

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

**BETWEEN**

H. E. RAILA AMOLO ODINGA.....1<sup>ST</sup> PETITIONER  
H. E. STEPHEN KALONZO MUSYOKA.....2<sup>ND</sup> PETITIONER

AND

INDEPENDENT ELECTORAL AND  
BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT  
THE CHAIRPERSON OF INDEPENDENT  
ELECTORAL AND BOUNDARIES  
COMMISSION.....2<sup>ND</sup> RESPONDENT  
H. E. UHURU MUIGAI KENYATTA.....3<sup>RD</sup> RESPONDENT

AND

MICHAEL WAINAINA MWAURA.....INTENDED RESPONDENT / AMICUS CURIAE

**AFFIDAVIT IN OPPOSITION TO THE PETITION**

**IT EXPERT TESTIMONY REFUTING PETITIONERS' IT EVIDENCE**

I, **GEORGE KARIUKI NJOROGE**, an adult male of sound mind resident in the Republic of Kenya within Nairobi County, and of Post Office Box Number 42547- 00100 Nairobi do hereby make oath and state as follows:

1. I am an IT expert specializing in computer forensics and disaster recovery with a very wide array of experience in the field, and competent to make this deposition in opposition to the Petition herein, having carefully followed the purported objections of the Petitioners to the election from the run up to the final declaration of the Presidential Election results on August 11<sup>th</sup> 2017.

2. I work with EAST AFRICAN DATA HANDLERS, a limited liability company duly incorporated in the Republic of Kenya. I am the Managing Director. I now annex hereto and marked as exhibit **"GKG 1"** a copy of the Certificate of incorporation.
3. I have been in the IT field over the last 15 years, and the company EAST AFRICA DATA HANLDERS and the said company has been the premier computer forensics and Disaster recovery company in Africa, and this experience has placed us on the global map in the said field.
4. We have in our company the cutting edge specialized IT engineers in this part of Africa, having as part of our clients Banks across East Africa, doing cyber security for their operations, corporate entities, and various governments. We have so far done over 1 million IT data and computer forensic analyses to recover most difficult data losses. Our website at [www.eadatahandlers.co.ke](http://www.eadatahandlers.co.ke) provides a spectrum of our experience. I annex hereto and marked as exhibit **"GKG 2"** the company profile.
5. Against that background, I am competent to respond to the allegations made by the 1<sup>st</sup> Petitioner Raila Odinga on **9<sup>th</sup> August 2017** that the IEBC KIEMS system had allegedly been hacked as he contemporaneously released a 50page "log" a copy of which I now produce and marked as exhibit **"GKG 3"**.
6. At the same time, I noted that the Petitioners had issued a 7 page Statement (through NASA) on the same date on 9<sup>th</sup> August 2017 alleging the said "logs" to be their ostensibly incontrovertible "evidence" of the alleged "hacking" of the IEBC KIEMS system. I now produce a copy of my analysis of the "logs" marked as exhibit **"GKG 4"**.
7. I did an analysis of the said allegations and was shocked and dismayed at the very elementary bases of the so-called "proof of hacking" of the IEBC KIEMS system made by

the Petitioners, which I prove herein is was NEVER hacked into as per my analysis. I now produce a copy of my analysis marked as exhibit "GKG 5".

8. From the comparison I have made of the Raila Odinga's allegations of hacking of the IEBC systems and the document he produced to the whole world to back up his allegations, I was shocked at the extent to which the Petitioners had gone to conjecture and contrive "evidence" to justify their non-factual allegations of "hacking" of IEBC KIEMS system. . I now produce a copy of their Press Release marked as exhibit "GKG 6".
9. I would therefore wish to testify before this Honourable Supreme Court and demonstrate (from my expertise in IT spheres) that the Petitioners have NOT demonstrated (to this Honourable court or even an innocent Kenyan observer completely disinterested in the electoral dispute) beyond peradventure or conjecture that the IEBC KIEMS system was ever hacked.
10. I state the foregoing based on my interpretation of the "evidence" Raila Odinga and his witnesses have tabled before this Court and which they presented to the Kenyan public prior to their invoking the judicial process. My analysis is therefore objective and dispassionate, and not intended in any way to demean anyone.
11. I believe that this Honourable Court would be better equipped to determine the Petition from the IT angle allegations with my testimony on board since the Petitioner has presented before the Court allegations touching on IT expertise it may not possess (with tremendous respect). My presence therefore is intended to add invaluable evidence as opposed to mere opposition to the Petition.
12. Having stated the foregoing, I now wish to elaborate on the deficiency of evidence as tendered by the Petitioners. I was dismayed upon carefully reading the Petition, and the

Supporting Affidavit of Raila Odinga that his lamentation was that the IEBC has churned “computer generated” leaders – which would include ODM elected Governors, Members of National Assembly, Ward Representatives, Senators, and Women Representatives.

13. Unfortunately, (and speaking as an IT expert), in his entire testimony and that of his witnesses, Raila Odinga has NOT proven HOW the declared electoral leaders are allegedly “computer-generated leaders”. I now turn to address specific IT witnesses whom the Petitioners cite as presenting credible evidence to support the claims.
14. I have carefully read and re-read the Supporting Affidavit of **APPRIELLE OICHOE** sworn on 18<sup>th</sup> August 2017 and I am totally unable to decipher the tenor of her “cyber Security” “evidence” she alleges in her Affidavit. It is disappointing that although she claims to be a PHD “**candidate**” on cyber security, she does NOT express her level of expertise, scope of experience, or produced any exhibit demonstrating her capacity as such “expert” in order to lend credibility to her testimony.
15. I noted that she has NOT disclosed the degree of expertise in specifically analyzing cyber data across Kenya’s electoral platform at any given period, neither has she exhibited a single document showing she sought for, and/or was granted access to the IEBC IT systems in regard to the August 8<sup>th</sup> 2017 Presidential election to warrant her making the suppositions she makes.
16. I did read from her deposition that she holds **ID card Number 22574992**, and after I keyed this ID card number to the IEBC voter registration inquiry portal short code “70000”, the response was nil, and no data was retrieved in respect of her registration with the IEBC as a voter in ANY polling station in Kenya.

17. By implication, **APPRIELLE OICHOE** was **NOT a registered voter** across Kenya during the August 8<sup>th</sup> 2017 election, and I believe that she therefore HAS NO basis to allege any aspect of the August 8<sup>th</sup> 2017 Presidential election was interfered with absent her PROOF of accessing the IEBC IT data by means of formal documents or exhibits.
18. Further, I traced her bio data on LinkedIn, a social website used by individuals across the world to network for skilled work. She has posted her resume at LinkedIn, and her competence of experience is not reflected at all.
19. At any rate, she alludes in paragraph 5 of her Affidavit to an “exhibit” titled **“ the Travesty that was the electoral Process – Kenya 2017”** which document Mr. Harrison Kinyanjui Advocate has explained to me has NOT been produced within the prescription of the Oaths and Statutory Declarations Act, Cap 15, nor is the purported “exhibit” certified at all.
20. Notwithstanding, and assuming the said “exhibit” is admitted (which I doubt to be admissible in evidence as explained to me by Mr. Harrison Kinyanjui Advocate), the said “exhibit” proves absolutely NOTHING in terms of alleged external third party “hacking” or accessing the IEBC KIEMS system during or in the course of the August 8<sup>th</sup> 2017 Presidential or other election.
21. I have carefully looked at the averments of **APPRIELLE OICHOE** and noted with concern that she does NOT in the least reference that so-called “exhibit” to explicate its contents at all. Rather, she renders her Affidavit in the form of generalized averments of expectations, speculations and opinion. Mr. Harrison Kinyanjui Advocate has informed me that such a “deposition” negates the intent of Order 19 of the Civil Procedure Rules governing the contents and scope of Affidavit evidence.

22. I verily believe that this is a very grave matter because the Petitioners have primed their supporters through public statements carried by the media that such “evidence” as is contained in the purported deposition of **APPRIELLE OICHOE** allegedly constitutes incontrovertible “evidence” to prove the Petitioners’ allegations when the opposite is the case.

23. As I have shown above, the “evidence” which RAILA ODINGA presented to the public on August 9<sup>th</sup> 2017 on the alleged “hacking” or intrusion of the IEBC systems and database was a sham and a total fabrication, yet **APPRIELLE OICHOE** appears to harp on the same theme in paragraph 4 of her deposition.

24. In particular she alleges in paragraph 4 i. of her Affidavit that her deposition provides such evidence in the following terms:

***“This Affidavit and the Petition shall demonstrate that the Commission website and database publicly maintained in its portal were compromised...”***

No such “evidence” was ever produced or has been produced to substantiate such a claim.

25. She further claimed in paragraph 4 ii. of her Affidavit:

***“Non authenticated non prescribed results through form and format that is unknown to law found itself into the IEBC public portal”.***

Other than this being a generalized and sweeping statement, there is NO proof at all **APPRIELLE OICHOE** has produced to substantiate her allegation. Not even her “exhibit” has been shown to demonstrate this allegation to have an iota of truth.

26. In paragraph 4iv. of her deposition, APPRIELLE OICHOE has alleged that:

***“The Petition has established that entry was made into the system [sic] and a strange return made in place of the statutory form 34 and in particular an exercise book was used to post results. ..”***

Again having looked at her “exhibit” I am disappointed to state that other than an anecdotal reference to such an action, NOTHING in the entire Affidavit of APPRIELLE OICHOE proves any of this.

27. In para 4.v of her deposition sub headed **“Authenticity”, APPRIELLE OICHOE** claims that the IEBC announcement regarding the lack of 3G and 4G network coverage in some parts of Kenya during the August 8<sup>th</sup> 2017 Presidential election, she has NOT demonstrated that the use of Satellite phones to transmit the results from such places fell short of the legal threshold of “electronic” transmission of results.

28. Furthermore, APPRIELLE OICHOE has not demonstrated that such Satellite transmission of the results was SPECIFICALLY compromised, or that a Satellite phone transmission of the results failed to meet the “electronic transmission” threshold of Section 44(b) of the Elections Act as amended.

29. In paragraph 4vi. APPRIELLE OICHOE curiously invites this Court to ONLY order an audit of the IEBC presidential election data IF it is proved as is being posited in the Petition that the IEBC KIEMS system was interfered with. I believe that averment does NOT constitute ANY evidence warranting the grant of such a plea for audit of IEBC system. I quote her:

***“If it is proved as is being posited [alleged would be a more suitable word, with respect] in the Petition that IEBC failed to secure its data and public maintained***

***portal then there would be need and a justification for an audit of all systems of IEBC***". [underlining mine]

30. Overall therefore, I am persuaded that the Petitioners have NOT dislodged their burden of proof using the deposition of **APPRIELLE OICHOE** to demonstrate ANYTHING untoward about the 2<sup>nd</sup> Respondent's IT systems or the KIEMS system during the August 8<sup>th</sup> 2017 election. Her "evidence" is of no probative value and with respect, it is worthless.
31. I now turn to the allegations in the 2 Affidavits made by **GODFREY OSOTSI** in support of the Petition made on August 18<sup>th</sup> 2017. To begin with, the entire 2<sup>nd</sup> Affidavit of the said deponent ought to be disregarded entirely as it constitutes hearsay and NOT primary evidence. He states that the source of his information is his undisclosed Advocate.
32. Notwithstanding, and without validating an otherwise invalid deposition, having read his deposition several times, and as an IT expert myself, I equally saw NO evidence even tangentially linking the IEBC with alleged IT interference of its systems to warrant the purported "audit" as alleged by **GODFREY OSOTSI** to warrant the Supreme Court to intervene as sought in ordering the requested "audit" or access to the IEBC servers.
33. I can confidently state that from my experience as an IT expert, UNLESS and absent proof that the Petitioners' stated "witnesses" GAINED verifiable access (through evidential logs) to the IEBC KIEMS servers and systems, their "evidence" remains speculative, hearsay, guesswork, and sheer fabrication. For the record I am NOT holding brief for the IEBC, am only testifying as an IT expert.
34. This is best expressed in the 2<sup>nd</sup> Affidavit of Godfrey Osotsi at para 19 thereof:

***“There is a real founded danger that this failure is due to the fact that the commission was either unable to have full control of its system, or that it ceded this authority to some other authority, contrary to the legal requirement of the IEBC to maintain independence, and the principle of universal suffrage of one man one vote in line with art 38, 81 and 86.”***

[underlining mine]

35. As for the allegation that IEBC started receiving results as at 5.15p.m.claimed in para 8 of the 1<sup>st</sup> Affidavit of **GODFREY OSOTSI** , I did NOT see ANY evidence he produced in support of the allegation. The claim remains unproven.
36. In regard to the allegation by **GODFREY OSOTSI** that he and the Petitioners’ chief agent, the Hon. Musalia Mudavadi allegedly “...caused a meeting to be held between the 1<sup>st</sup> Respondent and our chief agent on the 8<sup>th</sup> August 2017, and at the said meeting, the 1<sup>st</sup> Respondent’s IT consultants from Saffron who had supplied the KIEMS gadgets confirmed that indeed they were receiving results without form 34A’s for the reason that some areas had network challenges and hence could not transmit images because of lack of 3G and 4G network .” I noted that Musalia Mudavadi DECLINED to swear any affidavit in these proceedings. The allegation is therefore uncorroborated.
37. I noted from the entire Affidavit of RAILA ODINGA that he has NOT produced a single exhibit annexed to his own affidavit to demonstrate and PROVE from an IT angle, HOW he arrived at the allegation in paragraph 9(a) of his deposition about an alleged compromise of the IEBC systems.
38. I noted the Petitioners make a wild allegation in paragraph 25.3.6. of their Petition that:

***“The Petitioners aver that the inaccuracies and inconsistencies affect and account for at least 7 million votes.”***

From an IT expert's angle, calculating that each polling station had approximately 700 voters, the Petitioners have not discharged the burden of proof to demonstrate each of these 7 million voters did NOT vote. There is no such evidence.

39. I did not see any evidence of whatever kind in the Petition or Raila Odinga's own deposition alluding to the earlier vehemently pursued allegation of the IEBC KIEMS system had been "hacked" and that the results streaming from the IEBC public portal were in his own favor at the stated over 8 million votes.
40. I believe that had such evidence existed, the Petitioners would have presented the same without failure and availed it to this Honourable Court for scrutiny. They did not, hence have failed to discharge their evidential burden of proof.
41. At any rate, there MUST exist extremely compelling grounds for this Court to order an audit of ALL the electronic data of the ALL polling stations spread over 40,000, within the very restricted time lines for the determination of this Petition. Given that the Supreme Court would require EXTERNAL IT experts (and not just one) who would of necessity have to be PROCURED within the prescription of the law to execute such an audit, there is HARDLY any time to do so without running afoul the Constitutionally set time lines.
42. I believe that the Petitioners ought to have limited themselves to specific polling stations or even constituencies they perceive are REASONABLY capable of producing evidence to warrant the audit sought to sustain their case but NOT the entire gamut of polling stations in Kenya.
43. In any event as an IT expert, if my company were to undertake such an audit, the process would take between 2 and 3 months to produce an ERROR FREE audit, costing

between Ksh.20 million and Ksh. 30 million. Even then, we would have to produce a consequential forensic REPORT, and then this would take about 2 further weeks to prepare.

44. Thus, the process sought by the Petitioners herein in respect of the IEBC KIEMS kit system audit involves 2 distinct phases, which I believe they have NOT factored in practical terms how and in what time it would be executed:

- a. Audit of the IT systems;
- b. Consequential Report on the analysis of the Audit.

45. Turning now to the IEBC servers, I verily believe that if the Supreme Court were to order an analysis of the IEBC servers, the process of forensically acquiring terabytes of data would take a minimum 1 month, processing and analyzing it would take another 2 to 3 months, and the Report arising would be approximately 2 weeks.

46. I believe that the strict time lines this Supreme Court has to determine this Petition forbids such an adventure, and given the dearth of justifications for such an exercise on the part of the Petitioners, the Petitioners have not succeeded in showing it is executable. I am prepared to be cross examined on these issues at any time, even though I am aware that the evidence before the Supreme Court is by way of Affidavits.

47. Overall, there is NO technical expertise or credible evidence presented by the Petitioners to show the timelines I have herein demonstrated would be required, or to warrant the grant of any of their reliefs so far as IT systems operated by the IEBC during the 2017 August 8<sup>th</sup> Presidential elections are concerned, and the Petition ought to be dismissed in consequence.

48. Moreover, NONE of the Petitioners' witnesses have shown the COST implications of their pleas and I verily believe that this Court is not supposed to issue orders in a vacuum.

49. I make this deposition in opposition to the Petitioners' Petition.

50. What is deposed to herein above is true and within my personal knowledge, save what is based on information and belief, the bases and the sources of which I have duly indicated.

SWORN BY THE SAID, **GEORGE KARIUKI NJORGE**

AT NAIROBI ON THIS 23<sup>RD</sup> DAY OF AUGUST 2017

BEFORE ME

COMMISSIONER FOR OATHS

**DRAWN & FILED BY:**

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