

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Election Petition Cause 2 of 2008

JAYNE NJERI WANJIRU KIHARA.....PETITIONER

AND

CHRISTOPHER L. AJELE

(Returning Officer of Naivasha Constituency)....1ST RESPONDENT

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

JOHN MICHAEL NJENGA MUTUTHO.....3RD RESPONDENT

RULING

On the 10th July 2008 while scrutiny and counting of the votes cast at Naivasha Parliamentary elections was going on, the 3rd respondent filed a notice of motion seeking that the C. I. D. be directed to carry out comprehensive investigations on the storage of ballot box No. 43214 and 43413. On 11th July 2008, this court directed that the scrutiny of all the votes cast be completed and the court will deal with all the issues that required investigations. This matter was revisited again, counsel for the 1st and 2nd respondent had no objection to the orders sought. **Mr. Wamasa** submitted that as far as the 1st and 2nd respondent are concerned because no order has been made for the destruction of the election materials and they are therefore eager to make the investigations carried out. **Mr. Kihara** too on behalf of the petitioner does not object to the investigations given that he objects to the averments contained under paragraph 7, 11 and 18 of the supporting affidavit by the 3rd respondent. Those three paragraphs contain generalized allegations that are scandalous and allude that the petitioner who has an interest with the outcome of the petition may have tampered with the ballot boxes.

Upon listening to all the parties it is generally agreed that in the interest of establishing the truth and justice in this matter what happened to ballot box No. 43214 and 43415 from the time of polling, storage, transportation and upto the time of scrutiny must be established. Also the entire contents of the ballot boxes must be established. This request is adequately supported by the matters stated in the application therefore I agree the allegations contained under paragraph 7, 11 and 18 of the supporting affidavit by the 3rd respondent are merely generalized, they are scandalous and are therefore expunged from the record. The allegations refer to people who are not named. I order that the C.I.D. through the Provincial Criminal Investigation Office, Nakuru do carry out comprehensive investigations on the ballot boxes No. 43214 and 43415 from polling to scrutiny. The report of the investigation be filed in court within 60 days from today. The applicant to serve the P.C.I.O. with this order within 7 days, failure to which any other party shall be at liberty to serve them. This disposes the notice of motion dated 10th July, 2008.

Ruling read and signed on 28th day of July, 2008

M. KOOME

JUDGE