



THE REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Maraga: CJ & President, Mwilu; DCJ & V-P, Ibrahim, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

PRESIDENTIAL ELECTION PETITION NO. 2 OF 2017

(APPLICATION FOR JOINDER AS INTERESTED PARTY)

BETWEEN

HON. JOHN HARON MWAU.....PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....1ST RESPONDENT

THE CHAIRPERSON OF INDEPENDENT

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

H.E UHURU MUIGAI KENYATTA3RD RESPONDENT

AND

BEN CALEB WAMAYA.....APPLICANT/ INTERESTED PARTY

RULING

(An application for joinder as an interested party under Rule 25 of the Supreme Court Rules, 2012 as read with Rule 4 (2) of the Supreme Court (Presidential Election Petition) Rules, 2017)

- 1. UPON** perusing the application dated 7th November, 2017 and filed on even date by **Ben Caleb Wamaya** for joinder as an interested party in **the Presidential Election Petition No. 2 of 2017** and;
- 2. UPON** reading: **the affidavit of Mr. Ben Caleb Wamaya** (registered to vote at Carwash Polling Station code No.015, in Kisumu Central Constituency, Kisumu County), sworn on the 7th November, 2017;

3. UPON considering the arguments made therein, in which **the applicant contended that he is a Registered Voter, who wished to cast his vote in the 26th October, 2017 repeat Presidential election but he was denied his right to do so due to the unavailability of election staff and materials and the actions of the Police chasing away people from the polling station.**

4. The applicant has not demonstrated that he has an identifiable stake in the present petition neither has he demonstrated that he will be prejudiced if he is not enjoined as a party taking into consideration the issues he raises have already been addressed by the parties.

5. Having considered the application, by a unanimous decision of the Court, we find that the applicant does not qualify to be joined as an interested party and make the following orders under Rule 25 of the Supreme Court Rules as read with Rule 4(2) of the Supreme Court (Presidential Election Petition) Rules 2017.

6. ORDERS

REASONS

The application is disallowed.

The application does not meet the principles laid out in ***Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others***, Supreme Court Petition No. 12 of 2013, [2015] eKLR and ***Francis Kariuki Muruatetu & another v Republic & 5 others***, Supreme Court Petition No. 15 & 16 of 2015 (consolidated); [2016] eKLR in that the applicant does not intend make submissions before the Court that are not already presented by the rest of the parties.

DATED and DELIVERED at NAIROBI this 14th Day of November, 2017.

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT

OF THE SUPREME COURT

.....

J.B. OJWANG

JUSTICE OF THE SUPREME COURT

.....

S. N. NDUNGU

JUSTICE OF THE SUPREME COURT

.....

P. M. MWILU

DEPUTY CHIEF JUSTICE &

VICE-PRESIDENT OF THE SUPREME COURT

.....

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

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SUPREME COURT OF KENYA



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