



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

AND

IN THE MATTER OF THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTION)
PETITION RULES, 2017

AND

IN THE MATTER OF THE ELECTION FOR MEMBER OF NATIONAL ASSEMBLY FOR
NYARIBARI CHACHE CONSTITUENCY

BETWEEN

CHRIS MUNGA N. BICHAGE 1ST PETITIONER

ZAHEER JHANDA 2ND PETITIONER

JAMES F. O KENANI 3RD PETITIONER

VERSUS

I.E.B.C 1ST RESPONDENT

JULIUS MEJA OKEYO (RETURNING OFFICER) 2ND RESPONDENT

RICHARD NYAGAKA TONGI 3RD RESPONDENT

RULING

This Court did pronounce itself in respect of evidence sought to be relied on by the 2nd and 3rd Petitioner on 5/12/2017.

Under paragraph 67 of the ruling the Court stated;

“With the result that documents marked “C” and “B1” do not comply with the mandatory provisions of Rule 9 of the Oaths and Statutory Declarations Rules, the Court makes an order that the same be expunged from the record....”

Rule 12 (5) (6) and (7) of the **Elections (Parliamentary and County Elections) Petition Rules** are clear on the mode of presentation of evidence in an election petition. This is vide affidavits and it is obvious that any evidence to be relied on will be a fact within the knowledge of a witness or through an annexure to the affidavit aforesaid.

When such an annexure is expunged, the same Court cannot go behind its own orders to admit the same.

In view of my orders of 5/12/2017 the 2nd and 3rd Petitioner are precluded from reliance on the expunged documents.

Dated, Signed and Delivered in Kisii this 18th day of December, 2017.

A. K. NDUNG'U

JUDGE