



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT KERUGOYA

ELECTION PETITION NUMBER 1 OF 2017

**IN THE MATTER OF THE ELECTION OF THE MEMBER OF THE COUNTY ASSEMBLY
FOR THIBA WARD**

AND

IN THE MATTER OF THE ELECTIONS ACT, 2011, NO. 24 OF 2011

AND

**IN THE MATTER OF THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTIONS)
PETITION RULES, 2017**

BETWEEN

JOSEPH KIRAGU MUTHURA.....PETITIONER

VERSUS

PIUS NJOGU KATHURI.....1ST RESPONDENT

JULIUS MAINGI MUTHUSI.....2ND RESPONDENT

INDEPENDENT ELECTIONS &

BOUNDARIES COMMISSION.....3RD RESPONDENT

RULING

1. The 1st Respondent has made an application for stay of proceedings pending directions in Civil Appeal No. 44 of 2017. The appeal arises from a ruling on an interlocutory application delivered by this court on 27th October, 2017. This matter was coming up for mention for directions to be made on scrutiny and recount of votes cast in all the polling stations within Thiba Ward when this application was made by learned counsel for the 1st Respondent Mr. Kahiga.

2. This application was opposed by learned counsel for the petitioner Mr. Maina Kagio who submitted that it was made under unknown provisions of the law and that it should have been made on 27th October, 2017 under Order 42 Rule 6 of the Civil Procedure Rules when the ruling was delivered. Order 42 Rule 6(5) of the Civil Procedure Rules provides as follows:

(5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.

3. The 2nd and 3rd Respondents did not oppose the application. Learned counsel for the 2nd and 3rd Respondents Mr. Kathungu urged that the matter be mentioned in two weeks time within which time the High Court will have given directions on the interlocutory appeal and that in any event oral evidence had been dispensed with by consent of the parties and the constraint on time was not demanding on the court.

4. I have considered submissions made before me by learned counsels. The application by the 1st Respondent is an informal one. I agree with learned counsel Mr. Maina Kagio that the appropriate time for an oral application was when the ruling was delivered. The 1st Respondent needed to make a formal application.

5. This is an election petition with strict time constraints and the clock has been ticking, the petition having been filed on 6th September, 2017. Rule 4 of the Elections (Parliamentary and County Elections) Petition Rules gives the objective of the Rules which is to facilitate the just, expeditious, proportionate and affordable resolution of election petitions. Under section 75 of the Elections Act a petition should be heard and determined within six months of the date of lodging the petition and any delay must be discouraged.

6. As stated earlier, parties were coming for directions on scrutiny and recount of votes cast in Thiba Ward. Since it is an informal application for stay of proceedings, I am unable to grant it for the reasons explained and direct that dates be taken for the exercise of scrutiny and recount of votes.

7. There shall be no order as to costs.

DATED, SIGNED and DELIVERED this 13th November, 2017 in the presence of all Counsels.

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S.M.S. SOITA

CHIEF MAGISTRATE