

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

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

PRESIDENTIAL ELECTION PETITION NO. E001 of 2022

BETWEEN

JOHN NJOROGE KAMAUPETITIONER

AND

WAFULA CHEBUKATI.....1ST RESPONDENT

WILLIAM SAMOEI RUTO2ND RESPONDENT

RIGATHI GACHAGUA3RD RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....4TH RESPONDENT

RAILA AMOLO ODINGA.....1ST INTERESTED PARTY

MARTHA WANGARI KARUA.....2ND INTERESTED PARTY

JULIANNA CHERERA.....3RD INTERESTED PARTY

IRENE MASIT.....4TH INTERESTED PARTY

JUSTUS NYANGAYA.....5TH INTERESTED PARTY

FRANCIS WANDERI.....6TH INTERESTED PARTY

PROF. ABDI YAKUB GULIYE.....7TH INTERESTED PARTY

BOYA MOLU.....8TH INTERESTED PARTY

(Being an application to strike out the 3rd, 4th, 5th, 6th, 7th, and 8th Interested Parties from the Petition)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 26th August, 2022 and filed on 27th August, 2022 by the 2nd and 3rd Respondents, anchored on Rule 17 of the Supreme Court (Presidential Election Petition), Rules 2017 and all other enabling provisions of the laws seeking the following orders:

a) *The 3rd, 4th, 5th, 6th, 7th, and 8th Interested Parties be struck out of this Petition.*

b) *The costs of this application be to the Applicants.*

[2] UPON considering the grounds on the face of the application, the supporting affidavit sworn on 26th August, 2022 by Josphat Koli Nanok and submissions dated 26th August, 2022 and filed on 27th August 2022. It is the Applicants' argument that the the 3rd, 4th, 5th, 6th, 7th, and 8th Interested Parties do not meet the strict legal requirements to be enjoined as Interested Parties in the Petition as settled by the Court in the case of ***Francis Kariuki Muruatetu & another v. Republic & 5 Others (2016) eKLR***, their participation prejudices the Applicants case and violates their right to fair trial as the 5th Interested Party, despite not being a substantive party to the Petition, has through an affidavit introduced a new cause of action that ought to be by way of Petition or Cross Petition. It is further contended that Independent Electoral and Boundaries Commission is an independent commission established pursuant to Article 248 and 249 with the capacity to sue and be sued and not subject to the control of any person or authority, negating the joinder of the 3rd to 8th Interested Party to the proceedings. The 3rd and 8th Interested Parties are not necessary parties as they enjoy immunity pursuant to Article 250 (9) of the Constitution, no reliefs are sought against them and their joinder infringes on the law in the ***Mudavadi v. Kibisu case***.

[3] UPON perusing the Replying Affidavit sworn on 28th August, 2022 by John Njoroge Kamau and filed on 28th August, 2022 and the submissions dated 28th August and filed on even date, all in opposition to the application. It is contended that the joinder of the 3rd, 4th, 5th, 6th, 7th and 8th Interested Parties was neither illegal nor irregular in the proceedings, rather are necessary and their joinder will result in the complete settlement of all the issues in the proceedings. It is further asserted that, the supporting affidavit is filed by a stranger to the proceedings. The 3rd, 4th, 5th, 6th, 7th and 8th Interested Parties have made no application to be struck and have instead responded to the

various petitions filed. Allowing the application would be prejudicial to his rights as voter pursuant to Article 38 (c) as read together with Article 81(e) of the Constitution. He also asserts that the 3rd, 4th, 5th, 6th, 7th and 8th Interested Parties are relevant to the proceedings as they are Commissioners in IEBC and their participation will not prejudice the 2nd and 3rd Respondents as the 2nd Respondent in ***Presidential Election Petition No. E005 of 2022, Raila Amolo Odinga & Another v. IEBC & 8 Others***. He filed a replying affidavit where at paragraph 20(e) and (f), he makes allegations against them while referring to them as “disaffected Commissioners”. It is also pointed out that this affidavit has been adopted by the 2nd and 3rd Respondents in the present proceedings vide Response to the Petition at paragraphs 6, 7 and 8. It is also added that they have also been adversely mentioned by the 1st and 4th Respondents in their Response dated 26th August, 2022 and that they would suffer prejudice if they are struck out and adverse findings are made against them.

WE NOW PRONOUNCE as follows, bearing in mind all these submissions:

[4] APPRECIATING that the Supreme Court has previously admitted various persons as Interested Parties in Presidential Election Petitions, the coming into force of the Supreme Court (Presidential Election Petition Amendment) Rules, 2019 (Legal Notice No. 7 of 2020) did away with practice.

[5] NOTING that Rule 17A (4) of the Supreme Court (Presidential Election), Rules 2017 categorically provides that “*an application by any person to join the petition as an interested party shall not be allowed.*”

[6] FURTHER taking into consideration that joinder as an interested party should be of the party’s own volition and not by the originator of proceedings.

[7] WE OPINE if a party has an identifiable stake and would be directly affected by the outcome of the presidential petition, then they ought to file a Petition.

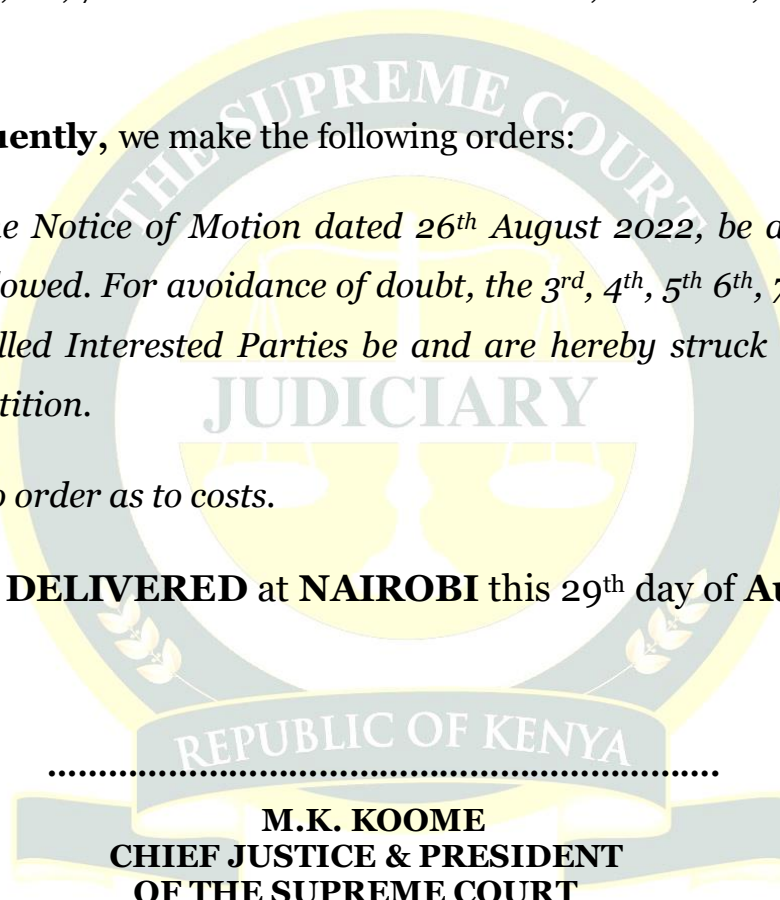
[8] FOR THE AFORESTATED REASONS, we find that the application has merit and is allowed.

[9] BE THAT AS IT MAY, in the event of consolidation, the interested parties are named as respondents in various other Petitions, wherein the issues raised cut across the various petitions. The 3rd, 4th, 5th 6th, 7th and 8th Interested Parties will have opportunity to respond to any allegations made against them. Due to the foregoing, it is this Court's finding that in allowing the application, the 3rd, 4th, 5th, 6th, 7th and 8th Interested Parties will, therefore, not suffer any prejudice.

[10] Consequently, we make the following orders:

- a) *The Notice of Motion dated 26th August 2022, be and is hereby allowed. For avoidance of doubt, the 3rd, 4th, 5th 6th, 7th and 8th so-called Interested Parties be and are hereby struck out from the Petition.*
- b) *No order as to costs.*

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

