

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

**RAILA AMOLLO ODINGA.....1<sup>ST</sup> PETITIONER**  
**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 1<sup>ST</sup> AFFIDAVIT OF  
DR. NYANGASI ODUWO**

**I, DR. KARANJA KIBICHO** a resident of Nairobi and of care of Post Office Box 30510-00100 Nairobi make oath and swear as follows:

1. I am the Principal Secretary, Ministry of Interior & Coordination of National Government.
2. I hold a Doctorate Degree in Mechanical Engineering from the University of Cape Town, South Africa, a Masters and Bachelor's Degree in Mechanical Engineering from the University of Nairobi.
3. I have seen, read and been explained to by the 3<sup>rd</sup> Respondent's Advocates on record the Petition dated 18<sup>th</sup> August, 2017, the Affidavit in Support by Raila Amolo Odinga and the affidavit of Dr. Nyangasi Oduwo sworn on 18<sup>th</sup> August, 2017. I make this Affidavit in response to the Petition and in answer to the Affidavit of Dr. Nyangasi Oduwo in relation to the allegation of payments to the Internally Displaced Persons (IDPs). I would wish to give the following background:
4. I am aware that following the 2007 general elections in Kenya, politically instigated ethnic violence caused massive and unfortunate displacement of persons across the Country. These persons are referred to as IDPs for brevity and clarity.
5. I am also aware that resulting from the above displacements, the Government embarked on various programmes to re-settle and assist the IDP's .

6. Due to the magnitude and complexity of the IDP problem, it became clear that the issue required an appropriate legal framework to strengthen Government's effort to deal with the matter. It is against this background that Parliament enacted the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012.(the Act). This Act is specific to providing assistance to the victims of 2007/2008 Post Election Violence Victims (PEV).
7. Some of the crucial gains secured in the Act includes human rights and legal approach to displacement issues and the primary responsibility on the Government to protect the rights of IDPs.
8. Section 4 of the Act mandates the Government and any other organization, body or individual when responding to a situation of internal displacement and the needs of internally displaced persons under the Act to take into account their rights and freedoms as set out in the Bill of Rights under the Constitution.
9. Resulting from the legal and constitutional obligation of the government to address IDPs related issues on a continuous and sustainable basis, budgetary allocations have over the years been made available in the national budget to address these issues.
10. The IDPs affairs are managed on behalf of Government by the National Consultative Coordination Committee on IDPs as established by Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 2012.
11. The Committee for purposes of implementation of its legal mandates functions under the Ministry of Interior and Coordination of National Government.
12. In the 2016/2017 Development Budget for the State Department of Interior, there was an allocation of Kshs. 6 Billion earmarked for resettlement of IDPs under Head 1037, sub-head 01, Item 2640503. Annexed herewith is the Report and its annexures all marked "**KB-1**". The bundle contains the following:
  - i). Report On Assistance To Integrated IDPS For Financial Year 2016/2017;
  - ii). Development Expenditure Summary 2016/2017 and Projected expenditure estimates for 2017/2018-2018/2019 indicating under Item (Head) 1021103700(Resettlement of IDPs and Restorative Justice);
  - iii). Budget Based Work Plan For NCCC For FY 2016/2017;
  - iv). Supplementary Development Expenditure Estimates 2016/2017;
  - v). List of Counties that benefitted from 2016/2017 financial year;
  - vii). Approval of IDPs funds by National Treasury for 2017/2018; and,

viii). List of Counties to benefit from 2017/2018 financial year.

13. On the basis of the above budgetary provision, the National Consultative Co-ordination Committee on IDPs prepared a detailed work plan which they submitted to the Accounting Officer for approval to enable them undertake the necessary processes towards achieving the resettlement of the IDPs.
14. The above budgetary provision was, however, reduced by the National Treasury in February, 2017 during the Supplementary Estimates from the original Ksh.6 Billion to Kshs.2 Billion and this is the amount that was finally disbursed to the Integrated IDPs across 17 Counties.
15. The funds as is the procedure were disbursed through the beneficiaries Bank Accounts. Specifically for payment to Integrated IDPs in Kisii and Nyamira Counties, the Chairman of the Committee publicly announced that payments had been effected to IDPs accounts as part of the programme of resettlement and which programme had a specific budget which had been approved by National Assembly.
16. It is against the above background that the 3<sup>rd</sup> Respondent witnessed the announcement made in Kisii and Nyamira Counties.
17. It is therefore untrue, incorrect, misleading and without any basis for the Petitioners and their witnesses to allege that the 3<sup>rd</sup> Respondent made payments to the IDPs and that this constituted either bribery, inducement or undue influence. It is outrageous for the 1<sup>st</sup> Petitioner to allege at paragraph 36 of his affidavit that the 3<sup>rd</sup> Respondent committed an offence by paying reparations to the victims of the 2007 post-election violence during the campaign period since such payments were effected by the authorized public officers from budgeted funds.
18. The payments to the IDPs were made pursuant to the government's legal and constitutional obligation as set out in the Act. Furthermore, the payment was, as acknowledged by the 1<sup>st</sup> Petitioner and his witness made to persons throughout the Country and was not limited to a particular part of the Country. This was thus, a national undertaking oblivious of any campaign input.
19. As head of Government, the President of Kenya does not during the campaign period cease being Head of Government and the person in charge of implementation of Government programmes and thus accountable to the people of Kenya.
20. The citizens of Kenya, including IDPs are entitled to enjoyment of their rights at all times as the Act is not suspended at any time. Kenyan citizens' enjoyment of their constitutional rights is not and cannot be suspended during the campaign period.

21. As the Principal Secretary of Ministry of Interior & Coordination of National Government, it is within my docket to oversee all field National Government Administrative Officers that include Regional Commissioners, County Commissioners, Deputy County Commissioners, Assistant County Commissioners, Chiefs and Assistant Chiefs, among other personnel in the Government security structure. In line with this scope of work I receive daily reports from the Field Officers relating to security situations and intelligence information.
22. In line with the above, in the month of July, I received information that some Chiefs in Makueni County were unlawfully using their positions and government motor cycles to campaign for NASA candidates including the 1<sup>st</sup> Petitioner. The Chiefs who were implicated are:
  - a. Makueni Sub-County:
    - i. Thaddeus M. Makumbi, Chief, Wote Location, Makueni Sub-County: He campaigned for his brother who ran for an MCA seat under NASA in Wote ward as well as the 1<sup>st</sup> Petitioner.
  - b. Kibwezi East Sub-County:
    - i. Nicholas Mwonga, Acting Chief, Thange Sub-location: He campaigned for Jessica Mbalu who ran for Member of Parliament for Kibwezi East under NASA
    - ii. John Ndiku, Chief, Kathekani Location was engaged in open campaign for the 1<sup>st</sup> Petitioner and NASA candidates for other elective positions.
23. Upon receipt of the intelligence information stated at 22 above, I reported the same to the 3<sup>rd</sup> Respondent before his visit to Makueni County.
24. It is against this background that during his address to the public on 2<sup>nd</sup> August 2017 in Makueni County, the 3<sup>rd</sup> Respondent expressed his concerns in Kiswahili as follows; "*...na nyinyi machief msifikirie hatujui kile kinacho endelea hapa, hizo pikipiki ni mali ya Jubilee (sic Government)....*
25. As far as I am concerned, the context of the 3<sup>rd</sup> Respondent's remarks were that Chiefs and all public officers should not take political sides and or use state resources for politics. At no time did the 3<sup>rd</sup> Respondent direct that any Chief should be suspended and/or terminated from employment. Equally, at no time did the 3<sup>rd</sup> Respondent request and/or direct any Chief to campaign for him.
26. Unless otherwise stated and the source of information clearly identified, the matters deposed to herein are true to my knowledge.

**SWORN at NAIROBI by the said** ]  
**DR. KARANJA KIBICHO** ]

This \_\_\_\_\_ day of \_\_\_\_\_ 2017 ]  
**BEFORE ME:** ]

\_\_\_\_\_  
**DEPONENT**

**COMMISSIONER FOR OATHS** ]

**DRAWN AND FILED BY:**

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