



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT NYAMIRA
ELECTION PETITION NO.1 OF 2013

BENTER NYABOKE NYANDIBA.....PETITIONER

-VERSUS-

FRED NYACHAE OMAIYO.....1ST RESPONDENT

**THE RETURNING OFFICER, NORTH MUGIRANGO
CONSTITUENCY.....2ND RESPONDENT**

**INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION.....3RD RESPONDENT**

R U L I N G

The court has done the Recount of all the votes that were cast within Magwagwa Ward (**CODE1360**), in North Mugirango Constituency, **No.272**. The ballot boxes used at the time of the voting on the 4/3/2013, were presented before this court by the Returning Officer, North Mugirango Constituency. The vote Recount exercise was done in court in presence of the Presiding **Magistrate Hon. Njagi, P.M.**, the Advocates for the Petitioner, Mr. O.M. Otieno, Mr. Odhiambo Advocate for 2nd and 3rd.

Respondent and Mr. Osongo Advocate for the 1st Respondent. The Recount was done for the court and the parties involved to know if the 1st Respondent, was the winner of the elections held on the 4/3/2013. The election of the Respondent 1 has been challenged by the petitioner who has alleged that her votes were erroneously given to the 1st Respondent, and as a result, the Independent Electoral and Boundaries Commissioner and its agents, denied the petitioned her victory and instead declared the 1st Respondent, the winner.

The court did adopt a consent that was placed before it by the Counsels involved in this case. The Recount of the votes from all the 15 ballot boxes from entire Magwagwa Ward, is as a result of the consent order. The order is as follows "By consent of all the counsels, the Petitioner's application dated the 21/5/2013, is hereby settled on the following terms:-

(1) There be a Recount of all votes cast in regard to all 14 polling stations within Magwagwa Ward.

The Recount be undertaken in resence of all the parties and one (1) agent per party.

The ballot boxes be availed to the court by the 3rd Respondent, Independent Boundaries and Electoral Commission, on 31/5/2013, at 2.00p.m.

The court to ensure that there is adequate security for the boxes. Court to also provide adequate security at the time of the Recount exercise.

(5) The Results/Outcome of the Recount to determine this petition.

The court to make the orders accordingly in line with the statute/election rules.

(6) The costs to abide by the outcome. The Recount was done for the candidates who participated in the Magwagwa ward Elections on the 4/3/2013. There were ten candidates who participated in the aforesaid elections, but, it is the petitioner, **BENTER NYABOKE NYANDIBA, O.D.M.** Party candidate who has challenged the Elections results that were used to declare the 1st Respondent, **FRED NYACHAE OMAIYO OF THE NATIONAL ALLIANCE** party, declared the winner.

The court did count the votes cast for all the candidates who participated in the election.

The court shall deal with the votes cast in favour of **FRED NYACHAE OMAIYO** of the National Alliance party.

The following were valid votes cast at the polling station i.e. Magwagwa ward.

1. Code 45 ESANINGA PRIMARY SCHOOL -100 – VOTES.
2. Code 45 ESANINGA PRIMARY SCHOL -89 VOTES
3. Code 046-GITWEBE PRIMARY SCHOOL -48 – VOTES
4. Code 047 - NYAKENYOMISIA PRIMARY – 152 VOTES
5. Code 048 –MISAMBI PRIMARY SCHOOL – 1 VOTE
6. Code 049 - MOGONGO PRIMARY – 1 VOTE
7. Code 050 - GETARE PRIMARY – 139 VOTES
8. Code 051 - ESAMBA PRIMARY – 59 VOTES
9. Code 052- RIOMEGO PRIMARY – 164 VOTES
10. Code 053 - RIAMANYAGE PRIMARY – 84 VOTES
11. Code 054 - GETURI PRIMARY – 23 VOTES
12. Code 055 - NYAMATUTA PRIMARY – 4 VOTES
13. Code 056 - NYABWORORO PRIMARY – 61 VOTES
14. Code - 057 KENYERERE PRIMARY – 317 VOTES
15. Code 058 - MESOBWA PRIMARY – 12 VOTES

The total votes garnered by the 1st respondent are – **1,254 Votes**

For the petitioner, **BENTER NYABOKE NYANDIBA, O.D.M. PARTY.** She garnered the following votes from the following polling stations.

- (1) Code 045 –ESANINGA PRIMARY SCHOOL -0-

- (2) Code 045 –ESANINGA PRIMARY -24 VOTES
3. GITWEBE PRIMARY – CODE 046 – 19 VOTES
4. NYAKENYAMISA PRIMARY – CODE 047 – 64 VOTES
5. MISAMBI PRIMARY – CODE 048 – 456 VOTES
6. MOGONGO PRIMARY CODE 049 – 312 VOTES
7. GETARE PRIMARY –CODE 050 – 21 VOTES
8. ESAMBA PRIMARY CODE 051 – 17 VOTES
9. RIOMEGO PRIMARY –CODE 052 – 9 VOTES
10. RIAMANYANGE PRIMARY CODE 053 -40 VOTES
11. GETURI PRIMARY -054 – 14 VOTES
12. NYAMATUTA PRIMARY CODE 055 – 93 VOTES
13. NYABWORORO PRIMARY CODE 056 – 23 VOTES
14. KENYERERE PRIMARY CODE 057 – 11 VOTES
15. MESOBWA PRIMARY –CODE 058 – 32 VOTES

The total votes garnered by the Petitioner after the Recount is 1,132 votes.

The other candidates after the recount garnered the following votes

3. SAMWEL NYONGA MBERE –FORD PEOPLE PARTY
TOTAL VOTES – 838
4. SAMWEL NYAMBEGA NDUBI –N.L.P PARTY – 825 Votes
5. JOHNES GARI OGARI –P.P.K. PARTY – 696 Votes
6. ERIC MOSE NYACHIO –U.D.F. PARTY -535 VOTES
7. ESTHER KEMUNTO ORANGI –K.S.C. PARTY -272 –BVOTES
8. RICHARD ONYIERE NYANG’AU K.A.N.U PARTY -227 VOTES
9. HENRY SIGIRA SIBOTA –N.F.K. PARTY -192 VOTES
10. ABEL MOSE MAYAKA –NARK –K -138 VOTES

The total valid votes cast and allocated to each of the 10 candidates is =**6,109 votes**

Spoilt Votes 25

Rejected votes 47

This is what the court has come up with after the Recount of all cast votes from all the polling stations within Magwagwa ward.

The 1st Respondent shall be declared validly elected and is now the winner of the elections and validly elected as the county assembly member from Magwagwa ward.

Costs be provided to the 1st Respondent.

N. NJAGI

PRINCIPAL MAGISTRATE

1/8/2013