

IN THE REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

PETITION NO. OF 2017

BETWEEN

RAILA AMOLO ODINGA.....1ST PETITIONER

STEPHEN KALONZO MUSYOKA.....2ND PETITIONER

AND

INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION..... 1ST RESPONDENT

THE CHAIR PERSON OF THE INDEPENDENT ELECTORAL BOUNDARIES

COMMISSION..... 2ND RESPONDENT

H.E. UHURU MUIGAI KENYATTA.....3RD RESPONDENT

AFFIDAVIT IN SUPPORT OF PETITION DATED 18TH AUGUST, 2017

I, **GEORGE KEGORO** of Post Office Box Number Nairobi and resident of the Nairobi County within the Republic of Kenya do make oath and state as follows:

1. **THAT** I am a Kenyan Citizen and an advocate of the High Court of Kenya.
2. **THAT** I am currently the Executive Director of Kenya Human Right Commission. The Human Rights Commission is an NGO created to foster human rights, democratic values, human dignity and social justice through multiple strategies and actions aimed at

entrenching human rights and democratic values in the society. This it achieves by facilitating and supporting individuals, communities and groups to claim and defend their rights and holding state and non-state actors accountable for the protection and respect of all human rights for all peoples and groups.

3. **THAT** Kura Yangu Sauti Yangu is a coalition of like-minded civil society organizations, who came together to proactively support Kenya's preparations for the 2017 elections with a view to ensuring that the country minimizes the risks related to dysfunctional electoral competition which the country has experienced in the recent elections, launched a citizen initiative dubbed 'Kura Yangu Sauti Yangu.' The Kenya Human Rights Commission is the secretariat of Kura Yangu Sauti Yangu.
4. **THAT** save as otherwise expressly stated herein, the contents of this affidavit are based on my own knowledge acquired in my above mentioned capacity and are true. To extent that any matter in this affidavit is based on information and/or belief, I have disclosed the source and/or ground (as the case may be) of the same, and I verily believe the same to be true.
5. **THAT** I am duly conversant with the subject matter of this Petition and therefore competent to swear this Affidavit in support of the Petition herein and I hereby wish to state as follows;
6. **THAT** on the 8th of August 2017, the 1st Respondent presided over the General Elections in the Republic of Kenya and subsequently, through its website and/or online platform, and which was being relayed by media houses to the general public, electronically transmitted results from various constituencies for the respective Presidential candidates.

7. **THAT** On Election Day, Kura Yangu Sauti Yangu (KYSY) a coalition of civil society organisations in Kenya, deployed over 500 monitors in all the 290 constituencies to monitor and observe the election. KYSY has also received observations from the public in pictorial, video and written form.
8. **THAT** KYSY has revealed important contradictions and major anomalies in the data released by the Independent Electoral and Boundaries Commission (IEBC) – particularly differences between the chairman’s formal announcement of final presidential results, and what is displayed on the website portal. For example in Kisumu, the IEBC’s verbal announcement was 60,000 votes less than what is in the portal. *(I have Annexed herewith is a report for Kura Yangu Yauti Yangu, which elaborates the qualitative and quantitative perspective of the election– marked GK-1)*
9. **THAT** final results verbally announced by IEBC Chair, Wafula Chebukati, 11 August, are dramatically contradicted by the data displayed on the website portal. Every region (or former province) has major differences of valid votes. Totals in Nyanza, Western, Nairobi, North Eastern and Eastern show differences through totals of decreased valid votes; Central, Rift Valley, and Coast show differences through increased valid votes. For example, in Kisumu, the IEBC’s verbal announcement was 60,520 votes less than what is in the portal.
10. **THAT** After examining the number of votes cast in the presidential election, we found that there is a gap between what the IEBC verbally announced on August 11, what was being shown on the television screen at the time of the announcement, and what was in the portal the following day.

11. **THAT** Since the IEBC's announced turnout is less than what its own portal was showing at the time of the announcement of presidential results, the validity and reliability of the IEBC's announced figures is questionable.

 12. **THAT** The IEBC's portal shows varying levels of votes cast for the different elective offices. For instance, in Stream 2 of Kithare Primary School in Meru County (Njia Ward), there were 448 votes cast for president¹ but only 354² votes cast for Member of County Assembly. Given that the IEBC's regulations stipulate that every voter must receive and must cast six ballots, there is no reason for differing numbers of votes cast.

 13. **THAT** There is also evidence of turnout in excess of 100 per cent. For instance,
 - a) In Garissa Main Prison, there are 25 registered voters.³ The portal shows that there were 18 valid votes and 25 rejected votes, totaling to 43 cast ballots.⁴ This amounts to 172 percent turnout.
 - b) In Kitale Medium Prison, there are 7 registered voters but 9 total votes cast. This is 129 percent turnout.
 - c) In Manyani Prison, there are 157 registered voters.⁵ There were 289⁶ votes cast, which amounts to a turnout rate of 184 percent.
 - d) In Moyale Prison, there are 6 registered voters⁷, but there were 10 votes cast.⁸ This is 167 percent turnout.
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Rejected Votes

14. **THAT I am aware that** when the IEBC verbally declared the presidential results, it did not announce the number of rejected votes. At the time of the declaration of presidential results, the television showed a total of 401,093 rejected votes. The IEBC's website currently shows that there were 403,495 total rejected votes cast in the presidential election.
15. **THAT** these differences are not only huge, but they point to serious problems with the election outcome as announced. At face value, they suggest the need for a full audit of the results the IEBC has released and reconciliation of announced results with the authentic documents from the polling stations. The amount of missing data, a full week after the election, calls into question whether the declaration of results could be made legitimately.
16. **THAT** the Respondent's opaque and unaccountable management of election results has already produced deadly consequences. In the aftermath of the announcement of the election results, violence in various parts of the country resulted in several deaths, 13 of which Kura Yangu attributes to police violence.

POLICE VIOLENCE

17. Furthermore, Kura Yangu Sauti Yangu has received reports of the violent police dispersal of peaceful protests and gatherings through the use of excessive force in areas including Kondele, Mathare and Kibra (Olympic, Gatikwira and Bombululu). Live bullets, brutal beatings and teargas have been the police forces' weapons of choice. Three incidents of rape have been reported in Mathare after police broke into people's houses and forced the men out. We have also received reports of damage to property.
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The overall picture is one of grievous violations of the right to life, freedom of assembly and security of person and property.

18. **THAT** Kura Yangu Sauti Yangu established that in Embakasi West there are two different forms 34B, each contains different results. For instance, one indicates that Mohamed Dida obtained 35 votes while the other Form 34B indicates that Mohamed Dida obtained 15 votes. *(I have Annexed herewith is a report for Kura Yangu Yauti Yangu, which elaborates the qualitative and quantitative perspective of the election– marked GK-2)*
19. THAT the same situation was reported from Njoro Constituency and Lugaru Constituency, in which more than one forms 34B were found in each case, and those forms indicated different results from each other. Specifically, in Njoro Constituency,
20. F34B from IEBC records JN with 105 votes, RO with 6085 votes and total valid votes at 84691 F34B while a separate form 34B shows that JN obtained 180 votes, RO with 5984 votes and total valid votes at 84665 in another form 34B. Notably, both forms 34B seem to have been signed by the same person, though their details are details on the signature page are different. *(I have Annexed herewith is a report for Kura Yangu Yauti Yangu, which elaborates the qualitative and quantitative perspective of the election– marked GK-3)*
21. **THAT** Unlike what we have witnessed, the use of force, and in particular lethal force, should not be the default position for police in crowd control and management. In any case, the objective for use of force should be to subdue with the objective of affecting an arrest and not to perform execution-style killings. The use and deployment of all

weapons, lethal and non-lethal, should be accounted for after every security operation to enhance individual and command responsibility.

22. **THAT** I am advised by the Advocates for the petitioners on record, which advise I believe is true that the aforesaid were blatant violations of clear provisions of electoral laws .

23. **THAT** I swear this affidavit in support of this Petition and humbly seek this Honourable courts intervention allow this Petition and secure our democracy.

24. **THAT** what is deponed to herein is true to the best of my knowledge save for facts and deposition to which sources I have disclosed.

SWORN at NAIROBI)

By the said)

GEORGE KEGORO) **DEPONENT**

This day **18TH** Day of **AUGUST**, 2017)

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BEFORE ME)

COMMISIONER FOR OATHS)

DRAWN & FILED BY:

SANDRA OYOMBE ADVOCATE

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NAIROBI