



**United Democratic Alliance Party v Kenya Human Rights Commission & 8 others  
(Civil Application E288 of 2022) [2022] KECA 813 (KLR) (8 August 2022) (Ruling)**

Neutral citation: [2022] KECA 813 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E288 OF 2022  
FA OCHIENG, LK KIMARU & PM GACHOKA, JJA  
AUGUST 8, 2022**

**BETWEEN**

**UNITED DEMOCRATIC ALLIANCE PARTY ..... APPLICANT**

**AND**

**KENYA HUMAN RIGHTS COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KATIBA INSTITUTE ..... 2<sup>ND</sup> RESPONDENT**

**COMMISSION OF JURISTS (ICJ)-KENYA ..... 3<sup>RD</sup> RESPONDENT**

**HAKI YETU ..... 4<sup>TH</sup> RESPONDENT INUKA**

**KENYA NI SISI LTD ..... 4<sup>TH</sup> RESPONDENT**

**EDUCATION CONSORTIUM ..... 5<sup>TH</sup> RESPONDENT**

**BOUNDARIES COMMISSION ..... 6<sup>TH</sup> RESPONDENT**

**WAFULA WANYONYI CHEBUKATI ..... 9<sup>TH</sup> RESPONDENT THE**

**ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**CRAWN TRUST ..... 8<sup>TH</sup> RESPONDENT**

**HUMAN RIGHTS ..... 9<sup>TH</sup> RESPONDENT**

**RULING**

1. We have considered the Applicant's application was is predicated upon Rule 5(2)(b) of the *Court of Appeal Rules*, among other provisions of the law. We have perused the written submissions filed in favour and in opposition to the application. We have further considered the oral submissions made by Mr. Mutuma for the Applicant, Mr. Mwangi for the Respondents, other than the 8<sup>th</sup>, 9<sup>th</sup>, 10, 11<sup>th</sup>, 12 and 13<sup>th</sup> Respondents, Mr. Mukele for the 8<sup>th</sup> and 9<sup>th</sup> Respondents and Mr. Mbaji for the 12<sup>th</sup> Respondent. We have also considered the authorities cited by the parties, particularly this this



Court's decision of *National Super Alliance (NASA) Kenya v Independent Electoral and Boundaries Commission & 2 Others* [2017] eKLR

2. We are giving this ruling in a short form under Rule 34(1) of the *Court of Appeal Rules*, 2022 due to the urgency of the matter and the fact that the general elections are scheduled to be held tomorrow i.e 9<sup>th</sup> August, 2022. The reasons for the ruling shall be rendered on 28<sup>th</sup> August, 2022.
3. Upon careful consideration of issues in contention, we are of the considered opinion that the applicant has made a case for the grant of stay on the judgment of the High Court delivered on 4<sup>th</sup> August, 2022 in Nairobi Constitutional Petition No. E306 of 2022 *Kenya Human Rights Commission & 6 Others vs. Independent Electoral and Boundaries Commission & 2 Others Interested parties* pending the hearing and determination of the intended appeal.
4. For the avoidance of doubt, we reiterate the decision of this Court in *National Super Alliance (NASA) Kenya v Independent Electoral and Boundaries Commission & 2 Others [supra]* in respect of identification of voters shall guide the Independent Electoral and Boundaries Commission (the Commission).
5. The above decision incorporated the Memorandum of the Commission dated 27<sup>th</sup> July, 2017 which was consented to by the parties to the suit which provided that:
  - a. "Presiding Officers must ensure that voters are identified by Biometrics upon production of an identification document used during registration. Biometric verification is a primary mode of identifying voters."
  - b. "Where a voter cannot be identified using Biometrics, then the Presiding Officer shall use a complementary mechanism of alphanumeric search in the presence of the agents and the voter shall fill form 32A before being issued with the six ballot papers."
  - c. "The Presiding Officer will resort to the use of the printed register of voters after approval from the Commission upon confirmation that the KIEMS Kit has completely failed and that there is no possibility of repair or replacement."
  - d. "The contents of the said Memo dated 27<sup>th</sup> July, 2017 shall be adhered to by all concerned persons in application of Regulations 69 and 83 of the Elections (General) Regulations, 2012."
6. The costs of the application shall abide the outcome of the intended appeal.
7. It is so ordered.

**DATED and DELIVERED at NAIROBI this 8<sup>TH</sup> DAY OF AUGUST, 2022.**

**F. OCHIENG**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**L. GACHOKA**

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**JUDGE OF APPEAL**



**I certify that this is a True copy of the original**

**Signed**

**DEPUTY REGISTRAR**

**NRB Civil Application No. E288 of 2022**

**Ruling of the Court**

