

**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 2021

RAILA ODINGA.....1ST PETITIONER
MARTHA WANGARI KARUA.....2ND PETITIONER

VERSUS

**THE INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION.....1ST RESPONDENT**
WANYONYI WAFULA CHEBUKATI.....2ND RESPONDENT
BOYA MOLU.....3RD RESPONDENT
PROF ABDI YAKUB GULIYE.....4TH RESPONDENT
JULIANA WHONGE CHERERA.....5TH RESPONDENT
JUSTUS NYANG'AYA.....6TH RESPONDENT
FRANCIS WANDERI.....7TH RESPONDENT
IRENE MASIT.....8TH RESPONDENT
WILLIAM SAMOEI RUTO.....9TH RESPONDENT

AND

FARMERS PARTY OF KENYA..... PROPOSED AMICUS CURIAE

*(Being an application by Farmers Party of Kenya to be enjoined as Amicus
Curiae)*

RULING OF THE COURT

[1] UPON perusing the Amended Notice of Motion dated 26th August 2022 and lodged on the even date by the Applicant, Farmers Party of Kenya, brought

pursuant to the provisions of Articles 163, 140, 159(2) (e) of the Constitution and Rule 17A (1) of the Supreme Court Rules 2017, seeking leave of the Court to be enjoined in the proceedings as amicus curiae; and leave of the Court to file a response to the Petitions herein; and

[2] UPON reading the Affidavit by Irungu Nyakera, the Chairperson of Farmers Party of Kenya sworn on 26th August 2022; and

[3] UPON considering the applicant's grounds in support of the application wherein, it contends that it is a political party which comprises 65% of voters who participated in the concluded general elections and whose objective is among others, to safeguard the interest of ordinary farmers and whose membership consists mainly of farmers and intends to address the Court on:

- i. *Whether the ordinary voter perceived the process to be free, verifiable and transparent?*
- ii. *Whether there is a recourse in the event the Chairperson of the Independent Electoral and Boundaries Commission declines to declare the results?*
- iii. *Whether it is a preserve of the Independent Electoral and Boundaries Commission to deliberate or discuss the result of a polling station and whether such a discussion interferes with the will and power of an ordinary farmer or voter?*

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

[5] FURTHER considering the provisions of Rule 17A of the Supreme Court (Presidential Election Petition) Rules 2017, which makes provision for the admission of a friend of the Court in a presidential election;

[6] WE NOW OPINE as follows:

- i. An Applicant for joinder as an *amicus* has to satisfy this Court that they have fulfilled the legal requirements for joinder. The relevant law is Rule 19 of the Supreme Court Rules 2020. The said Rule provides as follows:

“19. (1) The Court may, on its own motion or at the request of any party, permit a person with particular expertise to appear in any matter as a friend of the Court. Participation of friends of the Court .

(2) The Court shall, before admitting a person as a friend of the Court, consider—

(a) proven expertise of the person;

**(b) independence and impartiality of the person;
or**

(c) the public interest”.

- ii. The guiding principles applicable in determining an application to be enjoined in that capacity was settled in ***Trusted Society of Human Rights Alliance v. Mumo Matemu and 5 Others***, Supreme Court Petition No. 12 of 2013 [2015] (*Mumo Matemu case*), where the Court on this occasion, pronounced itself on its inherent power to admit *amicus curiae* and emphasized that;

“(i) An amicus brief should be limited to legal arguments.

“(ii) The relationship between amicus curiae, the principal parties and the principal arguments in an appeal, and the direction of amicus intervention, ought to be governed by the principle of neutrality, and fidelity to the law.

“(iii) An amicus brief ought to be made timeously, and presented within reasonable time. Dilatory filing of such briefs tends to compromise their essence as well as the terms of the Constitution’s call for resolution of disputes without undue delay. The Court may, therefore, and on a case-by-case basis, reject amicus briefs that do not comply with this principle.

“(iv) An amicus brief should address point(s) of law not already addressed by the parties to the suit or by other amici, so as to introduce only novel aspects of the legal issue in question that aid the development of the law...

“(vi) Where, in adversarial proceedings, parties allege that a proposed amicus curiae is biased, or hostile towards one or more of the parties, or where the applicant, through previous conduct, appears to be partisan on an issue before the Court, the Court will consider such an objection by allowing the respective parties to be heard on the issue...”

We also affirmed the above guiding principles in ***Francis Kariuki Muruatetu & another v. Republic & 5 Others*** Sup Ct. Petition No. 15 and 16 of 2015 [2016] eKLR.

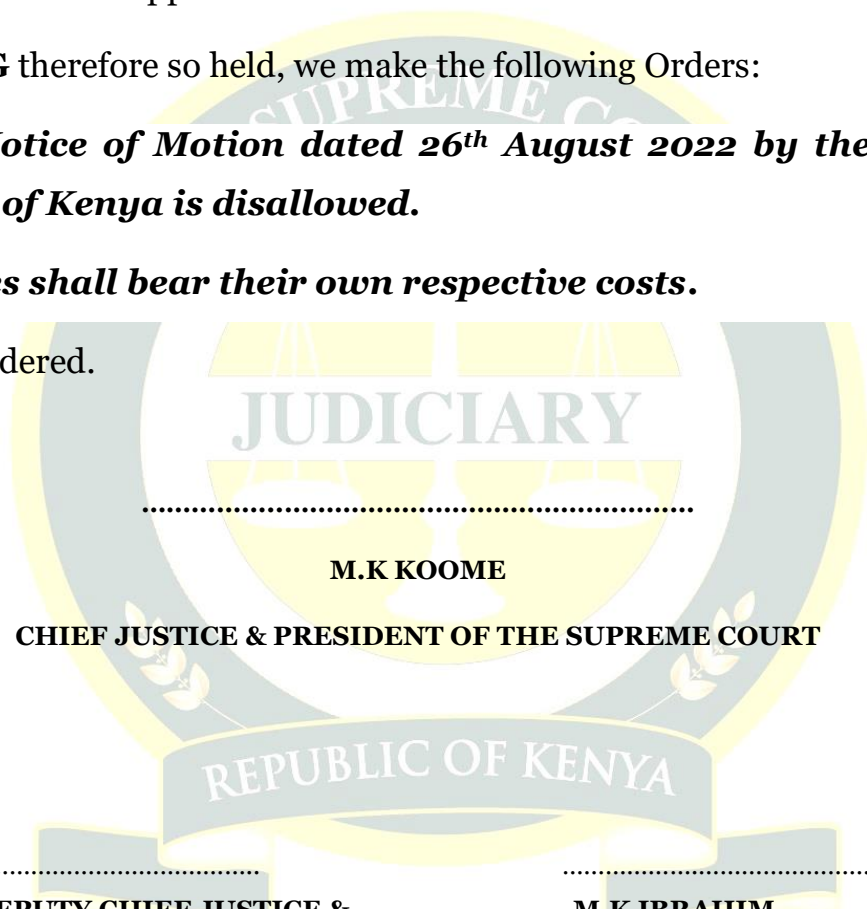
- iii. Accordingly having considered the application in the context of the law as expressed in ***Mumo Matemu case*** where we stated that the admission of *amici curiae* is useful for achieving our constitutional mandate to develop the law with the assistance of input from parties appearing before us. We note from the application that the applicant

intends to address the Court on factual issues on whether the ordinary voter perceived the election process was free, verifiable and transparent; these issues are not limited to legal arguments, and further the issues are already addressed in the substantive petitions before us. In the circumstances, we are of the view that the Applicant shall not add any useful purpose to the Court. We therefore exercise our discretion and disallow the application.

[7] **HAVING** therefore so held, we make the following Orders:

- a) ***The Notice of Motion dated 26th August 2022 by the Farmers Party of Kenya is disallowed.***
- b) ***Parties shall bear their own respective costs.***

[8] It is so ordered.



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M.K KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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

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

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

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**NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT**

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I. LENAOLA
JUSTICE OF THE SUPREME COURT

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

DATED and DELIVERED AT NAIROBI this 30th day of August 2022



I certify that this is a true copy of the original

**REGISTRAR,
SUPREME COURT OF KENYA**