



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**ELECTION PETITION NO. 4 OF 2013**

**BETWEEN**

**GEORGE ALADWA OMWERA ..... PETITIONER**

**AND**

**BENSON MUTURA KANG'ARA ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE KWAMBOKA MOGAKA ..... 2<sup>ND</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

During the evidence of the Petitioner's witness 1, **Daniel Nyakundi**, it was clear from his affidavit sworn on **5<sup>th</sup> April, 2013** at paragraphs 10 to 13 that he had received two ballot papers for Member of Parliament elections in Makadara Constituency, Kaloleni Primary School, Polling Centre. That he had voted with both ballot papers and was assisted in the exercise by at least two officials of IEBC. His evidence on cross-examination and Re-examination reiterated the facts and confirmed the same. The witness was also taken through and did read the provision of **section 58 (m)** of the Elections Act and understood that voting twice is an offence punishable by a fine not exceeding one million shillings or **6 years** in prison. Counsel for IEBC seeks the arrest of the witness on his own admission of wrongdoing for further investigations. Counsel for the Petitioner seeks that the IEBC officials who were mentioned by the witness should also be arrested for investigation and a list be brought to court of all officers involved in the election at Kaloleni.

This court is a court of law. An offence has been admitted to have been committed by witness Daniel Nyakundi. It would be improper if such actions, admitted in court, should not be further investigated so that all who are culpable face the consequences. Aiding and abetting any crime is also a criminal offence.

Accordingly I am inclined to, and do order as follows:

1. Daniel Nyakundi ID No. 24634472 be arrested forthwith on his own clear and unambiguous admission of culpability as having voted twice contrary to **section 58** of the Elections Act and that investigations be carried out by the police in that regard.

2. Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent do provide this court with the list of all officers of IEBC who were involved or engaged at Kaloleni Primary School Streams 2 and 5 not later than close of business today.
3. All such officers shall forthwith record a statement with the police and investigations be carried out by police with the aim of identifying the officers or officer of IEBC who were complicit in the unlawful act.
4. That the matter be handled hereafter by the appropriate court at first instance.

Orders accordingly.

**DATED** at Milimani Law Courts, **NAIROBI** this 6<sup>th</sup> Day of June, 2013.

.....

**R. MWONGO**

**JUDGE**



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