**Ngethe v Njeru and another**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 6 November 2006

**Case Number:** 5/03

**Before:** Visram J

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Election law – Election petitions – Vital documents lost – Whether court could proceed with hearing*

*of petition.*

**Editor’s Summary** By an affidavit sworn on 16 March 2006, Mr Daniel Mosomi, the Procurement and Supplies Manager with the Electoral Commission of Kenya deponed that relevant records and materials in relation to the Parliamentary Election in Kiambaa constituency had been lost. Following the deposition, the petitioner made an application that the petition was untriable and undeterminable. He further sought that the Electoral Commission of Kenya and its Returning Officer be condemned to pay the costs of the petition. The first respondent opposed the application on the ground that there was no law providing for such an application and, therefore, the application was incompetent.

**Held** – The fact that the National Assembly [Election Petition] Rules did not provide for the consequences of loss of election material by the election officials does not leave a litigant without a remedy. The petition could not be heard and determined in a fair and just manner, in the absence of vital documents required by law to be placed before the court 48 hours before the hearing of the petition. Application allowed with costs to the first respondent in whose custody the lost documents were placed.

**No cases referred to in ruling**