



Shafat v Independent Electoral and Boundaries Commission & 2 others (Election Petition Appeal E008 of 2023) [2023] KEHC 22309 (KLR) (21 September 2023) (Judgment)

Neutral citation: [2023] KEHC 22309 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
ELECTION PETITION APPEAL E008 OF 2023
PM MULWA, J
SEPTEMBER 21, 2023**

BETWEEN

SALLAH HASSAN SHAFAT APPELLANT

AND

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

IBRAHIM ABDI FARAH 2ND RESPONDENT

HASSAN DAHIR NOOR 3RD RESPONDENT

*(Being an appeal from the judgment and order of the Chief
Magistrate Court at Garissa - Hon. H.M. Nyaberi delivered on the
27th February 2023 in Garissa Election Petition No. E002 of 2022)*

JUDGMENT

1. This is an appeal from the judgment and decree of the Election Court (Hon H.M. Nyaberi - CM) at Garissa dated 27th February 2023, upholding the election of the 3rd Respondent Hassan Dahir Noor as the duly elected Member of County Assembly representing Baraki Ward, Garissa County Assembly.

Background

2. On 9th August 2022, nationwide multiple elections were held to fill six positions of President, Members of the National Assembly, Members of the Senate, Woman Representatives in the National Assembly, Governors and Members of the County Assembly.
3. In Baraki Ward Garissa County, the Petitioner and the 3rd Respondent were the only candidates for Member of County Assembly (MCA). Thereafter, the 1st and 2nd Respondent declared the 3rd



- Respondent as the duly elected MCA having garnered 1779 votes while the Petitioner garnered 1083 votes.
4. The Petitioner dissatisfied with the decision of the 1st and 2nd Respondent filed a Petition dated 30th August 2022, challenging the election of the 3rd Respondent. The petitioner contended that the election conducted was not free and fair. That the election was marred with violence, intimidation, improper influence and corruption. The Petitioner submitted that his agent namely Salah Mohammed Abdi Bulle was attacked at Afweine Centre stream 1 polling station while Abdikhan Abdi Mohammed was attacked at Afweine Primary School polling station, his agents were ejected from the polling station and there was failure of the KIEMS Kit. The Petitioner also averred massive manipulation of figures in favour of the 3rd Respondent. That there was interference with the voter's freedom of choice as the 1st and 2nd Respondent allowed voting to continue until 10.00 p.m. The Petitioner argued there was collusion where the agents of the 1st Respondent issued numerous ballot papers without being identified and marked in favour of the 3rd Respondent.
 5. The Petitioner sought several orders and declarations inter alia; a determination that the 3rd Respondent was not duly elected as Member of County Assembly representing Baraki Ward, scrutiny, audit and recount of votes in Afweine Centre stream 1, Afweine Centre stream 2, Afweine Primary School, Afweine Chief's Office, Afweine Dispensary, Afweine Secondary, Darusalam, Togdub and Lunguyato polling stations in Baraki Ward in Garissa County, a determination that the Petitioner was duly elected into office, an order for fresh elections for the MCA representing Baraki ward and a determination that there were election offences of a criminal nature and the Respondents to be condemned to pay the costs of the appeal.
 6. The 1st and 2nd Respondents refuted claims of massive irregularities and violence. They however confirmed there being a brief scuffle between the Petitioner's agent one Salah Mohammed Abdi Bulle and the 3rd Respondent outside Afweine Centre polling station, which was resolved by the security personnel. It was their assertion that the scuffle did not interfere or interrupt the voting process.
 7. The 3rd Respondent denied knowledge of any violence. He averred that the Baraki ward is inhabited by 2 clans and the voting patterns are based on the clan distribution.
 8. After a full hearing, the trial court found the Petitioner did not demonstrate to the required standard that there was violence, and that he failed to tender evidence to show that such violence affected the voting and the final results. That it was widespread, systematic, planned or organized. That the single incident in Afweine Centre polling station was contained in 20 minutes and the voting continued peacefully. The court found the violence was of a minor magnitude and did not affect the voting process. The court proceeded, inter alia, to;
 - i. dismiss the petition and upheld the election of the 3rd Respondent as the duly elected Member of County Assembly Baraki Ward Garissa County.
 - ii. Order the ODPP to take up the matter of the election offences committed by Salah Mohammed Abdi Bulle, Qureshi Ali Ahmed and Amin Abdullahi Dagane.
 - iii. The costs of the petition were awarded to the Respondent and to be borne by the Petitioner.
 9. Dissatisfied with the trial court's judgment the Petitioner/Appellant filed the instant appeal vide a Memorandum of Appeal dated 13th March 2023, raising 12 grounds of the appeal:
 - i. That the honourable magistrate erred in law by finding that the elections held on 9th August 2022 for the Member of County Assembly for Baraki ward, Lagdera Constituency, Garissa County were held in accordance with *the Constitution*, the Election Laws and Regulations.



- ii. That the honourable magistrate erred in law by finding that the Petition did not prove election malpractices and irregularities.
 - iii. That the Honourable magistrate erred in law by making a finding that the violence did not affect the outcome of the election.
 - iv. That the honourable magistrate erred in law and in fact by finding that the petitioner failed to discharge his burden of proof on issues surrounding violence, election of agents, intimidation of voters and agents, failure of KIEMS Kits and ballot stuffing.
 - v. That the honourable magistrate erred in law by failing to order a scrutiny and recount of the votes in the polling stations named and identified in the petition.
 - vi. That the honourable magistrate erred in Law by finding that scrutiny could not be conducted on the basis that there was no time left on account of the deadlines to conclude election petitions.
 - vii. That the learned magistrate erred in law and completely misapprehended the effect and impact that physical violence and assault on agent by the 3rd Respondent would have on the conduct of elections in the polling stations mentioned in the Petition.
 - viii. The learned magistrate erred in law in his evaluation of the entire evidence, especially when dealing with evidence of violence and intimidation as alleged against the 3rd Respondent.
 - ix. That the learned magistrate erred in law by raising the standard of proof beyond reasonable doubt contrary to the requirements of the law with regards to election matters.
 - x. That the learned magistrate erred in law when he misinterpreted and misapplied Article 38(2), 81(e) and 86 of *the Constitution* of Kenya and Sections 32, 33 and 40 of the *Elections Act*.
 - xi. That the honourable magistrate erred in law in its evaluation of the entire evidence and in considering the principle of adverse interference as the Respondent failed to prevent the necessary evidence with regards to the scale of violence and failure of the KIEMS Kits that would have assisted the court thereby making the court reach at the wrong conclusion.
 - xii. The learned magistrate erred in law by dismissing the Appellant’s petition on conclusions that were based on no evidence on record or misapprehending the gravity and effect of the evidence on record.
10. The Appellant urged the court to allow the appeal, set aside and or vacate the judgment of Hon. Nyaberi, and allow the prayers in the petition dated 30th August 2022 and/or any other reliefs.
11. Directions were given that the appeal be heard by way of written submissions and the same were highlighted on 11th September 2023.

Appellant’s submissions

12. Mr. Abdi Salah, learned counsel for the Petitioner argued that the instant appeal raised credible grounds that supported the allegations of non-compliance with *the constitution* and the law. It was submitted that the Petitioner had proved the issue of violence which was admitted by the 1st, 2nd and 3rd Respondents. That the evidence showed the elections were not conducted in an impartial, neutral, efficient, accurate and accountable manner. And that the elections did not meet the constitutional threshold enshrined under Articles 38(2), 81 and 86 of *the Constitution*.



13. Counsel submitted that the elections as conducted were not free and fair as they were coupled with violence, intimidation, improper influence and corruption.
14. It was counsel's submission that the fact that violence was admitted by the 1st and 2nd Respondents, the trial magistrate failed to extraneously and exhaustively examine the allegation of violence and appreciate the effect the violence would have caused on the elections. Mr. Abdi referred to the case of Raila Odinga and 5 others vs Independent Electoral and Boundaries Commission & 3 others, Supreme Court Election Petition No. 5 of 2013,(2013)eKLR where it was held inter alia; "the Petitioner seeking to nullify an election should clearly and decisively demonstrate that the conduct of the election was so devoid of merits and so distorted as not to reflect the expression of the people's electoral intent and that the evidence should disclose profound irregularities in the management of the electoral process."
15. Mr. Abdi argued that the trial magistrate erred when he raised the burden of proof beyond reasonable doubt contrary to the requirements of the law which is on a balance of probability. That the Appellant had demonstrated that violence perpetrated by the 3rd Respondent was meted on his chief agent, while the 1st and 2nd Respondent failed to prove that the violence was minimal. The appellant having proved violence during the elections the burden shifted to the Respondents to prove the contrary. The 1st and 2nd Respondents failed to address the issue as to why the security officers were increased if the violence only lasted 10 mins. The provisions of Section 83 of the Election Act were cited; "...no election shall be declared to be void by reason of non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the constitution and in that written law or that the non-compliance did not affect the result of the election."
16. Counsel stated that for the purpose of the violence, section 83 of the Election Act should be read together with section 73(1). According to counsel section 73 is designed to cater for the postponement of elections in a situation where it was impossible to conduct elections.
17. Counsel argued that the election fell short of compliance with Article 81 (e) of the Constitution. The violence interfered with the voter's right to vote.
18. He further argued that the trial court erred in failing to order for scrutiny of votes in the 9 polling stations, while the appellant had called a number of witnesses who gave evidence which formed the basis for scrutiny. That a recount or scrutiny of votes would have given the court an opportunity to verify the process and confirm whether the voting process was proper, free and fair. The appellant demonstrated there was violence, voter intimidation, coercion, and ejection of the appellant that interfered with the election at Baraki Ward perpetuated by the 3rd Respondent.
19. In conclusion Mr. Abdi urged the court to find that the elections conducted in Baraki Ward - Garissa County on 9th August 2022 were not conducted in accordance with the constitutional provisions set out in Articles 38, 81 and 86, as the voting was marred with irregularities that materially affected the validity of the results announced and pleaded with the court to allow the appeal.

1st and 2nd Respondent's submissions

20. In opposing the appeal Mr. Sheikh Muhamud filed the submissions dated 8th September 2023. He argued that upon tallying the 9th August 2022 Election Results in Baraki Ward the 3rd Respondent emerged victorious having garnered 1,779 votes while the Appellant garnered 1,083 votes. As a result, the 2nd Respondent declared the 3rd Respondent as the winner.
21. Counsel stated that the record of appeal as filed captures the affidavits of witnesses who did not testify in the trial court and urged the court to disregard the witness affidavits of Abdikhani Abdi Mohamed,



- Abdi Yussuf Gure and Abdisalam Abdikadir Bare. Counsel also urged the court to disregard the exhibits marked as 2(b), 2(c) and 2(d) annexed to the affidavit of the Appellant in support of the petition as they were objected to and the trial court upheld the objection.
22. Out of the 12 grounds of the appeal raised, Mr. Sheikh framed four issues for determination, which can be summarized as; whether the allegations of violence, failure of KIEMS Kits and alleged ballot stuffing were proved by the Appellant; and if so, whether the same affected the outcome of the elections.
 23. According to counsel, the issues come out of the Appellant's grounds on alleged. violence in 9 polling stations, the expulsion of agents from Afweine Centre 1 and Afweine Primary, failure of KIEMS Kits, voter suppression/apathy and ballot stuffing. Counsel further stated the allegations of violence were not supported by evidence. That the trial court was right in holding that the Appellant failed to demonstrate the violence in 8 polling stations listed and the only issue for determination was whether the violence in Afweine Centre 1 was proved.
 24. Mr. Sheikh submitted that none of the Appellant's witnesses proved forceful ejection from Afweini Centre 1, violence or intimidation. That RW2 from Darusalam Primary School testified he received a call from RW1 and was informed of the scuffle outside Afweine Centre 1 polling station. Counsel submitted the scuffle lasted for 20 minutes and the same was contained and it did not interfere with the election.
 25. The case cited was Owino Paul Ongili Babu vs Francis Wambugu Mureithi & 2 others, Election Petition No. 18 of 2018 where the Court of Appeal stated "it is not enough to find that there was some form of violence in a given station then proceed to nullify the results of an election. There has to be a demonstration that the violence affected not only the voting but the final result of the election; for example, that the violence disfranchised some voters and/or gave an undue advantage to one of the parties."
 26. It was further submitted that violence in an election petition cannot be addressed through nullification of election results as argued by the Appellant as doing so will encourage candidates upon sensing defeat to instigate violence with the hope that the results would be nullified.
 27. It was contended by counsel that the testimony of RW2 proved that KIEMS Kits only failed in 2 polling stations in Bariki Ward, which were replaced and voting proceeded normally. That the argument by the Petitioner of voters being disfranchised was not backed up by evidence.
 28. On the issue of alleged ballot stuffing counsel submitted that the Appellant failed to avail an iota of probative evidence of proof. The allegation of ballot stuffing is baseless, a rumour and unfounded. According to counsel, the appellant failed to establish the burden of proof as required under Sections 107 and 109 of the *Evidence Act*. Counsel submitted the Appellant did not attempt to adduce cogent evidence that would shift the burden of proof to the Respondents. Even in the trial court, the Appellant failed to prove his case to the required standard which is higher than the balance of probability but lower than beyond reasonable doubt.
 29. On the twin issues of scrutiny and recount together, counsel stated that at no time did the trial magistrate hold that the election court lacked the time for scrutiny and recount based on the timelines for hearing of election petitions. According to counsel, the Appellant failed to demonstrate that the election in the 9 polling stations - Afweine Centre stream 1, Afweine Centre Stream 2, Afweine Primary School, Afweine Chief's Office, Afweine Dispensary, Afweine Secondary, Darusalam, Togdub water pan and Lunguyato Village Borehole in Baraki Ward in Garissa County were marred with irregularities.



30. He submitted the trial court was right in holding that the Appellant had not laid a basis to order for scrutiny and recount.
31. Counsel further submitted that the provisions of Sections 80(4)(a) and 82 of the *Elections Act*, 2011 as read with Rules 28 and 29 of the Elections (Parliamentary & county Elections) Petitions Rules 2017 are clear on when and how scrutiny and recount are done. The court is mandated to grant scrutiny and recount if sufficient grounds to grant the same are pleaded. Counsel referred the court to the Supreme Court case in *Gitirau Peter Munya vs Dickson Mwenda Kithinji* (2014) eKLR where the court held; “on the contrary, judicial opinion distinctly favours a view that commends itself to us: that an application for scrutiny and recount, must be couched in specific terms, and clothed with particularity as to which polling stations within a constituency are to attract such scrutiny. If a party lays a clear basis for scrutiny in each and all the polling stations within a constituency, then the order ought to be granted. Otherwise, a prayer pointing to a constituency but lacking in specificity is not to be entertained.”
32. In conclusion counsel submitted that the appellant failed to adduce sufficient reasons to grant the order for scrutiny and recount and thus the trial court could not be faulted in dismissing the appellant’s petition. He pleaded with the court to find the appeal as lacking in merit and dismiss the same.

3rd Respondent’s submissions

33. Mr. Ndegwa, counsel for the 3rd Respondent joined issue with submissions for the 1st and 2nd Respondents and submitted that the alleged violence, which the Appellant failed to prove, cannot be a substantial ground to invalidate the will of the people. That it is not enough to merely plead there was violence during an election, the Appellant bears the burden of proof to establish that there indeed was violence and the same had a significant effect on the results of the elections and the violence compromised the principles laid out under Article 86 of *the constitution* of Kenya 2010.
34. He cited the case of *Abdikadir Hussein Mohammed vs. Abas Ibrahim Kafow & Others* (2023) where the Court of Appeal relied on and quoted the case of *Rekensington North Parliamentary Elections* (1960) 2 ALL ER 150 where Streatfield J held that: “it seems to me that the election was conducted substantially in accordance with the law and that the act or omission did not affect the true results... it’s for the court to make its mind on the evidence as a whole whether there was substantial compliance with the law as to elections, or whether the act or omission affected the results.”
35. Counsel argued that the alleged violence did not affect the voter turnout, voting process or the tallying and/ or counting of the votes in the affected polling station. That the Appellant failed to bring forth any witnesses to testify that their right to vote was denied due to the violence.
36. On the issue of denial of agents access into the polling station, Mr. Ndegwa submitted that there was no evidence tendered before the trial magistrate showing that the absence of agents in the polling station compromised the elections. There was proof that all forms 36A were duly signed by agents of all parties including the ones for the Appellant.
37. According to counsel, in as much as the Appellant relied on the alleged violence as a ground to seek a recount and scrutiny of votes in 9 polling stations, he failed to lay the basis of violence in 8 of the polling stations. Counsel further argued the Appellant failed to plead the issue of KIEMS Kits with clarity, certainty, and specification.
38. In conclusion counsel pleaded with the court to find there is no basis to warrant the court disturb the findings of the trial court. He urged the court to dismiss the appeal.



Analysis and determination.

39. I have considered the appeal, the trial court record and submissions, both written and oral, by counsel. Let me at this stage thank all learned counsel for parties for their diligence and able presentations considering that we had limited time to canvass the appeal.

40. This being the first appellate court, I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanour. I am also aware that the jurisdiction of this court is limited to matters of law only as provided under Section 75 (4) of the *Elections Act* which states as follows: -

“75 (4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be; -

- (a) filed within thirty days of the decision of the magistrate’s court; and
- (b) heard and determined within six months from the date of filing of the appeal.”

41. I now proceed to frame the issues for determination as follows:

- i. Whether the irregularities complained of affected the results of the election to warrant a nullification of the results.
- ii. Whether the trial magistrate erred in holding that the violence was not properly proved.
- iii. Whether the learned magistrate erred in law disallowing the prayer for scrutiny and recount.
- iv. Who bears the costs of the appeal?

I will handle issue numbers (i) and (ii) together.

Whether the irregularities complained of, including the alleged violence, affected the results of the elections

42. In the instant appeal, the trial court concluded that the alleged irregularities were not of such magnitude to have affected the outcome of the election. The court went ahead to state that procedural irregularities of not opening and/or closing the polling station in time cannot vitiate the election.

43. Upon perusal of the record, the irregularities complained of included ballot stuffing, failure of the KIEMS Kits, violence and low voter turnout. The appellant submits the irregularities were aimed at disfranchising the voters.

44. In *Raila Odinga & Others -v- Independent Electoral & Boundaries Commission & Others*, Petition No. 5 of 2013, the court stated: “[196] ...Where a party alleges non-conformity with the electoral law, the Petitioner must not only prove that there has been non-compliance with the law, but that such failure of compliance did affect the validity of the elections.”

45. It is upon the Petitioner to prove that indeed the irregularities affected the voting process as well as the results of the elections. The Petitioner ought to discharge the burden of proof to the required standard. RW1 testified that the failure of the KIEMS Kits was only in 2 polling stations and they were immediately replaced thus giving voters the opportunity to vote. And that the time was extended to allow time for voters who were on the queue.



46. Article 81 of *the Constitution* sets out general principles for the electoral system in this country. It states as follows:

“General principles for the electoral system

The electoral system shall comply with the following principles-

- a. freedom of citizens to exercise their political rights under Article 38;
- b. not more than two-thirds of the members of elective public bodies shall be of the same gender;
- c. fair representation of persons with disabilities;
- d. universal suffrage based on the aspiration for fair representation and equality of vote; and
- e. free and fair elections, which are-
 - i. by secret ballot;
 - ii. free from violence, intimidation, improper influence or corruption;
 - iii. conducted by an independent body;
 - iv. transparent; and
 - v. administered in an impartial, neutral, efficient, accurate and accountable manner.

47. The issue of violence as cited by the Appellant was confirmed by the 1st and 2nd Respondent. However, it was their contention that the violence did not last more than 20 minutes and that it was limited only to Afweine Centre 1 polling station. It was further contended that the scuffle was promptly and adequately controlled and/or managed by the security officers. The 3rd Respondent testified that he did not witness the violence.

48. The Appellant had contended that the violence was caused by the 3rd Respondent in cahoots with some of his agents and a group of rowdy youth from the Afgab Clan. That during the violence his agents were ejected from the polling station, some assaulted, others threatened and the move was calculated to scare the Petitioner’s supporters from voting. The Appellant argued that 80% of voters in Afweine Polling Station were assisted voters and their decision could not be verified after his agents were ejected.

49. The Appellant’s evidence on the violence and election malpractice was largely based on the events of the polling day at Afweine Polling Station 1. The evidence presented to the election court by the 1st Respondent was largely oral evidence which was direct evidence by RW1 who was present at the polling station. RW1 confirmed the scuffle was contained within 20 minutes and the same did not affect the voting process as it happened outside. As regards the malpractices on the voting day, the election court preferred the evidence of the 1st and 2nd Respondents to that of the Petitioner and his witnesses

50. The trial court held that apart from the one incident witnessed outside of the Afweine polling station 1, the Appellant failed to relate to violence in the other 8 polling stations.



51. This court finds the Appellant has failed to discharge the burden of proof, and has also failed to prove that the electoral malpractices alleged in the petition and the appeal affected the voting as well as the results of the elections.
52. Section 83 of the *Elections Act* stipulates that:
- “No election shall be declared to be void by reason of non-compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in *the Constitution* and in that written law or that the non-compliance did not affect the result of the election.
53. In *Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others* [2014] eKLR, the Supreme Court at paragraph 217 held that:
- “If it should be shown that an election was conducted substantially in accordance with the principles of *the Constitution* and the *Elections Act*, then such election is not to be invalidated only on the ground of irregularities”
54. In view of the above, this court finds the alleged malpractices fail to lay a basis for the nullification of the results for Member of County Assembly for Baraki Ward Garissa County. The 3rd Respondent having garnered the majority votes was lawfully elected into office.

Whether the learned magistrate erred in law by disallowing scrutiny and recount

55. It was submitted for the Appellant that scrutiny and recount should be limited to polling stations where results are disputed and that the trial magistrate misapplied the law by refusing to allow scrutiny.
56. I have considered the trial court record and I note that the trial magistrate held the appellant failed to demonstrate a basis for recount and scrutiny.
57. The trial court is vested with the discretion to order a recount and scrutiny if it is satisfied that the recount and scrutiny are necessary to enable it to arrive at a just and fair determination. The order for scrutiny does not lie as a matter of right to the party pleading the same, the party must establish a basis for the order.
58. In the case of *Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari & Anr.* (Civil Appeal Nos. 5710-5711 of 2012) 2014 the Supreme Court of India held that:
- “Before the court permits the recounting, the following conditions must be satisfied:
- i. The court must be satisfied that a prima facie case is established;
 - ii. The material facts and full particulars have been pleaded stating the irregularities in counting of votes;
 - iii. A roving and fishing inquiry should not be directed by way of an order to recount the votes;
 - iv. An opportunity should be given to file an objection; and
 - v. Secrecy of the ballot should be guarded.”



59. This court is not persuaded that the trial magistrate erred in failing to order for scrutiny and recount. The Appellant failed to lay the basis for the recount and scrutiny as well as show that the election was marred with irregularities and procedural technicalities.

Who bears the costs of the Appeal?

60. It was argued by Mr. Ndegwa counsel for the 3rd Respondent that the issue of costs has not been appealed and as such the costs should follow the outcome of dismissing the appeal and the costs be awarded to the Respondents. And further that the costs awarded by the trial court to be treated differently from the appeal costs.

61. On the issue of costs Section 84 of the *Elections Act* provides: “An election court shall award the costs of and incidental to a petition and such costs shall follow the cause.”

62. An election court may either award the total costs payable or cap the maximum sum payable and leave the assessment to the Taxing Officer. Rules 30 and 31 of Elections (Parliamentary and County Elections) Petitions Rules lay the parameters of the court to determine the person by whom costs are payable, and the total costs payable.

63. The order of the trial court on the issue of costs was:

“the Petitioner will bear the costs of the petition as follows; the 1st and 2nd Respondent are jointly granted full costs of the petition capped at kshs. 400,000/=, the 3rd Respondent is awarded full costs of the petition capped at 300,00/=, Mr. Ndegwa costs capped at Kshs. 250,000/=.”

64. I find no fault in the trial court decision in awarding costs. In the instant appeal I will award the Respondents costs to be borne by the Petitioner. The 1st and 2nd Respondents are jointly awarded costs of Kshs 600,000/=, the 3rd Respondent costs are awarded at Kshs.500,000/= while the instruction fees of Mr. Ndegwa are capped at Kshs. 300,000/=.

65. Final Orders:

- i. The Judgment of the trial court sitting at Garissa dated 27th February 2023 is upheld.
- ii. That the Petition of Appeal no. E008 of 2023 is hereby dismissed.
- iii. The declaration of results of the election by the Independent Electoral and Boundaries Commission in respect of the Member of County Assembly for Baraki Ward Garissa County is affirmed.
- iv. The costs of the Appeal are awarded to the Respondents in the following terms:
 - a. The 1st and 2nd Respondents are jointly awarded costs of Kshs 600,000/=.
 - b. The 3rd Respondent costs are awarded at Kshs. 500,000/=.
 - c. The instruction fees for Mr. Ndegwa are capped at Kshs. 300,000/=.

Orders accordingly.

JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 21ST DAY OF SEPTEMBER 2023.

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P. M. MULWA

JUDGE

In the presence of:

Mr. Abdi Salah - for the Appellant

Mr. Sheikh Mohamud - for the 1st and 2nd Respondents

Mr. Ndegwa Njiru - for the 3rd Respondent

Court Assistants - Mr. Kinyua & Mr. Dual

