



REPUBLIC OF KENYA
IN THE HIGH COURT OF KAJIADO
ELECTION PETITION CASE NO.1 OF 2017

MARK NKONANA SUPEYO 1ST PETITIONER

MESHANA OLE SIMEL 2ND PETITIONER

VERSUS

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

THE KAJIADO WEST CONSTITUENCY,

RETURNING OFFICER..... 2ND RESPONDENT

SUNKUYIA GEORGE RISA..... 3RD RESPONDENT

RULING

BACKGROUND

1. The applicants herein Mark Nkonana Supeyo (1st petitioner) and Meshana Ole Simel (2nd petitioner), moved this court vide a Notice of Motion dated 16th November, 2017 and filed the same day seeking orders as follows:

- 1. That application be certified as urgent.**
- 2. That scrutiny and audit of forms 35A and 35B from all the 148 polling stations within Kajiado West Constituency be done.**
- 3. That an order do issue for scrutiny of the Secure Digital (SD) Cards contained in KIEMS kit from the 148 polling stations stated in prayer 2 above.**
- 4. That an order do issue for scrutiny of all election materials contained in ballot boxes that were sealed as per the court's inventory from the polling stations stated in prayer number (2) above.**
- 5. That an order do issue for comparison of data record in the SD Cards to actual returns in forms 35A and 35B filed in respect of the a forestated polling stations.**

6. That the second respondent do avail for scrutiny all original polling station documents for the aforesaid polling stations.

7. That the court be pleased to issue an order for scrutiny and audit of forms 32A against KIEMS supervisor validation forms and KIEMS kits records in SD Cards in the respective polling stations.

8. That the honourable court be pleased to issue an order for the 2nd respondent to avail in court all unused forms 35A for Kajiado West Constituency.

9. That the honourable court be pleased to grant any such other orders as may be just and expedient in the circumstances.

2. Filed pursuant to Articles 35, 81, 86 and 159 of the Constitution, Sections 80(1) (d) and 82 of the Elections Act No. 24 of 2011 and rules 4 and 29 of the Elections (Parliamentary and County Elections) Petitions Rules 2017, application is premised on grounds on the face of it and affidavit in support deposed on 16th November, 2017 by the 1st applicant.

Applicants' Case:

3. Based on the grounds set out on the face of the application and the affidavit in support, it is the applicants' contention that after the close of their case and testimony of the returning officer (2nd respondent), sufficient ground and basis had been laid out to warrant an order for scrutiny.

4. Among the grounds relied on in advancing the prayer for scrutiny is the allegation that, pursuant to this court's orders dated 9th October 2017 directing the 1st and 2nd respondents to avail original forms 35A, 35B, SD Cards and preservation of election materials, 44 original forms 35A were not availed to the Deputy Registrar; that majority of those forms bore one IEBC stamp instead of two; that the forms 35A used in declaring results did not comply with prescribed statutory forms; that the said forms were not signed by the presiding officers, their deputies and authorized agents ; incorrect tallying results and lack of relevant security and accountability features.

5. The applicants further stated that, in some polling stations e.g. Inkuyan Primary Polling Station 1 of 1 Code no.097, Don Bosco 11 of 11 Code 109 and Olepolos 2 of 2 Code 008, the results posted in form 35B do not tally with what is reflected in forms 35A. They listed 30 polling stations which allegedly did not bear any IEBC stamp.

6. They further alleged that, most voters did vote without being identified by the KIEMS kit and that, after data from 11 SD Cards (KIEMS kits) out of the 12 disputed polling stations was converted into readable format in the presence of both parties courtesy of this court's order of 9th October 2017, six of them revealed discrepancies in terms of the total number of votes cast which were either more or less as opposed to the actual votes cast as per form 35A thus confirming their allegation that unregistered voters were allowed to vote. Some of the affected stations in this category were listed as Singaraine Primary Polling Station 1 of 1, Olepolos 2 of 2, Kenya Marble Quarry 2 of 2, Enkusero Keri Primary 1 of 1 and Leshuta 1 of 1.

7. The other ground heavily relied on to bolster a case for scrutiny is the fact that, after the court ordered preservation of election materials and resealing of ballot boxes, only 84 ballot boxes were identified from the form 35A stickers out of 148 Polling Stations. Sixty ballot boxes could not be identified as belonging to Kajiado West Constituency, four were missing and one was empty hence raising eyebrows and questions bordering on manipulation, tampering and interference with election materials thus undermining IEBC's credibility in preservation of election materials.

8. In support of their clients' application, counsel for the petitioners Ms Opiyo, Ms. Maumo and Mr. Havi, made oral submissions while relying on a list of authorities filed on 20th November 2017. Learned

counsels argued that, in compliance with Article 81 and 86 of the Constitution, Section 82 of the Elections Act and rule 29 of the Parliamentary Elections rules 2017, the applicants have laid out a firm foundation (basis) and grounds upon which scrutiny could be granted taking into account that the election exercise was not free and fair. They reiterated the applicants' averments in their affidavit in support and grounds on the face of it but basically relied on failure of the presiding officers, deputy presiding officers and agents in not signing the forms 35A; failure to stamp the said forms; discrepancies in results posted in form 35B from those in 35A; broken or missing seals on the ballot boxes and inaccurate tabulation of results.

9. Learned counsels made reference to the book authored by the Hon. Chief Justice of the Republic of Kenya Hon. Justice Maraga on Balancing the Scales of Electoral Justice in which scrutiny is defined as;

“.....a technical term, which refers to a court supervised Forensic investigation into the validity of the votes cast in an election and the subsequent determination of who ought to have been returned as the winning candidate.”

10. Further reference was made to the case of **Richard N. Kalembe Ndile and another vs Patrick Musimba Mueu and 2 others (2013)eKLR** in which the court ordered a scrutiny based on apparent errors whether by mistake and or deliberate considering the margin of votes which was less than 250 and that it was not necessary for the petitioners to prove to the requisite standard. To further buttress their argument, learned counsel Mr. Havi made reference to **William Maina Kamanda vs Margaret Wanjiru Kariuki & 2 others (2008)eKLR** case in which the court emphasized that scrutiny can be made at any stage of the hearing before final judgment whether on the court's own motion or if a basis laid requires so.

1ST and 2ND Respondents' Case

11. In response to the applicants' case, the 1st and 2nd respondents filed a replying affidavit deponed on 25th November 2017 by the 2nd respondent one Kwamboka Mogaka Florence in which the application for scrutiny was vehemently opposed arguing that, no sufficient basis had been laid out as required in law and that the application herein is bad in law, misconceived and an abuse of the court process. They claimed that, the 1st respondent did supply all form 35A as required by the court save for 44 forms which were in carbon copy which is as good as original. They contended that, stamping of forms 35A was not a legal requirement hence not mandatory.

12. They further averred that, there was no evidence led by the petitioners to prove that the forms used had no security features; that there were errors committed during tallying exercise; that agents were harassed or chased away as none of them testified and that the minor conflicting results revealed by the KIEMS kit as compared to form 35A was as a result of stray ballots.

13. As regards the missing four boxes, the 2nd respondent stated that the same have since been recovered from among ballot boxes stored for Kajiado East constituency hence a curable omission considering the huge volume of ballot boxes stored in the same warehouse. Concerning the unidentified ballot boxes without form 35A stickers, the respondent asserted that, each box has a seal which can be used to identify a box for a given polling station using the seals inventory which is in possession of the presiding officer and readily available.

14. In his oral submissions, Mr. Liko for the 1st and 2nd respondents also adopted the averments contained in the aforesaid affidavit contending that the applicants had not laid a basis as required in law to justify a scrutiny hence engaging the court on a fishing expedition. Counsel submitted that, all issues raised in the application as requiring scrutiny have adequately been addressed during the hearing and more particularly on cross-examination of the returning officer and the materials placed before court.

15. Counsel relied on various authorities enumerating the guiding principles a court ought to consider before granting an order for scrutiny and more particularly, a basis must be laid and that a petitioner

should not engage in a fishing expedition. Among the cases referred to in his list of authorities filed on 20th November 2017 are, **Gatirau Peter Munya vs Dickson Mwenda Kithinji and 2 others (2014)eKLR, Mohammed Mahat Kuno vs Abdikadir Omar Aden and 2 others (2013) eKLR, Raila Amolo Odinga & Another vs IEBC and 2 Others (2017) eKLR** and **Kakuta Maimai Hamis vs Peris Pesi Tobiko and 2 others (2013) eKLR**.

16. Mr. Liko distinguished the Richard Kalembe Ndile and Maina Kamanda cases quoted above arguing that the circumstances under which scrutiny was ordered in those cases are different and not relevant to this case. He further stated that, failure to supply original 44 forms 35A is not fatal as a carbon copy is as good as the original. He referred the court to Section 65 of the Evidence Act and an Indian authority in the case of **Prithi Chand vs State of Himachal Pradesh 1989 AIR 702, 1989 SCR(1) (123)** wherein the court held:

“.....besides, since the carbon copy was made by one uniform process, the same was primary evidence within the meaning of explanation 2 to Section 62 of the Evidence Act. Therefore, the certificate was clearly admissible in evidence”.

3rd Respondent’s case.

17. On his part, the 3rd respondent filed 7 grounds of opposition dated 21st November 2017 but filed on 22nd November 2017 and a replying affidavit deponed on the 21st November 2017 challenging the application for scrutiny on grounds that it has introduced all polling stations which were not pleaded in the petition hence introducing new issues notwithstanding the well-known principles that a party is bound by his or her own pleadings.

18. The 3rd respondent denied that there were irregularities or illegalities with regard to signing of forms 35A, calculation and transposition of results from form 35A to 35B. He further argued that, the petitioner did not disclose the source of his form 35B which is totally different from what IEBC had supplied to the court. He averred that, elections were free and fair and that the forms used to declare results were legal with all necessary security features. In a nut shell, he urged the court to find that there was no basis laid out to allow a scrutiny.

19. In submission, Mr. Masika relied on the grounds of opposition arguing that the application was not consistent with the grounds pleaded in the petition as it seeks to expand the scope of the petition and that it does not meet the threshold provided in Section 82 of the Elections Act and rule 29 of the elections (parliamentary and county) petitions rules 2017 in that no basis had been established.

20. Mr. Masika adopted Mr. Liko’s submissions and further relied on a number of authorities inter alia **Raila Amolo Odinga vs IEBC and 3 Others Election Petition 1/2017 Supreme Court of Kenya(supra), Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others (supra)** in which the court set out principles and or guidelines for granting a scrutiny. Counsel further relied on the case of **Jackton Nyanungo Ranguma vs IEBC and 2 Others (2017) eKLR** wherein the court held that election transmission is applicable only in presidential results.

Analysis and determination.

21. I have considered the application herein, affidavits in support and replying affidavits plus submissions by both counsels and authorities quoted thereof. The key issues for determination are; whether the applicants (petitioners) have established a case sufficient enough to warrant an order for supply of the election materials sought and secondly; whether a basis or a case for scrutiny has been made out to the required standard or degree.

22. The law relating to scrutiny is clearly set out in Section 82 of the Elections Act 2011 and rule 29 of the elections (parliamentary and county) petitions rules 2017. Section 82(1) provides as follows:

“An election court may, on its own motion or on an application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.”

Rule 29 aforesaid further provides thus;

Sub- Rule 1 – The parties to the proceedings may apply for scrutiny of the votes for purposes of establishing the validity of the votes cast.

Sub- rule 2 – on an application under sub-rule (1), an election court may, if it is satisfied that there is sufficient reason, order for scrutiny or recount of votes.

23. The principles regarding scrutiny have also been settled and encapsulated in various authorities most of them already quoted by both parties. In the case of **Nathif Jama Adan vs Abdikarim Osman Mohamed and 3 others (2014) eKLR**, the supreme court held as follows:

“It emerges that, the primary consideration in determining whether to grant scrutiny, are, where there are polling stations with a dispute as to the election results; whether such a state of affairs has been pleaded in the petition; and whether a sufficient basis has been laid- to warrant the grant of the application for scrutiny.

We agree with the court of appeal, that the learned trial Judge was in error in holding that an order for scrutiny cannot be granted where it is not pleaded. But it is crucial that the polling stations which are the subject of a possible scrutiny, would have been already signaled in the pleadings, as having contested results. This is the import of the wording of rule 33(1) of the elections petitions rules, that an application for scrutiny can be applied for at any stage. A foreshadowing of such an application should have been embodied in the main lines of pleadings, which mark out the terrain of any legitimate electoral contest”.

24. In **William Maina Kamanda vs Margaret Wanjiru Kariuki and 2 Others (2008)eKLR**, the court had this to say:

“It is now well established that an order of scrutiny can be made at any stage of the hearing before final judgment whether on the court’s own motion or if a basis requires so. It can be made if it is prayed in the petition itself – as is the case in this petition – or when there is ground for believing that there were irregularities in the election process or if there was a mistake or mistakes on the part of the returning officer or other elections officials.....

The burden of proof that such irregularities occurred falls squarely on the petitioner and he must also establish that such irregularities were of such magnitude that they substantially and materially affected the outcome of the electoral process. The petitioners’ allegations may well turn out to be red herrings but an order of scrutiny would assist the court in its investigations to determine the truth.

In doing so, Section 23(d) of the Act empowers the court to decide all matters before it without undue regard to technicalities, so that even if the petitioner had failed to provide a list of the votes he is objecting to, that would not of itself bar the court from scrutinizing the votes cast, whether on its own motion or on application - and I so hold”

The court went further to state:

“In light of the petitioners’ allegations on which he has led evidence – that the second respondent and or the ECK failed to carry out their duties under the regulations, this court is under a duty to investigate the truthfulness or otherwise of the allegations and scrutiny of ballot would assist in this regard. But another purpose of scrutiny is to assist the court to investigate if allegations of irregularities and breaches of the law complained of by the

petitioner are valid.”

25. In Peter Gatirau Munya vs Dickson Mwenda Kithinji and 2 others case (Supra), the Supreme court set a clear road map on guidelines regarding scrutiny as follows:

“From the foregoing, review of the emerging jurisprudence in our courts on the right to scrutiny and recount of votes in an election process, we would propose certain guiding principles as follows:

(a) The right of scrutiny and recount of votes in an election petition is anchored in Section 82 (1) of the Elections Act and rule 33 of the Elections (Parliamentary and County Elections) Petitions Rules 2013. Consequently, any party to an election petition is entitled to make a request for recount and or scrutiny of votes, at any stage after the filing of petition, and before the determination of the petition.

(b) The trial court is vested with the discretion under Section 82(1) of the Elections Act to make an order on its own motion for a recount or scrutiny of votes as it may specify, if it considers that such scrutiny or recount is necessary to enable it to arrive at a just and fair determination of the petition. In exercising this discretion, the court is to have sufficient reasons in the context of the pleadings or the evidence or both. It is important that the court should record the reasons for the order for scrutiny or recount.

(c) The right to scrutiny and recount does not lie as a matter of course. The party seeking a recount or scrutiny of votes in an election petition is to establish the basis for such a request to the satisfaction of the trial Judge or Magistrate. Such a basis may be established by way of pleadings and affidavits, or by way of evidence adduced during the hearing of the petition.

(d) Where a party makes a request for scrutiny or recount of votes, such scrutiny or recount if granted, is to be conducted on specific polling stations in respect of which the rights are disputed or where the validity of the votes is called into question in the terms of rule 33 (4) of the Election (Parliamentary and County Elections) Petition Rules.

26. As to whether there is a good reason advanced to warrant material and documents scrutinized, the case of Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission and 7 others (2013)eKLR captured the legal position as follows:

“The Supreme Court’s approach to orders of scrutiny in election dispute resolution, thus, is by no means precipitate; It follows a clear pattern that is rational, familiar and Judicious. Testimony to this effect is found in our earlier decision in the Munya case, in which we cited with approval the decision of Odunga J, in Gideon Mwangangi Wambua and another vs IEBC and 2 others (paragraph 26). The aim of conducting scrutiny and recount is not to enable the court (to) unearth new evidence on the basis of which the petition could be sustained. Its aim is to assist the court verify the allegations made by the parties to the petition which allegations themselves must be hinged on pleadings. In other words, a party should not expect the court to make an order for scrutiny simply because he has sought such an order in the petition. The petitioner ought to set out his case with sufficient clarity and particularity and adduce sufficient evidence in support thereof in order to justify the court to feel that there is a need to verify not only the facts pleaded but the evidence adduced by the petitioner in support of his pleaded facts. Where a party does not sufficiently plead his facts with the necessary particulars but hinges his case merely on the documents filed pursuant to rule 21 of the rules, the court would be justified in forming the view that the petitioner is engaging in a fishing expedition or seeking to expand his petition outside the four corners of the petition”.

27. Lastly, in Raila Amolo Odinga and Another vs IEBC and 4 Others and the AG Supreme Court

Petition No. 1/2017, the court stated as follows:

“Having addressed our mind to the above issues, it is our view that first, we note that as correctly argued by counsel for the 3rd respondent, a party must be bound by its own pleadings and secondly any scrutiny of either the forms or technology must be made for sufficient reason. Any prayer in the application that would seem to be an extension of the case for petitioners or would in effect a fishing exercise to procure fresh evidence not already contained in petition would and must be rejected.

28. Having analyzed the statutory requirements, rules and case law governing issuance of orders for scrutiny, it is apparent that, a trial court has unfettered discretion to exercise, determine and direct its mind judicially for or against such request with the ultimate intention of arriving at a just, fair and honest decision that will promote free and fair elections results as envisaged in Article 38(2) and 81(e) of the Constitution. An election court cannot be used as a midwife or conveyer belt by a speculative petitioner through a scrutiny application to access and deliver evidence not in their possession on imaginary violations or breaches of the electoral laws in an election petition. Any violation or breach of electoral laws must be pleaded or established by way of affidavits or evidence during the trial so as not to disenfranchise the adverse party who would otherwise be a victim of practice by ambush.

29. Before me is an application seeking scrutiny of several election materials including scrutiny of form 35A in all the 148 polling stations. As stated in the **Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission case (Supra)**, a party seeking scrutiny must with clarity and particularity adduce evidence to support such an order. In this case, no sufficient evidence has been adduced to justify scrutiny of all the forms 35A amounting to 148 polling stations.

30. In any event, the applicants only made a generalized claim and or allegation of illegalities and irregularities in their petition with reference to twelve polling stations namely Singiraine Primary School Polling Station 1 of 1, Olepolos Primary School Polling Station 2 of 2, Illoodoariak Primary Polling Station 1 of 1, Ntoroshi Nursery Polling Station 1 of 1, ACK Nursery Polling Station 1 of 2, Ilmasin 1 of 1, Ilmasin Primary Polling Station 1 of 2, Leshuta Primary School Polling Station 1 of 1, Olng’arua Primary New Polling Station 1 of 1, Oltepesi Polling Station 2 of 2, Kenya Marble Quarry Polling Station 2 of 2, Enkusero Keri Primary New Polling Station 1 of 1 as having not been stamped, do not bear returning officer’s and deputy returning officer’s signature, lacks agents signature and that unknown agents signed.

31. Having identified specific stations as areas of concern with irregularities and illegalities, the applicant cannot make a demand for the entire 148 polling stations without basis. For sure, a party is bound by his own pleadings. For those reasons, the prayer for scrutiny in all the 148 polling stations is disallowed as that amounts to engaging in a fishing expedition. The same fate shall apply to the 3rd prayer for scrutiny of all the 148 SD cards.

32. However, the court is inclined to consider whether there is good reason to justify scrutiny of the specific mentioned stations or any other that it may for good reason suo motto, find deserving on its own assessment based on the evidence on record.

33. It is worth noting that, some of the forms attached by the applicants with regard to the 12 disputed form 35A, are either blank (3 of them) or illegible (9 of them) when compared with the carbon copies they presented in court for comparison as the source of their unclear copies. On the other hand, the respondents filed their form 35A copies reflecting the signature of either the presiding officer or deputy presiding officer having signed arguing that, it was not a must for all to sign at the same time. Indeed this does not require scrutiny to ascertain. However, where there are contradicting forms with others reflecting signature of presiding officer and others do not, then, it will be necessary to conduct a scrutiny in respect of the affected or doubtful stations so as to establish the truth which is the bedrock of any scrutiny orders.

34. As to lack of two stamps, Mr. Liko submitted that, there is no legal mandatory requirement and that it was a mere administrative action and gratuitous in nature. Again, from the evidence of the returning

officer and the forms presented before court by both parties, it is clear that they do not bear two stamps hence an issue for submissions and not scrutiny. Counsel made reference to the court of appeal decision in the case of **IEBC and Another vs Stephen Mutinda Mule and 3 Others (2014)eKLR** where it was held:

“there is no stamping required in the case of 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. We agree with submissions on behalf of the applicant that it is the signatures of the presiding officers and the agents that authenticates the form 35. If any such forms were stamped, it was gratuitous and superfluous, discretionary or administrative act incapable of creating statutory obligation, less still invalidation of the forms 35 that did not.”

35. According to the forms attached to the petition by the applicants, Leshuta Polling Station 1 of 1 has the presiding officer’s signature but the copies attached by the 1st and 2nd respondents (D-Ex.9) has a signature by both the presiding officer and deputy presiding officer. The same case applies to Olng’arua Primary Polling Station 1 of 1. As concerns Ntoroshi Polling Station 1 of 1, the form attached by the petitioners (P.exh.5) does not have the name or signature of the presiding officer or deputy presiding officer. However, the one attached by the respondents has both signatures. The discrepancies in content in form 35A raises some questions which goes a long way to justify the claim by the petitioners that forms 35A filed by the respondents were doctored or pre-filled to fill in the gaps complained of hence the need for scrutiny.

36. Considering these discrepancies, and taking into account that six out of the 11 KIEMS kits (SD cards) that were analysed had revealed discrepancies in terms of valid votes cast as per the KIEMS kit vis a vis the data in forms 35A, it is prudent to order a scrutiny for the specified 12 stations to allay the fear by the petitioners in their testimony that unregistered voters did vote.

37. Further, taking into account that during preservation and resealing exercise directed by the court 30 out of the 148 polling stations had their seals either broken or missing thus putting into question the integrity of elections material preservation by IEBC, the court is inclined suo motto to direct that scrutiny be conducted in respect of all the 30 polling stations as per the deputy registrar’s report on preservation and resealing of ballot boxes. The exercise shall include the 4 missing ballot boxes now allegedly recovered as per the replying affidavit of the returning officer as well as four ballot boxes in respect of the four missing SD Cards as admitted by the returning officer in her testimony.

38. In the same vein, the KIEMS kits in respect of the aforesaid stations shall be availed to both parties in the presence of their ICT experts, judiciary ICT officer and the Deputy Registrar so as to analyze data into readable format for purposes of ascertaining the voters register and whether voters who were identified and actually voted is in tandem with the results entered in form 35A and therefore used to process form 35B.

39. As to whether those forms are signed by deputy presiding officers or agents, stamped once or twice or not, is a matter of submissions based on evidence and the legal position.

40. Regarding supply of unused forms 35A, the returning officer in her cross examination stated that, form 35A was printed in plenty and in booklets of six copies to which they have no inventory indicating any specific number issued to a particular polling station hence not possible to be given out. Again, no good reason has been given to justify supply of such massive stationery.

41. Considering that about sixty ballot boxes could not be identified to a particular polling station due to the absence of form 35A on the surface, the returning officer is hereby authorized to use the seals inventory to identify the ballot boxes before commencement of scrutiny.

42. As regards security features affecting the requisite declaration statutory forms, the same was dealt with substantially during the hearing and cross examination of the returning officer hence no need for further scrutiny. Touching on the absence of 44 original forms 35A, copies were supplied and no specific

complaint has been raised in relation to the respective polling stations. To start digging into what is contained in the affected stations would amount to a fishing expedition.

43. Accordingly, in exercise of the powers and discretion conferred upon me under Section 82 of the Election Act and rule 29 of the Elections (parliamentary and county) Petitions Rules 2017, I hereby direct and do order scrutiny in the affected stations as follows:

Category A – 12 disputed stations:

- (1) Singiraine Primary 1 of 1
- (2) Ole Polos Primary School 2 of 2
- (3) Ntoroshi Nursery School 1 of 1
- (4) Illoodoariak Primary School 1 of 1
- (5) Kenya Marble Quarry Primary School 1 of 1
- (6) Enkusero Keri Primary School 1 of 1
- (7) Oltepesi Primary School 2 of 2
- (8) ACK Nursery 1 of 2
- (9) Olng'arua Primary 1 of 1
- (10) Leshuta Primary 1 of 1
- (11) Ilmasin 1 of 2
- (12) Oltepesi Primary 2 of 2

Category B – 1 empty ballot box S/No.120726

Category C – Identified ballot boxes with seals interfered with

- (1) Oltepesi Primary 1 of 1
- (2) Inchoroi Primary 1 of 1
- (3) Naromoru Primary 1 of 5
- (4) Naromoru Primary 3 of 5
- (5) Oloirien Primary
- (6) Esonorua Primary
- (7) Indupa Primary School 1 of 1
- (8) Torosei Primary 2 of 2
- (9) Emorkeya Primary 2 of 2
- (10) Ilparakuo Primary School 1 of 1

(11) Entaamo Nursery Primary 1 of 1

(12) Oloika Primary 2 of 2

(13) Shampole Primary 1 of 1

(14) Ewuaso Primary 1 of 3

(15) Ewuaso Primary 3 of 3

(16) Kisharu Primary 1 of 1

(17) Olosho Primary

(18) Saikori Primary

Category D – Unidentifiable ballot boxes S/No.

(1) 124404

(2) 120639

(3) 124984

(4) 124982

(5) 124545

(6) 120854

(7) 120376

(8) 124416

(9) 124417

(10) 124625

(11) 124407

(12) 124909

Category E – Four missing boxes now found.

Category F – Ballot Boxes in respect of the four missing SD Cards.

44. The 1st and 2nd respondents be and are hereby directed to supply the following in relation to the affected stations;

(a) Original forms 35A and polling station diaries for scrutiny.

(b) marked copy of register together with the KIEMS kit logs in and logs out or in the alternative SD cards for conversion into readable format showing the voters register with full details regarding the identification of voters who voted on 8th August 2017.

- (c) packets of spoilt papers together with statements made thereof.
- (d) packets of rejected ballot papers together with statements made thereof.
- (e) counterfoils of used ballot papers
- (f) inventory of ballot boxes serial numbers and ballot boxes seals' numbers issued and used by the presiding officers
- (g) packets of stray ballot papers if any.
- (h) packets of counted votes.
- (i) original forms 32A that were filled at the specified polling centers.
- (j) form 35B used in collating results for Kajiado West Constituency.
- (k) ballot Boxes in respect of the four missing SD Cards.

45. Costs in the cause.

46. That the Deputy Registrar shall supervise the exercise with the help of any other judicial officer and the Executive Officer of the court on such dates as the court shall direct.

SIGNED, DATED AND DELIVERED AT KAJIADO THIS 29TH DAY OF NOVEMBER, 2017.

J.N. ONYIEGO (JUDGE)

In the presence of:

MS. MAUMO..... Counsel for Petitioners

MR. LIKO..... Counsel for 1st and 2nd Respondents

MR. MASIKA.....Counsel for the 3rd Respondent

MS. CATHERINE..... Court Assistant