



Case Number:	Election Petition 4 of 2013
Date Delivered:	06 Jun 2013
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Richard Mururu Mwongo
Citation:	George Aladwa Omwera v Benson Mutura Kang'ara [2013] eKLR
Advocates:	-
Case Summary:	<p><u>Witness in an election petition punished for voting twice on his own admission</u></p> <p>George Aladwa Omwera v Benson Mutura Kang'ara & 2 others</p> <p>Election Petition No 4 of 2013</p> <p>High Court at Nairobi</p> <p>R. Mwongo, J</p> <p>June 6, 2013</p> <p>Reported By Nelson K Tunoi & Beatrice Manyal</p> <p><u>Brief Facts</u></p> <p>During the evidence of the Petitioner's witness 1(Daniel Nyakundi), it was clear from his affidavit 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</p>

same.

Issue:

- i. Whether a witness who had testified to have voted twice in an election could be arrested on his own admission of wrongdoing pending further investigations together with other IEBC officials who had also been mentioned by the witness to have aided in the commission of the crime.

Electoral law-electoral offence- evidence- whether a witness who had testified to have voted twice in an election could be arrested on his own admission of wrongdoing pending further investigations together with other IEBC officials who had also been mentioned by the witness to have aided in the commission of the crime.

Elections Act No. 24 of 2011 section 58 (M) Provides;

58(m) voting twice is an offence punishable by a fine not exceeding one million shillings or 6 years in prison.

Held:

1. The High Court was a court of law. An offence had been admitted to have been committed by a witness. 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 was also a criminal offence.

The witness be arrested on his own admission of wrongdoing for further investigations; the IEBC

	<i>officials who were mentioned by the witness to record a statement with the police pending investigations; A list to be brought to court of all officers involved in the election at Kaloleni primary school; the matter be handled hereafter by the appropriate court.</i>
Court Division:	Constitutional and Human Rights
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petition Allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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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 1ST RESPONDENT

FLORENCE KWAMBOKA MOGAKA 2ND RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 3RD RESPONDENT

RULING

During the evidence of the Petitioner's witness 1, **Daniel Nyakundi**, it was clear from his affidavit sworn on **5th 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 2nd and 3rd 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 6th Day of June, 2013.

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R. MWONGO

JUDGE



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