



REPUBLIC OF KENYA
IN THE SENIOR RESIDENT MAGISTRATE'S COURT
AT KILGORIS
ELECTION PETITION NUMBER NO. 3 OF 2017
TOMITO ALEX TAMPUSHI.....PETITIONER
VERSUS.
PATRICK SOSIO LEKAKENY.....1ST RESPONDENT
MACHARIA MBOGO ELIJAH.....2ND RESPONDENT
GEORGE OKUMU ADERA.....3RD RESPONDENT
IEBC.....4TH RESPONDENT

JUDGMENT.

A. Introduction.

1. For the people of Shankoe ward in Kilgoris Constituency within Narok County, like the rest of Kenya, 8th August, 2017 was the D-day for the general elections. They woke up at cockcrow rising to the occasion and call to turn up and vote according to the dictates of democracy. Four men were cleared by the Independent Electoral and boundaries Commission to battle it out for the position of Member of County Assembly (MCA) representing Shankoe Ward. They are: Patrick Sosio Lekakeny sponsored by Jubilee party, Tomito Alex Tampushi sponsored by ODM, Yiamboi Olaimmerri Moses an Independent Candidate and Jackson Kaipei Mosonko sponsored by Chama Cha Mashinani CCM.

2. On 10th August, 2017 when voting and counting was done, the returning officer declared Patrick Sosio Lekakeny as winner with 3156 votes. The Petitioner came second hot on his heels with 3,090 votes. The petitioner dissatisfied with the result as declared filed this petition.

B. The Petitioner's Case.

3. On 25th August, 2017, the Petitioner, through masseurs Leina Morintat & Co. Advocates, filed petition against the four respondents. He prays for orders as follows;-

- a. A declaration that the election of the 1st Respondent as a Member of County Assembly Shankoe Ward pursuant to the General elections held on 8th August, 2017 is invalid.
- b. This honorable court be pleased to order a fresh election for Member of County Assembly

Shankoe Ward.

c. Costs of the petition herein be borne by the Respondents.

d. Such further or other relief or orders as may be made as may be just.

4. The 1st Respondent is sued as one of the candidates in the impugned elections and now an elected MCA. The 2nd Respondent was the Constituency Returning Officer (R.O). The 3rd Respondent was the Presiding Officer (P.O) at Endoinyo Nkopit Polling Station and joined in the petition by reason of his conduct and the conduct of the Deputy Presiding officer (DPO) and clerks subordinate to him. The 4th Respondent The Independent Electoral and Boundaries Commission (IEBC) is brought in as the body corporate established by the Constitution and whose functions include conducting or supervising referenda and elections to any elective body or office established by the constitution. The 4th Respondent appointed the 2nd and 3rd Respondent into their respective positions in the impugned elections.

5. It is the Petitioners case that the 2nd Respondent declared the 1st Respondent as MCA elect for the Ward. That in declaring the winner, the R.O excluded the results from Endoinyo Nkopit Polling station Code 081. The station has a total of 666 registered voters and which, if considered, could change the outcome of the election. And that the margin was 62 votes only. He also avers that there was a great variance between the total number of valid votes and voter turnout as declared by the 2nd Respondent and that the percentage of turnout tallies with the turnout indicated in the declared results but differs with the total score per candidate and lower compared to neighboring wards.

6. The Petitioner accuses the Respondents of various electoral malpractices and breach of law. First, he claims that the 1st and 3rd Respondents drove in the same car to the 1st Respondent's house on the date of the election. And that when he confronted the third Respondent his response was that he had gone to charge the power bank. Secondly, he avers that the 3rd Respondent along with his D.P.O and a police officer were found in the 3rd Respondents rented premises and or house, in compromising circumstances, with six ballot boxes on 9th August,2017 in the afternoon. That the three were subsequently charged in court vide Kilgoris Senior Resident Magistrates Court Criminal Case No. 714 of 2017 for various offences under the Election Offences Act No. 37 of 2016. A copy of the charges sheet is annexed to his affidavit.

7. The petitioner further avers that the 2nd, 3rd and 4th Respondents by themselves and or through officers and agents acting under them or under their direction committed an election offence by breaching their official duties and code of conduct in;-

a) Failing to serve impartially and independently and perform their duties in good faith.

b) Performing their duties under the influence of the 1st Respondent.

c) Diverting the ballot boxes and other voting materials to the 3rd Respondents rented house and or failing to deliver the ballot boxes and form 36A results to the tallying centre.

8. The Petitioner cites the 2nd Respondent as having committed an election offence by breaching his official duty and code of conduct by;-

a) Declaring results which he knew or had reasonable cause to be false or he did not believe to be correct.

b) Succumbing to the influence of the 1st Respondent in declaring results which he knew or had reasonable cause to be false or that he did not believe to be correct.

9. The Petitioner finally avers that in light of the violations the declaration of the Respondent as the successful candidate in the ward election was heavily tainted with illegality and does not reflect the overall will of the electors of the ward. And that the said declaration should be declared null and void. He avers that the declaration of the 1st Respondent as the MCA elect was not attained through a free, fair, transparent and verifiable process.

10. The Petitioner's case is supported by his witness Felix Ledama Kiok who swears the 3rd Respondent was biased in favour of the 1st Respondent due to compromise and or undue influence. In his testimony largely informed by his Affidavit sworn on 25th August, 2017, Mr. Ledama Felix Kiok stated that on the date of elections he went to vote at Endoinyo Nkopit polling station. And returned to Kilgoris to take over work left by a man he employed as *boda boda* rider who had taken days off. Later around 3.00pm he was hired by some two customers to ferry them to the same polling station. That while at the polling station the 1st Respondent arrived in a motor vehicle went to the polling station and returned shortly to the vehicle. He was followed by the 3rd Respondent. The two boarded the same vehicle and were driven off. Later the same vehicle returned and the 3rd Respondent alighted from the vehicle and he had an argument with the Petitioner over where he was from with his rival. That the arguments were calmed by the Petitioner's supporters at the polling station who advised him against chaos at the polling station. That he left the polling station at around 4.30pm.

11. Mr. Ledama further states that on 9th August, 2017 he was at Kilgoris booking a vehicle for his return journey to Nairobi when he heard a commotion and immediately thereafter saw a huge crowd of people moving towards Milimani area. That he heard some of them shout that electoral materials had been found in the Presiding officer's house. That he followed the crowd and witnessed the arrest of the 3rd Respondent at a house in Milimani area of Kilgoris. He thereafter returned to the bus stage and waited for his vehicle and his journey for Nairobi kicked off at 3.00pm.

c. The Respondents' Case.

- 1st Respondent response.

12. The 1st Respondent in his Response to the petition and in his affidavit dated 4th September, 2017 and filed in court on 6th September, 2017 and in his testimony in court denies the allegations of facts contained in the petition. He maintains that the entire process culminating in his declaration as MCA elect in respect of Shankoe Ward was transparent, free and fair reflecting the overall free will and choice of the electorate and should therefore be declared valid for all intents and purposes.

13. The 1st Respondent terms the petition, the claim and complaints advanced by the Petitioner as an afterthought, an abuse of the court process and otherwise hinged on false and spurious grounds and are thus legally untenable. He admits that he was declared Member of County Assembly elect as stated in the petition and that the declaration was lawful. He has particularized the results announced according to form 36B. In response to the non inclusion of results from Endoinyo Nkopit polling station in the final tally, it is the 1st Respondents contention that the results thereof were taken into account and considered by the 2nd Respondent while declaring the overall winner of the elections in the ward. Further that the omission was as a result of dispute by candidates and the ongoing investigations which surrounded an incident which occurred while the ballot boxes and results from the polling station were being delivered to the tallying centre.

14. The 1st Respondent further states that the fact that the difference in votes garnered between him and the Petitioner was 62 votes does not invalidate the result. He terms the Petitioner's description of the margin as 62 votes only as lamentation which has no basis in law or fact. He also terms the allegation that there was a great variance between total number of valid votes garnered by each candidate and voter turnout as declared as misconceived and untrue. He avers that the figures as posted captured and reflected in form 36A and 36B were accurate and reflects the correct votes as garnered by each candidate, the number of rejected votes and total registered voters and the total number of votes cast and the percentage

achieved. He however points out that there was an inadvertent human error in respect of arithmetic computation as made in form 36B and the total number of votes garnered at Ndoinyo Nkopit polling station. He says the error was normal in an election exercise and does not vitiate, invalidate or go to the root of the result.

15. It is further his explanation that an error occurred in tabulating, transposing and computing the votes in form 36B. He avers that the electoral officer failed to compute and or add 1,349 votes garnered by Yiamboi Olamerri Moses thus making the total valid votes cast to be 6,747 instead of 8,096. That if there was proper computation the percentage of voter turnout would be 74. That the error cannot be said to have been deliberate and tailored or intended to benefit any candidate.

16. The 1st Respondent further states that the Petitioner was represented by an agent one Dominic Ledama and he was represented by one Moses Ledama Kilingat. That their respective agents duly participated in the exercise all through and appended their signatures on form 34A as a sign of their approval and satisfaction with the accuracy and the transparency of the process. He also states that the event of the some officers being arrested and charged for failure to deliver electoral material in time has not affected the validity of the result or candidates scores. It is his contention that if the votes had been taken into account he would have garnered 3,341 against the Petitioners 3,428 thereby beating the petitioner by a margin of 87 votes.

17. As regards the incident of the arrest of some election officials over election materials from Endoinyo Nkopit, the 1st Respondent states that he was informed by his agent of the incident. He states that the allegation was that they were trying to open the ballot boxes and that the motive was yet to be established and was unknown to him. He states he was aware the officers have since been charged with neglect of duty. He states that when police seized the ballot boxes and commenced investigation it was resolved in a consultative meeting between the candidates, agents and the returning officer that declaration of final results be made without the results from Endoinyo Nkopit. And further that the Petitioner cannot seek to benefit from that anomaly, distort the facts so as to afford him the grounds to challenge the results. He states that the approach adopted in announcing the result was protected by the Provisions of Section 83 of the Election Act.

18. On the allegations that he met with the 3rd Respondent, the 1st Respondent deny the allegations and terms them as malicious scandalous and defamatory. He avers he did not go to Endoinyo Nkopit polling station on the poll day and deny meeting or interacting with the 3rd Respondent. He states that he is registered as voter at Kilgoris County Council Hall and that the Petitioner and his witness fabricated the fact that he ever went to Endoinyo Nkopit. He states that it was the Petitioner who was personally in attendance and made inappropriate contacts with the presiding officer and that it is highly possible that an attempt at interfering with the voting material by the presiding officer was at the behest of the petitioner. That the Petitioner was only painting him in bad light.

19. The 1st Respondent denies all allegations that he visited Endoinyo Nkopit in a motor vehicle and contacting the 3rd Respondent at all. He terms the allegation in the petition and affidavit of petitioner and his witness as scandalous and meant to malign him. He states that in fact it was the Petitioner who made inappropriate contact with the 3rd Respondent. He introduces a photograph allegedly taken of the two at the polling station.

- 2nd and 4th Respondents response.

20. The 2nd and 4th Respondents did a joint response through the firm of masseurs Morara Apiemi & Nyangito Advocates. The Response is supported by Affidavit sworn by Macharia Mbogo Elijah. The response attacks the petition as raising complaints against persons in relation to the conduct of County elections for Shankoe Ward without enjoining them as Respondents in the petition. It is their case the appointment of the R.O, the POs and other staff for Kilgoris Constituency were done in compliance with Election (General)Regulations 2012 and 2017. That the voting in all polling stations in Shankoe Ward was free and fair save for Endoinyo Nkopit polling station where the 3rd Respondent is said to have been

engaged in electoral offences and the same is subject to Criminal Case No. 714 of 2017. That the counting of votes and declaration of results at Shankoe Ward was conducted as provided by the law. That the final tallying of the results for Member of County Assembly for Shankoe Ward was conducted in compliance with the law. And that the County elections of Shankoe Ward was conducted in compliance with the principles laid down in the Constitution and that in case of any non compliance of the Election laws and Regulation, the same did not affect the result of the election declared.

21. It is their prayer that all allegations against persons not enjoined be expunged from the record. That it be determined that the 1st Respondent was duly elected and the election was valid. And that the results for the ward declared by the 2nd Respondent be upheld and the petition dismissed with costs to the 2nd and 3rd Respondents.

22. The 2nd Respondent who was the R.O has sworn a 12 paragraph affidavit in support of their response and on authority of the 4th Respondent. In his affidavit and in testimony in court, he maintains that he ensured all the clerks and polling clerks were trained. That he ensured that ballot boxes and election materials were supplied to all polling stations in the ward. That voting, counting and transmission of votes was concluded in all the polling stations as provided by the law. He states that all the results from the polling stations save for Endoinyo Nkopit polling station were properly and accurately verified, tallied and announced in accordance with the provisions of the law. That after declaring the result for the ward, he issued the 1st Respondent with form 36C the same being certificate of an elected MCA.

23. The 2nd Respondent further states that the results for Endoinyo Nkopit polling station were not included in the final tally because of the incident wherein the 3rd Respondent is said to have been engaged in electoral offences and electoral material thereto were taken to the police custody as exhibits and thus the same were never received at the tallying centre. And that they were subject of the case referred to in the Response. He admits that the conduct of the elections for the ward was faced with the challenge at Shankoe but the same cannot be said to be devoid of merits and so distorted and failing short of expressing the people's electoral intent.

24. He has annexed the following documents to his affidavit;- A bundle of the duly filled and signed form 36As from all the polling stations in the ward, A copy of form 36B and a copy of form 36C issued to the 1st Respondent on his being announced and declared MCA elect.

- Response by 3rd Respondent.

25. By the time of pre trial hearing on 5th October, 2017 the 3rd Respondent had not filed any response. He sought leave and was granted leave on his own terms. He filed the response on 6th October, 2017. In his response the 3rd Respondent deny all the allegations against him in the Petition. He avers that the Petitioners claims and complaints are a product of living in denial, product of malicious activities, a machination to use fraud and or conspiracy to change the results of election as declared at the polling station- Shankoe Ward 0884. He terms the petition as an abuse of court process. And prays for its dismissal.

26. The 3rd Respondent has tabulated the results as declared at Endoinyo-Onkopit polling station. The table shows the 1st Respondent leading with 272 votes, the Petitioner with 247, Moses Yiampoi Olaimeri with 29 and Kaipei Mosoiko Jackson with 3 votes. The total valid votes at 551, Rejected ballot papers at 30. And total registered voters at 666.

27. On the issue of allegation that he had inappropriate contact with the 1st Respondent, it was his response that he never drove in one car with him. That the Petitioner was in his words; "*stretching his imagination using malice to achieve his nefarious actions*". That he was assigned a van and he could not have left the station while voting was on. That the Petitioner was not being truthful and coached witnesses. That it was the Petitioner who was chaotic and went to the polling station three times and threatened officers of dire action should he lose election in his home backyard polling station.

28. On the election offence case, the 3rd Respondent avers that it was an administrative issue that the Petitioner was taking opportunity of. That they had to leave the polling station in haste when security situation became foul and a large group of youth had breached the 400m barrier. Further that they needed to re-charge the KIEMS machine which was running low on power. He blames the Petitioner for derailing the delivery and or transit of the results from the polling station to the tallying centre. His theory is that the Petitioner had enlisted the services of police and the youth who earlier invaded and caused tension at the polling station.

29. On the actions taken by police in seizing the ballot boxes, he avers that the officers did recount and retallied the electoral positions without court order and without involving the Presiding Officer, Deputy Presiding Officer and the police who provided security. That the Petitioner benefited from the recount and retallying and used the materials to compile a detailed petition.

30. He has itemized the activities and responsibilities he was tasked with and which he avers he carried them out meticulously.

D. Hearing of the Petition.

31. Hearing commenced before this court on 7th November, 2017. The Petitioner together with his witness testified led in examination- in- chief by Mr. Morintat advocate. They were cross-examined by Mr. Otieno advocate for the 1st Respondent, Mr. Muriuki advocate for the 2nd and 4th Respondents and the 3rd Respondent who appeared in person. The Petitioner essentially reiterated what is in his pleading as well as the affidavit whose contents I have set out above.

32. The same applies to the witness one Ledama Felex Kiok (Pw.2). His affidavit was adopted as evidence in chief. He reiterated the content of the affidavit save for an error on the date he alleges to have been returning to his place of work erroneously typed as 9th September, 2017 instead of 9th August, 2017. At the close of business for the first day of hearing the Petitioner closed his case.

33. On 8th November, 2017 three witnesses testified for the defence. The 1st Respondent's defence commenced with the testimony of one Ledama Kilingat (Dw.1). He was an agent to the 1st Respondent at Endoinyo Nkopit Polling station the epicenter of the issues arising in this petition. He essentially reiterated the content of his affidavit and was duly cross-examined on the same. The petitioner came next and maintained the elections at Shankoe ward were free and fair. He maintained that he was lawfully declared the winner.

34. The defence for the 2nd and 4th Respondents was tendered by the 2nd Respondent Elijah Ombogoh (Dw.3). He equally reiterated the content of his affidavit in support of the response to the petition as filed by the 2nd and 4th Respondent. He was subjected to cross-examination and he maintained that the election at Shankoe Ward was free and fair and the process was transparent. He acknowledged there were issues concerning Endoinyo Nkopit Primary School polling station where physical forms and all election materials were not received at the Constituency Tallying Center (CTC) after the arrest of the P.O, the DPO and a security officer. He however states that the P.O from the said polling station had earlier and as required transmitted the results electronically and that the same could be accessed from the public portal. He terms his declaration of the winner without results from Endoinyo Nkopit as lawful. Further that it was as a result of consultation and consensus reached with the candidates at the tallying center. On allegations of impropriety, he avers that he received no complaints from anyone.

35. The 3rd Respondent testified without calling any witness on the 9th day of November, 2017 after failing to adhere to conditions of leave granted to file affidavit by witness. He was examined by the advocates for the co-Respondents as well as advocate for the Petitioner. He essentially reiterated the content of his response to petition as filed on 6th October, 2017. According to him the election at Endoinyo Nkopit was smooth. That the day was free from chaos on the Election Day apart from some complaints raised by the petitioner which he addressed as the Presiding Officer. That after close of voting,

counting was done to conclusion. That he thereafter announced the results without any complaints from the agents and observers who were present. He thereafter transmitted the results electronically but could not get notification of having successfully done so. That since the power was getting low on the KIEMS equipment they had to find a place to recharge. He preferred they do it from his house at Kilgoris Milimani area after consultation with the security officer and his deputy who was not feeling well.

36. It was further the testimony of the 3rd Respondent that before leaving the station he had to pin the results on the wall outside the polling station and which was accessible to the public. He says he went to his house with the security officer and released the DPO to rest in her house as he continued with clerical work he had not concluded during the day. That on 9th August, they were preparing to leave for the Constituency Tallying Center when he together with the security officer and the DPO were arrested by police who seized the ballots and all election materials and thus could not present the physical statutory forms as was required.

E. Submissions.

- Petitioner's submissions.

37. At the conclusion of hearing parties through their advocates filed submissions. The Petitioners submissions filed on 20th November, 2017 and highlighted on 8th December, 2017. On the question whether the Petitioner enjoined all parties complained of, it is submitted that with the naming of R.O and P.O all the other junior officers of the 3rd Respondent had been covered. It is submitted that there was no legal requirement to enjoin all appointed officials. On this they rely on the case in Hassan Omar Hassan and Another vs. Independent Electoral and Boundaries Commission and 2 others Election Petition No.10 of 2017 2017 eKLR where it was held non-inclusion of running mate as Respondent in gubernatorial petition was not fatal to Petition.

38. On whether the 2nd and 4th Respondents complied with law in appointment of officials, it is submitted that the Petitioner raised complaints that one of the clerks at Shankoe Ward was a relative to one of the candidates. That the said clerk was posted to Endoinyo-Nkopit Polling Station. That the complaint was ignored.

39. On whether the elections were credible free and fair and in conformity with the Constitution, the Elections Act and Regulations, it is submitted that it did not. It is submitted that the results from Form 36B display a clear variance between the valid votes cast and the total score of all the candidates. That the total votes of all candidates vary significantly from the percentage of voter turnout. It is also submitted that the R.O is responsible for tallying of results from each polling station and declare results tallied and ensure safe keeping of election materials. That R.O left out one station and that the elections materials did not reach him for safe keeping. It is further submitted that the act of P.O in taking the election materials to his home and the discrepancies in results declared in Form 36B shows the integrity of the elections at Shankoe was compromised. The Petitioner invites the court to reasoning in Raila Amolo Odinga and Another v IEBC AND 4 others and Attorney General and Another Election Petition No.1 of 2017. - (Raila 2).

40. On whether the electoral malpractices and illegalities if any affected the integrity of the election and declaration made by 2nd Respondent it is submitted for the Petitioner that it did. It is submitted that there were illegalities and electoral malpractices. That P.O, DPO and a security officer were arrested for diverting election materials contrary to Section 58 of the Election Act. That there was influence of voters as reported against DPO at Endoinyo Nkopit. That the IEBC officials gave the 1st Respondent undue advantage in violation of law. On the strength of police report it is submitted that the election officials at the impugned station interfered with ballot boxes. That there were broken seals and misplaced votes. That assisting of voters by DPO and clerks was contrary to Regulation 72 of Election General Regulations 2012. They rely on the case in Musikari Kombo vs. Moses Masika Wetangula 2013 eKLR on the aspect of voiding an election for election offence of bribery and treating of voters.

41. On whether illegalities affected the result, it is submitted for the Petitioner that contrary to Regulation 73 long after close of polling and counting he took work home where he recorded serial numbers of used and unused ballot papers. That the R.O did not verify results from Polling station, and disregarded the rights of voters at Endoinyo Nkopit and their votes never counted. It is submitted the illegalities and irregularities were substantial.

42. On whether non-inclusion of Endoinyo Nkopit results affected the result, it is submitted it did. With reference to *Peter Kimori Maranga vs. Joel Omangwa 2013 eKLR*, it is submitted the non inclusion of results from station with 666 registered voters would affect the result. That missing primary documents from a polling station was fatal as held in *Lucas Ongaki vs. Samwel K. Nyanganya (2013) eKLR*.

43. On whether 1st Respondent was validly elected, it is submitted for Petitioner that he was not. That there was violation of Articles 38, 81 and 86 of the Constitution as well as the Election law. That the violation invalidated the results.

- 1st Respondent's submissions.

44. It was submitted for the 1st Respondent that the election at Shankoe was free and fair. That the malpractices complained of were normal errors. On authority *Richard Kalembe Ndile and another v Patrick Musimba Mweu and 2 others (2013) eKLR* that the burden of proof rests with the Petitioner. On the issue of parties the advocate submits that the Petitioner accused parties not party to petition of serious offences without enjoining them. On the question of non-compliance with law in appointment of electoral official, advocate submits that the issue was not pleaded and that the relationship with candidate was not proved. That there was no proof of how that relationship affected the vote. Mr. Otieno submitted on authority of the case in *Edward Akongo v Independent Electoral and Boundaries Commission and 2 others (2013) eKLR* that an election can never be perfect and that mistakes and errors were bound to happen. He admits there were mere arithmetical and computation errors which did not affect the result.

45. On the question of voter influence, Mr. Otieno submits that there was no voter influence and that the Petitioner did not proof his allegation. That the Petitioner did not call voters allegedly influenced and neither did he call his agent at Endoinyo Nkopit- Dominic Ledama. On authority in *Millah Nanyokia Masungu v. Robert Mwembe and 2 others 2014 eKLR*, he submits that the failure to call witnesses attracted an adverse inference that they would be adverse.

46. The allegation that the 1st and 3rd Respondents boarded a common vehicle is denied. It is submitted that the Petitioner was a liar and of doubtful credibility. It is also argued that if it were true that indeed the two boarded one vehicle, there had been no prove of any corrupt motive to influence the results of the elections. Advocate further attacks the credibility of the Petitioners witness. He submits his testimony was doubtful. That without photographs corrupt motive intended to be depicted was not proved beyond reasonable doubt.

47. On the question of arrest of the P.O, DPO and security officer from Endoinyo Nkopit Polling Station and purported interference with ballot boxes, it is submitted that the issue arose after the close of polls and after results were announced. And further that those results were not affected after Form 36A was filled, pinned on notice board and agents given copies. On authority in *Independent Electoral and Boundaries Commission vs. Maina Kiai and 5 Others 2017 eKLR (Maina Kiai Case)* those results were final and could not be changed. He further submits that the existence of criminal offence is not sufficient to invalidate an election. On this, he has cited the case in *John Murumba Chikati v. Returning Officer Tongaren Constituency and 2 Others 2013 eKLR* and that in *Abdi Osman Mohamed and another v. Independent Electoral and Boundaries Commission and 2 Others 2013 eKLR*

48. On the report presented as done by officers from the Directorate of Criminal Investigation, Mr. Otieno submits that the officers who made the report were not called as witnesses for cross-examination on the content of the report. That in any case they were not trained on matters election. Even in attacking them, says they came up with almost the same results as was in Form 36A confirming the results were secure, accurate, verifiable, transparent and were not interfered with.

49. On the question of alleged disenfranchisement of voters at Endoinyo Nkopit Polling station, it is submitted that they were not. That the results were electronically transmitted and that the failure to submit the physical form 36A to the CTC did not benefit any candidate. That the votes were left out after consultation and the results were discernible. On authority in Edward Akongo Oyugi v. IEBC and 2 others, 2013 eKLR an election cannot be invalidated on such an issue. On the issue of margin of vote, he submits that a win was a win as was held in Joseph Amisi Omukanda v IEBC and 2 others 2014 eKLR. That the 1st Respondent was validly elected as MCA Shankoe Ward. And that the Petition should be dismissed in its entirety with costs. Finally on costs it is submitted on authority in Joseph Amisi Omukanda (supra) that costs was mandatory in election Petitions and that the same should be borne by the Petitioner.

- 2nd and 4th Respondents submissions.

50. The 2nd and 4th Respondents filed submissions on 4th December, 2017. On the first major issue, It is submitted that the 2nd and 4th Respondents conducted elections in conformity with the law. It is submitted on authorities in Raila Odinga vs. IEBC and 3 others, Election Petition No.5 of 2013, Josiah Taraya Kipelian Ole Kores vs. Dr David Nkediye and 3 Others 2013 eKLR and Rashid Hamid Amana vs. IEBC and others Malindi EP No. 6 of 2013 that the burden and the standard of proof lay with the Petitioner to create a nexus between any alleged irregularities and the credibility of an election by laying cogent evidence in court. That the standard of proof in case of electoral malpractices was higher that of a balance of probabilities.

51. On the issue of voter influence, it is submitted that evidence adduced was an afterthought and related to facts which were never pleaded in the petition. That parties are bound by their pleadings and the same should therefore be disregarded. On this they rely on authority in Independent Electoral and Boundaries Commission and Another vs. Stephen Mutinda Mule and 3 others 2014 eKLR and Malawian Supreme Court of Appeal in Malawi Railways Ltd vs. Nyasulu 1998 MWSC 3., Ugandan case in Libyan Arab Uganda Bank for Foreign Trade and Development and Another vs. Adam Vassiliadis 1986 UG CA 6.

52. It is submitted on without prejudice basis that the two voters alleged to have complained of being influenced by Presiding officer and clerk were not called as witnesses. That the Petitioners agent at the station was not also called and that calls for the drawing of an inference that the misconduct complained of did not happen. In addition that no formal complaint was made to the 4th Respondent. It is submitted that the testimony of Dw.2 was clear on the assistance given to assisted voters.

53. On authority of Hosea Mundi Kiplagat vs. Sammy Komen Mwaita and 2 others 2013 eKLR and Supreme Court case In Raila Odinga and 5 Others v IEBC AND 3 Others, the standard of proof was higher for electoral offences under Section 59 (g) of the Elections Act Cap 7. And that the standard has not been met in this Petition.

54. On the issue of variance in Form 36B, it is submitted that the variance was purely arithmetic as stated by the 2nd Respondent in court. That the same did not in any way go into substance or fundamentally affect the outcome of the elections. That in fact the arithmetic error affected all the candidates and never gave any undue influence and did not alter will of the People of Shankoe Ward. They rely on the words of Justice Majanja in Wavinya Ndeti vs. IEBC AND 4 Others EP 4 of 2013 (2013) eKLR

55. On issue of flawed recruitment of polling clerks, it is submitted that the allegation that one of the clerks at Endoinyo Nkopit was related to the 1st Respondent was neither here nor there. That the clerk was appointed in conformity with the law in open and transparent manner. And further that the clerk was not proved to have used her position to influence the outcome of the results. And that no complaints were received against her appointment.

56. On the second major issue, whether the electoral malpractices and illegalities if any affected the integrity of the election, it is submitted that it did not. It is submitted that the 3rd Respondent was arrested after the polls. That is after tallying, counting and declaration of results for Endoinyo Nkopit polling

station was completed. And that the results were that the 1st Respondent beat the Petitioner by 25 votes. It is submitted on the strength of Article 86(b) of the Constitution of Kenya and on authority in Maina Kiai Case that the results announced at the polling station were final. It is further submitted that failure by the 3rd Respondent to deliver the results and other election materials did not in any way affect the result. That the failure was personal hence the charges preferred. That the 3rd Respondent was not charged with breaking seals in the Election Offence case he is facing. And that it would not be used to annul an election. It is so submitted on strength of decision by Justice F.Gikonyo in John Murumbi Chikati vs. Returning Officer Tongaren Constituency and 2 Others (2013) eKLR.

57. It is also submitted that the report by Directorate of Criminal Investigation does not in itself prove any electoral malpractice. It only gives an inventory of the ballot boxes. And that even the report tallies with Statutory Form 36A for Endoinyo Nkopit Polling Station. That the will of the people of Shankoe Ward was expressed in the ballot and should be safeguarded by this court.

58. On the question of the 3rd Respondent boarding Motor vehicle Registration Number KBQ 974A on the poll day, it is submitted that the credibility of petitioner and witnesses was wanting. That there were contradictions. That no report was ever made to the 2nd and 4th Respondents. And no eye witness and no agents were called by the Petitioner. That no evidence was adduced to link the motor vehicle to the 1st Respondent. It is submitted that, in any event there was no proof tabled of any wrong doing in the alleged vehicle. That there needed to be established the malpractice and the magnitude and the effect as observed in John Kiarie Waweru v. Beth Wambui Mugo and 2 Others (2008) eKLR

59. It is finally submitted that the Petition has not met the threshold for nullification of an election. That the election was conducted in accordance with the law and alleged irregularities and particularly the conduct of the 3rd Respondent did not affect the results. That the Petition should fail. And consequently that a declaration do issue that 1st Respondent was validly elected, that the elections for Shankoe Ward were credible, free, fair and in conformity with the Constitution, the Elections Act and the Regulations there under. And finally that the Petition be dismissed with costs to be borne by the Petitioner.

- 3rd Respondent's submissions.

60. The 3rd Respondent did not file any submissions but sought to make oral submissions and was allowed. In his submissions which threatened to be a recitation of his testimony he submits that the Petitioner should have enjoined the D.P.O. He submits that no voter single voter was assisted at Endoinyo Nkopit. He submits that the electorate whose rights were allegedly violated should have been called as witnesses. He also submits that no register was produced to show the Petitioners witness was a voter and further that the witness cannot be relied upon. He also maintains the police scrutinized the documents without a court order and their report should be disregarded. On recruitment, he said he and the other officials were competitively recruited and there was no formal complaint against any. On the case pending, it is his contention that the same should not be used in this petition and maintains his innocence. On the issue of broken seals as indicated in the DCI report, he submitted that there was no evidence he broke any. He denies he was compromised and submits he did not enter the 1st Respondents vehicle. He submits further that the results did not reach the CTC and it was not out of his making.

F. Issues for determination.

61. The issues framed and agreed upon by the parties during pre trial hearing can be condensed into the following;-

- 1) Whether the 2nd, 3rd and 4th Respondents conducted credible, free, fair elections in compliance with the Constitution, Elections Act and the Regulations made there under.
- 2) Whether election malpractices, illegalities, irregularities and errors were committed, if yes, by whom and whether the same affected the integrity of the election and consequently the declaration

made by the 2nd Respondent.

3) Whether the 1st Respondent was lawfully and validly elected as member of County Assembly for Shankoe Ward.

4) What consequential orders, declarations and reliefs should the court grant?

5) Who should be condemned to pay the costs of this petition and to whom?

G. General Principles.

62. It suffices to outline general principle of law that govern elections that this court looks at in determination of the merits of this election Petition. In the conduct of elections the IEBC is enjoined to do so with strict regard to the Constitution and the law. It is to ensure the elections are free and fair, free from violence, intimidation, improper influence or corruption, simple and transparent. (See Articles. 81, 82 and 86 of the Constitution of Kenya). The law as to the election of MCA is governed by the Elections Act and the Elections General Regulations, 2012. Votes are to be counted, tabulated and announced. They are then sent to the C.T.C where they are collated and declared.

63. The law on the burden of proof and standard of proof in election petitions is well settled. This court will therefore not re-invent the wheel. It is for the Petitioner to prove not only that there were irregularities, malpractices and illegalities committed but further that their occurrence affected the outcome of the election. Once the burden is discharged it is for the Respondents to prove the contrary.

64. Two crucial questions to ask in every election are;- were there irregularities and illegalities? Did the irregularities and illegalities affect the result? It is not envisaged that an election that is free from errors and irregularities anywhere in the world. The laws have always been put in place to take care of those minor irregularities. Section 83 of the Elections Act provides as follows;-

"No election shall be declared to be void by reason of non compliance with any written law relating to the 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..."

65. The Supreme Court of Kenya in Raila 2 in interpreting Section 83 stated as follows;

"[211] In our respectful view, the two limbs of Section 83 of the Elections Act should be applied disjunctively. In the circumstances, a petitioner who is able to satisfactorily prove either of the two limbs of the Section can void an election. In other words, a petitioner who is able to prove that the conduct of the election in question substantially violated the principles laid down in our Constitution as well as other written law on elections, will on that ground alone, void an election. He will also be able to void an election if he is able to prove that although the election was conducted substantially in accordance with the principles laid down in our Constitution as well as other written law on elections, it was fraught with irregularities or illegalities that affected the result of the election"

66. Article 86 of the Constitution, IEBC is obligated to ensure, *inter alia*, that;-

*"Whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent; the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station; the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials."*Emphasis added.

67. The crucial position played by a polling station in an election cannot be gainsaid. The Court of Appeal

in Maina Kiai Case as cited and approved by the Supreme Court in Raila 2 captures it succinctly thus:

“It is clear ...that the polling station is the true locus for the free exercise of the voters’ will. The counting of the votes as elaborately set out in the Act and the Regulations, with its open, transparent and participatory character using the ballot as the primary material, means, as it must, that the count there is clothed with a finality not to be exposed to any risk of variation or subversion.”

68. The Elections Act and the rules made there under to wit the Elections (General) Regulations, 2012 prescribe the roles of the officers at a polling station and at the County Tallying Center. Under Section 39(1A)(i) it is responsibility of the Constituency R.O to tally, announce and declare, in the prescribed form, the final results from each polling station in a constituency for the election of a member of the National Assembly and members of the County assembly.

69. It is the duty of the P.O at the end of voting vote counting to record the count in tallying sheet. The candidates, agents etc sign declaration. Thereafter the P.O (a) immediately announces the results of the voting at the polling station before communicating the results to the R.O. (b). candidates/agents append signature (c). provide each political party, candidate or agent with copy of declaration of results (d). affix a copy at the public entrance at polling station. Recount is provided for if required by agents. P.O Seal of ballot papers. Lastly, the P.O shall, as soon as is practicable deliver to the returning officer for the electoral area the ballot box containing all electoral materials. The R.O picks up from there.

H. Analysis and Determination.

70. The questions that must be asked are as follows;- What happened at Shankoe ward? What happened at Endoinyo-Nkopit polling station? Was there compliance with the Constitution? Was there compliance with electoral law and regulations? Was the counting of votes done to conclusion? Did the presiding officer announce results? Were the results tallied? Was there failure? Was there declaration of results? Does the declaration reflect the will of the people of Shankoe ward? This is a cocktail of concerns that do not even begin to describe the scope of this Petition as presented. Suffice it to address the issues arising one after the other.

71. On the question of parties, it was submitted for Respondents that the Petitioner named some persons not enjoined. The Respondents did not name the specific persons named and not enjoined. It is clear however from pleading and testimonies that they refer to the D.P.O, the security officer and a clerk among others. It is my finding that all the necessary parties were brought on board. An election court audits the process of an election. It is not necessary to bring on board as parties all the persons mentioned in the Petition. A party need not call a superfluity of persons either as parties or witnesses.

72. On the question whether there was compliance with the law in appointment of electoral officials and particularly on the allegation that one of the clerks at Shankoe was related to the 1st Respondent, it is my finding that nothing turns on it. There was no proof of the relationship. Even if there was, there needed to have been proof of breach of law, the code of conduct and that breach affected the election in a material way. There was no mention of impropriety, integrity or diligence on the part of the official. It is submitted for Respondents that the issue was raised with the R.O but it was not acted upon. There is nothing to show by way of documentation that the issue was raised. As stated by the R.O, the officials were employed on merit. The merit has not been attacked. Besides, this was not pleaded. The allegation is dismissed.

73. On the question of breach of law and inappropriate contact between the 1st Respondent and the P.O, it is submitted for the Petitioner that the two met and used one vehicle. It is denied by the two Respondents. One witness was called to say he was at Endoinyo Nkopit when he saw the two enter one vehicle. The witness appeared very shaky. His presence at the polling station on the two occasions is surprising and cannot have been by sheer coincidence. There is no proof that the P.O and the 1st Respondent made contacts as alleged. There is equally no proof that the meeting if indeed took place resulted in the compromise of the election. Nothing turns on that allegation. Nothing also turns on the allegation that it

was the Petitioner who made inappropriate contact with the P.O. There is no evidence of impropriety between the P.O and the Petitioner. All contestants were free to attend to polling station and monitor progress and the P.O is the best person to address any concerns that may arise on poll day. There is also no cogent evidence that he Petitioner threatened the election officials with dire consequences should he lose at the polling station.

74. Was there compliance with the law as regards Endoinyo Nkopit Polling Station? The Presiding officer says he complied with the law. The Petitioner says there was no compliance with the law. The Petitioner says, he was not aware of any results announced at the Polling Station. This is supported by his witness who says the P.O did not post any results on the Notice Board at the school as alleged by the P.O. There is submission that he Petitioner failed to call his agent as a witness and that the failure should draw adverse inference that his testimony would have been against his cause. The agent would have testified on the same issues the witness called has testified on the events at Endoinyo Nkopit. Whether the votes were counted and whether they were posted and transmitted. The P.O in his testimony says he transmitted the results electronically to the Constituency Tallying Center. He at the same time says he did not receive notification and had to rush home to power the machine which was running low on power. This is not consistent with his pleading where he says there was rush to leave the polling station due to security issues and that some youth had breached the 400metres radius rule and were demanding recount. Which begs the question, what is truth?

75. There is no doubt the P.O was arrested at a house at Kilgoris before he presented the physical results and all the election materials to the Constituency Tallying Center at Kilgoris Boys. He with others faces charges under Election Offences Act No. 37 of 2016. The copy of charge sheet reads an offence under section 6(j) for neglect of official duty. Section 58 of the Elections Act referred to in submissions of parties was repealed by Section 25 of the Election Offences Act No 36 of 2016 and reference to it is erroneous. The trial of the three for the offence is pending, and should continue to its logical conclusion. In the fullness of time, a determination on that shall be out.

76. The content of the ballot boxes were opened and audited by the CID the report produced in court. This court cannot vouch for the authenticity of the content of the report. I doubt that scrutiny and recount by this court would have amounted to anything meaningful. It is not clear what broken seals were found and whether they were broken prior to voting or after close of counting. None of the parties was comfortable with their findings.

77. The explanation by the P.O that he had some pending clerical work to do after the announcement of results does not wash. There should be no homework for an Election official outside the polling Station or Tallying Center. The law does not envisage such an event. The Maina Kiai case supra is instructive, that the count at the polling station is clothed with finality. The actions of the P.O subverted the electoral material and exposed it to risk. His actions compromised integrity of the ballot.

78. Were the results from the polling stations openly and accurately collated and promptly announced by the returning officer? The Returning officer says he considered but admits not including the contested results in the final tally. What results did the R.O consider? With the P.O saying he had difficulty in transmitting the results electronically and with the arrest of the P.O, it is difficult to place a finger on what results the R.O considered. There cannot have been any results from Endoinyo Nkopit Polling Station. Where is accountability?

79. On the question of errors in the statutory forms, it is often stated that error is to human. All that is required of this court is to consider whether the errors affected the election. What are the errors complained of? The Petitioner says there was variance between the total number of valid votes garnered by each candidate and voter turnout as declared by the R.O. That the 61.3 percentage turnout indicated in declared results differs with the total score per candidate. The explanation is that those were computational errors which are normal in every election. The percentage of voter turnout is given as 61 percent computed on 6747 total votes. The error is explained by the R.O who says in his testimony that in computing percentage of voter turnout the total votes of one candidate Yiampoi Moses who garnered 1349 votes were not added and that if added it changes the percentage of voter turnout but does not affect

any candidate. I find the explanation given plausible. This was an arithmetical error and it has not been demonstrated that it affected the result.

80. On the related question of margin, what can one make of the vote difference/ margin? The Petitioner says the margin made it difficult to tell who the winner was. The Respondents say the size of the margin did not matter. In common parlance, the margin was too close to call as between the Petitioner and the 1st Respondent. It was neck to neck.

81. Musinga J. (as he then was) in Manson Nyamweya vs James Magara & 2 Others [2009] eKLR and as cited with approval in Dickson Mwendwa Kithinji v. Gatirau Peter Munya and 2 others 2014 eKLR stated as follows;

“... it must be borne in mind that in auditing an electoral process to determine whether the results as declared in an election ought to be disturbed, the court is not dealing with a mathematical puzzle and its task is not just to consider who got the highest number of votes. The court has to consider whether the grounds as raised in the petition sufficiently challenge the entire electoral process and lead to a conclusion that the process was not transparent, free and fair. It is not just a question of who got more votes than the other. It cannot be said that the end justifies the means. In a democratic election the means by which a winner is declared plays a very important role. The votes must be verifiable by the paper trail left behind, it must be demonstrated that there existed favourable circumstances for a fair election and that no party was prejudiced by an act or omission of an election official...”

82. What was the will of the electorate at Shankoe for the impugned election? In an election every vote must count. That is a cardinal constitutional principle. No voters should have their vote disregarded in the process. The votes from Endoinyo Nkopit Polling station were admittedly not added to the final tally due to issues surrounding arrest of P.O and his colleagues. The testimony as to whether counting and announcement had been made at the polling station is not adding up. The P.O says he had announced the results and pinned a copy affixed to the notice board at the polling station and had even sent through KIEMS machine to the CTC and NTC. No copies are produced of the Print out of the form sent. Only Form 36A is produced by the 1st Respondent who says he received copy from his agent at the polling station. Apparently, all the party agents did a shoddy job. In future, if the polling station is to be the true locus as held in Maina Kiai case, parties and candidates had better invest in capacity building and training.

83. What can one make of the form 36A produced from Endoinyo Nkopit? Suffice it to restate that the authenticity of the form is suspect. What is annexed is produced is a colored photocopy. We cannot compare it with that in the ballot box since there was interference. First, by the acts of P.O who admits he took work home to finalize clerical work. Secondly, the police opened the ballot boxes and resealed them afterwards. The police are entitled to investigate electoral crimes but not to audit an election. The later is the province of the courts sitting on election Petition. The 3rd Respondent claims the Petitioner must have colluded with the police and says the detailed Petition was an indicator. There is no evidence of that and is treated unsubstantiated and reckless talk.

84. The R.O says results from Endoinyo Nkopit were omitted after consultation. No evidence of such consultation was tendered in form of a write-up. No one individual or group of people can decide for the electorate. In George Mike Wanjohi vs. Steven Kariuki and 2 others it was held, and I am accordingly guided, that the weight of the peoples franchise-interest is far too substantial to permit one official or a couple of them, including the R.O, unilaterally to undo the voters verdict.

85. If in Presidential elections the Returning Officer at the NTC cannot add, subtract, multiply or divide any numbers transmitted from Constituency Tallying Centers as held in Maina Kiai Case (supra), it follows that the R.O at CTC cannot do the same over Forms from Polling stations. He can only tally and declare the result. He cannot purport to confirm, vary or verify the results. If there were results transmitted electronically- which by virtue of Section 39(1C) of the Elections Act No. 24 of 2011 as amended in 2016 is a statutory requirement for Presidential elections- from the Polling station as claimed

in court by the 3rd Respondent, the R.O ought to have used them to tally and declare. Without it, the result was inconclusive and or indeterminate. The numbers did not just add up. It cannot be that the R.O when asked what figures he considered points everyone to the public portal. What public portal when the P.O says he could not get notification of a successful electronic transmission of results?

86. It is not in doubt that the R.O, by law, is obligated to make a declaration. He made a declaration based on what he had. I find the allegation that he succumbed to influence of 1st Respondent not proved. The registered voters from Endoinyo Nkopit polling station are 666. That is not a negligible figure in an election. The failure to include the results may not have affected the candidates, but it affected the voters. Article 38 of the Constitution of Kenya is there for protection of political rights of the electorate.

87. In the case of the Returning Officer Tongaren Constituency referred to by the Respondents, the court made emphasis of the fact that commission of an offence was one thing and the effect on integrity of election is another thing altogether. In the present case, the failure by the P.O to comply with the law and the failure to submit the results and all election materials affected the results.

88. With the foregoing state of affairs, it cannot be said that the results declared reflected the will of the people of Shankoe. It cannot be said the election were credible free and fair. It cannot be said the 1st Respondent was lawfully and validly elected. Further, in this election, unlike in the racetrack, it cannot be said that the 1st Respondent won by the nose or first past the post. This court finds that there was breach of Articles 38, 81 and 86 of the Constitution of Kenya. The system adopted by the P.O and vicariously by the 2nd and 4th Respondent is far from accountable, secure and verifiable.

89. On the question of costs, it is a general rule in election Petitions that "costs shall follow the cause." This court is obligated under Section 84 of the Elections Act and Rule 30 of the Elections (Parliamentary and County Elections) Petition Rules, 2017 to award costs. In this Petition, parties are in agreement that costs shall follow. That is granted.

90. Who will shoulder the costs and to whom is it payable? The Petition is successful. The 1st Respondent was not responsible for the conduct of the election and is not indicted of any election offence. He however gave the election a clean bill of health The 4th Respondent is mandated by law to conduct an election that should meet constitutional muster. It does so through its appointed officials. Other than in election offences which attract personal responsibility, the failure of those officials is institutional failure. And failure comes with its attendant consequences. Costs are one such a consequence. It is a burden to the tax-payer but again it is a price attached to democracy. The 3rd Respondent is responsible for the whole mess. He became the weakest link that broke in the entire election chain. His actions affected every party in this Petition and most importantly the electorate of Shankoe Ward in entirety. In this Petition, he was a lone ranger. The 4th Respondent shoulders liability principally and vicariously.

I. Conclusion and Disposal Orders.

91. As I conclude, I take this opportunity to thank everyone who participated in this election Petition. The parties for their patience and the advocates for their time input in advocacy and burning the midnight oil in legal research. Every actor should put their best foot forward. The electorate should prepare to make a decisive call. The midwife (IEBC) should prepare a free, fair and level ground. Every actor should go back to the drawing board. This court clears the way for the will/power of the people. The parties should assemble their arsenal for a rematch. As regards the elections held on 8th August, 2017 for Member of County Assembly for Shankoe Ward, it is time to hammer the final nail in the coffin. The petition is upheld. In the genre of Kenyan political tunes and currency you are used to; let the drums roll please...*Tibim! Tialala!...Tuko pamoja!*

92. For the avoidance of doubt, the following orders do hereby issue;

1) I declare that the 1st Respondent (Patrick Sosio Lekakeny) was not validly elected as a Member

of County Assembly for Shankoe Ward.

2) The declaration of the 1st Respondent as elected Member of County Assembly for Shankoe Ward following 8th August, 2017 election is hereby declared null and void.

3) The 4th Respondent is hereby ordered to hold fresh election for Member of County Assembly for Shankoe Ward pursuant to the Constitution, the electoral laws of the day and within the stipulated time.

4) The Petitioner and the 1st Respondent shall have the costs. The cost shall be borne by the 4th Respondent.

5) The Petitioner and the 1st Respondent shall file their Bill of Costs to be assessed by this court.

6) The cost payable is hereby capped at Kshs. 300,000/= for the Petitioner and Kshs. 150, 000/= for the 1st Respondent.

7) The security for costs deposited in court shall be released to the Petitioner/depositor.

8) Pursuant to Section 86 of the Election Act, a Certificate of the determination of this Petition shall issue to the Independent Electoral and Boundaries Commission-(IEBC).

9) Contemporaneously, Notice of this court's determination to issue to the Speaker Narok County Assembly.

Dated, Delivered and Signed at Kilgoris this 18th day of January, 2018.

By: D.K.Matutu Esq. [Senior Resident Magistrate].

In open court. In the presence of;-

- 1)
- 2)
- 3)
- 4)
- 5)