

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO. _____ OF 2017

IN THE MATTER OF: THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: THE ELECTION OF THE PREIDENT OF THE REPUBLIC OF KENYA
AFTER FAILED REPEAT PRESIDENTIAL ELECTIONS SLATED FOR
26TH OCTOBER 2017

IN THE MATTER OF: THE LAWS APPLICABLE TO THE PRESIDENTIAL RE-RUN

IN THE MATTER OF: THE FORMATION OF A CARETAKER GOVERNMENT TO HOLD THE
COUNTRY TOGETHER AND MIDWIFE ELECTORAL REFORMS.

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

~ VERSUS ~

THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 1ST RESPONDENT
THE CHAIRPERSON,
INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT
THE H.E. UHURU MUIGAI KENYATTA 4TH RESPONDENT

CERTIFICATE OF URGENCY

I, OKIYA OMTATAH OKOITI, care of Room 4, Floor B1, Block A, Western Wing, NSSF Building, Bishops Road, P. O. Box 60286-00200, NAIROBI, the Applicant/Petitioner herein, acting in person, DO CERTIFY that this application is extremely urgent and should be heard forthwith on priority basis.

DATED at NAIROBI this 11th day of October 2017

OKIYA OMTATAH OKOITI
THE PETITIONER

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI
ROOM 4, FLOOR B1, WESTERN WING,
NSSF BUILDING,
P.O BOX 60286 - 00200
NAIROBI.

TO BE SERVED UPON:

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

2. THE HON. ATTORNEY GENERAL
7TH FLOOR, SHERIA HOUSE
HARAMBEE AVENUE
NAIROBI.

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NOTICE OF MOTION

(Under articles 20, 22, 50(1), 23(3), 159(2)(d), 162(2), 165(5), and 258 of the Constitution of Kenya 2010, Sections 18, 19 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013, and all other enabling provisions of the Law)

LET ALL PARTIES CONCERNED attend the Honourable Judge in Chambers on the ____ day of _____, 2017, at 9.00 O'clock in the forenoon or as soon thereafter for hearing of an Application by the Applicant for **ORDERS:**

1. **THAT** this application be certified as urgent and fit to be heard forthwith, and be granted *ex-parte*, and in priority to any other matter herein.

2. **THAT** pending the hearing and determination of this Application and/or the Petition herein the Honourable Court be pleased to issue a temporary order of injunction restraining the 1st and 2nd Respondents, its agents, servants, or any person claiming to act under its authority from proceeding to announce President Uhuru Muigai Kenyatta

as the President elect following the withdrawal of the presidential and deputy presidential candidates representing the National Super Alliance.

3. **THAT** the Honourable Court be pleased to join parties necessary for the fair determination of the instant petition on the merits.
4. **THAT** consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
5. **THAT** the costs of this application be provided for.

THIS APPLICATION is based on the following grounds **THAT**:

1. This matter is extremely urgent since the presidential and the deputy presidential candidates for the National Super Alliance (NASA) from the presidential re-run slated for the 26th October 2017.
2. The law as regards the consequences of the NASA withdrawal is not clear and this Court is enjoined to clarify the law.
3. Both the orders sought herein are required to preserve the main motion from being rendered nugatory where successful.
4. This application and petition will be rendered nugatory if the orders sought herein are not granted and the 1st and 2nd respondents declare President Uhuru Muigai Kenyatta the president elect.
5. The applicant/petitioner has established a *prima facie* case.
6. The respondents will suffer no prejudice if the orders are granted.
7. Granting the orders sought herein will advance the cause of justice.
8. Granting the orders is not determinative of the Petition.
9. The balance of convenience favours the granting of the orders sought in this application.

10. This Honourable Court has unfettered powers and jurisdiction to make the orders sought.

11. It is meet and just, for purposes of justice and equity and the overarching purpose of constitutional integrity and rule of law, to make the orders sought.

AND FURTHER SUPPORTED by the affidavit of **OKIYA OMTATAH OKOITI** annexed herewith, the nature of the case and other grounds and reasons to be adduced at the hearing hereof.

DATED at **NAIROBI** this 11th day of **October 2017**

OKIYA OMTATAH OKOITI
THE PETITIONER

DRAWN & FILED BY:

OKIYA OMTATAH OKOITI
ROOM 4, FLOOR B1, WESTERN WING,
NSSF BUILDING,
P.O BOX 60286 - 00200
NAIROBI.

TO BE SERVED UPON:

- 1. THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION**
6TH FLOOR, ANNIVERSARY TOWERS
UNIVERSITY WAY
P. O. BOX 45371 - 00100
NAIROBI.
- 3. THE HON. ATTORNEY GENERAL**
7TH FLOOR, SHERIA HOUSE
HARAMBEE AVENUE
NAIROBI.

Note: If any party served does not appear at the time and place above mentioned such orders will be made and such proceedings taken as the Court may deem just and expedient.

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THE H.E. UHURU MUIGAI KENYATTA 4TH RESPONDENT

SUPPORTING AFFIDAVIT

I, OKIYA OMTATAH OKOITI, a resident of Kenya and of care of Room 4, Floor B1, Western Wing, Block A, Social Security House, P.O Box 60286-00200, Nairobi, do hereby solemnly make oath and state as follows:

1. **THAT** I am the Applicant/Petitioner herein, aware of the matters in issue and, hence, competent to swear this affidavit on my own behalf.
2. **THAT** I have perused the Application herein and confirm that the facts stated therein are true and correct, and I swear this affidavit in good faith in support of the Application herein.
3. **THAT** I hereby reaffirm and solemnly repeat the facts and averments stated and included in the Application, including each of the paragraphs (each individually as well as cumulatively), and solemnly state that the facts therein are true and to my own knowledge, information and belief.

4. **THAT** I have sworn a supporting affidavit in support of the Petition and I hereby reiterate and repeat the averments in the said Supporting Affidavit and Petition, and I intend to, and I hereby seek the leave of the Honourable Court, to rely on the annexure to the said Supporting affidavit in support of the application herein.
5. **THAT** the Application and the Petition are about the implementation of the 2010 Constitution of Kenya, and relate to the defence of the Constitution of Kenya, 2010, including the enjoyment of fundamental rights and freedoms secured and guaranteed by the Constitution.
6. **THAT** both the application and petition raise matters of grave public concern.
7. **THAT** the facts stated establish a sufficient case with a high possibility of success in respect to the Applicants'/Petitioners' claims, and that further there is an overarching requirement of justice that the orders sought be granted.
8. **THAT** I have a right of access to the Constitutional Court to safeguard my rights and those of others, and to defend the Constitution of Kenya, 2010, which has been, is being and is in danger of further infringement.
9. **THAT** I verily believe, that in regard to the continuing threats to and violation of the Constitution, it is of utmost importance and urgency that the violations and threats to the Constitution be stopped by the court without delay.
10. **THAT** the Honourable Court has unfettered powers and the jurisdiction to stop the blatant disregard for the rule of law.
11. **THAT** it is meet and just, for purposes of justice and equity and the overarching purpose of constitutional integrity and rule of law, to make the orders sought.
12. **THAT** unless the application is urgently heard and determined, the applicants and the people of Kenya will suffer great loss and damage in the very likely event that the violations of rights and fundamental freedoms enshrined in the constitution are not stopped.

13. **THAT** in view of the above, and pursuant to this Court’s duty to promote and safeguard constitutionalism and the rule of law, I verily believe that it is now incumbent for this Honourable Court to determine the issues raised in this Application to ensure that both statute and the Constitution are protected, and that the law will henceforth be applied with certainty.

14. **THAT** what is deponed to herein is true to the best of my knowledge save what has been deponed to on information and belief the sources and grounds whereof have been respectively specified.

SWORN by the said **OKIYA OMTATAH OKOITI**
at Nairobi this 11th day of **October, 2017**
BEFORE ME

}
DEPONENT

COMMISSIONER OF OATHS / MAGISTRATE

DRAWN & FILED BY:

**OKIYA OMTATAH OKOITI,
ROOM 4, FLOOR B1, BLOCK A,
WESTERN WING, NSSF BUILDING,
BISHOPS ROAD,
P. O. BOX 60286-00200,
NAIROBI.**