



REPUBLIC OF KENYA

High Court at Busia

Petition 1 of 2013

**PHILLIP OSORE
OGUTU.....PETITIONER**

VERSUS

**1. MICHAEL ONYURA ARINGO.....1ST
RESPONDENT**

**2. INDEPENDENT ELECTORIAL & BOUNDARY COMMISSIONS (IEBC).....2ND
RESPONDENT**

**3. RETURNING OFFICER3RD
RESPONDENT**

2.5.2013

Coram: F. Tuiyott J.

Kadenyi – court clerk

Kasamani for Petitioner

K’opot for the 1st Respondent

Akide for the 2nd and 3rd Respondents

DIRECTIONS AT PRE-TRIAL CONFERENCE

1) COMPLIANCE WITH STATUTORY TIMELINES

1.1. It was confirmed that all parties had complied with Statutory timelines in respect to filing and service of the Petition and the Responses.

2) ISSUES FOR DETERMINATION

2.1. All averments of facts in all affidavits are challenged and required to be proved.

2.2. Agreed issues for the Court’s determination are:-

a) Whether there should be scrutiny and recount of the votes in the polling stations listed in paragraph 19

of the Petition.

b) Whether there should be a declaration that the 1st Respondent was not validly declared as elected member of the National Assembly for Butula Constituency.

c) Who should pay for costs.

3) **INTERLOCUTORY APPLICATIONS**

3.1 The Petitioners application of 29/04/2013 is hereby allowed in its entirety.

3.2. The statement of ESTHER ENGEFU MUSUNDI made on 29th April 2013 shall be converted into an affidavit.

3.3. The Respondents are granted leave to file Affidavits in reply to the Petitioners additional evidence. The Affidavits to be filed on or before **8th May 2013**.

3.4 The Petitioner is granted leave to file an application justifying scrutiny, that application shall be filed and served on or before **8th May 2013**.

3.5. The 1st Respondent is granted leave to file an application seeking to strike out some portions of Affidavits filed in support of the Petitioners cause, that application shall be filed and served on or before **8th May 2013**.

3.6. Responses, if any, to both applications above shall be filed and served on or before **13th May 2013**.

3.7 Both applications shall be heard on **15th May 2013**.

4) **EVIDENCE**

4.1. The minutes annexed to the Petitioner's Affidavit of 29th April 2013 and marked **P00 "2"** shall be produced without calling its maker.

4.2. The photographs, "lessos" and the Petitioners protest letter to IEBC, which are part of the motion, shall be produced in accordance with the provisions of The Evidence Act (Chapter 80 Laws of Kenya).

4.3. The video recording referred to in paragraph 12 of the Petitioner's Affidavit of 29th April 2013 shall be shown to the Respondents Counsel on or before **8th May 2013**. In the absence of an agreement as to its production then the decision shall be left to Court.

4.4. The production of the voter register and Forms 35 shall await the Courts decision on the Petitioner's application for scrutiny and recount.

4.5 The 2nd and 3rd Respondents confirm that they shall, on or before **13th May 2013**, deliver to the Deputy Registrar of the Court the ballot boxes and results in respect to the election.

5) **WITNESSES**

5.1. It is agreed that the Affidavits of all witnesses shall form their evidence-in-chief whereupon they shall be cross-examined and re-examined.

5.2 The Petitioner shall call 10 witnesses (whole Affidavits are already filed), this includes the Petitioner himself.

5.3 The examination-in-chief, cross-examination and re-examination of the Petitioner's witnesses shall be limited to 2 days.

5.4 The 1st Respondent shall call 5 witnesses including the 1st Respondent himself. The other 4 witnesses are:

- 1) Mary Makokha
- 2) Moses Osodo Onyango
- 3) Blasto S. Ngono
- 4) Pamphil Oduor Opoya

The Affidavit of these four witnesses shall be filed and served in compliance with direction 3.3 above.

5.5. The 2nd and 3rd Respondents shall call one witness only, Joseph Sigei.

5.6. The examination-in-chief, cross-examination and re-examination of the Respondent's witnesses shall be limited to 2 days.

6) **SUBMISSIONS**

An order on submissions shall be made by the Court at the close of taking of all evidence.

DATED AND ISSUED AT BUSIA THIS 2ND DAY OF MAY 2013.

F. TUIYOTT

J U D G E