

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
ELECTION PETITION NO. E002 OF 2025

NEWTON **KARIUKI**
NDWIGA.....PETITIONER/APPLICANT

-VERSUS-

THE INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION (IEBC)..... 1ST

RESPONDENT

JOHN MWII KINYUA2ND RESPONDENT

CURTIS NJERU MAWIRA.....3RD

RESPONDENT

NJERU LEO WA MUTHENDE.....4TH RESPONDENT

RULING ON SCRUTINY AND RECOUNT

The Application

1. The application is dated 22nd December 2025. Through it, the applicant seeks the following orders:

(1) Spent;

(2) Spent;

(3) That this Honourable Court be pleased to order the reopening, scrutiny, and recount of all ballot boxes used in the Mbeere North Constituency By-Election held on 27th November 2025, covering polling stations within the Constituency, including Kaungu, Kaungu Primary, Kianamu, Siakago Social Hall, Gitiburi Primary 1 & 2, Ciany Primary 1 & 2, Ibutuka Primary, Kirie Primary 2, Kamugu Primary 1, Muchonoke Primary 2, Karambari Primary, and Ngiri Primary 1 & 2.

(4) That this Honourable Court be pleased to order the 1st Respondent (IEBC) to give full and unfettered or supervised access to the Petitioner for purposes of scrutiny, examination, and forensic verification, including:

a) Complete KIEMS Kit logs for each polling station, including biometric authentication logs, override logs, manual identification entries, device failure logs, and complementary mechanism logs;

- b) All back-end KIEMS server logs, including metadata, access logs, user logs, configuration logs, and verification-data records relating to the 27th November 2025 By-Election;
 - c) Serial numbers, deployment registers, polling-station allocation lists, and opening and closing certificates of all KIEMS Kits deployed in Mbeere North Constituency on 27th November 2025;
 - d) Addresses, source and destination IP addresses, server details, and user details relevant to the functioning of the KIEMS Kits;
 - e) Full access to any electronic appliances or devices used to capture, store, transmit, and tally Forms 35A and 35B from polling stations to the Constituency Tallying Centre, including scanning devices or ancillary technologies used in the process.
- (5) That this Honourable Court be pleased to compel the 1st Respondent to avail to Court for purposes of scrutiny the KIEMS Kit Serial number 2132052510081655-7 that was used to register Collins Munene Muruki at Mwundu Primary School.
- (6) That this Honourable Court be pleased to compel the 1st Respondent to avail to Court for purposes of scrutiny the KIEMS Kits that were deployed in the following polling stations, Siakago Primary School, Ciangare Primary School, Kabachi Primary School, Kune Primary School, St Peters Primary School, Kageri Primary School, Kanyuambora Primary School, Marangu Primary School, Kienire Primary School, Karuaru Primary School, Mbaraga Primary School and Kiathambu Primary School.
- (7) That this Honourable Court be pleased to order the 1st Respondent to produce certified copies of all the following electoral materials for scrutiny that appertain to the Member of the National Assembly By- Election for Mbeere North Constituency that was held on 27th November, 2025, including:
- a) Original and carbon copies of Forms 35A from each polling station listed above;
 - b) Form 35B used in declaring the final constituency results;
 - c) All Polling Station Diaries (PSDs) maintained by presiding officers;
 - d) All Incident Report Forms, complaints registers, Occurrence Book extracts, and any other electoral documentation relating to the by-election;
 - e) All Forms 32A used to manually identify or validate voters.

- f) All unutilized/ unused ballot papers that remained.
 - g) Counterfoils for all the ballot papers that were used/utilised.
- (8) That this Honourable Court be pleased to order that the scrutiny, recount, and examination of all electoral materials that were used in the Member of the National Assembly for Mbeere North Constituency By- Election that was held on 27th November 2025, KIEMS logs, and technology be conducted under the supervision of the Deputy Registrar in the presence of the parties and/or their duly appointed representatives.
- (9) That this Honourable Court be pleased to order the 1st Respondent to produce and place before this Honourable Court the full names of the persons that were trained to for appointment as Presiding Officers and Deputy Presiding Officers and the details of the persons who were actually appointed as Presiding Officers and Presiding Offices together with the names of the Polling Stations in which they were deployed during the Member of the National Assembly for Mbeere North Constituency By- Election that was held on 27th November 2025.
- (10) Spent; and
- (11) That the costs of this application be in the cause.
2. The application was supported by grounds set out on its face and in the supporting affidavit of even date sworn by the petitioner/applicant. It was the applicant's case that the by-election was conducted in a manner that compromised the integrity, accuracy and verifiability of the declared results in multiple polling stations including Kaungu Primary school, Kianamu, Siakago Social Hall, Gitiburi, Ciany, Ibutuka, Kirie, Kamugu, Muchonoke, Karambari and Ngiiri. That in these stations, judicial scrutiny of the outcome is required.
 3. The applicant asserted that the 1st respondent's agents abdicated their roles in verification, custody and handling of election materials in several polling stations thus causing miscarriage of the election. In particular, he stated that in his traditional strongholds of Evurore and Muminji wards, there were systemic irregularities in voter registration, erroneous transfer of voters and omission of duly registered voters. As a result, there were discrepancies in the number of registered voters vis-a-vis the number of voters who cast their ballots, issues that would have to be scrutinised by the court.
 4. It was also his case that there was need to scrutinise anomalies in the voter register contained in the Kenya Integrated Electoral Management System (KIEMS) in polling stations where there were multiple and double registration of

voters and also where the manual voter registers were not used for verification of voters. He pointed out that there were polling stations where the voters were not identified by the KIEMS register but they cast their votes in any event. That these were unregistered voters who should not have voted in the by-election.

5. He contended that even though the voter register to be used in the by-election had been frozen by the 1st respondent in June 2022, there were new members added to the register after that freezing. In this regard, he named one Collins Munene Muriuki of National ID No.42676995 who was added to Mwundu Primary School Pooling station using KIEMS Kit serial number 2132052510081655-7. That besides this voter, there were more additions to the register of voters after it had been frozen and these additions were made to Siakago Primary School, Ciangare Primary School, Kabachi Primary School, Kune Primary School, St Peters Primary School, Kageri Primary School, Kanyuambora Primary School, Marangu Primary School, Kienire Primary School, Karuaru Primary School, Mbaraga Primary School and Kiathambu Primary School.
6. He cited incidences of voter bribery, inducement to vote for a particular aspirant, open distribution of money by agents to the voters and violence at some polling stations including Kaungu Primary School, Kianamu and Siakago Social Hall where the elections were interrupted. He stated that some polling stations were supervised by unauthorised persons who took over the processes of counting and tallyng. This led to discrepancies, forged or altered forms 35A and irregular vote counts.
7. He claimed that the chain of custody of election materials was broken at some polling stations including Gitiburi, Cianyi, and Ibutuka, due to missing transfer forms and mishandling by non-IEBC personnel. That this led to unauthorized alterations, necessitating judicial scrutiny to ensure the integrity and validity of the votes. According to the applicant, the irregularities disclosed affected a total of 4,606 votes across multiple polling stations in the constituency, hence scrutiny and recount is necessary.
8. The applicant stated that his supporters and some of his agents were obstructed from accessing polling stations and they were harassed and intimidated and as a result, the recorded votes did not reflect the will of the people in the election. He noted that there were procedural lapses and interference of the process by state officials wielding state resources that were unauthorised but used to disrupt the election. That election materials were generally mishandled, misplaced and

- destroyed during the election in the hands of officers of the 1st respondent who failed to manage the process as they should.
9. He prayed that the court do grant the orders sought in the interest of justice and in line with Articles 81(e) and 86 of the Constitution which require that an election be free, fair, transparent, verifiable and accurate. He reiterated that the prayers are made on the strength of section 82 of the Elections Act which allows the court to ascertain the validity of an election where its integrity is in question.
 10. Through his supporting affidavit, he cited evidence which he said supported his averments including the sentiments of the 1st respondent's Commissioners regarding the discrepancies observed from the by-election in question. He also deposed that state officers, namely, Governor Cecily Mbarire of Embu County and Hon. Karemba Eric Muchangi Member of National Assembly for Runyenjes, both of the United Democratic Party (UDA) (on whose ticket the 4th respondent vied) actively interfered with the by-election. That they did so by rallying large groups of rowdy youth to disrupt the voting processes through chaos and violence.
 11. He also named Hon. Alice Wahome, CS Ministry of Lands, Public Works and Urban Development, Hon. Eric Wamumbi Member of National Assembly of Mathira Constituency and Hon. Geoffrey Kiringa Ruku, CS in charge of Public Service, who are also members of UDA party as some of the government officials who caused chaos and violence to break out at several polling stations on the day of the by-election.
 12. He urged the court to scrutinize Forms 35A and 35B from Kirie Primary School 2, Gitiburi Primary School 2, Kamugu Primary School 1 and Muchonoke Primary School 2 where he claimed, there were differing entries of valid votes cast. He singled out Siakago Social Hall as one of the polling stations where the tallied votes allegedly exceeded the number of authenticated voters but the presiding officer dismissed any complaints raised about that issue.
 13. The applicant deposed that the transfer of ballot boxes to the tallying centre happened without escort and the boxes were not accompanied by forms 35A as the case should be. That, in fact, some materials were seen being ferried by a boda boda rider. He analysed the areas of discrepancy in paragraph 114 of his supporting affidavit and urged the court to order scrutiny and recount as prayed.

Responses

14. The 2nd respondent swore a replying affidavit on behalf of the 1st-3rd respondent. In it, he deposed that the rules governing scrutiny and recount of votes after an election are set out clearly in the case of **Munya v Kithinji & 2 others [2014] KESC 38 (KLR)**. There, the court held that the order for scrutiny is founded on section 82(1) of the Elections Act and it is discretionary. That recount is not a matter of course and only votes in dispute should be subjected to recount.
15. They deposed that the court must satisfy itself that there are sufficient grounds to grant any scrutiny or recount order before granting it, and such order must not aide a fishing expedition. They cited the cases of **Youth Advocacy for Africa (YAA) & 7 others v Independent Electoral and Boundaries Commission & 17 others [2022] KESC 42 (KLR)** and **Musimba v Independent Electoral & Boundaries Commission & 2 others (Election Petition E001 of 2022) [2022] KEHC 16664 (KLR)** to stress this point.
16. According to them, the applicant was unclear as to the polling stations where they demanded scrutiny and recount. They stated that the prayers sought were too general and impractical. They urged the court to dismiss the application with costs.
17. The 4th respondent also filed a replying affidavit in which he relied on the guidelines issued by the 1st respondent through Gazette Notice Number 11160 dated 8th August, 2025, regarding the by-election. Counsel pointed out that paragraphs 1-27 of the replying affidavit are in response to an issue on eligibility of the 4th Respondent that was struck out through a ruling of this Court as it was a pre-election issue. The remaining paragraphs of the replying affidavit respond to the issue of scrutiny and recount. On these issues, the 4th respondent contended that the court may only grant these orders on its discretion upon being satisfied that there are sufficient grounds.
18. He stated that the allegations made in the application are not supported by evidence. That the issues of violence which allegedly affected the election were election offences which the court lacked jurisdiction to determine. He stated that the court has not been shown any basis to invalidate the election results through scrutiny. On this, he cited the case of **Joho v Nyange & Another (No. 3) (2008) 3 KLR (EP) 188**.

Hearing of the Application

19. The application was initially scheduled to be heard on 24th February, 2026. However, on that date, the parties agreed to adjourn the hearing to a later date when the substantive evidence of witnesses would have been heard. Witness evidence for all parties concluded on 19th March, 2026, whereupon this application was canvassed orally as supported by written submissions which had been previously filed.
20. At the hearing of the application, the applicant indicated to the court that he wished to clarify some of the prayers sought. First, he emphasised that he would focus on prayers 3 and reiterated that for the named 12 polling stations thereunder, he seeks scrutiny of the physical voter register vis a vis the one contained in KIEMS Kits to ascertain addition of voters after the said register had already been frozen for purposes of the by-election. He also sought scrutiny of all the election materials used in the election including KIEMS logs to ascertain the number of voters who voted in the by-election.
21. Second, he sought scrutiny of the 1072 Forms 32 for registered assisted voters following his contention that there was an absurdly high number of assisted voters and that one person assisted more than one voter, which was unlawful.
22. Thirdly, he sought scrutiny of the original and copies of Forms 35A on the basis that a number of these forms had visible alterations and amendments that were not countersigned. Consequently, he sought recount of the votes cast in these stations. He named the following 37 polling stations as those affected by this vice: Kune Primary School 1/1, Mbingori Primary School 1/1, Makunguru Primary School 1/2, Makunguru Primary School 2/2, Mungau Primary School 1/1, Mathai Primary School 1/1, Rwagori Primary School 1/1, Karimari Primary School 1/1, Mukororia Primary School 1/1, Kanyuambora Primary School 1/3, Kaverengo Primary School 2/2, Kabachi Primary School 1/1, Itira Primary School 1/2, Karambari Primary School 1/1, Gangara Primary School 1/1, Kirie Primary School 1/2, Kianjogu Primary School 1/1, St. Michael's Gachuriri Primary School 1/1, Kamauwa Primary School 1/1, Ibutuka Primary School 1/1, Kirigo Primary School 1/1, Ciangera Primary School 2/2, Muthanthara Primary School 1/1, Kogari Primary School 1/1, Nthigirani Primary School 1/1, Kiathambu Primary School 1/1, Gwakaithi Primary School 2/2, Rwanjeru Primary School 1/1, Gatororori Primary School 2/2, Ovarire Primary School 1/1, St. Mary's Kanganga Primary School 1/1, Usambara Primary School 1/1 and St. Peter's Primary School 1/3.

23. Fourthly, he sought scrutiny of all the polling station diaries for the polling stations mentioned in prayers 3 and 6 of the application.

Parties' Submissions

24. All the parties had filed their written submissions which they also highlighted at the oral hearing.

25. The applicant submitted that the court had jurisdiction to determine the application and he relied on section 82(1) of the Elections Act and Rules 29 and 33 of the Elections (Parliamentary and County Elections) Petition Rules. He argued that scrutiny is a judicial tool and there is sufficient case law backing the argument, led by the case of **Munya v Kithinji & 2 others (supra)**. He also relied on the case of **Hassan Mohammed Hassan & another v Independent Electoral & Boundaries Commission & 2 others [2013] KEHC 5949 (KLR)** where the court held that scrutiny and recount may be ordered where the court finds sufficient reason to do so, and such reason would include serious irregularities on the part of the presiding or returning officers. He argued that in this case it is necessary to scrutinize Forms 35A and 35B for specific polling stations mentioned and the KIEMS Kit logs, given the discrepancies between the physically counted votes and electronically transmitted results. According to him, he had made out a case for granting of a scrutiny order based on the court's discretion.

26. He argued that the 1st respondent failed in its duty under Article 86 of the Constitution to ensure security, accuracy and accountability of the election results. Reliance was placed on the case of **Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others [2013] KESC 6 (KLR)**. He further argued that he is entitled to access the election materials and information pursuant to the Constitution and the laws. In this regard, he referred to his right of access under Article 35 of the Constitution, Section 4 of the Access to Information Act, section 27 of the Independent Electoral and Boundaries Commission Act, and Regulations 15, 16 and 17 of The Elections (Technology) Regulations, 2017.

27. The 1st-3rd respondents made submissions relying on section 82 (1) of the Elections Act, 2011 and Rule 29 (2) of the Elections (Parliamentary and County Elections) Petition Rules. In addition, they relied on the cases of **Munya v Kithinji & 2 others (supra)**, **Youth Advocacy for Africa (YAA) & 7 others v Independent Electoral and Boundaries Commission & 17 others [2022]**

KESC 42 (KLR) and Musimba v Independent Electoral & Boundaries Commission & 2 others (Election Petition E001 of 2022) [2022] KEHC 16664 (KLR).

28. The 1st – 3rd respondents argued that an order of scrutiny should not be made to aide a fishing expedition by a party as the applicant is trying to do. They argued that the orders sought are not specific, neither are they supported by evidence. That the polling station diaries are voluminous and it is impractical to scrutinize all of them for the whole constituency, which may end up being a total of more than 5,000 pages. Accordingly they posited that scrutiny of forms 32 and the KIEMS register of voters is unnecessary and should only be done if the court finds sufficient reasons to order such scrutiny. According to them, no basis had so far been laid for scrutiny of these and any other election materials.
29. Further reliance was placed on the cases of **National Super Alliance (NASA) Kenya v Independent Electoral and Boundaries Commission & 2 others [2017] KECA 342 (KLR)** and **Maina Kiai & 2 others v Independent Electoral and Boundaries Commission & 2 others [2017] [2017] KEHC 8646 (KLR)** in support of the argument that recount of the votes should have been sought before the returning officer in the first instance. They also prayed for costs of the application citing the case of **Haraf Traders Limited v Narok County Government [2022] KEHC 2357 (KLR).**
30. In his submissions, the 4th respondent relied on Section 82 (1) of The Elections Act and Rule 29(2) of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 and Section 82 (1) of the Elections Act. He stated that an order of scrutiny is made at the court's discretion as stated in **Youth Advocacy for Africa (YAA) & 7 others v Independent Electoral and Boundaries Commission & 17 others (supra), Munya v Kithinji & 2 others (supra)** and **Joho v Nyange & Another (No. 3) (supra).**
31. He also submitted that scrutiny should be ordered only where the alleged malpractices are so widespread and pervasive, that they substantially and materially affect the result of the election as stated in the case of **Philip Munge Ndolo v Omar Mwinyi Shimbwa & 2 others [2013] KEHC 5537 (KLR).** He also termed the prayer for scrutiny as a fishing expedition, an act which the court should refrain from aiding. In this regard, he relied on the cases of **Munya v Kithinji & 2 others (supra)** and **Odinga v Independent Electoral and Boundaries Commission & 3 others (Petition 5 of 2013) [2013] KESC 2 (KLR).**

32. He stated that the election cannot be nullified based on non-compliance with written law according to section 83 of The Elections Act. He relied on Rule 29(2) of the Elections (Parliamentary and County Elections) Petitions Rules and argued that the orders sought will create a time consuming, costly, laborious and arduous exercise. He further relied on Articles 81 and 86 of the Constitution of Kenya and Electoral Laws and Regulations and stated that any scrutiny exercise is usually extravagant and wasteful.

33. Finally, Counsel also relied on the cases of **Gideon Mwangangi Wambua & another v Independent Electoral and Boundaries Commission & 2 others [2013] KEHC 2392 (KLR)** and **Adam v Mohamed & 3 others [2014] KESC 28 (KLR)**.

Issues for Determination

34. As earlier noted, the hearing of the application had been scheduled earlier and was deferred and heard after the hearing of evidence in the substantive petition. From the application and the evidence adduced, the following issues arose regarding the scrutiny application herein:

- (1) Whether there was failure by the 1st respondent to deploy the printed register of voters at polling stations, whose result was disenfranchisement of duly registered voters (ground 4) necessitating scrutiny and or recount;
- (2) Whether there was unlawful third-party interference with voter registration data and failure by the 1st respondent to secure and protect the register of voters (ground 5) necessitating scrutiny and or recount;
- (3) Whether there was violence, voter intimidation and disruption of voting in violation of the constitution, the electoral code of conduct and electoral law (Ground 6) necessitating scrutiny and or recount;
- (4) Whether there was bribery, threatening and undue influence in violation of the Election Offences Act and the Constitution (Ground 7) necessitating scrutiny and or recount;
- (5) Whether there was exclusion of agents, opaque counting and tallying and falsification of Statutory forms in violation of constitutional and statutory requirements (Ground 8) necessitating scrutiny and or recount;
- (6) Whether there was any broken chain of custody, unlawful handling of election materials and violation of procedure on close of polling (Ground 9) necessitating scrutiny and or recount.

Analysis and Determination

The Deputy Registrar's Report

35. Before commencing on an analysis of the application, it is necessary to point out that following the court's directions, prior to, and at the pre-trial conference, all election material used in the Mbeere North By-election were availed to the Court for safe custody. This was done under the supervision of the Deputy Registrar who availed a Report thereon as directed.

36. In summary, the election materials delivered to the Court were contained in 154 sealed ballot boxes as follows:

- (1) 134 ballot boxes, one for each polling station as set out in the inventory at pages 23-53 of the DR's Report (hereinafter referred to as "the Polling Stations Ballot Boxes").
- (2) 1 ballot box No.135 containing strategic materials delivered at the Tallying Centre, set out at page 53 of the DR's Report (hereinafter referred to as "Box 135 Strategic Materials"). It was unclear why the items thereon were not placed in the respective ballot boxes on the polling day. As a result, the Court considers that this box will, undoubtedly have to be opened to scrutinize all the contents therein.
- (3) 15 ballot boxes containing KIEMS Kits, as set out at page 3(viii) and pages 65-89 of the DR's Report (hereinafter referred to as "the KIEMS Kit Ballot Boxes").
- (4) 4 ballot boxes containing "Other Strategic Materials" as set out at pages 59-61 of the DR'S Report (hereinafter referred to as "Other Strategic Materials Boxes").

Legal basis for Scrutiny and Recount

37. Section 82 of the Elections Act provides as follows:

"(1) An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition, order for a scrutiny of votes to be carried out in such manner as the election court may determine.

(2) Where the votes at the trial of an election petition are scrutinized, only the following votes shall be struck off—

(a) the vote of a person whose name was not on the register or list of voters assigned to the polling station at which the vote

was recorded or who had not been authorised to vote at that station;

(b) the vote of a person whose vote was procured by bribery, treating or undue influence;

(c) the vote of a person who committed or procured the commission of personation at the election;

(d) the vote of a person proved to have voted in more than one constituency;

(e) the vote of a person, who by reason of conviction for an election offence or by reason of the report of the election court, was disqualified from voting at the election; or

(f) the vote cast for a disqualified candidate by a voter knowing that the candidate was disqualified or the facts causing the disqualification, or after sufficient public notice of the disqualification or when the facts causing it were notorious.

(3) The vote of a voter shall not, except in the case specified in subsection (1) (e), be struck off under subsection (1) by reason only of the voter not having been or not being qualified to have the voter's name entered on the register of voters."

38. An application for scrutiny and recount may be allowed for the polling stations where the results are contested. Rule 29(4) of the Elections (Parliamentary and County Elections) Petitions Rules provides for scrutiny of votes in disputed polling stations:

"The scrutiny or recount of votes in accordance with sub-rule (2) shall be confined to the polling stations in which the results are disputed and may include the examination of-

(a) the written statements made by the returning officers under the Act;

(b) the printed copy of the Register of voters used during the elections sealed in a tamper proof envelope;

(c) the copies of the results of each polling station in which the results of the election are in dispute;

(d) the written complaints of the candidates and their representatives;

(e) the packets of spoilt ballots;

(f) the marked copy register;

- (g) the packets of counterfoils of used ballot papers;**
- (h) the packets of counted ballot papers;**
- (i) the packets of rejected ballot papers;**
- (j) the polling day diary; and**
- (k) the statements showing the number of rejected ballot papers.”**

39. In the case of **Munya v Kithinji & 2 others (supra)**, the Supreme Court stated that an order of scrutiny and recount must be based on the evidence adduced. It gave guidelines for conducting scrutiny and recount as follows:

“From the foregoing review of the emerging jurisprudence in our Courts, on the right to scrutiny and recount of votes in an election petition, we would propose certain guiding principles, as follows:

a. The right to scrutiny and recount of votes in an election petition is anchored in Section 82(1) of the Elections Act and Rule 33 of the Elections (Parliamentary and County Elections) Petition Rules, 2013. Consequently, any party to an election petition is entitled to make a request for a recount and/or scrutiny of votes, at any stage after the filing of petition, and before the determination of the petition.

b. The trial Court is vested with discretion under Section 82(1) of the Elections Act to make an order on its own motion for a recount or scrutiny of votes as it may specify, if it considers that such scrutiny or recount is necessary to enable it to arrive at a just and fair determination of the petition. In exercising this discretion, the Court is to have sufficient reasons in the context of the pleadings or the evidence or both. It is appropriate that the Court should record the reasons for the order for scrutiny or recount.

c. The right to scrutiny and recount does not lie as a matter of course. The party seeking a recount or scrutiny of votes in an election petition is to establish the basis for such a request, to the satisfaction of the trial Judge or Magistrate. Such a basis may be established by way of pleadings and affidavits, or by way of evidence adduced during the hearing of the petition.

d. Where a party makes a request for scrutiny or recount of votes, such scrutiny or recount if granted, is to be conducted in specific polling stations in respect of which the results are disputed, or where the validity of the vote is called into question in the terms of Rule

33(4) of the Election (Parliamentary and County Elections) Petition Rules.”

40. Through the application and following its hearing, the applicant clarified to the court that he was not seeking scrutiny and recount of all the election material but rather, only those that he specified during the hearing of the application. These are captured within the issues highlighted for determination as follows:

Issue 1 & 2

41. The applicant asserted that the voter register had been interfered with and that the IEBC had failed to protect it. In support of this assertion, PW1 testified that unregistered voters voted in Siakago Social Hall polling stations and some new voters were added to the register after it was declared frozen on 21st June 2025 and that they were allowed to vote. There is no evidence by the respondents to counter this position.

42. It is imperative that the voters in an election be properly identified before they are allowed to cast their votes. This identification is done through the relevant gazetted voter register. In this case, RW1 confirmed that the voter register used was the one used in 2022, and that it was frozen for purposes of the by-election in question on 21st June 2025. It is the role of the 1st respondent to keep the register safe for efficient use during the election. It is also expected that the Register of voters remains untampered with and credible for use in the election. In the case of **Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others [2013] KESC 6 (KLR)**, the Supreme Court held that:

“To guarantee the credibility of the voter register, the agency entrusted with responsibility (IEBC) for voter registration must ensure as follows:

(a) all those who turn out to register are qualified to be registered, in accordance with the constitutional and legal requirements;

(b) all those who turn out to register are actually registered and their particulars accurately captured;

(c) the administrative arrangements put in place to facilitate the registration process are simple, transparent and accessible;

(d) the public and political actors are kept informed of the various steps in the register-preparation process;

(e) the resultant register is verifiable.”

43. In her evidence, PW5 stated that she could not be identified the KIEMS Kit at Gikuyari Polling Station which is her usual polling station in years past. When she inquired, she was informed by IEBC officials that she had been transferred to Karatina, yet she had not requested such transfer. This is the reason why she was not identified as a voter in Mbeere North constituency.
44. The applicant also claimed that the IEBC failed to deploy the physical voter register in some of the polling stations. In rebuttal, RW1, the County Returning Officer testified that in all the polling stations, polling started by KIEMS scanning the QR code on the manual register to access the physical register. That the KIEMS register was the sole identifier of voters on that day and that physical registers were not required to be used. He stated that the physical registers are all contained in the various ballot boxes for the polling stations, even those in Nthigirani 1/1, Gwakaithi 1/1, Kamauwa 1/1, Siakago Social Hall 1/1, Mbaruari 1/1 and Ciangera 2/2.
45. RW2 stated that after, or despite, the freezing of the register of voters as at June 2022, voter registration continued because it is a continuous exercise but that any new additions were flagged out. Such newly added voters were “flagged out” and were not allowed to vote in the Mbeere North By-election. That this was also the case for Collins Munene who was added as a voter in Mwundu Polling Station after the voter register had been frozen. RW5 confirmed that Collins Munene did not have any intention to change polling stations gazetted as required by law but the change was made regardless. He stated that Collins presented himself at IEBC offices to pursue the change in registration of his polling station.
46. From the available evidence, it is clearly necessary that there be scrutiny of the register of voters and KIEMS Kit registers for Siakago Social Hall, Mwundu Primary School and Gikuyari Primary School Polling Stations, together with their Polling Station Diaries (PSDs) to ascertain the events that occurred there.
47. In addition, whilst RW1 asserted that the KIEMS kit was opened up by scanning the QR code on the register of voters at each polling station, he made an admission concerning six (6) registers of voters. When referred to the DR’s Report at page 59 (inventory of other strategic materials), he admitted that only 128 out of the total of 134 registers of voters for all polling stations in Mbeere North Constituency were availed to the Court in one ballot box serial number 405247. He asserted, without evidence, that the balance of 6 Registers of Voters were contained in the ballot boxes for Nthigirani 1/1, Kamauwa 1/1, Gwakaithi 1/1, Siakago Social Hall 1/1, Mbaruari 1/1, and Ciangera 2/2.

48. Clearly, the ballot boxes for these (six (6) polling stations must therefore be opened to ascertain whether there are registers of voters therein and scrutinize the same against the KIEMS kit register and the events recorded in the Polling Station Diaries (PSDs) for the six (6) polling stations.

Issue 3

49. The applicant's assertion was that there was violence incited by 3rd parties on the polling day. That this resulted in voter disruption and intimidation in violation of the law. It was asserted that in some polling stations, politicians and other public officers actually went to the polling stations accompanied by rowdy crowds who disrupted the polling process. PW1 and PW2 testified concerning violence and gunshots at Kaungu polling station.

50. RW7, the Presiding Officer at Kaungu confirmed that he witnessed violence at the station. That the polling station was pelted with stones from outside. He said that he indicated in the PSD that there was disruption of voting. He noted that the people who were causing chaos were a mix of locals and politicians and public officers. It was his evidence that after the violence started, he stopped the polling process for a about 30 minutes which was compensated at the end of the polling day by a similar period. (NMK 14 video). PW3 stated that after CS Ruku's visit violence followed in the vicinity of the polling station. It was his evidence that the shots were fired by the aides to the politician's aides at the scene. As a result, PW8 suffered a gunshot wound and he testified as much stating that he was outside the polling station gate.

51. Still on this issue of voter disruption, it was alleged that in Gitiburi polling station 2 where a fire broke out, the ballot boxes and materials were taken out of the room. In fact, the ballots were counted at Gitiburi polling station 1 after that. Regarding this, RW3, the presiding officer of Gitiburi 2 testified that CS Ruku visited Gitiburi 2 after close of the voting and this caused some commotion. At the time, she said, forms 34A had already been signed and witnessed. She stated that after the commotion, the ballot boxes were returned to Gitiburi 1 where the counting of votes was done. RW4 was the presiding officer at Gitiburi 1 and she stated that she did not see CS Ruku at Gitiburi 1, although there was commotion after the voting closed. She recorded the commotion from the fire incident in Gitiburi 2 in the PSD.

52. From the evidence adduced, it is clear that there was disruption and commotion at Gitiburi 1 and 2, partly due to visits by politicians and also due to the fire that

erupted at Gitiburi 2 of 2. The outcome of these events was that some polling station materials burnt, but more critically that polling station activities were disrupted, and ballot boxes were removed from both Gitiburi 1 and 2 and taken to a vehicle outside. RW4 in re-examination admitted that she left the polling materials in the vehicle in order to go back and collect her personal things and handbag. This was an admission of loss of custody of the polling materials. Further it emerged that the counting of ballots for Gitiburi 2 was done in Gitiburi Polling Station 1.

53. Indeed, when videos were shown to RW4 (Video NN3) she admitted that the chaotic scene of members of the public wielding sticks, had broken into the polling station, and were not supposed to be there.

54. For all these reasons, it is inevitable that a full scrutiny and recount of ballots and ballot materials be done in Gitiburi 1 and 2, and in Kaungu polling station where violence interrupted the ongoing voting.

Issue 4

55. PW1 testified that voters were bribed throughout the constituency on the day of elections, some through food substances and others through money in order to coerce them to vote for the 4th respondent. PW10 and PW11 testified that they were offered food substances in exchange for her vote to the 4th respondent at Kamugu polling station. PW11 testified that she left her house in the wee hours of the morning to go and collect food items in exchange for her vote and she was informed that the food was from the government.

56. The respondent's witnesses all uniformly asserted that they did not witness any voter bribery at any of their polling stations. The evidence availed demonstrated that where there may have been cases of voter bribery, this did not occur at polling stations. Whilst bribery may have occurred, it was not specifically demonstrated from the evidence that there was a clear connection between any such bribery and the votes of, or at any, specific polling station. In the absence of any such specificity, no basis has been laid for scrutiny or recount at any particular polling station with regard to bribery.

Issue 5

57. On exclusion of agents, PW1 testified that he was informed that some of his agents were removed from the polling centres forcefully and that they were not present when the votes were being counted. PW2 was the applicant's chief

agent who stated that he was informed that an agent at Riandu was denied access to the polling station. PW4 alleged that he saw polling clerks and officers stuffing leftover election materials in a separate box at Ciany 2.

58. On this issue, it appears from a look at the Forms 35A presented as evidence, that all the agents signed and where the results were not satisfactory, the forms indicated that they refused to sign. On this basis, there is no rationale for ordering scrutiny of these forms to ascertain whether some agents were denied access to the polling stations.

Issue 6

59. PW6 testified that there was a fire at Gitiburi 1 when the Deputy Presiding Officer tried to light a gas lamp which accidentally exploded. According to RW3, the ballot boxes were moved to a motor vehicle outside the polling station after the fire broke out and taken to a PSV matatu. On his part, RW2 stated that elections materials were handled properly and lawfully in the circumstances.

60. RW3 was the Presiding Officer at Gitiburi 1. She said that a gas lamp exploded at Gitiburi 2 and burned unused forms 32 and KIEMS forms. She and her colleagues took the ballot boxes outside to a motor vehicle hired by IEBC. The IEBC officers and security officers were present. She stated that she left the ballot boxes in the vehicle for some time and returned to the polling station to collect her personal items from the room that had caught fire. She helped supervise the ballot boxes to be moved to Gituburi 1 for counting of votes.

61. As earlier pointed out, the explosion and fire caused a commotion at Gitiburi 2 polling station. In the aftermath of the fire, there was alarm and subsequent commotion at both Gitiburi 1 and 2 polling stations. The commotion involved unauthorized persons entering the polling station as depicted in the video clips availed. Again, as earlier pointed out, this necessitates a full scrutiny and recount of the ballots in ballot boxes and materials for these two stations verified by KIEMS Kit information.

Disposition

62. From all the evidence adduced by the parties witnesses herein, and taking into account the respondents' witnesses' evidence on the DR's Report, the following conclusions and determinations inevitably follow:

1. There shall be limited scrutiny and recount of ballots and elections material in terms of Section 82(2)(a) Elections Act, and Rules 28 and 29 of the Elections (Parliamentary and County Elections) Rules, as hereinunder directed;
2. Ballot box No.135 contains Strategic Materials delivered at the Tallying Centre as indicated in the DRs Report, which has items that were placed therein without any basis or explanation, and without any record thereof having been made. It is unclear why the items therein were not placed in the respective polling station ballot boxes on the polling day. As a result, this box, will, undoubtedly, have to be opened to scrutinise all the contents therein referred to as Strategic Materials.
3. Further, it is necessary to open all the 15 boxes containing the KIEMS kits referred to at pages 7-9 of the DRs Report in order to obtain the Kits used in the various polling stations where scrutiny and recount will be required pursuant to the orders of the Court herein.
4. The 4 ballot boxes containing “Other Strategic Materials” will need to be opened to enable scrutiny of Forms 32 and the PSDs.
5. Ballot boxes for **Nthigirani 1/1, Kamauwa 1/1, Gwakaithi 1/1, Siakago Social Hall 1/1, Mbaruari 1/1, and Cingera 2/2 polling stations** shall be opened to ascertain whether there are registers of voters therein and scrutinize the same vis a vis the KIEMS kit register and Polling Station Diaries (PSDs) for those polling stations.
6. It is necessary that there be scrutiny of the register of voters and KIEMS Kit registers for **Siakago Social Hall, Mwundu Primary School and Gikuyari Primary School Polling Stations**, together with their PSDs to ascertain whether the record therein shows that the unregistered/unidentified voters cast their ballots in the named polling stations.
7. A full scrutiny of ballot materials and recount of ballots shall be conducted for **Gitiburi 1 and 2 polling stations** following the outbreak of fire in Gitiburi 2 resulting in commotion with the resultant temporary break in the chain of custody of polling materials, and leading to votes for both Gitubiri 1 and Gitubiri 2 having to be counted at Gitiburi 1.
8. The evidence availed demonstrated that where there may have been cases of voter bribery this did not occur at polling stations. It was not

clearly demonstrated from the evidence availed that there was a clear connection between any such bribery and the votes at any specific polling station. In the absence of any such specificity with regard to bribery, there is no basis laid for scrutiny or recount at any particular polling station.

9. The Court perused the Forms 35A presented as evidence, and notes that the agents present signed them, and where the results were not satisfactory, the forms indicated that the agents refused to sign. On account of this, there is no basis for ordering scrutiny of these forms and connected materials to ascertain whether some agents were denied access to the polling stations.
10. There is persuasive evidence that the gross violence and overrunning of wananchi witnessed at **Kaungu polling station** resulting in a thirty (30) minute closure of polling, could have affected the outcome of the election. On this basis, it is necessary for the election materials for Kaungu Polling station to be scrutinised and votes recounted.
11. On the claim that alterations were made on the election forms, the court has perused the Forms 35A produced as evidence by the petitioner. As mentioned hereinbefore, the applicant named 37 polling stations where, according to him, Forms 35A were altered and the alterations were visible and not countersigned. The Court perused all the 37 particularised forms, and is of the view that scrutiny of Forms 35A and ballots and counterfoils in the following polling stations is necessary to ascertain whether the number of votes cast according to Forms 35A is the same as the number of votes indicated in the KIEMS log for the polling day and as compared to the tallies transferred to Form 35B. The 8 stations affected in this respect are: **Rwagori Primary School 1/1, Karimari Primary School 1/1, Kanyuambora Primary School 1/3, Karambari Primary School 1/1, Kamauwa Primary School 1/1, Ibutuka Primary School 1/1, Kogari Primary School 1/1 and St. Mary's Kanganga Primary School 1/1.**

63. The DR shall avail to the Court a Report of her findings following the exercise conducted under this order no later than 17th April, 2026.

64. The Court will issue detailed directions to the Deputy Registrar which directions will be published to the parties, for the conduct of the Scrutiny and Recount exercise ordered herein

65. A mention for purposes of final submissions on the merits of the petition and for observations on the DR's Report so filed, shall be held on 22nd April, 2026.

66. Orders accordingly.

Delivered virtually, dated & signed at Embu High Court this 27th day of March, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

1. Mr. Ndegwa Njiru, Mr. Kiroko Ndegwa & Mr. Kiragu Wathuta (For the Petitioner)
2. Mr. C. Mwongela & Ms. Laureen Omondi (for the 1st to 3rd Respondents)
3. Ms. Rose Migwi also h/b for Mr. M. Gachuba & Dr. A. Kamotho (for 4th Respondent)
4. Francis Munyao - Court Assistant