

**THE 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**

**RAILA ODINGA ..... 1<sup>ST</sup> PETITIONER**

**MARTHA WANGARI KARUA ..... 2<sup>ND</sup> PETITIONER**

**VERSUS**

**INDEPENDENT ELECTORAL AND BOUNDARIES**

**COMMISSION..... 1<sup>ST</sup> RESPONDENT**

**WANYONYI WAFULA CHEBUKATI..... 2<sup>ND</sup> RESPONDENT**

**BOYA MOLU..... 3<sup>RD</sup> RESPONDENT**

**PROF ABDI YAKUB GULIYE ..... 4<sup>TH</sup> RESPONDENT**

**JULIANA WHONGE CHERERA..... 5<sup>TH</sup> RESPONDENT**

**JUSTUS NYANGAYA ..... 6<sup>TH</sup> RESPONDENT**

**FRANCIS WANDERI ..... 7<sup>TH</sup> RESPONDENT**

**IRENE MASSIT..... 8<sup>TH</sup> RESPONDENT**

**WILLIAM SAMOEI RUTO ..... 9<sup>TH</sup> RESPONDENT**

**AND**

**DAVID MWAURE WAIHIGA.....INTENDED INTERESTED PARTY**

*(Being an application by David Mwaure Waihiga to be enjoined as an  
interested Party)*

## **RULING OF THE COURT**

[1] **UPON** perusing the Notice of Motion dated 26<sup>th</sup> August 2022 and filed on 27<sup>th</sup> August 2022, pursuant to Rule 2 and 17 of the Supreme Court (Presidential Petition) Rules 2017, seeking joinder of David Waihiga, the party leader of Agano Party as interested party; and

[2] **UPON** reading the Supporting Affidavit of Mr. David Waihiga Mwaure, the party leader of Agano Party sworn on 26<sup>th</sup> August 2022; and

[3] **UPON** perusing the grounds adduced by the applicant in support of the orders to be enjoined as interested party that is, he was one of the four presidential candidates in the presidential election held on 9<sup>th</sup> August 2022 under the Agano Party Ticket; he actively participated in the said elections from the point of campaigns, casting of ballots, tallying and counting of ballot papers, up to the declaration at Bomas of Kenya; and the Court needs to take his evidence into account to ensure that the final judgment of the Court is based on available evidence; and

[4] **NOTING** that no party has filed a response to the application; and

[5] **CONSIDERING** the provisions of Rule 17A (4) of the Supreme Court (Presidential Election Petition) Rules 2017, which provide that an application by *any* person as an interested party shall not be allowed in a presidential election petition.

[6] **FURTHERMORE**, none of the intended interested party's averments demonstrate the prejudice he will suffer if he was not enjoined. It is also our finding, that the arguments he proposes to make can be adequately argued by other parties in the petition.

[7] For the foregoing reasons, the final Orders of the Court are as follows:

**ORDERS:**

*a. The application dated 26<sup>th</sup> August 2022 and filed on 27<sup>th</sup> August 2022 seeking joinder of David Waihiga Mwaure as Interested Party to this petition is hereby dismissed.*

*b. There shall be no orders as to costs.*

[8] Orders accordingly.

**DATED and DELIVERED at NAIROBI this 29<sup>th</sup> Day of August 2022.**

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**M.K KOOME**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**

.....  
**P.M MWILU**

**DEPUTY CHIEF JUSTICE &**

**DEPUTY 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**

.....  
**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**