



**Musau & 2 others v Independent Electoral and Boundaries Commission & 2 others
(Petition 2 of 2013) [2025] KEHC 15731 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15731 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
PETITION 2 OF 2013
RC RUTTO, J
NOVEMBER 3, 2025**

BETWEEN

**THOMAS MALINDA MUSAU 1ST PETITIONER
STEPHEN NDAMBUKI MULI 2ND PETITIONER
JOHN NTHULI MAKENZI 3RD PETITIONER**

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT
LEONARD OKEMWA (RETURNING OFFICER) 2ND RESPONDENT
STEPHEN MUTINDA MULE 3RD RESPONDENT**

RULING

1. The applicant filed a Notice of Motion dated 29th July 2020 seeking the following substantive orders;
 - a. Spent
 - b. Spent
 - c. Spent
 - d. A declaration do issue to the effect that the 2nd and 3rd petitioners did not consent to the filing of this suit and did not instruct any advocate to act on their behalf and any petition purported to be filed by them is a nullity ab initio.
 - e. A declaration do issue to the effect that the 2nd and 3rd petitioners are not liable for orders made against them in ruling delivered by Hon. Kemei to settle the sum of ksh.3,318,564 as costs owed to the 3rd respondent.



- f. A declaration do issue to the effect that all execution proceeding against the 2nd and 3rd petitioners are a nullity ab initio.
- g. The costs of the application be borne by the 1st petitioner.
2. The application is premised on Order 22 Rule 22, Order 40 Rule 1, Order 51 and Section 1A, 1B, 3A of Civil Procedure Act.
3. The application is supported by the grounds that the 3rd respondent decree holder, has proclaimed motor vehicle registration no. KBA 136H belonging to the 3rd petitioner/judgment debtor; the 2nd and 3rd respondent were fraudulently listed as parties in the petition challenging the validity of the results of Matungulu parliamentary seat; the petition was filed by the 1st petitioner who was aggrieved by the election outcome, that the 2nd and 3rd petitioners did not instruct Laichena Mugambi advocate to act for them, nor did they pay any legal fees. They were unaware of their inclusion as petitioners, did not sign any documents and did not authorize the 1st petitioner to swear affidavit on their behalf, and any document purported to be signed is a forgery.
4. In response to the application the 3rd respondent opposed the application through a Replying Affidavit sworn on 13/2/2024, and a preliminary objection dated 10th August 2024 opposing the application. It deponed that on 31st January 2014 the Court of Appeal in Civil Appeal No. 219 of 2013 IEBC & Another versus Stephen Mutinda Mule & 3 others set aside the High Court judgment and decree and ordered the 2nd, 3rd and 4th Respondent to pay the Appellants and the 1st Respondent costs of the Appeal at the Court of Appeal and of the High Court; no reference or appeal has been filed challenging the Court of Appeal's decision or the taxed bill of costs; the High Court lacks jurisdiction to interfere with or declare the orders for costs issued by the Court of Appeal null and void.
5. It emphasized that the order to pay cost was made by the Court of Appeal and therefore this court does not have jurisdiction to declare the 2nd and 3rd petitioner not liable to pay costs.
6. It was also asserted that the allegations by the 2nd and 3rd Petitioner were unsubstantiated with no evidence of the petitioners confronting the law firm regarding unauthorized representation.
7. In support of the application the applicant set out 4 issues for determination namely;
- Whether applicants instructed the firm of Laichena Mugambi Company Advocates to file the petition herein.
 - Whether applicants signed the impugned affidavits dated 18/3/2023.
 - Whether applicants are liable to pay costs in the petition.
 - Who should bear the costs.
8. On the 1st issue the applicants denied ever visiting or instructing the firm of Mugambi Laichena & Company advocates and never instructed the said firm over the petition. They relied on Section 107(1), 109 and 112 of the Evidence Act to urge that the burden of proof lies with the law firm of Laichena Mugambi & Company Advocates to demonstrate that instructions were given. On the 2nd issue they denied signing the affidavit dated 18th March 2013 and submitted a forensic report indicating that the signatures on the impugned documents did not match theirs.
9. On the third and fourth issue, they urged that since they neither instructed counsel nor signed any documents, they should not be held liable for the costs and requested that the 1st petitioner bear the costs of the application.



10. It is undisputed that this application arises from execution proceedings following the Court of Appeal's judgment. The petition was heard and determined, and the aggrieved party successfully appealed to the Court of Appeal with the court awarding them costs. The appellants then taxed the bill of costs and commenced execution, prompting the current application. As reiterated in the ruling of 4th July 2025, the Court of Appeal's judgment delivered on 31st January 2024 in Civil Appeal No. 219 of 2013 conclusively dismissed the petition and ordered the 2nd, 3rd, and 4th respondents to pay costs. That judgment brought the matter to a close.
11. This Court, being subordinate to the Court of Appeal, cannot review, set aside, or interfere with the findings of a Court of Appeal judgment. Any party aggrieved must seek redress through the Court of Appeal or the Supreme Court. In light of the foregoing, this Court finds that the application lacks merit and is hereby dismissed each party to bear its own cost.
12. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF NOVEMBER, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....Petitioners

.....Respondent

Selina Court Assistant

