



Case Number:	Election Petition 1 of 2013
Date Delivered:	10 Jun 2013
Case Class:	Civil
Court:	Election Petition in Magistrate Courts
Case Action:	Ruling
Judge:	D K Kemei - Spm
Citation:	Michael Odoyo Nyakwaka v Boaz Owiti Okoth & 2 others [2013] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Migori
Docket Number:	-
History Docket Number:	-
Case Outcome:	Viva Voce evidence to be taken & leave to file further affidavit granted.
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT AT MIGORI

ELECTION PETITION NO.1 OF 2013

IN THE MATTER OF ELECTIONS ACT 2011

**ELECTION OF THE MEMBER OF THE COUNTY ASSEMBLY SEAT OF NORTH KADEM
WARD**

MICHAEL ODOYO NYAKWAKAPETITIONER

VERSUS

BOAZ OWITI OKOTH..... 1ST RESPONDENT

RETURNING OFFICER FOR NYATIKE CONSTITUENCY.....2ND RESPONDENT

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

COURT (RULING ON PRE-TRIAL CONFERENCE):

Sentiments by the Learned Counsels for the parties have been noted. During the pre-trial conference it had been agreed that matter, do proceed for trial today. Since there are chances that there are matters of fact raised in the affidavits and in order for the parties to appreciate that indeed the petition is a Suit for trial, I order that Viva Voce evidence be taken since the witnesses have already filed affidavits, and in order to ensure expeditious trial, the deponents shall be called to introduce themselves and confirm the aspect of the affidavit and then to be cross examined and thereafter re-examined by Counsel calling him or her.

D.K. KEMEI

SPM. 10/6/13

COURT:

Petitioner's case proceeds.

COURT: The petitioners application dated 27/6/13 is fixed for hearing on 17/7/13. Petitioner to ensure he secures to gazette Notice as required by the Rules. The 2nd and 3rd Respondent be served.

D.K. KEMEI

SPM.2/7/13

COURT: I have considered the sentiments of all learned Counsels. Today's date had been slated for the hearing of the petitioners application dated 27/6/13 seeking to withdraw the petition. I note all parties have filed away affidavits and as such application should be due for

canvassing. On the other hand a gazette notice towards the withdrawal of the petition has been filed today and it is dated 12/7/13 and its notice to the public is to expire within seven days from that date.

Seven days from that date. Ideally the petitioner should have first sought leave to withdraw the petition after which if leave is granted proceeds to file the application and to accompany same with a gazette notice. These state of affairs did not take place in this matter. Parties were to appear before Court on 2nd July, 2013 to take a date for Judgment, but instead the present application was filed by the petitioner.

Indeed all Election Petitioner have timelines set by the constitution. The replying affidavits were filed on 12/7/13 and 16/7/13 and both raise the issue of costs to be borne pursuant to the withdrawal of the petition.

The issue of the petitioners Learned Counsel seeking time to file supplementary affidavit regarding the issue of costs is not a major one same can be easily canvassed during the oral submissions. I would reject the request on that ground but for the fact that the seven days given in the gazette notice have not lapsed. I shall order the matter to be deferred to a date after the 19/7/13. This is to take care of members of public and any interested parties regarding the aforementioned gazette notice. I shall therefore allow the adjournment but order that the petitioner meets today's costs of the three respondents.

D.K. KEMEI

SPM 17/7/13

LATER:

COURT: By consent matter is rescheduled to 24/7/13. Petitioner granted leave to file supplementary affidavit but should file and serve upon Respondents within two days from today. The Respondents are also given leave to file further replying affidavits if need be by 23/7/13.

D.K. KEMEI

SPM.17/7/13



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