

**THE REPUBLIC OF KENYA**

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

**PRESIDENTIAL PETITION NO 1 OF 20 17**

**BETWEEN**

**RAILA AMOLO ODINGA..... 1<sup>ST</sup> PETITIONER**

**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**

**3<sup>RD</sup> RESPONDENT'S AFFIDAVIT IN REPLY TO THE AFFIDAVIT OF BENSON**

**WASONGA**

I, **MARYKAREN KIGEN- SOROBIT** of Post Office Box 37544-00100 Nairobi do hereby make an oath and solemnly state as follows:

1. I am a female adult of sound mind and employed by the Jubilee Party as the Deputy Chief Executive Officer and Director of Legal affairs & Compliance. In that capacity I am well versed with the facts of this matter and I am duly authorised to swear this Affidavit on behalf of the Jubilee Party which nominated the 3<sup>rd</sup> Respondent as its Presidential Candidate.
2. I have read and Counsel on record for the 3<sup>rd</sup> Respondent, has explained to me the import and purport of the Affidavit of **BENSON WASONGA** and in response to the same I depone as follows.

3. In response to Paragraph 3 and 4 of the said affidavit, I verily believe that no proof has been availed of the alleged anomalies with regard to the declaration of the Presidential results by the 2<sup>nd</sup> Respondent.
4. In response to Paragraph 4, I am advised by the 3<sup>rd</sup> Respondent's Advocate on record, which information I verily believe to be true, that the said paragraph contains unsubstantiated allegations and do not raise any factual issues.
5. Further, I know the portal the actual summation of the total valid votes is actually 15,180,381.
6. In response to paragraph 5, I wish to state as follows:
  - a. According to Form 34C, Raila Odinga's votes were 6,762,244 and Uhuru Kenyatta's votes were 8,203,290. The assertion that Raila Odinga's votes were 6,821,505 while Uhuru Kenyatta's votes were 8,223,163 is thus false.
  - b. Form 34C, which is the basis upon which the results were declared by the 2<sup>nd</sup> Respondent pursuant to the provisions of Regulation 87(3)(e) of Elections (General ) Regulations , does not include the results for Nyando constituency where the Petitioner had 60,715 votes against the 3<sup>rd</sup> Respondents 214 votes as per the aforementioned Form 34C.
  - c. The proviso to Regulation 87 (3) states that: *“Provided that the Chairperson of the Commission may declare a candidate elected as the President before all the Constituencies have delivered their results if in the opinion of the Commission the results that have not been received will not make a difference with regards to the winner on the basis of Article 138(4) (a) (b) of the Constitution.”*
  - d. The Deponent's attempt to characterise this as an attempt to suppress the Petitioners final vote count therefore lacks any legal foundation or justification.

**Annexed and marked “MKS 1” is a true copy of the Form 34 C dated 11<sup>th</sup> August, 2017.**

7. As stated above, there were 15,180,819 valid votes cast in the presidential election. 60,715 votes , which were cast in favour of the Petitioners in Nyando, work out at 0.39% of the valid votes cast for the presidential election and would not have made a material

difference within the contemplation of the proviso to Regulation 87(3) reproduced above in full. The 2<sup>nd</sup> Respondent was therefore within the four corners of the law when he declared the final result on 11<sup>th</sup> August 2017.

8. The results referred to in paragraphs 6 and 7 of Mr. Wasonga’s Affidavit have, been lifted from 34C though it is not clear what they are intended to demonstrate.
9. Unless otherwise stated and the source of the information clearly identified the facts deponed herein are within my knowledge and are true.

**SWORN** at **NAIROBI** by the said ]  
**MARYKAREN KIGEN-SOROBIT** ]

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

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

**COMMISSIONER FOR OATHS**

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