

**REPUBLIC OF KENYA**  
**IN THE SUPREME COURT OF KENYA AT NAIROBI**  
**PRESIDENTIAL ELECTION PETITION NO. 1 OF 2017**

**BETWEEN**

**H. E. RAILA AMOLO ODINGA.....1<sup>ST</sup> PETITIONER/APPLICANT**

**H. E. STEPHEN KALONZO MUSYOKA.....2<sup>ND</sup> PETITIONER/APPLICANT**

**AND**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE CHAIRPERSON OF INDEPENDENT**

**ELECTORAL AND BOUNDARIES COMMISSION.....2<sup>ND</sup> RESPONDENT**

**H. E. UHURU MUIGAI KENYATTA.....3<sup>RD</sup> RESPONDENT**

**CERTIFICATE OF URGENCY**

I, **ONYANGO JACKSON AWELE**, an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the Petitioners/Applicants do hereby certify this application is extremely urgent for reasons **THAT**:

1. On 08<sup>th</sup> of August 2017 the Independent Electoral and Boundaries Commission [IEBC], the 1<sup>st</sup> Respondent herein, conducted and supervised the Presidential Election and on the 11<sup>th</sup> of August 2017, announced and declared H.E. Uhuru Muigai Kenyatta, the 3<sup>rd</sup> Respondent as President Elect vide Gazette Notice Vol. CXIX - No. 115 [Special issue NO.7718].

2. The Petitioners, being aggrieved by the said declaration have filed a Presidential Election Petition dated 18<sup>th</sup> August 2017 challenging the said Presidential Election.
3. The Petition is premised on grounds inter-alia that the impugned declaration of the Presidential results was made in absolute breach of the Constitution of Kenya and the national legislation governing elections, and in particular the Elections (Technology) Regulations, 2017 [Legal Notice No. 68) (Kenya Gazette Supplement No. 61); and section 39(1C) of the Elections Act, No. 24 of 2011 which mandatorily require that the results at the Polling Stations are final and must be transmitted electronically by the presiding officer in the prescribed form.
4. The Petitioners contend in the Petition that the electronic transmission system of results from polling stations to the constituency tallying centres and to the national tallying centres was not secured as to deliver a free, fair, secure, credible, transparent, accurate, accountable, and verifiable election in compliance with Articles 81 and 86 of the Constitution.
5. As the hearing and determination of the Petition is within a limited time frame fixed by law; and in light of the Practice Directions issued by the Honourable Chief Justice on 21<sup>st</sup> August 2017 in relation to this Petition, it is necessary and expedient that this application be heard and determined urgently before Friday, 25<sup>th</sup> August 2017 in order to ensure a just and fair determination of all the issues in the Petition.
6. No prejudice shall be occasioned on the Respondents in granting the orders sought.

7. It is just and fair therefore that the orders sought in the application be granted.

DATED at NAIROBI this 21<sup>st</sup> day of August 2017.

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**MURUMBA & AWELE ADVOCATES  
FOR THE PETITIONERS/APPLICANTS**

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Lodged in the Registry at Nairobi on the .....of ..... 2017

.....

Registrar

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**NOTICE OF MOTION**

*(Under Articles 19, 20, 22, 23(3), 35, 81, 86, 140, 159 and 258 of the Constitution of Kenya 2010; Section 39 and 44 of the Elections Act No. 24 of 2011; Section 27 Independent Electoral and Boundaries Commission Act No. 9 of 2011 [Rev.2016]; Sections 12, 23 & 26 of the Supreme Court Act No. 7 of 2011; Rule 18 of the Supreme Court (Presidential Election Petition) Rules, 2017; Access to Information Act; the Elections (Technology) Regulations, 2017 [Legal Notice No. 68]; and all other enabling provisions of the Law)*

**TAKE NOTICE** that this Honourable Court will be moved on the.....day of August 2017, at 09:00 O' Clock in the forenoon or so soon thereafter as Counsels for the Applicants may be heard on an Application for **ORDERS THAT:**

1. This application be certified as extremely urgent, heard and orders given before the hearing of the substantive Petition.

2. The application be heard and determined expeditiously and in priority but in any event before 25<sup>th</sup> August 2017.

3. The 1<sup>st</sup> Respondent be compelled to give access to and supply to the Court and to the Parties, the following information and data that is in the exclusive possession of the 1<sup>st</sup> Respondent:

a. The IEBC Election Technology System Network Architecture comprising but not limited to:

- (i) the servers;
- (ii) number of servers;
- (iii) location of servers;
- (iv) firewalls;
- (v) IP addresses;
- (vi) Operating systems;
- (vii) Software running applications

b. The IEBC Election Technology System Security Policy comprising but not limited to:

- (i) Password policy;
- (ii) Password matrix;
- (iii) Owners of system administration password(s)

- (iv) System users and levels of access
- c. The IEBC Election Technology System Redundancy Plan comprising:
  - (i) Business continuity plan;
  - (ii) Disaster recovery plan
- d. Certified copies of certificates of Penetration Tests conducted on the IEBC Election Technology System prior to and during the 2017 General and Presidential Election including:
  - (i) Certified copies of all reports prepared pursuant to Regulation 10 of the Elections (Technology) Regulations, 2017; and
  - (ii) Certified copies of certificate(s) by a professional(s) prepared pursuant to Regulation 10(2) of the Elections (Technology) Regulations, 2017
- e. In relation to KIEMS Kits:
  - (i) Import testing certification in relation to all KIEMS Kits;
  - (ii) Static IP addresses of each KIEMS Kit used during the Presidential Election;
  - (iii) Specific GPRS location of each KIEMS Kit used during the Presidential Election for the period

between and including 05<sup>th</sup> August 2017 and 11<sup>th</sup> August 2017;

- (iv) Certified list of all KIEMS Kits procured but not used and/or deployed during the Election;
  - (v) Polling station allocation for each KIEMS Kit used during the Presidential Election;
  - (vi) Audit log of what each KIEMS Kit used during the Presidential Election transmitted from Polling Stations to Constituency Tallying Centres and to IEBC National Tallying Centre; and from IEBC Result Transmission Database to Media Houses Application Protocol Interface (API)(logs of media data update). Log must also show:
    - i. Time of transmission from KIEMS Kit to the IEBC Result Transmission Database; and
    - ii. Time of transmission from IEBC Result Transmission Database to the Media Houses API;
  - (vii) Count of Identified Voters by each KIEMS Kit;
  - (viii) Soft copy of Ids captured in each KIEMS Kit;
  - (ix) Audit log of transmission of scanned Forms 34A from each of the KIEMS Kits
- f. Technical Partnership Agreement(s) for the IEBC Election Technology System including but not limited to:
- (i) List of the technical partners;
  - (ii) Kind of access they had;
  - (iii) List of APIs for exchange of data with the partners



- g. Log in trail of users and equipments into the IEBC Servers
  - h. Log in trails of users and equipments into the KIEMS Database Management Systems
  - i. Administrative access log into the IEBC public portal between 5<sup>th</sup> August 2017 to date.
4. The 1<sup>st</sup> Respondent be compelled to give the Petitioners and any person engaged by them in relation to this Petition, direct and unfettered access to relevant persons and systems at Safran Identity and Security (Safran); and an order that the relevant persons give any necessary and/or required assistance.
5. The 1<sup>st</sup> Respondent be compelled to give the Petitioners and any person engaged by them in relation to this Petition, full and unfettered physical and remote access to each biometric electronic appliance used at each voting location used to verify voters' identification against the list of registered voters. The appliances will be forensically imaged to capture, inter alia, metadata such as data files, creation times and dates, device IDs, MAC addresses, IP Addresses, geographic and local communications mast information;
6. The 1<sup>st</sup> Respondent be compelled to give the Petitioners and any person engaged by them in relation to this Petition, full and unfettered physical and remote access to any local server(s) connected to the electronic device(s)

used to verify voters' identification against the list of registered voters at each polling station, from which a forensic image will be taken.

7. The 1<sup>st</sup> Respondent be compelled to give the Petitioners and any person engaged by them in relation to this Petition, full and unfettered physical and remote access to electronic device(s) used to capture Form 34A's and Form 34B's onto the K1EMS system and transmitted to a) the Constituency Tallying Centres (CTC) and b) the NTC. Full and unfettered physical and remote access will be required to any form of scanning device, which saved images onto a local server(s) for onward transmission. The devices will be forensically imaged to capture, inter alia, metadata, hash values, creation time and date, device ID, source and destination MAC address, source and destination IP Address, server details and user details. Access to any scanning device would serve to establish whether the Form 34A was captured, stored and forwarded in the expected timeframes.
8. The 1<sup>st</sup> Respondent be compelled to give the Petitioners and any person engaged by them in relation to this Petition, full and unfettered physical and remote access to any server(s) at the CTCs for storing and transmitting voting information. The servers will be forensically imaged to capture, inter alia, metadata such as data files for all Form 34As and Form 34Bs.
9. The 1<sup>st</sup> Respondent be compelled to give full and unfettered physical and remote access to any servers at the NTC for storing and transmitting voting information. The servers will be forensically imaged to capture, inter alia, a copy of the Form 34C which is the total of all votes cast, and metadata such as creation times and dates, device IDs, source and destination MAC

addresses, source and destination IP Addresses, server details and user details.

10. The 1<sup>st</sup> Respondent be compelled to give access to and supply to the Court and to the Petitioners, certified photocopies of the original Forms 34A prepared at and obtained from the Polling Stations and Presiding Officers.
11. The 1<sup>st</sup> Respondent be compelled to give access to and supply to the Court and to the Petitioners, certified photocopies of the original Forms 34B prepared at and obtained from the Constituency Tally Centres and Returning Officers.
12. This Honourable Court be pleased to grant leave to the Petitioners/Applicants and any and/or all other Parties to the Petition to file any further or supplementary affidavit as may be necessary arising from the aforesaid information.
13. This Honourable Court be pleased to grant any other reliefs that become just and fit to grant.

**WHICH APPLICATION** is supported by the annexed affidavits of RAILA AMOLO ODINGA, DR EDGAR OUKO OTUMBA, OMAR YUSUF MOHAMED and NORMAN MAGAYA, and premised on the following grounds inter alia **THAT:**

1. On the 8<sup>th</sup> of August 2017, the 1<sup>st</sup> Respondent conducted and supervised the Presidential Election and on 11<sup>th</sup> of August 2017 announced and declared the

3<sup>rd</sup> Respondent as the President Elect vide Gazette Notice Vol. CXIX- No. 115 [Special issue NO.7718].

2. The Petitioners being aggrieved by the conduct of the said Presidential Election and the resultant declaration have filed a Presidential Election Petition dated 18<sup>th</sup> August 2017 challenging the Election.
3. The Petition is premised on grounds inter-alia that the impugned declaration of the Presidential results was made in absolute breach of the Constitution of Kenya and national legislation, and in particular the Elections (Technology) Regulations, 2017 [Legal Notice No. 68) (Kenya Gazette Supplement No. 61); and section 39 (1C) of the Elections Act, No. 24 of 2011 which stipulates that the results at the Polling Stations are final and shall be transmitted electronically by the presiding officer in the prescribed form.
4. Section 44 of the Elections Act as amended established the Kenya Information Electoral Management System (KIEMS), a platform that integrated voter registration, identification and results transmission.
5. With respect to transmission of results, Section 39(1C) of the Elections provides as follows:

“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.”

6. The Petitioners contend in the Petition that the electronic transmission system of results from polling stations to the constituency tallying centres and to the national tallying centres was not secured as to deliver a free, fair, secure, credible, transparent, accurate, accountable, and verifiable election in compliance with Articles 81 and 86 of the Constitution.
7. The Petitioners contend that the IEBC Elections Technology System was penetrated and/or deliberately compromised and used in a matter not intended by law, so as to interfere with and affect the result of the Presidential Election.
8. Prior to 08 August 2017, the 1<sup>st</sup> Respondent deliberately refused to respond to or accede to numerous requests that were made by NASA through its CEO and agents. The information that was sought and which the 1<sup>st</sup> Respondent refused to supply was largely similar to what is sought in the application.
9. By law the stakeholders who include the Petitioners were and are still entitled to this information.
10. The information and data that is sought is critical to demonstrate that the 1<sup>st</sup> Respondent did not conduct a free, fair, secure, verifiable, accountable and transparent Election. The Petitioners have no other means of securing the information and data that is exclusively in the 1<sup>st</sup> Respondent’s possession, except through an order of the Court.

11. The grant of access to the information and data sought is coterminous with the 1<sup>st</sup> Respondent's duty to be transparent and accountable.
12. Based on reasonable assumptions about how the NTC servers and computer systems are likely to have been used and operated, the Petitioners' Forensic IT experts would be able to help to establish
  - (a) the integrity of the end-to-end process of capturing, storing, transmitting, recording and assimilating election results (i.e. whether any votes were incorrectly recorded, omitted or other irregularities are apparent); and
  - (b) if any votes were recorded incorrectly or other irregularities are apparent, whether this is due to human intervention or systems error.
13. In order to ensure a just and fair determination of the Petition and in particular the accuracy, security, verifiability, accountability and transparency of the said transmission system, it is only proper and just that the Honourable Court and the parties be granted access to all the information and data sought.
14. As the hearing and determination of the Petition is within a limited time frame fixed by law; and in light of the Practice Directions issued by the Honourable Chief Justice on 21<sup>st</sup> August 2017 in relation to this Petition, it is necessary and expedient that this application be heard and determined urgently before Friday the 25<sup>th</sup> August 2017 in order to ensure a just and fair determination of the all the issues in the Petition.

15. No prejudice shall be occasioned on the Respondents in granting the orders sought.

16. It is just and fair therefore that the orders sought in the application be granted.

DATED at NAIROBI this 24<sup>th</sup> day of August 2017.

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**MURUMBA & AWELE ADVOCATES  
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Lodged in the Registry at Nairobi on the .....of ..... 2017

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Registrar