



**REPUBLIC OF KENYA**

**High Court at Kitale**

**Election Petition 8 of 2013**

**THE ELECTIONS ACT, 2011**

**JAMES KUYA EBEL.....PETITIONER**

**VERSUS**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....1ST RESPONDENT**

**KIRORI KIMANI.....2ND RESPONDENT**

**DANIEL NANOK EPUYO.....3RD RESPONDENT**

**RULING**

1. The petitioner filed this petition on the 10th April, 2013. To date no payment has been made for security for costs nor has service been effected upon the respondents.
2. The 3rd respondent chose to move the court by way of Notice of Motion for dismissal of the petition.
3. The date for hearing of the application was taken in court and all counsel were present
4. On the 28th May, 2013, the application proceeded for hearing in the absence of the petitioner and his counsel, as counsel had due notice.
5. Having failed to deposit the requisite security for costs and having failed to effect service upon the respondents, this court finds that the petitioner is not desirous in prosecuting the petition.
6. The petition is hereby dismissed for want of prosecution.
7. On the issue of costs, in line with the overriding objectives enunciated in **Rule 4** of the **Elections Petition Rules 2013** with particular emphasis on the words: “.....**proportionality and affordable resolution**.....”, the respondents shall only be entitled to costs of this application.
8. A Certificate shall issue to I.E.B.C. and the Speaker of the National Assembly under the provisions of **Section 86(1)** of the **Election Act**.

It is so ordered.

**Dated, Signed and Delivered at Kitale this 11th day of June, 2013.**

**A. MSHILA**

**JUDGE**

Delivered in the presence of

Kassachoon, Court clerk

N/A for Petitioner

Samba holding brief for Gumbo for 1st and 2nd respondent

Samba for 3rd respondent

Stephen Karuga, Legal Researcher