



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NYERI

Election Petition 2 of 2008

JOHN GITHUI MITHAMO .....

APPLICANT

Versus

ROBINSON NJERU GITHAE ..... 1<sup>ST</sup>

RESPONDENT

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

RESPONDENT

JESEE KIMANI MBUTHIA (Returning officer for Ndia constituency ) ..... 3<sup>RD</sup> RESPONDENT

RULING

The petitioner **JOHN GITHUI MITHAMO** amongst others contested in the General Elections of 27<sup>th</sup> December 2007 for the Ndia Parliamentary Constituency. He lost that election to the first respondent **ROBINSON NJERU GITHAE**. He filed the present petition on 24<sup>th</sup> January 2008 alleging many irregularities and therefore questioned the validity of that election. The 2<sup>nd</sup> respondent the Electoral Commission of Kenya in accordance to Regulation 41(1)(b) of the Presidential and Parliamentary Elections Regulations published the election results of the first respondent in gazette notice dated 30<sup>th</sup> December 2007.

In this ruling the court is considering two applications. One is filed by the first respondent which is by way of notice of motion dated 18<sup>th</sup> February 2008 seeking to strike out the petition on the basis that the said petition is incompetent. That application is based on the following grounds.

- i. The petition was served upon the first respondent outside the mandatory period provided by law.*
- ii. Notice of filing of the petition was not served upon the first respondent within the mandatory period provided by law.*
- iii. The receipt purportedly given for this petition is incompetent as it talks of a petition purportedly signed by someone else other than the petitioner.*
- iv. The notice purported to have been published in the daily nation of 28<sup>th</sup> January 2008 refers to a different petition cause to wit petition cause no. 7 of 2008 and is therefore defective.*
- v. The whole petition in its totality is bad in law and fatally defective due to the aforesaid non-compliance with the mandatory provisions of law.*

The application is brought under **Section 20(1)(a)**, **Section 22** and **Section 23** of the National Assembly and Presidential Petitions Act Cap 7 (hereinafter called the Act). It is also brought under **Rules 3(1)** and **14** of The National Assembly Elections (Election Petition) Rules (hereinafter called the Rules). The other application falling for consideration in this ruling is brought by the second and third respondents. The same is by way of notice of motion and is dated 14<sup>th</sup> February 2008. It too seeks the

striking out of the petition on the basis that it is incompetent. It is also brought under the same provisions of the law as the application by the first respondent. That application is based on the following grounds:

- a) The petition was not served within the mandatory period as prescribed by law.**
  
- b) The petition was improperly received as no receipt for the same was duly given as is duly prescribed by law.**
  
- c) The failure to serve within the time prescribed renders the petition invalid.**
  
- d) Failure to provide the requisite receipt as by law prescribed invalidates the petition.**

As can be seen both the applications being considered hereof are seeking the same relief and are based on more or less the same grounds. The petitioner has by this petition questioned the validity of the election of the first respondent. That being so Section 20(1)(a) of the Act provides the period of filing and serving a petition to be 28 days from the date of the publication of the election results. To be specific that section provides:-

**20. (1) A petition --**

**(a) to question the validity of an election, shall be presented and served within twenty-eight days after the date of publication of the result of the**

**election in the Gazette**

The service of the petition was effected by Christopher Githui. The first respondent did not as provided in **Rule 10** of the Rules give notice in writing to the Registrar appointing an advocate in case there should be a petition filed against him. That being the case the first respondent had to be served in person rather than through an advocate. Whilst the first respondent denies being served with the petition in person, the third respondent has denied being served with the petition at all and the 2<sup>nd</sup> respondent contends that service was effected after 28 days period. In considering that denial it is important to read through the affidavit of service of Christopher Githui.

- 1. THAT I am a court process-server of this Honourable Court duly authorized to serve court processes and hence competent to make this affidavit.**
  
- 2. That on the 24<sup>th</sup> day of January, 2008 I received Petition, receipt of Petition, Notice of presentation of petition, notice of appointment of advocates and notice of acceptance all dated 22<sup>nd</sup> January 2008 in triplicate from M/S J. M. Njenga & Co. Advocates with instructions to effect service upon the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in this suit.**
  
- 3. THAT on the same day 24/1/08 at 9.45 a.m. I proceeded to the Kenya Parliament Building along Parliament Road Nairobi with a view of tracing the whereabouts of the first respondent herein and upon arrival, the security guards advised me that all elected members of parliament were attending a seminar at Safari Park Hotel along Thika Road involving Constituency Development Fund.**
  
- 4. THAT I proceeded to the said Safari Park Hotel and on arrival, the security guards manning the gate thereof requested that I inform them of my purpose of visit to which I told them that I intended to effect service of a petition to the Hon. Robinson Njeru Githae.**
  
- 5. THAT a security guard who introduced himself to me as Mr. Musau lamented that my mission was impossible as the 1<sup>st</sup> respondent was held up in a parliamentary meeting, and that the security guards had strict instructions not to allow any interruptions. I therefore went away with advise from the said guard that I attempt service the following morning.**
  
- 6. THAT on 25.1.08 and in the company of the petitioner herein, I went back to the Safari Park Hotel aforesaid and arrived at around 8.00 a.m. and waited at the hotel Gate, together with the petitioner herein and at around 9.45 a.m. the 1<sup>st</sup> respondent arrived at the gate at which time he was pointed out to me by the petitioner herein and I approached his vehicle and begged for his audience after flagging down the vehicle while he was seated on the passenger seat of the front cabin of his vehicle.**
  
- 7. THAT I introduced myself to him and told him why I as looking for him and simultaneously handed over the documents herein to effect service.**

8. *THAT the 1<sup>st</sup> respondent herein casually looked at the first page of the petition and literally threw back the documents to me saying that he did not want any rubbish and meanwhile he angrily directed his driver to drive into the hotel as I was left collecting my documents.*

9. *THAT the scenario attracted the attention of the gate security men who hurriedly closed the gate and ordered me and the petitioner herein away.*

10. *THAT I personally attempted service to 1<sup>st</sup>*

*Respondent herein with the petition document herein which he declined to acknowledge but threw them back to me, and I return the petition herein as duly served.*

11. *THAT as if that was not enough, I returned the*

*Information to the petitioner's advocates and,*

*through them, on 26.1.08, I caused to be prepared and subsequently paid for a notice in the Nation Daily Paper with a view of effecting service upon the Respondents herein through the media.*

12. *THAT on 28.1.08 the service of petition herein*

*was duly effected through the Nation Newspaper*

*against all the Respondents, herein as per the*

*relevant extract annexed hereto Marked CGI.*

13. *THAT on the same day 28/1/08, around 9.40 a.m.*

*I arrived on the 7<sup>th</sup> floor of Anniversary Towers*

*along University Way, Nairobi where the offices*

*of the 2<sup>nd</sup> Respondent are situated. I met the*

*receptionist to whom I introduced myself and*

*explained the purpose of my visit. I was directed*

*to another office on the same floor whereof I met*

*a lady to whom I again introduced myself and*

*she in turn told me her name was Jemimah Keli*

*and that she was a legal officer with the 2<sup>nd</sup>*

*respondent herein.*

**14. THAT I explained to Jemimah Keli the purpose**

**of my visit and handed over the petition**

**documents to her. She went through the**

**documents and shortly thereafter accepted**

**service by way of stamping and signing on the**

**reverse of my copy.**

**15. THAT I enquired from the said Jemimah Keli the**

**whereabouts of the 3<sup>rd</sup> respondent whom the 2<sup>nd</sup>**

**respondent had dispatched to Ndia Constituency**

**as a Returning Officer in the 27/12/07 General**

**Elections and the said Jemimah told me that**

**she was not aware of the 3<sup>rd</sup> Respondents**

**whereabouts neither where he resides or could**

**be found but that since he was their employee**

**the service on the 2<sup>nd</sup> respondent was sufficient.**

**16. THAT the said Jemimah Keli therefore accepted**

**service of the petition herein for and on behalf of**

**the 3<sup>rd</sup> respondent who had in any event been**

**served as per annexure CGI.**

**17. THAT the said first respondent and Jemimah**

**Keli became known to me at the time of service although I had in many occasions seen the first Respondent through the media.**

The notice of motion by the second and third respondent is supported by an affidavit sworn by Jemimah Keli. She is an advocate of the High Court of Kenya and a senior legal officer at the Electoral Commission of Kenya the second respondent. She stated that on 28<sup>th</sup> January 2008 at 9.45 am she was at her office at the Electoral Commission of Kenya headquarters. At that time she received a notice of presentation of an election petition and notice of appointment of advocate which had been filed in court on 24<sup>th</sup> January 2008 in election petition No. 23 of 2008. She accepted service and signed at the back on the notice of appointment of advocate. In accepting she wrote at the back of that notice that that acceptance was under protest because service was out of time. Annexed to that affidavit was the notice where she accepted service under protest. She said that she endorsed that protest because she was knowledgeable of the relevant laws relating to election petition and more particularly **Chapter 7** of the Laws of Kenya as an advocate of the High Court of Kenya and a legal officer of the second respondent. She further deponed that she was informed by the advocate appearing for the second and third respondent that the third respondent had not been served. Bearing in mind that the said Ms. Keli noted in the notice that she had accepted

service under protest due to late service and because she described herself as an advocate of Kenya knowledgeable of the law relating to election petitions then one would have expected, if indeed she accepted service on behalf of the 3<sup>rd</sup> Respondent as well as the second respondent that she would have specifically noted that acceptance on the notice. Bearing this in mind the statement by the process server that Ms Keli accepted service on behalf as 3<sup>rd</sup> Respondent because he was their employee is not credible. Ms. Keli does not admit accepting service on behalf of the third respondent. Ms. Keli deponed that the receipt filed by the petitioner in compliance to **Rule 3(1)** of the Rules indicated that the petition was signed by someone else and not the petitioner. For the above reasons she was of the view that the petition was incompetent and should be struck out. The notice of motion dated 18<sup>th</sup> February 2008 was filed by the first respondent. In his affidavit in support of that application the first respondent stated that he came across a newspaper advertisement in the nation newspaper giving notice of election petition filed by the petitioner herein. He said that that advertisement showed the heading of the petition to be No. 23 of 2008 but inside the body of that notice it reflected the petition being advertised to be No. 7 of 2008. It was argued that, that misstatement of the petition number rendered service through advertisement to be non-effective. My finding on that argument is that quotation of the wrong case number does not go to the root of the petition so as to invalidate it and does not also render service to be non-effective. I so find because the advertisement simply directs the one served to collect a copy of the petition from court. One would have to show that the wrong number made them not to be able to get a copy of the petition for one to succeed in an argument that service was non effective. First respondent also argued that the receipt annexed to the petition in compliance to Rule 3(1) of the rules indicated that the petition was filed by Jesse Kimani Mbuthia. This issue will be dealt with later in this ruling. First respondent also stated that he was not served with notice of filing the petition as required by **Rule 14(1)** of the Rules. In respect of that argument relating non service of notice in confirmative with Rule 14(1) of the Rules I find that such failures is not fatal to the petition. This was the holding of **KIBAKI vs MOI (2002) 1EA**. The Court of Appeal in that case held:

***“We accordingly agree with the High Court that Section 20(1)(a) of the Act is in direct conflict with Rule 14 and that being so Rule 14 must give way to the plain words of Section 20(1)(a) of the Act. Accordingly, Rule 14 of the rules can no longer apply to petitions which concern Section 20(1)(a) of the Act. Indeed, under Section 20(1)(a) of the Act, all that one needs to serve is a copy of the petition but we would have no quarrel with it if a party chose to include an unnecessary document like a notice of presentation, which, for the purposes of Section 20(1)(a) of the Act is really irrelevant.”***

The petitioner filed a replying affidavit dated 22<sup>nd</sup> February 2008. The petitioner reiterated that the first respondent was served personally but that he declined to accept that service. He stated that the first respondent by the mere fact that he filed the application before court means that he was indeed served with the petition. In going through the papers filed in this matter I did come across an application made by the first respondent advocate to peruse the court file. That application was made on 15<sup>th</sup> February 2008. The reasons given by that advocate in making that application were stated to be:-

***“to ascertain when various pleadings***

***were lodged in court”.***

It was after that request to peruse the file was made that the first respondent notice of motion dated 18<sup>th</sup> February 2008 was filed. That application to peruse the court file lends credence to the first respondent claim that he was not served, otherwise if he was served, why would his counsel apply to peruse the file to ascertain when the pleadings were filed? Robinson Njeru Githae, the first respondent swore a supplementary affidavit. In that supplementary affidavit he denied the averments made by the petitioner in the replying affidavit. He denied that he was personally served with the election petition. He also confirmed that after he read the affidavit of service of Christopher Githui he realized that he could not have been served by that process server at Safari Park Hotel on 25<sup>th</sup> January 2008 as he had indicated. This was because on that date he was out of the country. He stated that he was in Singapore with his family on holiday. That he was in Singapore with this family from 23<sup>rd</sup> January 2008 to 1<sup>st</sup> February 2008. He annexed to the affidavit copies of his and his family's passports boarding passes and the hotel receipts issued by a hotel in Singapore. The proceedings in this case show that on the petitioner's counsel being served with that supplementary affidavit he applied for time to carry out investigations both at the Kenyan immigration office and in Singapore. Indeed the record shows that he was given an adjournment to enable him carry out that investigations and leave was given to the petitioner to file a further affidavit. When the matter came for hearing the petitioner had filed a supplementary affidavit. In that affidavit the petitioner had questioned the authenticity of the documents relating to the first respondent's travel. The petitioner made a bare statement of questioning the authenticity of those documents without laying any background of the suspicion by saying, ***‘That the authenticity of the said annexures is in doubt and I shall crave the leave of the court to inspect the originals thereof before any proceedings are undertaken.’*** In about turn of his previous stand in this matter the petitioner deponed in that supplementary affidavit that the first respondent was out of the country with a view to avoiding being served. Hence why he was served through the newspaper advertisement.

As I consider the two applications before court, I see two broad issues arising. The first is whether **Rule 3(1)** of the Rules is mandatory. If the answer to that questions is yes, then the next question that arises is whether the petitioner did meet the requirements of that Rule. That rule provides as follows.

***“3. (1) the presentation of an election petition shall be made by delivering it at the office of the Registrar, and the Registrar or the other officer of his department to whom the petition is delivered shall give a receipt in the following form .....***

The Rule requires the Registrar at the delivery of the petition in his/her office to issue a receipt to so confirm. The format of that

receipt is shown in that rule as follows:-

**“Received on the ..... Day of ..... 19 .....**

**At the Registry of the High Court, a petition touching the election of ..... for .....**

**..... Purporting to be signed by ..... ( insert the name of the petitioners)**

**Registrar**

**(or other officer to whom the petition is delivered).**

As can clearly be seen the rule provides that the presentation or in other words the filing of the petition needs to be confirmed by the registrar in that receipt. In this case that receipt was filed on 24<sup>th</sup> January 2008. It was in the following terms.

**“RECEIPT**

**Received on the 24<sup>th</sup> day of January 2008, at the Central Registry of the High Court of Kenya at Nairobi, a petition touching the election of ROBINSON NJERU GITHAE as member of the National Assembly for Ndia Constituency purporting to be signed by Jesse Kimani Mbutia.**

**(Signed)**

**REGISTRAR**

**HIGH COURT OF KENYA”**

The function of that rule is to confirm that the petitioner has presented the petition and has signed it. It follows that in the absence of such a receipt it cannot be said that the petitioner filed the petition or signed it. The rule therefore requires compliance. It is mandatory in nature. At this point I borrow the words of **J. E. GICHERU JA**, (as he then was) in the case of **CIVIL APPEAL NO. 25 OF 1999 DAVID WAKAIRU MURATHE =and= SAMUEL KAMAU MACHARIA** where considering **Rules 10, 11, 14(1) and (2)** said as follows:-

**“I do not for one moment think that it is for nothing that rules 10, 11, 14(1) and (2) of the rules were formulated”.**

I too say that I do not think that Rule 3 was put in the Rules for nothing. It clearly requires a confirmation of filing the petition. The petitioner's receipt indicates that this petition was filed by **Jesse Kimani Mbutia**. That person is not the petitioner herein. The petitioner argued that the receipt was issued by the registrar and that the petitioner therefore does not bear the responsibility of its format or error. The point as I see it is whether or not the receipt was issued by the Registrar its primary purpose was to confirm whether the petition was signed by the petitioner. In this case the receipt indicated that the petition was purportedly signed by Jesse Kimani Mbutia. The end result is that the present petition is rendered incompetent by that receipt which indicates that it was signed by someone else other than the petitioner. The petitioner had a responsibility to only accept the correct receipt. Having accepted a receipt which indicated that the petition was signed and presented by someone else shows that he presented a petition signed by that other person. I indeed find that the petition is rendered incompetent for failure to have a receipt in the name of the petitioner. I reject the argument that failure to have a correct receipt was a mere technicality which the court can disregard. I am of the view that Rule 3(1) of the rules cannot be ignored particularly because it is in mandatory terms. The second issue that needs consideration is on service. The first respondent according to the affidavit of service was first presented with the petition on the 25<sup>th</sup> January 2008. The court needs to consider, was the first respondent served on 25<sup>th</sup> January 2008? Considering the evidence brought forward by the first respondent showing he was out of the country the court makes a finding that the first respondent was not served on 25<sup>th</sup> January 2008 at Safari Park Hotel as alleged by the process server. The evidence of the travel documents overwhelmingly support the first respondent contention that on 25<sup>th</sup> January 2008 he was in Singapore and not anywhere near Safari Park Hotel. The process server further stated that since the first respondent threw back to him the petition he arranged for service to be effected through a newspaper advertisement on 28<sup>th</sup> January 2008. An issue was raised by the first respondent that even if service was effected through the newspaper advert that the same was outside the period provided by section 20(1)(a) of the Act. The 28 days provided in that section, the first respondent argued, expired on 27<sup>th</sup> January 2008. The petitioner argued in response that in computation of time **Order XLIX** of the Civil Procedure Rules and **Section 57** Interpretation and General Provisions **Chapter 2** would apply. That being his submissions the petitioner argued that the twenty eight (28) days of service provided in **Section 20(1)** of the Act would begin to run from the 31<sup>st</sup> December 2008 without consideration of public holidays and Sundays. Such computation, petitioner said would make the service through advertisement and service on second and third respondent to be within time. The respondents were opposed to that submission and argued that the Act was a complete Act in itself without consideration of other laws unless they had been imported into the Act. The Act and its Rules has been stated in many of previous decision to be a complete regime and that other Legislations or Rules could only apply to election petitions if they were made applicable. A case in point is **KIBAKI vs MOI (2000) 1EA**. The Court of Appeal stated:-

***“the Act and the Rules both form a complete regime and other legislation or Rules can only be applicable to election petitions if they are made applicable by the Act itself or the Rules”.***

Similarly in the case of **HASSAN ALI JOHO –vs- HOTHAM NYANGE & ANOTHER MSA H.C. Election Petition No. 1 of 2005., (Unreported)**, Honourable Justice Maraga held as follows:-

***“It is, in my view, now well established that the jurisdiction conferred upon the High Court by Section 44 of the Constitution to hear and determine election petitions is a special jurisdiction. The National Assembly and Presidential Elections Act Cap 7 of the Laws of Kenya (the Act) and the Rules made thereunder form a complete legal regime with its elaborate procedure concerning the filing, serving, hearing and determination of election petitions. Save where the regime expressly admits and incorporates the provisions of other law it is a complete code of its own.***

***The Civil Procedure Act and the rules made thereunder do not therefore apply to election petitions save where they are expressly incorporated. If any authorities are required for this proposition the Court of Appeal decisions in DAVID WAKAIRU MURATHE vs SAMUEL KAMAU MACHARIA, Civil Appeal No. 172 of 1999 suffice it.”***

**Rule 18(7)** of the Rules specifically imports **Order XVIII** of the Civil Procedure Rules and the Oaths and Statutory Declaration Act. The Act and the Rules make it clear that unless the provisions of other law are imported the Act and the Rules are to be considered in isolation. I therefore make a finding that **Order XLIX** of the Civil Procedure rules and **Section 57** of the Interpretation and General Provisions Act do not apply in the computation of time in respect of period of service provided under of section 20(1)(a) of the Act. That being my finding the time period of service of the petition since the results of the elections were gazetted on 30<sup>th</sup> December 2007, was on 27<sup>th</sup> January 2008 when 28 days expired. The respondents having not been served by that date the petition becomes a nullity by virtue of **Section 20(1)(a)** of the Act. The petitioner argued that the service of the petition of the third respondent upon the second respondent was good service. According to the petitioner’s argument it was good service because the third respondent was an employee of the 2<sup>nd</sup> respondent. It is clear that each respondent ought to be served with the petition. Once a party has been made a respondent in an election petition it is clear after the decision of **KIBAKI vs MOI** that the law as it stands is that the best service of an election petition on such respondents is personal service. The Court of Appeal in that case made a finding as follows:-

***“In the event, we are satisfied the three learned judges of the High Court were fully justified in holding that as the law now stands only personal service will suffice in respect of election petitions filed under section 20(1)(a) of the Act.”***

Similarly in **Civil Appeal no. 150/1998 ALICEN J. R. CHELAITE versus DAVID MANYARA NJUKI & OTHERS** the Court of Appeal stated:-

***“In accordance with the mandatory provisions of section 20(1)(a) of the Act to which I have already alluded the petition should have been served on each and every respondent within 28 days from the date of publication of the result in the gazette.....”***

In the case of **DAVID WAKAIRU MUTHEE =and= SAMUEL KAMAU MACHARIA (Supra) J. E. GICHERU JA.** (as he then was) stated:-

***“Like any other legal process, the function of service is primarily to bring to the attention of the person to be served the fact that legal proceedings against him are being taken and for my part very clear language is required if anything short of that is to constitute service. Indeed where alternative methods of service are provided as rule 14(2) of the rules does in a matter such as was before the Learned judge, it was necessary that one of the methods in that rule should have been shown to have been followed. Such compliance could only have been possible if the appellant had acted in accordance with Rule 10 of the Rules. Having not done so as is outlined above the only other mode of service of the notice of presentation of a petition together with a copy of the petition was by personal service which in any event is best.”***

Section 20(1)(IV) provide alternative method of service where difficulty is experienced on effecting service on a respondent. That section states:-

***“Where after due diligence it is not possible to effect service under paragraph (a) and (b), the presentation may be effected by its publication in the Gazette and in one English and Kiswahili Local Daily newspaper with the highest national circulation in each case.”***

The court was not told what effort was put to personally serve the third respondent nor even the first respondent for that matter and thereafter the difficulties experienced to lead the petitioner to serve through an advertisement. Service of the third respondent through the second respondent was not good service even if it had been effected within the statutory 28 days because it was not personal service. The court, however, is greatly concerned about the contents of the affidavit of service by Christopher Githui which affidavit was adopted by the petitioner in his affidavit. In that affidavit the process server stated that he was on 25<sup>th</sup> January 2008 in the company of the petitioner at Safari Park Hotel. The process server gave elaborate description of how being in the company of the petitioner he served the petition on the first respondent. He alleged that on being handed the petition the first respondent threw back the papers to the process server. On being confronted by the first respondent’s affidavit where he stated that at that material date he was in Singapore on holiday with his family, the petitioner made about turn of his assertion on service by alleging that the first respondent was deliberately out of the country to avoid service. In the same

breath he doubted the document of travel were authentic. The nagging question is, was the petitioner at Safari Park Hotel on 25<sup>th</sup> January, 2008 or not? Even though the petition was granted time to enable him carry out investigation on the authenticity of the first respondent document of travel he did not mention his finding on such an investigation in his further affidavit. The matter as it now stands would seem to indicate that someone is not truthful and may very well have committed perjury. At the conclusion of submissions of counsel the court requested the original travel documents of the first respondent to be handed over to the court. The court has had an opportunity to examine those documents and it looks like the first respondent and his family were indeed in Singapore on the 25<sup>th</sup> January 2008 when the alleged service was attempted. The court finds it most unacceptable that a party would treat a matter of such magnitude and importance as election petition in such a flimsy manner. The petition is of importance not only to the parties in the matter but also to the constituents of Ndia at large. Much more if the first respondent was in Singapore on the said dates the process server has lied under oath. Because of that importance of the matter before court it is important for the police to be involved in an investigation on whether any party has committed perjury. For that reason the Deputy Registrar of this court is hereby ordered to refer the affidavit of Christopher Githui sworn on 1<sup>st</sup> February 2008, affidavit of Robinson Njeru Githae sworn on 11<sup>th</sup> March 2008, affidavit of John Githui Mithamo sworn on 22<sup>nd</sup> February 2008 and this ruling to the Criminal Investigation Department for an investigation to be carried out to determine whether any party has committed perjury and if so necessary action be taken. The end of the matter is that the petition is found to be incompetent for lack of service as provided by **Section 20(1)(a)** of the Act and for failure to provide a receipt required by Rule 3(1) of the Rules. Accordingly the petition is hereby dismissed with costs to all the respondents.

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF JUNE 2008.**

**MARY KASANGO**

**JUDGE**