

IN THE REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
ELECTION PETITION NO. 1 OF 2017

BETWEEN

RAILA AMOLO ODINGA.....1ST PETITIONER
STEPHEN KALONZO MUSYOKA..... 2ND PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION1ST RESPONDENT
THE CHAIRPERSON OF INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION2ND RESPONDENT
H.E. UHURU MUIGAI KENYATTA3RD RESPONDENT

3RD RESPONDENT’S AFFIDAVIT IN REPLY TO THE AFFIDAVIT OF GODFREY
OSOTSI

I, **DAVIS KIMUTAI CHIRCHIR**, a resident of Nairobi County within the Republic of Kenya and of Post Office Box Number 19200-00501 Nairobi do make oath and state as follows:

1. I am a male adult of sound mind, a citizen of Kenya and a holder of a Masters of Business Administration-International Management degree from the University of London, a Bachelor of Science in Computer Science and Physics degree from the University of Nairobi and a Post Graduate Diploma in Teletraffic Engineering from Central Training School Nairobi.
2. I was the Chief Presidential Agent nominated by the 3rd Respondent and authorised to make this Affidavit on his behalf.
3. The 3rd Respondent was nominated by the Jubilee Party and my duties included being the titular head of all the election agents.
4. In the course of the General Elections that took place on 8th August 2017 all the JP election agents were ultimately answerable to me pursuant to a hierarchy established by JP.
5. I am therefore conversant with the conduct of elections including voting, tallying of results and transmission of results from my own knowledge and from my role as the individual to whom all JP elections agents answered to.
6. Having read the Petitioners’ Supporting Affidavit sworn by Godfrey Osotsi and filed on 18th August 2017 (hereinafter referred to as the ‘**Affidavit**’) I am competent to respond to the issues raised therein and I make this affidavit in response and in opposition to the Petitioners’ Supporting Affidavit sworn by Godfrey Osotsi and filed on 18th August 2017 on the basis of matters within my own knowledge and as regards matters of law, on the basis of advice from Advocate on record which advice I verily believe to be correct.

7. It is clear to me that the deponent of the said Affidavit has exaggerated facts, peddled outright falsehoods and suppressed material facts in a bid to mislead this Honourable Court and obtain an unjust advantage in favour of the Petitioners to the prejudice and subversion of the will of the Kenyan people expressed in a free, fair and credible election.
8. For avoidance of doubt, I reject all the allegations, both specific and vague, set out in the Affidavit, regarding the irregularities attributed to the 1st and 2nd Respondents and state as follows:-
 - a. As far as I am aware the process of voting, collating, tallying and declaration of results was conducted and done in full and/or substantial compliance with the provisions of the Constitution and all electoral laws.
 - b. To the best of my knowledge, the presidential results announced by the 2nd Respondent on 11th August 2017 were indeed accurate and verifiable in accordance with the standards established by law and were announced in a transparent and lawful manner as contemplated by Article 86 of the Constitution and the Elections (General) Regulations, 2012.
 - c. Most local and international observers who were accredited by the 1st Respondent have issued preliminary reports terming the election substantially free, fair and credible notwithstanding the minor transmission problems experienced during the election process.
 - d. The 1st Respondent has posted on its website scanned copies of each and every Form 34B received in its servers, which upon collation and tallying into Form 34C, demonstrates that the election results announced on 11th August 2017 were accurate, verifiable, transparent and lawful.
9. **THAT** in response to paragraph 8 of the Affidavit, from the time stamp sheet accessible vide the 1st Respondents website, I am aware that the first presidential results from Narok Womens Prison were received in the 1st Respondent's server at exactly 17:07hrs (5.07p.m). The said results indicate that there were 20 registered voters out of whom only 10 voted. Annexed hereto and marked **DKC-1** is a copy of the Time Stamp Sheet.
10. **THAT** in response to paragraphs 9, 14 and 15 of the Affidavit, the allegations contained thereof are unsubstantiated since no transcript of the alleged video clips nor the MS Excel data file have been produced and/or annexed and the contents of these paragraphs should not be admitted as evidence.
11. **THAT** in reply to paragraphs 10, 13 and 18 of the Affidavit, I know as a matter of fact that the 1st Respondent had as per the deponent's annexure marked E, published and notified the general public in the dailies and in its website of all the polling stations that were out of 3G and 4G network coverage in accordance with the provisions of the Elections (Technology) Regulations, 2017. I have noted that the deponent has not disclosed and/or identified the alleged IT Consultants alluded to in paragraph 10 of the Affidavit and has not substantiated the allegations contained in paragraph 13 of the Affidavit and the same remain mere allegations that should not be admitted as evidence.

12. **THAT** in response to paragraph 11 of the Affidavit, I wish to state as follows:-
- a. It is not true that the results continued streaming in constant percentages of 54% and 44% for the 3rd Respondent and the 1st Petitioner respectively or a constant difference of 10% in favour of the 3rd Respondent. As a matter of fact the result difference between the Petitioner and the 3rd Respondent oscillated between 27.06% and 9.22% in favour of the 3rd Respondent. Annexed hereto and marked **DKC-2** is a copy of the Analysis of the results based on Time Stamp Sheet.
 - b. As a function of statistical law, as cumulative results attain a high figure, a high number is required to dilute its percentage i.e. if 700 represent 50%, an addition of another 700 to it, will increase the percentage by 16.7% making it 66.7%. However, if 3,000,000 represent 54% an addition of 700 to it, will increase the percentage by 0.00580066% making it 54.00580066%. It will require a change of 130,000 in that number and no change at all in the corresponding number to attain a 1% increase.
 - c. The percentage dilution factor in huge numbers is also a huge number. The implication is 130,000 votes represent 186 polling stations with approximately 700 voters each. It will therefore require an addition of results of 186 polling stations of maximum capacity to the cumulative results, where one candidate attains all results and the other gets no results at all to make a 1% change.
13. **THAT** in response to paragraph 12 of the Affidavit, I verily believe that the alleged inability to access the relevant documents was peculiar to the deponent for reasons not known.
14. **THAT** in response to paragraph 16 of the Affidavit, the alleged inconsistencies in the deponent's annexure marked "D" have not been specifically substantiated hence the veracity thereof is in doubt and the same should not be admitted as evidence.
15. **THAT** in response to paragraph 17 of the Affidavit, the deponent has failed to point out the specific Forms 34As referred to therein and failed to disclose whether the areas which the said Forms 34As related to had sufficient 3G and 4G network coverage of 3G or 4G required to transmit the Form 34As images. Accordingly, the deponent's allegations are unsubstantiated and should not be admitted in evidence.
16. **THAT** in response to paragraph 19 of the Affidavit, I reiterate the contents of paragraph 7(d) hereinabove.
17. **THAT** I urge this Honourable Court to protect the constitutional democracy and reject the Petitioners' attempt to sacrifice the people's will at the alter of political expediency and to determine that the 3rd Respondent was duly elected in a free, fair, credible and valid election conducted on 8th August 2017.
18. **THAT** what is deponed to herein is true to the best of my knowledge save for facts and deposition to which sources I have disclosed.

SWORN at NAIROBI by the said]
DAVIS KIMUTAI CHIRCHIR]
This _____ day of _____ 2017]
BEFORE ME:]
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DEPONENT

COMMISSIONER FOR OATHS

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