

**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA  
AT NAIROBI**

*(Coram: Mutunga, CJ; Tunoi, Ibrahim, Ojwang, Wanjala, Ndungu SCJJ.)*

**CIVIL APPLICATION NO. 2 OF 2013**

**APPLICATION BY MR. ALUOCH POLO ALUOCHIER FOR JOINDER  
IN THE PETITIONS**

**IN THE MATTER OF ARTICLES 22, 138 AND 140 OF THE CONSTITUTION  
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 2, 10,  
27, 77(2), 88, 99, 137 AND 148 OF THE CONSTITUTION**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF  
SECTIONS 22, 23, 59  
AND 72 OF THE ELECTIONS ACT**

**IN THE MATTER OF RULE 25(2) OF THE SUPREME COURT  
(PRESIDENTIAL ELECTION PETITION) RULES, 2013  
IN THE MATTER OF RULE 50 OF THE SUPREME COURT RULES, 2012**

**BETWEEN**

**ISAAC ALUOCH POLO ALUOCHIER .....PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES**

**COMMISSION .....1<sup>ST</sup> RESPONDENT  
RT. HON. RAILA AMOLO ODINGA .....2<sup>ND</sup> RESPONDENT  
HON. UHURU MUIGAI KENYATTA .....3<sup>RD</sup> RESPONDENT  
HON. WYCLIFFE MUSALIA MUDAVADI .....4<sup>TH</sup> RESPONDENT  
HON. PETER KENNETH .....5<sup>TH</sup> RESPONDENT  
HON. STEPHEN KALONZO MUSYOKA .....6<sup>TH</sup> RESPONDENT  
HON. WILLIAM SAMOEI RUTO .....7<sup>TH</sup> RESPONDENT  
ORANGE DEMOCRATIC MOVEMENT .....8<sup>TH</sup> RESPONDENT  
THE NATIONAL ALLIANCE .....9<sup>TH</sup> RESPONDENT  
UNITED DEMOCRATIC FORUM PARTY .....10<sup>TH</sup> RESPONDENT**

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|-----------------------------------------|-----------------------------------|
| <b>KENYA NATIONAL CONGRESS .....</b>    | <b>11<sup>TH</sup> RESPONDENT</b> |
| <b>AHMED ISSACK HASSAN .....</b>        | <b>12<sup>TH</sup> RESPONDENT</b> |
| <b>LILIAN BOKEEYE MAHIRI-ZAJA .....</b> | <b>13<sup>TH</sup> RESPONDENT</b> |
| <b>AMB. YUSUF A. NZIBO .....</b>        | <b>14<sup>TH</sup> RESPONDENT</b> |
| <b>MOHAMED ALAWI HUSSUIN .....</b>      | <b>15<sup>TH</sup> RESPONDENT</b> |
| <b>ENG. ABDULLAHI M. SHARAWA .....</b>  | <b>16<sup>TH</sup> RESPONDENT</b> |
| <b>THOMAS LETANGULE .....</b>           | <b>17<sup>TH</sup> RESPONDENT</b> |
| <b>J. MUTHONI WANGAI .....</b>          | <b>18<sup>TH</sup> RESPONDENT</b> |
| <b>ALBERT CAMUS ONYANO BWIRE .....</b>  | <b>19<sup>TH</sup> RESPONDENT</b> |
| <b>KULE GALMA GODANA .....</b>          | <b>20<sup>TH</sup> RESPONDENT</b> |

## **APPLICATION BY MR. ALUOCH POLO ALUOCHIER FOR JOINDER IN THE PETITIONS**

### **RULING**

[1] Mr. Aluoch Polo Aluochier yesterday appeared before this Court, for the purpose of canvassing the prayer that he be enjoined in Petition No. 4 of 2013 which is already lodged and has now been consolidated with the other Petitions concerned with the Presidential election of 4<sup>th</sup> March, 2013.

[2] However, none of the counsel having the conduct of the said petition agrees that the applicant has a proper case to be enjoined as prayed for.

[3] Learned counsel, Mr. Regeru submitted that the said application has only recently been served upon him, and the prospect of joinder as prayed, in the circumstances, cannot but be for the purpose of delaying the dutiful prosecution of the cause. Learned counsel thus expressed concern:

*“There must be a reason why he zeroes in on Petition No. 4. He says he wants to advance brand new issues. [There will be] little benefit in admitting him.”*

[4] Counsel submitted that the applicant had not complied with the rules regulating the lodgement of causes in respect of a Presidential election; and that his issues were by no means related to the petitioner’s issues in Petition No. 4 of 2013. Counsel submitted that the applicant’s motion was prejudicial to the petitioners, and that, therefore, there was no basis for allowing it.

[5] Such was also the common position among other counsel in the series of petitions as now consolidated. Learned counsel, M/s. Oraro, Ngatia and Kigen opposed the application for joinder; as did also Mr. Abdullahi, who submitted that the applicant’s grievance bore no relation to the matter in the consolidated petitions.

[6] Mr. Aluochier for his part, maintained that the Petitions in hand were a requisite foundation for constitutional deliberations of great public interest, which he ought to be allowed to canvass under the umbrella of those Petitions.

[7] It is clear that the applicant believes his joinder-intent to be squarely supported by both the libertarian design of the Constitution of Kenya, 2010 and specifically by Rule 17 of the Supreme Court (Presidential Election Petition) Rules, 2013 which

thus provides:

*“(2) Any person who was entitled to be a petitioner in the petition may apply and be joined as a co-petitioner at any time before the conclusion of the hearing of the petition.”*

[8] The applicant in his submissions, did not specifically address the question of his entitlement to be enjoined as a petitioner in respect of the Presidential election, but devoted his attention to important issues of constitutional principle which he was seeking to have adequately ventilated. In this respect, the applicant’s cause appeared more distinct by its academic element than by the object of securing the righting of an electoral wrong. It is not surprising, in these circumstances, that the parties who had in the first place moved the Court, perceived the instant application as a sheer encumbrance upon the setting of their causes towards expeditious disposal.

[9] Settlement of disputes of a practical nature, is the primary purpose for which the judicial establishment was conceived, and must be regarded as the real justification for any proceedings that may be lodged.

[10] Perceived against such a context of judicial engagement, the applicant’s case herein, in our view, has an improbable ring, just as learned counsel have urged;

and, necessarily, all counsel will not welcome the applicant by way of joinder, as he seeks.

[11] This Court finds no practicality or sincerity in the applicant's claim, and so, cannot allow it. The application, consequently, is disallowed.

[12] There will be no order as to costs.

[13] ***Orders accordingly.***

**DATED and DELIVERED at NAIROBI** this 26<sup>th</sup> day of March, 2013.

.....  
W.M. MUTUNGA  
CHIEF JUSTICE & PRESIDENT  
OF THE SUPREME COURT

.....  
P.K. TUNOI  
JUSTICE OF THE SUPREME COURT

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

.....  
J.B. OJWANG  
JUSTICE OF THE SUPREME COURT

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

.....  
N.S. NDUNGU  
JUSTICE OF THE SUPREME COURT

**I certify that this is a true  
Copy of the original**

**REGISTRAR  
SUPREME COURT OF KENYA**