



**REPUBLIC OF KENYA**  
**IN THE SENIOR PRINCIPAL MAGISTRATES COURT**

**AT VOI**

**ELECTION PETITION NO. 1 OF 2017**

- 1. WILSON MWANG'OMBE MWAJUMWA.....1<sup>ST</sup> PETITIONER**
- 2. MOHAMED JUMA OMAR.....2<sup>ND</sup> PETITIONER**
- 3. MWACHOFI JOHN RIGHA.....3<sup>RD</sup> PETITIONER**
- 4. MWANDAWIRO GRANTON RAPHAEL.....4<sup>TH</sup> PETITIONER**
- 5. MWAKOMA DANSON MWAGHALUKA.....5<sup>TH</sup> PETITIONER**
- 6. MWAMBANGA DOMINIC ALIBHAI .....6<sup>TH</sup> PETITIONER**

**AND**

- 1. INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION.....1<sup>ST</sup> RESPONDENT**
- 2. SWALHAH IBRAHIM YUSUF.....2<sup>ND</sup> RESPONDENT**
- 3. GODFREY FUNDI MWAMBI.....3<sup>RD</sup> RESPONDENT**

**RULING**

**Introduction**

The petitioners herein Wilson Mwang'ombe Mwajumwa, Mohamed Juma Omar, Mwachofi John Righa, Mwandawiro Granton Raphael, Mwakoma Danson Mwaghaluka, Mwambanga Dominic Alibhai and the 3<sup>rd</sup> Respondent Godfrey Fundi Mwambi were all candidates for the position of Member of County Assembly of Mbololo ward Voi Constituency in the August 8<sup>th</sup> 2017 General election. The 1<sup>st</sup> respondent is the Independent Electoral and Boundaries Commission, the body mandated to conduct general elections. The 2<sup>nd</sup> respondent Swalhah Ibrahim Yusuf was the returning officer for Voi Constituency.

The 3<sup>rd</sup> respondent was declared winner with 2614 votes. The first to sixth petitioners garnered 2239, 529, 283, 197, 1008 and 1095 votes respectively.

The petitioners being dissatisfied with the manner in which the election was conducted, filed the present petition. The petition is supported by an Affidavit in support sworn by the 1<sup>st</sup> Petitioner on his own behalf and on behalf of his five co-petitioners all of whom filed a signed authority authorizing him to swear Affidavits and do all acts necessary towards prosecuting the petition on their behalf. The petition is also supported by an Affidavit of one Ernest Mwabagha Mkala whom the petitioners intend to call as a witness.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a joint response to the petition supported by an Affidavit of the 2<sup>nd</sup> Respondent.

The 3<sup>rd</sup> Respondent also filed his response supported by his sworn affidavit.

The Petitioners had on the date of filing their petition filed a Notice of Motion Application under Certificate of Urgency dated 5<sup>th</sup> September 2017 seeking orders to compel the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to produce to court all the Forms 36A's and 36B for Mbololo Ward, Voi Constituency for safe keeping and scrutiny. The application was supported by the Affidavit of the 1<sup>st</sup> Petitioner sworn on his own behalf and on behalf of the other petitioners.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a notice of preliminary objection/Grounds of Objection challenging the competency of both the petition and Notice of Motion dated 5<sup>th</sup> September 2017 on account of incompetence of the supporting affidavits as well as the affidavit of the intended witness.

When the matter came up for pre-trial on the 11<sup>th</sup> October 2017, Mr Kariuki for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent pointed out that the 1<sup>st</sup> and 2<sup>nd</sup> Respondent had in their response to the petition annexed and as such produced all forms 36A's and 36B for Mbololo Ward Voi Constituency and had no problem availing all the original copies. Without condoning its incompetency, he urged that the Petitioners' application be deemed as spent. With this indication, this court ordered that all original forms 36A and 36B be availed to court within seven days for safe keeping and scrutiny at the opportune time. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent in compliance deposited in court all original Forms 36A and 36B together with certified true copies of the same. The application was deemed spent with cost being in the cause.

Meanwhile on the 5<sup>th</sup> October 2017 the 3<sup>rd</sup> Respondent filed a notice of motion application dated 4<sup>th</sup> October 2017 brought pursuant to Sections 76 (1) (a) and Section 87(1) & (2) of the Election Act No 24 of 2011, Rules 8(4) (b), 12(1) (b), 12(4) and 12(14) of the Elections (Parliamentary and County Elections) Petition Rules 2017 and all other enabling provisions of the law.

On 11<sup>th</sup> October 2017 the 1<sup>st</sup> & 2<sup>nd</sup> Respondent filed a similar Notice of Motion application dated 4<sup>th</sup> October 2017. This Ruling relates to these two applications.

### **The applications and the grounds thereof**

The 3<sup>rd</sup> Respondent seeks the following orders;

1. That this Honourable Court strikes out the Affidavit in support of the petition dated 5<sup>th</sup> September 2017 sworn by Wilson Mwang'ombe Mwajumwa on 5<sup>th</sup> September 2017 and filed on even date, and all annexures to the Affidavit;
2. That this Honourable court strikes out the supporting affidavit to the petition sworn by Ernest Mwabagha Mkala on 5<sup>th</sup> September 2017 and filed on even date.
3. That this Honourable Court strikes out the Supporting Affidavit to the petitioners' notice of motion dated 5<sup>th</sup> September 2017 sworn by Wilson Mwangombe Mwajumwa on 5<sup>th</sup> September 2017 and filed on even date, and all annexures to the Affidavit.
4. That this Honourable Court strike out the petition dated 5<sup>th</sup> September 2017 for non-compliance with the mandatory provisions of Rule 8(4) (b), 12 (1) and 12 (4) of the Elections (Parliamentary

- and County Elections) petition Rules 2017.
5. That pursuant to prayer 4 herein this Honourable Court declares Godfrey Fundi Mwambi the duly elected member of County Assembly, Mbololo Ward, Taita Taveta County.
  6. That this Honourable Court recommends to the Director of Public Prosecutions to investigate and prosecute the petitioners for electoral malpractices of a criminal nature, including in respect to the forged commissioners stamp and signature of Henry Muranje appearing in affidavits in support of the petition dated 5<sup>th</sup> September 2017 and petitioners notice of motion dated 5<sup>th</sup> September 2017.
  7. That costs be provided for.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent. Seeks orders that;

1. The Honourable Court be pleased to strike out the Election Petition and notice of motion dated 5<sup>th</sup> September 2017 for being frivolous, vexatious and an abuse of the Court with cost.
2. That costs of the application be provided for.

Both applications are premised on the grounds that, the Affidavit in Support of the petition sworn by the 1<sup>st</sup> petitioner, the Affidavit in Support of the petitioners' application dated 4<sup>th</sup> September 2017 as well as Affidavit of the Petitioners' intended witness one Ernest Mwabagha Mkala sworn on 5<sup>th</sup> September 2017 are all forgeries noting that Henry Muranje a commissioner for oaths who is purported to have commissioned the Affidavits never commissioned, stamped or signed the Affidavits

That the Affidavits offends the provisions of Rule 12(14) of the Elections (Parliamentary and County Elections) petition Rules, 2017.

That the Affidavits and all the annexures are prohibited documents under the provisions of Section 13(j) of the Election Offences Act No. 37 of 2016 which makes it an election offence to knowingly or recklessly make a false statement or furnish false particulars in a document required under the Elections Act.

That the Affidavits are prohibited documents under Section 347 of the Penal Code which makes it an offence to forge a document.

The applications are also premised on the ground that Affidavits and the annexures contravenes the provisions of Section seven (7) of the Oaths and Statutory Declarations Act cap 15 Laws of Kenya which makes it an offence to knowingly and wilfully make a false declaration.

The petitioners aver that once the affidavits are struck out, the petition shall be a bare petition not supported by any affidavit which is irredeemably incompetent, fatally defective and patently offends the mandatory provision of Rule 8(4) (b), Rule 12(1) (4) of the Elections (Parliamentary and County Elections) petition Rules 2017 and should be dismissed and the 3<sup>rd</sup> respondent declared duly elected member of County Assembly, Mbololo Ward pursuant to Section 75 (3) (a) of the Election Act No. 24 of 2011.

The 3<sup>rd</sup> Respondent's application is supported by his sworn affidavit of even date i.e 4<sup>th</sup> October 2017. He annexes an affidavit sworn by Advocate Henry Robert Muranje on 21<sup>st</sup> September 2017 disputing having commissioned the petitioner's Supporting Affidavit to both the petition and the application or that of his witness. He too annexed a letter to law society of Kenya seeking to know if there exist on their record any other advocate by the name Henry Muranje as well as a response from Kenya Law Society confirming that there is only one Advocate by the name Henry Muranje. He thus sought that his application be allowed.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' application is supported by the affidavit sworn by the 2<sup>nd</sup> Respondent and

Another sworn by Henry Muranje Roberts. The 2<sup>nd</sup> Respondent deposes having met advocate Henry Muranje who confirmed to be an active member of the Law Society of Kenya bearing Admission No. P105/2476/92 under the name Muranje Henry Roberts of practice number LSK/2017/6353 and a life ABA member and who confirmed that he is a commissioner for oath but denied having commissioned the petitioner's affidavits in Support as well as the petitioners intended witness's Affidavit. She annexed the affidavit by Henry Muranje to that effect. She thus deposes that the affidavits are falsified and in contravention of the provisions of Section 11 of Oaths and Statutory Declaration Act, Section 347 of the Penal Code and should be struck out. She deposes that the falsification renders the petition incompetent and the same should be struck out with costs.

Henry Muranje deposes in his affidavit sworn on 21<sup>st</sup> September 2017. He disputed the stamp impression on the challenged affidavits and stated that, at no one time did he commission the affidavits. He deposed that the signature purported to have been appended by him is not his and do not even on its face value resemble his.

He too denies even owning the address noted on the stamp or being within Taita Taveta County on the date it is alleged that he commissioned the affidavits while at Voi. He annexed sample impressions of his commission rubber stamp, signature and annexure stamp which he deposed that he has been using for the last one year.

### **The Petitioners' Response to the 3<sup>rd</sup> Respondent's and 1<sup>st</sup> and 2<sup>nd</sup> Respondents' applications**

In opposing the application, the Petitioners filed a notice of Preliminary objection/Grounds of opposition setting out the following;

1. That the applications were filed and served out of time and ought to be struck out and expunged from the record.
2. That the same contravenes the express and mandatory provisions of Rule 13(1) and Rule 13(4) of the Elections (Parliamentary and County Elections) Petition Rules 2017.
3. That the applications are otherwise frivolous, vexatious and otherwise an abuse of the court process.

The petitioner also filed a Replying Affidavit sworn by their Advocate Mr Fredrick M Mwawasi. He deposes that after drafting and preparing the impugned affidavits he gave them to the clerk who assists him in Voi one Nicholas Mchanji who is also an employee of Omollo Onyango & Company Advocates and who told him that he could have the affidavits Commissioned. That he was glad to receive the affidavits back duly commissioned and had no reason to doubt their propriety. He deposes that he has since enquired from the said Nicholas Mchanji who informed him that the firm of Omollo Onyango & Company Advocate has a long standing arrangement with Mr Henry Muranje under which the said firm routinely have their affidavits Commissioned by Mr Muranje. He annexed other Affidavits as examples of affidavit forwarded to him having been so commissioned. He indicates that he as such believe that the commissioning was done with the express knowledge, authority and permission of Mr Henry Muranje pursuant to the agreement and he is hence stopped from denying the legality of what was done.

He deposes that the Petitioners are absolutely blameless and it would be unfair to punish them so gravely as to have their petition dismissed for something they are not even aware of. Counsel deposes that dismissal is a draconian measure that should be resorted to only in the most extreme of cases. He sought that the petitioners be allowed to file fresh affidavits.

All counsels agreed to dispose of the Applications by way of submissions. Counsel for the 3<sup>rd</sup> Respondent also sought to have Mr Henry Muranje cross examined on his Affidavit in support of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's application. This court ordered that Advocate Henry Muranje do attend court for cross examination.

## **Oral evidence of Advocate Henry Muranje**

On 9<sup>th</sup> November 2017 Advocate Henry Muranje took to the stand and testified on oath that he is an Advocate and Commissioner for Oaths having received his commission on 29<sup>th</sup> October 1997. He adopted the contents of his affidavit in support of 1<sup>st</sup> and 2<sup>nd</sup> Respondent application dated 4<sup>th</sup> October 2017 as well as the Affidavit annexed to the same application.

He dismissed the information in the Replying Affidavit sworn by the Counsel for the petitioner on 10<sup>th</sup> October 2017 as false and indicated that, one Nicholas Mchanji stated therein, is not known to him and neither are the Advocates in the firm of Omollo Onyango & Co. Advocates. He testified having only established on the morning before his testimony that the firm is owned by two young ladies who are barely a few years in practice. He noted that being in practice for over twenty five years and a commissioner for oaths since 1997 it would be ridiculous to enter into an arrangement where other persons commission Affidavits using his commissioners stamp. He denied that there was ever such an arrangement between him and the firm of Omollo Onyango & Co. Advocates and regretted that the proprietors of that firm did not swear any affidavit as he would have wished to take them on that allegation.

He confirmed that he has not, over the last several years commissioned any affidavit for filling in Voi and noted that he was nowhere near Taita Taveta on the 5<sup>th</sup> September 2017 when he is alleged to have commissioned the impugned affidavits at Voi. He noted that, at no one time have the purported deponents ever appeared before him for purposes of taking an oath or for any other purpose. He noted from the annexed affidavits that, there was a habit of Nicholas Mchanji filling affidavits purportedly commissioned by him.

He confirmed that the stamp used is not his and neither is the signature. He noted that there was not even the slightest attempt at forging his signature. He too noted that the postal address on the stamp is not his and he has never owned an address for Mombasa. He indicated that he is based in Malindi where his stamp and that he do not carry the same around.

Mr Muranje confirmed on cross examination that he first became aware of the use of his name when counsel for 1<sup>st</sup> and 2<sup>nd</sup> Respondent brought it to his attention around 21<sup>st</sup> September 2017. He confirmed that over fifteen years ago, he had an office in Taveta and that he know all the people who have ever worked for him and that Nicholas Mchanji is not one of them.

Counsels then proceeded to highlight their written and filed submission.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondents' submissions**

Mr. Kariuki for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent submitted that the petitioners through the affidavit in reply sworn by their Advocate Mr Mwawasi has conceded that the 1<sup>st</sup> petitioner's affidavit in support of the petition as well as the witness affidavit were not commissioned by Advocate Muranje Commissioner for Oaths. That the Petitioners have failed to demonstrate the existence of the alleged arrangement between Advocate Henry Muraje and the Law firm of Omollo Onyango Advocates. He submitted that Advocate Henry Muranje's testimony on oath confirms that such an arrangement is non-existent. He submitted that the impugned affidavits contravenes the provisions of Section 5 and 7 of the Oaths and Statutory Declaration Act which mandates that the place of attestation be truly stated and makes it an offence for any person to hold himself out as a commissioner for Oaths.

Counsel submitted that the 1<sup>st</sup> petitioner and their intended witness never appeared before advocate Henry Muranje as mandated by Rule 7 under Section 6 of the Oaths and Statutory Declaration Act.

He submitted that Rule 12 of the Election (Parliamentary and County Elections) Petition Rules 2017 specifically provide for the application of the provisions of the Oaths and Statutory Declaration Act and Order 19 of the Civil Procedure Rules 2010 as regards Affidavits. He thus urged me to strike out the two affidavits for contravening the mandatory provisions of the Law.

Counsel noted that without the supporting affidavit and witness affidavit the petitioners' petition is incurably defective because it, contravenes Rule 8(4) (b) and Rule 12(3) and (4) of the Elections (Parliamentary and County Elections) Petition Rules 2017 which requires that every petition be supported by an Affidavit sworn by the petitioner and that every intended witness swears an affidavit which should be filed at the time of filling the petition. He noted that these provisions are mandatory.

Counsel submitted that, the extent of the illegality which amount to a criminal offence under the provisions of section 347 of the Penal Code, Section 7 of the Oath and Statutory Declaration Act as well contravention of mandatory provisions of election (Parliamentary and County Elections) Petition Rule, are such that, the court cannot exercise discretion under Article 159(2) (d) of the Constitution 2010.

In buttressing his submissions Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents cited the case of **Nicholas Kiptoo Arab Korir Salat vs IEBC and 6 others (2013) eKLR** where Justice Kiage held that;

**“ .....Article 159 of the Constitution and the oxygen principles which commands court to seek to do substantive justice in an efficient, proportionate and cost effective manner were never intended to aid in the overthrow or destructions of the rules of procedure and creates an anarchical free-for-all in the administration of justice. This court, indeed all courts must never provide succour and cover to parties who exhibit Scant respect for rules and timelines.....”**

He too relied on **Mombasa Election Petition No. 9 of 2017 Jimmy Mkala Kazungu vs IEBC and two others** where justice Thande observed that the petition offended the mandatory provisions of Rule 8(1) and 12(2) and struck same out. He too referred the court to the case of **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 others (2014) eKLR** and **Ferdinanad Ndungu Waititu vs IEBC and 8 others (2013) eKLR** where it was held that an Affidavit in support of the petition and any documents annexed thereto are deemed to be part of the petition and therefore part of the pleadings in the case.

Counsel also noted that in as much as Rule 19(1) of the Election Petition Rules provide for extension of time Rule 19(2) gives a mandatory clarification to the effect that sub-rule (1) shall not apply in relation to the period within which a petition is required to be filed, heard and determined.

In response to the petitioners' notice of preliminary objection/grounds of opposition to the effect that the 1<sup>st</sup> and 2<sup>nd</sup> respondent notice of motion contravenes Rule 13(1) of the Election (Parliamentary and County Elections) Petition Rules 2017 and ought to be struck out, counsel submitted the relevant provision is Rule 11(1) which applies to response to the petition and not any subsequent application which in this case was filed and served before pre trial directions were taken and as such did not need the leave of the court. He noted that Rule 13(1) relates to deposit of security for cost and not as indicated. He noted that Rule 13(4) does not exist.

Counsel urged me to find the objection misplaced, frivolous, vexatious and an abuse of the process of the court.

### **3<sup>rd</sup> Respondent's submissions**

Mr Okoth, counsel for the 3<sup>rd</sup> Respondent submits just like Mr Kariuki that Henry Muranje Advocate did not commission the affidavit in support of the petition purportedly sworn before advocate Henry Muranje by the 1<sup>st</sup> Petitioner. He submits that appointment of a commissioner for Oaths is a solemn and elaborate exercise only done by the chief justice and published in the Kenya Gazette. That powers of a

commissioner for oaths are specific to the commissioner hence section 7 criminalizing holding out as a commissioner unless the person is duly appointed as such. Counsel cited the case of **Microsoft Corporation vs Mitsumi Computers Garage Ltd & Another (2001)** eKLR to buttress his position.

He notes that an affidavit that is not sworn in strict compliance with section 4(1) of the Oaths and Statutory Declarations Act is irredeemably defective. On this he cited the case of **Caltex Oil (Kenya) Ltd vs New Stadium Service Station Ltd and Another (2002)** eKLR and noted that contravention with the provisions of the Oaths and Statutory Declaration Act is not mere irregularities and that such an affidavit is for all intent and purposes not an affidavit as envisaged in law.

Counsel submits that a petition not supported by validly sworn affidavits is a bare petition and is irredeemably incompetent, fatally defective and patently offends the mandatory provisions of Rules 8(4) (b), 12 (1), 12 (4) and 12 (14) of the Election (Parliamentary and County Elections) Petition Rules requiring a petition to be supported by an affidavit of the petitioner setting out facts and grounds relied on and that the affidavit is to be filed at the time of filing the petition and not later.

Counsel submits that the replying affidavit of Mr Mwawasi, Counsel for the Petitioner discloses that the impugned affidavit in Support of the Petition was commissioned, signed and stamped by one Nicholas Mchanji a clerk at the law firm of Omollo Onyango & Company Advocates an unqualified person purportedly on the strength of an arrangement between the firm and Henry Muranje.

He likened the current state with the position prevailing in **Hosea Mundui Kiplagat vs Sammy Komen Mwaita & 2 others** (2013) eKLR.

He quoted extensively from that authority and urged me to find, just like it was found in Hosea Kiplagat case that an affidavit commissioned by an unqualified person is not valid.

Counsel noted that Rule 12(4) of the Elections (Parliament and County Elections) Petition Rules requires that the supporting affidavit and affidavits of witnesses be filed simultaneously with the petition. He gave reference to **Hosea Mundui Kiplagat** case and submitted that 28 days from declaration of results have elapsed, thus the petition is irredeemably defective.

He too relied on **David Wamatsi Omusotsi vs The returning officer Mumias East Constituency & 2 others (2017) eKLR** and noted that the same address the twin mandatory nature of Rules 8 and 12 and competency of a petition supported by an affidavit that is in contravention of Section 4 of Oaths and Statutory Declarations Act.

He noted that the very issues before this court of whether an affidavit commissioned without the deponent appearing before a commissioner for Oaths was valid and whether a clerk who shows up with signed affidavits could competently be said to have commissioned them.

### **Petitioners' submissions**

The petitioner through their counsel Mr Mwawasi submitted that upon preparing the questioned affidavits, counsel gave them to one Nicholas Mchanji an employee of the firm of Omollo Onyango & Company Advocates who offered to have them commissioned.

That the said clerk did as promised and brought them back duly commissioned, stamped and signed.

Counsel submitted that the affidavits must have been commissioned by Mr Muranje or with his knowledge, authority and permission. He noted that the deponent does not even know Mr Muranje.

Counsel argued that the petitioner ought to be allowed to file fresh affidavits noting that even when the affidavit is defective, it does not automatically lead to the striking out of the pleading. He relied on **Nairobi Flystar Ltd vs Delhis Bank Ltd (2015) eKLR** where the court found that a verifying affidavit commissioned by a person not authorized by the law is no affidavit at all, is null and void. The court

however, on striking it out exercised its discretion and allowed the plaintiff to file a compliant affidavit.

He too referred to the holding of Ringela J in **Microsoft Corporation vs Mitsumi Computer Garage Ltd & Another (2001) KLR** that Deviations from or lapses in form and procedure which do not go to the jurisdiction of the court or prejudice the adverse party in any fundamental respect ought not be treated as nullifying the legal instruments thus affected. He noted that what the court should do in such instances is to rise to its higher calling to do justice by saving the proceedings in issue by rejecting the defective affidavit and ordering that a fresh and compliant one be made and filed.

He too noted the case of **Pastificio Lucio Garofalo Spa vs Security & fire Equipment Co. & Another (2001) KLR 483** where similar holding was made.

He too relied on **Salesio M'aribu vs Meru County Council Civil Appeal No. 183 of 2002** where the court held that no suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.

Counsel also draw the attention of the court to **Kenya Commercial Finance Company Ltd vs Richard Akwesera Onditi Court of Appeal No. 329 of 2009 Nairobi** where it was held that; ".....the court still retains an unqualified discretion to strike out a record of appeal or a notice of appeal, but the only difference is that it now have wider powers and will not automatically strike out proceedings before looking at available alternative."

Counsel too noted the decision in **H.A Katema & 2 others vs Nathaniel Mramba & 9 others HCC No. 7 of 2016 Voi.** where the position has been upheld. Counsel thus submitted that they should be allowed to file fresh affidavits. He noted that indeed the contents of the impugned affidavits stands unchallenged and as such the quarrel is with the form rather than substance. He urged me not to elevate form over substance.

He noted that the respondents have not suffered any prejudice.

On the petitioners notice of preliminary objections/grounds of opposition based on the provisions of the elections (Parliamentary and County Elections) Petition Rules 2017 Rules 13(1) and 13(4), counsel argues that upon service with a petition, a respondent ought to file his response within fourteen days of service and serve the same within seven (7) days of filing.

He thus argued that the respondents pleadings were filed and served out of time. He noted that reliance on a wrong set of Election Petition Rules does not alter that fact and as such they should be struck out.

### **Analysis and determination**

The issues for this court's determination are;

1. Whether the provisions of Rules 8 and 12 of the Election (Parliamentary and County Elections) Petition Rules 2017 are mandatory.
2. Whether the 1<sup>st</sup> petitioners affidavit in support of the petition was properly commissioned.
3. Whether the affidavit of Ernest Mwabagha Mkala, the intended witness was properly commissioned.
4. Whether the petition is incurably defective.
5. Whether the 3<sup>rd</sup> respondent's and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Notice of Motion Applications dated 4<sup>th</sup> October 2017 contravenes mandatory provision of Rule 13(1) & (4) of Election (Parliamentary and County Election) Petition Rules 2017.
6. Whether the same were filed and served out of time.
7. Whether the court has discretion to allow the petitioner to file fresh affidavits in support of the

petition.

**Competency of the 3<sup>rd</sup> respondent's and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Notice of Motion  
Applications dated 4<sup>th</sup> October 2017**

It would be important as a starting point to address the Preliminary objection/Grounds of opposition dated 10<sup>th</sup> October 2017 filed by the petitioners in response to the respondents twin applications and from which issues number five (5) and six (6) above derives. It is worth noting that a preliminary objection is legally totally different from grounds of opposition. Reference to a single document as a notice of Preliminary objection/Grounds of opposition is a misnomer. Be it as it may, the gist of the notice is that the 3<sup>rd</sup> Respondent's Notice of Motion Application dated 4<sup>th</sup> October 2017 and filed on 5<sup>th</sup> October 2017 and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Notice of Motion Application dated 4<sup>th</sup> October 2017 and filed on 11<sup>th</sup> October 2017 and both of which are the subject of this ruling were filed and served out of time and as such are in contravention of the express and mandatory provisions of Rule 13(1) and 13(4) of the Elections (Parliamentary and County Elections) Petition Rules 2017 and should be struck out and expunged from the record.

Two issues clearly emerges, first whether such an issue amounts to a preliminary objection.

What constitute a preliminary objection was defined in the case of Mukisa Biscuit Company vs Westend Distributors Ltd (1969) E.A 696 as follows;

**“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and occasion confusion of issues.”**

Whether a pleading or any process was filed and served out of time cannot be said to be a pure point of law. It is dependent on evidence of filing and service and the court must ascertain those facts before making a determination of whether the filing and service was within time or not and hence whether the law is contravened or not.

The issues raised in the petitioners notice cannot therefore be said to be preliminary points of objections. They can only be taken as grounds of opposition.

The petitioner cites contravention with Rules 13(1) and 13(4) of the Elections (Parliamentary and County Election) Petition Rules 2017 and argues that the applications subject to this ruling were filed and served out of time and should be struck out.

Section 13(1) however does not deal with filing and service and clearly, as pointed out by Mr Okoth counsel for the 3<sup>rd</sup> respondent, the petitioners have placed reliance on wrong provisions of the law. For clarity, it is important to set out Section 13(1) Election (Parliamentary and County Elections) Petition Rules 2017.

**Rule 13(1) within ten days of the filing of a petition, a petitioner shall deposit security for the payment of costs in compliance with section 78(2) (b) and c of the Act.**

Rule 13(4) do not even exist. Clearly the petitioners were making reference to obsolete provisions of the law i.e legal notice no. 56 of 2017 which provisions are of no relevance to the subject matter.

Mr Mwawasi in his submissions argued that even if reliance may have been placed on the wrong provision of the law, the fact that the Respondent pleadings were filed and served out of time remains. He

likened the repealed Rules 13(1) and 13(4) of the Elections (Parliamentary and County Elections) Petition Rules 2017 Legal Notice No 56 to Rule 11(4) of the Elections (Parliamentary and County Elections) Petition Rules 2017 legal notice No. 116 of 2017 and argued that the Respondents application should be struck out for not being filed within seven days of service of the petition and not been served within seven (7) days of filling.

Even if I were to ignore the reliance on a wrong provision of the law and look at the ground of opposition using the lens of Rule 11 Election (Parliamentary and County Election) Petition Rules 2017 Legal Notice No. 116 of 2017, the opposition would still be premised on a misapprehension of the law.

Rule 11 relates to response to the petition, it is to the effect that;

1. **Rule 11(1) upon being served with a petition in accordance with Rule 10, a respondent may oppose the petition by filling a response within seven days.**
2. **The response to a petition under sub-rule (1) shall be in form 4 set out in the first schedule.**
3. ....
4. **Unless otherwise ordered by the election court, every response to a petition shall be served within seven days from the date of the filing that response.**
5. **A response to a petition shall respond to each claim made in the petition.**
6. ....
7. ....
8. ....

What is clear from this Rule is that the time limit of seven day for filing from the date of service of the petition and seven days for service from date of filling relates to responses to the petition and not interlocutory applications. This is indeed clear from the provisions of Rule 15.

**Rule 15(1) within seven days after the receipt of the last response to a petition, an election court shall schedule a pre-trial conference with the parties in which the election court shall;**

- a. ....
- b. ....
- c. **Determine interlocutory application**
- d. ....
- e. ....
- f. ....
- g. ....
- h. ....
- i. ....
- j. ....

**(2) An election court shall not allow any interlocutory application to be made on conclusion of the pre-trial conference, if the interlocutory application could have, by its nature, been brought before commencement of the hearing of the petition.**

The upshot of this provision is that interlocutory application can be brought without leave at any time before conclusion of pre-trial conference and even thereafter but only with the leave of the court.

Clearly, interlocutory application are not restricted within the seven days set for filling responses. The Respondents notices of motion were therefore properly filed and served and are competently before court.

Having dealt with the competency of the applications, I turn now to the substance of the two applications.

The gist of the two applications is that the Affidavit sworn by the 1<sup>st</sup> petitioner in support of the petition and that of Ernest Mwabagha Mkala, whom the petitioners intended to call as a witness were not commissioned by Mr Henry Muranje, a commissioner for Oaths as purported on the stamp impression

thereon and that the same are, as a result, forgeries.

In support of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' application Mr Henry Muranje sworn an affidavit deposing that he did not commission the two affidavits and distancing himself from the stamp impression and the signature purported to have been impressed by him. He too came before court and testified on Oath on the content of his affidavit and was cross examined accordingly. He denied having ever entered into an arrangement to have his commission stamp routinely used, by the Law firm of Omollo Onyango and Company Advocate, a firm of advocate in which one Nicholas Mchanji, a process server who is said to have assisted Mr Mwawasi have the affidavit commissioned worked. He denied the rubber stamp and the signature, which, even to an untrained eye is totally different from what is on his affidavit. He noted that he was never in Voi on the dates he is purported to have commissioned the documents at Voi and that the deponents never appeared before him for purpose of swearing the affidavits or for any other purposes whatsoever.

It is worth noting that the allegation of an arrangement between Mr Henry Muranje and the firm of Omollo Onyango & Co. Advocate to have the later use his commission stamp was information obtained from one Nicholas Mchanji as deposed by Mr Mwawasi in his affidavit in response to the Respondents/Applicants application sworn on 10<sup>th</sup> October 2017. The said Nicholas Mchanji did not swear any affidavit in reply. The veracity of the information cannot therefore be confirmed. That being the case, with Mr Muranje's evidence, it behoved the petitioners to tender evidence to establish the existence of the arrangement to at least prove Mr Mwawasi's assertion that what was done, as informed by Nicholas Mchanji, was done with Mr Muranje's express knowledge, authority and permission. It is noteworthy that none of the proprietors of the firm of Omollo Onyango & Company Advocate who were the other party to the purported arrangement swore any affidavit nor was the information of the arrangement obtained from them. It is clear to me that, the 1<sup>st</sup> petitioner's affidavit in support of the petition as well as Ernest Mwabagwa's affidavit were neither commissioned by Mr Henry Muranje nor was the commissioning done with his knowledge, authority and permission. The stamp was impressed and signed by someone else other than Mr Henry Muranje.

The oaths and statutory declarations act cap 15 laws of Kenya is clear on who should exercise the powers of a Commissioner for Oaths.

### **Section 2(1)**

- 1. The Chief Justice may by commission signed by him appoint persons being practising advocates to be Commissioners for Oaths and may revoke such appointment.**
- 2. ....**
- 3. After the commission has been signed and stamped the appointment of the person therein named as a Commissioner for Oaths shall be forthwith published in the Gazette.**

### **Section 3;**

**Every Advocate appointment a Commissioner for Oath shall, on appointment, sign a roll which shall be kept by the Registrar of the High Court.**

It is clear from these provisions that only advocate who have been commissioned by the chief justice and whose name remain in the roll can act as Commissioners for Oath. The powers donated by section 4 of the Act are only exercisable by a Commissioner for Oaths duly commissioned as aforesaid.

Indeed section 7 criminalises any passing out as a Commissioner for Oaths.

### **Section 7**

**Any person who hold himself out as a Commissioner for Oaths or receives any fee or reward as a Commissioner for Oaths shall, unless he has been appointed as such under this Act, be guilty of an offence and in addition to any other penalty or punishment to which he may be liable by any law**

**in force, be liable for a fine not exceeding six hundred shillings and for a second offence, in addition to any other penalty or punishment, shall be liable to a fine of two thousand shillings or imprisonment for a term not exceeding six months or to both such fine and imprisonment.**

The person who impersonated Mr Henry Muranje, Commissioner for Oaths committed an offence under this section. His action extinguished the legality of the affidavits and rendered them mere forgeries.

It is important to note that the provisions of Rule 15(14) of the Elections (Parliamentary and County Elections) petition Rules 2017 specifically imports the provisions of the Oaths and Statutory Declaration Act.

The case of **Hosea Mundui Kiplagat vs Sammy Komen Mwaita & 2 others, Eldoret (2013) eKLR** addresses the twin issues of who may be appointed as a Commissioner for Oaths and the effect of unqualified person acting as a Commissioner for Oaths on the documents. Justice Achode noted as follows;

**“Under section 2 of the Oaths and Statutory Declaration Act, only practising advocates may be appointed as Commissioners for Oaths by the chief justice.....”.**

She went on to state, **“.....An affidavit commissioned by an unqualified advocate is as good as an affidavit not commissioned at all, it is not complete without the attestation clause and is therefore void”.**

Similarly in **Caltex Oil Kenya Ltd vs New Stadium Service Station Ltd & Another** (2002) eKLR.

Justice Onyango Otieno found as follows, **“..... I still stand by what I did say in the case of James Francis Kariuki and Another vs United Insurance Co. Ltd HCCC No. 1450 of 2000 that such an affidavit sworn in violation of Section 4(1) of the Oaths and Statutory Declarations Act is for all intent and purposes not an affidavit as envisaged in law.....”**

Even as recent as on 2<sup>nd</sup> day of November 2017 **David Wamatsi Omusotsi vs The Returning Officer Mumias East Constituency & 2 Others (2017)** eKLR Justice Jesei Njagi while striking out affidavits in support of a petition held that, **“.....An affidavit can only be commissioned by a Commissioner for Oaths and other officials of the court allowed to do so under the Act. In this petition the signature of the person who was said to have commissioned the affidavits are forgeries. The stamp impressions on the affidavits are forgeries. The totality of all this is that the documents are not affidavits as known in law. They are mere forged documents.”**

These decisions resonate very well with the position in this case. They indeed binds me. The affidavit of the 1<sup>st</sup> petitioner in support of the petition and that of Ernest Mwabangwa Mkala are not affidavits as envisaged by law, they are mere forgeries and are hereby struck out.

### **What is the effect of striking out of the Affidavit?**

Mr Mwawasi, counsel for the petitioner argued that the **law is now firmly established** that, even if an Affidavit is defective it does not automatically lead to the striking out of the pleading involved. He referred to several cases to buttress his argument.

In **Flystar Limited vs Delphis Bank Ltd 2015** eKLR, despite finding a verifying Affidavit null and void, the judge went ahead and exercised his discretion in not striking out the plaint.

In **Pastificio Lucio Garofalo Spa vs Security & Fire Equipment Co. & Another (2001) Klr 483** Ringera J noted that after striking out a verifying affidavit the court has discretion whether to strike out the suit or not. He stated that;

**“.....In exercising the discretion, the court should be alive to the principles of justice, that procedural lapses, omissions and irregularities, unless they go to the jurisdiction of the court or prejudice the adversary in a fundamental respect which cannot be atoned for by an award of costs, are not to be taken as nullifying the proceedings affected”.**

In Salesio M’Aribu vs Meru County Council Civil Appeal No. 183 of 2002, the court held;

**“ No suit ought to be summarily dismissed unless it appears so hopeless that it plainly obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward.....”**

Similarly, in Kenya commercial Finance Company Ltd vs Richard Akwesera Onditi Civil Appeal No. 329 of 2009 Nairobi the court held,

**"This court still retains an unqualified discretion to strike out a record of appeal or a notice of appeal; the only difference now is that the court has wider powers and will not automatically strike out proceedings. The court before striking out, will look at available alternatives”.**

Reference was also made to the case of Microsoft Corporation Vs Mistumi Computer Garage Ltd and Another 2001 KLR 470 where Justice Ringera pronounced himself as follows;

**“ Rules of procedure are hand maiden and not mistresses of justice. They should not be elevated to a fetish. Theirs is to facilitate the administration of justice in a fair orderly and predictable manner, not to fetter or choke it. In my opinion, where it is evidence that the plaintiff has attempted to comply with the rule requiring verification of a plaint but has fallen short of the prescribed standards, it would be to elevate form and procedure to a fetish to strike out the suit. Deviations from or lapses in form and procedure which do not go to the jurisdiction of the court or prejudice the adverse party in any fundamental respect ought not to be treated as nullifying the legal instruments this affected. In those instances, the court should rise to its higher calling to do justice by saving the proceedings in issue.....The purpose may be attained by rejecting the defective affidavit and ordering that a fresh and complying one be made and filed on record”.**

Notably, in all these cases, the court was addressing provisions of the Civil Procedure Rules. It would appear that what the Court was against was elevation of procedural requirements under the Civil Procedure Rules to obscure or hinder the court from looking at the substantive issues in the matter by dismissing pleadings at preliminary stages. It is unlikely that the judges intended to condone illegalities and trash clear provisions of the law by excusing non-compliance with the law.

Speaking of Section 4(1) of the Oaths and Statutory Declarations Act In Caltex Oil (Kenya) Ltd vs New Stadium Service Station Ltd & Another (2002) eKLR the court noted;

**“..... in my humble opinion any attempt to reduce such an act of parliament to a mere irregularity is an affront to our laws.....Breach of this section cannot be treated as a mere irregularity or as an irregularity as to form only. I do think that the courts have a duty to rightly interpret the laws and to ensure that they do not condone any breaches of the same laws under any pretence whatsoever. An Affidavit sworn in violation of Section 4(1) of the Oaths and Statutory Declarations Act is for all intent and purposes not an Affidavit as envisaged in law as it offends a provision of an Act of Parliament and does not represent a mere irregularity either in defect as to form or by misdirection of the parties or in the title.....”.**

On the same breath, Justice Kiage speaking on the objectives of the Election petition Rules as set out in Rule 4 of the Election (Parliamentary & County Elections) Petition Rules and Constitutional imperative to administer justice without undue regard to procedural technicalities enshrined under Article 159 of the Constitution of Kenya 2010 in Nicholas Kiptoo Arab Kenga Salat vs I.E.B.C and 6 others (2013) eKLR stated as follows;

**“.....Article 159 of the Constitution and the oxygen principles which commands court to seek to do substantive justice in an efficient, proportionate and cost effective manner and to eschew defeatist technicalities were never meant to aid in the overthrow or destruction of the rules of procedure and creates an anarchical free for all in the administration of justice. This court, indeed all courts must never provide succour and cover to parties who exhibit scant respect for rules and timelines”.**

It would be an affront to our laws & principles of justice of this court were to ignore illegalities bouldering to criminality exhibited in this case.

Moreover, election petition proceedings are sui generis proceedings which are guided by special and specific set of laws and not generally by the provisions regulating the normal ordinary civil processes. They are special proceedings with detailed procedures. The law has set out what a petition should contain and if any of the matters supposed to be included is omitted, then the petition would be incurably defective.

Justice Lessit in M’nkiria Petkay Shen Miriti vs Ragwa Samuel Mbae & 2 others

stated,

**“ Rule 10 (now Rule 8) are not mere technical requirements laying down procedural form and content of intended election petitions but are substantive as they go to the root and substance of the issues and matter subscribed upon. Since the rules, like the election act are special legislation created to give effect to the overriding objective mentioned in Rule 4, which is to facilitate the just, expeditious proportionate and affordable resolution of election petitions under the constitution and the Act; every rule is intended to achieve a required result geared towards, inter alia expedition in the resolution of the petitions”.**

On the same breath Rule 12 cannot be said to be a technical requirement setting out procedural matter that an affidavit must contain. It is substantive and indeed imports the Oaths and Statutory Declarations Act an entire substantive Act of Parliament under Rule12 (14)

It is clear in this case that the petitioners have trumped upon mandatory substantive provisions of the Election (Parliamentary and County Elections) Petition rules and of Oaths and Statutory Declaration Act by having this Supporting Affidavit and that of their witness commissioned by unqualified person. This court has no choice but to strike it out. A bare petition without a Supporting Affidavit is incurably defective and cannot stand.

### **Should the petitioners be allowed to file Compliant Affidavits?**

Mr Mwawasi for the petitions seeks the courts discretion in allowing the petitioners to file Compliant Affidavit in support of the petition and by the witness. Judicial discretion can however only be exercised within the law. It cannot be employed to oust constitutional imperatives or mandatory provisions of the law.

Article 87(2) of the Constitution of Kenya 2010 provides as follows;

**“ 87(2) .....Petitions concerning an election, other than a presidential election, shall be filed within twenty eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission”.**

Every Act of parliament derives its legitimacy from the constitution which sets the framework within which every other law and processes must operate. The usage of the mandatory expression ‘shall’ in Article 87(2) means that the timelines for filing petitions are **definite** and **cannot be expanded/extended**.

Section 76(1) (a) of the Elections Act of 2011 is to the effect that;

**“A petition to question the validity of an election shall be filed within twenty eight days after the date of declaration of the results of the election and served within fifteen days of presentation”.**

In line with the constitution this section asserts the mandatory time lines of twenty eight days.

With these provisions in mind, Rules 8 and 12 of the Election (Parliamentary and County Elections) petition Rules 2017 made pursuant to Section 96 of Elections Act 2011 to regulate practice and procedure of conducting election petitions cannot be said to be pure rules of procedure like noted by Justice Lesiit in **M’nkira Petkay Shen** Case aforesaid, they are not mere technical requirements laying down procedural form and content of intended election petition but are substantive as they go to the root and substance of the matters prescribed thereto.

Rule 8(4) is to the effect that

**8(4) The petition shall**

- a. ....
- b. **Be supported by an Affidavit sworn by the petitioner containing the particulars set out under Rule 12; and**
- c. ....

**Rule 12 states;**

**12(1) A petition shall be supported by an Affidavit which shall**

- a. **Set out facts and ground relied on in the petition**
- b. **Be sworn personally by the petitioner or by at least one of the petitioners, if there is more than one petitioner**

**12(3) Each person who the petitioner intends to call as a witness at the hearing shall swear an Affidavit.**

**(4) a petitioner shall at the time of filling the petition file the Affidavit sworn under sub rule (3)**

These rules are expressed in mandatory terms and a petition without a supporting Affidavit of the petitioner is defective.

In **Dickson Mwenda Githinji vs Gatirau Peter Munya & 2 others 2014** eKLR the court of Appeal noted as follows;

**“ Rule 9(3) (b) now (Rule 8 (4) (b) of the election petition Rules provide that an election petition shall be supported by an Affidavit of the petitioner containing the grounds on which relief is sought. The plain reading of this rule is that an Affidavit in support of the petition is a mandatory requirement”.**

By the very purposes of the Affidavit in support as set out in the rule, it gives life to what is averred in the petition by virtue of the fact that it is on oath. It is therefore part of the pleading and should be filed simultaneously within the constitutional timeline.

A petitioner devoid of it cannot stand.

Similarly, the affidavits of witnesses provided under Rule 12(3) and 4 aforesaid should be filed at the time of filing the petition. In **Hosea Mundui Kiplagat** case aforesaid the court held that **“.....Rule 12 on the other hand requires the petitioner to file Affidavits of witnesses the petitioner may wish to**

**rely on simultaneously with the petition.....”.**

They are all deemed part of the pleading. Being pleadings they must respect and be filed within the time frame set under section 76(1) (a) of the Elections Act 2011 and Article 87(2) of the Constitution of Kenya 2010. The petition, supporting Affidavit and Affidavit of witnesses must be filed within 28 days from date of declaration of results. These provisions give no rule for the exercise of judicial discretion.

In deed Rule 19(2) specifically oust the courts discretion as relates to the period within which a petition is required to be filed, heard and determined.

Rule 19 is to the effect that;

**19(1) where any act or omission is to be done within such time as may be prescribed in these Rules or ordered by an elections court, the election court may for the purposes of ensuring that injustice is not done to any party extend or limit the time within which the act or omission shall be done with such conditions as may be necessary even where the period prescribed or ordered by the court may have expired.**

**(2) Sub:- rule (1) shall not apply in relation to the period within which a petition is required to be filed, heard and determined.**

Allowing the petitioners to file compliant Affidavit shall be tantamount to trashing mandatory legal and constitutional imperative. My fidelity is to the law. I refuse to so do.

It is also worth noting Mr Mwawasi's argument that the content of the impugned affidavits remains unchallenged. With respect, I do note that the matters deposed in the affidavits were not the issue in the applications subject to this ruling. Content was responded to through the responses to the petition filed by the respective respondents. The veracity of the content of the impugned affidavits or the response thereto can only be determined during hearing of the main petition.

Note worthy also, is the indication by counsel for the petitioners that the petitioners are absolutely blameless and it shall be unfair to punish them so gravely as to have their petition dismissed for something they are not even aware of. The following paragraph from the mind of Justice Jesse Njagi in **David Wamatisi Omusoti** case aforesaid aptly responds to this indication. He stated;

**“.....The petitioner did not appear before anybody to swear the Affidavit. He did not demand to see the person who was to commission the Affidavits.....he is expected to know that a person is required to appear in person before a commissioner for oaths to swear an Affidavit. The petitioner did not use due diligence to ensure that the documents were commissioned by a person authorized to do so. He cannot claim that he was a victim of circumstances. He just fell victim to what many Kenyans unflinchingly fall to on daily basis-service by quacks. The petitioner used shortcuts to have the documents commissioned. He has to bear with the consequences of his own self-created misfortune. Though I do sympathize with him, my hands are tied by the law”.**

I am not only bound by the above, but also in perfect agreement. A little of due diligence by the petitioners and their counsel would have saved the petition.

I have emphasized the term victim of service by quacks in the above paragraph because though what was done cannot amount to an election offence having been done outside the election period as provided under the Election Offences Act and as such inapplicability of Section 87 of the Election offences Act of 2011, it is clear that a criminal offence under both the Penal Code and Oaths and Statutory Declarations Act was committed by a person or persons that this court has no mandate to establish. It is upon parties to decide what action to take away from these proceedings.

All in all and in the light of all the above, I do find that the affidavit in Support of the Petition sworn by the 1<sup>st</sup> petitioner as well as the affidavit of the witness Ernest Mwabagha Mkala contravenes the

mandatory provisions of the law and are hereby struck out. The petition is rendered incompetent and the same is consequently struck out with costs to the Respondents.

Since none of the counsels addressed me on cost, the same shall be taxed in the normal matter before a taxing master unless otherwise agreed upon.

It is so ordered

Dated, signed and delivered at **Voi** this **24<sup>th</sup>** day of **November 2017**

**Signed**

**ELENA G. NDERITU**

**Senior Principal Magistrate**

Court clerk- Ramadhan

In presence of:

Mw Mwawasi Absent for Petitioners

Mwinzi holding brief for Mr Kariuki present for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Okoth present for 3<sup>rd</sup> Respondent

1<sup>st</sup> Petitioner present in person

**Signed**

**E.G NDERITU**

**Senior Principal Magistrate**