

**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**

**INFORMATION COMMUNICATION TECHNOLOGY ASSOCIATION**  
**OF KENYA (ICTAK).....APPLICANT/INTENDED AMICUS CURIAE**

*(Being an Application by the Information Communication Technology Association of Kenya (ICTAK) for leave to be enjoined as Amicus Curiae)*

**AMICUS BRIEF**

**A. STATEMENT OF INTEREST**

1. The intended *amicus curiae* is the Information Communication Technology Association of Kenya (ICTAK) a body registered on 20th February 2007 under the Societies Act (Cap 108) of the laws of Kenya. The ICTAK's vision is anchored on the goal of ensuring beneficial use of technology to the wider Kenyan public.
2. As the prime association for ICT professionals and industry players in Kenya, the intended *amicus curiae* objectives are among others to extend

the frontiers of knowledge and application of ICT; advance competence in the practice of ICT and promote the formulation of effective policies in the application of ICT in society. Programs that intended *amicus curiae* undertakes include: ICT Policy Development and Advocacy, ICT Industry Research, ICT Value awards, Cyber Security Awareness and Training, ICT Systems Audit, Continuous Professional Development Programs and hosting the International Conference on Future and Emerging Technologies (ICEFICT).

3. The Petition herein implicates hotly contested Information Communication Technology (ICT) issues, which inevitably the Supreme Court is expected to adjudicate and determine. Submissions by the intended Amicus Curiae will doubtlessly avail crucial insights that would not only enlighten the Honorable Court but also the various parties to the Petition.
4. This brief is filed pursuant to Rule 54 of the Supreme Court Rules, 2012 as read together with the Practice directions on the Presidential election Petition 1 of 2017 issued by the Honorable Chief Justice and President of the Supreme Court on 21st August 2017. Copies of the amicus brief are to be served upon all parties as per the address of service furnished by the Registrar of the Supreme Court.

#### **B. STATEMENT OF THE PETITION**

5. The Petitioners aver that the 2017 Presidential Election was so badly conducted, administered and managed by the 1<sup>st</sup> Respondent in that it failed to comply with the governing principles established under Articles 1, 2, 4, 10, 38, 81, 82, 86, 88, 138, 140, 163 and 249 of the Constitution of Kenya; the Elections Act and the Regulations made there under including the Electoral Code of Conduct among other relevant provisions of the Law.

6. According to the Petitioners there was massive, systemic, systematic and deliberate non-compliance with the Constitution and the Law in a manner that goes to the very core and heart of holding elections as the key to the expression of the sovereign will and power of the people of Kenya. This the Petitioners contend, undermines the foundation of the Kenyan system as a sovereign republic and severely undercuts the very rubric and framework of Kenya as a nation State.

### **C. SUMMARY OF ARGUMENTS**

7. Questions emerging and which the *amicus curiae* seeks to contribute towards revolve around the performance of the electoral system in use by the 1<sup>st</sup> Respondent as viewed from the constitutional imperatives of accountability, verifiability and transparency.
8. Pertinent, is the issue as to whether there was failure to comply with provisions of the electoral law and the principles embodied therein in relation to electoral technology. Based on best practice realities, the intended *amicus curiae* will from a professional standpoint advance the position that successful deployment of electoral systems is contingent upon satisfaction of the conditions enunciated under the Elections (Technology) Regulations, 2017.
9. From a balanced standpoint the intended *amicus curiae* will proceed to offer highlights as to whether transmission failure if adjudged to have occurred, did impact the results of the Presidential election. Also naturally emanating from the Petition is the question as to whether the transmission process failed and if so how this affected the election results.
10. At the hearing, the intended *amicus curiae* shall offer an objective appraisal of the technology oriented aspects as cited in the Petition and the attendant

impact on the final results. In the view of the intended Amicus Curiae, electoral technologies are only as efficacious as the environment and context in which they are applied, the persons who manage them, enabling technology regulations and the professional integrity of the concerned entities.

11. Another fundamental issue that warrants the input of the intended *amicus curiae* is to be found at Paragraph 16 of the Petition where it is averred that the 1<sup>st</sup> Respondent conspired to “deliver preconceived and predetermined computer generated leaders”. If indeed substantiated, ascertained and proved at the hearing that the declaration of the 3<sup>rd</sup> Respondent as the President elect was a computer error, then the 1<sup>st</sup> Respondent’s declaration would unceremoniously implode.
12. In order to methodically analyze the “computer generated” question, the Supreme Court as of necessity requires solid appreciation of the technological facets upon which the 2017 Presidential election was underpinned. In this regard, an impartial perspective by the intended *amicus curiae* would definitely be valuable to the Supreme Court and all parties to the Petition.
13. Equally imperative is Paragraph 21.2 of the Petition where it is asserted that the entire process of relaying and transmitting of results from polling stations to the Constituency and National Tallying Centre (NTC) on the one hand; and from the constituency tallying centers to the NTC on the other; was not simple, accurate, verifiable, secure, accountable, transparent, open and prompt. In light of these the petitioners are persuaded that the process substantially compromised and affected the requirement of free and fair elections.

14. In deciding the above-mentioned question relating to the process of relay and transmission of results, the intended *amicus curiae* shall at the hearing urge the Supreme Court to meticulously gauge whether, under the circumstances obtaining, the 1<sup>st</sup> Respondent properly discharged its duty as mandated under Article 81 and 86 of the Constitution as read together with Sections 39, 44 and 44A of the Elections Act, 2011 Regulation 82 and 87 of the Elections (General) Regulations, 2012 and provisions of the Elections (Technology) Regulations, 2017.

#### **D. CONCLUSION**

15. The intended *amicus curiae* respectfully implores the Supreme Court to nurture conditions that will ultimately strike a fair balance between the rights of the Petitioners and the Respondents by laboriously scrutinizing the competing contestations by parties to Petition. Admission of the intended Amicus Curiae would undeniably ensure that the Supreme Court benefits from a neutral, impartial, unbiased and balanced input in a manner that ensures justice for all concerned.
16. For the foregoing reasons, the intended *amicus curiae* urges the Supreme Court that the prayers in the Notice of Motion dated 21<sup>st</sup> August 2017 be allowed.

**DATED** at **NAIROBI** this.....day of.....2017

---

**ADRIAN KAMOTHO NJENGA**

**FOR THE APPLICANT/INTENDED AMICUS CURIAE**

**DRAWN AND FILED BY:**

Information Communication Technology  
Association of Kenya, (ICTAK)  
PSC Wing, 9th Floor, Hazina Towers,  
P. O. BOX 17429-00100,

**NAIROBI.**

E-MAIL: secretarygeneral@ictak.or.ke

PHONE: 0721 411 564

**TO:** THE SUPREME COURT OF KENYA

**NAIROBI****TO BE SERVED UPON:**

1. Murumba & Awele Advocates  
Mirage Plaza, Mezzanine 1 - Unit 7  
Chiromo Road, Westlands  
P. O. BOX 22255-00505

**NAIROBI**

2. V. Nyamondi & Company Advocates  
Lower Hill Road Duplex  
House No. 7, Lower Hill Road  
P.O. Box 48358-00100

**NAIROBI**

Iseme, Kamau & Maema Advocates  
IKM Place, 5<sup>th</sup> Floor  
5<sup>th</sup> Ngong Avenue,  
P.O. Box 54555-00200,

**NAIROBI**

Ogetto, Otachi & Company Advocates  
Sifa Towers, 8<sup>th</sup> Floor  
Junction Lenana Road/Ring Road Kilimani  
P.O. Box 54555-00200

**NAIROBI**

Mutuma Gichuru & Associates  
Chaka Apartments, Suite No. 2  
Chaka Road, Off Argwings Kodhek Road  
P.O. Box 4781-00100  
**NAIROBI**

Isaac Aluoch Polo Aluochier  
P.O Box 44848-00100  
0716446500

**LODGED** in the Registry at **NAIROBI** on the **25<sup>th</sup>** day **August** of 2017.

.....

**REGISTRAR**