



Our Ref:ACA/Gen/17

Your Ref:TBA

Date: 23rd October 2017

Mr. Wafula Chebukati

Chairperson

Independent Electoral and Boundaries Commission

Anniversary Towers, 6th Floor

University Way,

P.O Box 45371 - 00100,

Nairobi.

RE: Contravention of Section 14 of the Election Offences Act, 2016 on the use of Public Resources

I refer to my letter dated 12th April 2017 to the Director of Public Prosecution and copied to you bringing to your attention the commission of Election Offences outlined in Section 14 of the Election Offences Act.

As you are now aware, on **10th April 2017**, His Excellency the President together with the Deputy President purported to launch a public information portal **Kenya Government delivery portal/website - www.delivery.go.ke** to showcase various national government programmes and projects across the country. The said launch and public advertisement of the said projects were also carried on television by several media houses during prime time.

I asserted that the actions contravened the provisions of the Elections Offences Act specifically Section 14 (1) and (2) as outlined above and hence criminal in nature.

In **paragraph 73** of the Majority Judgment in the **Supreme Court Presidential Petition No. 1 of 2017**, the court made observation with regard to the then pending ***Nairobi High Court of Kenya in Petition No. 162 of 2017 Apollo Mboya versus Attorney-General & 3 Others***. The court has now concurred with my assertions and delivered a judgment and decree that:

1. The advertisements in the **Kenya Government delivery portal/website - www.delivery.go.ke** of achievements by the National Government on

various programmes and projects undertaken across the country in the last four(4) years is unlawful as it was made in violation of section 14 of the Election Offences Act(, No.37 of 2016) and against **ARTICLES 10 and 38(2)** of the **Constitution of Kenya** and therefore is **null and void**.

2. The purported use of public resources to launch and maintain Kenya Government delivery portal/website - www.delivery.go.ke to advertise achievements by the National Government on various programmes and projects undertaken across the country in the last four(4) years contravenes Section 14 of the Election Offences Act hence is **irregular, illegal and unlawful**.
3. An order of permanent injunction restraining the National Government, whether by itself, agents, servants, proxies and/or any other person acting under its or their authority or direction from advertising achievements by the National Government of any programmes and/or projects undertaken across the country in the last four(4) years in the **Kenya Government delivery portal/website - www.delivery.go.ke** or in any print media, electronic media, or by way of banners or hoardings in public places during the election period.

Attached is the Judgment and Decree for ease of reference.

The Election Offences having been committed by the President, Deputy President and the Accounting Officer who authorized the use of public resources to come up with and launch the **Kenya Government delivery portal/website - www.delivery.go.ke**, this is to now to bring to your attention the provisions of sections 14 (6) and 24 (3) of the Election Offences Act, 2016 as follows:

Section 14(6): *“A person who fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding six years or to both.”*

Section 24(3): *“A person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election for a period of five years following the date of conviction.”*

This therefore means that as at 8th August 2017, the President and his Deputy had committed Election Offences inviting the sanctions contained in the provisions of sections 14(6) and 24(3) of the Election Offences Act, 2016 as

shown above. The same remains true for the Fresh Elections scheduled for 26th October 2017 or any other Election that the President and Deputy President present their candidature. There is no immunity under the Act.

By a copy of the letter, I also forward the Judgment and Decree to the Director of Public Prosecution who has the constitutional powers to commence criminal proceedings against those culpable and to the Auditor General to take note for the purposes of recovery of the public resources associated with **Kenya Government delivery portal/website - www.delivery.go.ke** .

Yours faithfully
Apollo & Company Advocates



**APOLLO MBOYA, HSC
ADVOCATE**

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