

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

BETWEEN

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

AND

INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION 1ST RESPONDENT
CHAIRPERSON, INDEPENDENT ELECTORAL AND
BOUNDARIES COMMISSION.....2ND RESPONDENT
H.E. UHURU MUIGAI KENYATTA.....3RD RESPONDENT

3RD RESPONDENT'S AFFIDAVIT IN REPLY TO THE AFFIDAVIT OF GEORGE
KEGORO

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

1. **THAT** I am a male adult of sound mind, a citizen of Kenya and a holder of a Masters of Business Administration-International Management degree from the University of London, a Bachelor of Science in Computer Science and Physics degree from the University of Nairobi and a Post Graduate Diploma in Teletraffic Engineering from Central Training School Nairobi.
2. **THAT** I am the Chief Agent of Jubilee Party (hereinafter referred to as 'JP') for the 2017 General Elections and duly authorized to make this affidavit on its behalf and on behalf of the 3rd Respondent. JP is the party on whose ticket the 3rd Respondent contested the presidency in the 2017 General Elections.
3. **THAT** in the course of the General Elections that took place on the 8th day of August 2017 all the JP election agents were ultimately answerable to me pursuant to a hierarchy established by JP.
4. **THAT** I am therefore conversant with the conduct of elections including voting, tallying of results and transmission of results from my own knowledge and from my role as the individual to whom all JP elections agents answered to.

5. **THAT** having read the Petitioners' Supporting Affidavit sworn by George Kegoro and filed on 18th August 2017 (hereinafter referred to as the '**Affidavit**') I am competent to respond to the issues raised therein and I make this affidavit in response and in opposition to the Affidavit in Support of Petition sworn by George Kegoro and filed on 18th August 2017 on the basis of matters within my own knowledge and as regards matters of law, on the basis of advice from Counsel on record which advice I verily believe to be correct.
6. **THAT** it is clear to me that the deponent of the said Affidavit has exaggerated facts, peddled outright falsehoods and suppressed material facts in a bid to mislead this Honourable Court and obtain an unjust advantage in favour of the Petitioners to the prejudice and subversion of the will of the Kenyan people expressed in a free, fair and credible election.
7. **THAT** for avoidance of doubt, I reject all the allegations, both specific and vague, set out in the Affidavit, regarding the irregularities attributed to the 1st and 2nd Respondents and state as follows:-
 - a. As far as I am aware, the process of voting, collating, tallying and declaration of results was conducted and done in full and/or substantial compliance with the provisions of the Constitution and all electoral laws.
 - b. To the best of my knowledge, the presidential results announced by the 2nd Respondent on 11th August 2017 were indeed accurate and verifiable in accordance with the standards established by law and were announced in a transparent and lawful manner as contemplated by Article 86 of the Constitution and the Elections (General) Regulations, 2012.
 - c. Most local and international observers who were accredited by the 1st Respondent have issued preliminary reports terming the election substantially free, fair and credible notwithstanding the minor transmission problems experienced during the election process.
 - d. The 1st Respondent has posted on its website scanned copies of each and every Form 34B received in its servers, which upon collation and tallying into Form 34C, demonstrates that the election results announced on 11th August 2017 were accurate, verifiable, transparent and lawful.
8. **THAT** in response to paragraph 8, of the Affidavit, I wish to state that as at the time the 2nd Respondent announced the presidential results, the 1st Respondent's online portal had yet to transmit the presidential results. These results were being retrieved from the Form 34As received from the polling stations, which results had already been transmitted to the Constituency level;
9. In reply to paragraph 9, the results were captured in Form 34A, 34B and 34C but had not been transmitted to the online portal. As at 21st August 2017 at approximately

8:14am (10 days after the general election), the transmission rate was at 99.99% meaning that the reported valid votes of 15,180,381 at the portal did not include valid votes from all the 40883 polling stations.

10. In reply to paragraph 10 of the Affidavit 2nd Respondent announced the Presidential results based on Form 34C which form, did not contain results from Nyando Constituency made up of 60,370 valid votes as captured in Nyando Constituency's Form 34B. Annexed hereto and marked **DKC-1** and **DKC-2** are copies of the said Form 34C and 34B respectively.
11. In response to paragraph 11 of the Affidavit, I verily believe that there are no significant differences in the number of valid votes reported in Form 34Bs and Form 34C. Annexed hereto and marked **DKC-3** is a bundle of all the 290 Form 34Bs.
12. In response to paragraph 12 of the Affidavit, I wish to state as follows:-
 - a. The valid votes cast for various/different elective offices in Igembe Central Constituency, Kithare Primary School Stream 2 were as follows:

No.	Elective Position	Valid Votes Cast
1.	President	448
2.	Governor	452
3.	Senator	458
4.	Woman Representative	447
5.	Member of County Assembly	354

- b. From the foregoing, it is clear that the Presidential, Gubernatorial, Senatorial and Woman Representative positions garnered valid votes cast, which numbers are close to one another, which are then more reliable as opposed to the only outlier Member of County Assembly who garnered 354 votes. Annexed hereto and marked **DKC-4** is a bundle of Form 34Bs for the above mentioned elective positions.
13. **THAT** in response paragraph 13 of the Affidavit, I wish to state as follows:-
 - a. The voter turnout in Moyale Prison, Kitale Medium Prison, Garissa Main Prison and Manyani Prison was as follows:

No.	Station Name	Rejected Votes	Turnout percentage
1.	Moyale Prisons	0	66.7%
2.	Kitale Medium Prisons	0	28.6%
3.	Garissa Main Prison	0	72%
4.	Manyani Prison	0	85%

- b. From the foregoing, it is clear that none of the aforementioned prisons station had a voter turnout of in excess of 100%. However, I note that the total number of registered voters in the said stations were erroneously entered as rejected votes in the KIEMS kit. Annexed hereto and marked **DKC-5** is a bundle of Form 34Bs for the aforementioned prisons stations.
14. **THAT** in response to paragraph 14 of the said affidavit, I verily believe the rejected votes as seen in the 1st Respondent's online portal is due to erroneously keying in the value of the valid votes in the rejected votes column of the KIEMS kit which explains why the rejected votes equals the valid votes. However, the official rejected votes are those captured in the Form 34C annexed hereto and marked **DKC-6**.
15. **THAT** in response to paragraphs 16, 17 and 21 of the Affidavit, the violence alleged therein is directly attributable to the demand by the 1st and 2nd Petitioners to be declared President and Deputy President respectively even before collation of results in Form 34C on the basis that the Petitioners were in possession of what they termed actual results resident in the 1st Respondent's servers. The situation was worsened by the Petitioners holding a press conference at Caramel Restaurant in Nairobi at which the Petitioners urged their supporters not to accept the results that were about to be announced and ominously to await further instructions. As the Kreigler report noted, the use of such coded and/or ambiguous language in highly charged and polarised political environment more often than not lead to violence.
16. **THAT** in response to paragraph 18, 19 and 20, I am only aware of one Form 34B for Embakasi West Constituency in which Mohamed Dida Abduba garnered 35 votes; Njoro Constituency in which Nyaga Joseph William Nthiga garnered 105 votes; Lugari Constituency in which Nyaga Joseph William Nthiga garnered 251 votes. Annexed hereto marked **DKC-7** are copies of the said Form 34Bs.
17. **THAT** I urge this Honourable Court to protect our constitutional democracy and reject the Petitioners' attempt to sacrifice the people's will at the alter of political expediency and to determine that the 3rd Respondent was duly elected in a free, fair, credible and valid election conducted on 8th August 2017.
18. **THAT** what is deponed to herein is true to the best of my knowledge save for facts and deposition to which sources I have disclosed.

