



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ELECTION PETITION NO. 12 OF 2017

(CONSOLIDATED WITH ELECTION PETITION NO. 10 OF 2017)

IN THE MATTER OF ELECTIONS ACT, 2011

AND

**IN THE MATTER OF THE ELECTIONS (PARLIAMENTARY AND COUNTY ELECTION) PETITION
RULES, 2017**

AND

**IN THE MATTER OF THE ELECTION FOR MEMBER OF NATIONAL ASSEMBLY FOR NYARIBARI
CHACHE CONSTITUENCY**

BETWEEN

CHRIS MUNGA N. BICHAGE 1ST PETITIONER

ZAHEER JHANDA2ND PETITIONER

JAMES F. O KENANI3RD PETITIONER

VERSUS

I.E.B.C 1ST RESPONDENT

JULIUS MEJA OKEYO (RETURNING OFFICER)2ND RESPONDENT

RICHARD NYAGAKA TONGI3RD RESPONDENT

RULING

Where service of summons or any other court documents is in dispute, the onus is on the process server to prove the service.

Such prove is achieved by the filing of an affidavit of service and an inquiry through cross-examination if deemed necessary.

I have considered the affidavit of service and the cross-examination and re-examination of the process server Philip Kimutai Langat.

My findings are as follows;

1. There is no concrete evidence supporting the service of affidavits of Joseph Oiruria Nyachae, John Ratemo and the affidavit referred to in paragraph 4 of the affidavit of service (The replying affidavit of the 2nd Respondent filed in response to petition No. 10 and intended for use in this consolidated suit). No explanation is given in the affidavit of why the said documents are not stamped, whether they were joined together with the response as a single document and whether the recipient was asked to stamp and sign and he declined to do so.

2. There is evidence of service of response to the petition by the 2nd Respondent as discerned from the due stamping and signing on top thereon with the stamp of Ms Oguttu, Ochwangi, Ochwal & Co. Advocates and the spirited effort in cross-examination to disown the stamp and signature fails on account of lack of rebuttal evidence by way of affidavit which was neither sought nor provided.

Dated, Signed and Delivered in Kisii this 19th day of December, 2017

A. K. NDUNG'U

JUDGE



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