



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
NAIROBI ELECTION PETITION NO. 5 OF 2013

KAKUTA HAMISI

.....**PETITIONER**

VERSUS

PERIS TOBIKO.....1ST
RESPONDENT

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....2ND
RESPONDENT

RETURNING OFFICER KAJIADO EAST CONSTITUENCY3RD
RESPONDENT

RULING (NO. 2)

1. On 5th March 2013, the election results for the National Assembly seat for Kajiado East were announced. The 1st respondent was declared the winner with 23,645 votes. The petitioner came second with 22,771 votes. The margin was only 874 votes. It was a narrow divide. The petitioner questions the count. He casts aspersions on the integrity of the tallying process and conduct of election officials. By a notice of motion dated 10th May 2013, the petitioner seeks scrutiny of votes and other election materials in 5 polling centres.

2. The Court stayed the hearing of that prayer until the conclusion of oral evidence. The primary reason was to grant the petitioner opportunity to lay a firm basis for an order of scrutiny. The trial closed on 19th June 2013. The motion for scrutiny was then canvassed on 20th June 2013. Part of the motion praying to strike out the 2nd and 3rd respondents’ response and replying affidavits was spent and was the subject of a considered ruling delivered on 24th May 2013.

3. The Notice of Motion is anchored upon sections 80 (3) and 82 of the Elections Act 2011, article 35 of the Constitution and rules 14 and 33 of the Elections (Parliamentary and County