

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
PRESIDENTIAL PETITION NO. OF 2022

JOHN NJOROGI KAMAU..... PETITIONER

BETWEEN

WAFULA CHEBUKATI..... 1ST RESPONDENT
WILLIAM SAMOEI RUTO..... 2ND RESPONDENT
RIGATHI GACHAGUA..... 3RD RESPONDENT
THE INDEPENDENT ELECTORAL
AND BOUNDARIES COMMISSION 4TH RESPONDENT ——— 10

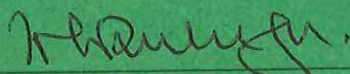
AND

RAILA AMOLO ODINGA..... 1ST INTERESTED PARTY
MARTHA WANGARI KARUA..... 2ND INTERESTED PARTY
JULIANA CHERERA..... 3RD INTERESTED PARTY
IRENE MASIT..... 4TH INTERESTED PARTY
JUSTUS NYANGAYA..... 5TH INTERESTED PARTY
FRANCIS WANDERI..... 6TH INTERESTED PARTY
PROFESSOR ABDI YAKUB GULIYE..... 7TH INTERESTED PARTY
BOYA MOLU 8TH INTERESTED PARTY

THE PETITION

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DATED at NAIROBI this 21st day of August 2022


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ADVOCATES FOR THE PETITIONER

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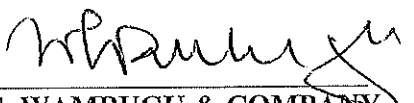
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DATED at NAIROBI this21st day ofAugust 2022


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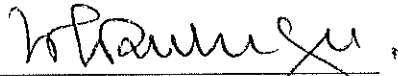
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DATED at NAIROBI this21st day ofAugust 2022



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BOYA MOLU8TH INTERESTED PARTY

THE PETITION

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This is the humble petition of **JOHN NJOROGE KAMAU**, of National Identity Card No. 10905275. The address of the Petitioner is Post Office Box 60063 – 00200 City Square, Nairobi. His address of service for purpose of this Petition shall be care of Messrs. W. G. Wambugu & Company Advocates, 5th Avenue Office Suites, 3rd Floor, off Ngong Road, P.O Box No. 9076 – 00300, Nairobi Email: wanjawambugu@gmail.com. The Petitioner states as follows:

A. Introduction

1. On Tuesday, 9th August, 2022, Kenya held its third general election under the Constitution of Kenya, 2010 (hereinafter, the Constitution). The general election was meant to give Kenyan voters the opportunity to elect Members of the County Assembly, — 30

Members of National Assembly, Members of Senate, County Governors and the President of the Republic of Kenya.

2. The general election was to be conducted under a legal framework comprising, of, the Constitution, the Elections Act, No. 24 of 2011, The Election Offences Act, No. 37 of 2016, the Independent Electoral and Boundaries Commission Act, No. 9 of 2011 ("the IEBC Act"), amongst other applicable laws.
3. Article 81 of the Constitution sets out the general principles of the electoral system as follows:

"(81) *The electoral system shall comply with the following principles—*

- (a) *freedom of citizens to exercise their political rights under Article 38;*
- (b) *not more than two-thirds of the members of elective public bodies shall be of the same gender;*
- (c) *fair representation of persons with disabilities;*
- (d) *universal suffrage based on the aspiration for fair representation and equality of vote; and*
- (e) *free and fair elections, which are—*
 - (i) *by secret ballot;*
 - (ii) *free from violence, intimidation, improper influence or corruption;*
 - (iii) *conducted by an independent body;*
 - (iv) *transparent; and*
 - (v) *administered in an impartial, neutral, efficient, accurate and accountable manner.* [Emphasis supplied]

4. The current legal framework on elections has been developed over the years in a bid to correct the weaknesses that resulted in the 2007/2008 post-election violence. The Independent Review Commission (the Kriegler Commission) hereinafter the IREC, provides a historical account of the weaknesses that had characterised Kenya's electoral system by that time:

"Concerns about the counting, tallying, transmission and announcement of results are not new in Kenya. In 1992, on the occasion of the first multiparty

elections, an International Republican Institute (IRI) pre-election report noted that: "... the electoral law does not stipulate the mechanism for transmittal of constituency results to the ECK in Nairobi [and] urges that this information be transmitted in ... a timely way".

The Report of the Commonwealth Observer Group was more drastic in its evaluation: "given ... the poor communication between the ECK and the returning officers and between returning officers and presiding officers, the lack of coordination and inconsistencies in dealing with clear-cut problems, we can only conclude that neither the polling day arrangements nor... the counting processes were adequately designed or carried out to meet the specific situations and needs which the Kenyan electoral environment required". The situation had not much improved by the 1997 general elections.

A joint report of the Institute for Education in Democracy (IED), Catholic Justice and Peace Commission and the National Council of Churches in Kenya recommended that: "... it is vital to have a speedy counting exercise, with results verified by all parties and announced immediately after the count is completed. This is the only way in which public confidence in the result can be ensured. Unfortunately, this was not the case in 1997".

5. Regarding the 2007 general election that led to the post-election violence, IREC observed as follows:

"IREC's analysis of nineteen sample constituencies - which we have no hesitation in using for drawing conclusions about the entire operation - has led it to the irrefutable conclusion that the ECK was not able to manage the counting, tallying and results announcement processes in such a way that it secured the integrity of the electoral process at either the presidential or the parliamentary level. IREC has only sporadically concerned itself with the civic elections, but we believe that the situation is not much different at that level. If one - be it a voter, a candidate, a media representative, a party leader, an election observer - cannot trust the accuracy of the election results published by an EMB (Election Management Body), then nothing is left and the political system loses credibility as well as legitimacy." [Emphasis supplied]

6. In order to avert the violence and chaos that had characterised Kenya's elections, especially in 2007, and to assure the conduct of free, fair and credible elections, IREC made the following pertinent recommendations:

- *IREC recommends that the ECK integrate the various descriptions of the entire counting and tallying procedure into one document - and one document only - which will then be the principal description and must be adhered to. The need for such descriptive regulations does not depend on possible changes in the counting and tallying system.*
- *IREC recommends that without delay ECK start having developed an integrated and secure tallying and data transmission system, which will allow computerised data entry and tallying at constituencies, secure simultaneous transmission (of individual polling station level data too) to the national tallying centre, and the integration of this results-handling system in a progressive election results announcement system.*
- *IREC recommends that the media must have full access to this new system, which will not be a problem if it is properly constructed. This will assist the media in obtaining fully reliable results at high speed from all over the country and will also place the ECK in the driver's seat in relation to providing the media with fast and reliable data.*
- *IREC recommends that ample time be allowed for verifying provisional results so that they are declared final/official only once there is no risk that errors may still be found or non-frivolous objections raised. Most countries allow one or two weeks for this – there must be sufficient time to check the provisional results, which are given status as final results only when all objections have been considered, all checks and rechecks conducted and the final verdict issued by the proper authorities. Given a clear explanation of what a provisional result, there is no problem in making voters understand that election results are so important that they can be declared final only once they have been properly scrutinised and checked.*

7. The foregoing recommendations were largely implemented through the enactment of the Constitution and supporting legislation, including the Elections Act, 2011. However, allegations of illegalities, irregularities and malpractices have still

characterised general elections in Kenya. In 2017, the Supreme Court, in the case of **Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others** [2017] eKLR, declared, *inter alia*, that the presidential election held on 8th August, 2017 was not conducted in accordance with the Constitution and the applicable law rendering the declared result invalid, null and void, and that the irregularities and illegalities in the said election were substantial and significant that they affected the integrity of the election, the results notwithstanding. As will be apparent in the paragraphs hereinbelow, the Supreme Court set down the unequivocal legal position as to how a general election should be conducted in accordance with the principles outlined in the Constitution and in the law.

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8. The Petitioner now seeks to demonstrate to this Honourable Court that the conduct of the 2022 Presidential election was not conducted in accordance with the Constitution and the applicable law, thereby rendering the declared result invalid, null and void.

B. The Parties

9. The Petitioner is a citizen of Kenya by birth. He is also a registered voter and a public-spirited individual, committed to the promotion of good governance and democracy in Kenya, including through free, fair, credible and verifiable elections.
10. The 1st Respondent was, at all material times, the Chairperson of the Independent Electoral and Boundaries Commission (the IEBC). The 1st Respondent holds his position by dint of Article 250 of the Constitution and Sections 5 and 6(1) of the IEBC Act.
11. The 2nd and 3rd Respondents participated in the presidential election held on 9th August, 2022 as candidates for the offices of President and Deputy President, respectively. On 15th August, 2022, the 1st Respondent made a public announcement and declared the 2nd and 3rd Respondents were the President-elect and Deputy President-elect, having garnered 7,176,141 votes (50.49%) of the total votes cast. By the Gazette Notice No. 9773 dated 15th August 2022, and published as a special issue namely, Volume CXXIV No. 163 on 16th August, 2022, they were declared by the 1st Respondent as having been elected as President and Deputy President.

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12. The 4th Respondent is an independent constitutional commission established under Article 88(1) of the Constitution. By dint of Articles 88 and 250 of the Constitution as read with Sections 5 and 6 of the IEBC Act, the 4th Respondent consists of a Chairperson and six other members. Article 88(4) of the Constitution charges the 4th Respondent with the mandate of conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.

13. The 1st and 2nd Interested Parties participated in the presidential election held on 9th August, 2022 as candidates for the offices of President and Deputy President, respectively. They were declared by the 1st Respondent as having emerged second in the Presidential election, with 6,942,930 votes (48.85%) of the total votes cast. — 10

14. The 3rd, 4th, 5th, 6th, 7th and 8th Interested Parties are Commissioners of the IEBC, the 4th Respondent herein. They hold office by dint of Article 250 of the Constitution as read with Sections 5 and 6(2) of the IEBC Act.

15. On 15th August, 2022 and on 16th August, 2022, the 3rd, 4th, 5th and 6th Interested Parties made a public announcement disowning the presidential election result of the elections held on 9th August, 2022.

C. The Points of Law

16. Article 1(1) of the Constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. Article 2(1) of the Constitution directs that the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. According to Article 2(4) of the Constitution, any law, including customary law, that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid. — 20

17. Article 4(2) of the Constitution stipulates that the Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of governance referred to in Article 10.

18. Article 10(1) of the Constitution directs that the national values and principles of governance bind all State organs, State officers, public officers and all persons whenever any of them—

- (a) applies or interprets the Constitution;
- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.

19. Article 10(2) of the Constitution outlines the national values and principles of governance. These include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people, inclusiveness, good governance, integrity, transparency and accountability.

20. Article 38(2) of the Constitution directs that every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for any elective public body or office established under the Constitution.

21. Article 38(3) of the Constitution provides that every adult citizen has the right, without unreasonable restrictions—

- (a) to be registered as a voter;
- (b) to vote by secret ballot in any election or referendum; and
- (c) to be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

22. Article 81 of the Constitution sets out the general principles of the electoral system as follows:

“(81) *The electoral system shall comply with the following principles—*

- (a) *freedom of citizens to exercise their political rights under Article 38;*
- (b) *not more than two-thirds of the members of elective public bodies shall be of the same gender;*
- (c) *fair representation of persons with disabilities;*
- (d) *universal suffrage based on the aspiration for fair representation and equality of vote; and*
- (e) *free and fair elections, which are—*
 - (i) *by secret ballot;*

- (ii) *free from violence, intimidation, improper influence or corruption;*
- (iii) *conducted by an independent body;*
- (iv) *transparent; and*
- (v) *administered in an impartial, neutral, efficient, accurate and accountable manner."*

23. Article 86 of the Constitution stipulates that at every election, the 4th Respondent shall ensure that—

- (a) whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent;
- (b) the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station;
- (c) the results from the polling stations are openly and accurately collated and promptly announced by the returning officer; and
- (d) appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.

24. Article 136 (1) of the Constitution stipulates that the President shall be elected by registered voters in a national election conducted in accordance with the Constitution and any Act of Parliament regulating presidential elections.

25. Article 138 of the Constitution stipulates the procedure at a presidential election and specifically, Article 138(3) provides that in a presidential election—

- (a) all persons registered as voters for the purposes of parliamentary elections are entitled to vote;
- (b) the poll shall be taken by secret ballot on the day specified in Article 101(1) at the time, in the places and in the manner prescribed under an Act of Parliament; and
- (c) *after counting the votes in the polling stations, the IEBC shall tally and verify the count and declare the result.* [Emphasis supplied]

26. Article 138(10) of the Constitution directs that within seven days after the presidential election, the chairperson of the 4th Respondent shall—

- (a) declare the result of the election; and
- (b) deliver a written notification of the result to the Chief Justice and the incumbent President.

27. Article 73 of the Constitution provides inter alia responsibility of leadership and guiding principles of leadership and integrity including accountability to the public for decisions and actions of state offices.

28. The Elections Act, 2011, (the Elections Act) is an Act of Parliament “*to provide for the conduct of elections to the office of the President, the National Assembly, the Senate, county governor and county assembly; to provide for the conduct of referenda; to provide for election dispute resolution and for connected purposes.*”

29. Section 39(1C) of the Elections Act directs that for purposes of a presidential election, the 4th Respondent shall —

- (a) electronically transmit and physically deliver 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 constituency tallying centre and the national tallying centre; and
- (c) publish the polling result forms on an online public portal maintained by the Commission.

30. Section 30 (1E) of the Elections Act provides that where there is discrepancy between the electronically transmitted and physically delivered results, the Commission shall verify the results and the result which is an accurate record of the results tallied, verified and declared at the respective polling station shall prevail.

31. Under section 87 of the Elections Act, an election court may, at the conclusion of the hearing of a petition, in addition to any other orders, make a determination on whether an electoral malpractice of a criminal nature may have occurred.

32. Quorum of the Commission for the conduct of business at a meeting of the Commission, pursuant to the Second Schedule clause 5 of the IEBC Act shall be at least half of the

existing members of the Commission, provided that the quorum shall not be less than 3 members.

33. Paragraph 7 of the Second Schedule to the IEBC Act provides that "[u]nless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting."

34. Section 6 of the Elections Offences Act makes it an offence, among others, for a member of the Commission, staff or other person having any duty to perform pursuant to any written law relating to any election to without reasonable cause do or omit to do anything in breach of his official duty; or wilfully contravene the law to give undue advantage to a candidate or a political party on partisan, ethnic, religious, gender or any other unlawful considerations. —10

35. Regulation 51 (5) of the Elections (General) Regulations 2012 requires the 4th Respondent to Gazette candidates it has declared validly nominated to contest in the general elections. Regulation 68 (3) is categorical that persons validly nominated shall have their names included in the ballot papers for an election in the same order as they appeared in the notice published in accordance with regulation 51(5).

D. The Facts

36. Following the general election held on 9th August, 2022, the 1st Respondent made a public announcement on 15th August, 2022, and declared that the 2nd and 3rd Respondents were the President-elect and Deputy President-elect, having garnered 7,176,141 votes (50.49%) of the total votes cast. By a Gazette Notice No. 9773 dated 15th August 2022, and published as a special issue namely, Volume CXXIV No. 163 on 16th August, 2022, they were declared by the 1st Respondent as having been elected as President and Deputy President. The final results declared by the 1st Respondent were as follows: —20

	CANDIDATE	VOTES CAST	PERCENTAGE
1.	Odinga Raila	6,942,930	48.85%
2.	Ruto William Samoei	7,176,141	50.49%

3.	Waihiga David Mwaure	31,987	0.23%
4.	Wajackoyah George Luchiri	61,969	0.44%

37. On the said 15th August, 2022, prior to the declaration of the Presidential election result by the 1st Respondent, the 3rd, 4th, 5th and 6th Interested Parties made a public announcement disowning the said result of the elections on the basis that the process leading to the said results had been opaque.

38. On the 16th August, 2022, the said Interested Parties issued a press statement providing reasons for disowning the election result as had been declared by the 1st Respondent. In part, the subject Interested Parties stated as follows:

"The Commission chairperson has conducted the election as though he is the National Returning Officer, a non-existent role, and his role in declaring results that were not approved at plenary by all 7 commissioners renders the results unconstitutional to the extent that these are Chebukati's results as opposed to those of the IEBC. In keeping with Article 138(2) of the Constitution, there is no national presidential election in Kenya but rather the presidential election is held in each constituency." [Emphasis supplied]

39. By a Press Release issued on 17th August, 2022 and signed by the 1st Respondent, the 1st Respondent stated, in part, as follows:

"There have been public discussions on the role of the Chairperson and Commissioners in verification, tallying and declaration of Presidential results. For avoidance of doubt, the law provides that the Chairperson of the Commission is the Returning Officer of Presidential Election...

... This constitutional mandate falls squarely on the Chairman of the Commission, who is the National Returning Officer as gazetted in Notice No. 4956 of 28th April 2022. The role of National Returning Officer for Presidential Election is not a shared responsibility and not subject to Plenary decisions of the Commission."

40. On 19th August 2022, the 3rd, 4th, 5th and 6th Interested Parties issued a further press statement in response to the 1st Respondent's Press Release of 17th August 2022.

41. The foregoing facts form the ground of this Petition, which is that the presidential election held on 9th August, 2022 was not conducted in accordance with the Constitution and the law, as further enumerated hereinbelow.

42. The Petitioner recalls that before the election of 9th August, 2022, the 1st Respondent, on 8th August, 2022, abruptly announced that certain gubernatorial, parliamentary and Member of County Assembly elections had been postponed, ostensibly on account of a mix-up in the printing of ballot papers despite the fact that the 1st Respondent was aware of the names of the candidates for all positions at the end of the nomination period. The postponement was extended indefinitely by the 1st Respondent in his press release of 17th August, 2022 as set out herein below: — 10

Position	Name of Constituency/County
Gubernatorial positions	Mombasa County, Kakamega County
Member of National Assembly	Kacheliba Constituency (West Pokot County), Pokot South Constituency (West Pokot County), Rongai Constituency (Nakuru County) and Kitui Rural Constituency (Kitui County)

43. The Petitioner contends that the postponement of the elections in the said areas was done without jurisdiction on the part of the 1st Respondent and/or the 4th Respondent. — 20
The said postponement contravenes the clear stipulation of the Constitution as to the date of a general election. With specific reference to the presidential election, the sudden and abrupt postponement of the aforementioned election undermined the conduct of free, fair and credible elections as it had the obvious effect of depriving voters the opportunity to vote for all the candidates on the **date stipulated by the Constitution** and suppressing turnout in the affected areas, to the extent that campaign mobilizations and voting were predicated on uniformity in voting for party/coalition candidates across the board.

44. The Petitioner additionally contends that the purported mix-up in the printing of ballot papers, the printing of the ballot papers before gazettelement of the candidates, and the controversial manner in which the ballot papers were printed and delivered into the country without the involvement of the Commissioners of the 4th Respondent, underscore the fact that the presidential election held on 9th August, 2022 was not conducted in accordance with the Constitution and the law governing the conduct of elections.

E. Arguments in Support of the Petition

45. Article 138(3) of the Constitution provides, in part, that after counting the votes in the polling stations, the Independent Electoral and Boundaries Commission shall tally and verify the count and declare the result. — 10

46. Paragraph 7 of the Second Schedule to the IEBC Act provides that “unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present and voting.”

47. In view of the contradictory Press Statements by the 1st Respondent on the one hand, and the 3rd, 4th, 5th and 6th Interested Parties, on the other hand, it is evident that the process leading to the declaration of the result of the presidential elections held on 9th August, 2022, was not in accordance with clear constitutional and statutory provisions which require the 4th Respondent, and not the chairperson, to tally and verify the result before the declaration is made by the 1st Respondent. This position has been affirmed — 20 in a number of decisions.

48. In the case of **Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others** [2017] eKLR, the Court of Appeal held as follows:

“It is, in our view fallacious and flies in the face of the clear principles and values of the Constitution to claim that the chairperson of the appellant [IEBC] can alone, at the national tallying centre or wherever, purport to confirm, vary or verify the results arrived at through an open, transparent and participatory process as we have already set out.”

49. The said Court also stated as follows in relation to the tallying and verification of presidential election results as received from polling stations:

"The appellant, as opposed to its chairperson, upon receipt of prescribed forms containing tabulated results for election of President electronically transmitted to it from the near 40,000 polling stations, is required to tally and "verify" the results received at the national tallying centre, without interfering with the figures and details of the outcome of the vote as received from the constituency tallying centre. At the very tail end of this process, in Article 138(10) the chairperson then declares the result of the presidential election, and delivers a written notification of the result to the Chief Justice and to the incumbent — 10 President. That is how circumscribed and narrow the role of the chairperson of the appellant is.

50. The same position was expressed by the Supreme Court in the case of **Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others** [2017] eKLR in the following words:

"[292] The failure by the 1st respondent [IEBC] to verify the results, in consultation with the 2nd respondent [IEBC chairperson], before the latter declared them, therefore went against the expectation of Article 138(3)(c) of the Constitution, just as the failure to electronically and simultaneously transmit the results from all the polling stations to the National Tallying Centre, — 20 violated the provisions of Section 39 (1C) of the Elections Act." [Emphasis supplied]

51. The public announcement of 15th August 2022 of untallied and unverified presidential 'results' and Gazette Notice No. 9773 dated 16th August, 2022, declaring the 2nd and 3rd Respondents as having been elected as President and Deputy President are both a product of the 1st Respondent's unconstitutional acts and are not constitutionally valid.

52. Article 101 of the Constitution provides that a general election of members of Parliament shall be held on the second Tuesday in August in every fifth year. Article 136(2)(a), Article 177(1)(a) and Article 180(1) of the Constitution are clear that the date for the conduct of elections for President, County Governor and Member of County — 30 Assembly shall be as set out in Article 101 of the Constitution. Article 138 of the

Constitution entitles registered voters to vote, by secret ballot, on the constitutionally specified day.

53. The 1st Respondent acted without jurisdiction in purporting to postpone elections in specified areas, in purported reliance on Section 55B of the Elections Act, when the Constitution does not contemplate such postponement. The 1st Respondent's action had the consequence of suppressing the voter turn out and/or disenfranchisement of voters.

54. Further, the supposed mix-up in the printing of ballot papers, the printing of the ballot papers before gazettelement of the candidates, and the controversial manner in which the ballot papers were printed and delivered into the country without the involvement of the Commissioners of the 4th Respondent, underscore the Petitioner's position that the presidential election held on 9th August, 2022 was not verifiable, and the impugned actions of the 1st Respondent relating to the results announced on 15th August 2022 were a continuation of his disregard for the Constitution and the law governing the conduct of elections. —10

55. The conduct of the 1st Respondent falls short of the requirements of the Constitution and the law governing elections in Kenya and in particular, resulted in a serious violation of the Constitution and binding judicial pronouncements namely:

- a. Postponing the general elections as set out in paragraph 20 hereinabove contrary to Article 136(2)(a), 177(1), 180(1) as read together with Article 101 of the Constitution; —20
- b. Failing to ensure that the results of the Presidential elections were tallied and verified by the 4th Respondent pursuant to section 39(1D) and 39(1E) of the Elections Act;
- c. Usurping the mandate of the 4th Respondent by unilaterally declaring the Presidential election results without the 4th Respondent tallying and verification of the same;
- d. Disregarding the binding judicial authorities in the conduct of the Presidential election;
- e. Subverting the purposes and objects of the Constitution in regard to the conduct of the Presidential election; —30
- f. Bringing dishonor and indignity to the nation and public office he holds;

- g. Failing to provide public confidence in the integrity of the electoral process;
- h. Violating his oath of office.

56. The conduct of the 1st Respondent amounts to an election offence pursuant to section 6 of the Election Offences Act and therefore is liable to be sanctioned by this Honourable Court.

F. Questions for Determination

57. The Petitioner invites the Supreme Court to make a determination on the following questions:

- (a) Whether the elections for President held on 9th August, 2022 was conducted in accordance with the requirements of the Constitution and the law? — 10
- (b) Whether the 1st Respondent can, alone and to the exclusion of the other Commissioners of the 4th Respondent, tally and verify the results of a presidential election?
- (c) Whether the result of the presidential election held on 9th August, 2022 as declared by the 1st Respondent is valid?
- (d) Whether the 1st Respondent and/or the 4th Respondent can, on its own motion, postpone the constitutionally set date of the general election in any part of Kenya?
- (e) Whether the purported postponement of the date of the general election in Mombasa County, Kakamega County, Kacheliba Constituency (West Pokot County), Pokot South Constituency (West Pokot County), Rongai Constituency (Nakuru County) and Kitui Rural Constituency (Kitui County) by the 1st Respondent and/or the 4th Respondent was valid? — 20

G. Reliefs Sought

58. The reliefs sought by the Petitioner are as follows:

- (a) A declaration that the constitutional mandate for tallying and verifying election results as received from the polling stations by the National Tallying Centre has to be undertaken by all the Commissioners of the 4th Respondent and not the 1st Respondent unilaterally;
- (b) A declaration that the presidential election held on 9th August, 2022 was not conducted in accordance with the Constitution and the applicable law, rendering the declared result invalid, null and void; — 30

- (c) A declaration that the 1st Respondent and/or the 4th Respondent does not have the power to postpone the date of the general election;
- (d) A declaration that the 2nd and 3rd Respondents were not validly declared as the President and Deputy President, respectively;
- (e) A declaration that the Gazette Notice No. 9773 is invalid and is hereby quashed;
- (f) An order directing the 4th Respondent to organize and conduct a fresh presidential election in strict conformity with the Constitution and the Elections Act;
- (g) A declaration that the 1st Respondent has violated Article 10 and 73 of the Constitution;
- (h) A declaration that the 1st Respondent committed election irregularities and illegalities and should therefore be investigated for possible criminal culpability;
- (i) The 1st Respondent be and is hereby prohibited from acting as a returning officer of any subsequent Presidential election and be barred from holding any public office;
- (m) Costs of the petition; and
- (n) Any other Orders that the Honourable Court may deem just and fit to grant.

DATED at NAIROBI this 21st day ofAugust 2022

Signed [Signature]

Petitioner JOHN NJORGE KAMAU

[Signature]
W. G. WAMBUGU & COMPANY
ADVOCATES FOR THE PETITIONER

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To:

The Supreme Court of Kenya

Copies to be served on

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Lodged in the Registry at on the day of

.....

Registrar

— 30