



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE’S COURT AT BUNGOMA

ELECTION PETITION NO. 1 OF 2013

**IN THE MATTER OF THE ELECTIONS ACT NO. 24 OF 2011 AND ELECTIONS
[PARLIAMENTARY AND COUNTY ELECTIONS] PETITION RULES, 2013**

AND

IN THE MATTER OF THE MEMBER OF COUNTY ASSEMBLY FOR LWANDANYI WARD

BETWEEN

ROBERT BISAKAYA WANYERA.....PETITIONER

VERSUS

1. NATHAN OBWANA1ST RESPONDENT

2. CALEB S. GEKONDE2ND RESPONDENT

3. THE INDEPENDENT ELECTORAL

BOUNDARIES COMMISSION.....3RDRESPONDENT

4. LORNA NANJALA KHAEMBA4TH RESPONDENT

R U L I N G

This is a ruling on application dated 30th April 2013 filed by the 2nd, 3rd and 4th respondents. It is brought under rule 20 of the Elections (Parliamentary and County Elections) petition rules 2013. It seeks Court’s leave for the 2nd, 3rd and 4th Respondents to file response to petition out of time. Mr. Akenga for the 3 respondents submitted that at the time of being given instructions his clients did not supply them with all relevant documentary evidence and information to file response to the petition. He said the said documents were to come from the 3rd respondent’s headquarters and it required time because there are many petitions filed all over the republic. He further stated that the documents he filed will be relevant to Court, petitioner and the respondents. He referred to rule 20 of election (Parliamentary and County) petitions rules and Article 159(2)(a) of the Constitution of Kenya 2010.

In reply Counsel for the petitioner Ms Mumalasi submitted that the respondents have come to Court 37 days late and that a matter of time is not a matter of technicality as provided in Article 159 as time is of essence in all election petitions and that they have not satisfied the Court as to why they delayed. She further submitted that the application is an abuse of Court process and that the application is eating into the time of hearing of the petition. She further submitted that if the Court be inclined to allow the

application the petitioner should be adequately compensated by way of costs which should not be less than Kshs.300,000/-. In response Mr. Akenga submitted that the delay has been explained and that the 3rd respondent was involved in election exercise in so many wards in the Country and so many petitions have been filed therefore requiring time to furnish documents. He said no prejudice will be caused to the petitioner if the application is allowed as hearing has not commenced.

On costs he said he had not served the petitioner to attend Court but was in Court for mention.

I have considered arguments by both Counsels. I have also perused rule 20 Election (Parliamentary and County) petition rules 2013 and Article 159(a) of the Constitution. I have also perused exhibits annexed to the petition and response. There is no doubt that the 2nd, 3rd and 4th Respondents failed to file response to petition within the required 14 days as per rule 14(1) of Election (Parliamentary and County) petition rules 2013. Rule 20 gives this Court discretion to extend time. Extension should be upon sufficient reasons being given for failure to file within required time. The petition herein refer to one ward and documents required may not be much but I also take Judicial notice of the fact that the 3rd Respondent who was required to provide the documents was also involved in election in many other wards all over the Country and many petitions have been filed. Dealing with documents relating to all petitions filed would no doubt take time. Delay is however in excusable but locking out a crucial party from proceedings will do more injustice to the people affected.

Having perused the intended response and its annexures I note that participation of the respondents herein in the trial will be of benefit to the Court and all parties concerned.

For the purpose of ensuring that no injustice is occasioned to any party I find it fair and just to grant the 2nd, 3rd and 4th respondent's leave to file response to the petition.

I further order that the response annexed to the application herein be and is duly deemed filed upon payment of requisite fee.

Costs of the application to be costs in the cause.

R. B. NGETICH

Ag. CHIEF MAGISTRATE

8/5/2013

8/5/2013

Before Mrs. Ngetich Ag. CM

Mr. Kamau for 1st Respondent

Mr. Akenga for 2nd, 3rd and 4th Respondents

COURT: Ruling delivered in open Court.

R.B. NGETICH

Ag. CHIEF MAGISTRATE

8/5/2013