

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI

BETWEEN

MOSES KURIA..... 1ST PETITIONER

GEOFFREY KING'ANG'I MUTURI.....2ND PETITIONER

AND

HON RAILA AMOLO ODINGA1ST RESPONDENT

AZIMIO LA UMOJA ONE KENYA PARTY2ND RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....1ST INTERESTED PARTY

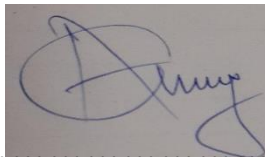
HON. DAVID WAIHIGA

MWAURE.....2ND INTERESTED PARTY

AGANO PARTY.....3RD INTERESTED PARTY

PETITION.

DATED at NAIROBI this21stDay ofAugust.....2022



.....
OMANGA NYABWENGI & COMPANY
ADVOCATES FOR THE PETITIONERS.

DRAWN AND FILED BY:

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REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
ELECTION PETITION. OF 2022

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MOSES KURIA..... 1ST PETITIONER
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AND
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AND
INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION.....1ST INTERESTED PARTY
HON. DAVID WAIHIGA
MWAURE.....2ND INTERESTED PARTY
AGANO PARTY.....3RD INTERESTED PARTY

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PETITION.

TO
THE SUPREME COURT OF KENYA
NAIROBI.

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The Humble Petition of MOSES KURIA and GEOFFREY KING'ANG'I MUTURI of P.O. Box Number 18380-00200 NAIROBI in the Republic of Kenya is as follows:

A. DESCRIPTION OF PARTIES

1. The 1st Petitioner is a male adult of sound mind, law abiding citizen of the Republic of Kenya, Party Leader of Chama Cha Kazi Political Party

registered under the Political Parties Act, 2022 and the immediate former Member of the National Assembly for Gatundu South Constituency. His address for service for purposes of this suit shall be in the **C/O OMANGA NYABWENGI & COMPANY ADVOCATES, JUBILEE EXCHANGE BUILDING, 5TH FLOOR, SUITE 501, MAMA NGINA STREET, P.O BOX 6266-00300, NAIROBI. EMAIL: info.advocateomanga@gmail.com TEL: 0713579337/0712770782.**

2. The 2nd Petitioner is a male adult of sound mind, a citizen of the Republic of Kenya, and the immediate former Member of the National Assembly for Mbeere South Constituency. His address of service for purposes of this suit shall be in the **C/O OMANGA NYABWENGI & COMPANY ADVOCATES, JUBILEE EXCHANGE BUILDING, 5TH FLOOR, SUITE 501, MAMA NGINA STREET, P.O BOX 6266-00300, NAIROBI. EMAIL: info.advocateomanga@gmail.com TEL: 0713579337/0712770782.** 10
3. The 1st Respondent is a male adult of sound mind, a citizen of the Republic of Kenya, the Party leader of the Orange Democratic Movement Party, a member of the Azimio la Umoja-One Kenya Alliance Coalition and the 1st Runner's-up to the Presidential Election in the 2022 General Elections carried out on the 9th of August, 2022. His address of service for the purposes of this Petition is care of the Petitioners' Advocates' Offices. 20

4. The 2nd Respondent is a Coalition Party established by dint of The Political Parties(Amendment) Act 2022 and on whose ticket the 1st Respondent run for the 2022 Presidential Elections in August 2022. Their address of service for the purposes of this Petition is care of the Petitioners' Advocates' Offices.

5. The 1st Interested Party is a Statutory body established under Article 88 of the Constitution of Kenya, 2010 charged with the functions to conduct elections and referenda, regulate the process by which parties nominate candidates for elections and the settlement of electoral disputes, including disputes relating to or arising from nominations in Kenya. Its address of service for purposes of this Petition shall be care of the Petitioners' Advocates.

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6. The 2nd interested Party is a Kenyan Citizen, a male adult of sound mind, Party leader of the 2nd Respondent Agano Party and a candidate in the Presidential Elections held on the 9th of August, 2022. His address of service shall be care of the Petitioners' Advocates.

LOCUS STANDI

7. The Petitioners institute this Petition on the strength of Article 3(1) of the Constitution which provides that every person has an obligation to respect, uphold and defend the Constitution of Kenya 2010; Article 138 and 140 of the Constitution. The Petitioners are a "person" envisaged under Article 22 of the Constitution and by dint of Article 260 a "person"

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is defined to include a company, association or other body of persons whether incorporated or unincorporated.

8. The Petitioners bring this Petition on their own behalf and interest and also on behalf of Public interest under Article 22(1) (2)(c) and 258 of the Constitution.

B. JURISDICTION.

9. The Petition herein relates to the Presidential Election held on 9th of August, 2022 touching on conduct of a Presidential candidate thus within the exclusive original jurisdiction of this Honorable Court by dint of Article 163 (3) (a) as read with Article 140 of the Constitution. 10

C. BACKGROUND OF THE PETITION

10. The people of Kenya adopted the 2010 constitution promulgated on 27th August 2010 which has been acclaimed as the most progressive constitution regionally and globally.
11. The Constitution of Kenya 2010 was subjected to a most desirable constitution making and building process whose climax was its passage through a referendum. 20
12. Remarkably, the 2010 Constitution envisions a society based on the rule of law, non-discrimination and social justice. At its core is the belief that there can only be real progress in society if all citizens participate fully in their governance, and that all, male and female, persons with disabilities and all hitherto marginalized and excluded groups get a chance at the table.

13. In a clear avowal that the constitution envisioned a society where citizens participate fully in their governance, **Article 1** reiterates that All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.
14. That the people are guaranteed to exercise their sovereign power either directly or through their democratically elected representatives.
15. The people are guaranteed political rights as enshrined in Article 38 of the Constitution which right is exercised in any election or referendum, to vote by a secret ballot. 10
16. The said political rights are to be enjoyed within the confines of the constitution and the guiding legislation in particular Article 260, 91 and 92 of the constitution.
17. Article 2 (1) of the Constitution provides that the Constitution is the supreme law of the Republic and binds all persons and all state organs at both levels of government. 20
18. Article 3 of the Constitution requires every person to respect, uphold and defend the Constitution.
19. The enabling legislation, that is the, Elections Act No 24 of 2011, the Independent Electoral & Boundaries Commission Act Nos 9 of 2011 and the Election Offences Act No.36 of 2016 require all persons subjecting themselves either as persons or through political parties, to abide by the Constitution and the electoral laws in place. 30
20. That Regulation 6 of the Electoral Code of Conduct require political parties, independent Candidates and all persons participating in the election to comply with the requirements contained in the said Code to

inter alia; That those bound by this Code shall, throughout an election period –

a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason;

(b) refrain from any action involving violence or intimidation;

(c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature; 10

D. FACTS OF THIS PETITION AND THE NATURE OF INJURY CAUSED TO THE PETITIONER/GENERAL PUBLIC.

21.The Petitioners enjoy the fundamental rights and freedoms as envisaged in the Constitution of Kenya 2010 and as such, they have the right to present the Petition touching on election of the President elect having exercised their right under Articles 81, and 138 (1) (b) and 140 of the Constitution. 20

22.On 9th August, 2022, the 1st Interested Party conducted nationwide General Elections for election of the President, Members of Parliament, County Government and the Members of the County Assembly in accordance to Article 101, 138,177 and 180 of the Constitution.

23.The 1st Respondent was one among four Presidential Candidates who were due to be elected as President in the over 46,000 polling stations in the country. 30

24. At the close of voting on the said date, the 1st interested Party through its agents and/or officers began vote count and/or tallying of presidential votes at every polling station and upon closure, filled form 34A in the presence of each candidate's agent and subsequently transmitted the Results electronically in accordance to section 139 (1C) of the Elections Acts, No. 24 of 2011.
25. That the Presiding Officers, upon verification of results at the polling station announced the total number of votes cast and valid votes cast in favour of each presidential candidate and upon electronic transmission via the KIEMS Kit, proceeded to submit the results to the Constituency Returning Officer. 10
26. That the Constituency Returning generated form 34B from all the forms 34A in the Constituency and subsequently transmitted the same electronically.
27. That the constituency Returning Officers were required, which they did, to physically hand over all the forms 34As and 34B to the Presidential Returning Officer who is the Chairperson of the 1st Interested Party for purposes of verification against the electronically transmitted results. 20
28. That it is true that the 1st Interested Party gazetted the Bomas of Kenya as its National Tallying Centre from where it received and verified all the forms 34A and B from each of the 290 Constituencies, together with those from the Diaspora and Kenya Prisons in the presence of all the candidate's agents in accordance to Article 81 ,82 and 138 of the Constitution.
29. That all the while, the 1st Interested Party (IEBC) made it accessible for all the members of the public including the Presidential Candidates the forms 34A on its website and/or portal wherein, 30

anyone would download, verify against the carbon copy forms given to each candidate's agent at the polling station and tally accordingly.

30. That the process of verification went on smoothly for Six (6) days and Six (6) nights at the Bomas of Kenya until Monday the 15th August, 2022 save that on the night of Saturday 13th August, 2022 at around 2300hours, the Azimio la Umoja-one kenya Alliance Party attempted to disrupt the verification process.

31. That on the said date, one SETIABO OLE KANCHORI, who was one of the accredited Chief agents of the 1st Respondent went to podium where IEBC Official were seated and caused a scene shouting “ **this place is a crime scene**” announcement that subsequently led to interference with the verification area prompting deployment of anti-riot police to safeguard the election materials and preesent further disruption. 10

32. That the exercise at the National Tallying Centre was aired by both local and international media and Kenyans of all works of life followed the process from the 1st to the last day of verification exercise and all the attempted disruptions by the 1st Respondent's agents were duly captured on camera. 20

33. That on the said date , at around 08000hours, IEBC announced that it had completed verification exercise and that the chairman of the commission, who is the Presidential Returning Officer would announce the results and declare the winner later that day.

34. That the Petitioners, who had been accredited as party agents accessed the National Tallying Centre throughout the said period and were present on the 15th August, 2022. 30

35. That the Country was kept at bay for the better part of Monday 15th August, 2022 and at around 17hours or thereabout, the Presidential Returning Officer; the Commission's Chairman walked in to the floor of the National Tallying Centre in readiness to announce and/or declare the Presidential Results.

36. That shortly after entry of the Commission's Chairman two other commissioners and the Chief Executive Officers, one SATIABAO OLE KANCHORI and Narok County Senator Elect, Honourable Ledama Ole Kina who was also an accredited agent of the 1st and 2nd Respondents gained access to the podium whereby he threatened and physically assaulted the Chairman and the commissioners in full glare of cameras.

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37. That the aforesaid persons kept shouting and barring the Presidential Returning Officer from performing his duty; that is, to declare the results.

38. That shortly after chaos erupted prompting security agents to safeguard the commissioners and eject the said agents from the podium.

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39. That all this while the said agents namely Honourable Ledama Ole Kina and SETIABO KANCHORI were armed and ready to unleash violence.

40. That at around 1800hours, the Chairman of the Commission, declared the Presidential Results announcing William Samoei Ruto as the Winner and President-elect under heavy security.

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41. That the Chairman alluded that he had been a victim of intimidation and the altercation led to his two commissioners and the CEO sustaining physical injuries.
42. That as a result of the said violence at the National Tallying center, the Chairperson of IEBC was prevented from performing his mandate in that he was unable to announce results from a number of constituencies.
43. That the actions of the 1st Respondent through his agents amounted to breach of national security as the same caused fear and panic not only amongst the Petitioners and all the persons present at Bomas but also amongst Kenyans across the globe who were keenly following the process on television. 10
44. That further, the said actions posed a threat to the lives of foreign diplomats, international and local observers, clergy men and women, the three presidential candidates and their families at the time in Bomas, elected leaders, IEBC officials among many Kenyans who had been accredited. 20
45. That the interference with the declaration of presidential election results by the 2nd Respondent and the attack on the person of the Presidential Returning Officer made it difficult for the National Returning Officer to singly announce the results of the 38 polling stations that had been verified the morning of 15th August, 2022.
46. That to date, almost seven (7) days later, the 1st Respondent has neither condemned nor distanced himself from the actions of the 2nd Respondent. 30

47. That the 1st Respondent, being the Principal in the process, is liable to the election offence and/or malpractices committed by his duly appointed agents.

48. That as such, the 1st Respondent cannot be deemed to be a beneficiary of any relief sought or granted by this Honourable Court from the Petition challenging the election of the President elect in the 2022 Presidential elections.

F. LEGAL FOUNDATION OF THE PETITION

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49. Article 1 of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised in accordance with the Constitution.

50. Article 2 (1) of the Constitution provides.” This constitution is the supreme law of the Republic and binds all persons and all state organs at both levels of Government. As such the Constitution binds the Respondents herein.

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51. Article 2(2) states that no person may claim or exercise state Authority except as authorized under this constitution.

52. Under Article 3, every person has an obligation to respect, uphold and defend this Constitution, and any attempt to establish a government, otherwise than in compliance with this Constitution is unlawful.

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53. Article 38 of the Constitution provides for political rights for every citizen including the right form, or participate in forming, a political party, participate in the activities of, or recruit members for a political party; or campaign for a political party or cause.

54. Article 140 of the Constitution provides that a person may file a petition in the Supreme court to challenge the election of the President elect within seven days f=after the date of the declaration of the results of presidential election.

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55. Article 163 of the Constitution which establishes the Supreme court give this honourable court the inherent jurisdiction to determine questions emanating from validity of Presidential elections.

56. Article 258 of the Constitution empowers every person to institute court proceedings in public interest where there is a contravention of the constitution or where there is a threatened contravention.

57. Article 259 of the Constitution provides for the manner of construing the constitution, including a manner that advances the rule of law, human rights and fundamental freedoms in the Bill of Rights. 20

58. Section 20 of the Election Offences Act provides that any person who contravenes the Electoral Code of Conduct commits an electoral offence.

59. The Electoral Code of Conduct as envisaged in the Elections Act No 24 of 2011 at Sections 110 (1)- (6) provides *inter alia* **That those bound by this Code shall, throughout an election period –**

- (a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason;**
- (b) refrain from any action involving violence or intimidation;**
- (c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;**

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60. Section 10 of The Election Offences Act provides as follows:

- 1) A person who, directly or indirectly in person Undue influence or through another person on his behalf uses or threatens to use any force, violence including sexual violence, restraint, or material, physical or spiritual injury, harmful cultural practices, damage or loss, or any fraudulent device, trick or deception for the purpose of or on account of –
- (a) inducing or compelling a person to vote or not to vote for a particular candidate or political party at an election;
 - (b) inducing or compelling a person to refrain from becoming a candidate or to withdraw if he has become a candidate; or
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(c) impeding or preventing a person from being nominated as a candidate or from being registered as a voter, commits the offence of undue influence.

(2) A person who induces, influences or procures any other person to vote in an election knowing that the person is not entitled to vote in that election commits an offence.

(3) A person who directly or indirectly by duress or intimidation —

(a) impedes, prevents or threatens to impede or prevent a voter from voting;
or

(b) in any manner influences the result of an election, commits an offence.

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(4) A person who directly or indirectly by duress, intimidation or otherwise compels or induces any voter who has already voted at an election —

61. Section 13 of The Election Offences Act provides as follows;

A person who —

(a) prints, publishes, distributes or posts up, or causes to be printed, published, distributed or posted up, any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of the printer and publisher;

(b) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false

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statement of withdrawal of any other candidate at such election;

(c) forges, defaces or destroys any nomination paper, or delivers to a returning officer any nomination paper knowing it to be forged;

(d) interferes with election material by removing destroying, concealing or mutilating or assists in the removal, destruction, concealment or mutilation of any such material save on the authority of the Commission or under the provisions of the Elections Act (No. 24 of 2011);

(e) directly or indirectly prints, manufactures or supplies or procures the printing, manufacture or supply of any election material in connection with the election save on the authority of the Commission;

(f) interferes with free political canvassing and campaigning by –

(i) using language which is threatening, abusive or insulting or engages in any kind of action which may advocate hatred, incite violence or influence the voters on grounds of ethnicity, race, religion, gender or any other ground of discrimination;

(ii) directly or indirectly, using the threat of force, violence, harassment or otherwise preventing the conduct of any political meeting, march, demonstration or other event of a political

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nature or any other person from attending or participating therein;

(iii) creating a material disruption with the intention of preventing a political party from holding a public political meeting;

(iv) impeding, preventing or threatening to impede or prevent the right of any representative of any political party from gaining access, in the manner and during the hours prescribed to voters in any particular area, whether public or private for the purposes of canvassing and campaigning and soliciting membership and support; or

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(v) impeding, preventing or threatening to impede or prevent a member of the Commission, a representative of the Commission or any other authorised person or organisation engaged in voter education from gaining access, in the refuses or fails to effect a direction, instruction or lawful order issued by or on behalf of the Commission;

(g) refuses or fails to leave an election counting centre or any area designated by the Commission for electoral purposes when so ordered in accordance with the Elections Act;

(h) enters or remains in an election centre or in any area designated by the Commission for electoral purposes in contravention of Elections Act;

(i) obstructs or hinders any elections officer, candidate or agent in the execution of their lawful duties;

(j) makes a false statement or furnishes false particulars in any statement which is required under Elections Act knowing the statement or particulars to be false or without reasonable grounds for believing the same to be true; or

(k) publishes, repeats or disseminates in any manner whatsoever, information with the intention of –

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(i) disrupting or preventing the election;

(ii) creating hostility or fear in order to influence the process or outcome of the election; or

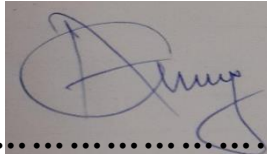
(iii) otherwise unlawfully influencing the process or outcome of the election, or aids, abets counsels or procures the commission of or attempts to commit any such offence; or

(l) forges, defaces or destroys any campaign or promotional material of an opposing candidate or political party, commits an offence .

G. RELIEFS SOUGHT:-

- i. A declaration that the Respondents' direct or indirect actions of 13th and 14th August, 2022 at the Presidential Election Tallying center were aimed at obstructing or hindering the 1st Interested party from execution of their lawful duties in respect of the Presidential election held on 9th August 2022 thus in violation of the Constitution, the Elections Act and the Code of Electoral Conduct. 10
- ii. A declaration that the 1st and 2nd Respondents are not entitled to benefit from any reliefs sought and/or granted in the elections court under Article 140 of the Constitution by virtue of having breached the electoral code of conduct and having directly or indirectly participated or condoned electoral malpractice of obstructing or hindering the 1st Interested party in execution of their lawful duties. 20
- iii. An order directing the Director of Criminal Investigations in conjunction with Director of Public prosecutions to commence investigations over the impugned actions of the 1st Respondent in person as well as the actions of the agents of the 2nd Respondents with a view of preferring criminal charges for commission of electoral offences under The Elections Offences Act.
- iv. Costs of this Petition be awarded to the Petitioners. 30

DATED at NAIROBI this21stDay ofAugust.....2022



.....
**OMANGA NYABWENGI & COMPANY
ADVOCATES FOR THE PETITIONERS.**

DRAWN AND FILED BY:

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To be served upon

1. THE RT HONOURABLE RAILA AMOLLO ODINGA
AZIMIO LA UMOJA-ONE KENYA ALLIANCE
JAMES GICHURU ROAD LAVINGTON
NAIROBI

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2. AZIMIO LA UMOJA-ONE KENYA ALLIANCE PARTY
JAMES GICHURU ROAD LAVINGTON
NAIROBI

3. THE INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION
ANNIVERSARY TOWERS
6TH FLOOR
UNIVERSITY WAY
NAIROBI

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4. HONOURABLE DAVID WAIHIGA MWAURE
AGANO PARTY.

Lodged at the Supreme Court of Kenya registry at NAIROBI.....this
.....day of2022.

.....
REGISTRAR, SUPREME COURT.

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COMMISSION.....1ST INTERESTED PARTY

HON. DAVID WAIHIGA

MWAURE.....2ND INTERESTED PARTY

AGANO PARTY.....3RD INTERESTED PARTY

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SUPPORTING AFFIDAVIT.

I, MOSES KURIA, do hereby make oath and state as follows: -

1. That I am the 1st Petitioner herein thus competent to swear this affidavit which I do in support of the Main Petition.
2. That I swear this Affidavit on my own behalf and on behalf of the 2nd Petitioner herein. 20
3. That I am a Kenyan Citizen, party leader of Chama Cha Kazi, an affiliate party of Kenya Kwanza Coalition, immediate former Member of Parliament for Gatundu South Constituency and was an accredited Agent for representing The Kenya Kwanza coalition at the National Tallying centre at Bomas of Kenya.
4. That on the 9th of August, 2022, I equally participated as a candidate in the gubernatorial seat for Kiambu County wherein I signed Electoral Code of Conduct with the 1st Interested Party. 30

5. That as such, I am aware that everyone who participated in the recently concluded 9th August, 2022 elections, the 1st Respondent included, had to sign to commit to the Electoral Code of Conduct with the 1st Interested Party.

6. That Regulation 6 of the Electoral Code of Conduct require political parties, independent Candidates and all persons participating in the election to comply with the requirements contained in the said Code to *inter alia*;

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7. That those bound by this Code shall, throughout an election period –
(a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason;

(b) refrain from any action involving violence or intimidation;

(c) ensure that no arms or weapons of any kind are carried or displayed at

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political meetings or any march, demonstration or other event of a political nature;

8. That I am aware that all candidates including the Presidential election candidates were required to sign the Electoral code of conduct with the 1st Interested Party prior to the day of elections committing to observe the rules and regulations governing the election process thus the 1st Respondent is bound by the said Code.

9. That I am advised by my Advocates on record, which information I verily believe is true that 1st Respondent by himself and/or through his Chief Agent, herein breached the Electoral Code of Conduct on the 13th and 15th of August, 2022 which falls under the election period.
10. That I have read and my Advocates on record have explained to me that Section 80 (4) of the Elections Act provides that this Court, which is the Presidential election court may by order direct the 1st Interested Party to issue a certificate of election to a President, a member of Parliament or a member of a county assembly if – 10
- (a) upon recount of the ballots cast, the winner is apparent; and
- (b) the winner is not found to have committed an election offence.
11. That as such, any person who seeks to be declared a winner by dint of Section 80 (4) of the Elections Act must satisfy the Court that such person did not commit an election offence throughout the election period. 20
12. On 9th August, 2022, the 1st Interested Party conducted nationwide General Elections for election of the President, Members of Parliament, County Government and the Members of the County Assembly in accordance to Article 101, 138, 177 and 180 of the Constitution.
13. The 1st Respondent was one among four Presidential Candidates who were due to be elected as President in the over 46,000 polling stations in the country.

14. At the close of voting on the said date, the 1st interested Party through its agents and/or officers began vote count and/or tallying of presidential votes at every polling station and upon closure, filled form 34A in the presence of each candidate's agent and subsequently transmitted the Results electronically in accordance to section 139 (1C) of the Elections Acts, No. 24 of 2011.

15. That the Presiding Officers, upon verification of results at the polling station announced the total number of votes cast and valid votes cast in favour of each presidential candidate and upon electronic transmission via the KIEMS Kit, proceeded to submit the results to the Constituency Returning Officer.

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16. That the Constituency Returning generated form 34B from all the forms 34A in the Constituency and subsequently transmitted the same electronically.

17. That the constituency Returning Officers were required, which they did, to physically hand over all the forms 34As and 34B to the Presidential Returning Officer who is the Chairperson of the 1st Interested Party for purposes of verification against the electronically transmitted results.

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18. That it is true that the 1st Interested Party gazetted the Bomas of Kenya as its National Tallying Centre from where it received and verified all the forms 34A and B from each of the 290 Constituencies, together with those from the Diaspora and Kenya Prisons in the presence of all the candidate's agents in accordance to Article 81 ,82 and 138 of the Constitution.

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19. That all the while, the 1st Interested Party (IEBC) made it accessible for all the members of the public including the Presidential Candidates the

forms 34A on its website and/or portal wherein, anyone would download, verify against the carbon copy forms given to each candidate's agent at the polling station and tally accordingly.

20. That the process of verification went on smoothly for Six(6) days and Six (6) nights at the Bomas of Kenya until Monday the 15th August, 2022 save that on the night of Saturday 13th August, 2022 at around 2300hours, the Azimio la Umoja-one kenya Alliance Party attempted to disrupt the verification process.

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21. That on the said date, one SAITABAO OLE KANCHORI , who is the chief agent of the 1st and 2nd Respondent went to podium where IEBC Official were seated and caused a scene shouting “ **this place is a crime scene**” announcement that subsequently led to interference with the verification area prompting deployment of anti riot police to safeguard the election materials and prevent further disruption.

22. That the exercise at the National Tallying Centre was aired by both local and international media and Kenyans of all walks of life followed the process from the 1st to the last day of verification exercise and all the attempted disruptions by the 1st Respondent's agents were duly captured on camera.

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23. That on the said date ,at around 0800hours, IEBC announced that it had completed verification exercise and that the chairman of the commission, who is the Presidential Returning Officer would announce the results and declare the winner later that day.

24. That the Petitioners, who had been accredited as party agents accessed the National Tallying Centre throughout the said period and were present on the 15th August, 2022.

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25. That the Country was kept at bay for the better part of Monday 15th August, 2022 and at around 17 hours or thereabout, the Presidential Returning Officer; the Commission's Chairman walked in to the floor of the National Tallying Centre in readiness to announce and/or declare the Presidential Results.
26. That shortly after entry of the Commission's Chairman two other commissioners and the Chief Executive Officers, the said SATIABAO OLE KANCHORI and one other accredited agent of the 1st and 2nd Respondents who is also Narok County Senator Elect, Honourable Ledama Ole Kina gained access to the podium whereby they threatened and physically assaulted the Chairman and the commissioners in full glare of cameras. 10
27. That the aforesaid persons kept shouting and barring the Presidential Returning Officer from performing his duty; that is, to declare the results.
28. That shortly after chaos erupted prompting security agents to safeguard the commissioners and eject the said agents from the podium. 20
29. That all this while the said agents accredited by the respondents were armed.
30. That at around 1800 hours, the Chairman of the Commission, declared the Presidential Results announcing William Samoei Ruto as the Winner and President-elect under heavy security.
31. That the Chairman alluded that he had been a victim of intimidation and the altercation led to his two commissioners and the CEO sustaining physical injuries. 30

32. That as a result of the said violence at the National Tallying center, the Chairperson of IEBC was prevented from performing his mandate in that he was unable to announce results from a number of constituencies.

33. That the actions of the Respondents through their agents amounted to breach of national security as the same caused fear and panic not only amongst the Petitioners and all the persons present at Bomas but also amongst Kenyans across the globe who were keenly following the process on television. (*Annexed are links bearing the videos capturing the disruption and violence at the national tallying centre marked MK-1:*<https://www.youtube.com/watch?v=C8OYY1zOg-8>,
<https://www.youtube.com/watch?v=R0sZ98vA8j8>,<https://www.youtube.com/watch?v=-yM7HXyV7TM>,
<https://www.youtube.com/watch?v=W8XNzDSFN-0>)

10

34. That further, the said actions posed a threat to the lives of foreign diplomats, international and local observers, clergy men and women, the three presidential candidates and their families at the time in Bomas, elected leaders, IEBC officials among many Kenyans who had been accredited.

20

35. That the interference with the declaration of presidential election results by the Respondents and the attack on the person of the Presidential Returning Officer made it difficult for the National Returning Officer to singly announce the results of the 38 polling stations that had been verified the morning of 15th August, 2022.

36. That to date, almost seven (7) days later, the 1st and 2nd Respondents have neither condemned nor distanced themselves from the actions of the their said agents.

30

37. THAT I am also aware some public spirited Kenyans under their umbrella body, Mbunge La Mwananchi, have already petitioned the O.D.P.P, in respect to the acts of violence meted upon the 1st Interested party and its chairman, staffs and agents of Kenya Kwanza, but no action has been taken because the government of the day is sympathetic to the 1st and 2nd Respondent. (Marked and Annexed as M.K -2 is a copy of the Petition)

38. That the 1st Respondent, being the Principal in the process, is liable to the election offence and/or malpractices committed by his duly appointed agents. 10

39. That as such, the 1st Respondent cannot be deemed to be a beneficiary of any relief sought or granted by this Honourable Court from the Petition challenging the election of the President elect in the 2022 Presidential elections.

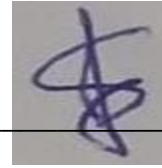
40. That I am apprehensive that the 1st Respondent, in his attempt to challenge the validity of the presidential election, 2022, will fail to disclose to the honourable Court that he either by himself or through his accredited agents to have committed electoral malpractice. 20

41. That I pray that this Honourable Court grant the prayers sought in the Petition herein.

42. That issuance of the orders herein is unlikely to prejudice the respondents or any of the other parties.

43. That all that is deponed herein above is true to the best of my knowledge information, sources whereof I have disclosed.

Sworn by the said;)
MOSES KURIA at Nairobi)



This **21st** day of **AUGUST 2022**)

DEPONENT.

BEFORE ME)



COMMISSIONER FOR OATHS)

10

DRAWN AND FILED BY:

OMANGA NYABWENGI & COMPANY
ADVOCATES,

20

JUBILEE EXCHANGE BUILDING,
5TH FLOOR, SUITE 501,

MAMA NGINA STREET,

P.O BOX 6266-00300, NAIROBI.

EMAIL: info.advocateomanga@gmail.com

TEL: 0713579337/0712770782.

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI

BETWEEN

MOSES KURIA..... 1ST PETITIONER

GEOFFREY KING'ANG'I MUTURI.....2ND PETITIONER

AND

HON RAILA AMOLO ODINGA1ST RESPONDENT

AZIMIO LA UMOJA ONE KENYA PARTY2ND RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....1ST INTERESTED PARTY

HON. DAVID WAIHIGA

MWAURE.....2ND INTERESTED PARTY

AGANO PARTY.....3RD INTERESTED PARTY

10

AFFIDAVIT OF GABRIEL GATHUKA KAGOMBE.

I, **GABRIEL GATHUKA KAGOMBE** of P.O BOX 1838-00200 NAIROBI
hereby make oath and state as follows: -

1. That I am the Member of the National Assembly- Elect for Gatundu South Constituency in the 9th August, 2022 elections.
2. That I was duly accredited to attend and witness the final declaration of the Presidential election Results at the Bomas of Kenya on the 15th August, 2022.
3. That I swear this Affidavit to give first hand account of the happenings at the Bomas of Kenya on the 15th August, 2022 in support of the Petition herein.

20

30

4. That I am aware that the 1st Respondent was a candidate in the Presidential Elections leading up to the declaration of the results on the 15th August, 2022.
5. That Regulation 6 of the Electoral Code of Conduct require political parties, independent Candidates and all persons participating in the election to comply with the requirements contained in the said Code to *inter alia*;
6. That those bound by this Code shall, throughout an election period –
- (a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage or for any other reason; 10
- (b) refrain from any action involving violence or intimidation;
- (c) ensure that no arms or weapons of any kind are carried or displayed at political meetings or any march, demonstration or other event of a political nature;
7. That I am aware that all candidates including the Presidential election candidates were required to sign the Electoral code of conduct with the 1st Interested Party prior to the day of elections committing to observe the rules and regulations governing the election process thus the 1st Respondent is bound by the said Code. 20
8. That as such I am aware that the 1st Respondent was required by law to commit to abide by the electoral laws and the Constitution by signing the Electoral Code of Conduct with the 1st Interested Party. 30

9. That the verification exercise and tallying of Presidential votes at the National Tallying Centre, in Bomas was broadcasted by both local and international media and Kenyans of all walks of life followed the process from the 1st to the last day of verification exercise and all the attempted disruptions by the 1st Respondent's agents were duly captured on camera.
10. That on 15th August, 2022, at around 0800hours, IEBC announced that it had completed verification exercise and that the chairman of the commission, who is the Presidential Returning Officer would announce the results and declare the winner later that day. 10
11. That the Petitioners, who had been accredited as party agents accessed the National Tallying Centre throughout the said period and were present on the 15th August, 2022.
12. That the Country was kept at bay for the better part of Monday 15th August, 2022 and at around 17hours or thereabout, the Presidential Returning Officer; the Commission's Chairman walked in to the floor of the National Tallying Centre in readiness to announce and/or declare the Presidential Results. 20
13. That on or about 1700hours, I was at Bomas of Kenya where I was an agent for Kenya Kwanza coalition which had fronted a presidential candidate in the elections.
14. That while seated at the plenary, the IEBC chair person, Wafula Chebukati walked in to the podium together with Mr Marjan Hussein the CEO, Commissioner professors Gulyie, and Commissioner Bolu and proceeded to take positions.

15. That all the people in the Bomas had been waiting for that moment for a long time and with baited breath and therefore I was very keenly following the ongoing.

16. Shortly after the arrival, Senator Olekina, James Orengo Governor elect and Siatiabao Ole Kanchori who were all accredited agents of the 1st and 2nd Respondents herein, went up the podium walking past uniformed police officers who did not stop them. The Deputy Inspector of General of police one Gabow was personally there and he gave way to the three of them.

10

17. That Senator Ledama Ole Kina and Governor-elect- Orengo walked to the front of the table at which the chairman sat, I saw Mr. Siatiabo Kanchori who was armed with a gun, jumped atop the table and attacked the chairman physically.

18. That the trio caused havoc and since the police were not swift, I had to run to the rescue of the IEBC chairman where I acted as his human shield. Fortunately a team of GSU officers came in and we escorted the said Kanchori outside.

20

19. That the IEBC chairman was first escorted to safety until calmness resumed when the Chairman returned to declare the results at 1805 hours or thereabout.

20. That the Chairman in his remarks confirmed that he had been a victim of intimidation and the altercation led to his two commissioners and the CEO sustaining physical injuries.

21. That the actions of the 1st Respondent through his agents amounted to breach of national security as the same caused fear and panic not only amongst the Petitioners and all the persons present at Bomas but also amongst Kenyans across the globe who were keenly following the process on television.

10

22. That further, the said actions posed a threat to the lives of foreign diplomats, international and local observers, clergy men and women, the three presidential candidates and their families at the time in Bomas, elected leaders, IEBC officials among many Kenyans who had been accredited.

23. That the interference with the declaration of presidential election results by the agents of the respondents and the attack on the person of the Presidential Returning Officer made it difficult for the National Returning Officer to singly announce the results of the 38 polling stations that had been verified the morning of 15th August, 2022 before making the final declaration.

20

24. That to date, almost seven (7) days later, the 1st and 2nd Respondents have neither condemned nor distanced himself from the actions of the 2nd Respondent.

25. That the 1st Respondent, being the Principal in the process, is liable to the election offence and/or malpractices committed by his duly appointed agents.

30

26. That as such, the 1st Respondent cannot be deemed to be a beneficiary of any relief sought or granted by this Honourable Court from the Petition challenging the election of the President elect in the 2022 Presidential elections.

27. That I pray that this Honourable Court grant the prayers sought in the Petition herein.


28. That issuance of the orders herein is unlikely to prejudice the respondents or any of the other parties.

29. That all that is deposed herein above is true to the best of my knowledge information, sources whereof I have disclosed.

Sworn at Nairobi by the said;

GABRIEL GATHUKA KAGOMBE

This **21st** day of **AUGUST 2022**


DEPONENT.

BEFORE ME



COMMISSIONER FOR OATHS

DRAWN AND FILED BY:

OMANGA NYABWENGI & COMPANY
ADVOCATES,
JUBILEE EXCHANGE BUILDING,
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REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI

BETWEEN

MOSES KURIA..... 1ST PETITIONER

GEOFFREY KING'ANG'I MUTURI.....2ND PETITIONER

AND

HON RAILA AMOLO ODINGA1ST RESPONDENT

AZIMIO LA UMOJA ONE KENYA PARTY2ND RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION.....1ST INTERESTED PARTY

HON. DAVID WAIHIGA

MWAURE.....2ND INTERESTED PARTY

AGANO PARTY.....3RD INTERESTED PARTY

10

AFFIDAVIT IN SUPPORT OF THE PETITION.

I, **Rev. DENNIS NTHUMBI**, a male adult of sound mind, holder of Identification No. 14582805 and a citizen of the Republic of Kenya, do hereby make this solemn oath and state as follows:

1. **THAT** following the completion of the electoral voting process 20
conducted nationally on Tuesday, the 9th of August, 2022 the
Independent Electoral and Boundaries Commission camped at Bomas
of Kenya, where national Tallying of the Presidential results was to be

conclusively tallied and the winning candidates announced by the National Returning Officer, Mr. Wafula Chebukati Wanyonyi, the Chairman of the Commission.

2. **THAT** during the tallying process at The Bomas of Kenya, there were a series of planned assaults and acts of violence instigated concurrently, by the 1st and 2nd Respondent, against the IEBC officers and agents deployed in the validation and verification of the Electoral Process.

10

3. **THAT** the Azimio Presidential Chief Agent **Saitabao Kanchory** would instigate spurious allegations on any innocent officer or agent with the intention of giving an impression that the process at Bomas was not open, transparent and verifiable.
4. **THAT** these egregious acts by Mr. **Saitabao Kanchory** were instigated to incite people to rebel against the IEBC and invite the people of Kenya to chaos and violence.

5. **THAT** the Azimio Presidential Chief Agent served as the ring leader of a group of five (5) Azimio supporters being;
- a) **Esther Passaris**
 - b) **Millicent Odhiambo**
 - c) **Gladys Wanga**
 - d) **Dennis Mbanda**
 - e) **Lucky Ogutu Okudo**
6. **THAT** rather than raising any issues through the regular legal channel, the Chief agent and his acolytes marshalled to physically assault innocent persons involved in the electoral process. 10
7. **THAT** **Mr.Saitabao Kanchory** on the 13th of August, 2022 at one point in his erratic ways to set off violence violently grabbed the Microphone at the Bomas of Kenya and shouted that:
- “I want to announce to the nation that the Bomas of Kenya is a scene of crime.”*
8. **THAT** it is notably evident that Mr. Kanchory was the leader to the afore-mentioned Five (5) who wreaked havoc in The Bomas of Kenya

creating and conducting all criminal and violent activities against innocent persons and the electoral process as a whole.

9. **THAT** the main goal and motive of the violent cadre was to injure the continuity of the electoral process to ensure that it either goes beyond the Seven-day Constitutional timeline or that it was completely withheld and in favor of their presidential candidate.

10. **THAT** on the instigation of the 1st and 2nd Respondents and in the full glare of the national media, an I.E.B.C staff male of Asian descent, was 10 assaulted, while servicing a Photocopiers at The Bomas of Kenya, to aid with the conduct and tallying of the votes.

11. **THAT** the chief agent pushed and/ or marshalled his brigade who violently pushed through the police cordon, disrupted the process flow in Bomas and ejected the Photocopier servicing officer violently out of Bomas, while physically assaulting him. The role of the victims was to service the photocopiers provided to the agents.

12.**THAT** the second incident was castigated against the **Hon. Gladys Boss Shollei** who they accused of carrying paper work to the floor of Bomas. The violent cadre in their rampage disrupted the electoral process at the Bomas of Kenya and ensured that the verification and validation process was either disrupted and/ or came to a standstill.

13.The assault was also intended to deny her Constitutional and Political right to act for and participate for the party including stopping her from voluntarily participating in the political process. Hon. Gladys Boss Shollei's bags were violently confiscated and as was later noted, 10 Milly Odhiambo ransacked them through and through at the Police Station.

14.**THAT** the rampaging off the cadre proceed to assault UDA agents who were also violently kidnapped and dumped at the Police Station, where to their Surprise Milly Odhiambo ransacked their luggage in search of phantom evidence against the due process, where after the agents were release after 3 hours of unlawful detention.

15. THAT we were on that particular night cautioned against leaving The Bomas of Kenya, as we were earmarked for either harm or kidnap. On the same night, several vehicles were broken into and an active search of UDA agents, staff and supporters conducted at The Bomas' compound with the intent to either harm, intimidate or kidnap.

16. In view of the foregoing and being fully aware of the threat our lives were hanging on, we directly protested to the IEBC on the heinous crimes and requested for additional protection to the process and to the members, though nothing much was done to remedy the situation. 10

17. THAT in an attempt to deal with the disruptions, IEBC was forced to come up with 'House Rules' to regulate the conduct of affairs at Bomas of Kenya.

18. Whereas parties were allowed to come in with laptops and paper work for the specific tasks of validation and verification, the Azimio

party agents did not have much paper work and they therefore felt disadvantaged by the fact that UDA agents carried verification paperwork and all the necessary data storage equipment.

19.**THAT** the assaults and violent acts persisted and led to victimization of Mr. Davis Chirchir, who upon his arrival at the Bomas of Kenya, left the police no other choice than eject Mr. Davis Chirchir against his will and in clear violation of his political and Constitutional rights and obligation to serve his party and participate in the electoral process. 10

20. That Azimio Party agents further proceeded to assault one Mr. Maina who had been profiled by Esther Passaris. Ms Esther Passaris entered the Bomas of Kenya floor under the instructions of the Chief agent, Mr. Kanchory, wherein she was briefed by Dennis Mbanda who then went and position himself behind Maina.

21.**THAT** Ms. Esther Passaris who was not accredited as a chief agent was seen strutting the floor and then walked purposely towards the

desk that Maina was working from and grabbed his neck while screaming. Together with Dennis Mbanda, Ms. Passaris violently robbed Maina of his mobile phone. Dennis Mbanda then proceeded to hand over the phone to Lucky Okudo who thereafter instantly left Bomas.

22.**THAT** after the incident, Ms. Esther Passaris calms down and does not forward any official complain to the IEBC and neither does the chief agent raise any concern with the IEBC over the matter. The 10 offence and violation that Maina would allegedly be liable to is unknown and not provided for in the Elections Offences Act, or even in the Elections Act.

23.The fact that the fracas, violence and assaults caused by the Azimio agents was completely ignored by the Police is still astounding; as the incidents were not only open and violent but repetitive. The Bomas of Kenya was therein turned into a den of violence with threats and

intimidations, as the Azimio agents and brigade grossly violated on the UDA personnel's and agents' freedoms and rights.

24.**THAT** the tallying process was concluded on the 15th of August, 2022 wherein the winning presidential candidate was to be announced by the Presidential Returning Officer, Mr. Wafula Chebukati.

25.**THAT** at about 1400 hours, the Chief Azimio Presidential Agent, Mr. Kanchory, was seen to be pacing in and out of the plenary, marshalling for reinforcements twice towards the office of the Presidential Returning Officer, the Chairman of the IEBC. 10

26.**THAT** the sole intent of the actions and pronouncements of Mr. Kanchory was to cause injury , apprehension , tension , anxiety to thereby defeat the sanctity to the fidelity and the integrity of the electoral process and to incite the country to chaos and to rebel against the IEBC and thereon stop the process from proceeding.

27.**THAT** the chief agent, Mr. Saitaboi Kanchory, then again marshals a violent brigade to destroy the podium, which cadre is led by Senator Olekina who attempts to talk on the Microphone. Upon the microphones failure, he then marshals more members of Azimio to destroy the microphones, chairs and other assets meant to aid the process. All this time, the police watch as the hazardous acts proceed and act on the matter lazily.

28.**THAT** once order had been restored, Mr. Kanchory was seen physically restraining the Chairman to the IEBC from accessing the Dias, while pushing around the security team. The security team 10 however prevailed to restore order at the Dias.

29.**THAT** at this point, James Orengo, Gladys wanga and a team of other Azimio Party agents with othe goons, interrupted the process, when they aimed for the IEBC Chairman, Mr. Wafula Chebukati, who was left physically assaulted,before he was successfully evacuated from the Dias by the security team.

30. The other Commissioners are injured as a result of the assault and are visibly left with what seems to be knife or cut wounds.

31. That James Orengo, Gladys Wanga and Ledama Olekina, led a team that further destroyed communication systems, podiums and chairs until the General Service Unit (GSU) was called in, which deployment took inordinately long to respond and restore order.

32. THAT it was notable that the choir all the while was still singing in attempts to maintain an ordinate tranquil, until order was restored at the Bomas of Kenya. 10

33. THAT I swear this Affidavit in support of the Petition and application herein for grant of the orders therein prayed.

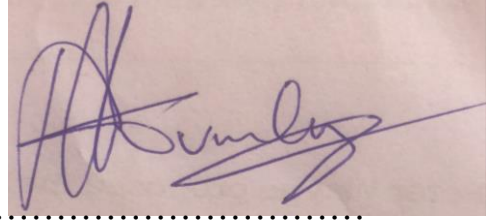
34. THAT all that is deponed herein is true to the best of my knowledge, understanding and belief save where otherwise stated.

SWORN at NAIROBI

By the said **REV. DENNIS NTHUMBI**

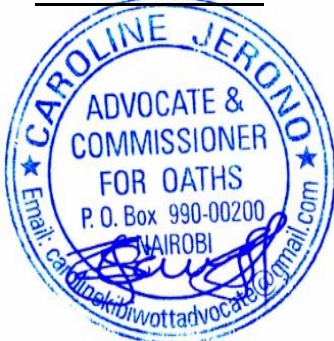
This 4TH day of AUGUST 2022

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)
)



DEPONENT

BEFORE ME:



)
)

COMMISSIONER FOR OATHS.

DRAWN AND FILED BY:

10

**OMANGA NYABWENGI & COMPANY
ADVOCATES,
JUBILEE EXCHANGE BUILDING,
5TH FLOOR, SUITE 501,
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REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI

BETWEEN

MOSES KURIA..... 1ST PETITIONER
GEOFFREY KING'ANG'I MUTURI.....2ND PETITIONER

AND

HON RAILA AMOLO ODINGA1ST RESPONDENT
AZIMIO LA UMOJA ONE KENYA PARTY2ND RESPONDENT

AND

INDEPENDENT ELECTORAL & BOUNDARIES
COMMISSION.....1ST INTERESTED PARTY
HON. DAVID WAIHIGA
MWAURE.....2ND INTERESTED PARTY
AGANO PARTY.....3RD INTERESTED PARTY

10

CERTIFICATE.

(Pursuant to section 106 (4) (B) of the Evidence Act)

I, **MOSES KURIA**, an adult male of sound mind, residing within the
Republic of Kenya, do hereby certify that:

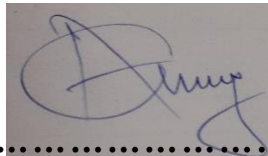
1. I am a Kenyan Citizen and former member of Parliament.
2. I make this certificate in respect of the electronic evidence of

AUGUST, 2022, referred to in the Affidavit and the Petition herein.
3. I downloaded on the 22nd of **August, 2022** from:
<https://www.youtube.com/watch?v=C8OYY1zOg-8>,
<https://www.youtube.com/watch?v=R0sZ98vA8j8>,
<https://www.youtube.com/watch?v=-yM7HXyV7TM>,
<https://www.youtube.com/watch?v=W8XNzDSFN-0>

20

4. All those electronic gadgets were in good working condition and operated and performed the actions described above seamlessly and without any technical difficulties.

CERTIFIED at NAIROBI this22nd.....day of **AUGUST, 2022.**



.....
OMANGA NYABWENGI & COMPANY
ADVOCATES FOR THE PETITIONERS.

10

DRAWN AND FILED BY:

OMANGA NYABWENGI & COMPANY
ADVOCATES,

JUBILEE EXCHANGE BUILDING,

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NAIROBI.

EMAIL: info.advocateomanga@gmail.com

TEL: 0713579337/0712770782.

20

TO BE SERVED UPON:

5. THE RT HONOURABLE RAILA AMOLLO ODINGA
AZIMIO LA UMOJA-ONE KENYA ALLIANCE
JAMES GICHURU ROAD LAVINGTON
NAIROBI

6. AZIMIO LA UMOJA-ONE KENYA ALLIANCE PARTY

JAMES GICHURU ROAD LAVINGTON
NAIROBI

7. THE INDEPENDENT ELECTORAL &
BOUNDARIES COMMISSION
ANNIVERSARY TOWERS
6TH FLOOR
UNIVERSITY WAY
NAIROBI

8. HONOURABLE DAVID WAIHIGA MWAURE
AGANO PARTY.

10



MK-2

Bunge La Mwananchi! Nquvu Mashinani!

PUBLIC INTEREST PETITION

Ref: 19/08/BLM/2022

Date: 19 August 2022

To: Mr. Noordin Haji
The Director of Public Prosecution
Office of Director of Public Prosecution
ODPP House, Ragati Road, Upper Hill
Nairobi, Kenya



Re: THE IMMEDIATE INVESTIGATION AND UNDERTAKING OF CRIMINAL PROCEEDINGS AGAINST THE FOLLOWING AZIMIO LA UMOJA ONE KENYA ALLIANCE PERSONNEL AND CANDIDATES:

1. MR. SAITABAO OLE KANCHURI (Chief Agent)
2. HON. ESTHER WANJIKU PASARIS (Woman Rep Nairobi County)
3. MR. DENNIS MBANDA (Raila Odinga Presidential Secretariat Aide)
4. MISS OGUTU OKUDO (Raila Odinga Presidential Secretariat Aide)

FOR ROBBERY WITH VIOLENCE CONTRARY TO PENAL CODE CAP 262, SECTION 295 AND VIOLATION OF THE ELECTIONS ACT AND ITS CODE OF CONDUCT, FOR VIOLENCE AND INTIMIDATION OF AN ELECTIONS OFFICIAL WITHIN THE PRECINCTS OF THE NATIONAL TALLYING CENTER AT THE BOMAS OF KENYA, AND IN THE BROAD VIEW OF THE PUBLIC AND THE MEDIA, ON 13 AUGUST 2022

Dear Mr. Haji

Bunge La Mwananchi is guided by the right to public participation in all processes of governance. We represent the common man and woman and it is enshrined in our sovereign responsibility as custodians of the Kenyan Mwananchi to lead the struggle for Democracy in Kenya. Bunge La Mwananchi is a lobby group whose main calling is to enhance good governance, devoid of corruption and impunity, across all levels of governance, for a sustainable and progressive society, to enforce public accountability, to institute legal action against any person found to have misappropriated public

funds and abused public office, and to name and shame corrupt person(s) and those accused of abuse of public office. We fully support state and constitutional agencies to eradicate graft and impunity.

We the Petitioners present to you the following evidence that the aforesaid Azimio La Umoja One Kenya Alliance Personnel and Candidate Violated the Constitution of Kenya, the Elections Act 2011 and its Code of Conduct, the Penal Code Cap 262 and various other statutes in the Republic of Kenya.

On 13 August 2022, at the National Tallying Center at Bomas, the named Azimio La Umoja personnel and candidate, attacked and violently robbed an IEBC official of what seemed to be elections material. In a flagrant display of vigilante machinations, they ganged up on him, bundled him out of the verification center, and forcefully took a device which he was carrying. Evidence of this is attached in Appendix 1, which contains a video clip and photos of the incident. We also note that the scene was aired live on public television and across various streaming platforms.

On its own and in light of other related events, these actions can only be seen as part of a well organized criminal scheme, with the aim of interfering with the IEBC Chairman's mandate and disrupting his announcement of the tallied results from the Presidential election. The violent behavior of the Azimio personnel and the Nairobi County Woman Representative was subversive and highly criminal. Their actions put the safety and security of all present at risk and raised tensions and anxiety across the country. It caused a breach of peace during a sensitive component of the Commission's mandate to tally and verify the 2022 Presidential election results per the Elections Act 2011:

Article 39. Determination and declaration of results section

(1C) for purposes of a presidential election the Commission shall —

- (a) Electronically transmit, in the prescribed form, the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre;
- (b) Tally and verify the results received at the national tallying centre; and
- (c) Publish the polling result forms on an online public portal maintained by the Commission.

(1D) The chairperson of the Commission shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

This criminal activity was in clear violation of the *Penal Code Cap 262, Section 295*, which defines the offence of robbery as “any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery”.

This criminal activity was further in clear violation of Section 110 (1)-(6) of the Elections Act, 2011 (the Electoral Code of Conduct), and the Second Schedule to the Elections Act.

The Electoral Code of Conduct, Part 6 states:

All those bound by this Code shall, throughout an election period –

- (a) publicly and repeatedly condemn violence and intimidation and avoid the use of hate speech, language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain any kind of advantage, or for any other reason;
- (b) Refrain from any action involving violence or intimidation.

Furthermore, in relation to such violations, it is within the mandate of the Commission under Part 6 (K) of the Election Act 2011 to:

- (v) Co-operate in the official investigation of issues and allegations arising during an election period and
- (vi) Take all reasonable steps to ensure the safety of observers and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties
- (m) Reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and persons who support the political party and who-
 - (i) Infringe this Code;
 - (ii) Engage in activities of commission or omission which constitute offences under the electoral laws or otherwise fail to observe this Code; and
 - (iii) Contravene or fail to comply with any provision of the electoral laws.

We the petitioner also note that one of the Azimio La Umoja One Kenya Alliance personnel aforementioned, namely Agutu Okudo, is a public servant serving as a Board Member of the National Oil Corporation NOCK. She was appointed to serve that Board in October 2021. This is clearly in breach of the Election Act 2011, the Public Officers Ethics Act, Chapter 163 of the Kenyan Constitution, and the Code of Governance for Government Owned Entities (Mwongozo).


We therefore DEMAND that Office of Public Prosecution Director:

1. Carry out open investigations into the incident of 13TH August 2022;
2. Take disciplinary action against the aforementioned Azimio La Umoja Representatives and Azimio la Umoja Coalition itself, as prescribed within the law;
3. Call for the Prosecution of the aforementioned individuals by the relevant authorities mandated to undertake criminal investigations;
4. Make public the findings of your internal investigations on this matter given that it is matter of national and public interest; and


5. Undertake the foregoing with utmost urgency and provide a response and reaction within the next 7 days.

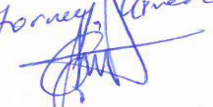
Please treat this petition with the highest level of seriousness and urgency.

Yours Faithfully,

*President
Collins Mwaigai*


BUNGE LA MWANANCHI

*John Mark Abaka
Prime Minister*


*Edward J. Githaiga
Attorney General*

0741769996

CC: INDEPENDENT & BOUNDARIES COMMISSION
DIRECTORATE OF CRIMINAL INVESTIGATION
ETHICS & ANTI CORRUPTION COMMISSION
NATIONAL COHESION & INTEGRATION COMMISSION
STATE CORPORATIONS ADVISORY COMMITTEE (SCAC)
NATIONAL OIL CORPORATION KENYA
UNITED STATES EMBASSY
UNITED KINGDOM EMBASSY
EUROPEAN UNION KE
AFRICAN UNION KE
RUSSIAN EMBASSY