



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

**FATUMA ZAINABU MOHAMMED.....PETITIONER**

**VERSUS**

**HON. PAMELA OWUOR OCHIENG.....1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. By her application dated 24/10/2017 the Petitioner herein withdrew her petition vide the leave of the court for the sole reason that she had family issues as well to reconcile with political leaders for the interest of the country.

2. The Respondents have filed their responses where in principle they did not oppose the said application save that they should be paid their costs. Mr. Ondiek suggested from the bar that they should be paid a sum of Kshs 100,000 as a commensurate compensation. Mr. Mboya on his part suggested that the Petitioner should pay the sum of kshs 500,000/-.

3. **Rule 30 of the Elections (Parliamentary and County Elections) Petition Rules 2017 states in Rule 30(2) (b) that:-**

*“When making an order under sub rule (1), the election court may-*

*(3) Impose the burden of payment on the party who may have caused an unnecessary expense, whether that party is successful or not, in order to discourage any such expense.”*

4. Having perused the pleadings herein, I do agree with the Respondents that they have done some serious work in response to the petition. Clearly, the Petitioner ought to have been diligent enough before filing this petition. I note that the Petitioner failed to deposit the security as required when she filed her petition. Clearly she was not serious.

5. Consequently taking into consideration the totality of the pleadings herein I shall allow her application dated 24<sup>th</sup> October 2017 and order that the Petitioner should pay a total sum of Kshs 300,000/- to the Respondents as follows;-

**(a) Kshs 200,000/- to the 1<sup>st</sup> Respondent.**

**b) Kshs 100,000/- to the 2<sup>nd</sup> Respondent IEBC.**

6. I have deliberately reduced the sum due to IEBC for I do not find that they had filed any response to the petition.

Orders accordingly.

Delivered, signed and dated at Migori this 30<sup>th</sup> day of November, 2017.

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**H.K. CHEMITEI**

**JUDGE**

**30/11/17**

**In the presence of;-**

**Sagana holding brief for Mboya for 2<sup>nd</sup> Respondent**

**Ang'awa holding brief for Ondiek for Petitioner**

**Nyauke - Court clerk**

**Ruling read in open court.**