



**Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others
(Petition 5, 3 & 4 of 2013 (Consolidated)) [2013] KESC 5 (KLR) (30 March 2013) (Order)**

Raila Odinga & 2 Others v Independent Electoral and Boundaries Commission & 3 Others[2013]eKLR

Neutral citation: [2013] KESC 5 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION 5, 3 & 4 OF 2013 (CONSOLIDATED)
WM MUTUNGA, CJ & P, PK TUNOI, MK IBRAHIM,
JB OJWANG, SC WANJALA & N NDUNGU, SCJJ
MARCH 30, 2013**

BETWEEN

**RAILA ODINGA 1ST PETITIONER
DENIS NJUE ITUMBI 2ND PETITIONER
ZAHID RAJAN 3RD PETITIONER**

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT
AHMED ISSACK HASSAN 2ND RESPONDENT
UHURU KENYATTA 3RD RESPONDENT
WILLIAM SAMOEI RUTO 4TH RESPONDENT**

**AS CONSOLIDATED WITH
PETITION 3 OF 2013**

BETWEEN

**MOSES KIARIE KURIA 1ST PETITIONER
DENIS NJUE ITUMBI 2ND PETITIONER
FLORENCE JEMATIAH SERGON 3RD PETITIONER**

AND

AHMED ISSACK HASSAN 1ST RESPONDENT



INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND
RESPONDENT

AS CONSOLIDATED WITH
PETITION 4 OF 2013

BETWEEN

GLADWELL WATHONI OTIENO 1ST PETITIONER

ZAHID RAJAN 2ND PETITIONER

AND

AHMED ISSACK HASSAN 1ST RESPONDENT

UHURU KENYATTA 2ND RESPONDENT

WILLIAM SAMOEI RUTO 3RD RESPONDENT

The 2013 presidential election was conducted in a free, fair, transparent and credible manner in compliance with the provisions of the Constitution and all the relevant provisions of the law

Reported by Kakai Toili

Electoral Law - elections - presidential elections - tabulation of presidential election results - inclusion of rejected votes in determining the final tally of votes - whether the rejected votes ought to have been included in determining the final tally of votes in favour of each of the presidential candidate - whether the presidential election held on March 4, 2013, was conducted in a free, fair, transparent and credible manner, in compliance with the provisions of the Constitution and all relevant provisions of the law.

Brief facts

The consolidated petitions were filed challenging the March 4, 2013 presidential elections on grounds that included the assertion that the election was not conducted in a free, fair, transparent and credible manner, in compliance with the provisions of the Constitution and all relevant provisions of the law.

Issues

- i. Whether the presidential election held on March 4, 2013, was conducted in a free, fair, transparent and credible manner, in compliance with the provisions of the Constitution and all relevant provisions of the law.
- ii. Whether the rejected votes ought to have been included in determining the final tally of votes in favour of each of the presidential candidate.

Held

1. The elections were conducted in compliance with the Constitution and the law.
2. The 3rd and 4th respondents were validly elected as President and Deputy President.
3. Rejected votes ought not to have been included in calculating the final tallies in favour of each presidential candidate.

Petition No 4 and 5 of the consolidated petitions dismissed.



Orders

- i. *As to Petition No 3 of the consolidated petitions, the prayer by the petitioners seeking a declaration of recomputation of percentages by the 2nd respondent was declined as the court had no jurisdiction.*
- ii. *The detailed judgement containing the reasons for decision of the court to be issued within two weeks from the date of the issuance of the order of the court.*
- iii. *Each party to bear his/her/it's own costs.*

Citations

Cases

None referred to

Statutes

Kenya

Constitution of Kenya In general - (Cited)

Advocates

None mentioned

ORDER

1. After extensive deliberations, we are happy to announce the Supreme Court has reached a unanimous decision on all the four issues that fell for determination in presidential election Petition No 3, 4 and 5 as consolidated.
2. The following is the unanimous decision of the court:
 - (i) As to whether the presidential election held on March 4, 2013, was conducted in a free, fair, transparent and credible manner, in compliance with the provisions of the Constitution and all relevant provisions of the law; it is the decision of the court that the said elections were indeed conducted in compliance with the Constitution and the law.
 - (ii) As to whether the 3rd and 4th respondents were validly elected and declared as President elect and Deputy President elect of the Republic of Kenya respectively, by the second respondent in the presidential elections held on the March 4, 2013; it is the decision of the court that the 3rd and 4th respondents were validly elected.
 - (iii) As to whether the rejected votes ought to have been included in determining the final tally of votes in favour of each of the presidential candidate by the 2nd respondent; it is the decision of the court that such rejected votes ought not to have been included in calculating the final tallies in favour of each presidential candidate.
 - (iv) As to what consequential declarations, orders and reliefs, that this honorable court ought to grant based on the above determinations, the following are the orders of the court:
 - a. Petition No 5 of the consolidated petitions is hereby dismissed.
 - b. Petition No 4 of the consolidated petitions is hereby dismissed.
 - c. As to Petition No 3 of the consolidated petitions, the prayer by the petitioners seeking a declaration of recomputation of percentages by the 2nd respondent is declined as the court as no jurisdiction.



- d. Regarding orders as to costs, the court orders that each party bears his/her/it's own costs.
3. The detailed judgement containing the reasons for decision of the court will be issued within two weeks from today.
4. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 30TH MARCH, 2013.

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WM MUTUNGA

CHIEF JUSTICE & PRESIDENT JUSTICE OF THE SUPREME COURT

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PK TUNOI

JUSTICE OF THE SUPREME COURT

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MK IBRAHIM

JUSTICE OF THE SUPREME COURT

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JB OJWANG

JUSTICE OF THE SUPREME COURT

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SC WANJALA

JUSTICE OF THE SUPREME COURT

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NS NDUNGU

JUSTICE OF THE SUPREME COURT

I certify that this is a true Copy of the original

REGISTRAR

SUPREME COURT OF KENYA

