



Khalifa & 3 others v Independent Electoral and Boundaries Commission & 3 others (Presidential Election Petition E003 of 2022) [2022] KESC 49 (KLR) (Election Petitions) (30 August 2022) (Ruling)

Neutral citation: [2022] KESC 49 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
ELECTION PETITIONS**

PRESIDENTIAL ELECTION PETITION E003 OF 2022

**MK KOOME, CJ & P, PM MWILU, DCJ & VP, MK IBRAHIM,
SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ**

AUGUST 30, 2022

BETWEEN

**KHELEF KHALIFA 1ST PETITIONER
GRACE KAMAU 2ND PETITIONER
RUTH MUMBI 3RD PETITIONER
GRACE KAMAU 4TH PETITIONER**

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT
CHAIRPERSON OF THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION 2ND RESPONDENT
WILLIAM RUTO 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

*(Being an application by the 3rd respondent to strike out
the name of the Attorney General in Petition E003 of 2022.)*

Supreme Court dismisses application filed out of time.

Reported by John Ribia



Electoral Law – presidential election petition – applications – applications filed out of time – whether in determining applications in the presidential election petition, the Supreme Court could determine an application filed out of time – Supreme Court (Presidential Election Petition) Rules, 2017, rule 17.

Brief facts

The 3rd respondent filed the application in which he sought leave to strike out the name of the Attorney General in petition No. E003 of 2022 on grounds of misjoinder, outside the prescribed time limits.

Issues

Whether in determining applications in the presidential election petition, the Supreme Court could determine an application filed out of time.

Held

The application was filed out of time. It was incompetent and an abuse of court process. In any event, the court had determined the issue in the said application in its ruling delivered on the August 29, 2022 in Petition E002 of 2022.

Application dismissed.

Citations

Cases

None referred to

Statutes

Kenya

Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 17 - (Interpreted)

Advocates

None mentioned

RULING

1. This application is dated the August 27, 2022 and filed on the August 29, 2022 by William Samoei Ruto, (the 3rd respondent). He seeks leave to strike out the name of the Attorney General in Petition No E003 of 2022 on grounds of misjoinder. It is supported by the affidavit of William Samoei Ruto, sworn on the 27th August, 2022 and filed on the August 29, 2022. It is brought pursuant to rule 17 of the [Supreme Court \(Presidential Election Petition\) Rules, 2017](#).
2. We have considered the application, affidavit in support, as well as the petitioners’ replying affidavit and submissions in opposition thereto. We find that the application, which was filed on the August 29, 2022 at 4:45 pm was filed out of time, is therefore incompetent and an abuse of the court process. In any event, the court has determined the issue in the said application in its ruling delivered on the August 29, 2022 in Petition E002 of 2022.
3. Consequently, the application is hereby dismissed with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF AUGUST, 2022.

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M. K. KOOME

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

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M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

.....

I. LENAOLA

JUSTICE OF THE SUPREME COURT

.....

W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

