

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

PETITION NO. E007 OF 2022

BETWEEN

OKIYA OMTATAH OKOITI..... 1<sup>ST</sup> PETITIONER  
NYAKINA WYCLIFE GISEBE.....2<sup>ND</sup> PETITIONER  
VICTOR OKUNA.....3<sup>RD</sup> PETITIONER  
JOHN MAINA SUIING AS EXECUTIVE DIRECTOR  
FOR CENTER FOR DIASPORA AFFAIRS..... 4<sup>TH</sup> PETITIONER

VS.

THE INDEPENDENT ELECTORAL  
AND BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT  
WAFULA W. CHEBUKATI (CHAIRMAN).....2<sup>ND</sup> RESPONDENT  
JULIANA CHERERA (VICE CHAIRMAN).....3<sup>RD</sup> RESPONDENT  
FRANCIS WANDERI (COMMISSIONER).....4<sup>TH</sup> RESPONDENT  
JUSTUS NYANG'AYA (COMMISSIONER).....5<sup>TH</sup> RESPONDENT  
IRENE MASIT (COMMISSIONER).....6<sup>TH</sup> RESPONDENT  
ABDI YAKUB GULIYE (COMMISSIONER).....7<sup>TH</sup> RESPONDENT  
BOYA MOLU (COMMISSIONER).....8<sup>TH</sup> RESPONDENT  
THE HON. ATTORNEY GENERAL.....9<sup>TH</sup> RESPONDENT

AND

ODINGA RAILA..... 1<sup>ST</sup> INTERESTED PARTY  
RUTO WILLIAM SAMOEI.....2<sup>ND</sup> INTERESTED PARTY

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WAIHIGA DAVID MWAURE.....3<sup>RD</sup> INTERESTED PARTY

WAJACKOYAH GEORGE LUCHIRI.....4<sup>TH</sup> INTERESTED PARTY

AND

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION.....1<sup>ST</sup> INTERESTED PARTY

HON. DAVID WAIHIGA MWAURE.....2<sup>ND</sup> INTERESTED PARTY

AGANO PARTY.....3<sup>RD</sup> INTERESTED PARTY

AFFIDAVIT OPPOSING PETITION

I, DAVID WAIHIGA MWAURE of P.O BOX 75642-00200 Nairobi, do hereby make oath and state as hereunder:

1. THAT I am an Amici / Interested Party in this Petition.
2. THAT I am also the Party Leader and Presidential candidate of Agano Party and I am competent and have authority to swear this affidavit on my own behalf and on behalf of Agano Party.
3. THAT my chief agent at Bomas of Kenya was Prophet Paul Mwangi Gatundu.
4. THAT I have had extensive briefings from my chief agent and my other agents concerning the matters alluded to by the deponents in the affidavits of support.
5. THAT I agree with what my chief agent and other agents have advised me and deponed to herein.
6. THAT my chief agent Bishop Prophet Paul Mwangi Gatundu and Right Reverend Bishop Julius Muranga Gichure have also deponed to other affidavits filed herein in support of this petition.
7. THAT as far as I am concerned polling strictly took place at the polling stations which were spread across the country.

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8. THAT for the benefit of the Court I wish to explain exactly what happened at the polling stations in a chronological order: -

- (i) Polling materials are delivered at the polling station on the eve of the polling day.
- (ii) All the party agents are required to be in attendance before the polling starts when they verify that the transparent boxes where the ballot papers are placed after person votes are empty.
- (iii) The said boxes are duly sealed to ensure that no other material can get there other than through the insertion via the small opening on the lid of the said boxes.
- (iv) Upon the close of voting all agents verify that the seals on the said ballot boxes are intact and have not been interfered with.
- (v) With all agents literally hawk eyed all the ballot papers are placed on the table and sorted in the presence of all the agents. Spoilt votes are placed in one corner and votes in favour of each respective candidate are placed in one heap. The votes are then counted in the presence of the agents. It is then that Form 34A is filled up and the agents present sign the same but if any of the agents has any valid reason not to sign he indicates the reason.

9. THAT as I sat at Bomas of Kenya with my agents I noticed that all the Commissioners of IEBC would, upon receipt of the original Forms 34 counter check whether the same were in tandem with Form 34A already sent electronically and upon verifying the original Form 34A the result was publicly declared at Bomas of Kenya.

10. THAT all those who were present at Bomas of Kenya including the election observers agreed that the final tallying process was being conducted in a transparent manner. Indeed, it is upon realizing that Agano Party had genuinely lost the election and that Kenya Kwanza had genuinely won the presidential election Agano Party



publicly conceded defeat.

11. THAT the Petition herein seeks for orders that contradict each other in that in prayer (d) the Petitioner seeks for a declaration that none of the presidential candidates obtained a result equal to 50% plus 1 of the votes that were cast while in prayer (p) the same Petitioner seeks for an order to the effect that the person who this Honorable Court establishes as elected be issued with the certificate to that effect.

12. THAT even if there are certain minor arithmetic errors (which are not admitted) it is appropriate to appreciate the fact that the conduct of an election is a very rigorous and highly involving process. In a manner of speaking in particular the officials of the IEBC and for that matter a number of party agents did not sleep from the night of 8<sup>th</sup> August 2022 to 15<sup>th</sup> August 2022 when the election results were declared. Under such tough conditions any human being is bound to make a mistake or two and I state that of small mistakes let not the will of the people of Kenya be upset by this Honorable Court.

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13. THAT I also urge the Honorable Court to take into account that as a country Kenya is experiencing economic problems with inflation high and currency strength devalued.

That explains how a packet of one kilogram of maize floor costs more than Kes. 200 yet that packet cannot feed a normal family of approximately four people. To hold a presidential election costs billions of shillings and as a national leader who is interested in the welfare of the Kenyan people I plead with the Court not to allow any process that would lead to a repeat of the presidential election race (whereby billions of shillings will be used again) unless the circumstances openly and clearly justify such a process. This I say, humbly as I can but yet as firmly as I can that this is a supreme duty that the Supreme Court of Kenya owes to the people of Kenya.

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14. THAT what is deponed to herein is true and to my own knowledge save as to facts deponed to on information and belief the sources and grounds whereof have been respectively specified.

SWORN at Nairobi by the said )

DAVID WAIHIGA MWAURE )

this 26<sup>th</sup> day of AUGUST 2022 )



BEFORE ME ) Deponent

**NABWIRE WANYAMA**

ADVOCATE & COMMISSIONER FOR OATHS

P. O. Box 65713-00607,

**NAIROBI**

**COMMISSIONER FOR OATHS**



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**DRAWN AND FILED BY:**

GIKANDI & CO ADVOCATES  
PLOT NO. 3521  
SUITE No. 1  
SAUTI YA KENYA ROAD,  
OPP ALFARSY EDUCATION CENTER  
(BEHIND KILINDINI POST OFFICE)  
P.O BOX 87669-80100,  
**MOMBASA**  
EMAIL: [gikandiadvocate@yahoo.com](mailto:gikandiadvocate@yahoo.com)  
PHONE: 0727 745 307

**TO BE SERVED UPON**

1. **J.M NJENGA AND CO. ADVOCATES**  
Telposta Tws, 5th Flr Koinange St,  
Nairobi, Kenya
2. **APOLLO AND CO. ADVOCATES**  
Kindaruma Court, Rm B2, Kindaruma Rd
3. **G & A ADVOCATES LLP**  
Avenue 5 Building, 4th Floor  
Rose Avenue, Off Lenana Road  
P.O. Box 22966 – 00100,  
Nairobi  
Landline: +254 204 400 509  
Cell: +254 719 851 555

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**4. RACHIER AND AMOLLO LLP**

Mayfair Centre, 5th floor Ralph Bunche Rd, Nairobi

**5. PAUL MWANGI AND CO. ADVOCATES**

Kindaruma Court, Rm B2, Kindaruma Rd

**6. ISEME KAMAU AND MAEMA ADVOCATES.**

IKM Place, Tower A, 5th Floor

5th Ngong Avenue,

Off Bishops Road,

Nairobi

**7. KITHURE KINDIKI & ASSOCIATES**

Hurligam Centre 2

Suite A 1 Regent Court

Argwings Kodhek

**Nairobi**

Tel: 020 2308883

Email: [kkindiki@yahoo.co.uk](mailto:kkindiki@yahoo.co.uk)

-10

**8. CHEGE & SANG CO ADVOCATES**

PR98 +68H, Utalii Lane

**Nairobi**

**Tel: 0722541361**

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