



No.782

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ELECTION PETITION NO.2 OF 2013

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE ELECTIONS ACT, NO. 24 OF 2011

AND

IN THE MATTER OF INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT NO.9 OF 2011

AND

IN THE MATTER OF ELECTION FOR BONCHARI CONSTITUENCY (NO.261)

BETWEEN

JOHN OROO OYIOKA PETITIONER

AND

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

PETER RESA, RETURNING OFFICER 2ND RESPONDENT

ZEBEDEO JOHN OPORE 3RD RESPONDENT

CONSOLIDATED WITH

ELECTION PETITION NO.4 OF 2013

IN THE MATTER OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ELECTIONS ACT, NO. 24 OF 2011

AND

IN THE MATTER OF INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT NO.9 OF 2011

AND

IN THE MATTER OF ELECTION FOR BONCHARI CONSTITUENCY (NO.261)

BETWEEN

NYABARO ONDITI PETITIONER

VERSUS

ZEBEDEO JOHN OPORE 1ST RESPONDENT

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PETER RESA, RETURNING OFFICER 2ND RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION..... 3RD RESPONDENT

RULING

Introduction

1. At the pre-trial conference held on the 27th May 2013 in the presence of all parties, these two petitions were consolidated to be heard together as they contest the election of Zebedeo John Opoire as the duly elected member of the National Assembly of Bonchari Constituency. By that time, there were 2 pending applications, one filed by each petitioner. It was agreed that the notice of motion dated 9th May 2013 filed by the Petitioner in Petition No.2 of 2013 be disposed of by way of written submissions limited only to the prayer for recount, such submissions to be filed and exchanged on or before 31st May 2013 save that the applicant's written submissions were to be filed and served on or before 29th May 2013. The application dated 20th May 2013, filed by the Petitioner in petition No.4 of 2013 was allowed by consent for appearance of the police witness on 1st and 2nd July 2013. Meantime, the petitions were fixed for hearing on 24th and 25th June 2013 and 1st, 2nd and 3rd July 2013.
2. In his petition dated 25th March 2013, the petitioner prayed for, *inter alia*, under prayer (c) thereof, an order for opening of the ballot boxes and scrutiny and counting of ballot papers therein for determination of accurate score of the candidates in the election whilst scrutinizing the accuracy of the contents of the following documents:-

- i. Form 35 from various polling stations handed to the petitioner's agents and annexed to the supporting affidavit of the petitioner;
- ii. Form 35 from various polling stations submitted by the 2nd

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Respondent to the 1st Respondent;

- iii. Form 35 deposited in the ballot boxes of each polling station;
- iv. The initial Form 36;
- v. The revised Form 36.

3. The petitioner in petition No.4 of 2013 prayed for, *inter alia*, a scrutiny of the votes recorded as having been cast in the parliamentary elections in the constituency as well as a recount of the ballot papers cast at the elections in Bonchari Constituency.

The Application

4. The Petitioner in Petition No.2 of 2013, John Oroo Oyioka, filed a Notice of Motion dated 9th May 2013 brought under **section 80 (3) of the Elections Act, 2011, the Elections (Parliamentary and County Elections) Petition Rules 2013 Rules 4, 5 and 33** thereof and **Order 57** of the **Civil Procedure Rules 2010**, seeking orders THAT:-

a. *The ballot boxes used in the election of MP for Bonchari Constituency be opened and the ballot papers there in be scrutinized and counted in the course of the hearing of the Petition in order to determine the accurate score of the candidates in the election and the accuracy of the contents of the following documents to aid in the determination of the issues related to the petition.*

- i. *Form 35 from various polling stations handed to the Petitioner's agents and annexed to the supporting affidavit of the Petitioner.*
- ii. *Form 35 from various polling stations submitted by the 2nd Respondent to the 1st Respondent.*
- iii. *Form 35 deposited in the ballot boxes of each polling station.*
- iv. *The initial Form 36.*
- v. *The revised Form 36.*

5. The application is premised on the following three (3) grounds:-

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- a. *The Petitioner petitioned this Honourable Court for the nullification of the results of the election of Member of National Assembly for Bonchari Constituency held on 4th of March 2013 as declared by the 2nd Respondent due to massive irregularities in the counting of the votes in some polling stations and inaccurate tallying of the votes by the 2nd Respondent.*
- b. *The issues raised in the Petition including inaccurate tallying and irregular counting of votes in some polling stations would be addressed and conclusively disposed of by recounting of the votes as sought in this Application.*

- c. *The determination of this application shall aid in the expeditious determination of the petition.*
6. The application is also supported by the sworn affidavit of the Petitioner dated 9th May 2013. The deponent avers that the March 4, 2013 General Election for Member of the National Assembly for Bonchari Constituency as declared by the 2nd Respondent was marred by massive irregularities in the counting of the votes in some polling stations and inaccurate tallying of the votes by the 2nd Respondent. He cites unprocedural counting of votes, inaccurate counting of votes, alteration of votes entered in forms 35 from various polling stations, inaccurate posting of votes from Forms 35 to Form 36 and the existence of two Form 36's as some of the irregularities committed by the Respondents herein. The deponent accuses the 2nd Respondent of nebulously undertaking the vote tallying exercise which process he says gave rise to election results that did not reflect the votes garnered by each candidate.
7. The applicant also contends that the total votes cast as shown in the

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initial Form 36 was given as 33294 while the sum of the total valid votes and the rejected votes is 33275, thus having a difference of 21 votes. The applicant prays for the orders sought and says that the irregularities aforementioned can only be meaningfully addressed and resolved by scrutiny and counting of votes.

8. In response to the Notice of Motion, the 1st and 2nd Respondents filed the following 9 grounds of opposition:-
1. **THAT** *the application seeks to circumvent the essence of the petition and cogent answer thereto and the Affidavits filed in reply thereto by the 2nd and 3rd Respondents as it seeks to have the conjectured statements and baseless allegations made in the petition declared as sufficient evidence for purposes of scrutiny.*
 2. **THAT** *Rule 33 (2) of the Elections (Parliamentary and County Election) Petition Rules, 2013 require that there be sufficient reason for scrutiny or re-count while non is apparent in the subject application.*
 3. **THAT** *the Court's jurisdiction is strictly limited to making an order for either scrutiny or re-count and not both scrutiny and re-count as prayed for in prayer (a) of the subject application, thus the Honourable Court is lacking in jurisdiction in that respect.*
 4. **THAT** *the prayers as couched in prayer (a) of the instant application are without the law and or Rules – Elections (Parliamentary and County Elections) Rules, 2013, governing Election Petitions. The scrutiny contemplated under Rule 33 (4) is in mandatory terms confined to the polling stations in which the results are disputed and does not contemplate the blanket approach adopted by the Petitioner.*
 5. **THAT** *no grounds for a scrutiny as contemplated under section 82 (2) of the Elections Act, 2011 have been brought out in the application.*
 6. **THAT** *prayer (a) in the instant application is a mirror-image of the*

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prayer (c) in the petition and thus there is nothing interlocutory about the instant application.

7. **THAT** *the instant application amounts to mere allegations without any evidence in support thereof. Further the allegations have been answered in the 1st and 2nd Respondent's response to the Petition.*
 8. **THAT** *in any event and without prejudice to the foregoing, and in strenuous opposition to the instant application the 1st and 2nd Respondents rely on the answer to the petition dated 16th April, 2013 and filed on even date and the Affidavits of Gedion Otworu Barongo, Susan Obachi, Faith Kerubo Onyancha, Albert Miriaria Mekubo and Alexander Okeiga Obwocha filed therewith. This further demonstrates the absurdity of the instant application as a hearing thereof would demand an examination of evidence presented by all parties in the petition thus in fact constitution a hearing of the Petition.*
 9. **THAT** *for the reasons aforesaid, the instant application is a legal nullity, gravely incompetent, frivolous, vexatious and indeed constitutes an abuse of the court process thus deserving instant dismissal.*
9. Thus the position taken by the 1st and 2nd Respondents is that the Petitioner/applicant has not complied with the Elections (Parliamentary and County Election) Petition Rules 2013 (the Rules) which require that there be sufficient reason demonstrated by the petitioner before a court can make an order for scrutiny or recount and that the petitioner herein has not demonstrated such sufficiency; that the application as drawn is bad in law and incompetent as it seeks to have this court make an order for both scrutiny and recount when the court's jurisdiction is limited to making an order for either one or the other and not both and finally that scrutiny contemplated under Rule 33 (4) is confined only to those polling stations in which the results are contested and does not

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contemplate the blanket approach adopted by the Petitioner. The 1st and 2nd Respondents pray that the Petitioner's Notice of Motion dated 9th May 2013 be dismissed with costs as the same is said to be an abuse of the court process.

10. The 3rd Respondent also filed Grounds of Opposition in response to the Petitioner's Notice of Motion dated 9th May 2013 to the effect THAT:-
 1. *An order for scrutiny or recount is not granted as a matter of course.*
 2. *No evidence has been tendered to establish a basis or sufficient basis or foundation for ordering a scrutiny or recount of the votes cast in respect of the election of the Member of the National Assembly for Nyaribari Chache (sic).*
 3. *There is no evidence of irregularities to warrant a scrutiny or recount.*
 4. *The motion is premature, as the Respondents have not been given a chance to explain the allegations made against them.*
11. During the pre-trial conference held on 27th May 2013, parties agreed to canvass the application by way of written submissions limited only to the prayer for recount. The parties have duly complied. Parties also made oral arguments and cited case law to support their respective

positions.

12. Counsel for the petitioner submitted vide the written submissions dated 28th May 2013 and filed in court on 30th May 2013 that the petitioner herein has made this application in the spirit of **Election (Parliamentary and County) Petition Rule 4** of the **Rules 2013** (the Rules) which provides that the court in exercising its powers under the Constitution and the Election Act (the Act) shall give effect to the

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overriding objective of the Rules which “**is to facilitate the just, expeditious, proportionate and affordable resolution of election petitions under the Constitution and the Act.**” The gist of the petitioner’s argument is that the petition herein raises issues concerning electoral irregularities that bring into question the authenticity and accuracy of the figures presented by the 1st and 2nd Respondents in Forms 35 and 36 on whose basis the 3rd Respondent was declared the winner of the said election. The petitioner contends that because of the said irregularities, the election for Member of the National Assembly for Bonchari Constituency cannot be said to have been free, fair, transparent and conducted in an impartial, neutral efficient accurate and accountable manner.

13. To support the contention that the election was neither fair nor free, reliance was placed on Court of Appeal decision in **James Omingo Magara –vs- Manson Oyongo Nyamweya & 2 others – Civil Appeal No.8, Court of Appeal at Kisumu [2010] e KLR.** where Omolo JA held *inter alia*; that:-

“It is clear to me from these provisions that in an election petition where the complaints concern the manner in which the body in charge of the electoral process has carried out its mandate --- an election court is perfectly entitled to, indeed I would go so far as to say such a court is bound to examine whether the election and its attendant processes were transparent, free and fair.”

14. Counsel also cited another passage from the same authority to the effect that:-

“These forms i.e. Form 16A and Form 17A constitute the written evidence showing, as they do, the figures which a returning officer announces, from where the figures have come and how they have been arrived at. But if the very authority of these figures is in issue, i.e.

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where did they come from, who compiled them and how they were arrived at, can one conclude that the electoral process has been transparent, free and fair” I agree with the assertion in **JOHN FITCH –VS. TOM STEPHENSON AND THREE OTHERS [2008] EWHC 501 (OB)** that:- “... the courts will strive to preserve an election as being in accordance with the law, even where there have been significant breaches of official duties and election rules, providing the results of the election was unaffected by those breaches... This is because where possible, the courts seek to give effect to the will of the electorate ...’ *Though I agree with the assertion I must nevertheless ask myself:- (1) How is the will of the electorate manifested” (2) Is the court simply to look at the figures and*

say:- “A has **25,000** votes and B has **20,000** votes and therefore A has won”” That would be very basic, and in my view an unrealistic way of looking at the matter. The court must still ask questions similar to those asked by the learned trial Judge. In which polling stations were those votes cast” Who presided over the poll in the stations” How many voters were registered in that station” How many of them actually voted” How many votes did each candidate get in each polling station” I agree with the learned Judge that the matter must go beyond simple arithmetic and certain basic questions such as ones listed must be easily answerable.”

15. Reliance was further placed on Harris –vs- Ryan [1997] Mplr (2d) (Nfld.Sc) which was cited in the James Omingo Magara case (above) and also cited in Dorothy E. Browton –vs- Jean Hart Kangas & others, Suit No.C198-01-10265 QB Manitoba where the court held, *inter alia*, that:-

“When interpreting legislation relating to elections, one may reasonably conclude the primary purpose is to ensure that we have a free, open and properly conducted democratic election. If there have been irregularities, these should be exposed to the view of the general public through the returning officer and through the candidates and their agents involved in the recount.”

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16. In light of the above authority, learned counsel for the petitioner submitted that a recount of the votes in this case would assist the court in determining the validity of the entire electoral process by pointing out irregularities and mistakes on the part of the Returning Officer. Also see Joho & 2 others –vs- Nyange & another.
17. On the issue of scrutiny, though the same was removed from the application at the pre-trial conference, learned counsel relied on the case of Maina Kamanda –vs- Margaret Wanjiru Kariuki & 2 others – Nairobi EP No.5 of 2008 [2008] e KLR in which the court correctly stated that an order of scrutiny can be made at any stage of the hearing before final judgment either on the court’s own motion or if a basis had been laid, and particularly where it can be shown that **“there were irregularities in the election process or if there is a mistake or mistakes on the part of the Returning Officer or other election Official.”** That in the instant case, a scrutiny is justified because the petitioner has alleged irregularities and mistakes in the electoral process.
18. The petitioner in petition No.4 of 2013, Nyabaro Onditi supports the notice of motion dated 9th May 2013 on grounds that both the petition and the supporting affidavit reveal clear irregularities in the elections and that to refuse to grant the prayer for scrutiny would be tantamount to rejecting and/or dismissing the petition. Further, that the application should be allowed by dint of the provisions of **section 82** of the **Act** and **rules 32** and **33** of the **Rules**. That once scrutiny and recount are undertaken; the petition can be disposed of without further delay. To support these submissions, learned counsel for the petitioner cited Said Hemed Said –vs- Emmanuel Karisa Maitha & another – Msa

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CACA No.237 of 1999 and **Maina Kamanda –vs- Margaret Wanjiru Kariuki & another** (supra).

Submissions by the Respondents

19. The 1st and 2nd Respondents filed submissions in opposition to the application. At the outset, learned counsel pointed out, citing the pre-trial directions that the only prayer being sought on this application is for recount, the petitioner/applicant having dropped his prayer for scrutiny at the pre-trial conference.
20. The gist of the 1st and 2nd respondent's submissions is that no order for recount can flow out under **rule 33 (2)** of the **Rules** without there being an application for scrutiny under **sub-rule (1)**; that having dropped the prayer for scrutiny the Petitioner/Applicant prepared to subject the prayer for recount to a natural death.
21. Further, that even if the petitioner's original prayer for scrutiny and recount remained intact, which is not the case herein, the application would still be incapable of being granted because the court's jurisdiction under the relevant **rule 33 (2)** is limited to making an order either for scrutiny or recount and not both scrutiny and recount. On the prayer for scrutiny, learned counsel submitted that even if the prayer were before the court, the same would not stand as there is no evidence in the application showing that the validity of the votes is in doubt.
22. Finally, learned counsel submitted that no sufficient reason has been given by the petitioner to justify the making of an order for scrutiny or recount. Reliance was placed on **M.R. Gopala Krishnan –vs- Thachady Prabha Karan & others 1995** as cited in **Vadiveli –vs- Sundaram &**

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others – Civil Appeal No.6443 of 1999 where it was held, *inter alia*, that :-

“—unless the Election Petition is able not only to plead and disclose the material facts but also substantiate the same by means of evidence of reliable character that there existed a *prima facie* case for recount, no tribunal or court would be justified in directing a recount.”

23. Learned counsel therefore urged this court to find the Petitioner's application to be lacking in merit, frivolous, vexatious and an abuse of the court process and deserving only of dismissal with costs to the 1st and 2nd Respondents.
24. By the undated written submissions filed on behalf of the 3rd Respondent on 31st May 2013, learned counsel appearing for the 3rd Respondent contended that consequent upon the consent orders recorded on 27th May 2013, the Petitioner's application is limited to the prayer for recount only of the ballot papers. It was submitted that under part VI of the Rules, a recount or scrutiny of ballot papers are independent prayers and that a party who prays for a recount does not benefit from a scrutiny. Counsel urged the court to find that having dropped his prayer for scrutiny; he cannot be heard to urge the issue in the written submissions.
25. Counsel further submitted that an order for recount can only be made when reason for the same exists, for example where it is shown by the applicant that there were irregularities in the election

process or that there was a mistake on the part of the returning officer or other election officials.
26. The 3rd Respondent submitted that the notice of motion for recount founded on allegations of impropriety is premature and lacking in merit since the respondents have not been heard on those allegations.

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He urged court to dismiss the application with costs.

Legal Provisions

27. **Section 82 (1)** of the **Act** clothes an election court with wide jurisdiction when considering an application for scrutiny. The sub-section provides that: **“An election court may, on its own motion or on application by any party to the petition, during the hearing of an election petition order scrutiny of votes to be carried out in such a manner as the election court may determine.”**
28. The Rules equally clothe the court with similar jurisdiction. **Rules 32** and **33** of the **Rules** provide as follows:-

“32 (1) Where the only issue in the election petition is the count or the tallying of the votes received by the candidates, the petitioner may apply to the court for an order to recount the votes or examine the tallying.

(2)The Petitioner shall specify in the election petition that he does not require any other determination except a recount of the votes or the examination of the tallies.

33 (1) The parties to the proceedings may, at any stage, apply for scrutiny of the votes for purposes of establishing the validity of the votes cast.

(2) Upon an application under sub-rule (1), the count may, if it is satisfied that there is sufficient reason, order for a scrutiny or recount of the votes.

(3) The scrutiny or recount of ballots shall be carried out under the direct supervision of the Registrar and shall be subject to directions as the court may give.

(4) Scrutiny shall be confined to the polling stations in which the results are disputed and shall be limited to the examination of –

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- (a) The written statements made by the presiding officers under the provisions of the Act;**
- (b) The copy of the register used during the elections;**
- (c) The copies of the results of each polling station in which the results of the election are in dispute;**
- (d) The written complaints of the candidates and their representatives;**
- (e) The packets of spoilt papers;**
- (f) The marked copy register;**
- (g) the packets of counterfoils of used ballot papers;**
- (h) the packets of counted ballot papers;**
- (i) The packets of rejected ballot papers; and**
- (j) The statements showing the number of rejected ballot papers.**

29. The above legal provisions have been the subject of discussion and determination by the superior courts in the authorities cited by counsel in both their written and oral submissions. I have set out the same in the preceding paragraphs of this ruling; the bedrock of the said decisions being that neither scrutiny nor recount shall be ordered by an election court as a matter of course; the court must in each situation be satisfied that there exists sufficient reason to require an examination of the ballot either by way of scrutiny or recount.

30. In **Rashid Hamid Ahmed Amana –vs- IEBC and others, Malindi Election Petition No.6 of 2013** (unreported) Kimaru J held, *inter alia*, that a petitioner can only lay sufficient basis for scrutiny and recount of the votes after such “**petitioner has adduced evidence during the actual hearing of the petition.**” The petitioner and his witnesses in the instant

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case have testified, though the Respondents' case is yet to be heard. If this was a case for scrutiny, it would have been necessary to fully hear the Petitioners' and the Respondents' cases before going into the issue of scrutiny. The petitioner's request in this case is however for a recount.

Findings and Conclusion

31. I have heard the Petitioner's case as supported by his own testimony and that of his witnesses. The petitioner and all his witnesses have been subjected to rigorous cross-examination by counsel for the Respondents. The only issue that arises for determination is whether I should order a recount. Both in the petition and the petitioner's supporting affidavit, the petitioner has set out a number of named polling stations in which there appear to be discrepancies between total number of votes cast and registered voters or in which there is either an increase or decrease in the number of votes cast for the various candidates. The petitioner has also complained of inaccurate counting of votes and inaccurate posting of results from Form 35 to Form 36.
32. In **Richard N. Kalembe Ndile & others –vs- Dr. Patrick Musumba Mwea & others, Machakos EP No.7 of 2013**, (unreported), Majanja J. held that the court has jurisdiction to define the scope of the scrutiny and the terms under which it is to be conducted. In the case, the petitioner asked for a scrutiny. The learned judge also held that the election “**court is entitled**” to consider whether to order a full examination of the ballots and related material, and whether or not a recount of the votes should be conducted or whether the scrutiny should be limited to tallying by

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reference to Form 35” and that whatever option is taken by the court will depend on the circumstances of each case.

33. In the instant case, the petitioner is said to have lost the election by 5 votes and considering the allegations made concerning alterations and errors in some of the Form 35's and Form 36 and the fact that there appear to have been 2 Form 36's, I am satisfied that for clarity of the results, a recount of the ballots from all the 82 polling stations be undertaken. The respondents have admitted, both during cross examination of the petitioner and his witnesses, and also in their responses to the petition that some errors do indeed exist. It is only a recount which will determine whether indeed the 3rd Respondent defeated the petitioner by 5 votes or more or less. The petitioner has told the court that he would be fully satisfied with the outcome of the recount, whether or not the recount gives him the winning number of votes.
34. In reaching this decision to take a recount of votes cast in all the polling stations, I am guided by the provisions of **Rule 32 (1)** of the **Rules**, which does not limit the extent to which a recount may be undertaken. In my humble view, the wider the net of the recount the better so that no stone at any of the polling stations in Bonchari Constituency is left unturned. In **Justus Omiti –vs- Walter Enock Nyambati Osebe & others – Kisii EP No.1 of 2008** (unreported) Musinga J (as he then was) ruled that “**All issues raised in the election petition and those which crop up**

during the hearing, whether pleaded or not, and which had the potential to affect adversely the final result, and the will of the voters in a constituency must come under spotlight, scrutiny

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and interrogation ---.” In this case, all the votes cast must be subjected to interrogation so that the court is assured that the 3rd Respondent's win and the Petitioner's loss were informed by correct figures of votes cast for them and for the other candidates who were in the same race.

35. Before I conclude this ruling, I will address the petitioner's prayers in the petition. Prayers (a) and (b) are for declarations that the 3rd Respondent, Zebedeo John Opore was not duly elected and the election was void and that the petitioner John Oroo Oyioka was validly elected respectively. It is in prayer (c) that the petitioner prays for scrutiny and recount. In my view, the declarations sought in prayers (a) and (b) of the petition can only be made if scrutiny and/or counting is done under prayer (c) thereof. Substantially therefore, the real prayer by the Petitioner is for recount of the ballots, and in my view, his application dated 9th May 2013 falls within the purview of **Rule 32** of the **Rules**.

36. In the premises, I am satisfied that an order for recount is merited and accordingly I allow the application for recount on the terms set out hereafter.

Order and Directions

37. There shall be recount of the votes in Bonchari Constituency as follows:-

- a. *There shall be a recount and ascertainment of the number of votes cast for each candidate for Member of the National Assembly obtained in each of the 82 polling stations in Bonchari Constituency.*
- b. *The recount shall be undertaken under the supervision of the Deputy Registrar of this court.*

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- c. *To ensure transparency, the Petitioners and the Respondents shall each be allowed to have two (2) agents present during the exercise.*
- d. *The exercise for recount shall commence on 5th July 2013 at 9.00 a.m. and shall proceed on a day to day basis until the exercise is concluded.*
- e. *The matter shall be mentioned on 19th July at 9.00 a.m. for further directions.*
- f. *In the meantime, the hearing of the petition shall proceed in accordance with the directions given on 27th May 2013.*
- g. *The costs of this application shall abide the outcome of the petition.*

38. It is so ordered.

Dated and delivered at Kisii this 02nd day of July, 2013

RUTH NEKOYE SITATI

JUDGE.

In the presence of:

Mr. Nyamweya for Petitioner in Petition 2/2013

Mr. Omwenga for Petitioner in Petition No.4/2013

Mr. Rigoro for 1st and 2nd Respondents in Petition 2/2013 and 2nd and 3rd Respondent in Petition 4/2013

M/s Nyaencha & Nyaundi for 3rd Respondent in Petition No.2/2013 and 1st Respondent in Petition 4/2013

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