



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kuria & 5 others v Hassan & 4 others (Petition 3, 4 & 5 of 2013 (Consolidated))  
[2013] KESC 15 (KLR) (Election Petitions) (25 March 2013) (Directions)**

*MOSES KIARIE KURIA & 2 OTHERS V ISSACK HASSAN & ANOTHER*[2013]eKLR

Neutral citation: [2013] KESC 15 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
ELECTION PETITIONS  
PETITION 3, 4 & 5 OF 2013 (CONSOLIDATED)  
WM MUTUNGA, CJ & P, PK TUNOI, MK IBRAHIM,  
JB OJWANG, SC WANJALA & N NDUNGU, SCJJ  
MARCH 25, 2013**

**BETWEEN**

**MOSES KIARIE KURIA ..... 1<sup>ST</sup> PETITIONER  
DENIS NJUE ITUMBI ..... 2<sup>ND</sup> PETITIONER  
FLOWRENCE JEMATIAH SERGON ..... 3<sup>RD</sup> PETITIONER**

**AND**

**ISSACK HASSAN ..... 1<sup>ST</sup> RESPONDENT  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 2<sup>ND</sup>  
RESPONDENT**

**AS CONSOLIDATED WITH  
PETITION 4 OF 2013**

**BETWEEN**

**GLADWELL WATHONI OTIENO ..... 1<sup>ST</sup> PETITIONER  
ZAHID RAJAN ..... 2<sup>ND</sup> PETITIONER**

**AND**

**AHMED ISSACK HASSAN ..... 1<sup>ST</sup> RESPONDENT  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 2<sup>ND</sup>  
RESPONDENT**



UHURU MUIGAI KENYATTA ..... 3<sup>RD</sup> RESPONDENT  
WILLIAM SAMOEI RUTO ..... 4<sup>TH</sup> RESPONDENT

AS CONSOLIDATED WITH  
PETITION 5 OF 2013

BETWEEN

RAILA ODINGA ..... PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT

AHMED ISSACK HASSAN ..... 2<sup>ND</sup> RESPONDENT  
UHURU MUIGAI KENYATTA ..... 3<sup>RD</sup> RESPONDENT  
WILLIAM SAMOEI RUTO ..... 4<sup>TH</sup> RESPONDENT

**Supreme Court issues orders of scrutiny and retallying of results in some polling stations in the 2013 presidential elections**

Reported by Kakai Toili

**Brief facts**

The instant application sought orders of scrutiny and retallying of results of some polling stations in the 2013 presidential elections.

**Orders**

- i. *There was to be a scrutiny of all form 34 which were used by the IEBC in tallying the presidential votes from each of the 33400 polling stations in the country including the form 34 used by IEBC in tallying the diaspora votes.*
- ii. *The scrutiny was to aim at establishing the number of registered voters, the number of valid votes cast and the number of rejected votes as indicated on each form.*
- iii. *There was to be scrutiny of all form 36 which were used by IEBC in aggregating the tallies of presidential votes from all form 34s.*
- iv. *The scrutiny would aim at establishing the accuracy or otherwise of the total tallies of the presidential votes as indicated on the form 34s.*
- v. *The scrutiny was to also aim at comparing the number of registered voters indicated in form 34 and the number of registered voters on the principal register.*
- vi. *There was to be a re-tallying of the presidential votes in the following 22 polling stations [list annexed], using forms 34, 36 and the principal register.*
- vii. *The re-tally was to aim at establishing whether the number of votes cast in each of the 22 polling stations exceeded the number of registered voters as indicated in the principal register.*
- viii. *The principal register that was to be used in the exercise was the external hard drive presented by IEBC in their annexure AIH.9 in the replying affidavit of the 1<sup>st</sup> respondent.*
- ix. *The exercise was to be carried out on the March 26, 2013, from 8.00 am. at a designated venue. The parties would be notified of the venue by the Registrar.*



- x. *The results of the exercise were to be filed in the Supreme Court Registry by latest 4.00 pm on Wednesday the March 27, 2013.*
- xi. *The petitioner(s) were to each jointly appoint 10 agents to act as observers during the scrutiny exercise as per orders i – vi.*
- xii. *The respondents were to each jointly appoint 10 agents to act as observers during the scrutiny exercise as per orders i – vi.*
- xiii. *An oath of secrecy and confidentiality was to be administered to each and every one of the designated agents referred to in order x and xi, for the purpose of carrying out the exercise. The oath was to be administered by a Registrar of the court on the March 26, 2013 at 7.30 am. The venue of the oath would be communicated by the Registrar.*

#### **Citations**

#### **Cases**

None referred to

#### **Statutes**

None referred to

#### **Advocates**

None mentioned

### **DIRECTIONS**

1. Having been seized of the 3 petitions challenging the presidential election of 2013 and having carefully studied the pleadings therein, the court hereby makes the following orders:
  - (1) There shall be a scrutiny of all Form 34 which were used by the IEBC in tallying the presidential votes from each of the 33400 polling stations in the country including the form 34 used by IEBC in tallying the Diaspora votes.
  - (2) The scrutiny shall aim at establishing the number of registered voters, the number of valid votes cast and the number of rejected votes as indicated on each form.
  - (3) There shall be scrutiny of all Form 36 which were used by IEBC in aggregating the tallies of presidential votes from all Form 34s.
  - (4) The scrutiny will aim at establishing the accuracy or otherwise of the total tallies of the Presidential votes as indicated on the Form 34s.
  - (5) The scrutiny shall also aim at comparing the number of registered voters indicated in form 34 and the number of registered voters on the principal register.
  - (6) There shall be a re-tallying of the presidential votes in the following 22 polling stations [list annexed], using Forms 34, 36 and the principal register.
  - (7) The re-tally shall aim at establishing whether the number of votes cast in each of these 22 polling stations exceeds the number of registered voters as indicated in the principal register..
  - (8) The principal register that shall be used in this exercise is the external hard drive presented by IEBC in their annexure AIH.9 in the replying affidavit of Ahmed Isaac Hassan.
  - (9) This exercise shall be carried out on the March 26, 2013, from 8.00 am. at a designated venue. The parties will be notified of the venue by the Registrar.



- (10) The results of this exercise shall be filed in the Supreme Court Registry by latest 4.00 pm on Wednesday the March 27, 2013.
- (11) The petitioner(s) shall each jointly appoint 10 agents to act as observers during the scrutiny exercise as per orders 1 – 6 above..
- (12) The respondents shall each jointly appoint 10 agents at act as observers during the scrutiny exercise as per orders 1 – 6 above.
- (13) An oath of secrecy and confidentiality shall be administered to each and every one of these designated agents referred to in order 10 and 11 above, for the purpose of carrying out this exercise. The oath shall be administered by a Registrar of this court on the March 26, 2013 at 7.30 am. The venue of the oath shall be communicated by the Registrar.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MARCH, 2013.**

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**W.M. MUTUNGA**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

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**P.K. TUNOI**

**JUSTICE OF THE SUPREME COURT**

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**M.K. IBRAHIM**

**JUSTICE OF THE SUPREME COURT**

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**J.B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

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**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

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**N.S. NDUNGU**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true Copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

