



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MALINDI**

**ELECTION PETITION NO. 2 OF 2013**

**DOBSON CHIRO MWAHUNGA .....PETITIONER**

**VERSUS**

**INDEPENDENCE ELECTORAL &**

**BOUNDARIES COMMISSION.....1ST RESPONDENT**

**THE RETURNING OFFICER, KILIFI COUNTY .....2ND RESPONDENT**

**RULING**

1. I have considered the seven-pronged Notice of Preliminary Objection raised by the 1st and 2nd Respondents, and the submissions thereto by the parties. In my considered view the preliminary objection merges both points of law and fact and is therefore not a pure point of law capable of disposing of the matter completely. In the circumstances, I would direct that the chamber summons filed on 20th March, 2013 proceeds to interpartes hearing whereupon the parties will be at liberty to revisit issues raised in the preliminary objection.
2. However, as counsel for the 1st & 2nd Respondent has intimated that his clients are willing to furnish to the applicant the documents mentioned in prayer 2b, namely forms 35 and 36 provided the applicants meet the cost, the applicant is at liberty to avail himself of the same subject to making the requisite costs.

Costs will abide the outcome of the chamber summons now set down for hearing on 16th April, 2013.

Delivered and signed at Malindi this **4th** day of **April, 2011** in the presence of Mr. Angima holding brief for Mr. Khagram for Petitioner, Mr. Katsoleh holding brief for Mr. Gicharu for petitioner.

**C. W. MEOLI**

**JUDGE**