

A.T. OLUOCH & COMPANY

ADVOCATES

OUR REF:
2017

YOUR REF:

22ND SEPTEMBER,

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

NSSF BUILDING

NAIROBI

RE: STATUTORY NOTICE TO INITIATE PRIVATE PROSECUTIONS

We have been instructed herein by our Client, the National Super Alliance Coalition Party to address you as we hereunder do;

By Petition 1 of 2017, Raila Odinga vs Independent Electoral and Boundaries Commission, the Supreme Court of Kenya delivered a Judgment on 1st September, 2017. In the body of that Judgment, the Supreme Court made findings on irregularities and illegalities committed by the Commission. These illegalities and irregularities are outlined in the detailed Judgement of the Supreme Court.

The Independent Electoral and Boundaries Commission was mandated to conduct free, fair in respect of which the Commission failed based on the irregularities and illegalities committed by members of the Commission. By virtue of Article 157 of the Constitution, the Office of the DPP is mandated to commence, initiate and prosecute any offences committed under any law and in this respect under the Election Offences Act, the Constitution, the Public Procurement and Asset Disposal Act and the Election Act.

The decision of the Supreme Court did not exonerate any member of the Commission any personal criminal liability in respect of the irregularities and illegalities cited above. Following that decision, your office has made a statement that it will evaluate the full text of the Judgment and make a determination on whether or not to commence and proceed with criminal prosecutions.

Our express instructions are that the Commissioners and members of the Secretariat not only committed criminal acts of which they should be held personally responsible, but also aided and abetted the commission of offences under the Elections Offences Act, the Public Procurement Act, the Elections Act and breaches of the Constitution.

In light of the pending Presidential Elections due for 26th October, 2017, the persons cited herein below cannot continue being in office and neither can they be allowed to perpetuate further illegalities. Unless investigations leading into criminal charges and prosecution is commenced within 72 hours of this office, our instructions are to institute private prosecutions pursuant to Section 28 of the Office of the Director of Public Prosecution. The said provision states as follows:

- (1) Notwithstanding any provision under this Act or any other written law, any person may institute private prosecution.
- (2) Any person who institutes private prosecution shall, within thirty days of instituting such proceeding, notify the Director in writing of such prosecution.
- (3) In accordance with Article 157 of the Constitution and this Act, the Director may undertake, takeover or discontinue any private prosecution.

The draft/proposed charges against the individual Commissioners and members of the Secretariat are attached. We look forward to your prompt response.

Yours Faithfully,

ANTHONY T. OLUOCH

A.T. OLUOCH & COMPANY ADVOCATES

DRAFT CHARGES:

1. EZRA CHILOBA, WAFULA CHEBUKATI, BETTY NYABUTO, IMMACULATE KASSAIT, JAMES MUHATI, PRAXEDES TOROREY, MOSES KIPKOGEI, ABDI GULIYE, MOLU BOYA and MARIJAN HUSSEIN MARIJAN between the 5th day of August 2017 to the 11th August, 2017 at the IEBC headquarters Nairobi County, without any reasonable cause committed actions and inactions which amount to breach of their official duties, which actions are:

2. CHARGE: COLLUDING WITH POLITICAL PARTY OR CANDIDATE FOR PURPOSE OF GIVING UNDUE ADVANTAGE TO THE POLITICAL PARTY OR CANDIDATE CONTRARY TO SECTION 6(K) OF THE ELECTIONS OFFENCES ACT

PARTICULARS OF OFFENCE: EZRA CHILOBA, WAFULA CHEBUKATI, BETTY NYABUTO, IMMACULATE KASSAIT, JAMES MUHATI, PRAXEDES TOROREY, MOSES KIPKOGEI, ABDI GULIYE, MOLU BOYA and MARIJAN HUSSEIN MARIJAN between the 5th day of August 2017 to the 11th August, 2017 at the IEBC headquarters Nairobi County unlawfully colluded with Jubilee Party and President Uhuru Kenyatta with the intention of giving an undue advantage by securing a win for the party and President Uhuru Kenyatta.

3. INCLUDE CHARGE OF CONSPIRACY

CHARGE: Wilfully contravening the law to give undue advantage to a candidate or a political party on partisan, ethnic and other unlawful considerations contrary to section 6(l) of the Elections Offences Act

PARTICULARS OF OFFENCE: EZRA CHILOBA, WAFULA CHEBUKATI, BETTY NYABUTO, IMMACULATE KASSAIT, JAMES MUHATI, PRAXEDES TOROREY, MOSES KIPKOGEI, ABDI GULIYE, MOLU BOYA and MARIJAN HUSSEIN MARIJAN between the 5th day of August 2017 to the 11th August, 2017 at the IEBC headquarters Nairobi County unlawfully contravened the law (the Constitution, the Elections Act and Elections Law (Amendment) Act and the regulations made thereunder; and the IEBC Act) and gave undue advantage to Jubilee Party and President Uhuru Kenyatta by securing their win.

4. CHARGE: FAILING TO PREVENT OR REPORT TO THE INDEPENDENT AND ELECTORAL BOUNDARIES COMMISSION OR ANY RELEVANT AUTHORITY THE COMMISSION OF AN ELECTORAL OFFENCE UNDER THE ELECTIONS OFFENCES ACT CONTRARY TO SECTION 6(M) OF THE ELECTIONS OFFENCES ACT

PARTICULARS OF OFFENCE: EZRA CHILOBA, WAFULA CHEBUKATI, BETTY NYABUTO, IMMACULATE KASSAIT, JAMES MUHATI, PRAXEDES TOROREY, MOSES KIPKOGEI, ABDI GULIYE, MOLU BOYA and MARIJAN HUSSEIN MARIJAN between the 5th day of August 2017 to the 11th August, 2017 at the IEBC headquarters Nairobi County knowingly failed to prevent and or report electoral offences committed under the Election Offences Act to the Commission or the Office of Director of Public Prosecutions or Director of Criminal Investigations which offences include: unlawful logins to Chebukati's system account and unlawful access to the Chairman's system account.

5. CHARGE: KNOWINGLY OR INTENTIONALLY CONCEALING, DESTROYING, ALTERING OR KNOWINGLY OR INTENTIONALLY CAUSING ANOTHER TO CONCEAL, DESTROY OR ALTER ANY COMPUTER SOURCE CODE USED FOR A COMPUTER, COMPUTER PROGRAMME, COMPUTER SYSTEM OR COMPUTER NETWORK CONTRARY TO SECTION 17(B) OF THE ELECTIONS OFFENCES ACT

PARTICULARS OF OFFENCE: EZRA CHILOBA and JAMES MUHATI between the 5th day of August 2017 to the 11th August, 2017 at the IEBC headquarters Nairobi County unlawfully and knowingly concealed, destroyed and altered and or caused to be destroyed, concealed or altered the passcode by adopting a porous file server

system to transmit FORM 34B instead of creating and using secure IP address and using password different from the official IEBC passwords.

6. CHARGE: DESTROYING OR ALTERING INFORMATION RESIDING IN AN COMPUTER RESOURCE OR DIMINISHING ITS VALUE OR UTILITY CONTRARY TO SECTION 17(C) OF THE ELECTIONS OFFENCES ACT

PARTICULARS OF OFFENCE: EZRA CHILOBA and JAMES MUHATI on or about the 14th day of August, 2017 at the IEBC headquarters within Nairobi County with the intention to destroy, delete and alter information residing in the computer resource to diminish its value or utility uploaded false information in an exercise book...

7. CHARGE: ACCESSING THE WHOLE OR ANY PARTY OF IEBC COMPUTER SYSTEM WITHOUT AUTHORIZATION CONTRARY TO SECTION 17(D) OF THE ELECTIONS OFFENCES ACT

PARTICULARS OF OFFENCE: EZRA CHILOBA , BETTY NYABUTO, JAMES MUHATI, PAUL MUGO and BONIFACE WAMAE between the period of 5th day of August, 2017 and 11th day of August, 2017 at the IEBC headquarters within Nairobi County unlawfully created and or caused to be created username and password in the name of Wafula Chebukati, the Chairman of IEBC and used the account to conduct electoral activities and manipulated election results by making 9934 transactions therein.

EMAIL: Anthony.oluoch@gmail.com

St. Ellis House, 1st Floor, Room 112, Wabera Street/City Hall Way