



REPUBLIC OF KENYA

High Court at Busia

Petition 2 of 2013

HENRY OKELLO NADIMOPETITIONER

VERSUS

THE INDEPENDENT ELECTORIAL & BOUNDARIES

COMMISISON1ST RESPONDENT

PAUL CHERUIYOT KONES2ND RESPONDENT

PIUS ABABU NAMWAMBA3RD RESPONDENT

14TH MAY 2013

Coram: F. Tuiyott - Judge

Kadenyi – court clerk

Muriuki for Petitioner

Mutahi for 1st and 2nd Respondents

Mandala for 3rd Respondent

DIRECTIONS AT PRE-TRIAL CONFERENCE

1) COMPLIANCE WITH STATUTORY TIMELINES

1.1. It was confirmed that all parties had complied with the Statutory timelines in respect to filing and service of the Petition and the Responses.

2) ISSUES FOR DETERMINATION

a) Whether the 3rd Respondent was validly elected and declared as member of The National Assembly for Budalangi Constituency during the elections held on 4th March 2013.

b) Whether the said election was conducted in a free, fair, transparent and credible manner and in compliance with the provisions of the Constitution and all relevant laws and regulations.

- c) Whether there was fundamental breach of the election process or commission of malpractices or irregularities that compromised the outcome or validity of that election and also whether such breaches or malpractices or irregularities, if any, are sufficient ground for nullification of the result of the said election.
- d) Whether the Respondents, jointly or severally, were involved in any electoral malpractices or election offences.
- e) Whether there are consequential declarations and reliefs including costs that this Court should grant on the determination of the petition.
- f) Whether a fresh election for the member of the National Assembly for Budalangi Constituency ought to be held.

3) **INTERLOCUTORY MATTERS AND APPLICATIONS**

3.1 The 1st Respondent shall within 7 (seven) days hereof deliver to the Deputy Registrar of this Court the results of the election which shall include all original forms 35 and 36.

3.2 The 1st Respondent shall not less than 48 (forty eight) hours before the hearing date deliver to the Deputy Registrar of this Court all ballot boxes in respect to the election.

3.3 The 1st Respondent shall within 14 (fourteen) days hereof file and serve the Petitioner and the 3rd Respondent with a list of the names of all Presiding officers, Deputy Presiding officers and clerks who manned all polling stations.

3.4 The Petitioners are granted leave of 7 (seven) days to file and serve affidavits in respect to additional evidence.

3.5. The Respondents are at liberty to file and serve affidavits in respect to additional evidence within 7 (seven) days of service.

3.6. The Petitioner is granted leave to file and serve an application for recount and scrutiny within 7 (seven) days hereof.

3.6 The 3rd Respondent is granted leave to file and serve an application for the enhancement of security of costs within 7 (seven) days hereof.

3.7 Responses, if any, to both applications shall be filed and served within 7 (seven) days of service of the Applications.

3.8 Both applications shall be heard on 10th June 2013.

4) **EVIDENCE**

All video, electronic or photographic evidence shall be exchanged by the parties within 7 (seven) days hereof and it is hereby agreed that the evidence shall be admitted without calling their makers or producers.

5) **WITNESSES AND HEARING**

5.1. The affidavits of witnesses shall form their evidence-in-chief whereupon they shall be cross-examined.

5.2 The examination-in-chief, cross-examination and re-examination of the Petitioner's witness shall be

limited to 5 (five) days.

5.3 The examination-in-chief, cross-examination and re-examination of the Respondents witnesses shall also be limited to 5(five) days.

5.4 Hearing shall be from 11th June 2013 to 14th June 2013 and from 24th June 2013 to 28th June 2013, the first and last days included.

6) **SUBMISSIONS**

An order on submissions shall be made by Court at the close of taking of evidence.

DATED AND ISSUED AT BUSIA THIS 14TH DAY OF MAY 2013.

F. TUIYOTT

JUDGE