

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. E005 of 2022

BETWEEN

RAILA ODINGA1ST PETITIONER

MARTHA WANGARI KARUA.....2ND PETITIONER

AND

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

WANYONYI WAFULA CHEBUKATI.....2ND RESPONDENT

BOYA MOLU3RD RESPONDENT

PROF.ABDI YAKUB GULIYE.....4TH RESPONDENT

JULIANNA WHONGE CHERERA.....5TH RESPONDENT

JUSTUS NYANGAYA.....6TH RESPONDENT

FRANCIS WANDERI.....7TH RESPONDENT

IRENE MASIT.....8TH RESPONDENT

WILLIAM SAMOEI RUTO.....9TH RESPONDENT

(Being an application to admit on record Further Affidavits)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion application dated 28th August, 2022 and filed on even date by the 5th Respondent, anchored on Rule 17 of the Supreme Court (Presidential Election), Rules 2017 seeking the following orders;

a) THAT this Honourable Court be pleased to admit on record the
Replying Affidavits of Juliana Cherera, Justus Nyangaya, Francis

Wanderi and Irene Masit, being members of the 1st Respondent, attached hereto.

b) THAT the costs of this application be provided for.

[2] UPON considering the grounds on the face of the application, the supporting affidavit sworn on 28th August, 2022 by Juliana Cherera and filed on even date. It is the Applicants' argument that the 2nd, 3rd and 4th Respondents in their Replying Affidavits have alleged that all the members of IEBC attended a meeting with a delegation from the National Security Advisory Committee (the NSAC) comprising Dr. Kennedy Kihara, the Principal Administrative Secretary in the Office of the President, Mr. Kennedy Ogeto, the Solicitor General, Mr. Hillary Mutyambai, the Inspector General of Police and Lieutenant General Fredrick Ogolla, Vice Chair of the Kenya Defence Forces, to subvert the will of the people. It is further contended that the 5th, 6th, 7th and 8th Respondents agreed with the proposal from the NSAC delegation to alter the results of the presidential election in favour of one candidate against another. To contending that unless the 5th, 6th, 7th and 8th Respondents are allowed to file responses to the said allegations, they will suffer great prejudice as the Court will make adverse findings without hearing the affected Respondents. We have also perused the Further Affidavit sworn on 28th August 2022 and filed on even date by the 5th Respondent.

We now **OPINE** as follows:

[3] We have considered the Application and the given justifications for the admission of the Further Affidavit sworn by the 5th Respondent.

[4] Under Rule 17 of the Supreme Court (Presidential Election Petition) Rules, 2017 there is no provision to allow any further or other affidavits of this nature. However, we have considered the special circumstances where the facts/allegations made by the 2nd, 3rd and 4th Respondents are contained in their response to the Petition. These events took place during the pendency of this matter. It would only be fair and just, considering the serious nature of the

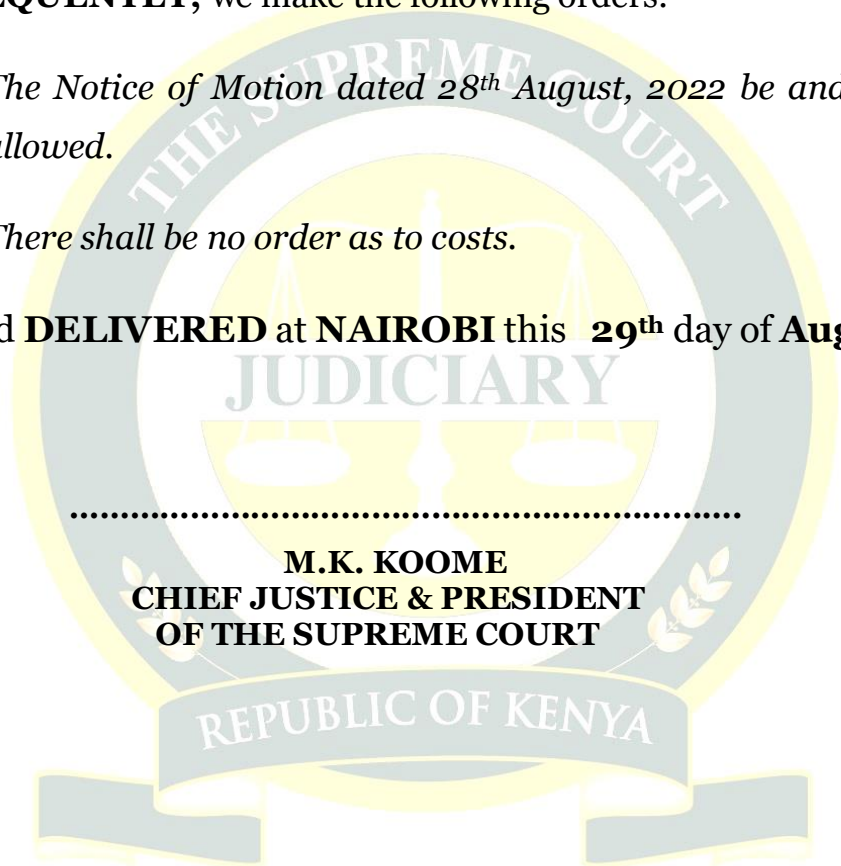
allegations and implications of the same, that the 5th, 6th, 7th and 8th Respondents ought to be given the opportunity to be heard regarding the same.

[5] We deem this to be an exceptional circumstance considering all aspects of the matter. We hereby invoke the provisions of the Supreme Court (Presidential Election Petition) Rules, 2017, Rule 4(2) as read together with Section 3A of the Supreme Court Act (Act No. 7 of 2011) on the inherent powers of the Court, and allow the Further Affidavits to be admitted as applied for.

[6] CONSEQUENTLY, we make the following orders:

- a) *The Notice of Motion dated 28th August, 2022 be and is hereby allowed.*
- b) *There shall be no order as to costs.*

DATED and **DELIVERED** at **NAIROBI** this **29th** day of **August** 2022



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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

