



**Independent Electoral & Boundaries Commission v Okeyo & another (Election
Petition Appeal E003 of 2023) [2023] KEHC 20809 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
ELECTION PETITION APPEAL E003 OF 2023**

KW KIARIE, J

JULY 18, 2023

BETWEEN

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION .. APPELLANT

AND

ONGILI PETER OKEYO 1ST RESPONDENT

BONDO VICKINS 2ND RESPONDENT

RULING

1. The appellant/applicant moved the court by way of Notice of Motion dated June 29, 2023. It was brought under section 80(1) (d) of the [Elections Act](#) & Article 159 (2) (d) of the [Constitution of Kenya](#). The applicant is seeking the following orders:
 - a. That this application be certified urgent, service be dispensed with thereof and the same be heard ex parte in the first instance.
 - b. That this honorable court be pleased to grant leave to the appellant/applicant to file a supplementary record of appeal and serve the same to the respondents within three (3) working days.
 - c. That the supplementary record of appeal be deemed as filed upon payment of the requisite fees.
 - d. That the costs of this application do abide the result of the appeal herein.
2. The application was premised on the following grounds:
 - a. That the filing of supplementary record of appeal to include all mandatory primary documents is necessary to enable the court determine all the issues of law raised in the appeal and pronounce itself with finality and on merit.
 - b. That unless this application is allowed, the appellant/applicant herein will suffer great injustice.



- c. That this application will not occasion any prejudice to the respondents' and the same is brought bona fide in the interest of justice and fairness.
3. The first respondent opposed the application on the following grounds:
- a. That the application is a nonstarter for reasons that has been brought late in the day, the identity of the documents/record intended to be supplied are not disclosed with terminologies known in law, the reasons for the delay or why leave of court is being invoked has not been given.
 - b. That terminology used by the applicant of "primary document" to be included is strange to what record of appeal ought to contain under Rule 34 of *Elections (Parliamentary and County Election) Petition Rules 2017*; such a document does not exist.
 - c. That the application cannot be allowed as it is because such document they intend to introduce and their probative value has not been disclosed as an annexure.
 - d. That the application if allowed shall prejudice the 1st respondent since the document intended for introduction at the appeal level could be strange material or evidence not contemplated at the appeal level.
 - e. That applicant is approaching court in bad faith without being transparent with facts and such document he intend to introduce.
 - f. That the Election Petition Rules does not contemplate filing of supplementary record of appeal after 43 months which delay is inordinate.
 - g. That could it have rendered itself on this matter in Election Petition Appeal E001 of 2023 and determined that there is no proper record of appeal; this Election Petition Appeal should abide the outcome or Election Petition Appeal E001 of 2023 which has been struck out.
4. Section 80(1) (d) of the *Elections Act* provides as follows:
An election court may, in the exercise of its jurisdiction—
- (d) decide all matters that come before it without undue regard to technicalities.
5. The appellant has contended that the documents they are seeking to introduce will not be prejudicial to any party but instead will allow the court to determine this petition with all facts on the table.
6. It was contended for the respondent that the intended supplementary record of appeal was not attached to the application. This, it was argued would be prejudicial.
7. Section 75 (4) of the *Elections Act* provide:
- (4) An appeal under subsection (1A) shall lie to the High Court on matters of law only and shall be –
- (a) filed within thirty days of the decision of the Magistrate's Court; and
 - (b) heard and determined within six months from the date of filing of the appeal.
8. Section 75 undoubtedly derives its authority from Article 87 of the *Constitution* which requires timely resolution of electoral disputes. To allow the application which was brought towards the tail end of the timelines is to defeat the intention of timely resolution of electoral disputes. Indeed the intended



supplementary record was not attached to this application and allowing it would be prejudicial to the respondents and will rob the court time to adjudicate this appeal.

9. I therefore find that the application is bereft of merits. The same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 18TH DAY OF JULY 2023

KIARIE WAWERU KIARIE

JUDGE

