

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

ELECTION PETITION NO. 10 OF 2013

HON. SAMUEL KAMBI KAZUNGU.....PETITIONER

-VERSUS-

HON. CHEA GUNGA MWINGA.....1ST
RESPONDENT INDEPENDENT ELECTORAL
AND

BOUNDARIES COMMISSION.....2ND RESPONDENT

RULING

On 10TH June 2013, the Petitioner filed an application under **Rule 23(3)** of the **Elections (Parliamentary and County Election) Petition Rules, 2013** {hereinafter referred to as **Election Petition Rules**) seeking to withdraw this petition. The Petitioner states that he has been compelled to withdraw the petition because of his recent appointment by the President to be the Cabinet Secretary for Labour, Social Security and Services. In compliance with **Rule 24(2)** of the **Election Petition Rules**, the Petitioner has published the notice of withdrawal of the petition in the Kenya Gazette. The notice appears as **Gazette Notice No.8631** of 21ST **June 2013**. Both Respondents do not object to the Petitioner withdrawing

the petition. This court therefore allows the Petitioner to withdraw this petition. The petition is marked as duly withdrawn.

As to the issue of costs, there is no doubt that the Respondents incurred costs in defending this petition. Since this court was seized with jurisdiction to hear the petition, it became aware of the tremendous work that the Respondents have put in preparing and in defending this petition. Costs usually follow the event. They are entitled to be paid costs for their troubles. However, this court notes that the petition was withdrawn before the formal hearing of the petition

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commenced. There were preliminary issues which this court dealt with that required attendance by counsel. I have taken that too into account for the order that I will shortly issue pursuant to **Rule 34 (1)** of the **Election Petition Rules**.

Rule 34 (1) (a) of the **Election Petition Rules** grants this court jurisdiction to cap the total amount of costs that shall be paid in respect of the petition. In the instant petition, the Petitioner shall pay to the Respondents costs of petition. I have taken into account the nature and the complexity of work involved in defending Election Petitions. I have also taken into account the fact that counsel were forced to suspend other legal work because of the Constitutional imperative that requires Election Petitions to be heard and determined within six (6) months from the date of the publications of the results. I have also taken into consideration that counsel for the Respondents were compelled to travel to Malindi and spend several days here as they attended court. This constituted additional expense. Taking all these factors into consideration, I will cap the total costs to be awarded to the

