8/17 at about 11.0am. It is his evidence that as the party chief agent, he was under pressure from his party to deliver the form 34B for the Presidential Election. The chopper was brought to Marsabit on 9.8.2017 in the evening and he used it to travel to North Horr and back to Marsabit on 10.8.2017. On 10.8.2017 he went to the Marsabit county tallying centre. The form 37C declaring the results for the governor was signed the following day on 11.8.17 at 2.00am. The Saku tallying centre is about 500metres to the Marsabit County tallying centre.

DW22 ALI MOHAMUD MOHAMED is the 3rd respondent. It is his evidence that after the conclusion of the election he was declared the winner having garnered 56,146 votes. He denied that the IEBC favoured Jubilee agents. He did not influence the transfer of the Laisamis constituency returning officer from Isiolo to Laisamis. He met the officer for the 1st time at the county tallying centre. He was present at the county tallying centre when the results were declared. His chief agent had received the statutory forms from the polling station agents. The results were declared on the 11.8.2017 at about 2.00am. Most of the statutory forms were signed by the party agents. Every election year there are new voters and this can be attributed to the level of sensitization and young people registering. It is his evidence that when the election is done when it is not very dry, many voters would turn up. His agents were involved in the preservation exercise and the ballot boxes were found to be intact.

It is his evidence that at one time the Jubilee presidential candidate came to Marsabit and there was commotion between the supporters of Jubilee and those of FAP. The IEBC picked up the matter. He was fined Ks.1million while Amb. Ukur Yattani was fined Kshs.3 million. He has not appealed against the decision of the IEBC tribunal. He relied mainly on the information from his agents and according to him the IEBC conducted the elections in a fair and transparent manner. The violence that occurred when the president was in Marsabit had nothing to do with his personality but was occasioned by the supporters. The complaint sent to the IEBC by the county returning officer was not against him as a person. The results that were declared were from the statutory forms. There is no plea that a polling station failed to send the results or that the results in the forms have been changed.

Parties consented to the adoption of the affidavits of three witnesses for the 3rd respondent. These are Lucas Masai Lekaana, Michael Loigamaanae Lesaigor and Baru Daharowa Chana. **Lukas Masai** will be **DW23**. He was a registered voter at Farakoren Primary school polling station. He was the first one on the queue and was issued with the six ballot papers. There was a polling booth at the polling station. **DW24 MICHAEL LOIGAMANAE LESAIGOR** was a FAP agent at Farakoren primary school polling station in Laisamis constituency. He avers in his affidavit that the gubernatorial elections held on the 8th August 2017 at the polling station were free, fair and transparent. There was a polling booth for the use of the voters. He saw one Francis Lesas who voted at 6.30am and was seen again at 4.00pm. **DW25 BARU DAHAROWA CHANA** was a Jubilee agent at Farakoren primary school polling station in Laisamis constituency. His evidence is that the presiding officer Rashid Adisomo assisted voters who required assistance in the presence of party agents. One Nkatiran Lesas was assisted by the presiding officer.

1st Petitioner's submission

Mr. Omwanza, Mr. Oduor, Miss Nyachai and Mr. Onderi appeared for the 1st petitioner. Counsel submit that Article 38, 81, 82, 83, 84, 85, 86, 87 and 88 of the constitution are the foundation of our democratic society. An election should comply with the above provisions. The respondents committed various constitutional and statutory violations or infractions. The 1st issue involves the use of fake/forged/inauthentic results declaration forms. There is a statutory requirement for the use of result declaration forms. Regulation 79 stipulates that the results declaration form at the polling station shall be in forms 37A. Regulation 87 refers to form 37Bs for the constituency and 37C for the county declaration centre. The respondents were engaged in a post- declaration cover-up with the intention of hiding their contravention of the regulations. This was done in the manner in which the forms were attested and witnessed. DW5 testified that the form 37B for Saku constituency was signed by the agents who were

present at the tallying centre. The evidence shows that the form 37B was signed at the County tallying centre instead of at the constituency tallying centre. DW18 Halake and DW21 Malicha testified during cross examination that they signed the form 37B for Saku constituency at the Saku tallying centre. Counsel submit that the Saku constituency form 37B was done at the county tallying centre as opposed to the constituency tallying centre contrary to regulations. The principle of finality of results was dealt with in the case of *Hassan Ali Joho and another V Suleiman Said Shahbal & 2 others* [2014] eKLR where the Supreme Court observed as follows:

“Declaration” takes place at every stage of tallying. For example, the first declaration takes place at the polling station; the second declaration at the Constituency tallying centre; and the third declaration at the County tallying centre. Thus the declaration of election results is the aggregate of the requirements set out in the various forms, involving a plurality of officers. The finality of the set of stages of declaration is depicted in the issuance of the certificate in form 38 to the winner of the election. This marks the end of the electoral process by affirming and declaring the election results which could not be altered or disturbed by any authority.”

Counsel further submit that when the constituency returning officer announced the gubernatorial results at the constituency tallying centre that marks the end of his mandate. After signing the form 37B the constituency returning officer becomes *functus officio*. He has no further input on the declaration forms. The evidence shows that DW18 and DW21 signed the Saku form 37B at the county tallying centre on 10.8.2017 long after the declaration was made at the constituency level. Their claim that the date was an error is pure falsehood. It is further submitted that three people signed the forms for Saku, Moyale and North Horr. These are Halima Darro, Hussein Malicha and Halake Wako. Halake Wako and Hussein Malicha gave unreliable evidence on how they moved around the constituencies in Marsabit county. The county is vast and their attempt to justify their movement is unbelievable. Two separate forms for Laisamis constituency were produced. One of the form was signed by both the returning officer and the agent. The other form is not filled at the handing and taking over section. The forms contain the same results and this proves that the respondents were involved in a post declaration signing of the forms with the intention of sanctifying the electoral fraud they had committed. The North Horr form 37B produced by the petitioner bears the serial numbers Gv 01- 0046/1. The form 37B produced by the 3rd respondent bears the same serial number and the same results. The initial form availed to the court was not signed by the agents, the returning officer and the county returning officer at the handing over stage. This proves that the 1st respondent used fake, inauthentic and unsigned results declaration forms. The same applies to the form 37B for Laisamis which give the same results as the one presented by the petitioner. The forms produced by the Petitioner for the four constituencies bear the same serial number and results as those produced by the respondent. Counsel relies on the case of *Ahmed Abdullahi Mohamad & another V Mohamed Abdi Mohamed & 2 others*[2018] eKLR where the court stated the following:

“For example, in paragraph 34 of his affidavit in Response to the Petition, R2W1 stated that “Forms 37A for the polling station referred therein have been duly signed, dated and stamped by the presiding officer and/or duly witnessed by the candidates accredited agents.” He produced a bundle of Forms 37A which were all signed by the Presiding officers. However, the Forms 37A for Ahmed Liban Secondary School polling station 1 of 2, Katote Primary polling station 1 of 1 and Hodhan Dispensary polling station 1 of 2 bore no signature of either the Presiding officer or the deputy. This is despite having sworn that all the forms 37A complained of had been signed, dated and stamped. Later on, he produced in his affidavit producing document filed on 31st October, 2017 Form 37A for Katote Primary which was allegedly signed by the agents. It was not clear when and where it was signed. The court took the view that the 2nd and 3rd respondents were doctoring documents because, some of the documents filed originally in court had no signatures or stamps.”

Counsel for the 1st petitioner further relies on the case of *Raila Amolo Odinga & another V Independent Electoral and Boundaries Commission & 2 others (Presidential Election Petition No.1 of 2017)* where the Supreme Court stated as follows:

“The Court notes further that from the report on forms 34B, the Registrar out rightly made an observation that some of the forms were photocopies, carbon copies and not signed. And out of the 291 forms, 56 did not have the watermark feature while 31 did not bear the serial numbers... The above incidences are singled out since they are incidences where the accountability and transparency of the forms are in question....”

“As pointed out by the petitioners, there is a reasonable expectation that all the forms ought to be in a standard form and format; and though there is no specific provision requiring the forms to have watermarks and serial numbers as security features, there is no plausible explanation for this discrepancy...”

It is further submitted that there was violence and violation of the electoral code of conduct. The respondents contravened Article 81 of the constitution. The evidence shows that the third respondent and the original petitioner Amb. Ukur Yattani were summoned to appear before the IEBC Code of Conduct and Enforcement Committee Tribunal where they were fined for violence that had occurred in the course of their campaigns. A judgment of the tribunal was produced. **Section 20(3)** of the Election Offences Act 2016 deals with breach of the electoral code of conduct which is an offence. The incidence of violence took place less than two weeks to the polling day.

The 1st Petitioner further submit that there was improper process of assisting voters. Regulation 72 provides the procedure by which voters can be assisted. Where a voter requires assistance and is not accompanied by someone to assist him, then the presiding officer is allowed to assist the voter in the presence of the party agents. The voter register has to be marked to that effect. Where an assistant other than the presiding officer assists a voter, then a Form 32 has to be filled. PW5, PW7 and PW8 testified that they witnessed instances of voters being assisted but no forms 32 were filled. DW1 testified that he did not mark against the physical register as he did not use the hard copy printed register. DW1 testified that around 150 voters were assisted. DW3 testified that 80% of the residents of Farakolen area are illiterate while DW7 testified that most of the voters at Loiyangalani Pry school are illiterate. Counsels rely on the case of **Ahmed Abdullahi Mohamad** (Supra) where Justice Mabeya observed as follows:

“In the absence of the Forms 32 and marked register, how is the 2nd and 3rd respondent to account for the assisted voters”. In the absence of such evidence, this Court doubts if that election is verifiable” having failed to mark the registers as required by Regulation 72(6) of the Regulations, the Presiding Officers were committing an offence under Section 6 (i) of the Election Offences Act, 2016”.

The 1st petitioner maintain that there was voter disenfranchisement. The petitioner visited Turbi primary, Bolgabo primary, Tigor mobile Orena mobile Sapass, Awal, Dillo mobile and Yaa Galbo mobile centres and observed that voters were denied the opportunity to vote. Also voters queued on the wrong streams due to poor voter education. There was wide spread discontent and disgruntlement. The IEBC was supposed to carry out voter education but did not fulfil its mandate. The electorate in Marsabit are mainly illiterate and the posting of the voter register at the pooling station doors is not sufficient. Counsels further submitted that the credibility of some witnesses is questionable. Halima Darro Hussein Malicha and Halake Wako signed the forms 37B under circumstances which makes their credibility to be in doubt. Their evidence is not in line with their affidavits. Although Halima Darro did not testify, she swore two affidavits which gave conflicting evidence. Counsels further submit that the election was not carried out in accordance with the law. The election was not transparent, free and fair.

2ND PETITIONER’S SUBMISSIONS

Mr. Walukwe, counsel for the 2nd petitioner submit that the petitioner has discharged the burden of proof to the required standard in Election petitions. The burden shifted to the respondents who failed to discharge it. It is further submitted that the affidavits that were filed together with the petition form part of the petition. Such affidavits are annexures to the petition and should be considered by the election court. The respondents were served with the petition and its annexures but did not seek any further

particulars before the pre-trial or at any time during the hearing.

Counsel submit that the right to vote as provided under Article 38 of the Constitution was violated. This violation was specifically pleaded some voters who were duly registered were stopped from voting. This happened at St. Mary's primary school, Fatul Bahr madrasa and Kulafa Rashidin polling stations. Regulation 69 provides for voter identification and its couched in mandatory terms. It is provided that in the event that the electronic voter identification device fails, then the presiding officer shall identify the voter using the printed register of voters. The evidence before the court is that only one mode of identification was used. Potential voters were turned away. The manual registered of voters that were brought to court were found to be intact and were not used at the polling stations.

It is further submitted that fake and non-authentic forms were used to declare results. Those forms cannot be verified. The form 37B for Saku was not signed by any agent or IEBC official. This form was given to the petitioner but another form was produced allegedly signed by party agents. The same applies to the form 37B for Moyale constituency, North Horr constituency and Laisamis constituency. The same agents who signed the form 37B for Saku and North Horr allegedly signed the form 39C at the County tallying centre. The form 37B for Saku has some alterations and the evidence on record is not clear as to whether those alterations were done at the constituency or county tallying centres. Counsel urged the court to take judicial notice of the fact that Marsabit is a vast county and the agent who signed the forms could not have been in all those places at the time they alledge to have signed the forms. The 2nd Petitioner testified that the forms provided by the 1st respondent were fake and lacked security features. Having looked at the forms, the 2nd petitioner observed that in 14 polling stations, no single agent signed the statutory forms 37As and no reasons were given. This affected 9,000 votes. 21 forms 37As have alternations that were not countersigned and this affected 10,000 votes. In 90 polling stations, no single FAP agent signed the form 37A. The forms deposited in court have differing stamps from the one prescribed by the commission for the polling stations. Regulation 79 requires that the presiding officers should request the candidates or agents to sign the forms. Where the forms are not signed the reasons have to be given.

It is further submitted that there was use, misuse and abuse of the printed voter register. Mr. Walukwe submit that those who could not be identified by the machines were to be identified through the use of the manual voter register as per regulation 69 and 79. The presiding officers were to indicate the reasons on the register as to why the voters were being assisted. The registers were not used.

It is further contended by the 2nd petitioner that the returning officer for Laisamis constituency, Mr. Jaffar Galgalo, was irregularly appointed. The aspects of clanism in election matters cannot be overlued. The elections in Marsabit are tribal based. The returning officer is a borana. There two functions during the elections. One was led by the 3rd respondent while the other one was behind Amb. Ukur Yattani. There was no consultation when the returning officer was appointed. The appointment was not transparent or competitive. The political parties were not consulted. The returning officer was heard saying that the election had been won.

Counsel further maintain that the election materials were not properly preserved. The seals on the ballot boxes were alleged to have been serialized on the poll book diaries but the same were not produced. It is not possible to authenticate the seals as those of the IEBC. There was violence before the election and the 3rd respondent was taken before the IEBC disciplinary committee. He was convicted and sentenced. He did not appeal against that decision. The scrutiny of the Kiems Kits also revealed some irregularities. The court cannot shut

its eyes on those irregularities.

1st and 2nd Respondents submission

Mr. Odhiambo, Counsel for the two respondents submit that the petitioners failed to prove their case to the required standard. The petitioners failed to discharge the burden of proof as held in the case of

RAILA AMOLO ODINGA AND ANOTHER V THE IEBC AND 6 OTHERS, Presidential Petition No.1 of 2017 where the court stated that **the threshold of proof should in principle be above a balance of probability though not as high as beyond reasonable doubt**. The petitioners allegations have not been proved and remained mere allegations. Allegations that assisted voters were not able to make their personal choices were not proved. Regulation 72 was complied with. counsel relies on the case of **Justus Gesito Mugali M'mbaya V Independent Electoral & Boundaries Commission & 2 others [2013] eKLR** where Ogola J held as follows:

In my view, the allegation that the illiterate voters were misled not to vote for the petitioner were not proved. A candidate could either be identified by his name, his photograph or party symbol. In addition, evidence was led to show the process through which assisted voters taken. It was a participatory process involving all the parties' agents. It is notable that none of the Petitioner's witnesses proved this allegation. In fact PW7 agreed with the Respondents that he was not aware of any voter who left confused or was misled in respect of the Petitioner's names. I can only agree with Mr. Lubulellah that the evidence of Emmanuel Mwanyonyi (PW7) was of little or no value to the Petitioner. This Court finds the allegations relating to the voter assistance baseless and therefore dismissed.

It is also contended that where a voter is assisted by the presiding officer the form 32 is not falled. This issue was dealt with in the case of **Bashir Haji Abdulahi V Adan Mohamed Nooru & 3 others [2013] eKLR** where the court held:

The court has referred to its earlier directions and orders on this issue. The court found that the issue of indicating the assisted voters in the voting register was only relevant and necessary where the voter was assisted by a person accompanying him/her for that purpose, to the polling station. That is contrasted with assistance by the Presiding officer himself in the course of his administrative and supervisory duties at the polling station.

Mr. Odhiambo maintains that the petitioners' allegation that voters were coerced and duly influenced were not proved. Under section 10 of the Election Offences Act undue influence is an offence. Such allegations ought to be strictly proved as they border on criminal acts. There is no evidence tendered by the petitioner to prove that allegation. It is further submitted that the petitioners agents were not excluded from participating in the election as alleged. Rule 79 (7) provide that the absence of a candidate or an agent at the signing of a declaration form or the announcement of results shall not by itself invalidate the results announced. Lack of signatures on the forms in itself is not a conclusive issue to lead to the nullification of an election. There is no requirement that the statutory forms must be stamped as held by the court of appeal in the case of **IEBC & another V Stephen Mutinda Mule and 3 others (2014)eKLR** where the court stated:

There is no stamping requirement in the case of the Form 35. All that is required with regard to Form 35 as provided for in Regulation 79 is the signature of the Presiding officer and the agents of the candidates.

In the case of **Michael Gichuru V Rigaht Gachagua & 2 others, Pet No.2 of 2017** the court also held that the stamping of the forms is not a requirement.

The petitioner's position on the forms that were not stamped was that the results which they represented were invalid and unauthenticated and were therefore unreliable. However, this argument is unsustainable for the simple reason that there is nowhere in the Elections Regulations where it is suggested that forms ought to be stamped; neither is there such a provision for stamping in the forms as prescribed under the schedule to the Act.

It is further submitted that the forms provided by the 1st respondent have the security features which include a watermark, logo and serial numbers. The alleged malpractices do not affect the results. The results for the gubernatorial election are not supposed to be transmitted electronically. Only the Presidential results under section 39 of the Election Act are to be transmitted electronically. Regulation

82 requires the presiding officer to transmit the physical results to the constituency tallying centre. The election materials were properly secured contrary to the petitioner's allegations. On the issue of alteration without countersigning, it is submitted that that cannot affect the result as held in the case of **Paul Gitenyi Mochorwa V Timothy Moseti E. Bosire & 2 others [2013]eKLR** where the court observed as follows:

There is no requirement that the entries on Form 35 or any other form be without alteration. The constitutional requirement for accuracy in election system cannot be construed to mean that the statutory forms for the recording of the results of an election must never have errors, correction or alterations. Accuracy does not mean free from error which has been corrected, an impossibility in all human endeavor, accuracy will be served, if there exists a means of verification of the entries to test for their accuracy and it necessarily imports corrections by alternations, whether countersigned or not.

It is submitted that the Election was conducted in accordance with the law and the petition should be dismissed with cost. No evidence was adduced to prove that the elections were not free, fair and credible.

3rd respondent submission

Mr. Muganda, Miss Hashi and Miss Barako appeared for the 3rd respondent. It is submitted that an election is a wholesome process. The casting of the votes is in numbers and it is the numbers which count. No results of a single polling station has been challenged as not representing the will of the people. Ordinarily an election is deemed to have been well conducted unless proven otherwise. The petitioners have failed to prove their case to the required standard. The parties are bound by their pleadings. Some issues were brought up after the time allowed for filing election petitions had lapsed. Such issues must be disregarded. The initial petition and its supporting affidavit gave issues which are different from the subsequent affidavits of the petitioners. Counsel relies on the case of **Philip Osora Ogutu V Michael Onyura Aringo and others Busia Ele. Pet. No.1 of [2013]eKLR**

It is submitted that the evidence on record does not show that at any single polling station the petitioner's agents were kicked out. No single agent testified to that effect. The petitioners' agents at Laisamis tallying centre walked out of the tallying centre and were not kicked out. There is no evidence that the petitioners agents sought a recount at a polling station and it was denied. The results for the gubernatorial election are found in the forms 37A. There is no evidence that FAP agent was denied the form 37A. The mobile stations were there during the 2013 elections as well as in the 2017 elections. It is also submitted that there were 384 polling stations. There is no evidence that at Kalariwe polling station more voters in excess of the registered voters voted. All the forms are consistent. The source of the document produced by the 2nd petitioner is not known. The same are not authenticated. No form was produced giving different results. Parties accessed the Kiems kits and no different results were observed. The forms 32 and polling book diaries were not to be produced. The 2nd petitioner produced a report on the scrutiny of the SD cards yet no such report was to be filed.

It is submitted further that the credibility of the Election has not been touched. No voter was stopped from voting because he was locked out of the polling station. The form 37A is a declaration of the results. Those who signed affirms the results. A summary of the form 37As shows that the FAP agent signed 76% of the forms. No FAP agent testified that he did not sign the forms. Hassan Marsa produced a list of 38 people who were alleged to have been denied their right to vote. The petitioner was to prove that those were registered voters. The voter registers were produced and the petitioner did not check if those 38 people were registered voters. The list does not show in which polling stations those 38 people were registered. The voter turn out was 77% and this proves that there was voter education, voter awareness and voters attendance.

Counsels maintain that the credibility of Daudi Kifile is in doubt. In this case he testified that he was in stream 2 while in the case for woman representative he stated that he was in stream 1. The issue of violence was not pleaded. The original petitioner was fined Ksh.3 million and he did not raise the issue

in the petition. This was a pre-election dispute which deal with the code of conduct. The 3rd respondent has not been charged with any offence. No witness testified on the issue of violence.

It is also maintained that Jaffer Galgalo was already a Returning officer when he was transferred to Laisamis. His appointment did not affect the election. He was at the tallying centre. The statutory forms were produced and there is no evidence that the forms were prepared fraudulently. There is no evidence that extra votes were given to the 3rd respondent. The form 37B is a collation of the results. The original forms were produced before the court. No evidence was produced to prove the allegation of bribery. The Deputy Registrars report on the preservation of the election materials indicate that all the boxes were intact. The election was properly won with a difference of about 9,000 votes.

Analysis

There was no consensus on the issues for determination by the Court. Parties raised their own issues which are somewhat similar. All these issues can be condensed into the following

- (i) Whether there were irregularities in the conduct of tHalima Dhhhe Marsabit gubernatorial elections and if so whether such irregularities affect the results.***
- (ii) Whether the Marsabit County gubernatorial elections was conducted in accordance with the Constitution, Electoral Laws and Regulations.***
- (iii) Whether the respondents or their agents committed any election offence.***
- (iv) Whether the Petitioners have discharged to the requisite standard their initial burden of proof.***
- (v) Whether the 3rd respondent was validly elected as the governor of Marsabit County.***
- (vi) Who should bare the cost of this petition.***

The Petition raises several allegations in relation to the way the elections were conducted. I will deal with the alleged irregularities separately. It is however important at this stage to set out the Constitutional and statutory provisions which guide the conduct of elections in Kenya. Each of the parties outlined all the relevant legal provisions. The constitution in its preamble state as follows:

We, the people of Kenya –

- RECOGNISING the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, Social Justice and the rule of law***
- EXERCISING our sovereign and inalienable right to determine the form of governance of our Country and having participated fully in the making of this constitution***
- ADOPT ENACT and give this Constitution to ourselves and future generations.***

The preamble therefore clearly sets out the aspirations of Kenyans to exercise their Constitutional right to determine how they would like to be governed. Article 1 of the Constitution bestows sovereign power to the people of Kenya. Article 38 provides for political rights which include the right to:-

- be registered as a voter***
- Vote by secret ballot in an election or referendum.***

Article 81 provides for the general principles for the Kenyan electoral system. These include:

- *Freedom of citizens to exercise their political rights.*
- *Universal suffrages and equality of vote*
- *Free and fair election*
- *Elections to be free from violence, intimidation, improper influence or corruption and transparency in elections*
- *Elections to be impartial, neutral, efficient, accurate and conducted in an accountable manner.*

Article 83 provides for the registration of voters. Article 83(3) states as follows:-

(3) Administrative arrangements for the registration of voters and the conduct of elections shall be designed to facilitate, and shall not deny, an eligible citizen the right to vote or stand for election.

Article 84 states as follows:-

In every election, all candidates and all political parties shall comply with the code of conduct prescribed by the Independent Electoral and Boundaries Commission.

Article 86 provides for the voting process and states as hereunder:-

At every election, the Independent Election and Boundaries Commission shall 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.***

The Independent Electoral and Boundaries Commission (IEBC) derives its powers to conduct the election from Article 88(4). It is the sole body given the mandate to conduct Presidential, Parliamentary and County elections in Kenya.

Other than the Constitution, there is the Election Act, Act No.24 of 2011. The Act declares its objectives in the preamble as “**An Act of Parliament to provide for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to provide for the conduct of referenda; to provide for election dispute resolution and for connected purposes.** Within the Elections Act there are the Elections (General) Regulations, 2012, the Elections (Registration of voters) Regulations 2012. Rules of procedure on settlement of disputes, Elections (Parliamentary and County elections) petition Rules 2013, the Elections (Technology) Regulations, 2017 and the Elections (Voter Education) Regulation 2017. Elections involve political parties which are governed by the political parties Act (No 11 of 2011). There is also the Election offences Act No.37 of 2016. Those aspiring to be elected as leaders are expected to fulfill the requirements of the leadership and Integrity Act, Act No.19 of 2012.

Those are the major Constitutional and statutory parameters governing the conduct of elections in Kenya.

The main objective is to ensure that those who ascend to political offices genuinely represent the will of the Kenyans who vote them into those offices.

Turning back to the issues involving this petition, there is the first issue which is ***whether there were irregularities in the conduct of the Marsabit gubernatorial elections and if so whether such irregularities affected the results.*** The petitioners have raised several allegations regarding the conduct of the elections:-

(1) Assisted voters

The petitioners contend in the petition that assisted voters were coerced to vote for Jubilee Party candidates. Secondly, those voters who went to the polling station with their assistants, the presiding officers did not allow the assistants to assist the illiterate voters. Thirdly, if an illiterate voter was in favour of the Jubilee Presidential candidate, then all the other ballots for the other polls would be marked for the Jubilee candidates;

The evidence in support of the above contention is that of PW5, **DAUDI KIFILE DALACHE**. It is his evidence that he was a FAP agent at Saku Primary school polling station stream 1. It is his evidence that those voters who asked for a FAP candidate were told to go back and think about their choices. Those who said they wanted to vote for Ambassador, presumably Honourable Ukur Kenacho Yattani; were told there was no ambassador on the ballot paper. There is the evidence of **PW4, JULIUS LEKOROLE** to the effect that the Presiding officer at Loiyangalani polling station stream 1 destroyed a ballot paper that had been filled by some one who had accompanied an illiterate voter. The first petitioner also testified that illiterate voters simply joined the queue without knowing their steams. They were later directed to the correct stream after having been on the queue for a long time. This made the voters to be disgruntled.

The above contentions are vehemently opposed. The 1st and 2nd respondents summoned **DW1 JAMES NAWE** and **DW2 JOSEPHINE JILO BIDU** who were the presiding officers at Saku primary school stream 1 and 2 respectively. Their evidence is that they assisted the illiterate voters in the presence of party agents. **DW3 Abdirashid Adisomo**, a presiding officer at Farkoren primary in Laimsais testified that he assisted illiterate voters. **DW7, LOTABON KAMBOTI DAVID** was the presiding officer at Loiyangalani polling station. It is his evidence that the concerned illiterate voter was accompanied by her grandchild who was under 18 years and did not qualify to assist a voter. He decided to assist the voter. **DW20 WARIO ROBA BARIRE** was summoned by the 3rd respondent. It is his evidence that he was a Jubilee party agent at Saku primary school. He saw several voters being assisted in the presence of political party agents.

Regulations 72 provides for assisted voters and states as follows:

(1) On the application of a voter who is, by reason of a disability or being unable to read or write, and therefore unable to vote in the manner prescribed in these Regulations, the presiding officer shall permit the voter to be assisted or supported by a person of the voter's own free choice, and who shall not be a candidate or an agent.

(2) Where the person who applies to be assisted is not accompanied by a person who is qualified to assist him or her, the presiding officer shall assist such voter, in the presence of the agents.

(3) The presiding officer may make such necessary and respectful inquiry in order to establish that the voter and the person the voter has chosen to assist him or her satisfies the provisions of this regulation.

(4) The person chosen by the voter is not required to be qualified to vote but is required to have attained the age of eighteen years.

The respondent contend that no assisted voter was summoned to testify. The petitioners evidence was disproved by those who were at the respective polling stations. PW4 did not witness the alleged incident at Loiyangalani. The presiding officer at the polling station testified in court. With regard to the evidence

of Daudi Kifile, the two presiding officers were in court and testified on how they assisted illiterate voters. The evidence on record is to the effect that over 50% of the voters in Marsabit County required assistance. There is no evidence to the effect that the IEBC had instructed its presiding officers to bar anyone from assisting a voter who required assistance or to mark the ballots for the illiterate voters in favour of the Jubilee candidates. The petitioners contentions are general allegations without cogent evidence. I have seen the forms 37A for the concerned polling stations and the results are as follows:

POLLING STATION	ADANO UMURO	ALI MOHAMUD	KANACHO YATTANI	UKUR	WARIO IBRAHIM
SAKUU PRIMARY					
(1)	2	201	263		0
(2)	4	183	280		2
LOIYANGALANI PRIMARY					
(1)	25	83	212		6
(2)	2	89	271		0
(3)	4	83	272		11
TOTAL	37	639	1,298		19

The results indicate that it is the original Petitioner who got the most votes in the two polling stations where allegations were made on assisted voters.

Although the Petition makes allegations that assisted voters were coerced to vote for Jubilee candidates, I do find that there is no evidence to support those allegations. I am satisfied that the presiding officers properly assisted those voters who would not vote on their own. The respondents have through evidence effectively rebutted that allegation. There was no coercion of the assisted votes. The presiding officers did not assist the voters in the absence of the party agents. **DW13 HUSSEIN BURJE SAGO** who was a Maendeleo Chap Chap party agent at Saku primary school stream 1 witnessed the voting by assisted voters. He explained how the presiding officer conducted the process which is in compliance with the regulations.

(ii) USE OF FAKE, FORGED AND INAUTHENTIC DECLARATION FORMS

Both petitioners attacked the forms that were used to declare the results. The forms 37B for Laisamis constituency did not give the totals for each candidate. The forms 37Bs for Saku, Moyale and North Horr were criticized as having been witnessed by people who were not in those tallying centres. These are DW18, **HUSSEIN MARSA UMURO**, (Malicha) DW 21 **HALAKE WAQO HALAKE** and **HALIMA DARRO** who was listed as a witness for both the petitioners and the 3rd respondent. The second petitioner's evidence is to the effect that the forms used to declare the results had not security features.

It is further submitted that the forms 37B for Saku has handwritten alteration. It is not clear whether the alterations were done at the Saku Constituency tallying Centre or at the County Tallying centre. Further, whereas the Petitioner was given a form 37B for Saku which has no alterations, the one produced in Court has the handwritten alteration. The petitioners position is that the results in those forms 37B were not

verified by those who signed them. The returning officers simply brought the forms at the county tallying centre where they had them signed. The form 37B for Saku constituency was signed on 10.8.2017 while it was handed over on 9.8.2017 by the Presiding officer to the County Returning officer.

In response, Jaffer Galgalo (DW1) admitted that he did not give the total votes for each candidate. His position is that his duty was to simply tally the results from the form 37As. DW6 **EVANSON GITHINJI NGOMANO** was the North Horr Returning officer. It is his evidence that he tallied the results from the forms 37As. Hon Ukur Yattani got 17,037 votes while the 3rd respondent got 1,211 votes. He completed the tallying on 10.8.2017 at about midday. He took a chopper and went to the Marsabit County tallying Centre. He joined the queue and handed over the forms at 10.37pm.

It is the evidence of **JUSTUS MWANZA NZOMO** (DW5) who was the Returning officer for Saku that the form 37B has security features. The form was signed on 9.8.2017 but the agents indicated 10.8.2017. One of the candidates had his votes indicated as 48 instead of 51. They amended the forms. His deputy countersigned.

The petitioners position is that the results in those forms are not authentic. I heard the evidence of Hussein Marsa and Halake Waqo. It is true that Marsabit is a vast county. However, their respective accounts of their movement does not raise doubt that they were not in those respective tallying centres. According to Hussein Marsa, he signed the Saku form 37B during the day on 9.8.2017. He travelled by road to North Horr and reached there at around 10.00pm. The form 37B for North Horr was signed on 10.8.2017 at around midday. He then came back to Marsabit. He signed the form 37C at the County tallying centre on 11.8.2017 past mid-night. This is the following day.

There is contention that for one to have covered that distance as explained by Hussein Marsa, he must be a “*super humane*”. The witness’s account is that he did not sleep during the period of the elections. It is his evidence that he was the KANU chief agent and was being driven. Halake Waqo also gave his movement itinerary during the period. The witness did not testify that he used a chopper at night to go to North Horr. The chopper was brought to Marsabit on 9.8.2017 at 6.00pm. He then took the chopper on 10.8.2017 at about 9.30am. The evidence shows that the north Horr constituency form 37B was signed before mid-day. Halake then went back to Marsabit County tallying centre. The form 37C was signed the following day.

The petitioners have raised the question as to why it was the same agents signing the forms 37Bs and 39C. This is a valid question. The response is that these were the chief agents. Halake testified that he was under pressure to provide the form 34B for the Presidential elections. I do find that the signing of the forms by the same agents is not illegal but should not be encouraged. It is prudent that different party agents sign such forms. Although the presiding and Returning officers cannot force an agent to sign, they should ensure that only those agents who sit through the counting and tallying exercise sign the relevant statutory forms. Otherwise, it is lawful for the form to be signed by any agent. That would not invalidate the results.

Regulation 79 provides for the signing of the results declaration form. Regulation 79 states as follows:

(2A) The presiding officer shall -

(a) Immediately announce the result of the voting at the polling station before communicating the results to the returning officer,

(b) request each of the candidates or agents present to append his or her signature

(c) provide each political party, candidate, or their agent with a copy of the declaration of the results; and

(d) affix a copy of the declaration of the results at the public entrance to the polling station or at any place convenient and accessible to the public at the polling station.

(3) Where any candidate or agent refuse or otherwise fails to sign the declaration form, the candidate or agents shall be required to record the reasons for the refusal or failure to sign.(emphasis added)

(4) Where a candidate or an agent refuses or fails to record the reasons for refusal or failure to sign the declaration form, the presiding officer shall record the fact of their refusal or failure to sign the declaration form.

(6) 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 the regulation shall not by itself invalidate the result announced under sub regulation (2)(a). (emphasis added)

(7) The absence of a candidate or an agent at the signing of a declaration form or the announcement of results under sub regulation (2) shall not by itself invalidate the results announced.

Regulation 83 (e) and (h) provides for the manner in which the constituency Returning officers are supposed to handle the results from the polling stations.

(e) complete the relevant Form 35B and 36B for the respective elective position set out in the Schedule in which the returning officer shall declare, as the case may, the

(i) name of the respective electoral area;

(ii) total number of registered voters;

(iii) votes cast for each candidate or referendum side in each polling station

(iv) number of rejected votes in each polling station;

(v) aggregate number of votes casting the respective electoral area; and

(vi) aggregate number of rejected votes

(h) deliver to the county returning officer the collated results for the election of the county Governor, Senator and county women representative to the National Assembly

There is the issue as to whether the forms used are fake and not authentic.

The regulation provides the samples of the result declaration forms. The form 37A is expected to have a serial number, name of the polling station, ward, constituency and county. Each of these have codes. There is also the number of votes cast in favour of each candidate. The form 37B has a serial number, constituency code, county code and name of the constituency tallying centre. The results for each candidate are to follow. The form 37C has a serial number, County code and constituency codes. Although the form 37C seems to suggest that the County Returning officer would simply pick the results from the tabulated form 37B, regulation 87 (b) provides that the county Returning officer is to declare the results for each candidate from each polling station. This led to the re-tallying of all the votes from each of the polling stations for the second time. The first tallying is done at the constituency level.

The original forms 37As, 37Bs and 37C were produced in Court. My view is that the form 37Bs are simply tallying sheets. The results are found in the forms 37As. The County Returning officer testified that he received all the forms 37As and tallied the results from those forms. The form 37C gives the results from each polling station.

My view about the whole issue of forms is that the petitioners have concentrated more on the physical

appearance of the forms than on the contents thereof. The Blacks' Law Dictionary define the Word "**form**" as follows:

The outer shape or structure of something, as distinguished from its substance or matter; courts are generally less concerned about defects in form than defects in substance.

It should not be lost that the signing of the forms by the party agents is voluntary. There is no penalty if the agents fail to sign the form. Therefore, even if we assume that the forms 37Bs were not properly signed or signed by people who did not verify the results contained in those forms, there is the plain fact that the results are captured in the forms 37As which are also captured in the form 37C. Further, there is no evidence that the results in the form 37Bs are different from those in the forms 37As and C. The signing of the forms by the party agents gives credibility to the results. It was explained to the court that the forms 37As are contained in an already printed booklet. They are filled by hand. The forms 37Bs and 37C are downloaded, filled and printed. It is possible to get a printed copy which is not signed. It is equally possible to get a copy which is printed and signed without handwritten amendments. The form 37B for Saku that has been attached in the petition shows that it was produced after the results of Ibrahim Dambi had been corrected from 48 to 51 votes. The form was printed and supplied to the petitioner without any signatures. The same serial number, codes and results are indicated in the form. That cannot be an irregularity to warrant nullification of the results.

(iii) **Party Agents**

The petitioners contend that their party agents were barred from participating in the elections. They were denied the forms 37As at the polling stations. They were kicked out of the polling stations. It is further stated in the petition that presiding officers refused to ensure that the votes being counted were verified by the FAP agents who were present. The counting room had no electricity and the provided lanterns were deliberately switched off. Counting was done through the use of light from mobile phones. Further, the petitioner's agents were denied the right for a recount when sought.

PW4 and PW5 were party agents for FAP. PW6 was a party agent for the ThirdWay Alliance Party. PW5 did not testify that he was kicked out of the Saku Primary School polling station. **PW7, NASRA IBRAHIM IBREN**, testified that at Ali Huda polling station, the FAP agent, Mohamed Nyuko, was barred from accessing the station. It is PW4's evidence that he was kicked out of the Laisamis tallying centre. PW6 captured the incident at Laisamis tallying centre on a video.

The defence evidence is to the effect that no party agent was prevented from participating in the elections. **DW10 JILLO BORU** was the presiding officer at Al-Huda Primary school. It is his evidence that there were many party agents in the room and they agreed that each party be represented by one agent. One FAP agent remained while Mohamed Nyuko went out. When PW7 complained, Mohamed Nyuko was allowed into the room and the other FAP agent went out.

It is the evidence of **DW11 JAFFER GALGALO HALAKE** that he could not provide the party agents with the forms 37As as the agents were to get those forms from the polling stations.

The entire petitioners' evidence does not prove that any single agent was stopped from participating in the election. No single agent testified that he was barred from witnessing the election process. Even Daudi Kifile who seems to be quite alert to his political rights informed the court that he was not evicted from the polling station.

Section 2 (a) of the Elections Act defines ***an agent as a person duly appointed by a political party or an Independent candidate for the purposes of an election.*** It is obvious that a candidate in an election cannot be in all the polling stations during the election period. A political party appoint agents to be their representatives during the elections. Agents are recognized by the law. Section 30 of the Elections Act provides for the appointment of party agents. If the political party does not appoint an agent, a candidate is allowed to appoint his/her own agent. In the book **DOABIA & DOABIA, laws of ELECTIONS AND ELECTION PETITIONS** by Justice T.S.Doabia, former High Court Judge of India, 5th edition,

the author explains an agent as follows:-

Meaning of “election agent”. The word “election agent has not been defined. Generally speaking, a person who manages the business of the election contest, may be termed as an election agent. The object of appointing one is that the affairs of the election should be carried on in the light of day; that there should be a respectable and responsible man, responsible to the candidate and to the public who shall be responsible effectively for all the acts done in procuring the election and who can be made responsible for conducting and managing the election affairs.

In the case of **BWANA MOHAMED BWANA –VS- SILVANO BUKO BONAYA & 2 OTHERS [2013]eKLR**, the Court had this to say on party agents:

“The role of an agent in a polling station is a legal requirement which must not be taken lightly. A vigilant polling agent would detect some wrongful acts at a polling station. He could initiate a complaint at the polling station or tallying centre within minimum delay. Providing the agents with Form 35 makes their work easier and tallying process manageable. An agent without results is like a blind mouse as he goes to the tallying centre. The empowerment by the Commission is critical to the work of the agent. An agent ceased to be of any use to his candidate or party if he lacks the tools.”

Doabia (Supra) states that a candidate should be very careful while selecting his/her agent. The author states as follows:-

“The candidate must take reasonable precautions to see that he selects a proper person as his election agent, who has not been guilty of any corrupt or illegal practices and who will not commit these offences in the future. The candidate by seeking election seeks an office of trust for the benefit of the public and so it is his duty that he should engage a trustworthy agent who should be a respectable and responsible man. The candidate should know that his fortune, his position and his character are entrusted to a great extent to his election agent whose ignorance or carelessness may give rise to serious consequences. Consequently, the election agent should be a man of position, responsibility and experience in the conduct of elections and must have a good deal of knowledge of the election laws. He should be a man of sufficient strength and character, and should be capable of resisting the temptation of commission or attempt to commit election offences and corrupt practices. On the other hand, he should be capable of putting a stop to the various illegal practices in an effective manner.”

An analysis of the forms 37As from the 384 polling stations show that FAP agents signed 298 forms out of the 383 stations which posted results. They were entitled to those forms. No agent testified that he was denied the form 37A. I am of the same view that apart from seeing through the voting process and counting of the votes, an election agent does great deservice to his candidate if he/she goes away from the polling station without a copy of the form used to declare the results. Ordinarily, agents are paid by their appointing parties or candidates. It would be proper for the political party or candidate to insist on being supplied with the results declaration form by the agent before settling the agent’s dues. The whole essence of having agents is to ensure that the results announced at the polling station remain the same results at the constituency tallying centre and County tallying Centre. Sending the results by way of text messages can only be a temporary measure just like transmitting results by the presiding officer electronically. The physical forms are the most crucial documents. If a candidate can obtain all the forms from the polling stations, he/she will be able to know the outcome of the election by making his/her own tally.

Going back to the Petitioners’ issue, it is clear to me that the FAP agents were greatly involved in the election process. In some polling stations, two FAP agents signed the form 37As. An agent who signs the forms does confirm that he/she was present when the results were announced. It can therefore not be alleged that such agents were denied the right to participate in the election or were evicted from the polling stations.

There is the twin issues of agents being denied the form 37As or right of recount. No agent testified to that effect. The big number of FAP agents who signed the forms 37As confirm that they were satisfied with the results. They saw through the entire process. No one testified that he was denied the form 37A. PW3 and PW4 went to the Laisamis tallying centre in the evening. The results started streaming in from 9.00pm. The retuning officer was announcing the results as he received them. It is obvious that not all polling stations in Laisamis had finished counting the ballots by 9.00pm and the presiding officers had agreed to deny all FAP agents the forms. What about North Horr where the 3rd respondent got a paltry 1,211 votes. Did the IEBC lock out the FAP agents in North Horr. I am satisfied that these allegation on party agents cannot be true. DW 13, a Maendeleo Chap Chap party agent testified that all agents at the Saku primary school polling station participated in the election.

The results in the forms 37A for Al Huda Primary school stream one are that Amb. Ukur Yatani got 360 votes in stream 1 and 357 votes in stream 2. The 3rd respondent got 89 votes in stream 1 and 93 votes in stream 2. The other candidates got 0 votes in stream 2 and three votes in stream 1. Mohamed Isaak who according to the evidence is the same Mohamed Nyuko signed the form for stream 1 as a FAP agent. Mohamed Amin Ali signed the form 37A for stream 2 as a FAP agent as well as Rehema Jamali, a FAP agent signed the stream 2 form. This proves that the FAP agents duly participated in the election. Mohamed Nyuko himself confirmed the results by appending his signature. This complaint has not been proved.

(iv) Voter Registers

The Petitioners contend that the manual voter registers were not used during the election. In some poling stations, the registers were returned intact. Mr. Walukwe maintains that the presiding officers failed to mark in the manual register the fact that voters were assisted. Further, those voters who could not be identified biometrically were to be identified through the use of the manual register.

Regulation 9 (e) states as follows –

In case the electronic voter identification device fails to identify a voter the presiding officer shall-

- (i) Invite the agents and candidates in the station to witness that the voter cannot be identified using the device;***
- (ii) Complete verification Form 32A in the presence of agents and candidates***
- (iii) Identify the voter using the printed Register of votes; and***
- (iv) Once identified proceed to issue the voter with the ballot paper to vote.***

The evidence of the 2nd respondent is that if the voter could not be identified through the biometric Kit, or alphanumerically or by way of the supervisory mode, then such a person could not vote. The reasoning is that the same register found in the Kiems Kits is the same printed register. My understanding of the process is that if your fingers could not identity you, then your identity card could be scanned, if that process failed, then your identity card number would be logged in, if that also failed, then your name cannot be found in the voter register. The second respondent testified that everyone who voted was identified by the Kiems Kits. That is a reasonable explanation. Even if a presiding officer were to check a voter's name in the manual register, if the voter could not be picked by the machine in the three ways, it was automatic that he could not be in the manual register. When the voter is registered, he used the same fingers and identity card for purposes of identification. If the fingers could not identify him, then the identity card ought to pick such a person when scanned or its number logged in.

On the issue of assisted voters, the manual voter registers were produced in Court. There is no evidence from the Petitioners that in a specific polling station, the voter registers were not marked. Regulation 72(b) requires a presiding officer to record on the register that the voter has been assisted. Can the election be nullified for failure to mark the register that a voter has been assisted? In my opinion such an

anomaly cannot be a ground to nullify an election. Even if the register is marked, the vote remains secret. One cannot conclude by seeing the marking on the register that the assisted voters voted for a particular candidate. The question is, what counts? The vote or the mark on the register? Although an election is a process, it should not be lost that the process is a chain. One cannot pick one action, fault it and call for the cancellation of the results. The assisted voter too would like to know the results of the election. Telling him that we forgot to mark the register that you were assisted and therefore we cancelled the results cannot be held to be justice. Even the assisted voters were identified through the use of the Kiems Kits. They did cast their votes which were counted and cannot be differentiated with the votes of those who were not assisted.

The petitioners called for the manual registers. It was upon the petitioners to peruse the registers and point out any irregularity. The registers were brought to me for safe keeping and all of them were in hard covers without their wraps. I do find that the petitioners' contention on this issue has not been proved.

V. Violation of the Right to vote and voter disenfranchisement

It is the Petitioner's contention that some voters were disenfranchised despite having been duly registered to exercise their political rights. PW1 testified that he visited some polling stations in Moyale and found voters who had been stopped from voting despite the fact that they were registered voters. His attempts to have them allowed to vote failed. He prepared a list of 38 people which is annexed to his affidavit. **PW2 SHARU AYALA GHACHU**, testified that he went to Fatul Bahr Madrasa polling station and was not allowed to vote.

DW8, ALI GODANA GALGALO was the presiding officer at St. Mary's polling station in Moyale. It is his evidence that he checked the registration status for **ADAN MAULO SHAME** and **MOHAMED RULA MASKO** and found that they were registered voters. **DW9 OSMAN ABDI** was the presiding officer at Baraza Park. He saw PW1 and PW7 at the polling station. PW1 alleged that their supporters had been denied their right to vote. **DW 14 OMAR ABDI BADO** was the Jubilee party agent at St. Mary's polling station. His evidence is that no unregistered voter was allowed to vote.

Section 13 of the Elections (Registration of voters) Regulations, 2012 provides for application for new registration. The registration officer is supposed to collect biometric data of the persons applying for registration. Section 13A(4) of the same regulations provide that the applicant shall be issued with an acknowledgement slip upon registration

Sections 5(3) and 5(5) of the Election Act state as follows:-

(3) Any citizen of Kenya who has attained the age of eighteen years as evidenced by either a national identity card or a Kenyan passport and whose name is not in the register of voters shall be registered as a voter upon application, in the prescribed manner, to the Commission.

(5) The registration officer or any other authorized officer referred to in subsection (3) shall, at such times as the commission may direct, transmit the information relating to the registration of the voter to the Commission or inclusion in the Register of Voters.

It is clear from the provisions of Section 5(5) that upon one being registered, the registration officer is supposed to transmit the information relating to the registration of the voter to the commission for purposes of inclusion in the register. It is therefore possible that one can be registered but still find his name not to be in the voters register. That is why section 6 calls upon members of public to inspect the voters register for purposes of rectifying the particulars in the register. Section 10 of the Elections Act provide that anyone whose name and biometric data are entered in a register of voters in a particular polling station and who produces the same identification document used during registration shall be entitled to vote.

The above provisions clearly stipulates that even after one is registered, that is not the end of the process. There is need to be included in the voters register. Registration as a voter is not automatic inclusion in

the register. It is logical that the voter expects the IEBC officials to complete the process. However, a curious voter should be courageous enough to verify his registration status as provided under section 6 of the Elections Act.

The evidence shows that those who alledged to have been registered could not be traced in the voters register. Even if we can assume that they had applied for registration, their biometric data was not sent to the commission for inclusion. This can be blamed on the IEBC staff. However, the candidate in the election cannot be blamed for that anomaly. There is evidence that some of the 38 people in PW1's list were not registered voters. One Hassan Yayo Godana was a registered voter in Kiamaiko ward, Mathare Constituency in Nairobi county.

The first petitioner testified that he saw five young women who were denied their right to vote because their fingers could not be detected by the machines. It could be possible that those voters could not vote as it is only those who were identified as voters who voted. Can it be said that there was a deliberate policy by the IEBC to stop certain people from voting. Once a voter goes to the polling station, he is not asked whom he/she would like to vote for. The first IEBC clerk deals with the identification of the voter before a voter is allowed to proceed with the other processes. It cannot be held that the identification clerk knew that some voters were going to vote for candidates other than the 3rd respondent and opted to stop such voters from exercising their rights to vote. It is the IEBC which calls upon Kenyans to go to the polling stations and cast their votes. The same IEBC cannot stop those who respond to such calls from voting. I am satisfied that those whose names were not found in the voters registers were not allowed to vote. The presiding officers could not simply allow people holding acknowledgment slips to proceed and vote. A voter should go the extra mile of verifying his registration status before going to the polling station. I am in agreement with the holding in the case of **JAMES GICHUHI WANYOIKE V FRANCIS OBINGO WERE & 2 OTHERS [2013] eKLR** when the court held:

Furthermore, possession of a voters card is not perse evidence that such a voters name is in the register. Under section 6 of the Elections Act, voters are allowed to inspect the register within a given period and have their names confirmed to be in the register. There is no evidence that the four witnesses who swore affidavits in support of the Petition's case ever verified their registration status.

It is my finding that there was no disenfranchisement of voters. All eligible voters were allowed to vote.

VI. Security of Election Materials

The Petitioners maintain that the Election materials were not properly secured. Some ballot papers were found scattered in Saku constituency. Some boxes were broken while some had no seals or their seals were broken.

This court issued orders for the preservation of the election materials. The Deputy Registrar prepared a report. The report of the Deputy Registrar gives the following picture:

CONSTITUENCY	No. of Ballot Boxes	No. of Ballot Boxes found Intact	No. of Ballot Boxes with more than one Broken seals	No. of Ballot Boxes with one Broken seal.
SAKU CONSTITUENCY	68	68 Intact	NIL	3
NORTH HERRING CONSTITUENCY	101	100 Intact 1 Polling Station no voters turn out.	NIL	4

LAISAMIS CONSTITUENCY	79	78 Intact 1 Ballot box lid cover Slightly broken but the content is Intact	1	2
MOYALE CONSTITUENCY	136	136 Intact	1	11

From the above report, it is clear to me that the election materials were properly secured. There is the issue of the SD cards. The IEBC provided about 245 SD cards. The court order did not include North Horr which has 101 Polling stations. The statutory forms were produced in court together with the voters registers. All the materials were found to be in good order. I am satisfied that all the election materials were found intact and in good condition.

VII. Gazettement of Jaffer Galgalo as the Laisamis Constituency Returning officer

The main contention is that the officer was initially gazetted for Isiolo North Constituency. He is from the Borana community and was transferred to Laisamis at the prompting of the 3rd respondent. According to PW3 and PW4, the officer ejected them from the tallying centre and told them that the election had already been won. The implication from the petitioner’s contentions is that the officer was partisan.

The evidence on record is that the Laisamis Constituency Returning officer was initially gazetted for Isiolo North constituency on 5th May 2017. There is a corrigenda dated 10th July 2017 which transferred him to Laisamis. His work was to simply tally the results from the forms 37As and compile the form 37B. There is no evidence that the officer was partisan. He was not at the polling station. There is no dispute that the results in the forms 37B are different from those in the form 37As or 37C. I find this allegation to be devoid of merit.

VIII. Variance in Results for the different polls

It is contended that there is difference in the results for the six polls. The petition gives the following comparison

- (i) Presidential 112,399 votes cast
- (ii) Gubernatorial 103,514 votes cast
- (iii) Senatorial 108,948 votes cast
- (iv) Women Representative 106,094 votes cast

The petition itself give the results of the election as follows:-

Total valid votes cast	110,685
Rejected votes	<u>2,417</u>
	<u>113,102</u>

This court had the advantage of handling the election petition for the Women Representative Election. At page 3 of that petition the results are tabulated as follows:

Total valid votes	110,708
Rejected votes	<u>1,644</u>
	<u>113,352</u>

The forms 37C and 39C for the two elections of Governor and Women Representative give the results as follows:

Governor: Total Valid votes	110,683
Rejected votes	<u>323</u>
	<u>111,006</u>

Women Representative: Total valid votes 110,628

Rejected	<u>330</u>
	<u>110,958</u>

The above tabulation gives a comparison of the two elections. The C series forms give a difference of 48 votes for the entire county. More people are shown to have voted for the Governor than for the Women Representative. The difference is minimal, the difference can be attributed to stray votes that were deposited in the wrong ballot boxes. The prisoners voted for the President only and that led to more voters for that poll. The petitioner's tabulation on the polls for the governor and Women member of National Assembly is incorrect. The results in the forms C series give a small margin of 48 votes. That cannot be regarded as an irregularity which should call for the nullification of the election. The source of the results for the other polls is not known. The Court cannot rely on those figures as they were not provided by the IEBC.

II. Whether the Marsabit County Gubernatorial elections were conducted in accordance with the Constitution, Electoral Laws and Regulations

The evidence on record establish that there were 141,708 registered voters in Marsabit County during the 2017 general elections. 111,006 did cast their votes for the governor's poll. This represents 78.33% voter turn out. This is a good turn out for such a vast and dry county where pastoralism is the main source of livelihood The 1st respondent had 384 polling station. Only Yaa Algana mobile polling station in North Horr which had three (3) registered voters did not have any voter turning up. There is the issue that the manual voter registers were not utilized. The evidence of the 2nd respondent is that all the voters were identified using the Kiems Kits. There is no evidence that any registered voter who turned up was stopped from voting. The petition contends on one hand that those voters who were on the queue after 5.00pm were not allowed to vote. On the other hand, it is contended that the scrutiny of the SD cards found that over 8000 people were found to have voted after 5.00pm. The North Horr SD cards were not scrutinized as it was not included in the court order. There are 101 polling stations in North Horr. A simple estimation of the 8000 voters who voted after 5.00pm in Laisamis, Saku and Moyale which has a combined total of 283 polling stations would give an average of 28 voters per polling station. Even if more than 100 voters in a single polling station voted after 5.00pm, that cannot be held to be non-compliance with the law. The polling stations were to open at 6.00am and close at 5.00pm. Those who were on the queue at 5.00pm were allowed to vote. It is obvious that not all polling stations opened at exactly 6.00am. There is no limit on the extended period. The only limit is that the last person who was on the queue after 5.00pm should be allowed to cast his/her vote.

The first petitioner testified that at Turbi primary school, one stream closed earlier than the other. Further, illiterate voters queued on the wrong stream and when they were directed to the correct stream, it was too late. The results for Turbi primary stream one show that Amb. Ukur Yattani got 386 votes while

the 3rd respondent got 2 votes. There were 551 registered voters. 474 voted. This represents 86% voter turnout. In stream 2, Ambassador Ukur Yattani got 394 votes. The 3rd respondent got 2 votes. There are 551 registered voters and 471 turned up to vote representing 85% voter turn up.

It is the 1st petitioner’s evidence that at Yaa Galbo mobile polling station the Kiems Kits failed and the replacement was brought at 3.00pm. By then some voters had left. The station has 248 registered voters. 195 turned up representing 78.62%. The 3rd respondent got 0 votes while Amb Ukur Yattani got 187 votes.

It is the 1st Petitioner’s futher evidence that at Wolena Baya Mnayatta polling station voters were denied their right to vote. There are 144 registered voters and 102 voted. This is 70.83%. Voter turn out in a mobile polling station. The 3rd respondent got zero votes while Amb. Ukur Yattani got 97 votes. The FAP agents signed the forms 37As for Wolena Baye and Turbi primary (both streams).

The contestations by the 2nd petitioner concern mainly the transmission of the results; the alleged mismatch in the results of the various polls. He contends that 31 polling stations had no data entered on the public portal for the governor thereby affecting 12,358 votes. A mismatch is alledged to have occurred in 246 out of the 384 polling stations. I have had the advantage of reading the judgment of Justice Muchelule in Machakos Election Petition No.1 of 2017, **WAVINYA NDETI & PETER MATHUKU –V- IEBC & 2 OTHERS** part of the judgment read as follows:

“instead they relied on an analysis prepared by one Dr. Noah Akala of the results of the Machakos gubernatorial elections as posted in the IEBC portal the Forms 37A to C as well as all other election materials. It was pleaded, and stated by the 1st petitioner, that Dr. Akala’s analysis had shown that going by the evidence on the portal, out of the 1332 polling stations, 109 polling stations had no data entered and this had affected 51,566 registered voters; that 5 polling station had voter turnout higher than the number of registered voters; that out of the 1332 stations, in 1157 there was a mismatch in the total number of votes cast for each of the 6 elections (affecting 552,283 voters); that from the search, out of the eight constituencies, only two Forms from two constituencies (Kangundo and Kathiani) accounting for 108,384 registered voters had been uploaded, and that there was no Form 37B uploaded for the entire Machakos County. Dr. Akala’s further analysis had allegedly shown that on checking the Forms 37A received from the IEBC portal and those from the 2nd respondent, there was revealed glaring differences and inconsistencies between the Forms ranging from the presiding officers and the deputy pressing officers not signing, mismatch in the tallies, and different Forms signed by different presiding officers and deputy presiding officers, all affecting 50,000 valid votes.

The allegations by Dr. Noah Akala in this matter are similar to those made in the Machakos gubernatorial election Petition. There is the deposition that FAP agents did not sign the forms 37As. Some form were not signed by any agent and others were not signed by the presiding officers or the deputies. Only one form for Dibu-Dadacha mobile was not signed by the presiding officer. The 3rd respondent got 295 votes while Amb. Ukur Yattani got 10 votes. My tabulation of the forms 37As signed by FAP agents in all the four constituencies is as follows:

SAKU: SIGNED BY FAP AGENTS

No.	POLLING STATION	ADANO UMURO SORA	ALI MOHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
1.	KUBI QALLO MOBILE	0	178	0	0

	010-047-0233-014 OF 1	1				
2.	GOF CHOPA MOBILE 010-047-0233-011 OF 1	1	0	28	0	0
3	NASIKAKWE MOBILE 010-047-0234-033 OF 1	1	10	154	230	2
4.	KARATINA NUR SCHOOL 010-047-0234-026 OF 1	1	1	56	109	2
5.	KARARE PRIMARY SCHOOL 010-047-0234-027 OF 1	1	8	86	212	3
6.	HULA HULA PRY SCHOOL 010-047-0234-025 1 OF 1	1	0	107	249	2
7.	MANYATTA ILMAN MOLU 010-047-0233-023 OF 1	1	0	119	0	0
8.	DIBAYU NUR SCHOOL 010-047-0233-020 OF 1	1	01	338	06	01
9.	MANYATTA HARO HUKA 010-047-0234-026 OF 1	1	00	73	01	00
10.	MANYATTA GUYO ARERO 010-047-0233-022	1	0	53	0	0

	OF 1				
11.	JALDESA ONE BOREHOLE 010-047-0233-017 1OF 1	0	70	17	0
12.	QACHACHA PRY SCHOOL 010-047-0233-015 1 OF 1	0	223	0	0
13.	MWANGAZA PRY SCHOOL 010-047-0234-012 1 OF 1	00	275	02	00
14.	BADASA PRY SCHOOL 010-047-0233-008 1 OF 1	0	396	12	0
15.	BADASA PRY SCHOOL 010-047-0233-008 2 OF 2	1	382	13	0
16.	SCHEME NUR SCHOOL 010-047-0233-009 1 OF 1	4	107	77	0
17.	MATAMUKA PRY SCHOOL 010-047-0233-010 1 OF 1	0	149	0	0
18.	BORU HARO PRY SCHOOL 010-047-0233-007 1 OF 1	00	478	04	01
19.	HEKIMA PRIMARY SCHOOL	0	490	74	0

	010-047-0233-006 OF 1	1				
20.	MANYATTA JILLO PRY SCHOOL 010-047-0233-001 OF 2	1 1	358	8	0	
21.	MANYATTA JILLO PRY SCHOOL 010-047-0233-001 OF 2	1 1	343	12	0	
22.	ST. PETER'S PRY SCHOOL 010-047-0233-002 1	1 1	477	6	1	
23.	GORO RUKESA PRY SCHOOL 010-047-0233-015 OF 1	0 1	561	06	0	
24.	GAR QARSA PRY SCHOOL 010-047-0233-004 OF 1	00 1	352	08	00	
25.	ALHIDAYA PRY SCHOOL 010-047-0235-044 OF 2	03 2	399	135	00	
26.	ALHIDAYA PRY SCHOOL 010-047-0235-044 OF 2	3 2	426	115	0	
27.	COMPLEX SOCIAL HALL 010-047-0235-041 OF 3	11 3	243	169	4	
28.	ST. JOHN PRY SCHOOL	2	180	167	2	

	010-047-0235-042 OF 2	1				
29.	KIWANJA NDEGE PRY SCHOOL 010-047-0235-038 OF 2	2 1	282	71	0	
30.	KIWANJA NDEGE PRY. SCHOOL 010-047-0235-038 OF 2	01 2	258	102	0	
31.	OLA DAABA PRY SCHOOL 010-047-0235-039 OF 1	1 1	61	169	0	
32.	MARSABIT FULL PRY SCHOOL 010-047-0235-040 OF 2	2 10	217	127	1	
33.	MARSABIT FULL PRY SCHOOL 010-047-0233-015 OF 1	4 1	223	120	0	
34.	KARARE MIX SCHOOL 010-047-0234-035 OF 1	3 1	104	161	1	
35.	FATHI MADRASA 010-047-0235-036 OF 2	1 8	276	125	1	
36.	FATHI MADRASA 010-047-0235-036 OF 2	2 9	274	123	1	
37.	SAKUU PRY. SCHOOL 010-047-0235-037 OF 2	1 2	201	263	0	

38.	LAKARTINYA SCHOOL 010-047-0234-034 OF 1	PRY 1	1	32	159	0
39.	KITURUNI SCHOOL 010-047-0234-029 OF 1	PRY 1	4	41	268	2
40.	SONGA SCHOOL 010-047-0234-030 OF 1	PRY. 1	8	81	404	0
41.	LEYAI PRY SCHOOL 010-047-0234-031 OF 2	1	01	07	153	01
42.	NAGAYO CHIEF'S OFFICE 010-047-0235-049 2 OF 2	2	3	278	90	3
43.	UPPER JAMIA SCHOOL 010-047-0235-046 OF 2	PRY 1	6	176	85	2
44.	UPPER JAMIA SCHOOL 010-047-0235-036 OF 1	PRY 2	1	170	96	3
45.	FURAHA SCHOOL 010-047-0235-047 OF 2	NUR 1	1	105	163	0
46.	FURAHA SCHOOL 010-047-0235-047 OF 2	NUR 2	02	93	175	00
47.	TAQWA		3	258	205	1

	INTERGRATED MADRASA 010-047-0235-037 OF 3	1			
48.	TAQWA INTERGRATED MADRASA 010-047-0235-048 OF 3	7 2	252	209	0
49.	TAQWA INTERGRATED MADRASA 010-047-0234-029 OF 3	08 3	239	196	0
50.	MOUNTAIN CHIEF'S OFFICE 010-047-0235-051 OF 2	02 1	166	108	01
51.	MOUNTAIN CHIEF'S OFFICE 010-047-0235-051 OF 2	0 2	155	111	1
	TOTAL	126	11,050	5,315	36

LAISAMIS: SIGNED BY FAP AGENTS

No.	POLLING STATION	ADANO UMURO SORA	ALI MOHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
1.	BUURI HARAMIA MOBILE 010-048-0238-040 1 OF 1	0	30	153	0
2.	DADABO AGUDHAN MOBILE 010-048-0238-038 1 OF 1	0	58	80	0
3.	HALISIRWA MOBILE	1	104	71	0

	010-048-0238-036 1 OF 1				
4.	AMBARA MOBILE 010-048-0240-063 1 OF 1	0	26	11	0
5.	ARGE MOBILE 010-048-0237-025 1 OF 1	1	5	184	0
6.	SEGEL MOBILE 010-048-0237-018 1 OF 2	1	208	95	0
7.	PALLO MOBILE 010-048-0236-013 1 OF 1	1	1	80	1
8.	SERIMA MOBILE 010-048-0236-009 1 OF 1	4	71	67	5
9.	GAS MOBILE 010-048-0240-063 1 OF 1	1	79	22	0
10.	HALUGUNDER NUR. SCHOOL 010-048-0240-057 1 OF 1	0	93	109	0
11.	LAISAMIS PRY SCHOOL 010-048-0240-053 1 OF 1	08	169	182	02
12.	LESITIMA BOREHOLE 010-048-0239-052 1 OF 1	2	123	87	0
13.	CATHOLIC NURSERY	3	188	200	0

	010-048-0239-051 1 OF 1				
14.	KAMBOE PRIMARY SCHOOL 010-048-0239-050 2 OF 2	4	115	356	0
15.	KAMBOE PRIMARY SCHOOL 010-048-0239-050 1 OF 2	3	106	337	1
16.	ELBAAROK PRIMARY SCHOOL 010-048-0239-049 1 OF 1	0	62	117	0
17.	LOKILELENG NURSERY 010-048-0239-048 1 OF 1	2	102	201	0
18.	LOGLOGO PRY SCHOOL 010-048-0239-047 1 OF 1	1	183	258	1
19.	MARTI NURSERY 010-048-0239-046 1 OF 1	0	59	139	02
20.	SANCHIR WATERPOINT 010-048-0240-057 1 OF 1	0	44	95	0
21.	NOMAD PRIMARY SCHOOL 010-048-0239-044 1 OF 1	159	187	112	2
22.	SARAI MANYATTA	0	30	46	0

	010-048-0238-043 1 OF 1				
23.	LEKUCHULA PRIMARY SCHOOL 010-048-0238-042 1 OF 1	0	117	28	0
24	TIRRIM PRY. SCHOOL 010-048-0238-039 2 OF 2	7	179	137	0
25	TIRRIM PRY SCHOOL 010-048-0238-063 1 OF 2	11	186	111	0
26	NAIRIBI PRY SCHOOL 010-048-0238-037 1 OF 1	0	81	105	0
27	MPAKAS PRIMARY SCHOOL 010-048-0238-037 1 OF 1	0	17	174	0
28	BALAH PRIMARY SCHOOL 010-048-0238-035 2 OF 2	0	217	83	0
29	BALAH PRIMARY SCHOOL 010-048-0238-035 1 OF 2	03	213	86	0
30.	ULAULI SCHOOL 010-048-0240-065 1 OF 1	1	29	69	1
31	SALT LICK CENTRE 010-048-0240-062 1 OF 1	2	142	84	0
32	KAMOTONY PRIMARY	0	176	70	0

	SCHOOL 010-048-0240-061 1 OF 1				
33.	MERILLE PRIMARY SCHOOL 010-048-0240060 1 OF 1	03	175	127	01
34.	LOSIDAN PRIMARY SCHOOL 010-048-0240-059 1 OF 1	1	25	137	0
35	LONTOLIO PRIMARY SCHOOL 010-048-0240-058 1 OF 1	0	207	116	0
36	KORR PRIMARY SCHOOL 010-048-0238-034 1 OF 2	1	263	54	1
37	LENGIMA PRIMARY SCHOOL 010-048-0238-031 1 OF 1	0	158	40	0
38	NAMAREI PRY. SCHOOL 010-048-0238-028 1 OF 1	2	163	89	0
39	NGURUNIT PRY SCHOOL 010-048-0238-028 1 OF 1	8	231	302	0
40.	GORLE NURSERY SCHOOL 010-048-0237-027 1 OF 2	1	7	66	2
41	GANGEISA PRIMARY	5	280	137	1

	SCHOOL 010-048-0237-026 1 OF 2				
42	KOROS WATER POINT 010-048-0237-024 1 OF 1	00	09	104	01
43	KURUNGO PRIMARY SCHOOL 010-048-0237-023 1 OF 1	2	8	69	1
44	TUNGUU NURSERY SCHOOL 010-048-0237-022 1 OF 1	1	3	177	1
45	KURKUM PRIMARY SCHOOL 010-048-0237-020 1 OF 1	5	144	20	0
46	KARGI SOCIAL HALL 010-048-0237-017 2 OF 2	3	171	84	0
47	TITUS MEMORIAL HALL 010-048-0236-015 1 OF 1	2	137	74	2
48	NGOROROI PRIMARY SCHOOL 010-048-0236-012 1 OF 1	0	121	17	0
49	LOSIKIRIASH PRIMARY SCHOOL 010-048-0236-011 1 OF 1	0	149	50	0
50.	LUAI WATER POINT	2	73	78	1

	010-048-0236-010 1 OF 1				
51.	LOIYANGALANI PRIMARY SCHOOL 010-048-0237-008 3 OF 3	4	83	272	11
52.	ELMOLO PRIMARY SCHOOL 010-048-0236-007 1 OF 1	0	25	20	0
53.	MOITE PRIMARY 010-048-0236-005 1 OF 1	31	32	233	11
54.	LARACHI CENTRE 010-048-0236-004 1 OF 1	1	54	20	0
55.	ARAPAL NURSERY SCHOOL 010-048-0236-003 1 OF 1	1	259	88	1
56	GATAB PRIMARY SCHOOL 010-048-0236-002 1 OF 1	2	224	142	1
57.	FARAKORE PRIMARY SCHOOL 010-048-0238-032 1 OF 1	1	269	141	0
	TOTAL	291	6,670	6,606	50

NORTH HERR: SIGNED BY FAP AGENT

No.	POLLING STATION	ADANO UMURO SORA	ALI MOHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
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1.	DUKAN PRIMARY SCHOOL 010-046-0228-001 OF 3	71	0	284	01
2.	DUKANA PRIMARY SCHOOL 010-046-0228-001 OF 3	80	00	270	00
3.	DUKAN PRIMARY SCHOOL 010-046-0228-001 OF 3	91	2	273	1
4	ELJIBO WATER HOLE 010-046-0228-002 OF 1	12	00	87	00
5.	BALESSARU CTR 010-046-0228-003 OF 1	82	0	273	0
6.	ARABTRIS AP POST 010-046-0228-005 OF 1	3	0	45	0
7.	BULLUK AP POST 010-046-0228-006 OF 1	08	00	39	00
8.	DIBANDIBA MAYATTA 010-046-0228-008 1OF 1	37	0	108	1
9.	RARA M ANYATTA 010-046-0228-009 OF 1	069	00	203	00
10.	BALESA PRIMARY SCHOOL	95	01	317	0

	010-046-0228-010 OF 1	1				
11.	DOSA AFURTOLE MANYATTA 010-046-0228-011 OF 2	77 1	00	211	00	
12.	DOSA AFURTOLE MANYATTA 010-046-0228-011 OF 2	81 2	00	206	00	
13.	KONYE MANYATTA 010-046-0228-012 OF 1	34 1	00	92	00	
14.	REJICHA MANYATTA 010-046-0228-014 OF 1	7 1	0	250	0	
15.	KUBI ADAI DAM 010-046-0228-015 OF 1	46 1	1	126	0	
16.	GOFF DUKANA 010-046-0228-017 OF 1	41 1	0	77	1	
17.	DIID GOLLA MOBILE 010-046-0228-018 OF 1	48 1	0	101	0	
18.	HURRI HILLS PRIMARY SCHOOL 010-046-0229-021 OF 1	79 1	31	271	1	
19.	BURARAT MANYATTA 010-046-0229-023 OF 1	0 1	0	217	0	

20.	BORR MOBILE 010-046-0229-023 OF 1	1	2	0	87	0
21.	KALACHA PRIMARY SCHOOL 010-046-0229-024 OF 2	1	52	00	322	00
22.	KALACHA PRIMARY SCHOOL 010-046-0229-024 OF 2	2	49	01	311	00
23.	HILDER NURSERY 010-046-0229-026 OF 1	1	42	0	70	0
24.	EL GADE PRIMARY SCHOOL 010-046-0229-027 OF 2	1	149	0	169	0
25.	EL GADE PRIMARY SCHOOL 010-046-0229-027 OF 2	2	145	00	182	03
26.	RAGE PRIMARY 010-046-0229-028 OF 1	1	136	0	202	0
27.	TULU DIMTU MOBILE 010-046-0229-029 OF 1	1	0	0	13	0
28.	RAMATA ROBI MANYATTA 010-046-0229-030 OF 1	1	53	1	142	0
29.	MAIKONA PRIMARY SCHOOL		90	0	365	0

	010-046-0229-031 OF 2	1				
30.	MAIKONA PRIMARY SCHOOL 010-046-0229-031 OF 2	113	3		364	0
31.	HIYOLE MANYATTA 010-046-0229-032 OF 1	14	1		152	0
32.	ARAMA DAM 010-046-0229-033 OF 1	57	0		138	0
33	BISIK MOBILE 010-046-0229-034 OF 1	24	0		105	0
34	FOROLE PRIMARY SCHOOL 010-046-0229-035 OF 1	22	9		412	2
35	ELBOR CENTRE 010-046-0229-037 OF 1	08	03		140	0
36	SHANKIRA NURSERY 010-046-0229-038 OF 1	19	0		221	0
37	TORICHA NURSERY 010-046-0229-039 OF 1	43	00		177	0
38	TULU DIMTU MOBILE 010-046-0229-029 OF 1	0	0		117	0

39	SELLE HAROBESA MOBILE	2	0	69	0
	010-046-0229-041 OF 1	1			
40	KURA WELLS	35	0	19	0
	010-046-0229-043 OF 1	1			
41.	DAKANE MOBILE	8	0	46	0
	010-046-0229-044 OF 1	1			
42.	CHALBI PRY SCHOOL	64	5	207	0
	010-046-0229-045 OF 2	1			
43.	CHALBI PRY SCHOOL	63	4	219	0
	010-046-0229-045 OF 2	2			
44.	TURBI PRIMARY SCHOOL	86	2	386	0
	010-046-0230-046 OF 2	1			
45.	TIGO SATELITE	9	0	267	0
	010-046-0230-048 OF 1	1			
46.	BOJI MANYATTA	10	0	303	0
	010-046-0230-049 OF 1	1			
47	BUBISA PRY SCHOOL	36	1	430	1
	010-046-0230-050 OF 2	1			
48.	SHURA WATER PRY	07	00	373	1
	010-046-0230-051	1			

	OF 1				
49.	LAGAWACHO MOBILE 010-046-0230-028 OF 1	1 1	0	11	0
50.	TULU DIMTU MOBILE 010-046-0229-052 OF 1	05 1	00	97	00
51.	SAPAASA AWAL DILO MOBILE 010-046-0230-054 OF 1	3 1	0	113	0
52	HURRENDERI MANYATTA 010-046-0230-055 OF 2	27 1	2	229	1
53.	HURRENDERI MANYATTA 010-046-0230-055 OF 2	18 2	0	235	0
54.	AAKANTI MOBILE 010-046-0230-056 OF 1	36 1	3	513	0
55.	DHEKUKU MOBILE 010-046-0230-057 OF 1	3 1	0	217	0
56.	YAA GALBO MOBILE 010-046-0230-058 OF 1	8 1	0	187	0
57	GAS PRIMARY SCHOOL 010-046-0231-059 OF 1	247 1	0	197	1

58.	ELTOKOCH WATER HOLE 010-046-0231-060 OF 1	1	93	0	82	0
59.	SARMO MANYATTA 010-046-0231-061 OF 1	1	56	0	58	0
60.	KOROMTO MOBILE 010-046-0231-062 OF 1	1	63	0	70	0
61.	KETE MAYATTA 010-046-0231-064 OF 1	1	108	0	51	0
62.	NORTH HERR PRIMARY SCHOOL 010-046-0231-063 OF 4	2	184	12	259	1
63.	NORTH HERR PRY SCHOOL 010-046-0231-064 OF 4	4	217	6	275	0
64.	URBAN URA MANYATTA 010-046-0231-065 OF 1	1	44	0	41	0
65.	WORMO NURSERY 010-046-0231-066 OF 1	1	73	0	58	0
66.	EL-BESO PRIMARY 010-046-0231-067 OF 1	1	262	0	204	0
67.	KARSA GATE 010-046-0231-071 OF 1	1	24	0	2	0

68.	GORISH NURSERY 010-046-0231-071 OF 1	1	62	0	100	0
69.	EL-BORU MAGADO 010-046-0231-072 OF 1	1	92	00	82	00
70.	KORKA PRIMARY 010-046-0231-074 OF 1	1	248	0	218	0
71.	SARMO MOBILE(DARIDE) 010-046-0231-075 OF 1	1	03	0	27	0
72.	BARCHUM GOS MOBILE 010-046-0230-055 OF 1	1	0	0	6	0
73.	EL-ISACKO MALA PRY SCHOOL 010-046-0231-077 OF 1	1	63	0	171	0
74.	ILLERET PRIMARY SCHOOL 010-046-0232-078 OF 2	1	10	227	123	6
75.	ILLERET PRIMARY SCHOOL 010-046-0232-078 OF 2	2	8	290	97	6
76.	OLOLO MANYATTA 010-046-0232-082 OF 1	1	2	72	39	1
77.	ILKIMIRE MANYATTA SCHOOL		05	39	15	00

	010-046-0232-083 OF 2	1			
78.	ELBOKOCH PRIMARY SCHOOL 010-046-0232-084 OF 1	05 1	225	28	3
	TOTAL	4,269	941	13,263	31

MOYALE: SIGNED BY FAP AGENT

No.	POLLING STATION	ADANO UMURO SORA	ALI MOHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
1	DABIYO MANYATTA 010-045-0227-099 1 OF 1	0	161	1	0
2	SOLOLOMADRASA 010-045-0223-025 2 OF 2	01	383	55	02
3	MANYAATA BURJI MADRASA 010-045-0223-027 1 OF 3	2	178	198	0
4	MANYATTA BURJI MADRASA 010-045-0223-027 2 OF 3	5	166	199	0
5	MANQATTA IBILE 010-045-0221-013 1 OF 1	0	36	14	0
6	MARAM MOBILE 010--045-0227-096 1 OF 1	1	208	9	1
7	MABLEBALLE MOBILE 010-045-0227-097 1 OF 1	0	46	0	1
8	KUKU BAR MOBILE 010-045-0227-098 1 OF 1	00	205	06	01

9	ARIA MOBILE 010-045-0222-026 1 OF 1	0	243	15	1
10	MATA SADEN MOBILE 010-045-0222-022 1 OF 3	0	137	20	0
11	GARBA MOBILE 010-045-0227-091 1 OF 3	2	407	2	0
12	MALKA DHOKE MOBILE 010-045-0221-008 1 OF 1	0	45	1	0
13	WALENSU FAKA MOBILE 010--045-0224-052 1 OF 1	3	87	348	3
14	HELLE DIMTU MOBILE 010-045-0226-079 1 OF 1	1	158	001	0
15	BUTI MOBILE 010-045-0226-076 1 OF 1	0	65	11	0
16	QONQOMA MOBILE 010-045-0226-086	00	128	14	00
17	HOGA MOBILE	02	345	35	01
18	MANYATTA BURJI MADRASA 010-045-0223-027 3 OF 3	01	163	199	06
19	ST. MARY'S PRIMARY 010-045-0223-028 1 OF 2	2	155	222	4
20	ST.MARY'S PRIMARY 010--045-0223-028 2 OF 2	4	176	176	3
21	HEILU PRIMARY 010-045-0226-029 1 OF 3	1	25	386	0

22	HEILU PRIMARY 010-045-0226-029 2 OF 3	0	08	419	0
23	HEILU PRIMARY 010-045-0223-029 3 OF 3	1	12	414	0
24	MANSILE PRIMARY 010-045-0223-030 - 1 OF 1	1	22	152	0
25	KINISA PRIMARY 010-045-0223-07 1 OF 1	0	1	393	0
26	K/RASHIDIN PRIMARY 010-045-0223-031 1 OF 2	2	226	150	4
27	ABBO MANYATTA CENTRE 010--045-0222-023 1 OF 1	0	260	2	0
28	ANONA NURSERY 010-045-0222-024 1 OF 3	0	130	0	0
29	HAMBALO DISPENSARY 010-045-0227-089 1 OF 1	0	73	1	0
30	DAMBALA FACHANA PRY SCH. 010-045-0227-090 1 OF 2	2	363	6	1
31	DAMBALA FACHANA PRY SCH. 010-045-0227-090 2 OF 2	01	353	01	01
32	BADAN RERO COMMUNITY HALL 010-045-0227-093 1 OF 1	0	97	5	0
33	MUKH GURRA PRY SHCOOL	40	163	03	0

	010-045-0227-094 1 OF 1				
34	GOLOLE NURSERY SCHOOL 010-045-0226-084 1 OF 1	1	315	33	2
35	KARBURURI PRY SCHOOL 010--045-0226-085 1 OF 1	0	145	6	0
36	DADACH ELELE PRY SCHOOL 010-045-0226-075 1 OF 1	0	127	4	0
37	FUNAN QUMBI PRY SCHOOL 010-045-0226-077 1 OF 1	0	155	0	0
38	BANALE WATER POINT 010-045-0226-078 1 OF 1	0	99	0	0
39	URAN GODHA PRIMARY SCHOOL 010-045-0226-080 1 OF 1	1	371	13	1
40	DADANOTA CENTRE 010-045-0226-081 1 OF 1	0	108	08	0
41.	QUICHA PRIMARY SCHOOL 010-045-0226-082 1 OF 1	2	92	0	0
42	MUSLIM PRY SCHOOL 010-045-0225-066 2 OF 2	2	107	159	2
43	WALDA PRIMARY SCHOOL 010-045-0226-067 1 OF 1	2	449	32	1
44	RAWANA PRIMARY	0	119	01	0

	SCHOOL 010-045-0226-068 1 OF 1				
45	ELLE BORA PRIMARY SCHOOL 010-045-0226-069 1 OF 1	0	281	0	0
46	URAN NURSERY SCHOOL 010--045-0226-070 1 OF 2	05	327	08	01
47	URAN NURSERY SCHOOL 010-045-0226-070 2 OF 1	01	319	10	04
48	URAN PRIMARY SCHOOL 010-045-0226-071 1 OF 1	2	579	2	0
49	GOLOLE PRIMARY SCHOOL 010-045-0226-072 1 OF 1	02	180	19	0
50	KARBURURI NURSERY SCHOOL 010-045-0226-073 1 OF 1	0	432	5	3
51	ITISAM MADRASA 010-045-0225-063 2 1 OF 2	05	141	237	01
52	MOYALE MADRASA 010-045-0225-064 1 OF 2	4	174	122	1
53	MOYALE MADRASA 010-045-0256-064 2 OF 2	5	176	119	2
54	SESSI PRY SCHOOL 010-045-0225-065 1 OF 1	1	510	15	4
55	BARAZA PARK	01	152	217	00

	010-045-0225-062 3 OF 3				
56	OLD HOSPITAL HALL 010-045-0225-061 2 OF 2	3	449	23	4
57	BARAZA PARK 010-045-0225-062 1 OF 3	04	150	240	0
58	MOYALE PRIMARY SCHOOL 010--045-0226-070 2 OF 2	4	245	80	8
59	AL HUDA PRIMARY SCHOOL 010-045-0225-060 2 OF 2	0	93	357	0
60	MOYALE PRIMARY SCHOOL 010-045-0225-059 1 OF 2	03	249	78	01
61	QALALIWE CENTRE 010-045-0226-072 2 OF 3	03	08	525	00
62	QALALIWE CENTRE 010-045-0224-057 3 OF 3	14	18	483	0
63	ODDA DISPENSARY 010-045-0224-049 2 OF 2	3	234	73	1
64	FUNAN NYATTA WATER POINT 010-045-0224-050 1 OF 1	01	04	191	01
65	NANA BORE HOLE 010-045-0224-051 1 OF 1	0	66	300	01
66	GUYO TIMO NURSERY SCHOOL 010-045-0224-053 1 OF 1	0	42	36	0

67	DABEL WATER SCHOOL	1	125	69	1
	010--045-0224-054 1 OF 1				
68	ILADU NURSERY SCHOOL	0	32	90	0
	010-045-0224-055 1 OF 1				
69	WATITI PRIMARY SCHOOL	0	140	1	0
	010-045-0224-056 1 OF 1				
70	GODOMA PRIMARY SCHOOL	0	263	224	1
	010-045-0226-072 1 OF 1				
71	GODOMA DIKO SCHOOL	0	45	302	0
	010-045-0224-045 1 OF 1				
72	GOLLA CENTRE	0	29	39	0
	010-045-0224-046 1 1 OF				
73	DABEL PRIMARY SCHOOL	11	297	186	01
	010-045-0224-047 1 OF 1				
74	DIRR DIMA PRIMARY SCHOOL	1	53	24	010
	010-045-0224-049 2 OF 2				
75	HADESA NURSERY SCHOOL	0	248	05	0
	010-045-0224-050 1 OF 1				
76	FUNAN NYATTA PRY SCHOOL	1	4	383	0
	010-045-0224-041 1 OF 1				
77	NANA PRIMARY SCHOOL	01	60	413	03
	010-045-0224-042 1 OF 1				

78	YABALO PRIMARY SCHOOL 010--045-0224-043 1 OF 2	0	81	305	03
79	ODDA PRIMARY SCHOOL 010-045-0224-039 3 OF 3	1	184	207	0
80	HEILU NURSERY SCHOOL 010-045-0223-033 2 OF 4	01	373	8	0
81	HEILU NURSERY SCHOOL 010-045-0223-033 3 OF 4	2	398	7	1
82	HEILU NURSERY SCHOOL 010-045-0223-033 4 OF 4	0	378	06	02
83.	MANYATTA PRIMARY SCHOOL 010-045-0223-034 1 OF 1	1	104	188	1
84.	FATUL BAHRI MADRASA 010-045-0223-035 1 OF 2	02	134	181	00
85	FATUL BAHRI MADRASA 010-045-0223-035 2 OF 2	02	134	181	00
86	HEILU SOCIAL HALL 010-045-0223-036 1 OF 2	01	488	20	04
87	HEILU SOCIAL HALL 010-045-0223-036 2 OF 2	0	504	22	2
88	MOYALE GIRLS SEC. SCHOOL	0	452	64	01

	010-045-0223-037 1 OF 2				
89	MOYALE GIRLS SEC. SCHOOL 010-045-0223-037 2 OF 2	0	407	87	02
90	FUNAN DIMO MANYATTA CENTRE 010--045-0223-038 1 OF 1	00	00	72	00
91	ODDA PRIMARY SCHOOL 010-045-0224-039 1 OF 3	02	163	221	01
92	ANONA PRIMARY SCHOOL 010-045-0222-017 2 OF 2	0	309	6	0
93	SOLOLO SEC. SCHOOL 010-045-0222-018 1 OF 1	2	480	63	4
94	RAMOLE PRIMARY SCHOOL 010-045-0221-019 1 OF 1	00	165	08	00
95	SOLOLO WOMEN GROUP CENTRE 010-045-0222-020 1 OF 2	7	338	63	4
96	SOLOLO WOMEN GROUP CENTRE 010-045-0222-020 2 OF 2	5	353	47	5
97	SOLOLO PRIMARY SCHOOL 010-045-0222-014 2 OF 2	11	427	55	0
98	MADO ADI PRIMARY SCHOOL 010-045-0222-015 1 OF 1	2	375	30	5
99	MOYALE BOY'S SEC.	02	211	68	00

	SCHOOL 010-045-0221-005 1 OF 2				
100	DADACHA LAKOLE PRY. SCHOOL 010-045-0221-006 1 OF 1	0	145	25	0
101	KURAA MANYATTA CENTRE 010--045-0221-009 1 OF 1	00	107	06	00
102	OILTA PRIMARY SCHOOL 010-045-0221-009 1 OF 1	0	77	10	0
103	BUTIYE NURSERY SCHOOL 010-045-0221-010 1 OF 2	1	415	38	3
104	BUTIYE NURSERY SCHOOL 010-045-0221-010 2 OF 2	2	421	37	01
105	TESO PRIMARY SCHOOL 010-045-0221-011 1 OF 1	1	104	1	0
106	AROSA PRIMARY SCHOOL 010-045-0221-012 1 OF 1	1	14	22	0
107	BUTIYE PRIMARY SCHOOL 010-045-0221-004 2 OF 4	3	503	40	1
108	BUTIYE PRIMARY SCHOOL 010-045-0221-004 3 OF 4	4	454	68	0
110	BORI PRIMAY SCHOOL	02	381	68	00

	010-045-0221-001 1 OF 1				
111	KATE PRIMARY SCHOOL 010-045-0221-002 1 OF 1	00	142	11	00
112	SOMARE PRIMARY SCHOOL 010-045-0221-003 1 OF 1	1	381	77	1
	TOTAL	213	23,128	11,262	126

TOTAL VOTES COMBINED SIGNED BY FAP AGENTS

CONSTITUENCY	ADANO UMURO SORA	ALI MUHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
SAKU CONSTITUENCY	126	11,050	5,315	36
LAISAMIS CONSTITUENCY	291	6,670	6,606	50
NORTH HERR CONSTITUENCY	4,269	941	13,263	31
MOYALE CONSTITUENCY	213	23,128	11,262	126
TOTAL VOTES FOR EACH CANDIDATE IN THE FOUR CONSTITUENCIES	4,899	41,789	36,446	243

There are sixteen polling stations where no agent signed the Forms 37As but the presiding officers signed. These are:

NOT SIGNED BY ANY AGENT

	POLLING STATION	ADANO UMURO SORA	ALI MOHAMUD MOHAMED	KANACHO UKUR YATTANI	WARIO IBRAHIM DAMBI
LAISAMIS	KORR PRY SCH. ILLAUT MOBILE -2 010-048-0238-033 1 OF 2		284	66	0
LAISAMIS	SATUR PRY SCH. 010-048-0236-014 1	14	63	311	5

	OF 1				
SAKU	SAKU PRY SCH. - 010-047-0235-037 2 4 OF 2		183	280	02
MOYALE	HEILU NUR SCHOOL -010-045-0223-037 1 0 OF 4		359	08	03
MOYALE	MADO ADI MOBILE SCH 010-045-0223-037 1 1 OF 1		521	8	3
MOYALE	QUALALIWE CENTRE 010-045-0224-057 1 OF 1	6	15	485	0
NORTH HARR	HEILU NUR SCHOOL -010-045-0223-037 1 20 OF 4		0	309	0
NORTH HARR	YAA ALGANA -010- 046-0228-019 1 OF 1	0	0	0	0
NORTH HARR	LAGLOKO MOBILE - 010-046-0229-020 1 1 OF 1		0	47	0
NORTH HARR	SASALA MANYATTA -010- 046-0229-036 1 OF 1	0	0	257	0
NORTH HARR	QILTA MANYATTA - 010-046-0229-042 1 11 OF 1		0	116	0
NORTH HARR	BURGABO PRY -010- 046-0230-047 1 OF 1	31	0	193	0
NORTH HARR	TURBI PRY SCHOOL -010-046-0230-046 2 74 OF 2		2	394	1
NORTH HARR	BUBISA PRY SCHOOL -010-046- 0230-050 2 OF 2	47	1	431	0
NORTH HARR	DARADE AP POST 010-046-0231-068 1	0	0	0	0

	OF 1				
NORTH HORR	ALIA BAY WILDLIFE P.HQS 010-046-0232- 079 1 OF 1	0	1	2	0
	TOTAL	16	211	1,429	2,907
					14

Given the evidence on record and the voter turn out, I do find that the 1st respondent fulfilled its constitutional and statutory obligations in relation to the conduct of the gubernatorial elections in Marsabit County. Voters turned up in large numbers. There was 76% voter turn out. That means more than seven (7) out of ten (10) voters turned up. Those whose registration was confirmed did cast their votes. The voters were tallied and transmitted to the constituency tallying centres and then to the county tallying centre. I do find that the election complied with the constitution and the electoral laws. The high voter turn out shows that despite the high level of illiteracy, there was voter education and sensitization.

III. Whether the respondents or their agents committed any election offence.

There are two main allegation against the 3rd respondent. PW5, Daudi Kifile Dalache testified that he saw voters being bribed by agents of the 3rd respondent at Saku primary school. He does not know those agents neither does he know those who were bribed.

It is a well-established principle that in election petition cases, where allegations are made which involve commission of crimes, the petitioner has to prove such allegations beyond reasonable doubt.

In the case of **MAHMUD SIRAT V ALI HASSAN ABDIRAHMAN & 2 OTHERS [2010] eKLR** there were allegations of bribery and the Court held as follows:

“The petitioner and his witnesses did not adduce any evidence to connect the persons who were allegedly bribing voters with the 1st respondent. The credibility of the petitioner’s case on the allegation of bribery would have been boosted if the petitioner procured a voter or voters to testify in support of his case in regard to the allegations of bribery. Having evaluated the evidence adduced in this regard this court is of the considered view that the allegations of bribery of voters by the 1st respondent was not proved.”

In the case of **SIMMONDS V KHAN [2008] EWHC 84** the court applied the standard of proof of beyond reasonable doubt where allegations of bribery were involve. The Court stated as follows:

“Thus the Court will apply-

(a) the criminal standard of proof to the charges that Mr. Eshaq Khan and/or his agents have been guilty of corrupt or illegal practices;

(b) the criminal standard of proof to the question of whether there has been general corruption.”

Similarly, in the case of **KARURI V MBOGO & ANOTHER (2008) 1KLR (EP)**, allegations of bribery were made. The court held as follows:

Paragraph 2: this dealt with allegations of bribery by the 2nd respondent and his agents. On this ground we heard the evidence of the petitioner that he saw 2nd respondent throw money in the air so that people could vote for him. The petitioner testified that he saw the 2nd respondent throw a bundle to shs.10,000/= in the air and people scrambled for it. We heard the evidence of one Kailanya (PW13) and Kamencho (PW15). All this was, of course denied by the respondent

and his witnesses. We have carefully examined the evidence in respect of this ground and we are of the view that this being a serious allegation connecting those involved with election offences a court would require a high standard of proof. We also find it odd that the 2nd respondent would throw a bundle of shs.10,000/= in the air for people to scramble for it. We are not satisfied that there is enough evidence to support this ground.

From the evidence on record, there is no proof of bribery. The evidence on record does not establish anything. No bribery took place. These are pure allegations which are devoid of any substance.

The other allegation involves that of violence. It is contended that the 3rd respondent breached the electoral code of conduct and was fined ksh.1 million. The effect of these allegations are that the 3rd respondent was not qualified to contest the position of a governor. Reference was made to Section 20 of the Election Offences Act which deals with breach of the Electoral Code of conduct. Section 20(3) provides that whoever breaches the Electoral Code of Conduct is liable for trial without prejudice to any proceedings in or consequent upon a petition. Section 24 (3) of the Election Offences act stipulates that anyone convicted of an offence under the act shall not be eligible for election or nomination in an election for a period of five (5) years.

The initial petition did not contain any allegation of violence. However, since the issue was allowed to proceed and was responded to, it is only prudent to deal with it. On 27th July 2017 the 2nd respondent wrote to the IEBC chairman informing him about skirmishes at Marsabit Town on Wednesday 26th July 2017. The letter reported that on 27th July 2017, the President and his deputy were in Marsabit town. The rival groups from the candidates clashed along the road. This attracted the attention of the President who appealed to supporters to maintain peace. A meeting was held and the 3rd respondent attended. Those in the meeting reiterated the need to observe peace during the electioneering period.

The IEBC electoral Code of Conduct enforcement committee met and delivered its judgement on 2.8.2017. The 3rd respondent was fined Ksh one million while Amb. Ukur Yattani was fined Ksh.3 million. Part of the decision reads as follows:

(iii) The committee hereby lifts the suspension on campaign activities in Marsabit county in respect of the two accused persons effective today: and

(iv) Should any of the accused persons herein fail to abide by the orders given then the Committee will not hesitate to disqualify such a candidate from participating as a candidate in the 8th August General Election 2017. (emphasis added).

The effect of the above decision is that the 3rd respondent was cleared to contest in the elections. The same applies to Amb. Ukur Yattani. These are not the only candidates who appeared before that committee. All those who were penalized by that committee were allowed to contest the elections. The issue of violence is now settled. It is not the candidates who acted violently but it was their supporters. There is no election offence committed by the 3rd respondent. It is the candidates' popularity which cause the clashes. An election is a political process which involves members of public. It is common knowledge that at times it becomes difficult to control one's supporters. I do find that the allegations of violence are an afterthought and cannot be the basis of nullification of the election.

Whether the petitioners have discharged the burden of proof to the required standard

The Petitioner raised several issues on alleged irregularities. These range from discrepancies in results on the portal and the forms, agents being discriminated, assisted voters being coerced to vote for Jubilee party candidates, registered voters not being allowed to vote, some polling stations registering more voters than the registered ones, the returning officer for Laisamis constituency having been irregularly appointed, presiding officers failing to mark the voter registers, election materials not being properly secured, bribery of voters among other complaints. It is my finding that all the above allegations as

explained in this judgement have not been proved to the required standard. The petitioner has failed to discharge the burden of proof. The petition remains to be mere allegations without evidence to support them.

Whether the 3rd respondent was validly elected as the Governor for Marsabit County

Although there were four candidates for the position of governor, Marsabit County, the results clearly confirm that the contest was mainly between the 3rd respondent and Amb. Ukur Yattani Kenacho. The 3rd respondent was declared the winner. There was over 76% voter turnout. All the votes were counted at the polling station and the forms 37As were signed by the party agents who witnessed the counting and tallying of the votes at the 383 polling stations where voters turned up. In one mobile polling station with three registered voters, no one turned up to vote. Out of the 383 forms 37As, only 16 were not signed by the party agents. This is about 4%.

All the forms 37As have been produced in Court and the petitioners had the advantage of evaluating them. Contrary to the Petitioner's contention, no single polling station registered more voters than those registered. All the results are available. The averments by the 2nd petitioner that the servers had no results while some polling stations did not post results cannot be true. The source of that information is not proved. Further, the 3rd respondent was declared as the winner on the basis of the results contained in the statutory forms and not in the portal. The results were declared at the County tallying centre using the form 37C.

Although election is a process, the candidate declared as the winner is the one who garners the highest votes. It is true that the election has to be evaluated both qualitatively and quantitatively. Where the qualitative aspect of the election are beyond blemish, then the court ought to acknowledge the quantitative aspect of the election which is represented by the election results. The purity of the election has to be maintained. The constitution and the electoral laws did not become casualties of the hotly contested polls. Everyone who goes to such a contest expects to be the winner. The losing candidate will always find fault in the process. At times such fault is found by the courts to be merited. Where the petitioner's alleged intractious are generalised and not proved, the court ought to uphold the will of that people. I am very satisfied that the results for the Marsabit gubernatorial elections held on 8th August, 2017 does represent the will of the good people of Marsabit. The 3rd respondent was validly elected as the governor of Marsabit County.

Having considered the entire evidence herein, it is my conclusion that the Petitioners have not proved their petition as required by the law. The petition even falls far short of establishing a case on a balance of probabilities. There are no irregularities that can be held to have bedeviled the gubernatorial election.

Each and every vote can be accounted for. The election process was transparent and it can be verified through the paper trail. The SD cards were available to the petitioners. My expectation was that the petitioners would have come up with results different from those on the statutory forms. All what Dr. Noah Akala could fish from the SD cards is allegations that in some polling stations there were more voters than those authenticated. Apart from Gatab and Losikiriashi polling stations, the alleged differences range from 1-4 votes, that at Gatab and Losikiriashi there was anomaly in registered voters and rejected votes, that some SD cards were not readable and that several polling stations continued to allow voters to vote after 5.00pm. 45 stations opened upto 10.00pm. All these alleged anomalies have been dealt with. The scrutiny of the SD cards just like the preservation of the electoral materials exercise, did not yield any irregularities. The election was conducted within the confines of the constitutional and statutory provisions. Even if we hold that 38 people in Moyale were unlawfully not allowed to vote as the petitioners and Hassan Marsa would like the court to believe, yet they were not registered voters, the underlying principle in elections is that it is meant to represent the will of the many voters and not the will of the few individuals. In the case of ***NAWA AKUFO-ADDO & 2 OTHERS V JOHN DRAMANI MAHAMA & 2 OTHERS, WRIT No. JI/6/2013***, cited in Kenya Supreme Court petitions Nos 2 and 4 of 2017, ***JOHN HARUN MWAU & 2 OTHERS V IEBC & 2 others***, the Supreme court of Ghana stated as follows:

“Beyond the individual’s right to vote is the collective interest of the constituency and indeed of the entire country in protecting the franchise”

All what I can say for now is that for the 2nd time round the cutthroat and competitive politics of the Marsabit gubernatorial elections have reared its head. The contest between the original petitioner, Hon. Amb. Ukur Yattani Kanacho, and the 3rd respondent, governor Ali Mohamud Mohamed, that was at play in 2013 was repeated in 2017. This time round the roles of “victor” and “vanquished” have been reversed. Only God knows what the scene will be in 2022.

FINAL ANALYSIS

An election is a long process and not a single day event. Before the voters appear at the polling station to cast their votes, there are several activities which are undertaken by both the IEBC, the candidates and the voters in preparation of the election. The IEBC conducts voter education, prepares the election materials and recruits extra staff for purposes of conducting the election. The political parties are expected to carry out their party nominations for their candidates. There is a period where campaigns are conducted. Candidates themselves are expected to meet the requirements necessary for their respective positions. The candidates have to present their nomination papers. The voters do participate in the voter registration exercise and verification of their registration status. They also participate in voter education and attend the political rallies. Ultimately on the election day the IEBC prepares the many polling stations and voters go to exercise their Constitutional rights to elect their political leaders. The votes are counted at each polling station and the results for each respective poll are announced. As party agents append their signatures on those forms. The Presiding officers physically carry the forms used to tabulate the results to the 290 constituencies in Kenya. The Constituency returning officers physically carry the forms to the County tallying centre. The result for the President, Governor, Women Representative and Senator are declared at the County tallying centre.

In short, the election process is quite protracted and in all stages statutory provisions are put in place to ensure that there is compliance by all the stakeholders.

Since human errors cannot be ruled out, those not satisfied with the process and the results are permitted by the law to proceed and petition the courts to nullify the election. The general presumption is that the election was conducted in accordance with the law unless the contrary is established.

In realization of the hectic process of conducting elections, the legislators came up with Section 83 of the Elections Act which states 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.

Section 83 of the Elections Act is not unique to Kenya. It establishes a very old principle that no election is to be voided due to non-compliance with any written law if the results are not affected. This is derived from the simple fact that it defeats logic to conduct elections which involve a very long process and is labour intensive only for purposes of rigging the elections in advance. That would defeat the whole concept of democracy. Several cases have dealt within the principle that elections should not be voided for noncompliance with the law if the results are not affected. It is true that an election encompasses both qualitative and quantitative elements. However, an election is a contest and if it is shown that all the candidates entered the election in an equal footing and the institution conducting the election was impartial, then the purity of the election has to be jealously protected.

The well known 1974 case of **MORGAN V SIMPSON[1974] ALL E.R, 722** has always been the point of reference when it comes, to Election Petition. In that case the Court stated as follows:

“an election court was required to declare an election invalid(a) if irregularities in the conduct

of the election had been such that it could not be said that the election had been so conducted as to be substantially in accordance with the law as to elections, or (b) if the irregularities had affected the result. Accordingly, where breaches of the election rules although trivial, had affected the result, that by itself was enough to compel the court to declare the election void even though it had been conducted substantially in accordance with the law as to elections. Conversely, if the election had been conducted so badly that it was not substantially in accordance with the election law it was vitiated irrespective of whether or not the result of the election had been affected.”

The Halsbury’s Laws of England, 3rd Edition, Vol. 14, page 150 states as follows:-

“An election ought not to be held void by reason of transgressions of the law committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election if the tribunal is satisfied that the election was notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, was not and could not have been affected by those transgressions. If, on the other hand, the transgressions of the law by the officials being admitted, the tribunal sees that the effect of the transgression was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the tribunal is then bound to declare the election void.”

In the Indian case of **RAHIM KHAN V KHURSHID AHMED [1974] 2 SCC 660**, the Court stated as follows

(i) An election once held is not treated in a light hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate.

(ii) An election is a politically scared public act not of one person or of one official, but of the collective Will of the whole constituency.

(iii) Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the returned candidate is adduced.

(iv) Indeed, election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

In the very old case of **WOOWARD V SARSONS (1875) LR 733**, Justice Coleridge CJ stated as follows:

“It has been so conducted that the tribunal which is asked to avoid it is satisfied, a matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws, - that is that the constituency have not infact had a fair and free opportunity of electing the candidate which the majority might prefer, or that there is reasonable ground to believe that a majority of the electors may, by reason of the irregularities in the mode of conducting the election, have been prevented from electing the candidate they preferred”.

The Petitioner raised several alleged irregularities in relation to the election. There are allegations that the results on the public portal are different from those on the forms 39Bs. The Petitioner’s evidence confirms that the results on the public portal indicate that the 3rd respondent is the winner. The response

to this allegation is that the results on the public portal were not used to declare the winner. Those results are derived from the electronic transmission from the polling stations. There is no guarantee that all the results transmitted to the public portal from the 384 polling stations reached the public portal or IEBC servers. Marsabit County is quite vast and the problem of network is common knowledge. That is why the law under regulation 82 makes a difference between the results which are transmitted electronically, which are categorized as provisional, and those which are physically taken to the tallying centres which are referred to as the “**actual results**”.

There is the alleged irregularity involving the assisted voters. There is no single assisted voter who testified. Even the petitioner’s own witness Daudi Kifile testified that he witnessed the illiterate voters being assisted although he added a rider that those who opted for the Jubilee Presidential candidate, then the other ballots were marked for the other Jubilee candidate. This is a mere allegation which is not proved. At Saku Primary school the results were in stream one and two. The petitioner got 160 and 168 votes. The 3rd respondent got 119 and 100 respectively. Seyere Christine Koreya got 149 and 159 votes respectively.

The allegation that the petitioner’s party agents were prevented from participating in the elections have also not been proved. Daudi Kifile was not removed from the polling station. **DW 7 Michael Logimare Lesargor**, a FAP agent, testified that he participated fully in the election process. No FAP agent testified that he was discriminated upon by the IEBC officials. That allegation is not proved.

The Petitioner contends that some votes were disenfranchised. PW4 Hussein Issa Woche, PW5 Sharu Aya Ghacho, PW6, David Gamate Shamo and PW7 Adan Mahulo Shame testified that they could not vote at St. Mary’s and Fatul Bahr polling stations. They testified that they were registered voters in those polling station. It is evident that some of the people indicated in the list of PW3’s affidavit are not registered voters. The complaints were mainly raised in relation to St. Mary’s, Fatul Bahr, Baraza Park and Kulafa Rashidin polling stations in Moyale constituency. No other voter from the other polling stations. I do find that this allegation has not been proved.

The other allegations involve differences in results of the six polls. I have already explained that the results of the gubernatorial and Women Representative does not give any difference. This cannot be a ground to nullify an election. It is quite difficult to create a balance sheet showing same number of voters; valid votes and rejected votes for all the six polls. If there is a very huge difference, then that can call for interrogation. However, there is no other data for the other polls for comparison. In any case the petitioner did not produce the actual results in form of the C series for the Presidential, Senate ad member of National Assembly for comparison. There is no request by the petitioner to produce those results. The Petitioner cannot allege that it was upon the 1st and 2nd respondents to produce those results. I am satisfied that the Petitioner has not discharged her burden of proof even to the ordinary civil case standard of on a balance of probabilities.

What orders on costs.

It is not the intention of the courts to penalize litigants whose election petitions are dismissed. It is these which have helped in the development of the Kenyan jurisprudence on election petitions. However, it should not be lost that election petitions are quite involving and parties incur costs. This petition was initially filed in Nairobi but was transferred to Marsabit. All the counsels had to travel from Nairobi to Marsabit, a distance of 530Km one way. At times the case had to proceed upto 8.00pm.

Rule 30 of the Election Petition Rules empowers the court to make final orders on costs. In view of the distance, it would be imprudent to cap the instruction fees and ask counsels to appear before the Deputy Registrar for the taxation of the other costs. Taking all the circumstances of the petition into account, I do order that the costs to the 1st and 2nd respondents shall be Ksh.2,500,000. Equally the costs to the 3rd respondent is assessed at Ksh.2,500,000. The two petitioners shall jointly and severally pay the total costs of Ksh.5million. This is full cost and not instruction fees.

Final Orders

(a) This Petition is hereby dismissed

(b) The respondents are awarded cost of Kshs.2.5million to the 1st and 2nd respondents and Kshs.2.5million to the 3rd respondent respectively.

(c) In line with Section 75 of the Elections Act, this court determines that the 3rd respondent **ALI MOHAMUD**

MOHAMED was validly elected as the Governor of Marsabit County. A certificate of the court under section 86 of the Elections Act to issue to the independent Electoral and Boundaries Commission and the Speaker of the Senate.

Dated, Signed and Delivered at Marsabit this 19th day of February 2018

S. CHITEMBWE

JUDGE