

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

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

**AND**

**THE 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**

**3<sup>RD</sup> RESPONDENT'S AFFIDAVIT**  
**IN REPLY TO THE AFFIDAVITS OF DR. NYANGASI ODUWO & OLGA KARANI**

**I ANDREW WAKAHIU**, a resident of Nairobi and of care of P. O. Box 40530-00100 Nairobi do make oath and state as follows **THAT:-**

1. I am the Secretary of Delivery and Head of the Presidential Delivery Unit (PDU) which is a functional office in the Executive Office of the President and I am duly authorized to make this affidavit on behalf of the 3<sup>rd</sup> Respondent.
2. I am a holder of a Bachelor's degree in Marketing from Moi University and currently pursuing a Masters degree in business administration (MBA) specializing in Consumer Psychology.
3. I joined the government of the Republic of Kenya in the capacity of head of the PDU in the Executive Office of the President in September 2016.
4. I have read and had the contents of the Petition , 1<sup>st</sup> Petitioner's and Dr. Nyangasi Oduwo's affidavit sworn on 18<sup>th</sup> August, 2017 in support of the Petition explained to me by the advocate on record and wish to respond as follows.
5. It is untrue that the 3<sup>rd</sup> Respondent violated section 14 of the Election Offences Act through sponsoring or causing sponsorship of advertisement in printed electronic media, business and billboards of the government achievements during the election period.
6. The allegations at paragraph 37 of the 1<sup>st</sup> Petitioner's affidavit and those set at paragraph 238 of Dr. Nyangasi Aduwo's affidavit are made in total disregard of the factual position.

7. I believe that the allegations in the paragraphs set out above are addressed at the work of the PDU which I head. It is important that the role and operations of the PDU are properly understood.
8. I am advised by the 3<sup>rd</sup> Respondent's advocates on record which I verily believe to be true that there is no provision in the Constitution that requires ongoing government programmes to be suspended during the election period.
9. The government exists to serve the people at all times and irrespective of whether a general election is imminent or not Citizens are entitled to hold their government to account.
10. The accountability of governments to their people is widely expected and the idea of setting up a delivery unit is one that is rapidly gaining application across the world.
11. There are delivery units in mature democracies such as the United Kingdom and India as well as in developing countries such as Rwanda, Ethiopia and Liberia.
12. The whole idea of a delivery unit is to enhance the accountability of a government to its citizens through making information relating to ongoing projects available.
13. During the month of May, 2017 the Kenya PDU hosted the Africa Delivery Exchange and Tony Blair Institute for Global change where a delegation of six PDUs from across the region attended the event which was basically a learning forum for sharing experiences among the distinctive PDUs. A copy of the brochure is annexed and marked "**AW 1**".
14. The 3<sup>rd</sup> Respondent was first elected the President of Kenya in 2013. He was the candidate of the Jubilee Coalition made up of The National Alliance (**TNA**), the United Republican Party (**URP**), National Alliance Rainbow Coalition (**NARC**) and Republican Congress (**RC**).
15. The Shared Manifesto of the Jubilee Coalition which is at pages 1 to 71 of the exhibit annexed and marked "**AW2**" had as its objective the transformation of Kenya.
16. The transformation was to be achieved through 3 pillars namely **unity, growth of the economy and openness**.
17. The Shared Manifesto stated as follows at page 63:

**" The Coalition believes in a new brand of politics: one where the national interest is placed above personal gain or tribal advantage. We are committed to fostering an**

**open, tolerant, forward looking Kenya with modern institutions that serve the people rather than narrow sectional interests.**

**We are dedicated to implementing the new constitution quickly and effectively, as it is the paramount guarantor of the people's rights and freedoms. Besides, power must be decentralized from Nairobi to the 47 new counties, bringing it closer to the people so that they can hold those who take decisions about their day-to-day lives to account."**

18. Accountability to the people of Kenya was therefore at the heart of the pledges made to the people of Kenya by the Jubilee Coalition.
19. By Executive Order number 11 of 9<sup>th</sup> March 2016, the Office of the Deputy Chief of Staff within the Executive Office of the President was created and several functional offices under that office namely:
  - (a) Secretary, President's Delivery Unit
  - (b) Secretary, Office of Budget Management
  - (c) Secretary, Office of Performance Management and Co-ordination
  - (d) Secretary, State Corporation Oversight Office.

A copy of the executive order is annexed and marked "AW3".

20. One of the easiest ways of making information on government projects available is to have it on a web portal.
21. The portal is one of the tools the PDU uses to enhance accountability. The PDU in Kenya as in many other countries is an operation of the government irrespective of the party or coalition of parties in power.
22. The citizens are able to check the status of projects and to raise any issues they have and any person who accesses the information availed is able to challenge the government on any aspects of the project.
23. I am aware that prior to the setting up of the web portal members of the general public and the media made numerous efforts to acquire information from the various state departments of the Government of Kenya especially on all ongoing projects undertaken from April, 2013 onwards after the launch of the Jubilee Coalition shared manifesto which outlined the coalition's vision, pledges and agenda from 2013 to 2017.

24. Once PDU set up the web portal, it was necessary to sensitize Kenyans on its existence and the Presidential delivery unit PDU did this by way of inter alia advertisements through the electronic and print media.
25. Upon joining the PDU, I undertook a three week's institutional training in the United Kingdom with the Prime Minister's Delivery Unit.
26. During the three week period, I received extensive training on setting up of a government delivery unit, building relationships between diverse government departments and modes of disseminating information to the general public to ensure government efficiency, prompt reporting of queries and assessment of projects across various state departments.
27. The purpose of setting up the president's delivery unit and specifically the delivery portal was to ensure that the members of the general public are informed and are able to track projects undertaken by the government and which is an obligation under Article 35.
28. Since the web portal was set up there have been over 6 million impressions (visits) which shows it is a very useful tool for monitoring government projects and the feedback from the members of the public a sample of which is annexed and marked "**AW4**".
29. The National Assembly where the coalition that sponsored the 1<sup>st</sup> Petitioner had 141 members allocated funds of the operations of PDU from the years **2014/2015, 2015/2016, 2016/2017** as shown in the copies of the budget allocation annexed and marked "**AW5**".
30. I have also read the affidavit of Olga Karani sworn on 18<sup>th</sup> August, 2017. I have reviewed all the clips produced through that affidavit.
31. There are 8 clips prepared bearing numbers **5, 7-10, 14, 16, 17** and **19** talking about the 3<sup>rd</sup> Respondent. I have prepared a table setting out the contents of these clips and my comments on them which copies are annexed and marked "**AW6**".
32. I am informed by the 3<sup>rd</sup> Respondent's counsel on record and verily believe it to be true that:
  - (a) **Article 35** of the Constitution and the Access to information Act guarantee the right to information
  - (b) **Article 201** of the Constitution requires that there be openness and accountability including public participation in financial matters.
33. Any provision of the law that curtails a right guaranteed by the Constitution is I am advised by the 3<sup>rd</sup> Respondent's counsel unconstitutional.

34. I am aware that there is litigation before the High Court on inter alia the constitutionality of section 14 of the Elections Act. The cases are *Constitutional Petition 162 of 2017 Apollo Mboya vs Attorney General and 3 others* and *Constitutional Petition 182 of 2017 Jack Munialo & 12 others -vs- Attorney General*. I now produce copies of the respective pleadings marked "AW7".

35. The High Court will determine the question of the constitutionality of section 14 of the Election Offences Act on **13<sup>th</sup> October** and **19<sup>th</sup> October, 2017** respectively.

36. I am informed by the advocate on record and which I verily believe to be true that a bill was introduced to the National Assembly seeking to repeal section 14 of the Elections Offences Act ensure that the section confirms to Article 35 of the Constitution, unfortunately the National Assembly was adjourned *sine die* before the bill was passed. A copy of the bill is produced and marked "AW8".

37. Unless otherwise stated and the sources of information clearly identified the facts deponed to herein are within my knowledge and are true.

<b>SWORN at NAIROBI</b> by the said	]	
<b>ANDREW WAKAHIU</b>	]	
This _____ day of _____ 2017	]	
<b><u>BEFORE ME:</u></b>	]	<b>DEPONENT</b>
	]	

**COMMISSIONER FOR OATHS**

**DRAWN AND FILED BY:-**  
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