



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA**

**AT NAIROBI  
MILIMANI LAW COURTS**

**Election Petition 33 of 2008**

**ROSELYNE ADHIAMBO OCHIENG.....1<sup>ST</sup> PETITIONER**

**CHARLES OTIENO ATULA.....2<sup>ND</sup> PETITIONER**

**MARY WANGUI NDERITU.....3<sup>RD</sup> PETITIONER**

**VERSUS**

**FERDINARD NDUNGWAITITU.....1<sup>ST</sup> RESPONDENT**

**ELECTORAL COMMISSION OF KENYA.2<sup>ND</sup> RESPONDENT**

**FRED N MUTUA.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application before me is dated the 25<sup>th</sup> of September, 2009 brought pursuant to Rules 23 & 24 of the National Assembly Elections (Election Petition) Rules, 1993. Seeking leave to have the 1<sup>st</sup>, 2<sup>nd</sup> and third Petitioners withdraw the petition.
2. The 1<sup>st</sup> Respondent and his Advocate *Mr Kioko Kilukumi* filed affidavits in compliance with Rule 23 & 24 of the said Rules.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file replying affidavits *Mr. Gikonyo* for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent informed the Court that the Chairman of the (IIEC) 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 6<sup>th</sup> day of November, 2009.

**ALI- ARONI**

**JUDGE**

**6/11/2009**

**Ruling delivered in the presence**

..... **for Petitioners**

..... **for 1<sup>st</sup> Respondent**

..... **for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**