

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

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION..... 2<sup>ND</sup> RESPONDENT

H.E UHURU MUIGAI KENYATTA.....3<sup>RD</sup> RESPONDENT

REPLYING AFFIDAVIT

I, **IMMACULATE KASSAIT**, a resident of Nairobi and of Post Office Box Number 45371-00100 Nairobi and resident of the Nairobi County within the Republic of Kenya do make oath and state as follows:

1. **THAT** I am the Director Voter Registration and Electoral Operations of the 1<sup>st</sup> Respondent. I am conversant with the matters deponed to herein and being duly authorised by the 1<sup>st</sup> Respondent, I am competent to swear this Affidavit.
2. **THAT** my duties in the Commission include the management of electoral processes, voter registration processes (voter registration strategies and inspection of voters register), electoral operations,

electoral dispute resolution, logistics and electoral training. My directorate is also responsible for designing quality control measures for the Commission including supervision of operational and regional reporting and monitoring performances. The Directorate has three departments: Electoral training, Voter Registration and Logistics departments.

3. **THAT** I have carefully read and understood the Supporting Affidavit and Further Affidavit both sworn by Dr. Nyangasi Oduwo on 18<sup>th</sup> August 2017. I have also sought advice on matters of law arising from the said Affidavit from my Advocates on record which advice I verily believe to be true and sound in law.

#### **REPLY TO THE SUPPORTING AFFIDAVIT**

4. **THAT** I wish to respond to the averments in the said Supporting Affidavit as hereunder.
5. **THAT** paragraphs 1 – 4 of the said Supporting Affidavit are admitted in so far as they are merely descriptive of the deponent and the date of the 2017 General Elections.
6. **THAT** in response to Paragraph 5, I wish to state that in most polling stations, voting commenced at 6am on 8<sup>th</sup> August 2017 and ended at 5.00 pm after which counting started. However, there were a number of polling station in which the voting process was delayed for one reason or the other. In these stations, voting commenced and

ended later than the above indicated times. For instance, in Turkana County in the number of polling stations, there was flooding and the voting materials had to be air lifted delaying the process by several hours.

7. **THAT** in response to Paragraph 6, the correct position is that the Court of Appeal in *Civil Appeal No. 105 of 2017: Independent Electoral and Boundaries Commission v. Maina Kiai, & 5 Others*, ruled that the electronically transmitted image of Form 34B is the final result for the Presidential Election with respect to each Constituency and it is therefore erroneous and incorrect to say, as alleged in the Supporting Affidavit, that Forms 34A from the polling station were the final results.
  
8. **THAT** in response to Paragraph 7, it is to be noted that in polling stations that had between 1-10 Registered Voters, it was possible to count and tally the votes within a very short time after the closure of the polling station and transmit the results. By way of example, the following polling stations had less than 5 registered voters:

Constituency	County Assembly Ward	Polling Station	No of Registered Voters
Matuga	TSimba Golini	Boyani Primary School	3
Wajir South	Benane	Arabrow	3
North Horr	Dukana	Ya algana	3
Tigania East	Muthara	Lowangina Primary School	1

Mwingi Central	Nguni	Mutwang'ombe Primary School	2
Kitui Rural	Kwanvonza/Yatta	Seuco	3
Narok North	Olpusimoru	Olopirik Primary School	4
Ugunja	Ugunja	Nyasanda Technical Institute	2

9. **THAT** the averments in Paragraph 8 regarding a constant difference of transmitted results are denied and the Petitioners put to strict proof thereof. In particular, based on a thirty-minute time interval analysis of the data, the Petitioners' allegation that there was a constant gap of 11% on valid votes cast between him and the 3<sup>rd</sup> Respondent is incorrect as demonstrated in the table below: -

REGISTERED VOTERS	UHURU KENYATTA	RAILA ODINGA	VALID VOTES	% for Uhuru Kenyatta	%for Raila Odinga	% DIFF
2,927	1,302	1,084	2,397	54.318%	45.223%	9.095%
34,012	16,713	10,471	27,652	60.440%	37.867%	22.573%
307,179	156,255	92,430	250,679	62.333%	36.872%	25.461%
2,003,577	850,822	704,278	1,566,982	54.297%	44.945%	9.352%
2,764,491				55.159%	44.110%	11.050%

	1,201,621	960,911	2,178,449			
1,273,332	1,758,807	1,402,008	3,184,487	55.230%	44.026%	11.204%
1,840,604	2,516,612	2,041,844	4,593,263	54.789%	44.453%	10.336%
1,711,223	3,236,984	2,616,276	5,898,251	54.880%	44.357%	10.524%
1,419,871	3,835,294	3,083,103	6,972,104	55.009%	44.221%	10.789%
1,225,476	4,360,933	3,481,089	7,903,134	55.180%	44.047%	11.133%
982,929	4,776,769	3,806,200	8,650,208	55.221%	44.001%	11.220%
728,099	5,080,001	4,053,592	9,205,489	55.184%	44.035%	11.150%
1,107,022	5,553,368	4,423,893	10,056,948	55.219%	43.988%	11.231%
369,084	5,715,218	4,545,755	10,343,316	55.255%	43.949%	11.306%
366,824	5,866,540	4,677,001	10,628,437	55.197%	44.005%	11.192%
338,250	6,019,573	4,787,339	10,894,169	55.255%	43.944%	11.311%
311,108	6,157,182	4,894,446	11,141,064	55.266%	43.932%	11.334%

237,447	6,262,635	4,974,725	11,328,408	55.283%	43.914%	11.369%
658,838	6,545,142	5,208,884	11,850,549	55.231%	43.955%	11.276%
331,632	6,690,293	5,325,436	12,114,586	55.225%	43.959%	11.266%
307,095	6,815,602	5,441,558	12,358,470	55.149%	44.031%	11.118%
262,848	6,926,926	5,539,009	12,569,140	55.111%	44.068%	11.042%
238,009	7,015,808	5,636,831	12,757,752	54.993%	44.184%	10.809%
530,707	7,218,747	5,847,171	13,175,898	54.788%	44.378%	10.410%
255,196	7,318,080	5,944,885	13,375,298	54.713%	44.447%	10.267%
211,204	7,400,270	6,025,712	13,540,220	54.654%	44.502%	10.152%
355,465	7,542,189	6,157,617	13,817,260	54.585%	44.565%	10.021%
141,210	7,592,705	6,216,017	13,927,439	54.516%	44.631%	9.885%
134,554	7,647,605	6,265,911	14,033,452	54.496%	44.650%	9.846%
1,508,905	8,218,043	6,817,245	15,170,344	54.172%	44.938%	9.234%

10. **THAT** in response to Paragraph 9, I wish to state that following the concerns raised through the media by the agents of the 1<sup>st</sup> Petitioner, the 2<sup>nd</sup> Respondent clarified that the statistics that are not backed by Forms 34A or 34B, including the statistics that were being projected on the National Tallying Centre's Television screens are not the final result.
  
11. **THAT** Paragraph 10 of the Supporting Affidavit is denied. The correct position is as stated in paragraph 8 hereinabove.
  
12. **THAT** averments in Paragraph 11 are denied and the Petitioners put to strict proof thereof. There is no evidence provided to show that the Petitioners agents were chased away and replaced in polling stations in central Kenya and in the Rift Valley. In addition, Ruai Girls Secondary School was a polling centre in Kasarani Constituency of Nairobi County with 13 polling stations and not a polling station. Further, at the said polling centre, the Petitioners' agents duly executed Forms 34A in all polling stations.
  
13. **THAT** in response to Paragraph 12, I wish to state that I am not privy to the assignment of tasks by the Petitioners to the deponent of the Affidavit under reply. It is notable, however, that no evidence is provided to back up this averment.
  
14. **THAT** averments in Paragraph 13 are denied and the Petitioners put to strict proof thereof. The tallied votes for the 1<sup>st</sup> Petitioner that were transmitted from the Kenya Integrated Elections Management System (KIEMS) kit in terms of text and image of the Form 34A URA

Tea buying polling station 2 of 2 was 56 votes and not 66 votes as alleged.

15. **THAT** in response to Paragraph 14, Amwamba Primary School had two polling stations. In polling station number 1, the 1<sup>st</sup> Petitioner had an agent. The total tally for the 1<sup>st</sup> Petitioner in polling station number 1 was 51 votes. Neither the 1<sup>st</sup> Petitioner nor the 3<sup>rd</sup> Respondent had agents in polling station number 2. The 1<sup>st</sup> Petitioner's tally in polling station number 2 was 32 votes. Consequently, the figures as alleged in Paragraph 14 of the Supporting Affidavit are inaccurate. (Annexed herewith and marked "EC.1" is a copy of the relevant Form 34B)
  
16. **THAT** Paragraph 15 is admitted to the extent only that there was a data entry error leading to the 1<sup>st</sup> Petitioner who garnered 561 votes being shown as having received only 2 votes. The specific circumstances leading to this error are as set out in the Affidavit of **John Ole Taiswa**.
  
17. **THAT** Paragraph 16 is admitted to the extent only that there was a data entry error leading to the 1<sup>st</sup> Petitioner who garnered 437 votes being shown as having received only 4 votes. The full circumstances as to how the said errors occurred are as set out in the Affidavit of **Rebecca Abwaku**.
  
18. **THAT** averments in Paragraph 17 are denied and the Petitioners put to strict proof thereof. It is misleading for the Petitioners to allege that a partial form 34B was uploaded in respect of Karachuonyo



Constituency. As a matter of fact, the whole Form 34B was uploaded and is available online. (Annexed herewith and marked “EC.2” is a copy of the Form 34B) of Karachuonyo Constituency.

19. **THAT** Paragraph 18 is denied. The allegation that the total valid votes in the original Form 34B is 38,269 is erroneous as the Form 34B as uploaded onto the online portal and the original Form 34B indicate a figure of 38,285 as valid votes cast. The reference to 33,757 votes in the said Form refers to the votes cast for the 1<sup>st</sup> Petitioner as shown in the annexure marked as “EC.3”.
20. **THAT** the averments in Paragraph 19 are denied and the Petitioners put to strict proof thereof. The accurate figure is as reflected in the uploaded Form 34B is 50,931 votes as opposed to the figures alleged in the Supporting Affidavit.
21. **THAT** Paragraph 20 is admitted to the extent that there is a clerical error. The Form 34 A indicates that the 1<sup>st</sup> Petitioner garnered 232 votes while form 34B shows that he garnered 242 resulting to a variation of +10 votes in the total votes tallied.
22. **THAT** averments in Paragraph 21 are denied and the Petitioners put to strict proof thereof. The figure for the results in Form 34A is the same as that in Form 34B.
23. **THAT** in response to Paragraph 22, there is no variance between the results as indicated in Form 34B and those keyed in the KIEMS kit and those projected at the National Tallying Centre. However, it is

admitted that there was a clerical error creating a discrepancy in Form 34A of 6 votes.

24. **THAT** in response to Paragraph 23, it is admitted that there is a discrepancy between Form 34A and 34B due to a transcription error, with no material effect on the results. The circumstances are explained in **Moses Nyongesa Simiyu's** Affidavit.
25. **THAT** in response to Paragraph 24, it is also admitted that statistics transmitted and projected at the National Tallying Centre indicate that there were 4 rejected votes. The result in Form 34B, however, does not have an indication on the number of rejected votes. This was as a result of transposition error.
26. **THAT** averments in Paragraph 25 are denied and the Petitioners put to strict proof thereof. Form 34B for Embakasi South Constituency is consistent with Form 34A for the referenced polling station.
27. **THAT** Paragraph 26 is admitted only to the extent that there is a discrepancy between Form 34 A and Form 34B as regards to the votes for the 3<sup>rd</sup> Respondent.
28. **THAT** averments in Paragraph 27 are denied and the Petitioners put to strict proof thereof.
29. **THAT** averments in Paragraph 28 are denied and the Petitioners put to strict proof thereof.

30. THAT Paragraph 29 is admitted only to the extent that there was an arithmetic error. However, the aggregate of votes cast for each candidate in Form 34A shows that there were 300 valid votes cast. The same figure is reflected in Form 34B. Annexed hereto and marked “EC.4” are the relevant Forms 34A and Form 34B.
31. THAT the averments in Paragraph 30 are denied and the Petitioners put to strict proof thereof. Form 34B and the result keyed in the KEIMS kit and projected at the National Tallying Centre tally all match showing 338 total votes. However, it is admitted that there is a computation error in Form 34A.
32. THAT allegations set out in Paragraph 31 are denied. However, it is noted that in Form 34A of there referenced polling station there were 4 rejected votes, while in Form 34B indicates that there were 5 rejected votes. This is a clerical error.
33. THAT in response to Paragraph 32, Form 34B shows that there are 2 rejected votes. Consequently, while there is a variance of 1 vote, the allegation that there is a variation of 45 votes is denied and the Petitioners put to strict thereof.
34. THAT Paragraph 33 is admitted. The difference of numbers is due to a transposition error.
35. THAT in response to Paragraph 34, the valid votes cast in respect to the candidates when tabulated is 410. The minor variance between the Form 34A and Form 34B was occasioned by a clerical error.

36. **THAT** Paragraph 35, is admitted. However, the circumstances leading to variance are as set out in the Affidavit of **Julius Meja Okeyo**.
37. **THAT** Paragraph 36 is admitted. However, it is clear that the minor difference in number is due to a transposition error.
38. **THAT** in response to Paragraph 37, the total number of valid votes cast under the section 'number of votes cast in favour of each candidate' section is rightly recorded as 272. However, the total number of valid votes cast under the section 'Polling station counts' was erroneously recorded as 273.
39. **THAT** the averments in Paragraph 38 are denied and the Petitioners put to strict proof thereof. The valid votes cast at the polling station were 340 and the 3 extra are the rejected votes.
40. **THAT** Paragraph 39 is denied and the Petitioners put to strict proof thereof. The total number of votes recorded and transmitted is 260 votes and not 261 votes as alleged.
41. **THAT** Paragraph 40 is admitted only to the extent that the correct number of votes is 354. The variance occurred due to a transposition/computation error.

42. THAT Paragraph 41 is admitted to the extent only that there was a data entry error. Kaluyu Japheth Kavinga on Form 34B is shown as having received 1 vote while Form 34A that indicates he received 2 votes.
43. THAT the averments in Paragraph 42 are denied and the Petitioners put to strict proof thereof. The results as captured in Form 34A are the same as captured in Form 34B for the referenced polling station.
44. THAT averments in Paragraph 43 are denied and the Petitioners put to strict proof thereof. Both Forms 34 A and 34B show the same figures for the referenced polling station at 508 votes.
45. THAT averments in Paragraph 44 are denied and the Petitioners put to strict proof thereof. Both Forms 34A and 34B show the same figures for the referenced polling station at 483 votes.
46. THAT the averments in Paragraph 45 are denied and the Petitioners put to strict proof thereof. The alleged figure of the votes received by the Petitioner at Rusinga Primary Polling Centre are false.
47. THAT Paragraph 46 is admitted. However, the circumstances leading the errors are as set out in the Affidavit of **David Kipkemoi Cherop**.
48. THAT Paragraph 47 is admitted only to the extent that there was a clerical error leading to the minor variation. The total number of valid votes cast under the section 'number of votes cast in favour of each candidate' section is rightly recorded as 405. However, the total

number of valid votes cast under the section 'Polling station counts' was erroneously recorded as 407.

49. **THAT** Paragraph 48 is admitted only to the extent that there was a clerical error leading to the minor variation. This error resulted in Form 34A showing that the Petitioner garnered 357 votes while Form 34B shows that he garnered 356 votes.
  
50. **THAT** Paragraph 49 is also admitted only to the extent that there are arithmetic and transposition errors. In addition, due to these errors the 3<sup>rd</sup> Respondent was denied 12 votes, which were indicated as belonging to Michael Wainaina.
  
51. **THAT** Paragraph 50 is admitted only to the extent that there was a clerical error leading to the minor variation of one vote between the figures in Form 34A and Form 34B.
  
52. **THAT** averments in Paragraph 51 are denied and the Petitioners put to strict proof thereof. The figures in the relevant Form 34A tally with that indicated in Form 34B.
  
53. **THAT** averments in Paragraph 52 are denied and the Petitioners put to strict proof thereof. There is no variance in the figures in Forms 34A and 34B for the referenced polling station.
  
54. **THAT** averments in Paragraph 53 are denied and the Petitioners put to strict proof thereof.

55. **THAT** averments in Paragraph 54 are admitted only to the extent that there was a mathematically error.
56. **THAT** Paragraph 55, is admitted only to the extent that there was a clerical error leading to the variance. However, the circumstances leading to the error as set out on the Affidavit of **Julius Meja Okeyo**.
57. **THAT** averments in Paragraph 56 are denied and the Petitioners put to strict proof thereof. There is Nyabieyo polling station in Nyaribari Chache Cconstituency.
58. **THAT** the averments in Paragraph 57 are denied and the Petitioners put to strict proof thereof. Form 34A clearly shows that the 1<sup>st</sup> Petitioner garnered 424 votes at the referenced polling station.
59. **THAT** the averments in Paragraph 58 are denied in toto and the Petitioners put to strict proof thereof. The number of votes garnered by the 1<sup>st</sup> Petitioner, being 26 votes is consistent with the figures in both Forms 34A and 34B. The same number was also transmitted via text and projected on the screens at the National Tallying Centre.
60. **THAT** Paragraph 59 is denied. Both Form 34A and Form 34B show that the 1<sup>st</sup> Petitioner received 146 votes.
61. **THAT** the averments in Paragraph 60 are admitted only to the extent that there was a data entry error leading to the variance.

However, the circumstances leading to the error are as set out on the Affidavit of **Gilbert Serem**.

62. **THAT** the averments in Paragraph 61 are denied and the Petitioners put to strict proof thereof. I confirm that Form 34A shows that the 3<sup>rd</sup> Respondent, garnered 234 votes and not 224 votes as alleged. Further, Form 34B is consistent with Form 34A and shows that the 3<sup>rd</sup> Respondent received 234 votes at the Ilmotioo polling station 1 of 1. It is therefore not true that the said 3<sup>rd</sup> Respondent was added 10 votes. Annexed hereto and marked “**EC.5**” are copies of the relevant Form 34A and Form 34B.
63. **THAT** the averments in Paragraph 62 are denied and the Petitioners put to strict proof thereof. There is no evidence to show that 10 votes were deducted from the 1<sup>st</sup> Petitioner’s tally.
64. **THAT** averments in Paragraph 63 are denied in toto and the Petitioners put to strict proof thereof. Both the statistics transmitted and projected at the National Tallying Centre and the result in Form 34A show that the 1<sup>st</sup> Petitioner garnered 45 votes.
65. **THAT** averments in Paragraph 64 are denied and the Petitioners put to strict proof thereof. Both the relevant Form 34A and Form 34B indicated that 3<sup>rd</sup> Respondent received 439 votes.
66. **THAT** averments in Paragraph 65 are denied and the Petitioners put to strict proof thereof. There are 2 polling stations in Nkiriana primary school. In polling station 1, Uhuru Kenyatta garnered 254



votes while Raila Odinga garnered 35 votes. In polling station 2, Uhuru Kenyatta garnered 275 while Raila Odinga garnered 34 votes.

67. **THAT** Paragraph 66 is admitted only to the extent that there was a clerical error leading to the variance.
68. **THAT** Paragraph 67 is admitted only to the extent that there was a clerical error leading to the variance and wrong entries for the votes garnered.
69. **THAT** Paragraph 68 is admitted only to the extent that there was a data input error leading to the variance.
70. **THAT** averments in Paragraph 69 are denied and the Petitioners put to strict proof thereof. The number of registered voters in the polling station is 382 and it therefore impossible for the Petitioner to have garnered 663 votes.
71. **THAT** averments in Paragraph 70 are denied and the Petitioners put to strict proof thereof. Further, I wish to reply that while there were cases where some Forms 34A did not have the 1<sup>st</sup> Respondent's official stamp or signatures and that there were mathematical errors leading to some variance there were no instances of a different presiding officer signing for another or voting presided over by ungazetted presiding officers.

72. **THAT** averments in Paragraph 71 are denied in toto and the Petitioners put to strict proof thereof. There is no evidence whatsoever that the 3<sup>rd</sup> Respondents votes were inflated as alleged or at all. Form 34B was also duly filled. The Section on handover could not have possibly been filled since this was to have been done at the National tallying Centre but the Petitioners are fully aware that the Court of Appeal had held that Returning Officers should not “troop” to the National Tallying Centre but sent the Forms electronically. Annexed hereto and marked “**EC.6**” is the Form 34B for Isiolo North Constituency.
73. **THAT** the averments in Paragraph 72 are preposterous and are denied in toto and the Petitioners put to strict proof thereof. There was absolutely no inflation of figures for the 3<sup>rd</sup> Respondent as alleged or at all and the Form 34B for Loima Constituency was duly filled, stamped and signed by both the Returning Officer and agents. Annexed hereto and marked “**EC.7**” is the Form 34B for Loima Constituency.
74. **THAT** the averments in Paragraph 73 are denied and the Petitioners put to strict proof thereof. The 1<sup>st</sup> Respondent did not have a polling station by the name Nyakwara Primary School. Consequently, no voting happened at the alleged polling station nor were any results declared from the non-existent polling station.
75. **THAT** averments in Paragraph 74 are denied and the Petitioners put to strict proof thereof. Handing over notes or report are not required by law or at all. The Petitioners are fully aware that the

Court of Appeal had held that Returning Officers should not “troop” to the National Tallying Centre but sent the Forms 34B electronically. It is therefore not conceivable that the Returning Officer could have physically handed over and signed the section to the 2<sup>nd</sup> Respondent At the national Tallying Centre. In addition, the information captured as rejected voters were equal to the votes of the 3<sup>rd</sup> Respondent.

76. **THAT** Paragraph 75 is denied and the Petitioners put to strict proof thereof. The online statistics and those projected at the National Tallying Centre are not a representation of the results.
77. **THAT** averments in Paragraph 76 are denied and the Petitioners put to strict proof thereof. Mr. Obadiah Kariuki Gacoki the returning officer had been duly gazetted. In relation to the numbers, the online statistics and those projected at the National Tallying Centre are not a representation of the results.
78. **THAT** Paragraph 77 is denied and the Petitioners put strict proof thereof. The online statistics and those projected at the National Tallying Centre are not a representation of the results.
79. **THAT** the averments in Paragraph 78 are denied and the Petitioners put to strict proof thereof. In particular, the 2<sup>nd</sup> Respondent herein was not a candidate in the Presidential Election and could therefore not have possibly had votes allocated in Form 34B. Further, the figure for results in Form 34B is not as alleged but is 44,595 votes.

80. **THAT** Paragraph 79 is admitted only to the extent that the total rejected votes were 121 and that the 1<sup>st</sup> Petitioner garnered 515 votes. However, the averment that the 1<sup>st</sup> Petitioner was denied 2 votes is denied and the Petitioners put to strict proof thereof.
81. **THAT** averments in Paragraph 80 are denied and the Petitioners put to strict proof thereof. The results as displayed by the 1<sup>st</sup> Respondent on Form 34B indicate that rejected votes are 31 as tallied from the Form 34A. I reiterate that the handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election.
82. **THAT** Paragraph 81 is denied and the Petitioners put to strict proof thereof. The results as shown in Form 34B indicating that rejected votes were 125 are correct.
83. **THAT** the averments in Paragraph 82 are denied and the Petitioner put to strict proof thereof. The total number of rejected votes as indicated in Form 34B, being 114 votes, is the correct figure. The said figure also matches the results in the relevant Form 34A.
84. **THAT** the averments in Paragraph 83 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election since Form 34B was sent electronically and not taken to the National Tallying Centre physically. The Form was also duly filled and signed.

85. **THAT** the averments in Paragraph 84 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election since Form 34B was sent electronically and not taken to the National Tallying Centre physically. The Form was also duly filled and signed.
86. **THAT** averments in Paragraph 85 are denied and the Petitioners put to strict proof thereof. The results as indicated in Form 34B tallies with the aggregate total in Form 34A. Annexed hereto and marked “**EC.8**” is Form 34B for Mwala Constituency.
87. **THAT** the averments in Paragraph 86 are denied and the Petitioners put to strict proof thereof. In the referenced constituency, the 1<sup>st</sup> Petitioner garnered 3,475 votes and not 3,106 as alleged, while the 3<sup>rd</sup> Respondent received 65,037 votes as evidenced in the annexed copy of Form 34B marked “**EC.9**”.
88. **THAT** the averments in Paragraph 87 are denied and the Petitioners put to strict proof thereof. There was no inflation of the 3<sup>rd</sup> Respondent’s votes by 93 votes as alleged or at all.
89. **THAT** the averments in Paragraph 88 are also denied and the Petitioners put to strict proof thereof. There was no inflation of the 3<sup>rd</sup> Respondent’s votes by 100 as alleged votes or at all.
90. **THAT** averments in Paragraph 89 are denied and the Petitioners put to strict proof thereof. Once again handover notes were not

applicable in the 2017 Presidential Election. With respect to stamping, while this was the procedure, its absence is not fatal in law and cannot be a basis for disenfranchising voters. The ballot was protected and could be authenticated by advanced security features which have been explained elsewhere in the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's response to the Petition.

91. **THAT** the averments in Paragraph 90 are denied in toto and the Petitioners put to strict proof thereof. Form 34B for the referenced constituency correctly indicates the rejected votes as 202 as tallied from the Forms 34A.
92. **THAT** Paragraph 91 is denied. I reiterate that handover notes were not applicable in the 2017 Presidential Election. With respect to stamping, while this was the procedure, its absence is not fatal in law and cannot be a basis for disenfranchising voters. The ballot was protected and could be authenticated by advanced security features.
93. **THAT** the averments in Paragraph 92 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election. The Form 34B for Mwatate Constituency was sent electronically to the National Tallying Centre. The Form was also duly filled and signed.
94. **THAT** averments in Paragraph 93 are denied and the Petitioners put to strict proof thereof. The results as shown in Form 34B correctly

indicate that rejected votes are 260 for Voi Constituency as tallied from the Form 34A.

95. **THAT** averments in Paragraph 94 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election. The Form 34B for Lamu East Constituency was sent electronically to the National Tallying Centre.
96. **THAT** averments in Paragraph 95 are denied and the Petitioners put to strict proof thereof. Form 34A for Jetview Polling Station indicates that the 1<sup>st</sup> Petitioner garnered 303 votes and not 323 votes as alleged. In response to the allegations with respect to Mulolonggo polling station, the 1<sup>st</sup> Petitioner only received 363 votes as shown in Form 34A and not 365 votes. Finally, the averment that no Form 34A was submitted for Githunguri polling station is denied and the Petitioners put to strict proof thereof.
97. **THAT** the averments in Paragraph 96 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election. The Form 34B for Malindi Constituency was sent electronically to the National Tallying Centre.
98. **THAT** the averments in Paragraph 97 are denied and the Petitioners put to strict proof thereof. The handing over notes are not a requirement in law and were not applicable to the 2017 Presidential

Election. The Form 34B for Yatta Constituency was sent electronically to the National Tallying Centre.

99. **THAT** averments in Paragraph 98 are also denied and the Petitioners put to strict proof thereof. An authentic stamp of the 1<sup>st</sup> Respondent was used and there is no basis for invalidating Form 34 for Eldas Constituency.

100. **THAT** averments in Paragraph 99 are denied and the Petitioners put to strict proof thereof. With respect to Mwangaza Primary school polling centre, the total votes for each respective candidate were captured correctly as they were indicated in Forms 34A and 34B.

101. **THAT** Paragraph 100 is admitted to the extent only that there was a variance due to data entry errors. There is a variance between the total votes tallied and the total valid votes as illustrated bellow. This leads to 461 votes missing and unaccounted for. While the variations is evident, it does not mean that the votes were deducted from the 1<sup>st</sup> Petitioners. The 1<sup>st</sup> Petitioners votes were correctly reflected and remain unaltered. It is other candidates who lost votes in the instance.

Total valid votes indicated in 34B	Total votes tallied for all candidates	variation
65128	65589	461

102. **THAT** the averments in Paragraph 101 are denied and the Petitioners put to strict proof thereof. Handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election.



There is therefore no basis for invalidating the Form 34B for Kuresoi Constituency.

103. **THAT** averments in Paragraph 102 are equally denied and the Petitioners put to strict proof thereof.
104. **THAT** averments in Paragraph 103 are denied and the Petitioners put to strict proof thereof. Form 34B was correctly signed by the gazetted Returning Officer for Sigor Constituency.
105. **THAT** averments in Paragraph 104 with respect to Park Road Primary School are denied and the Petitioners put to strict proof thereof. Form 34B indicates that the number of rejected votes is 24. The stamp used on the form was that of the Returning Officer issued by the 1<sup>st</sup> Respondent. It is also noteworthy that the Petitioners' agent duly appended his signature to the form including the name, I.D Number and contact .
106. **THAT** Paragraph 105 is admitted only to the extent that there was a computational error with respect to the total votes cast. However, the valid votes for each of the presidential candidates is accurate. Annexed hereto and marked "EC.10" is Form 34B for Turbo Constituency.
107. **THAT** averments in Paragraph 106 are denied and the Petitioners put to strict proof thereof. Handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election.

108. **THAT** the averments in Paragraph 107 are denied and the Petitioners put to strict proof thereof. The number of rejected votes for Turkana Central Constituency were 156 and not 1,393 as alleged. The allegation that the 1<sup>st</sup> Petitioner lost 7 votes is also denied. Annexed and marked “**EC.11**” is the relevant Form 34B.
109. **THAT** averments in Paragraph 108 are denied and the Petitioners put to strict proof thereof. Handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election. Form 34B for Kieni Constituency was sent to the National Tallying Centre electronically.
110. **THAT** averments in Paragraph 109 are denied and the Petitioners are put to strict proof thereof. Contrary to the averments in the said paragraph:
- Kipkelion primary school is a polling centre with 2 polling stations. In polling station 1, it is indicated in form 34A that Raila Odinga garnered 61 votes and the same is reflected in form 34B.
  - The 3<sup>rd</sup> Respondent garnered 269 votes as indicated on Form 34A and reflected on Form 34B and not the 268 as alleged by the petitioner.
  - All forms alleged have been stamped.
111. **THAT** averments in Paragraph 110 are denied and the Petitioners put to strict proof thereof. The total number of votes garnered by the 3<sup>rd</sup> Respondent in Emurua Dikir Constituency are 22,313 votes and the

same is confirmed by both Forms 34As and 34B. The figure is not 21,910 as alleged.

112. **THAT** the averments in Paragraph 111 are denied and the Petitioners put to strict proof thereof. Both Forms 34A and 34B indicate that the 3<sup>rd</sup> Respondent garnered 359 votes for Dundori primary school.
113. **THAT** averments in Paragraph 112 are denied and the Petitioners put to strict proof thereof. Handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election.
114. **THAT** averments in Paragraph 113 are admitted only to the extent that the variance of 6 votes between the two forms was as a result of data entry error. However, the other averments in the said paragraph are denied and the Petitioners are put to strict proof thereof.
115. **THAT** in response to Paragraph 114, the 3<sup>rd</sup> Respondent garnered 51,186 votes. The rejected votes as indicated in Form 34A are 74 votes and not 124 votes as alleged.
116. **THAT** Paragraph 115 is admitted only to the extent that there were some arithmetic errors in completing the Form. The other averments in the said paragraph are denied and the Petitioners put to strict proof thereof. It is notable that the number of votes cast in favour of each candidate were clearly indicated, and the forms signed by the Presiding officer and the Party Agent.

117. **THAT** averments in Paragraph 116, denied in *toto* and the Petitioner is put to strict proof thereof.
118. **THAT** averments in Paragraph 117 are denied and the Petitioners put to strict proof thereof. Nevertheless, I wish to state that the stamps used in Mandera East Constituency are valid stamps.
119. **THAT** averments in Paragraph 118 are denied and the Petitioners put to strict proof thereof. There is no requirement for signing all pages but only where signatures are required on the form.
120. **THAT** averments in Paragraph 119 are also denied and the Petitioners put to strict proof thereof. Handing over notes are not a requirement in law and were not applicable to the 2017 Presidential Election.
121. **THAT** in response to Paragraph 120, I wish to state that the entries on form 34B were correct as per form 34A but there was a computation error in form 34B that indicated valid votes as 25,779 and the total summed up votes as 22,590.
122. **THAT** averments in Paragraph 121 are denied and the Petitioners put to strict proof thereof. Trans Nzoia is a County not a constituency and, consequently, there cannot have been nor is there a Form 34B for the purported Trans Nzoia Constituency.
123. **THAT** averments in Paragraph 122 are denied and the Petitioners put to strict proof thereof.

124. **THAT** Paragraph 123 is admitted only to the extent that Form 34B does not show any rejected votes although there was 1 rejected vote. This was a transposition error. The other averments in the paragraph are denied and the Petitioners are put to strict proof thereof. The 2<sup>nd</sup> Respondent was not a candidate in the Presidential Election and no votes could therefore have been attributed to him at the referenced polling centre.
125. **THAT** averments in Paragraph 124 are denied and the Petitioners put to strict proof thereof.
126. **THAT** the averments in Paragraph 125 are denied and the Petitioners put to strict proof thereof. The stamp used is the official stamp.
127. **THAT** averments in Paragraph 126 are denied and the Petitioners put to strict proof thereof. The Returning Officer signed, dated and stamped the form and the total number of votes for each candidate were clearly indicated on the said form. Only agents who are present sign and there is no evidence that the Petitioners agents were present.
128. **THAT** the averments in Paragraph 127 are denied and the Petitioners put to strict proof thereof. The total valid votes at Wardei Primary School is 160 as indicated. The actual vote tally is 159 and not 169 as alleged. In form 34B the votes garnered by each candidate was entered correctly. The correct figure is 34203.

129. **THAT** averments in Paragraph 128 are denied and the Petitioners put to strict proof thereof. The total number of valid votes received by the candidates is 31,292 and not 31,288 as alleged. Form 34B indicates total valid votes as 31,252 instead of 31292. The variance of the 40 votes is as a result of computation error. The Returning Officer's Stamp is authentic.
130. **THAT** Paragraph 129 is admitted only to the extent that there was a computation error. However, the total votes cast in respect to every candidate was accurately tallied.
131. **THAT** Paragraph 130 is admitted only to the extent that there was a computation error. However, the total votes cast in respect of every candidate was accurately tallied.
132. **THAT** the averments in Paragraph 131 are denied and the Petitioners put to strict proof thereof. The Forms 34A of Mirima Primary School and Ushindin Baptist Primary School were duly stamped before the results were transferred to Form 34B.
133. **THAT** the averments Paragraph 132 (similar allegation as paragraph 99) are denied and the Petitioners put to strict proof thereof. With respect to Mwangaza Primary school polling centre, the total votes for each respective candidate were captured correctly as they were indicated in for 34A and 34Bs.
134. **THAT** averments in Paragraph 133 are denied and the Petitioners put to strict proof thereof.

135. **THAT** averments in Paragraph 134 are denied and the Petitioners put to strict proof thereof.
136. **THAT** Paragraph 135 is admitted to the extent that there was a computation error. The total number of valid votes received by the candidates is 105,840. However, Form 34B indicates total valid votes as 104,789. The Returning Officer's Stamp is authentic and the allegations that the Form does not have a bar code is denied and the Petitioner put to strict proof.
137. **THAT** averments in Paragraph 136 are denied and the Petitioners put to strict proof thereof.
138. **THAT** averments in Paragraph 137 are denied and the Petitioners put to strict proof thereof. Parkroad is a polling centre with three polling stations. The allegations are not specific to allow for a response
139. **THAT** in response to Paragraph 138, I confirm that whereas the Chief Executive Officer of the 1<sup>st</sup> Respondent issued a directive invalidating any ballot paper that was not stamped, the said directive was limited ballot papers and did not extend to Forms 34A. If the intention was for the directive to extend to Forms 34A, then the directive would have specifically provided so.
140. **THAT** the averments in Paragraph 139 are denied in toto and the Petitioners put to strict proof thereof. The referenced forms are all

clear and legible. Copies of the said Forms have been provided to this Honourable Court.

141. **THAT** averments in paragraph Paragraph 140 are also denied and the Petitioners put to strict proof thereof. The 1<sup>st</sup> Respondent did not gazette any polling station or centre known as Kiptendon primary school as alleged. Further, only agents present could sign the relevant forms and no evidence has been provided that the Petitioners agent was present and was denied the opportunity to sign the form or refused to sign the same for a valid reason.
142. **THAT** averments in Paragraph 141 are denied and the Petitioners put to strict proof thereof. It is also notable that no report by a handwriting expert has been produced to substantiate the allegation that the same person filled or completed Forms 34A.
143. **THAT** Paragraph 142 in denied and the Petitioners put to strict proof thereof.
144. **THAT** averments in Paragraph 143 are denied and the Petitioners put to strict proof thereof.
145. **THAT** averments in Paragraph 144 are denied and the Petitioners put to strict proof thereof.



146. **THAT** averments in Paragraph 145 are denied. I confirm that the Forms 34A for Njoguini Primary school are clear and legible. A copy of the said form has been provided to this Honourable Court.
147. **THAT** averments in Paragraph 146 are denied and the Petitioners put to strict proof thereof. In any case, it is not clear, even if the allegations were true, how this could have affected the Presidential Election or results.
148. **THAT** averments in Paragraph 147 are denied and the Petitioners put to strict proof thereof. The Forms from the referenced centre have not been crossed as alleged and they indicate the votes the candidates garnered.
149. **THAT** averments in Paragraph 148 are denied. No evidence has been provided to show that there was any agent present who was denied an opportunity to sign the forms or that they refused to sign and provided reasons.
150. **THAT** the averments in Paragraph 149 are denied and the Petitioners put to strict proof thereof. It is also notable that the referenced places are not polling stations.
151. **THAT** averments in Paragraph 150 are denied and the Petitioners put to strict proof thereof. There is no mandatory legal requirement for agents to sign Form 34A. Only agents who are present can sign. There is no allegation that the Petitioners agents were refused the opportunity to sign or they were present.

152. **THAT** averments in Paragraph 151 are also denied and the Petitioners put to strict proof thereof. There is no polling station by the name Habaswein Boys primary school.
153. **THAT** averments in Paragraph 152 are also denied and the Petitioners put to strict proof thereof. There is no polling station known as Kisina primary school.
154. **THAT** averments in Paragraph 153 are denied and the Petitioners put to strict proof thereof.
155. **THAT** the averments in Paragraph 154 are admitted only to the extent that a Form 34A belonging to Maluma Primary School was erroneously uploaded as being for Kalivu Primary School.
156. **THAT** averments in Paragraph 155 are denied in toto and the Petitioners put to strict proof thereof. Other than the relevant forms having been signed and witnessed by agents, no evidence has been provided to prove the allegation on the alteration of handwriting. Indeed, the forms referenced to are not annexed to the Supporting Affidavit.
157. **THAT** averments in Paragraph 156 are denied and the Petitioners put to strict proof thereof. The specific form that is alleged to be unclear is not identified and the tallying that is alleged to be incorrect is not specified.

158. **THAT** averments in Paragraph 157 are denied and the Petitioners put to strict proof thereof. There are no polling stations known as “Ykivuti primary school”, “Molemuni primary school” and “Ta Farmers School”.
159. **THAT** averments in Paragraph 158 are denied and the Petitioners put to strict proof therefore. No evidence has been provided to support this wild allegation made in the said paragraph.
160. **THAT** in response to Paragraph 159, I am aware that the 1<sup>st</sup> Respondent did not receive, and therefore did not reject any application from a candidate seeking to appoint agents in the above mentioned polling stations or centres. In addition, it has not been demonstrated how the absence of agents affected voting or tallying in the said places and/or how it affected the Petitioners.
161. **THAT** averments in Paragraph 160 are denied and the Petitioners put to strict proof thereof. Similar to the wild allegations in paragraph 158 of the Supporting Affidavit, no evidence whatsoever is provided to support the allegations.
162. **THAT** in response to Paragraph 161, the number of registered voters at Uruku Prison was 12 which number was gazetted.
163. **THAT** in response to Paragraph 162, I wish to state that:
- a) The 1<sup>st</sup> Respondent did not gazette any polling station known as “Gatinja primary school” and as such cannot comment further on the same.

b) As regards the legibility of Form 34As at Runyenjes Municipal Hall all the forms for the three (3) polling stations are legible. Copies of the said forms have been provided to this Honourable Court.

c) As relates to the Form 34As for Nduuri primary school, the said forms are legible. The total number of registered voters and total numbers of votes cast is clear and so are the polling station names. Copies of the said forms have been provided to this Honourable Court.

164. **THAT** in response to Paragraph 163, I note that instead of indicating their name, the agents for the respective parties simply indicated the names of their principals. This did not affect the results. Indeed, the Petitioners have not demonstrated in the Supporting Affidavit how the indication of the principals' names materially affected the result of the presidential election, if at all.

165. **THAT** averments in Paragraph 164 are denied and the Petitioners put to strict proof thereof.

166. **THAT** averments in Paragraph 165 are denied and the Petitioners put to strict proof thereof. It should also be noted that the 1<sup>st</sup> Respondent did not gazette any polling station by the name "Kithagutari primary school".

167. **THAT** averment in Paragraph 166 are denied and the Petitioners put to strict proof thereof. The respective Form 34As are clear and legible for both polling stations at Ciangera primary school polling

centre. Copies of the said forms have been provided to the Honourable Court.

168. **THAT** averments in Paragraph 167 are denied and the Petitioners put to strict proof thereof.
169. **THAT** averments in Paragraph 168 are denied and the Petitioners put to strict proof thereof.
170. **THAT** averments in Paragraph 169 are denied and the Petitioners put to strict proof thereof. The 1<sup>st</sup> Respondent did not have a polling station under the name “Qvaaine”.
171. **THAT** averments in Paragraph 170 are denied and the Petitioners put to strict proof thereof.
172. **THAT** averments in Paragraph 171 are denied and the Petitioners put to strict proof thereof. No expert evidence has been provided to demonstrate the similarity of handwriting. Further, similarity of handwriting does not mean that the same person signed the forms in the 2 polling centres.
173. **THAT** the averments in Paragraph 172 are denied and the Petitioners put to strict proof thereof.
174. **THAT** averment in Paragraph 173 is denied and the Petitioners put to strict proof thereof.

175. **THAT** averments in Paragraph 174 are denied and the Petitioners put to strict proof thereof.
176. **THAT** the averments in Paragraph 175 are denied and the Petitioners put to strict proof thereof. The stamp used is the 1<sup>st</sup> Respondent's authentic stamp.
177. **THAT** averments in Paragraphs 176 are denied and the Petitioners put to strict proof thereof.
178. **THAT** averments in Paragraphs 177, 178, 179, 180, 181, 182, 183, 184, 185 and 186 with regard to similarity of handwritings and/or lack of signatures or stamps are denied and the Petitioners put to strict proof thereof.
179. **THAT** averments in Paragraph 187 are denied and the Petitioners put to strict proof thereof. Pangani Secondary polling centre had several polling stations, all of which had the total number of votes cast and registered voters indicated on the respective Form 34A. Copies of the said forms have been provided to the Honourable Court.
180. **THAT** averments in Paragraph 188 are denied and the Petitioners put to strict proof thereof. Indeed, there was no polling station with the name "Kuni Primary".

181. THAT averments in Paragraphs 189, 195 196, 197, 199, 201, 202 and 209 with respect similar signatures of handwritings and all other averments in the said paragraphs are denied and the Petitioners put to strict proof thereof. No evidence has been provided to back up the claim nor has it been demonstrated how similarity of signatures, if any, affected the results.
182. THAT in response to paragraph 190, only agents who were present signed the relevant Forms 34A. No evidence has been provided to show that there were agents who were present but failed and/or refused to sign the relevant forms.
183. THAT averments in Paragraph 191 and 192 are denied and the Petitioners put to strict proof thereof. The relevant forms for the referenced centres are clear and legible. Copies of the said forms have been provided to the Honourable Court.
184. THAT averments in Paragraph 193 and 194 are also denied and the Petitioners put to strict proof thereof. There were no polling stations known as “Teldet Primary School” and “Kiplegut Primary” that were used in the 2017 Presidential Election.
185. THAT averments in Paragraph 198 are denied. Only agents who are present signed the relevant forms. No evidence has been provided to show that the Petitioners’ agents were present but failed and/or refused to sign the relevant forms.

186. **THAT** averment in Paragraph 200 is denied and the Petitioners put to strict proof thereof. There was no polling station with the name “Masset” that was used for purposes of the 2017 Presidential Election.
187. **THAT** averments in Paragraph 203 are denied and the Petitioners put to strict proof thereof. No evidence or specificity has been provided as to the alleged discrepancy.
188. **THAT** averments in Paragraph 204 are denied and the Petitioners put to strict proof thereof.
189. **THAT** averments in Paragraphs 205, 206 and 207 are denied and the Petitioners put to strict proof thereof. I confirm that there were no polling stations with the names “Njukinjiru” or “Kathurini Coffee” or “Keses” or “Kilelgut” or “Kalyet Pry School” or “Gakororone Market” that were used in the 2017 Presidential Election.
190. **THAT** averments in Paragraph 208 are denied and the Petitioners put to strict proof thereof. No evidence or specificity has been provided as to the alleged discrepancy.
191. **THAT** the averments in Paragraph 210 are denied and the Petitioners put to strict proof thereof. Other than the fact that there was no polling station with the name “Masste Pry” that was used in the 2017 Presidential Election, no evidence has been provided to prove the allegation made in the said paragraph.



192. **THAT** averments in Paragraph 211 are also denied and the Petitioners put to strict proof thereof. In addition to the fact that there were no polling stations (where Form 34As were used) with the names “Gilgil Constituency”, “St. Patrick Pry”, “Ole Sultan Pry”, “Muricucuria ECD Pry”, “Ndibai Pry School”, “St. Barnabas Trading”, “Munanda Pry”, “Gitare Pry”, “Kahuho Pry”, “Kamathat”, “Echacharia Pry”, “Loldia Pry”, “itherero Pry”, “Kiunguria”, and “Komothat Pry”, no evidence is provided to back the allegations or claims regarding discrepancies, illegibility of forms, lack of signatures or stamps and similarity of handwritings.
193. **THAT** averments in Paragraphs 212 are denied and the Petitioners put to strict proof thereof. No evidence has been provided to show that the Petitioners agents were present and were denied the opportunity to sign the relevant form or refused to do so for a valid reason. In addition, no evidence of the alleged discrepancy has been provided.
194. **THAT** averments in Paragraphs 213 are denied and the Petitioners put to strict proof thereof. The relevant forms are legible and copies of the same have been provided to this Honourable Court.
195. **THAT** averments in Paragraphs 214 are all denied and the Petitioners put to strict proof thereof.
196. **THAT** the averments in paragraph 215 are denied and the Petitioners put to strict proof thereof. In any event, it has not been

demonstrated how the alleged infractions violated the law and/or affected the results or outcome of the Presidential Election.

197. **THAT** averments in Paragraph 216 are denied and the Petitioners put to strict proof thereof. No evidence has been provided to substantiate the claim that the Forms 43A are illegible. Indeed, the said forms have been provided to this Honourable Court and are legible.
198. **THAT** averments in Paragraph 217 are denied and the Petitioners put to strict proof thereof.
199. **THAT** averments in Paragraph 218 are also denied and the Petitioners put to strict proof thereof.
200. **THAT** averments in Paragraph 219 are denied in toto and the Petitioners put to strict proof thereof. I confirm that there were no polling station with the names “Kitaingo Pry”, “Manguti Pry”, “Ciothiral”, “Barmeï Pry School”, “Chepkurbet Pry”, “River Bank Pry”, “Ndatabwa Pry”, “Komothai Pry School” and “Kapkatetl” that were used for the 2017 Presidential Election.
201. **THAT** the averments in Paragraph 220 are denied and the Petitioners put to strict proof thereof. No evidence has been provided to substantiate the said wild allegations.

202. **THAT** the averments in Paragraph 221 are denied and the Petitioners put to strict proof thereof. No evidence has been provided to back substantiate the said allegations.
203. **THAT** averments in Paragraph 222 are denied and the Petitioners put to strict proof thereof. No evidence has been provided to show or substantiate the claim that the results in the mentioned places do not tally mathematically. Indeed, most of the places mentioned were not polling stations.
204. **THAT** in response to Paragraph 223, I wish to state that Forms 34A are prepared by the presiding officers at the polling station. Additionally, it has not been shown how the completing of the Forms 34A by the presiding officers violated the law and/or affected the conduct or the results of the Presidential Election.
205. **THAT** averments in Paragraphs 224, 225, 226 and 227 are strongly denied and the Petitioners are put to strict proof thereof. I confirm that the Presidential Election was conducted in accordance with the requirements of the Constitution, the Election Act and regulations thereunder as well as all relevant applicable laws and regulations as demonstrated in the 1<sup>st</sup> and 2<sup>nd</sup> Respondents response to the Petition herein.
206. **THAT** the averments in Paragraph 228 are denied and the Petitioners are put to strict proof thereof.

207. **THAT** averments in Paragraph 229 are also denied and the Petitioners put to strict proof thereof. Not an iota of evidence has been produced to prove these wild allegations. I confirm that no elections were conducted in ungazetted polling stations/tallying Centres as alleged by the Petitioners or at all and further that the alleged ungazetted polling stations/tallying Centres do not exist.
208. **THAT** averments in Paragraph 230 are denied and the Petitioners put to strict proof thereof. While there is a variance in the total number of votes cast between the Presidential and governor elections the said variance is not of 482,202 votes as alleged. The variances with respect to county level elections (Governor, Senator, Women Representative in the National Assembly) and the Presidential Elections are within acceptable statistical limits and are annexed hereto and marked “**EC. 12**”.
209. **THAT** in response to Paragraph 231, as earlier indicated, the statistics projected at the National Tallying Centre or elsewhere were not the official results of the Presidential Election.
210. **THAT** the averments in Paragraph 232 are strongly denied and the Petitioners put to strict proof thereof. The allegations in the said averments are baseless, malicious and inflammatory.
211. **THAT** the averments at paragraph 233 are an expression of the deponent’s opinion.

212. **THAT** the allegations at paragraph 240 are denied. I am aware that the 2<sup>nd</sup> Respondent wrote to the Director of Public Prosecutions to discharge his constitutional mandate. The letters dated 21<sup>st</sup> June 2017 together with the two letters 6<sup>th</sup> July 2017 are annexed hereto and marked “EC. 13 (a)-(c)”.

### **REPLY TO THE FURTHER AFFIDAVIT**

213. **THAT** the contents of paragraphs 4 and 5 are denied and the Petitioners put to strict proof thereof. In any event, I note that despite the Petitioners making reference to annexure DNO-2A and DNO-2-2A, the said documents were not supplied to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. In the absence of the impugned forms and/or details of the affected forms, I am unable to respond to the said broad and unsubstantiated claims.

### **SECURITY FEATURES OF STATUTORY FORMS**

214. **THAT** I am aware that the Commission developed standards for its electoral goods prior to their procurement. The standards included specific security features for each ballot paper and statutory form in order to prevent duplication, misuse, piracy, fraud, counterfeiting and to improve controls. All the ballot papers and statutory forms used in the 8<sup>th</sup> August 2017 election contained these security features.

215. **THAT** some of the security features employed on the result declaration Forms 34A and 34B used in the 8<sup>th</sup> August 2017 election include:

- (a) **Guilloche patterns** against which all background colors on the various results declaration forms have been printed. These patterns are non – reproducible geometric patterns generated by a special security software used for currency designs and are generated as lines in vector format and cannot be scanned and reproduced.
  
- (b) **Anti – copy patterns;** when the results declaration forms are photocopied, hidden texts appear on the copy produced thus distinguishing the original from the reproduced copy. Thus, a photocopy would be distinguishable from an original form.
  
- (c) **Watermarks;** when the results declaration forms are viewed against normal light or at an angle, a pattern or text incorporated in the form can be seen.
  
- (d) **Micro text;** the results declaration forms have text characters printed in very small font size which appear like a line to the naked eye and are verifiable only under a magnified glass.
  
- (e) **Tapered serialization;** this means serial numbering. Each of the result declaration forms has a unique serial number to ensure monitoring and control of the distribution of forms. Furthermore, this serialization cannot be done by regular mechanical impact devices.

- (f) **Invisible UV printing;** each result declaration form bears invisible logos which may only be seen under a UV light. This feature renders the forms almost impossible to counterfeit.
  
- (g) **Polling station data personalization;** In addition to having the candidates' names, the forms 34A are personalized with the details of the polling station's name and code, ward name and code, constituency name and code and the county name and code. This curbs the misuse of forms at different stations and minimizes manual entry of information by officials at the polling stations.
  
- (h) **Self – carbonating element;** Forms 34A bear this aspect thereby restricting manual entry of data on the form 34A to only once and consequently enhancing accuracy and verifiability of the results.
  
- (i) **Barcodes;** The Forms 34B and Form 34C are printed with barcodes which identify the tallying center by showing the county codes and constituency codes, therefore ensuring quick identification and verification of results.

216. **THAT** security features were also incorporated in the ballot papers used in the 8<sup>th</sup> August 2017 election all in an effort to ensure that the elections were free and fair. For example, each ballot paper included different colour coding of the background of each ballot paper for the six (6) elections. Each ballot paper when examined visually

contained a different colour. Specifically the commission used different background colors for each election to wit:-

- a. Presidential-Plain white.
- b. Member of National Assembly-Green colour.
- c. Senator ballot paper-Yellow colour.
- d. Member of County Assembly-Brown colour.
- e. County woman member of national assembly-Purple colour.
- f. Governor-Sky Blue Colour.

217. **THAT** in addition to the colour coding, similarly as in the statutory declaration forms, each ballot paper incorporated a guilloche pattern, generic watermark, anti – copy feature, embossment, UV sensitive security, tapered serialization and tapered UV serialization to prevent duplication, misuse, piracy, fraud, counterfeiting and to improve controls.

218. **THAT** the security features incorporated on the results declaration forms and the ballot papers would enable the commission detect a counterfeit statutory form or ballot paper and discharge its constitutional mandate of conducting secure and verifiable elections.

219. **THAT** in addition to incorporating the security features, the Commission went a step further to instruct that all ballot papers need be stamped before they are issued to a registered voter to cast his/her vote. This was an extra measure initiated by the Commission with a view to ensure that the electoral process was secure. However, the absence of a stamp does not by itself speak to the authenticity of or invalidate the ballot paper.



220. **THAT** I confirm that all the Form 34A's received by the Commission at the National Tally Center had all the abovementioned security features.

221. **THAT** what is stated in the foregoing is true to my personal knowledge, save where I have relied on information and advice, the source of which I have disclosed and verily believe the same to be true.

<b>SWORN at NAIROBI</b>	]	
On this <b>24<sup>th</sup></b> day of <b>August</b> , 2017	]	
By the said	]	
<b>IMMACULATE KASSAIT</b>	].....	
	]	<b>DEPONENT</b>
<b>BEFORE ME</b>	]	
	]	
	]	
	]	
<b>COMMISSIONER FOR OATHS</b>	]	

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**Nairobi.**

Lodged in the Registry at Nairobi on the **24<sup>th</sup>** day of **August** 2017

.....  
Registrar