



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Petition 5 of 2013**

**PHILIP MUKWE WASIKE ..... PETITIONER**  
**AND**  
**JAMES LUSWETI MUKE ..... 1<sup>ST</sup> RESPONDENT**  
**IEBC ..... 2<sup>ND</sup> RESPONDENT**  
**SILAS ROTICH ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

With regard to the response filed by 2<sup>nd</sup> and 3<sup>rd</sup> respondents, I have seen the error referred to, which is conceded by the counsel for petitioner and for 1<sup>st</sup> respondent. It is really an honest mix-up which causes unnecessary confusion. I therefore order that para 6 of the response be and is hereby struck out in its entirety. The prayer (1) is also in reference to the wrong party and the same is marked as abandoned.

As regards the correction of names on para 7 of the petition, again I think that is an honest mistake as the names are repeated. Counsel seem to have no problem with the request and I direct that the 2<sup>nd</sup> name appearing at para 7 of the petition be amended to read ERICK KIMINGICHI WAPANGANA.

As regards filing of reply to the response, I am in agreement with Mr. Lubullelah that Election Petitions are causes *sui generis* in the sense that they are a special category of suits. Apart from that we are operating on an extremely tight constitutional time frame and I do not find any automatic right to reply to the response – the rules are clear – a petition is filed, a response made, then matters move with the greatest of respect to conclusion, that would only serve to delay the process and I detect no prejudice cause by lack of a reply to response.

I decline to grant such orders as no basis has been laid to warrant such orders.

As regards the 1<sup>st</sup> respondent who has not filed their response, at least ten days ago, the 1<sup>st</sup> respondent became aware of the petition, and having been elected, I would like to believe that he is aware of the Constitutional time frame in these matters. Time is of essence and for him to wait until the eve of the court session to now say he is not ready because he only just realized that his advocate had not filed any response, does not speak very well of him in terms of diligence. Of course that response ought to have been filed within 14 days of the service of the petition, which was served by way of publication in the newspaper. However for the sake of substantive justice, I think the provision must not be condemned in its restrictive sense, and more so because of the provisions of Rule 20 of the Election Petition Rules. I therefore grant leave to the respondent to file and serve his responses plus all the witness statements by 7<sup>th</sup> May 2013. Pre-trial on 9<sup>th</sup> May 2013. Notices to issue.

H.A. OMONDI  
JUDGE  
03/05/2013