



**REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE’S COURT**  
**AT KILIFI**  
**ELECTION PETITION NO. 2 OF 2017**  
**IN THE MATTER OF THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF THE ELECTION ACT. NO. 11 OF 2011**  
**AND**  
**IN THE MATTER OF THE ELECTIONS**  
**(PARLIAMENTARY AND COUNTY ELECTIONS) PETITION RULES, 2017**  
**BETWEEN**  
**DICKSON KARANI YAA.....PETITIONER**  
**AND**  
**INDEPENDENT ELECTORAL AND BOUNDARIES**  
**COMMISSION .....1<sup>ST</sup> RESPONDENT**  
**ABDIWAHID HUSSEIN – RETURNING OFFICER**  
**KILIFI NORTH CONSTITUENCY.....2<sup>ND</sup> RESPONDENT**  
**EMMANUEL CHANGAWA KOMBE.....3<sup>RD</sup> RESPONDENT**

**RULING**

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have filed this Application dated 9/11/2017 seeking orders “inter alia”

- 1) This honourable court strike out the petitioner’s petition for want of format and content by failing to declare the results of the elections as well as state the date of elections.
- 2) This court strike out the entire petition including the affidavit sworn by the Petitioner for offending the provisions of Rule 8(1) of the Election Rules. The grounds are the petition did not give the date and the declared results it therefore lacks specificity.

The Application is opposed. Both the Petitioner and the Respondents filed submissions and cited several authorities. The Petitioner in response stated that the Application is frivolous he states that the results are all contained in the annexure to the Petition hence has not failed to comply with the law.

I have also perused the Petition. On the face of it the Petitioner has alluded to declaration of results vide form 36B which is the instrument for declaration of final election results. It is its contents that contain the information that is required to be pleaded by Rule 8(1) & 12. It is from its contents that a certificate is issued to the winner. Its contains, votes cast, total votes cast and contents “*at al*”.

The Petitioner has also clearly stated the election date and date of announcement of results. This is different from those petitioners who have not stated the same and who have not even pleaded the existence of form 36B in the face of the petition. The court of Appeal in the case of **Jimmy Mkala Kazungu Vs. I.E.B.C** Justice Thende stated thus:-

“In order to determine whether the Petitioner has complied with the mandatory requirement of Rule 8(1) of the Election Petition Rules, all this court is required to do is look at what is contained in the petition against the provisions of Rule 8(1)...The same requirements are replicated in Rule 12 (2) ...affidavits...”

In this case I have looked at the petition and found that paragraph 4 and 11 of the supporting affidavit contains the date of the declaration of elections results so does the petition. Reference to form 36 B which is annexed to the petition also contains the rest of the requirements as defined in the case of **Hassan Ali Joho & another Vs. Suleiman Said Shabal & 2 others (2014). EKLR**. They contain the quantitative and numerical composition which are the actual declared results and who the winner and loser (s) are.

The Judges did not demand that these contents be verbatim laid out in the petition to my mind reference to the numerical and quantitative documents what is duly annexed is sufficient information for purposes of compliance with the law. If there was no reference to the statutory forms then they would have been in my opinion been obliged and the petition would not have survived past time point. I am therefore satisfied that the petition has complied with the law and hence I reject the Application as having no merit and dismiss the same with costs to the petitioner.

**Signed**

**Hon. Dr. Julie Oseko – CM**

**Delivered in the presence of:**

- Mr. Angina for 3<sup>rd</sup> Respondent and holding brief for Anne Kyusu for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents
- Mr. Kinaro for the Petitioner.

**Signed**

**Hon . Dr. Julie Oseko – CM**

**29/11/2017**