

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

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

PRESIDENTIAL ELECTION PETITION NO. E005 OF 2022

(Consolidated with)

PRESIDENTIAL ELECTION PETITION NO. E002 OF 2022

—AND—

PRESIDENTIAL ELECTION PETITION NO. E004 OF 2022

(For purposes of this Application only)

—BETWEEN—

RAILA AMOLO ODINGA.....1ST PETITIONER

MARTHA WANGARI KARUA.....2ND PETITIONER

YOUTH ADVOCACY AFRICA (YAA).....3RD PETITIONER

PETER KIRIKA.....4TH PETITIONER

DAVID KARIUKI NGARI.....5TH PETITIONER

—AND—

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

WANYONYI WAFULA CHEBUKATI.....2ND RESPONDENT

BOYA MOLU3RD RESPONDENT

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

JULIANA WHONGE CHERERA5TH RESPONDENT

JUSTUS NYANG'AYA6TH RESPONDENT

IRENE MASSIT7TH RESPONDENT

WILLIAM SAMOEI RUTO8TH RESPONDENT

Being an application by the 9th respondent to strike out the names of the 3rd to 8th respondents in Petitions E004 of 2022, and E005 of 2022 and the names of the 3rd to 8th and 13th respondents in Petition E002 of 2022

RULING OF THE COURT

[1] William Samoei Ruto, (the applicant) has been named as the 9th respondent in Petitions E002, E004, and E005 respectively. By three separate applications all dated the 27th day of August, 2022, he seeks to strike out firstly, the names of the 3rd to 8th respondents in Petitions E004 and E005 respectively, and secondly, the names of the 3rd to 8th and 13th respondents in Petition E002.

[2] Regarding the 3rd to 8th respondents in the three Petitions, the applicant submits that the said respondents, being members of the 1st respondent, an independent constitutional and corporate entity, cannot be sued in their individual capacity. In support, the applicant cites Section 15 of the IEBC Act, 2011 which insulates and protects the respondents, from being personally liable for any acts done in good faith and in the execution of the 1st respondent’s powers, functions and duties.

[3] As for the 13th respondent in Petition E002, the applicant submits that the said respondent has no role in this Petition, unless this Court grants leave for him to be joined as a Friend of the Court. Further, the applicant argues that the Supreme Court (Presidential Election) Rules, 2017 do not envisage the 13th respondent as a respondent in a Petition challenging the Presidential Elections.

[4] We have considered the applications and written submissions in support thereof. It is not lost on us that one of the main grounds on which the three Petitions are based is that the 1st respondent of which the 3rd to 8th are members, failed to perform its functions under Article 138 (3) (c) of the Constitution. This failure as claimed by the petitioners, was occasioned by the exclusion of the 5th to 8th respondents from the verification and tallying process by the 2nd respondent.

[5] This claim is based on a highly publicized Press statement by these very respondents disowning the declaration of the Presidential Election results by the 2nd respondent. This statement by the four respondents brings them squarely within the ambit of grievance by the petitioners. The latter cannot be faulted for seeking to place before the Court any evidence emanating from the four. To use Section 15 of the IEBC Act, as a shield, would be tantamount to suppressing evidence by the applicant.

[6] Regarding the application to strike out the 13th respondent from Petition E002, it is also not lost on us that the said respondent is the Attorney General of the Republic of Kenya. The holder of such an office, has more capacity than any other litigant in this Country to fend off any attempts to join him in proceedings to which he ought not to be a party. As the Attorney General, he does not need the aid of the 9th respondent to accomplish such a routine task.

ACCORDINGLY, WE MAKE THE FOLLOWING ORDERS:

- (i) *The three applications by the 9th respondent dated 27th August 2022 and filed on 28th August 2022, are hereby dismissed.***
- (ii) *No Orders 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