

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

BETWEEN

H. E. RAILA AMOLO ODINGA.....1ST PETITIONER

H. E. STEPHEN KALONZO MUSYOKA.....2ND PETITIONER

AND

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

THE CHAIRPERSON OF INDEPENDENT

ELECTORAL AND BOUNDARIES COMMISSION.....2ND RESPONDENT

H. E. UHURU MUIGAI KENYATTA3RD RESPONDENT

AND

CHARLES KANJAMA.....PROPOSED AMICUS CURIAE

PROPOSED AMICUS CURIAE’S LIST OF AUTHORITIES

	AUTHORITY CITED	PAGE NO.
1.	Black’s Law Dictionary, 9th Edition	
2.	The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2012	
3.	<p><u>Judicial Service Commission v Speaker of the National Assembly & another [2013] eKLR</u></p> <p>This was a Ruling in respect of two applications one of which the Applicant sought to be joined as Interested Party to the Proceedings before the High Court. Odunga J. stated:</p> <p style="text-align:center"><i>“Amicus curiae is therefore a person who shows that he is possessed of some expertise relevant to the matters for determination before the Court. Such a person as is</i></p>	<p>1-8</p> <p>Para. 2</p>

	<p><i>expected of experts is required to be non-partisan and his role is meant to enable the Court get a clear picture of the issues in dispute in order for the Court to arrive at an informed and just decision.”</i></p>	
<p>4.</p>	<p><u>Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 Others, Supreme Court Petition No. 12 of 2013,[2015] eKLR</u> (an application by Katiba Institute)</p> <p>This is a Notice of Motion dated 3rd March, 2015, filed by Katiba Institute seeking leave to be enjoined in the substantive appeal as <i>amicus curiae</i>.</p> <p>The Supreme Court set out guidelines of admittance as amicus curiae by holding thus:</p> <p>“From our perceptions in the instant matter, we would set out certain guidelines in relation to the role of <i>amicus curiae</i>:</p> <ul style="list-style-type: none"> <i>i. An amicus brief should be limited to legal arguments.</i> <i>ii. The relationship between amicus curiae, the principal parties and the principal arguments in an appeal, and the direction of amicus intervention, ought to be governed by the principle of neutrality, and fidelity to the law.</i> <i>iii. An amicus brief ought to be made timeously, and presented within reasonable time. Dilatory filing of such briefs tends to compromise their essence as well as the terms of the Constitution’s</i> <i>iv. call for resolution of disputes without undue delay.</i> 	<p>9-20</p>

The Court may therefore, and on a case- by case basis, reject amicus briefs that do not comply with this principle.

- v. *An amicus brief should address point(s) of law not already addressed by the parties to the suit or by other amici, so as to introduce only novel aspects of the legal issue in question that aid the development of the law.*
- vi. *The Court may call upon the Attorney- General to appear as amicus curiae in a case involving issues of great public interest. In such instances, admission of the Attorney- General is not defeated solely by the subsistence of a State interest, in a matter of public interest.*
- vii. *Where, in adversarial proceedings, parties allege that a proposed amicus curiae is biased, or hostile towards one or more of the parties, or where the applicant, through previous conduct,*
- viii. *appears to be partisan on an issue before the Court, the Court will consider such an objection by allowing the respective parties to be heard on the issue (see: Raila Odinga & Others v. IEBC & Others; S.C. Petition No. 5 of 2013-Katiba Institute's application to appear as amicus).*
- ix. *An amicus curiae is not entitled to costs in litigation. In instances where the Court requests the appearance of any person or expert as amicus, the*

legal expenses may be borne by the

- x. Judiciary.*
- xi. The Court will regulate the extent of amicus participation in proceedings, to forestall the degeneration of amicus role to partisan role.*
- xii. In appropriate cases and at its discretion, the Court may assign questions for amicus research and presentation.*
- xiii. An amicus curiae shall not participate in interlocutory applications, unless called upon by the Court to address specific issues.*

[42] In addition, we would adopt, with respect, certain guidelines which emerge from *Mr. Justice Odunga's* decision in the *Justice Tunoi case (op.cit.)* :

- i. xi. The applicant ought to raise any perception of bias or partisanship, by documents filed, or by his submissions.*
- ii. xii. The applicant ought to be neutral in the dispute, where the dispute is adversarial in nature.*
- iii. The applicant ought to show that the submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available.*
- iv. The applicant ought to draw the attention of the Court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the applicant ought to show that there is*

	<p><i>no intention of repeating arguments already made by the parties. And such new matter as the applicant seeks to advance, must be based on the data already laid before the Court, and not fresh evidence. .</i></p> <p><i>v. The applicant ought to show expertise in the field relevant to the matter in dispute, and in this regard, general expertise in law does not suffice. “</i></p> <p>In light of the foregoing principles, it is the Amicus’ submission that he is an objective and non-partisan individual equipped with vast legal, professional and personal competencies. The Applicant is not only an expert in the law, but he also possesses the requisite expertise that is relevant to the matters arising from the dispute herein. (see paras 5-9 of the Supporting Affidavit).</p>	
5.	<p><u>Raila Odinga & Others v. IEBC & Others; S.C. Petition No. 5 of 2013-Katiba Institute’s application to appear as amicus</u></p> <p><i>The Supreme Court while clarifying the role of amicus to be that of a non-partisan person held:</i></p> <p><i>“Where, in adversarial proceedings, parties allege that a proposed amicus curiae is biased, or hostile towards one or more of the parties, or where the applicant, through previous conduct, appears to be partisan on an issue before the Court, the Court will consider such an objection by allowing the respective parties to be heard on the issue”</i></p> <p>The amicus herein is an objective and non-partisan individual as evidenced by paragraphs 5-9 of his Affidavit in Support of the Application.</p>	21-25

DATED this

day of

2017

MUMA & KANJAMA

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