



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Election Petition 33 of 2008

IN THE MATTER OF THE NATIONAL ASSEMBLY AND PRESIDENTIAL

ELECTIONS ACT, CHAPTER 7 LAWS OF KENYA

AND

IN THE MATTER OF THE PRESIDENTIAL AND PARLIAMENTARY

ELECTIONS REGULATIONS AND NATIONAL ASSEMBLY ELECTION

(ELECTION PETITION) RULES

AND

IN THE MATTER OF THE ELECTION OFFENCES ACT, CHAPTER 66 LAWS OF KENYA

AND

IN THE MATTER OF THE BY – ELECTION FOR EMBAKASI CONSTITUENCY

BETWEEN

ROSELYNE ADHIAMBO OCHIENG1ST PETITIONER

CHARLES OTIENO ATULA.....2ND PETITIONER

MARY WANGUI NDERITU.....3RD PETITIONER

VERSUS

FERDINARD NDUNGWAITITU.....1ST RESPONDENT

ELECTORAL COMMISSION OF KENYA.....2ND RESPONDENT

RULING

1. The application before me is dated the 25th of September, 2009 brought pursuant to Rules 23 & 24 of the National Assembly Elections (Election Petition) Rules, 1993. Seeking leave to have the 1st, 2nd and third Petitioners withdraw the petition.

2. The 1st Respondent and his Advocate **Mr Kioko Kilukumi** filed affidavits in compliance with Rule 23 & 24 of the said Rules.

3. The 2nd and 3rd Respondents did not file replying affidavits **Mr. Gikonyo** for the 2nd and 3rd Respondent informed the Court that the Chairman of the (IEEC) Interim Independent Electoral Commission has been out of the country.

4 He urged the Court to dispense with the affidavit pursuant to Rule 23 (2) of the said Rules.

5. Having heard submissions by learned counsel for the parties, I hereby order as follows:-

1. Leave be and is hereby granted to the Petitioners to withdraw the Petition.

2. I award costs to the Respondents.

Dated and delivered at Nairobi this 6th day of November, 2009.

ALI- ARONI

JUDGE

6/11/2009

Ruling delivered in the presence

..... **for Petitioners**

..... **for 1st Respondent**

..... **for 2nd and 3rd Respondents**