



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ELECTION PETITION APPEAL NO. 5 OF 2018

BETWEEN

OBARE MOCHACHE WALTER.....APPELLANT

AND

SAMWEL APOKO ONKWANI.....1ST RESPONDENT

JULIUS MEJA OKEYO.....2ND RESPONDENT

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....3RD RESPONDENT

(An appeal from the Judgment of Election Petition No. 5 of 2017 at the Chief Magistrate's Court at Kisii delivered by Hon. S.K. ONJORO (SRM) on 27th February, 2018)

JUDGMENT

1. OBARE MOCHACHE WALTER (*hereinafter referred to as the appellant*); SAMWEL APOKO ONKWANI (*hereinafter referred to as the 1st respondent*) and 10 others were contestants for the position of Member of the County Assembly for **Kiogoro Ward in Nyaribari Chache Constituency in the general elections held on 8th August 2017.**

2. The results as declared by the 2nd respondent were as follows: -

CANDIDATE	VOTES
SAMWEL APOKO ONKWANI	2096
OBARE MOCHACHE WALTER	1913
JOELEX MOGAKA ORORA	1130
MESHACK KENGERE ONDARI	641
WILFRED ONSERIO BOSIRE	632
WILSON MOSE ONDIEKI	290
STEPHEN ONSERIO MANGONGO	88
JOSPHAT NYARIBO NYAMACHE	87
CHRISTOPHER ARUYA ONGWAE	21

NAFTAL KAMBUNI OIRURA	18
DENNIS KAYAGO OMBONGI	14
MOMANYI MOGAKA INNOCENT	8

3. The appellant filed a petition challenging the declaration by the 2nd respondent that the 1st respondent was the duly elected Member for County Assembly for **Kiogoro Ward**, in Nyaribari Chache Constituency.

4. In a judgment dated 27th February, 2018, the Election Court found that the petition was not proved and declared that the 1st respondent was validly elected.

The Appeal

5. The Appellant being dissatisfied with the Election Court's decision preferred this appeal and on 12.3.18 filed the Memorandum of Appeal of even date which raises 7 grounds of Appeal which I will return to later in my analysis of the evidence.

6. When the appeal came up for directions on 4.7.18, the parties advocates agreed that the appeal be canvassed by way of written submissions which they dutifully filed and cited various authorities. The submissions were highlighted on 24th July, 2018 and the court identified the following issues for determination:

i. Whether there were election irregularities and/or illegalities in the election of Member of the County Assembly for Kiogoro Ward, in the election conducted on 8th August, 2018

ii. Whether judgment can be founded on unpleaded issues

iii. Whether there existed 2 sets of election results

iv. Who bears the costs of this appeal

SUBMISSIONS

a) Irregularities and/or illegalities

7. Mr. Begi, advocate for the petitioner submitted that the presiding officer at Nyangogwa TCB Polling Station, did not indicate in the polling station diary, the number of votes cast in respect of Member of the County Assembly. He contended that the 299 votes cast at that polling station were not added to the appellant's votes and that the election was therefore not accountable. He additionally submitted that the election was conducted in breach of Section 79 of the *Elections (General) Regulations, 2012 (hereafter referred to as the General Regulations)*.

8. In response, Mr. Ogotu, advocate for the 1st respondent urged the court to reject appellant's submission that results for Nyangogwa TCB Polling Station were not accounted on the ground that Form 36A filed by the appellant shows that appellant received 33 votes while the 1st respondent received 94 of the 296 valid votes cast at that polling station. It was further submitted that failure to capture the results for Nyangogwa TCB Polling Station in the polling station diary is not an illegality but an irregularity curable under Section 83 of *the Act*.

9. The 1st respondent placed reliance on **Wavinya Ndeti & another v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR** where the court stated:

[98] "In our view, the statement by the Supreme Court in Raila 2017 in reference to the presidential election that, "the Maina Kiai decision, made it clear that Form 34A being the primary document, becomes the basis for all subsequent verifications" applies with equal force to gubernatorial elections. It was in the IEBC vs Maina Kiai & 5 others (above), that this Court stated that:

"Accuracy of the count is fundamental in any election. Voter turnout determines the outcome of an electoral contest. Numbers therefore are not only unimpeachable but they are everything in an election...The declaration form containing those results is a primary document and all other forms subsequent to it are only tallies of the original and final results recorded."

b) Effect of failure to file response to petition

10. The appellant faulted the Election Court for deeming the replying affidavit filed by the 2nd respondent as a response to the petition.

11. In response, Mr. Ogutu, advocate for the 1st respondent conceded that respondents did not file a response but that the 2nd respondent was cross-examined at length on his affidavit and that appellant is therefore estopped from denying that which he acquiesced to.

12. The 2nd and 3rd respondent's counsel Mr. Wasike restated that the 2nd respondent's replying affidavit was a valid response to the petition. Reliance was placed on the case of **Nahashon Akunga v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR** and **Karanja Kabage v Joseph Kiuna Kariambegu Nganga & 2 others [2013] eKLR**.

c) Two sets of results

13. The appellant argued that Form 36 B used by 2nd respondent to declare the results was irregular since it did not have a serial number and that the results thereon were a nullity. It was further submitted that the results on Form 36 B did not tally with the results on the IEBC Public Portal thereby raising suspicion that there were two sets of results. Appellant faulted the election court for disregarding the results on the IEBC Portal. He placed reliance on **Wavinya Ndeti & another v Independent Electoral and Boundaries Commission (IEBC) & 2 others (Supra)** where the Court of Appeal held as follows:

105. The forms used in the elections are “prescribed” by legislation. The content and design will depend on the purpose. Forms are therefore an integral part of an election and an election outcome will depend largely on the information contained in the forms used in the process. Indeed, many electoral disputes have been fought around the forms. In Raila 2017 the Supreme Court cited this passage from IEBC vs Maina Kiai & 5 others (above):

The court further stated as follows: -

“We are satisfied that with this elaborate system, the electronic transmission of the already tabulated results from the polling stations, contained in the prescribed forms, is a critical way of safeguarding the accuracy of the outcome of elections, and do not see how the appellant or any of its officers (read 1st respondent) can vary or even purport to verify those results ...”

14. In response, Mr. Ogutu, advocate for the 1st respondent conceded that Form 36 B used by 2nd respondent to declare the results did not have a serial number. He however submitted that in the absence of evidence of inconsistency of the final results tallied from Forms 36A's, the irregularity is not sufficient to invalidate the impugned election since it's curable under Section 83 of *the Act*.

15. Counsel for the 1st respondent further submitted that contrary to the appellant's submissions that there were two sets of results, the results on Form 36 B filed in court tallied with those on the IEBC Public Portal. It was additionally submitted that the final results in 36A *which is the primary source for all subsequent verifications of results cannot be contradicted by results in the IEBC Public Portal. In support of this proposition, the 1st respondent relied on Jackton Nyanungo Ranguma v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR where the court held as follows:*

[17] Even assuming accepting the errors, omissions and inconsistencies highlighted by PW 4 and the other witnesses, the legal position remains that the votes as recorded in Form 34A are final. Unless Forms 34A are disputed, any errors in electronic transmission of results or publication in the 1st respondent's public portal cannot, of themselves and without more, invalidate Forms 34A. Where the results from the polling station are electronically transmitted from the polling station to any other portal as the 1st respondent may direct, such results can only be termed as provisional thus underlining the primacy and finality of Form 34A.

16. 2nd and 3rd respondent's counsel Mr. Wasike reiterated submissions by the 1st respondent that the final results in 36A *could not be controverted by results in the IEBC Public Portal which were at 94.74% at the time they were downloaded.*

d) Unpleaded issues

17. The appellant argued that the election court had a duty to be inquisitive and to consider the petition in its totality notwithstanding that the breaches alleged by the appellant were not pleaded. Appellant placed reliance on **Choitram v Nazari [1984] eKLR**; **Peter Kimori Maranga & another v Joel Omagwa & 2 others [2013] eKLR** and **Moses Masika Wetangula v Musikari Nazi Kombo & 2 others [2015] eKLR**.

18. In response, Mr. Ogutu, advocate for the 1st respondent submitted that appellant's complaints at paragraph 9 of the petition were not particularized. He urged the court to find that the election court rightfully held that it could not address its mind to unpleaded issues. 1st respondent placed reliance on **Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others [2014] eKLR** where the Court of Appeal cited the decision of the Malawi Supreme Court of Appeal in **MALAWI RAILWAYS LTD Vs. NYASULU [1998] MWSC 3**, in which the learned judges quoted with approval from an article by Sir Jack Jacob entitled “The Present Importance of Pleadings.” The same was published in [1960] **Current Legal problems**, at P174 whereof the author had stated;

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute

which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called "Any Other Business" in the sense that points other than those specific may be raised without notice."

19. 1st respondent also relied on Raila Amolo Odinga and another v Independent Electoral and Boundaries Commission and 4 others & Attorney General and Another Petition No. 1 of 2017 [2017] eKLR where the Supreme Court held as follows:

"Having addressed our minds to the above issues, it is our view that first, we note that as correctly argued by counsel for the 3rd respondent, a party must be bound by its own pleadings and secondly, any scrutiny of either the forms or the technology must be made for a sufficient reason. Any prayer in the application that would seem to be an extension of the case for the petitioners or which would in effect a fishing exercise to procure fresh evidence not already contained in the petition would and must be rejected."

20. 2nd and 3rd respondent's counsel Mr. Wasike submitted that the evidence adduced by the appellant was at variance with the unparticularized, general and ambiguous pleadings contained in the petition and more particularly paragraph 9 of the Petition.

21. Counsel urged the court to uphold the election court's finding that parties were bound by their pleadings. Reliance was placed on Bullen and Leake and Jacob's Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell (The Common Law Library No. 5) where the learned authors declare: -

"The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two-fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial."

d) Costs

22. It was submitted for the appellant that the petition was not frivolous and that 2nd and 3rd respondents that conducted an election that was not accountable and verifiable ought to be condemned to pay costs since. Appellant placed reliance on Peter Kimori Maranga & another v Joel Omagwa & 2 others (Supra) where the court held as follows:

43. As the acts and omissions giving rise to the outcome of this petition were committed by the Independent Electoral and Boundaries Commission and its officers, the party and party costs of petition will be paid by the 3rd Respondent to the petitioners and the 1st respondent.

23. 1st respondent urged court to find that the election court's discretion to award costs was exercised judiciously and prayed for dismissal of the appeal with costs. The 2nd and 3rd respondents did not make any submission on costs.

ANALYSIS AND DETERMINATION

24. Before dealing with the issues in contention in this appeal, I must bear in mind the principle that the first appellate court must re-evaluate the evidence adduced before the Election Court before reaching its own independent determination as to whether or not to uphold the decision of the trial magistrate bearing in mind that it neither saw nor heard the witnesses testify (see Peters v Sunday Post Ltd [1958] EA 424).

LEGAL PRINCIPLES

25. The legal principles governing the conduct of elections are contained in Constitution, the Elections Act (*The Act*) and the Subsidiary Regulations thereto. **Article 1** of the Constitution pledges the Sovereignty of the will of the people which may be exercised through their democratically elected representatives. **Article 2** declares the Constitution to be the supreme law of the Republic while **Article 3** obligates every person to respect, uphold and defend this Constitution.

26. An Election Petition is but an audit undertaken by an Election Court, on the basis of the complaints raised in a Petition, to confirm if an election was undertaken in accordance with the Constitution and the electoral law. In our case, the Constitutional principles are to be found in **Articles 38, 81, 83 and 86 of the Constitution of Kenya**.

27. These are to the effect that; the elections should be free and fair which reflect the will of the electors; elections that are by secret ballot; elections that are free from violence, intimidation, improper influence or corruption, transparent; that are administered impartially, efficiently, accurately and in an accountable manner; that the voting method used is simple, accurate, verifiable, secure, accountable and transparent; that the votes are counted, tabulated and results announced promptly and that mechanisms are put in place to eliminate electoral malpractice including the safekeeping of electoral materials. (See Ahmed Abdullahi Mohamad & another v Mohamed Abdi Mohamed

& 2 others [2018] eKLR).

28. Elections emphatically demonstrate the sovereign will of the people, which qualifies to be safeguarded by the process of the law. An Election Petition is therefore not an ordinary civil dispute. It is a special dispute which calls upon an Election Court to determine whether the political rights of citizens under **Article 38** have been upheld. For that reason, it's now trite that the standard of proof in an election petition is beyond the balance of probability but lower than beyond reasonable doubt that is applicable in criminal cases. (**See Sarah Mwangudza Kai v. Mustafa Idd & 2 Others Election [2013] eKLR).**

29. The appellant not only bore the burden to establish that there were irregularities and/or illegalities in the conduct of the election for Member of the County Assembly for **Kiogoro Ward** held on 8th August, 2017, but also to demonstrate to the satisfaction of the Court, that those irregularities and/or illegalities affected the results of the election.

30. In **Raila Odinga and others v Independent Electoral and Boundaries Commission and 3 Others 9Supra**), the Supreme Court held that the petitioner bears the burden of proof. It observed that;

[196] This emerges from a long-standing common law approach in respect of alleged irregularity in the acts of public bodies, omnia praesumuntur rite et solemniter esse acta, all acts are presumed to be done rightly and regularly. So the Petitioner must set out by raising firm and credible evidence of the public authority's departures from the prescriptions of the laws.

31. I now turn to consider the issues framed, by reference to the appeal, in light of the principles I have highlighted.

Unpleaded issues

32. A petitioner is bound to prove the case it has pleaded. A petitioner is not permitted to make a case outside the pleadings and affidavits, and testimony must be consistent with, and support the case pleaded (**See Jackton Nyanungo Ranguma v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR**). In **Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission and 2 Others (Supra)**, the Supreme Court quoted with approval the Supreme Court of India in **Arikala Narasa Reddy v Venkata Ram Reddy Reddygari and Another Civil Appeal Nos. 5710 -5711 of 2012[2014] 2 SCR** where it stated that;

In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.

33. This position was clearly stated by Kimaru J. in **Mahamud Muhumed Sirat v Ali Hassan Abdirahman and 2 Others [2010] eKLR** as follows;

“From the outset, this court wishes to state that the petitioner adduced evidence, and even made submissions in respect of matters that he had not specifically pleaded in his petition. It is trite law that a decision rendered by a court of law shall only be on the basis of the pleadings that have been filed by the party moving the court for appropriate relief. In the present petition, this court declined the invitation offered by the petitioner that required of it to make decisions in respect of matters that were not specifically pleaded. This court will therefore not render any opinion in respect of aspects of the petitioner's case which he adduced evidence but which were not based on the pleadings that he had filed in court, and in particular, the petition”.

34. I have considered the evidence on record and the submissions filed on behalf of the parties. In his submissions, the petitioner introduces specific issues that were not pleaded. Faced with a similar scenario, the court in the case of **Bwana Mohamed Bwana v Silvano Buko Bonaya & 2 Others [2013] eKLR** stated as follows:

“It is established law that parties must confine themselves to their pleadings. A court of law will be seen to deviate from disputed issues if it engages in matters that are not specifically pleaded in the plaint. The court is therefore not bound to render any opinion on any new issues raised in the submissions”.

35. There is no doubt that the petition does not contain particulars of the polling stations where alleged irregularities and /or illegalities took place. This court rejects the appellant's submission that the election court was obliged to inquire into matters that were not pleaded. The election court was not bound to render any opinion on any new issues raised in evidence and the submissions by the appellant. Similarly, this court rejects the invitation to frame new issues for determination, not pleaded or responded to by the parties, for to do so, this court will have abandoned its role as an independent and impartial adjudicator and descended into the arena of conflict.

Irregularities and/or illegalities

36. Section 83 of **the Act** undoubtedly creates a rebuttable presumption that elections are generally conducted in accordance with the provisions laid down in the Constitution and other electoral laws. A petitioner seeking to nullify an election should therefore clearly and decisively discharge the burden of proof by demonstrating 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 the evidence should also disclose profound irregularities in the management of the electoral process. (See **Raila Odinga and Others v Independent Electoral and Boundaries Commission and 3 Others (Supra)** and **George Mike Wanjohi v Steven Kariuki & 2 Others, Supreme Court Petition No. 2A of 2014**).

37. There is no denying that courts have acknowledged that the legal sufficiency that an election was conducted in a free, fair and credible manner would not necessarily mean that the election was devoid of errors, mistakes or irregularities. (*See Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 Others, Kericho High Court Petition No. 1 of 2013*).

38. The Supreme Court concisely pronounced itself on this issue in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji and 2 Others SCK Petition No. 2B of 2014[2014] eKLR* and held thus:

[216] It is clear to us that an election should be conducted substantially in accordance with the principles of the Constitution, as set out in Article 81(e). Voting is to be conducted in accordance with the principles set out in Article 86. The Elections Act, and the Regulations thereunder, constitute the substantive and procedural law for the conduct of elections.

[217] If it should be shown that an election was conducted substantially in accordance with the principles of the Constitution and the Election Act, then such election is not to be invalidated only on ground of irregularities.

39. It is therefore not every non-compliance or every act or omission in breach of the election regulations or procedure that invalidates an election for being non-compliant with the law. This position was upheld by the Supreme court in *Raila 2017* (Supra).

40. An Election Court will therefore not easily upset an election by substituting its decision, conviction or will to that of the electorate. The Election Court has to be satisfied that the alleged irregularities affected the will of the electorate.

41. Having said that, I find and hold that in the absence of evidence of inconsistency of the final results tallied from Forms 36A's, results on Form 36 B used by 2nd respondent to declare the results are valid, notwithstanding that the form (36 B) did not contain a serial number.

42. Further to the foregoing, failure to indicate results in the polling station diary for Nyangogwa TCB Polling Station does not invalidate the uncontested results on Form 36A which is the primary and final *declaration form containing the results for that particular polling station*.

Effect of failure to file response to petition

43. The Election Court has been faulted for deeming the replying affidavit filed by the 2nd respondent as a response to the petition. To deny a party a hearing should be the last resort of a court. In support of this proposition, I am fortified by the decision in *Nahashon Akunga v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR* where the court invoked Article 159 (2) (d) of the Constitution and section 80 (1) (d) of the Act and deemed a replying affidavit as a response to the petition in the following terms:

“The 1st and 2nd Respondents’ replying affidavit states the election which is being disputed, the grounds on which the replying affidavit is premised, and a prayer that the 3rd Respondent was duly elected and that the election was valid. This replying affidavit does not differ to the Form 4 at the First Schedule in terms of the substantive content. In addition, the Petitioner did not in any way suggest that there was an intention to mislead.”

44. Similarly, in the case of *Karanja Kabage v Joseph Kiuna Kariambegu Nganga & 2 others [2013] eKLR* , the court in dismissing a preliminary objection on the form of the response to petition held as follows:

“Certainly, the First Respondent's Response cannot be said to be on all fours with Form EP 4. It is described by the First Respondent as an “Affidavit” and contained information ordinarily stated in affidavits, and not in the form required by Rule 14(2). Failure to conform with the Rule is not however fatal and does not warrant the drastic order of barring the First Respondent from participating in the Election Petition proceedings.”

45. I find that the reliance by the Election Court, of the 2nd respondent's replying affidavit as the response to the petition did not occasion the appellant any prejudice.

Two sets of results

46. Regarding the allegation that there were two sets of results, the evidence on record shows that the results in Form 36 B tallied with those on the IEBC Public Portal. In any case, the final results in 36A *which is the primary source for all subsequent verifications of results cannot be contradicted by results in the IEBC Public Portal.* (*See Jackton Nyanungo Ranguma v Independent Electoral and Boundaries Commission & 2 others (Supra)*).

47. This is fortified by the fact that the results in the *IEBC Public Portal were as stated hereinabove incomplete since they were at 94.74% at the time they were downloaded.*

Costs

48. Section 83 of *the Act* provides in respect of challenges to an election as follows:

“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”.

49. In view of numerous decisions rendered on the application of Section 83 of **the Act**, I reject the appellant’s submission that the petition was not frivolous and condemn him to pay costs. Taking all the factors I have outlined above, the instructions fees for each party shall be capped as follows; **Kshs. 200,000/-** for the 1st respondent and **Kshs. 200,000/-** for 2nd and 3rd respondents jointly.

Disposition

50. In auditing an election, the Election Court is not to substitute its will for that of the voters. In the case of **John Fitch v. Tom Stephenson & 3 Others [2008] EWHC 501 QB6**, the Court held: -

“The decided cases, including those which Lord Denning considered in Morgan –v- Simpson, establish that the courts will strive to preserve an election as being in accordance with the law, even where there have been significant breaches of official duties and election rules, providing the election was unaffected by those breaches. ... This is because where possible, the courts seek to give effect to the will of the electorate.”

51. Section 107 of the Evidence Act, places the burden of proof on the person who alleges in the following terms:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

52. The petitioner did not prove to the satisfaction of the court, that the declaration by the 2nd respondent that 1st respondent was validly elected as Member **of the** County Assembly for **Kiogoro Ward** did not give effect to the will of the electorate.

53. Having said that, my finding therefore is that the 1st respondent was the voters’ choice and was validly elected as Member **of the** County Assembly for **Kiogoro Ward**.

54. In the end, this court’s final orders are as follows: -

a) The appeal is considered, found to have no merit and is consequently dismissed

b) 1st respondent was validly elected as Member of the County Assembly for Kiogoro Ward, in Nyaribari Chache Constituency.

c) Appellant shall bear the costs of the appeal. Such costs shall be taxed by the Deputy Registrar but so as not to exceed Kshs.200,000 (two hundred thousand) for 1st respondent and a similar sum for the 2nd and 3rd Respondent being taxed together.

DATED THIS 3rd DAY OF September, 2018

T. W. CHERERE

JUDGE

DATED, DELIVERED AND SIGNED AT NYAMIRA THIS 5TH DAY OF SEPTEMBER 2018

E.N. MAINA

JUDGE

In the presence of-

Court Assistant - MILICENT

For Appellant - MR.LAZARUS MOSE

For 1st Respondent - MR.OGUTTA MBOYA

For 2nd and 3rd Respondents - MR.OGUTTA MBOYA