

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome CJ & P; Mwilu, DCJ & VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ)

PRESIDENTIAL PETITION NO. E006 OF 2022

— BETWEEN —

MOSES KURIA.....1ST PETITIONER

GEOFFREY KING'ANGI MUTURI.....2ND PETITIONER

-AND-

HON. RAILA AMOLO ODINGA.....1ST RESPONDENT

AZIMIO LA UMOJA ONE KENYA PARTY.....2ND RESPONDENT

-AND-

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....1ST INTERESTED PARTY

HON. DAVID WAHIGA MWAURE.....2ND INTERESTED PARTY

AGANO PARTY.....3RD INTERESTED PARTY

(A Notice of Preliminary Objection to the Petition dated 21st August, 2022)

RULING OF THE COURT

[1] UPON considering the 1st and 2nd Respondents' Notice of Preliminary Objection dated 26th August, 2022 and filed on even date seeking to strike out the Petition dated 21st August, 2022 on the ground that this Court lacks jurisdiction to determine the Petition; and

[2] UPON considering the 1st and 2nd Respondents' submissions dated 26th August, 2022 in support of their preliminary objection to the effect that pursuant to Article 163(3)(a) as read with Article 140 of the Constitution, the jurisdiction of this Court in a presidential election is confined to determination of the dispute on validity of a presidential election; that the substratum of the Petition does not challenge the validity of a presidential election; and that the petitioners' reliefs do not seek to invalidate the outcome of a presidential election. They contend in the same vein, that because the petition is not brought pursuant to Article 140 of the Constitution, it is not time bound to be heard within 14 days as restated by this Court in *David Pkosing v. National Super Alliance & 12 others* [2017] eKLR and *Institute for Democracy Governance v. Raila Amolo Odinga & 6 Others* [2017] eKLR; and

[3] Citing the decisions in *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd* [1989] KLR 1; *Samuel Kamau Macharia v. Kenya Commercial Bank Limited* [2012] eKLR and *Okiya Omtatah Okoiti v. Independent Electoral and Boundaries Commission & another; Uhuru Muigai Kenyatta & 7 others (Interested Parties)*, SC Petition No. 18 of 2017; [2020] eKLR, they urge that in the absence of jurisdiction, this Petition is incompetent.

In view of the foregoing, **WE NOW OPINE** as follows:

[4] The Petition relates to events that took place at the Bomas of Kenya, the tallying centre for presidential election results on 13th/ 14th August, 2022. It claims that the conduct of some officials allied to one of the presidential candidates, Hon. Raila Odinga, the 1st respondent, were intended to obstruct or hinder the 1st Interested Party (IEBC) from the execution of its lawful duties in respect of the presidential election; that the conduct was in violation of the Constitution, the Elections Act, and the Code of Electoral conduct; and that, for these reasons, the

1st and 2nd respondents are not entitled to any reliefs from this Court under Article 140 of the Constitution. As a consequence, the petitioners have asked the Court to, *inter alia*, direct the Director of Criminal Investigations (DCI) together with the Director of Public Prosecutions (DPP) to commence investigations into the conduct of the respondents and their agents with a view to preferring criminal charges under the Election Offences Act.

[5] The Court's jurisdiction in terms of Article 163(3)(a) of the Constitution leaves no doubt that that jurisdiction is limited only to hearing and determining disputes relating to the elections to the office of President arising under Article 140, namely, the questions as to validity of presidential election. The petition contemplated under Article 140 must be one challenging the election of the President-elect and must be instituted within seven days from the date of the declaration of the results of the presidential election.

[6] The Petition as framed, and though filed in the manner of a presidential election petition, is not in fact seeking to challenge the declaration of Hon. William Ruto, who was declared by the IEBC as the President-elect. Indeed, Hon. William Ruto, is not even named as a party to the petition and the remedies sought are alien to those contemplated in the Constitution and in law, whether the election of the President- elect is valid.

[7] We are satisfied on the basis of the foregoing that the objection meets the strictures enunciated in the famous of ***Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd*** [1969] EA 696. It is incompetent and we do not hesitate to strike it out.

[8] **CONSEQUENTLY**, we sustain the preliminary objection and strike out the petition with no orders as to costs. With this conclusion, the Notice of Motion dated 25th August, 2022 and filed on 28th August, 2022 by the petitioner cannot stand.

[9] In view of the foregoing, the petitioners are therefore entitled to a refund of Kshs. 1,000,000/- deposited as security for costs paid upon lodging of the petition.

[10] ACCORDINGLY, we make the following orders:

- i) The Preliminary Objection dated 26th August, 2022 is sustained.*
- ii) Presidential Petition No. E006 of 2022 is hereby struck out.*
- iii) The Notice of Motion dated 25th August, 2022 is similarly struck out.*
- iv) The deposit of the sum of Kshs. 1,000,000/- as security for costs to be refunded to the Petitioners.*
- v) There shall be no orders as to costs*

It is so ordered.

DATED and DELIVERED at NAIROBI this 29th Day of August, 2022.

.....
M.K KOOME
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

.....
P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE
PRESIDENT OF THE SUPREME COURT

.....
M.K. IBRAHIM
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

**I certify that this is a true
copy of the original.**

REGISTRAR
SUPREME COURT OF KENYA