



**Wafula v Odinga, Flag Bearer for Azimio La Umoja One Kenya Alliance & 5 others;
Royal Media (Media Television) & 4 others (Subsequent Party) (Presidential Election
Petition 1 of 2022) [2022] KESC 51 (KLR) (Election Petitions) (30 August 2022) (Ruling)**

Neutral citation: [2022] KESC 51 (KLR)

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

PRESIDENTIAL ELECTION PETITION 1 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

BENJAMIN BARASA WAFULA PETITIONER

AND

**RAILA AMOLLO ODINGA, FLAG BEARER FOR AZIMIO LA UMOJA ONE
KENYA ALLIANCE 1ST RESPONDENT**

**MARTHA WANGARI KARUA, DEPUTY PRESIDENTIAL NOMINEE FOR
AZIMIO LA UMOJA ONE KENYA ALLIANCE 2ND RESPONDENT**

**JULIANA WHONGE CHERERA, VICE CHAIRPERSON IEBC 3RD
RESPONDENT**

JUSTUS NYANG'AYA, COMMISSIONER IEBC 4TH RESPONDENT

FRANCIS WANDERI, COMMISSIONER 5TH RESPONDENT

IRENE MASSIT, COMMISSIONER 6TH RESPONDENT

AND

ROYAL MEDIA (MEDIA TELEVISION) SUBSEQUENT PARTY

THE JUBILEE PARTY CHAIRMAN SUBSEQUENT PARTY

**FRANCIS ATWOLI SECRETARY GENERAL OF THE CENTRAL
ORGANIZATION OF TRADE UNION (C.O.T.U) SUBSEQUENT PARTY**

**THE IEBC COMMISSION PRESIDING OFFICERS AT KWALE,
NYANDARUA, NYERI, KIRINYAGA, WEST POKOT, VIHIGA & MIGORI
COUNTIES SUBSEQUENT PARTY**



**JAMES ORENKO, CHARITY KALUKI NGILU STEPHEN KALONZO
& ALI HASSAN JOHO: COMMANDERS OF THE PARAMILITARY
AZIMIO LA UMOJA ONE KENYA ALLIANCE OF POLITICAL
PARTIES SUBSEQUENT PARTY**

Possibility of prosecuting a preliminary objection and a counterclaim in a presidential election petition as a pauper where the party was neither a petitioner or a respondent

Reported by Kakai Toili

Electoral Law – election petitions – presidential election petitions - whether a party could prosecute a preliminary objection and a counterclaim in a presidential election petition as a pauper where the party was neither a petitioner nor a respondent.

Brief facts

The applicant filed the instant application seeking to prosecute a draft preliminary objection and counterclaim as a pauper due to lack of funds for payment of court fees totaling to Kshs. 1,004,000. The applicant contended that there was manipulation of the IEBC tallying server by the commanders of the paramilitary Azimio la Umoja One Kenya Kwanza Alliance of Political Parties.

Issues

Whether a party could prosecute a preliminary objection and a counterclaim in a presidential election petition as pauper where the party was neither a petitioner or a respondent.

Held

Considering the Supreme Court (Presidential Election Petition) Rules, 2017 and the fact that the applicant was not a petitioner and/or had not been sued as a respondent in any of the presidential election petitions before the court and that he had also not sought to participate as a friend of the court, the application was unmerited.
Application dismissed.

Orders

No orders as to costs.

Citations

Statutes

Kenya

Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) In general - (Cited)

Advocates

None mentioned

RULING

1. Upon perusing the notice of motion dated August 26, 2022 seeking to prosecute a draft preliminary objection and counterclaim as a pauper due to lack of funds for payment of court fees totaling to Kshs 1,004,000; and
2. Upon reading the supporting affidavit of Benjamin Barasa Wafula sworn on August 26, 2022; and
3. Upon perusing the grounds adduced by the applicant in support of the orders sought wherein he contends that he was employed by Pan African Paper Mills (EA) Company Ltd from January 3, 1983 to September 23, 2003 when his employment was terminated after he supported the government to raise the Pan African Paper Mills EA Company Ltd employees' salaries, who were underpaid by 32.9%,



that after his termination as a Quality Control Checker and Trade Unionist, his capacity to secure employment was crippled affecting his financial status; and

4. Furthermore, considering the applicant's preliminary objection and counterclaim where he contends there were manipulation of the IEBC tallying server by James Orengo, Charity Ngilu, Stephen Kalonzo and Ali Hassan Joho being the commanders of the paramilitary Azimio la Umoja One Kenya Kwanza Alliance of Political Parties; and
5. Having considered the *Supreme Court (Presidential Election Petition) Rules, 2017* it is evident to us that the applicant is not a petitioner and/or has not been sued as a respondent in any of the Presidential Election Petitions before us, he has also not sought to participate as a friend of the court. Consequently, we find that the application before us is not merited and is therefore, dismissed.
6. For the foregoing reasons, the final orders of the court are as follows:

Orders:

- a. The application dated August 26, 2022 seeking waiver of fees; and leave to prosecute a preliminary objection and counterclaim is hereby dismissed.
 - b. There shall be no orders as to costs.
7. Orders accordingly.

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 & DEPUTY 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

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W. OUKO

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

