



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT NYAMIRA

ELECTION PETITION NUMBER 4 OF 2013

**NELSON BIKUNDO
APIMA.....PETITIONER/RESPONDENT**

-VERSUS-

**ROBERT APIEMI ONGWANO.....1ST
RESPONDENT/APPLICANT**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION.....2ND
RESPONDENT**

**RETURNING OFFICER WEST MUGIRANGO CONSTITUENCY.....3RD
RESPONDENT**

RULING

This ruling is with respect to the Notice of Motion dated 24/05/2013 and filed by the **Messrs Minda & Co. Advocates** for the 1st Respondent. The applicant is seeking the following orders, that;

- a) ***The petition and the amended petition herein be struck out and the same be dismissed.***
- b) ***The 1st Respondent be paid the costs of the petition and the amended petition.***
- c) ***Costs of this application be provided for.***

The application is predicated on the grounds on the face of it. However when the application was canvassed on 24/05/2013 all but the following ground were abandoned by the applicant;

The petition and the amended petition were drawn and executed by a person who was not duly qualified to act as an advocate under the provisions of the Advocates Act Cap 16 Laws of Kenya.

The application is further supported by Affidavit sworn by **Robert Apiemi Ongwano (1st Respondent)** on 24/05/2013. The Application is opposed by Mr. Eric Achoki A. Nyamanga vied a Replying Affidavit sworn by him on 30/05/2013 and filed on 31/05/2013. The 2nd and 3rd Respondents did not file any reply to this application.

I see it fit to set out a brief history of this petition before addressing the current application. The original petition herein dated 8/04/2013 was filed by the firm of Achoki and Associates Advocates on 10/04/2013. Thereafter, on 24/04/2013, and without the leave of the court the said Advocates for the petitioner filed an amended Petition dated 18/04/2013. Both the original and the amended petition are challenging the election of the 1st Respondent as the County Representative of the Nyamira township ward. The petitions are predicated on the grounds that photograph of one **NELSON ONDUKO ONYANCHA** who was contesting for the position of County Representative in a different ward called Bonyamatuta, was erroneously inserted in the ballot paper space meant for the petitioner. Secondly that in some of the ballot papers the names of the petitioner were spelled as **NELSON ZIKUNDO APIMA** instead of **NELSON BIKUNDO APIMA**.

The petitioner therefore is seeking the following reliefs;

1. ***Declaration that the 4-3-2013 election of the 1st Respondent as the county representative of Nyamira township herein is null and void for not being free, fair and transparent and lacking credibility.***
2. ***Certificate issued and granted to 1st respondent be quashed and nullified.***
3. ***Fresh election be held***
4. ***General Damages***
5. ***Costs to the petitioner.***

On 8/05/2013, the 1st Respondent through **Messrs Minda & Co. Advocates** filed Answer to the petition. The 2nd and 3rd Respondents filed their Response to the Petition through the firm of **J. Louis Onguto Advocates**. In compliance with court's direction made on 15/5/2013, the petitioner's advocates filed a Notice of Motion dated 21/05/2013 seeking to validate the amended petition aforesaid that was filed without leave of the court. When the said Notice of Motion came up for further directions on 24/05/2013 it turned out that the 1st Respondent had filed the application being the subject of this ruling. I therefore directed that the 1st Respondent's notice of motion seeking to strike out the petition be given priority over the petitioner's application to validate the amended petition.

Mr. Minda for the 1st Respondent/Applicant urged that the Petition and the amended petition were drawn, executed and filed by an unqualified person. That **Exhibit RAO 1** annexed to the supporting Affidavit sworn by the 1st Respondent is a document printed from Law Society of Kenya website which showed that as at 16/05/2013 Achoki had not taken out certificate. Mr. Minda added that **annexture EAN3** which is a copy of practising certificate annexed to Replying Affidavit sworn by Erick Achoki Nyamanga is dated 24/05/2013 and this is the effective date. To reinforce this point Mr. Minda referred to Section 24 of Advocates Act which states that,

“24 (1) every practising certificate shall bear the date of the day on which it is issued and shall have effect from the beginning of that day:

Provided that a practising certificate which is issued during the first month of any practising year shall have effect for all purposes from the beginning of that month.

(2) The practising year shall be from the 1st January to 31st December:

Provided that the Council of the Society, with the approval of the Chief Justice, may by order alter the practising year, and the order may make such transitional provision in regard to incidental matters as may be expedient.

(3) Every practising certificate shall expire at the end of the practising year in which it was issued:

Provided that, where the name of an advocate is removed from or struck off the Roll, the practising certificate (if any) of that advocate shall expire forthwith.

4. ***The Registrar shall enter upon the Roll a note of the date of the issue of every practicing certificate.***

Thus he urged that Mr. Achoki's certificate was effective from 24/05/2013. He therefore urged that Mr. Achoki did not have capacity as an advocate to execute and file the petition since the petition was filed on 10/04/2013 and amended on 24/4/2013, that is to say, prior to the issuance of Mr. Achoki's practicing certificate.

He stated that acts done by a person who has not met the requirements of **Section 9 of Advocates Act** are acts done by an unqualified person. **Section 9 of the Advocates Act Cap. 16** requires among others that;

“9. Subject to this Act, no person shall be qualified to act as an advocate unless-
(a).....
(b).....
(c) he has in force a practising certificate...”

He stated that under **Section 34 of the Advocates Act** an unqualified person cannot draw, execute any instruments or pleading, that it is a criminal offence to act as such.

While urging the court to strike out the petition and the amended petition with costs, Mr. Minda relied on the court of appeal decision in **Kenya power and Lighting Company Ltd-versus- Mahinda & Another[2005] 2 EA** and stated that the court held that a petitioner who appeared or drafted a document without a practising certificate at the time he did so was unqualified and that any act done or pleading drawn would be struck out.

Counsel also relied on the decision of **Lenaola-Judge**, in **Belgo Holdings Ltd –versus- Esmael [2005] 2 EA**. Counsel stated that in the decision it was held that effective date on which an act was done should be the date used to determine whether an advocate had taken out a practising certificate.

Mr. Abuya for the 2nd and 3rd Respondents supported the application and asked for costs. He stated that the petition rules require petition to be filed by the petitioner himself or by an Advocate. The petitioner herein, he said chose to file the petition through an advocate hence the petitioner cannot say that the rules are unfair.

Mr. Abuya stated that rule requiring taking out of practicing is meant to prevent quacks from practicing law. He relied on the decision in **Belgo Holdings Ltd –versus- Esmael [2005] 2 EA** where **justice Lenaola** distinguished the decision in **Njagi –versus Kihara[2001]1 EA 167** where Mulwa-judge, as he then was, in the words of Lenaola J,

“Attempted to side step the clear wording of section 9 of the Advocate Act”.

Mr. Achoki opposed the application. His entry argument was that the authorities cited by counsel for Respondents were as old as ten (10) years having been pronounced in the year 2004, that since that time many laws had come into place which would change the authorities aforesaid if they were to be delivered today. That the authorities were not election petitions, that election petitions are special in their kind. To support his view Mr. Achoki relied on the decision of **Justice Ochieng** in **Suleiman Said Shahbal –versus- Ali Hassan Joho and 3 others (2013) eKLR** and the decision of **Justice Majanja** in the case of **Wavinya Ndeti –vs- Alfred Nganga Mutua & 4 others (2013)eKLR**. In **Suleiman Said Shahbal** case, Mr. Achoki urged that the court looked at the effect of striking out the petition in relation to the hardship it would cause to the litigant. However, counsel did not supply those authorities to the court, his citation was always incomplete.

Obiter Dictum

I believe it is important for me to emphasize that it is bad practice for advocates to state authorities in

court whose full citation they cannot state and/or whose copies they are unable to supply.

Back to Mr. Achoki's argument, he turned to **Article 22(3) (b)** of the constitution to buttress his case. The said provision states that

“22(3) The Chief Justice shall make rules providing for the court proceedings referred to in this Article, which shall satisfy the criteria that—

(a).....

(b) formalities relating to the proceedings,

including commencement of the proceedings, are

kept to the minimum, and in particular that the

court shall, if necessary, entertain proceedings on

the basis of informal documentation...”

Mr. Achoki also said that **Article 22(3) (b)** of the constitution was reproduced in **Section 80(1) (d)** of the **Elections Act 2011**. The said section reads thus;

“80 (1) an election court may, in the exercise of its jurisdiction—

(a).....

(b).....

(c).....

(d) decide all matters that come before it without undue regard

to technicalities”.

He urged that the application was purely on technicality and did not go to the root of the matter. He argued that the matter before the court was whether the elections were free and fair and that other matters besides this were just side shows meant to circumvent and defeat justice. He stated that Section 3A of the Civil Procedure Act gives court inherent powers to ensure that ends of justice are met. He stated that the constitution and **Elections Act 2011** wanted parties to litigate on issues and not side shows.

On the issue of practising certificate, it was Mr. Achoki's argument that he had annexed a letter from Law Society of Kenya explaining the circumstances. Turning to the **annexture RAO1** attached to Affidavit in support of the present application, Mr. Achoki argued that the same was just an extract from Law Society of Kenya website, that no opinion or letter about the extract was sought from law Society of Kenya. However Mr. Achoki used the contents of the said annexure in explaining why he did not earn any continuing Legal education (**CLE**) units for the years 2009, 2010 and 2011. He explained that during this period he was pursuing masters degree and therefore was exempted from **CLE** requirements. He added that this exemption was also supposed to extend to the year 2012, that this is the mistake that caused the delay in forwarding application forms for practicing certificate to the Chief Registrar. Mr. Achoki argued that he sent his clerk to the Chief Registrar of Judiciary. That his clerk found that Mr. Achoki's application forms were at the Registrar's office. He stated that it was the mistake of the Chief Registrar of Judiciary's office not to have issued his practicing certificate. Mr. Achoki, while terming the **annexture RAO1** useless argued that had Mr. Minda written to the Law Society of Kenya to find out issues, matters would have been different. He criticized **annexture RAO1** for not showing when the practicing certificate was requested for. At this stage I wish to state that it was the onus of Mr. Achoki to

disclose when he applied for practicing certificate, rather than criticizing the said annexure.

Mr. Achoki argued that the authorities cited by Respondents' advocates, though from higher courts, are not binding to this court given that other courts of concurrent jurisdiction have already ruled on matters of election.

Mr. Achoki urged that allowing the Respondent to go scot free by dismissing the petition will amount to killing the spirit of the constitution. He stated that the petition has high chances of success, that it was erroneous for an election body to omit picture and name of petitioner and then run to court on an issue of technicality. Mr. Achoki thus urged the court to dismiss the application.

In reply Mr. Minda, for the 1st Respondent stated that it was for Mr. Achoki to show that he had papers to practice to disprove annexure RAO1 which showed that he was inactive, that Mr. Achoki failed to discharge this duty.

He stated that trying to show that one is not qualified to do a particular act is not procedural technicality. That the requirements for one to be an advocate were not procedural technicality. that this went to the root of the petition. He stated that **Article 22 of constitution, section 80(1) (d) of the Elections Act and Section 3A of Civil Procedure Act** cannot be invoked to change the position that Mr. Achoki did not have practicing certificate as at the time he drew the pleadings. That **section 3A of Civil procedure Act** cannot be invoked by court to put Mr. Achoki in a position as having a practicing certificate as at the time he drew the petition and amended petition.

Mr. Minda stated that **annexture EAN 4** which is letter from Law Society of Kenya did not show that Mr. Achoki experienced hardship in obtaining practicing certificate. That in **Ali Hassan Joho's** case and **Alfred Mutau's** case, parties were seeking to invoke election petition rules to strike out petition as opposed to the application herein wherein parties are seeking to strike out petition based on statute. He concluded that the petitioner ought to have searched the LSK website as LSK places information online for the benefit of the petitioner.

For Mr. Abuya while responding to explanation by Mr. Achoki about the latter's alleged communication to Supreme Court and High court to clarify about his practicing certificate, Mr. Abuya referred us to a section of the decision in **KPLC –versus- Mahinda & Another(supra)** where the Court of Appeal said it should not go into speculation and it does not care about administrative arrangements **involved in applying for and processing practicing certificates(emphasis mine)**.

In response to the contents of **RAO1** which were dismissed by Mr. Achoki, Mr. Abuya stated that **Article 46 (1)** of the constitution seeks to protect consumers from advocates as well. That litigants should confirm the status of their advocates, the reason why LSK put information on-line.

In relation to application of **Civil Procedure Act, Cap 21**, to **Elections Petitions**, Mr. Abuya urged that the same does not apply as High Court decisions have made it clear that **Cap 21** only applies when election laws have specifically donated power.

On the **Hassan Joho** and **Alfred Mutua** cases cited by Mr. Achoki, Abuya argued that advocates representing the parties therein had practicing certificates and that the issue was about the date of filing the petition. On the point that Respondents' counsel had relied on old cases Mr. Abuya observed that it does not mean that those cases are bad. He gave an example of **Rhylands –versus- Fletcher** which is an old case but we still rely on it.

The first issue to put to rest is whether Mr. Achoki had a practicing certificate as at 10/04/2013 when he filed the petition herein on behalf of the Petitioner. Mr. Minda relied on annexure RAO1 which is a print out from LSK website that shows that Mr. Achoki was inactive for the year 2013. He also stated that Mr. Achoki's practicing certificate was effective from 24/05/2013 as the copy of practicing certificate annexed to the Replying Affidavit sworn by Mr. Achoki on 30/05/2013 was dated 24/05/2013. Mr. Achoki basically attributed the delay of the issuance of his practicing certificate for the year 2013 to

inaction by the Chief Registrar of Judiciary's office. He said that when he was informed that the current application had been filed, he made a call to the Law Society of Kenya as this is the professional body that processes and forwards applications for practicing certificate to the judiciary. That another thing he did was to send his clerk to the Chief Registrar of Judiciary's office and the clerk found that his forms were there and that it was mistake of the Chief Registrar of Judiciary's office not to have issued the certificate.

Mr. Achoki's clerk did not swear and file his affidavit to confirm this averment. Again the explanation about the clerk relied on by Mr. Achoki is not incorporated in his Replying Affidavit. For these reasons I will not take into consideration the averment about the unnamed clerk who allegedly was sent to Chief Registrar of Judiciary's office.

Even if the said averments were to be admitted by this court, they could be of no help. The Court of Appeal authority supplied by Mr. Minda and Mr. Abuya, that is, **Kenya Power & Lighting Company Limited –versus- Mahinda & Another(supra)** has unambiguously stated that administrative arrangements cannot be factored in to excuse persons who fail to comply with provisions of Advocates Act. In a section of its ruling, the Court of Appeal stated thus;

“There may also be an administrative arrangement between the Law Society and the registrar whereby the registrar does not issue practicing certificates to advocates without first obtaining from the Council of the Law Society, its approval or comment.

We however, cannot descend into the realms of speculations as to the existence or nature of any such arrangements which would not, in any event, affect the legal position under the Advocates Act”.

The bottom line is that the administrative arrangements in processing practicing certificate does not affect the position under the Advocates Act.

Another thing worth noting is that there is contradiction between the averments in Mr. Achoki's Replying Affidavit and his explanation about his practising certificate at Supreme Court. In paragraph 10 and 11 of the said Replying Affidavit Mr. Achoki averred as follows;

“10. THAT immediately I called Law Society of Kenya to find what was the problem, who informed me that my records are proper, the only problem was that the Website had not been updated for sometime and they advised me to contact the Chief registrar at Supreme Court of Kenya for practising certificate.

11. THAT immediately I called the Supreme Court of Kenya the Chief registrar's office advised me to go for my practising certificate (Annexed and Marked EAN3 is copy of the practising certificate)”

In Mr. Achoki's argument he explained that he sent his clerk to Chief Registrar's office and the clerk found that Mr. Achoki's forms were there, that the judiciary delayed to issue the certificate. It therefore means the certificate had not been processed yet. On the other hand Mr. Achoki explained that he called the Chief registrar's office immediately after calling the LSK and he was told to go for his practising certificate. Now which is the true position?

Back to the question as to whether Mr. Achoki had a practicing certificate as at 10/4/2013 when the petition was filed, I find that he did not have one as at that date. A copy of Mr. Achoki's practicing certificate annexed to his Replying Affidavit is dated 24/05/2013. Under Section 24(1) of the Advocates Act;

“24 (1) Every practising certificate shall bear the date of the day on which it is issued and shall have effect from the beginning of that day:

Provided that a practising certificate which is issued during the first month of any practising year shall have effect for all purposes from the beginning of that month.

Therefore Mr. Achoki's certificate took effect on 24/05/2013, more than a month after he had filed the petition and the amended petition on behalf of the petitioner.

Having established that Mr. Achoki drew, filed and executed and filed the Petition at the time that he did not hold practicing certificate for the year 2013, what then are legal ramifications?

Mr. Minda submitted that the petition and the amended petition should be struck out with costs. He relied on the decision in ***Kenya Power and Lighting Company Limited –versus- Mahinda and Another(supra)*** and ***Belgo Holdings Limited –versus- Esmail(supra)***.

Mr. Abuya was also of the view that the petition and amended petition should be struck out. He argued that rules requiring taking out of practicing certificate is to prevent quacks from practicing law. He relied on the decision of **Justice Lenaola** in ***Belgo Holdings Limited –versus- Esmael*** where the learned Judge distinguished the position of **Justice Mulwa** as he then was in ***Njagi –versus- Kihara (2001) E.A. 167***. The learned Judge stated thus;

*“I reject the submission in this regard by Counsel for the Respondent when he cited the case of ***Njagi –versus- Kihara, (2001) 1 E.A. 167*** where **Mulwa –Judge** (as he then was) attempted to side step the clear wording of section 9 of the **Advocates Act**. In that case the learned Judge although aware of the Court of Appeal decision in ***the Obura –versus- Kooma case (Supra)*** above and without distinguishing it, stated as follows;*

'To my mind, I do not think that documents duly drawn, signed and filed in court, and which the court has acted upon, by an unqualified person and were specifically an advocate because his name is in the Roll of Advocates under Section 2, should be expunged from the records and done away with'.

“With respect and since I am not bound by that decision, I shall not apply the learned judge's wisdom of interpretation to the matter before me and I reiterate my view as earlier outlined”.

Mr. Achoki on the other hand urged that the application to strike out the petition should be dismissed. It was his view that the authorities relied on by Counsel for respondents were as old as ten (10) years having been determined in the year 2004. It was his view that many laws and judicial pronouncements had come in place and changed the position in the authorities supplied by counsel for respondents. Mr. Achoki in fact made a bold statement that I was not bound by the decision in ***Kenya Power & lighting Company Limited –versus- Mahinda & Another, and Belgo holdings –versus- Esmail***. His reason was that other courts of concurrent jurisdiction had already decided on matters of election. He urged that the application was purely on issues of technicality which do not go to the root of the petition. He cited two (2) case laws to reinforce his view, that is, ***Suleiman Said Shahil –versus- Ali Hassan Joho and 3 Others (2013) eKLR*** and ***Wavinya Ndeti –versus- Alfred Nganga Mutua and 4 Others (2013) eKLR***, where **Judge Ochieng** and **Judge Majanja** respectively declined to strike out the respective petitions on the issue of technicalities. Mr. Achoki also called to his aid **Article 22 (3) (b)** of the Constitution and **Section 80(1) (d) of the Elections Act 2011** to save the petition from being struck out.

Should this court agree with Mr. Achoki, and hold that his not holding of practicing certificate at the time he drew, executed and filed the petition and amended petition was just a technicality which should be cured by the authorities and provisions of law cited by him?

Section 9 of the Advocates Act is clear on qualifications that one must possess in order to practice as advocate. **Section 9 (d)** reads that;

“Subject to this Act, no person shall be qualified to act as an advocate unless;

(a).....

(b).....

(c) *he has in force a practicing certificate”*

Where a person does the work of an advocate without a practicing certificate, can he seek refuge under **section 80(1) (d)** of the **Elections Act 2011** and/or **Article 22 (3) (b) of the Constitution**? It is my view that **section 80(1) (d) of Elections Act 2011** and **Article 22(3) (b) of the constitution** are very broad and remote from the subject matter herein. There is an express provision under the Advocates Act which requires advocates to take out practicing certificate, therefore Mr. Achoki and his client, the petitioner, cannot then seek refuge in the statutory provisions aforesaid. These are not strong towers where advocates who practice without practicing certificate and their litigants can run to for safety.

As to the argument by Mr. Achoki that I am not bound by authorities supplied by respondents’ advocates because there are judicial pronouncements on election issues, I find that his argument is weak. I am yet to see an election petition where it was held that an election petition cannot be struck out even if it was drawn, executed and filed by a person who is not qualified to practise as an advocate. What Mr. Achoki wants this court to do is to apply by way of analogy, the authorities he cited. In the **Ali Hassan Joho** case, the application which was disallowed sought to strike out the petition on the ground that it was filed out of time, while in **Alfred Nganga Mutua’s** case, **Judge Majanja** declined to strike out the petition on the grounds stated by the applicant, that is, that the election results were not stated in the petition, and that the name of the returning officer was omitted contrary to provisions of ***The Elections (Parliamentary and County Elections) Petition Rules, 2013***. No issue of practicing certificate was raised in any of the two (2) cases.

I agree with Mr. Minda when he says that the applicants in **Alfred Mutua’s** case sought to dismiss the petition based on election rules, which is a different scenario herein where the respondents are seeking to dismiss the petition on a statutory provision. However in **Ali Hassan Joho’s** case, the applicants did not seek to dismiss the petition based entirely on election petition rules, but also were relying on the constitution and the Elections Act 2011.

While still at the decision of **Justice Ochieng** in **Ali Hassan Joho** Case, the reason as to why the Judge declined to dismiss the petition cannot be imported into this petition to support the argument of Mr. Achoki. The petition against **Ali Hassan Joho** was not dismissed as the Judge reasoned that though it was his finding that the petitioner was wrong in relying on Section 76 of Elections Act to calculate the period within which to file petition, the petitioner was not at fault because he thought that section 76 of Elections Act 2011 was the guiding law in filing an election petition and the said section provided that election petitions defined therein had to be filed within 28 days from the date of gazettelement of election results by the Independent Electoral and boundaries Commission. But according to the Judge this was not the case. The learned Judge in his own words stated this;

“As at the time when the petitioner was instituting the Petition herein, section 76 of the Elections Act was an integral part of the law in force.

The said law was prima facie lawful. Its legality had not been challenged. Therefore, when the petitioner filed his Petition within 28 days of the gazettelement by the Commission, he considered himself to be complying with the law. He did not err. If there be any err, it was committed by Parliament, not the Petitioner.

As the Petitioner complied with a law which was presumed to be lawful, at the time, it would be wrong, in my considered opinion, to punish him for the mistake of the parliament.

By striking out a petition which was, prima facie lawful at the time it was filed in court, this court would be purporting to impose this decision retroactively. It would be akin to punishing an accused person for an act which was committed by him before such act had been

criminalized by the law”

In a nutshell, **Justice Ochieng** was saying that the correct position as to when the 28 days for filing petition start running and when the said days end did not exist at the time the petitioner filed his petition under Elections Act while relying on **Section 76 of the Elections Act 2011**. That the correct position started existing as from the time the judge delivered his decision.

In the present case, one cannot argue that the correct position with regard to consequences of a person practising without a practicing certificate did not exist as at the time Mr. Achoki was filing the petition and the amended petition. We have the **Advocates Act Chapter 16** which came into force on 15/12/1989 long before Mr. Achoki filed the petition and the amended petition herein. The said statute has unambiguous and salient provisions on the requirement of practicing certificate. These provisions in the Advocates Act have been the subject of determination in various decisions in both the High Court and Court of Appeal. There is no doubt in me that Mr. Achoki, being an Advocate, was well aware of the said provisions and case laws regarding the consequences of an unqualified person purporting to act as an Advocate.

Since the practicing certificate of **Mr. Eric Nyamanga Achoki** was issued on **24/05/2013** I find that the petition filed by him on **10/04/2013** is incompetent as he was not qualified to practice law as at that time because he did not have a practicing certificate. His practicing certificate issued on **24/05/2013** cannot apply retrospectively to cover for the acts he did as an advocate prior to 24/05/2013. In **Kenya Power & lighting Company Limited –versus- Mahinda & Another**, the Court of Appeal stated thus;

“A practicing certificate is issued for a whole year and the certificate issued in this case was for the year 2004 and it was suggested that, although it was issued on 22nd September 2004, it had retrospective effect back to the beginning of 2004.

“We do not accept this submission. If no practicing certificate had been issued when the act was done, the advocate was not qualified to do that act, at the time he did it”.

The end result herein is that the petition must be struck out and dismissed, unfair as it is to the petitioner. As to the amended petition two reasons exist for striking it out, firstly, because it was filed without leave of court contrary to **rule 20 of the Elections (Parliamentary and County Elections) Petitions Rules, 2013** and secondly, that it was drawn, executed and filed by an unqualified person. I therefore make the following orders

(i) *The Petition and the amended petition be and are hereby struck out and dismissed.*

(ii) *The petitioner to pay costs of this application and the petition to the Respondents*

DATED SIGNED AND DELIVERED AT NYAMIRA THIS 14TH DAY OF JUNE 2013

NORBERT OKUMU

RESIDENT MAGISTRATE

In the presence of;

Mr. Mayaka holding brief for Mr. Achoki for the Petitioner/Respondent

Mr. Mong’are holding brief for Mr. Minda for the 1st Respondent/Applicant

Mr. Nyamwange holding brief for Mr. Abuya for the 2nd & 3rd Respondents