



**REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE'S COURT**  
**AT GARISSA**  
**PETITION NO 1 OF 2013**  
**BETWEEN**

**AND**

**MUTEMI TITUS RETURNING OFFICER,**  
**THE INDEPENDENT ELECTION AND**

**18/06/13**

C/CLERK : ABDI

**RULING**

(A) a recount of the votes received by the candidates at Buradansa Primary

(B) Scrutiny of the votes cast at Buradansa Primary School Polling Station.

That, the petitioner contends that the said form 35 from Buradansa Primary School, is the only one not signed by the agents or presiding officer and no reason is given by presiding officer why the form is not signed.

That, in view of the fact that petitioner was declared a victor on 5<sup>th</sup> March 2013, but later on, the 2<sup>nd</sup> Respondent unilaterally reversed the results, calls for re-count of the results at Buradansa Polling Station.

That, Petitioners application is premature, he is ingeniously and unjustifiably attempting to dispense with the petition at an interlocutory stage. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent were of similar view, and too refuted the application stating that it was pre-mature and speculative in nature and was in breach of the mandatory provisions of Rule 32, and Rule 33 (4) of the elections (County and Parliamentary Elections) petitions Rules 2013.

I endeavored to highlight the important issues raised in this application because the submissions simply amplified what is stated herein. I also noted that the applicant in his submission abandoned the 2<sup>nd</sup> prayer for scrutiny and only sought for a re-count of votes at Buradansa Polling Station.

The relevant provision of the laws, are sections 80, 82 (1) of the Election Act and Rules 32(1) and 33 AND the issues for determination is whether,

(B) Whether the only issue is the recount of votes cast at Buradansa Polling Station.

I concur with the Respondents, the Petitioner/ Application is in breach of Rules 32 and 33 of the Elections (County and Parliamentary Elections) Petitioner Rules 2013. The petitioner has not laid a basis for the order he is seeking. For the above reasons it may even appear that the application is premature. I hereby dismiss the Petitioner/Applicant notice of motion with cost.

I shall order that either party may again move Court for an order for scrutiny during hearing, the Court is not shutting the door completely at the stage.

**B. J. NDEDA SPM**

Ruling delivered in the presence of:

**B. J. NDEDA SPM**

<p justify;"=""> **18/6/13**