



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT

AT MALINDI

ELECTION PETITION NO. 1 OF 2013

IN THE MATTER OF THE ELECTION ACT, 2011 LAWS OF KENYA

AND

**IN THE MATTER OF THE ELECTION FOR THE GANDA COUNTY ASSEMBLY
REPRESENTATIVE FOR GANDA WARD WITHIN MALINDI CONSTITUENCY OF KILIFI
COUNTY**

BETWEEN

JOSEPH KIPONDA.....PETITIONERAND

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

STEPHEN BAHATI MLANDA.....2ND RESPONDENT

RULING

The Petitioner herein filed an application dated 13/6/13 seeking orders for scrutiny and or recount of all the votes cast in respect of County Assembly Representative for Ganda County Assembly ward within Malindi Constituency. The application is opposed by the Respondents. I have carefully considered the application and given due regard to the parties' submissions. In my considered view, the issues raised by the Petitioner in his application and Supporting affidavits cannot be determined by way of affidavit evidence. They are issues that can only be addressed by way of viva voce evidence. It would therefore be too early in the day for the court to order a scrutiny and recount of the votes cast in respect of the Election in dispute.

In view of the foregoing, I do not find it appropriate to allow the application at this stage. Consequently, I give the following directions:

- (a) That the petition shall proceed to hearing as scheduled;
- (b) That the witnesses shall be examined on the contents of their affidavits in support of the petition and the affidavits in support or in opposition to the application dated 13/6/13, which affidavits shall be the evidence in-chief of the respective witnesses;

(c) That the parties are at liberty to canvass the issues raised in the application dated 13/6/13 at the time of hearing of the petition;

(d) That after the evidence by all the parties has been heard, the court will thereafter make a determination as to whether or not there will be scrutiny and recount of all or part of the votes cast in respect of the Election in dispute.

(e) The issue of costs of the application dated 13/6/13 shall await the above said determination.

Dated at **Malindi** this **10th** day of **July 2013**.

Y.A. SHIKANDA

Ag. SENIOR RESIDENT MAGISTRATE

Delivered in open court in the presence of:

Mr Kabue for Petitioner

Ms Ndegwa for 1st Respondent

Mr Oduor for 2nd Respondent

Y.A. SHIKANDA

Ag. SENIOR RESIDENT MAGISTRATE

10/7/13