

**IN THE REPUBLIC OF KENYA**  
**IN THE SUPREME COURT OF KENYA AT NAIROBI**  
**PETITION NO. .... OF 2017**

**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**  
**WAFULA CHEBUKATI..... 2<sup>ND</sup> RESPONDENT**  
**H.E. UHURU MUGAI KENYATTA.....3<sup>RD</sup> RESPONDENT**

**PETITIONERS' SUPPORTING AFFIDAVIT**

**I, GODFREY OSOTSI** of Post Office Box Number 11095-00100 Nairobi do make oath and state as follows: **THAT**

1. I am a Kenyan Citizen, voter and male adult of sound mind, residing and working for gain in the Republic of Kenya and competent to make this affidavit.
2. I am the Secretary General of the Amani National Congress Party and was a duly accredited agent nominated by the National Super Alliance (NASA) for the 8<sup>th</sup> August 2017 general elections and therefore well versed with the facts and circumstances relating to the Petition.
3. Save as otherwise expressly stated herein, the contents of this affidavit are based on my own knowledge acquired in my abovementioned 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.

4. I am an IT expert by profession with experience spanning over 12 years in the industry. I hold a Bachelor's degree in computer science (Egerton University), a Master degree in Information Technology Management University of Sunderland, a Master of Business Administration (JKUAT) and a Master of Arts in International Studies (UoN).
5. On the 8<sup>th</sup> of August 2017, the 1<sup>st</sup> Respondent conducted and supervised general elections that included the Presidential election.
6. Kenyan citizens eligible to participate in the said election cast their votes on the said date at various polling stations around the country until 5pm or thereabouts.
7. Being an agent at the National tallying centres, one of my primary duties was to observe tallying on behalf of the Petitioners. Upon the start of the transmission of results and in a bid to understand what was happening, I engaged the 1<sup>st</sup> Respondent's ICT staff specifically a gentleman by the name of waqo Shuke.
8. One of the issues I noticed is that the results started streaming at 1715hrs even before the counting and tallying of votes at various polling stations started. Upon enquiry, Mr. Waqo explained to me that the process of tallying

involved two sets of results; those with form 34As and those without form 34 based on text messages only.

9. All along the IEBC had represented to us that all text results would be accompanied by forms 34A simultaneously. **Annexed herewith and marked 'A' is a transcript of the video clips by IEBC officers on the same.**
10. I immediately communicated to the Petitioners' chief agent, the Hon. Musalia Mudavadi and that caused a meeting to be held between the 1<sup>st</sup> Respondent and our chief agent on the 8<sup>th</sup> August 2017. At the said meeting, the 1<sup>st</sup> Respondent's IT consultants from Saffron who had supplied the KIEMS gadgets confirmed that indeed they were receiving results without form 34A's for the reason that some areas had network challenges and hence could not transmit images because of lack of 3G and 4G network .
11. However, upon review of the documents the stations that the 1<sup>st</sup> Respondent published as having no 3G or 4G network coverage, I discovered that a number of the stations whose forms could not be transmitted were infact not in the said list. **Annexed herewith and marked 'B' is a copy of the email showing .**
12. We thereupon raised a number of issues including the legal basis for transmission of results without prescribed forms. They explained that even the results streaming without form 34As were in a tabulated prescribed from. Interestingly, the results continued streaming in in constant percentages of 54% and 44% for the 2<sup>nd</sup> Respondent and the Petitioners respectively.

13. When my team realized the issue of form 34A was serious, we demanded access to the back end to enable us have access to the system. It was then that they gave us a link to access the said forms which did not work the entire night and when it eventually did, over 8 hours later, it only had one form. Moreover, we could not print the forms or access them from outside the auditorium.
14. We then requested the commission to upload the forms in our external drives. They first gave us 6000 forms and subsequently up to 29,000 forms. We therefore did not have over 11,000 forms.
15. Accordingly, by the time results were being announced, there were 10,480 forms 34As outstanding. After continued requests for the said forms, a Mr. Muhati responded a day later and sent me an email with an excel sheet with results from 10056 polling stations. Notably out of these stations, 100 polling stations had more than 700 registered voters and some of them were not gazetted. **Annexed herewith and marked 'C' is a copy of the email and excel sheet.**
16. It is accordingly not possible to independently and accurately confirm that the prescribed forms that were manually transmitted to the national tallying center were infact the forms that were filled in by presiding officers and returning officers in the presence of agents as by law required. Once the integrated electronic electoral system was discarded and/or ignored in favor of the manual system, the results being transmitted lost credibility in law.

17. In the circumstances, it is just and proper that all the reliefs sought as enumerated above be granted.

18. I make this affidavit in support of the Petition.

**SWORN at NAIROBI** )  
By the said )  
**GODFREY OSOTSI** ).....  
) **DEPONENT**  
This day        day of        2017 )  
)  
**BEFORE ME** )  
**COMMISSIONER FOR OATHS** )

**DRAWN & FILED BY:**  
MURUMBA & AWELE ADVOCATES  
MIRAGE PLAZA, MEZZANINE 1 - UNIT 7  
WESTLANDS, CHIROMO ROAD  
P.O. BOX 22255-00505  
**NAIROBI.**

To:  
The Supreme Court of Kenya

**Copies to be served on**

1. INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION  
ANNIVERSARY TOWERS  
6TH FLOOR  
UNIVERSITY WAY  
P.O BOX 45371 - 00100  
**NAIROBI**

2. WAFULA CHEBUKATI  
ANNIVERSARY TOWERS  
6TH FLOOR  
UNIVERSITY WAY  
P.O BOX 45371 - 00100  
**NAIROBI**

3. H.E. UHURU MUIGAI KENYATTA  
HARAMBEE HOUSE,  
HARAMBEE AVENUE  
**NAIROBI.**

Lodged in the Registry at Nairobi on the .....day of August 2017

.....

Registrar