

**REPUBLIC OF KENYA**  
**IN THE SUPREME COURT OF KENYA AT NAIROBI**  
**ELECTION 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 INDEPENDENT  
ELECTORAL AND BOUNDARIES  
COMMISSION.....2<sup>ND</sup> RESPONDENT  
H. E. UHURU MUIGAI KENYATTA.....3<sup>RD</sup> RESPONDENT

**AND**

MICHAEL WAINAINA MWAURA.....INTENDED RESPONDENT / AMICUS CURIAE

**NOTICE OF MOTION**

**(UNDER RULE 22 OF THE SUPREME COURT (PRESIDENTIAL ELECTION PETITION) RULES, 2017 &  
THE INHERENT POWER OF THE COURT)**

**TAKE NOTICE THAT** this Honourable Supreme Court shall be moved on the \_\_\_\_\_ day of August 2017 at 9.00 a.m. or as may otherwise be directed, on the hearing of this Motion at the instance of MICHAEL WAINAINA MWAURA/Applicant for **ORDERS THAT**:

1. This Notice of Motion be certified as urgent and be heard *ex parte* and service thereof on the Respondents be dispensed with in the first instance owing to its extreme urgency.
2. MICHAEL WAINAINA MWAURA an Independent Candidate in the August 8<sup>th</sup> 2017 Presidential election be forthwith enjoined as a Respondent/amicus Curiae, or in such capacity as this Honourable court may direct.
3. Upon the grant of Order 2 herein, the Replying Affidavit of MICHAEL WAINAINA MWAURA sworn on August 23<sup>rd</sup> 2017 and lodged herein be deemed as properly filed

and service thereof be effected on the Respondents forthwith under such terms and directions as this Honourable Supreme Court shall make.

4. Costs abide the cause.

**THIS NOTICE OF MOTION IS BASED ON THE UNDERLISTED GROUNDS AND ON THE ANNEXED DEPOSITIONS OF THE APPLICANT AND MIRIAM M. MUTUA, AND ON SUCH ORAL EXPOSITIONS THEREON AS MAY BE PROFFERED AT THE HEARING HEREOF.**

- (a) Rule 22 of the Supreme Court (Presidential Election) Petition Rules mandate the making of such a Motion, hence the need to comply with statutory mandate.
- (b) The Applicant is a relevant party having been an **Independent Presidential candidate** in the August 8<sup>th</sup> 2017 Presidential Poll, and having garnered 13,257 votes as declared by the IEBC on August 11<sup>th</sup> 2017.
- (c) As such an independent Candidate it is imperative for the Supreme Court to afford the Applicant an opportunity to table material that brings to bear objectivity in the process of adjudicating the issues.
- (d) The fact that the Applicant is not affiliated to any Political party unlike the Petitioners and the 3<sup>rd</sup> Respondent main protagonists herein, entitles this Court to open up the forum for such Independent candidates to equally articulate their faith in the IEBC to conduct credible elections, otherwise the Kenyan democratic experience will continue being dominated by Political Parties in spite of our Constitution affording independent candidates an opportunity to express political ideas outside the sphere of political parties.
- (e) The enjoinder sought will aid and assist this Court view the involvement of such an independent candidate in the general conduct and process of the Presidential election sought to be impugned, hence the plea is based on meritorious grounds.
- (f) In the circumstances this Honourable Supreme Court's intervention is imperative.

**DATED AT NAIROBI THIS 23rd DAY OF AUGUST 2017**

**J. HARRISON KINYANJUI & COMPANY**  
**ADVOCATES FOR THE APPLICANT**

**DRAWN & FILED BY:**

J. HARRISON KINYANJUI & CO. ADVOCATES  
ST. ELLIS HOUSE, 4<sup>TH</sup> FLOOR, SUITE 416,  
WABERA STREET,  
P.O. BOX 10024-00100 (G.P.O.)  
N A I R O B I, KENYA.

**TO BE SERVED UPON:**