



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM: NAMBUYE, MUSINGA & GATEMBU, JJA)**  
**CIVIL APPEAL NO.176 OF 2017**

**BETWEEN**

**PERPETUA MPONJIWA.....APPELLANT**

**VERSUS**

**ELIUS OKUMU OTIENO.....1<sup>ST</sup> RESPONDENT**

**THE ORANGE DEMOCRATIC MOVEMENT (ODM)**

**SPECIAL COUNTY APPEALS TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**MARY VICTORIA.....3<sup>RD</sup> RESPONDENT**

**THE RETURNING OFFICER KILELESHA WARD.....4<sup>TH</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....5<sup>TH</sup> RESPONDENT**

*(Appeal from the Judgment and Ruling of the High Court of Kenya at Nairobi (Kimaru, J) Dated 16<sup>th</sup> May, 2017 & 30<sup>th</sup> May, 2017 in Election Petition No. 30 of 2017)*

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**JUDGMENT OF THE COURT**

The consolidated appeals were exhaustively argued before us by learned counsel on board for the respective parties on the 21<sup>st</sup> day of June, 2017. We have accordingly considered the record in totality, in the light of the rival submissions by the said respective learned counsel, and the authorities relied upon by either side in support of their respective submissions, and for the reasons that we shall give on the 28<sup>th</sup> July, 2017, we hereby make the following orders:

1. The Appeal be and is hereby allowed.

2. The Judgment of the **Hon. Mr. Justice Luka Kimaru, J** delivered on the 16<sup>th</sup> day of May, 2017 and as affirmed by him on the 31<sup>st</sup> day of May, 2017 be and is hereby set aside.

3. The nomination of **Elius Otieno Okumu**, the first respondent, as the Orange Democratic Movement Party's candidate for the position of County Assembly representative for Kileleshwa Ward, Nairobi County, pursuant to the order of **Kimaru, J.** of 16<sup>th</sup> May, 2017 and as affirmed on the 31<sup>st</sup> day of May, 2017 be and is hereby set aside.

4. The Democratic Movement party, the 2<sup>nd</sup> respondent, is hereby directed to conduct fresh nomination exercise for the position of County Assembly representative for Kileleshwa ward in accordance with the party's current Constitution, Election and Nomination Rules within 48 hours from 4.00pm today.

5. Each Party to bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JUNE, 2017**

**R.N. NAMBUYE**

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**JUDGE OF APPEAL**

**D.K. MUSINGA**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU FCIArb**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original**

**DEPUTY REGISTRAR.**



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