

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

ELECTION PETITION NO. 1 OF 2017

Between

H.E RAILA AMOLO ODINGA 1ST PETITIONER

H.E STEPHEN KALONZO MUSYOKA.....2ND PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....1ST RESPONDENT

THE CHAIRPERSON OF INDEPENDENT

ELECTORAL AND BOUNDARIES COMMISSION.....2ND RESPONDENT

H.E UHURU MUIGAI KENYATTA3RD RESPONDENT

AND

EKURU AUKOTAPPLICANT/ INTERESTED PARTY

CERTIFICATE OF URGENCY

I, ELIAS MUTUMA GICHURU Advocate for the Applicants **DO HEREBY CERTIFY** that the annexed application is extremely urgent and ought to be heard on priority basis for the following reasons;

1. The 2ND respondent has declared and announced the 3rd respondent as the duly elected President respectively of the republic of Kenya in the elections held on 8th of August 2017.

2. That the said election and declaration has since been challenged by the Petitioners herein and by dint of article 140(2) this honourable court has 14 days to hear and determine the said petition and the set timeline started running on 18th August 2017.
3. That the Applicant herein, Dr Ekuru Aukot just like the 1st Petitioner and the 3rd Respondent, was a presidential candidate on a Third-way Alliance Kenya party ticket in the just concluded elections who had several agents monitoring the electoral process and he has compiled his own audit regarding the credibility, verifiability, accountability and transparency of the said process hence his joinder in this case to be a party will help the Court reach a judicious determination of the matter.
4. That being a presidential candidate in the elections which are subject of the Petition herein, the Applicant is entitled to join as a Petitioner by virtue of him and he will suffer prejudice if he is not joined as a party in these proceedings.
5. That as demonstrated in the annexed affidavits, the submissions to be advanced by the Applicant in this petition are of relevance and useful to the court and different from those of the other parties herein in that the Applicant has been an active player in these elections and he has gathered crucial information, facts and analysis that have a direct bearing on the proceedings herein and the ultimate outcome.
6. That it is in the interest of justice and of greater and wider public good that the Applicant be enjoined in these proceedings so that he can have an opportunity to present his audit of the electoral process for consideration by the court before a determination can be made on the issues at hand.

7. That in light of the strict and mandatory Constitutional timelines within which the current Petition should be heard and determined, it is only fair and just that the application herein be disposed of expeditiously to avoid a delay in the hearing of the main petition.

DATED AT NAIROBI THIS.....DAY OF.....2017

MUTUMA GICHURU & ASSOCIATES
ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:

MUTUMA GICHURU & ASSOCIATES ADVOCATES

CHAKA APARTMENTS SUITE NO 2

CHAKA ROAD, OFF ARGWINGS KODHEK ROAD

P.O. BOX 4781-00100

Phone no 0720 361 847

NAIROBI. (emutuma@ealawconsulting.com, eliasgichuru@gmail.com)

TO BE SERVED UPON

MURUMBA & AWELE

ADVOCATES

MEZZ. 1, UNIT 7

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NAIROBI

H.E UHURU MUIGAI KENYATTA

NAIROBI.

Lodged in the Registry on theday of.....,2017

.....

Registrar

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EKURU AUKOTAPPLICANT/ INTERESTED PARTY

NOTICE OF MOTION.

(Under Article 22, 23, 140, and 159 of the Constitution of Kenya 2010, the provisions of the Elections Act 2012, rules 21 and 22 of the Supreme Court (Presidential Election Petition) rules 2017, rules 25 and 26 of the Supreme Court rules 2012 and all other enabling provisions of the law)

TAKE NOTICE that on the day of.....2017, at.....o'clock in the morning/afternoon or as soon thereafter as he can be heard, ELIAS MUTUMA GICHURU, Advocate for the above named applicant, will move the Court/a Judge of the Court for ORDERS that:-

1. THAT this honourable court be pleased to certify this application as urgent and be heard on priority basis and service of the same be dispensed with at the first instance.
2. **THAT** this Honorable court be pleased to enjoin the Applicant, EKURU AUKOT as an interested party in this petition.

On the grounds that:

- a. That the intended interested party has direct and legitimate interest in the petition herein related to the issues subject for determination by this Honorable Court.
- b. That the intended interested party was a Presidential Candidate for the National General elections held on the 8th of August 2017.
- c. That the results of the said elections were announced and declared on the 11th day of August whereby the 2nd respondent declared and announced the 3rd respondent as the duly elected President of the Republic of Kenya in the elections held on 8th of August 2017.
- d. That the said election and declaration has since been challenged by the petitioner herein and by dint of article 140(2) this honourable court has 14 days to hear and determine the said petition and the set timeline started running on 18th August 2017
- e. That the Applicant herein, Dr Ekuru Aukot was a presidential candidate on a Third-way Alliance Kenya party ticket in the just concluded elections who had several agents monitoring the electoral process and he has compiled his own independent audit of the electoral process with a view of establishing its transparency, credibility, verifiability and

accountability hence he is entitled to be a party in these proceedings to help the Court reach a judicious and fair determination of the matter at hand.

- f. That being a presidential candidate in the elections which are subject of the Petition herein, the Applicant is entitled to join as a Petitioner and he will suffer prejudice if he is not joined as a party in these proceedings.
- g. That as demonstrated in the annexed affidavits, the submissions to be advanced by the Applicant in this petition are of relevance and useful to the court and different from those of the other parties herein in that the Applicant has been an active player in these elections and he has gathered crucial information, facts and analysis that have a direct bearing on the proceedings herein and the ultimate outcome.
- h. That in light of the mandatory Constitutional time constraints, this application ought to be disposed of expeditiously to avoid a delay in the hearing of the main petition.
- i. That the Applicant wish to be heard before a determination can be made on this matter because he will be directly affected by the outcome of this petition.

And for an Order that the costs of and incidental to this application abide by the result of the said petition.

The application will be supported by the affidavit of DR EKURU AUKOT, WAWERU MIRURU AND MARTIN GAVOLE all sworn on theday of.....2017..... The address for service of the applicant is MUTUMA GICHURU & ASSOCIATES ADVOCATES, CHAKA APARTMENTS, SUITE NO 2, CHAKA ROAD OFF ARGWINGS KODHEK ROAD,

P.O BOX 4781-00100, NAIROBI.TEL.0720 361 847 EMAIL: emutuma@ealawconsulting.com,
eliasgichuru@gmail.com

DATED AT NAIROBI THIS.....DAY OF.....2017.

MUTUMA GICHURU & ASSOCIATES
ADVOCATES FOR THE APPLICANT

Lodged in the Registry on theday of.....,2017

.....

Registrar

DRAWN & FILED BY:-

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H.E UHURU MUIGAI KENYATTA3RD RESPONDENT

AND

EKURU AUKOTAPPLICANT/ INTERESTED PARTY

SUPPORTING AFFIDAVIT

I, **EKURU AUKOT**, an adult male of sound mind of Post Office Box Number 4781-00100,

Nairobi do make oath and state as follows;

1. I am the Applicant herein, a Kenyan Citizen and the party leader of the Thirdway Alliance Kenya hence competent to swear this Affidavit on my own behalf and on behalf of the Thirdway Alliance Kenya .
2. That I make this affidavit in support of the Notice of Motion herein seeking to be enjoined as an interested party in this petition.
3. THAT I was a Presidential candidate in the General election that was held on 8th august 2017 under the Thirdway Alliance Kenya Party ticket. **Annexed is a copy of the party Nomination certificate and clearance certificate from the 1st Respondent marked EA1 and EA2 respectively**
4. THAT as such, my party and I have a direct and legitimate interest in this Petition in that I shall be affected directly by the proceedings herein and the outcome thereof
5. THAT in these proceedings I will seek to represent my interests as a candidate ,those of my party, those of my constituents and the voters at large
6. That on the 11th day of August 2017, the results of the said elections were announced and declared whereby the 1st respondent declared and announced the 3rd respondent as the duly elected President of the Republic of Kenya in the elections held on 8th of August 2017 with other the results being declared as follows;-

| | |
|-------------------------------------|-----------|
| i. Abduba Dida | 38,093 |
| ii. Ekuru Aukot | 27,311 |
| iii. Japheth Kavinga | 16,482 |
| iv. Jirongo Shakhhalaga Khwa | 11,705 |
| v. Joseph Nyaga | 42,259 |
| vi. Michael Wainaina | 13,257 |
| vii. Raila Odinga | 6,762,224 |
| viii. Uhuru Kenyatta | 8,203,290 |

7. That the said election and declaration has since been challenged by the petitioner herein vide the Election Petition filed on 18th August 2017 and by dint of Article 140(2) this honourable Court has 14 days to hear and determine the said petition and the set timeline started running on 18th August 2017.

8. That I am advised by my Advocate on record, which advise I verily believe, that having been a Presidential candidate in the just concluded elections I qualify to be a party to these proceedings as the Petitioner and and/or to present a petition in my own name challenging the Presidential results but I opt to be enjoined in the current petition as an interested party so as to save time and duplicity of pleadings.

9. That my party and I have been active players in the electoral process and even prior to the elections, we had sent agents who were closely monitoring the electoral process before, during and after the election including sending our agents to Dubai on invitation of the

1st Respondent for purposes of scrutinizing the printing of ballot papers and as such my party and I are in possession of crucial information gathered before, during and after elections and the information in our possession is key in determining the issues raised in this petition.

10. That in Particular, being a presidential candidate on a Third-way Alliance Kenya party ticket in the just concluded elections, I had several agents monitoring the election on the election day both at the Polling stations, Constituency Tallying centers and the National tallying center at Bomas of Kenya. Some of my chief agents include Bildad Kagai, Waweru Miruru, Andrew Njoroge and Martin Gavole. who were alternate agents at the National Tallying centers and other Tallying centers.

11. That we as active participants in this election have compiled our own independent audit of the electoral process with a view of establishing its transparency, credibility, verifiability and accountability hence it is in the interest of justice to be joined as a party in these proceedings to help the Court reach a judicious and fair determination of the matter at hand.

12. That the findings of said audit and our submissions during the hearing will reveal crucial facts touching on the credibility and verifiability of the presidential election results as declared and announced by the 2nd respondent which ultimately have a bearing on the outcome of this petition. **Annexed is a copy of the audit report marked EA5.**

13. Further we shall seek to present findings by our chief agents Waweru Miruru and Martin Gavole whose sworn affidavits are annexed herein giving a snap shot of the findings. Annexed herein are affidavits sworn by the said agents which we rely upon.
14. That there is need for us to be enjoined in order to expound and elaborate our findings, observations and reports and further grounds on the information in our possession as relates to the disputed election results.
15. That as such our joinder in this petition will be of relevance and I believe that the submission we shall make will be useful and different from those of the other parties herein.
16. That I shall suffer prejudice if I am locked out of the se proceedings in that the matter at hand will be heard and determined without the court having a chance to consider my submissions yet I have important material to ay before court and as a Kenyan voter and an active player in the just concluded election my voice is as important as that of the parties in this Petition.
17. That in light of the mandatory Constitutional time constraints, this application ought to be disposed of expeditiously to avoid a delay in the hearing of the main petition.

18. That the Applicants wish to be heard before a determination can be made on this matter because they will be directly affected by the outcome of this petition

19. That all what is deponed herein above is true to the of my knowledge, information and belief

SWORN at NAIROBI by the said DR. EKURU AUKOT

This day of 2017

BEFORE ME) _____

) **DEPONENT**

COMMISIONER FOR OATHS)

DRAWN & FILED BY:-

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AND

EKURU AUKOTAPPLICANT/ INTERESTED PARTY

AFFIDAVIT IN SUPPORT OF URGENCY

I, Dr. Ekuru Aukot, a resident of Nairobi and of P.O. Box Number 4781-00100 Nairobi ,

do hereby make oath and most solemnly state as follows :-

1. THAT I am a male adult of sound mind, a citizen of the Republic of Kenya and a duly registered voter.
2. That I make this affidavit in support of the urgency of the application to be joined as an interested party in the Petition herein.
3. THAT I am also the party leader of Third-way Alliance Kenya and was a presidential candidate in the National General Elections held on the 8th August, 2017 under the

Third-Way Alliance Kenya party ticket and conversant with the matters deponed to herein and therefore competent to swear this affidavit.

4. THAT the results of the said elections were announced and declared on the 11th day of August whereby the 2nd Respondent declared and announced the 3rd Respondent as the duly elected President of the Republic of Kenya in the elections held on 8th of August, 2017.
5. THAT pursuant to the declaration by the 2nd Respondent of the presidential election results of the elections held on the 8th of August, 2017, the Petitioner moved to this honourable court challenging the validity of the said results vide an Election Petition filed on the 18th day of August 2017.
6. THAT I am advised by my advocate on record that by dint of Article 140(2) of the Constitution this Honourable Court has 14 days within which to hear and determine the said petition and that the set timeline started running on the 18th August, 2017.
7. That as such and due to strict time lines imposed in the constitution, I confirm that there is need for the application herein to be heard expeditiously to avoid a delay in the hearing of the main Petition.
8. THAT as a Presidential candidate I had several agents that were monitoring the electoral process who have compiled an audit of the said process hence it is in the interest of justice that I be joined as a party in these proceedings to help the Court reach a fair and judicious determination of the matter.
9. That the findings of said audit and our submissions during the hearing will reveal crucial facts touching on the credibility and verifiability of the presidential election results as

declared and announced by the 2nd respondent which ultimately have a bearing on the outcome of this petition.

10. That I am advised by my Advocate on record, which advise I verily believe, that having been a Presidential candidate in the just concluded elections I qualify to be a party to these proceedings as the Petitioner and and/or to present a petition in my own name challenging the Presidential results but I opt to be enjoined in the current petition as an interested party so as to save time and duplicity of pleadings.

11. THAT there will be no prejudice that will be occasioned to the Respondents if this Application is heard forthwith.

12. THAT the Application herein has been filed expeditiously and without undue delay.

13. THAT in light of the mandatory Constitutional time constraints this application ought to be heard as a matter of utmost urgency to enable the court have time entitled to it to determine the main petition without delay, omissions or inadvertences.

14. That all what is deponed herein above is true to the of my knowledge, information and belief

SWORN at NAIROBI by the said DR. EKURU AUKOT

This day of 2017

BEFORE ME) _____

) **DEPONENT**

COMMISIONER FOR OATHS)

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