



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Election Petition 1 of 2013**

**AND IN THE MATTER OF THE  
NATIONAL ASSEMBLY ELECTION  
FOR KIBWEZI WEST CONSTITUENCY  
BETWEEN**

**RICHARD N. KALEMBE NDILE.....PETITIONER**

**AND**

**DR PATRICK MUSIMBA MWEU .....1<sup>ST</sup> RESPONDENT**

**RETURNING OFFICER\_KIBWEZI WEST CONSTITUENCY.....2<sup>ND</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Certificate of Urgency dated 5<sup>th</sup> June 2013 filed on behalf of the petitioner has been brought to my attention. It states as follows;

*I, Makau Kamolo an advocate of the High Court of Kenya do hereby certify that this matter need to be placed before the trial judge immediately for the following reasons:-*

(1) *That the 2<sup>nd</sup> and 3<sup>rd</sup> respondent have for unknown reason commenced transporting the ballot boxes in respect of Kibwezi Constituency parliamentary seat from Makindu 3<sup>rd</sup> respondents office to Kibwezi at certain unnamed go down.*

(2) *That the petitioner is apprehensive that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents acts are malicious aimed and calculated to destroy evidence purposely to defeat the petitioner herein,*

(3) *That unless a preservatory order is issued to secure the ballot boxes, the petitioner is bound to suffer irreparably in the event the court will order a recount of votes and the ballot boxes are lost or interfere with.*

(4) *That there is no security and none is guaranteed at the above stated go down and the ballot boxes may easily get lost.*

(5) *That there will be no prejudice if an order is issued that the ballot boxes are kept by the Deputy Registrar of this Court as provided for under Rule 21 of the Elections (Parliamentary and County*

*Elections) Petition Rules 2013.*

*I certify there exist an urgent cause to warrant this matter be placed before the trial judge for directions towards preserving the ballot boxes for the ends of Justice which cause the court can act Suo Motu.*

2. The certificate of urgency is not accompanied by any application. No affidavit has been sworn to support of the facts set out in the certificate. In other words, the certificate of urgency is not worth the paper it is written on.

3. The hearing of the petition is now scheduled to be heard on 11<sup>th</sup> June 2013. **Rule 21(a) of the Elections (Parliamentary and County Elections) Petition Rules 2013** provides as follows;

*The Commission shall deliver to the Registrar –*

*(a) The ballot boxes in respect of the relevant election not less than forty-eight hours before the date fixed by the court for trial...”*

4. It is the duty of the Commission to deliver the ballot boxes to the Court and for the court to take custody of them. There is no provision in the **Rules** for the grant of a conservatory order of the kind alluded and I find no reason to intervene, at least not on the basis of unsubstantiated statements.

5. The court has now given pre-trial directions and as the matter is fixed for hearing on **11<sup>th</sup> June 2013**, I decline to entertain any oral arguments or application on this matter.

**DATED and DELIVERED at NAIROBI** this 5<sup>th</sup> day of June 2013

**D.S. MAJANJA**  
**JUDGE**