



**Kuria & 5 others v Hassan & 5 others (Petition 3, 4 & 5 of 2013 (Consolidated)) [2013] KESC 26 (KLR) (25 March 2013) (Ruling)**

Neutral citation: [2013] KESC 26 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA  
PETITION 3, 4 & 5 OF 2013 (CONSOLIDATED)  
WM MUTUNGA, CJ & P, MK IBRAHIM, PK TUNOI,  
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  
FLORENCE JEMATIAH SERGON ..... 3<sup>RD</sup> PETITIONER**

**AND**

**AHMED 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  
UHURU KENYATTA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WILLIAM SAMOEI RUTO ..... REPUBLIC**



**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 KENYATTA ..... 3<sup>RD</sup> RESPONDENT**

**WILLIAM SAMOEI RUTO ..... 4<sup>TH</sup> RESPONDENT**

**Presidential Election Petitions Consolidated for expeditious disposal**

*Three presidential elections filed in respect of the 2013 presidential elections were consolidated and were to be heard and determined as one consolidated petition. The court explained that there was need for the expeditious disposal of the petitions.*

Reported by Lynette A. Jakakimba

***Electoral Law** - presidential election petitions - consolidation of presidential petitions with similar issues - petitions challenging the validity of the 2013 presidential elections - whether presidential election petitions could be consolidated in so far as the petitions were in respect of the same respondents and with regard to the validity of the Presidential Election.*

**Brief facts**

Presidential Election Petition Nos 3, 4, and 5 of 2013 were filed before the Supreme Court of Kenya challenging the validity of the March 4, 2013 presidential election. The instant matter was a determination on whether the three petitions should be consolidated.

**Issues**

Whether presidential election petitions should be consolidated as they were in respect of the same respondents and with regard to the validity of the presidential election.

**Held**

1. Time was of the essence in the disposal of petitions which related to matters that touched on great public interest and the Constitution which was the supreme law of the land.
2. Although Petition No 3 of 2013 raised distinct and separate questions that were to be determined and was a 'stand alone' petition, there was need for expeditious disposal of the petitions and determination of the many complex matters.
3. The three petitions were to be consolidated as one petition. However Petition No 3 of 2013 would be heard within the consolidated petition and the questions therein determined without prejudice to the parties.
4. The file for Petition No 5 would be deemed to be the pilot file in which all the proceedings would be recorded and the final decision made therein. The petitioner therein would be referred to as the petitioner.



5. The petitioners in Petition No 4 of 2013 would be jointly referred to as the 2<sup>nd</sup> petitioner. The petitioners in petition No. 3 of 2013 would be jointly referred to as the 3<sup>rd</sup> petitioner. The respondents would remain as in Petition No 5.

*Presidential Election Petition Nos 3, 4, and 5 of 2013 were consolidated as one petition.*

#### **Citations**

#### **Cases**

None referred to

#### **Statutes**

#### **Kenya**

Constitution of Kenya In general -(Cited)

#### **Advocates**

None mentioned

### **RULING**

1. We have considered the question of the possible consolidation of the three Petitions namely: Petitions 3, 4 and 5 of 2013. We have carefully considered the submissions by counsel regarding this issue.
2. All these Petitions are in respect of the same respondents with regard to one matter; the validity of the Presidential Election of March 4, 2013.
3. As we have indicated time is of the essence in the disposal of these Petitions which relate to matters that touch on great public interest and on the [Constitution of Kenya](#) which is the supreme law of the Land.
4. We agree with counsel that Petition No 3 of 2013 raises distinct and separate questions to be determined and is a stand alone Petition. However we note the need for expeditious disposal, the time constraints, pressure on the court and many complex matters to be determined.
5. We are of the view that the three Petitions should be consolidated as one Petition. This means that Petition No 3 of 2013 will be heard within the consolidated Petition and the questions therein determined without prejudice to the parties.
6. We hereby order the consolidation of the three Petitions.
7. The file for Petition No 5 shall be deemed to be the Pilot file in which all proceedings shall be recorded and the final decision made therein.
8. The petitioner in Petition No 5 of 2013 shall be referred to as the 1<sup>st</sup> petitioner. The petitioners in Petition No. 4 of 2013 shall be jointly referred to as the 2<sup>nd</sup> petitioner. The petitioners in Petition No 3 of 2013 shall be jointly referred to as the 3<sup>rd</sup> petitioner. The respondents shall remain as in Petition No 5.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> 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 this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

