



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**ELECTION PETITION NO. 12 OF 2017**  
**(CONSOLIDATED WITH ELECTION PETITION NO. 10 OF 2017)**  
**IN THE MATTER OF ELECTIONS ACT, 2011**  
**IN THE MATTER OF THE ELECTION FOR MEMBER OF NATIONAL ASSEMBLY FOR**  
**NYARIBARI CHACHE CONSTITUENCY**

CHRIS MUNGA N. BICHAGE.....1<sup>ST</sup> PETITIONER

ZAHEER JHANDA.....2<sup>ND</sup> PETITIONER

JAMES F. O KENANI.....3<sup>RD</sup> PETITIONER

VERSUS

I.E.B.C.....1<sup>ST</sup> RESPONDENT

JULIUS MEJA OKEYO (RETURNING OFFICER).....2<sup>ND</sup> RESPONDENT

RICHARD NYAGAKA TONGLI.....3<sup>RD</sup> RESPONDENT

**RULING**

1. This ruling is in respect of 2 applications.

**1. The oral application by Learned Counsel for the 2nd and 3rd Petitioner seeking directions on an application dated 30th November, 2017 seeking to file missing exhibits.**

**2. The common application by Learned Counsels for the 1st, 2nd and 3rd Petitioner for adjournment on basis that Counsels seized of the conduct of trial are engaged elsewhere.**

2. On the 1st application seeking directions on the application dated 30/11/2017, I have perused the said application and the relevant Law.

3. The pre-trial in this matter was held on 5/10/2017. This is about 2 months ago. Rule 15(1) (a) to (j) was exhaustively complied with.

4. This matter was set down for hearing on 10th, 14th, 17th and 30th November and 1st December.

5. For various reasons the case did not proceed on 10th, 14th and 17th November necessitating

adjournment to today.

6. The matter is up for hearing today.

7. A perusal of the envisaged application clearly shows that by its very nature the application could have been brought before the commencement of trial.

8. **Rule 15 (2)** of the **Elections (Parliamentary and County Elections) Petition Rules** is very clear on this;

**“An election Court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference if the interlocutory application could have, by its nature, been brought before the commencement of the hearing of the Petition.”**

9. **Rule 8** of the **Elections (Parliamentary and County Elections) Petitions Rules** is clear on the contents of the petition. **Rule 12** is clear on the filing of affidavits.

10. Such filing as in paragraph 9 above must be filed in compliance with **Section 76** of the **Elections Act**.

11. On the whole, I am satisfied that the envisaged application is shut out by Rule 15(2) of the Elections (Parliamentary and County Elections) Petitions Rules.

12. It is one that I shall not allow within the meaning of Rule 15(2).

13. I proceed to strike it out.

14. On the application for adjournment, the grounds by both counsels are similar. That the counsels in conduct of the matter are engaged at Nairobi High Court and Siaya High Court.

15. The date herein was taken by consent of the parties.

16. There is no indication that the matters before my sister Judges' Courts were taken earlier.

17. How the Counsels concluded that this was the easier matter to adjourn is baffling.

18. This when the Court has lost substantial time in the hearing of the matter. We are now at the tail end of the time allowed within which to conclude petitions by the Constitution.

19. This is a lengthy petition. It is actually 2 petitions in one having been consolidated with Petition No. 10 of 2007. The number of witnesses is enormous.

20. This Court is dealing with 3 other petitions. The distribution of dates is complete and the scheduling of all activities has been done and indeed the schedule is already in the hands of the Principal judge.

21. This Court has no free days left to adjourn this matter to.

22. The timelines set in the Constitution are known to all and sundry. It behoves on the parties and counsels to organize their briefs appropriately.

23. The dates having been taken in Court and there being no compelling reasons, and noting the shortage of time left, I am completely unable to afford further indulgence to the parties. In any event, in Court present are counsels who have in the past appeared in the matter and they should be able to proceed.

24. Most importantly the Law is tilted against the granting of an adjournment.

**Rule 20(1)** provides;

**“Rule 20(1): Save in exceptional circumstances, once the hearing of a petition has commenced it shall proceed uninterrupted on a day to day basis until it is determined.”**

25. With the result that the 2 applications herein are unmerited and dismissed. The application dated 30/11/2017 is struck out. This petition to proceed to hearing as scheduled today.

**Dated, Signed and Delivered in Kisii this 30th day of November, 2017 at 10.20 a.m.**

**A. K. NDUNG'U**

**JUDGE**