



THE REPUBLIC OF KENYA
IN THE SPM COURT AT WEBUYE
ELECTION PETITION NO.1 OF 2013

ERIC SOITA PATROBA----- PETITIONER

VERSES

MARTIN WAFULA WAWIRE----- IST RESPONDENT

IEBC----- 2ND RESPONDENT

ODUOL BENARD ARWINGS ----- 3RD RESPONDENT

DIRECTIONS

PROCEDURE FOR SCRUTINY AND RECOUNT OF VOTES BY THE COURT

Pursuant to its order made on 24/5/13 for scrutiny of forms 33,35&36 used and votes cast and a recount of all votes cast in the election of the county representative for sitikho ward the court makes the following practice directions for the implementation of the said order.

1.object of scrutiny of documents and recount

The object of scrutiny and recount is to establish the numbers,nature and state of integrity or otherwise of the following documents;-

- (a) forms 33,35 and 36
- (b) the marked copy register and the principal register
- (c)the packets of spoilt papers
- (d)the packet of counted ballot papers
- (e)the packets of rejected ballot papers

and to ascertain the valid votes garnered by each of the county representative candidates. The finding of the scrutiny and recount will inform the court decision on the issues raised in the petition .

2. scope of scrutiny and recount

The documents and materials to be scrutinized and as the case may be the votes to be recounted are set out in ruling of the court of 24/5/13.

3. method of scrutiny and recount

- (a) the scrutiny and recount shall be presided over by the E.O webuye law court assisted by other court officials as the E.O in his discretion deems sufficient for the task. The E.O will provide a separate room for storage of the scrutinized documents.
- (b) The parties to the petition shall each be represented at the scrutiny and recount by 4 nominees for the entire duration of the scrutiny and recount .(parties to send the list of their nominees to the E.O by 31/5/13)
- (c) chronology of acts in the scrutiny and recount exercise;-
- (i) Before the commencement of the scrutiny and recount the court will verify whether or not all the boxes are in the same general state and condition they were in when they were received by the E.O.
- (ii) The E.O shall in the company of the parties representatives (the nominated agents)bring into the scrutiny room ballot boxes in batches of not more than 2.
- (iii) the E.O and the parties representatives will confirm whether or not a particular box is in the same state and condition as it was at the time that it was received by the E.O of the court.
- (iv) in the presence of the parties representatives(nominated agents), the E.O will open the box to commence the scrutiny and recount which shall proceed simultaneously.
- (v) The contents of the boxes being the particular documents and material shall be scrutinized and as the case may be the votes recounted according matrices formulated and already agreed upon by all the parties and adopted for that purpose by the court by consent of all the parties. Copies of such matrices dully signed on behalf of the parties are annexed as follows;-
- FORM A Scrutiny-seals before and after
- FORM B SCRUTINY Statutory forms 33,35,36
- FORM C SCRUTINY marked register and principal register
- FORM D Scrutiny and recounts of votes
- (vi) upon scrutiny of each of them the forms 36s retrieved from the ballot boxes,such forms 36s' shall be filed in a separate file designed for that purpose by the E.O and on completion of the exercise of scrutiny and recount the parties may at their own expense and under the supervision and direction of the E.O make copies of the forms 36s' where after all such forms 36s' shall be kept and retained in safe custody as part of the court records in these proceedings.
- (vii) Subject to vi above the scrutiny documents and materials shall be returned into the ballot box and sealed. The 2nd Respondent (IEBC) shall provide the E.O with requisite seals for that purpose
- (viii) The E.O and the parties representatives shall sign the scrutiny and recount forms adopted for that purpose under subparagraph v above
- (ix) the E.O shall in the presence the parties representatives(nominated agents),store the scrutinized boxes in a separate room. Thereafter the E.O shall bring out another batch of ballot boxes for scrutiny and recount and the process repeated as set out in sub-paragraphs (I) -(viii) above
- (x)In the event of any dispute or disagreement arising on any issue at any stage during the scrutiny and recount the E.O shall make a record thereof and shall preserve the documents and materials the subject of such dispute or disagreement and call the magistrate to rule on th same before moving to the next box.

(ix) On conclusion of the scrutiny and recount the E.O shall record his findings to the court in a report on the scrutiny and recount ,copies of which shall be supplied to the parties who may make representations thereon before the court makes a ruling on the matters or gives further directions.

Ruling and further directions by the court

The court shall after hearing any representations that the parties may wish to present on the scrutiny and recount and the petition as a whole make its findings on the dispute before the court and or give such further directions for the disposal of the petition as the court deems appropriate.

Made &delivered at webuye this -----day of-----2013

SN ABUYA

MAGISTRATE.

We the undersigned Advocates on record for the parties to this petition do hereby confirm that the practice directions set out hereunder have been made and issued with their knowledge and authority as testified by our respective signatures hereunder:-

1.----- date-----

for petitioner

2.----- date-----

for 1st respondent

3.----- date-----

for 2nd respondent

4.----- date-----

for 3rd respondent

DATED and DELIVERED at WEBUYE this 24-day of -May--2013

SN ABUYA

MAGISTRATE

Ruling read in open court in the presence of :Petitioner

Absent-----counsel for the petitioner

Absent-----counsel for the 1st respondent

Absent-----counsel for the 2nd and 3rd respondents

