



**Odinga & another v Independent Electoral and Boundaries Commission
& 8 others; Orange (Interested Party) (Presidential Election Petition
E005 of 2022) [2022] KESC 53 (KLR) (29 August 2022) (Ruling)**

Neutral citation: [2022] KESC 53 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PRESIDENTIAL ELECTION PETITION E005 OF 2022
MK KOOME, CJ & P, PM MWILU, DCJ & VP, MK IBRAHIM,
SC WANJALA, N NDUNGU, I LENAOLA & W OUKO, SCJJ
AUGUST 29, 2022**

BETWEEN

**RAILA ODINGA 1ST PETITIONER
MARTHA WANGARI KARUA 2ND PETITIONER**

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 1ST
RESPONDENT
WANYONYI WAFULA CHEBUKATI 2ND RESPONDENT
BOYA MOLU 3RD RESPONDENT
ABDI YAKUB GULIYE 4TH RESPONDENT
JULIANA WHONGE CHERERA 5TH RESPONDENT
JUSTUS NYANGAYA 6TH RESPONDENT
FRANCIS WANDERI 7TH RESPONDENT
IRENE MASSIT 8TH RESPONDENT
WILLIAM SAMOEI RUTO 9TH RESPONDENT**

AND

JULIUES ORENGE INTERESTED PARTY

No person may be admitted as an interested party in the presidential election petition.

Reported by John Ribia



Electoral Law - presidential election petition – parties – joinder application – application to be joined as an interested party – category of persons that may be enjoined as an interested party - whether a natural person could be admitted as an interested party in the presidential election petition - Supreme Court Rules, 2020, rule 19; Supreme Court (Presidential Election Petition) Rules, 2017, rules 17A(1) and (2)

Brief facts

The applicant sought to be enjoined as an interested party in the presidential election petition on grounds that he intended to demonstrate electoral fraud arising from voters register on a sufficient scale. He contended that the voter fraud had the effect of a *coup d'etat*, protest or corruption of democracy.

Issues

Whether a person could be admitted as an interested party in a presidential election petition.

Relevant provisions of the Law

Supreme Court (Presidential Election Petition) Rules 2017

Rule 17A - Third-party applications

- (1) *A person seeking to be admitted as a friend of the Court may apply for admission at the close of pleadings.*
- (2) *An application made under sub-rule (1) shall include a friend of the court brief setting out the person's expertise and reasons for requesting the admission.*
- (3) *The Court may deliver a ruling by way of electronic communication to the applicant.*
- (4) *An application by any person to join the petition as an interested party shall not be allowed*

Held

1. Rule 17A (4) of the Supreme Court (Presidential Election Petition) Rules, 2017 provided that an application by any person as an interested party shall not be allowed in a presidential election petition.

Application dismissed.

Orders

No order as to costs.

Citations

Cases

None referred to

Statutes

Kenya

Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 17A(4) - (Interpreted)

RULING

1. Upon perusing the notice of motion application by the applicant, Julius Orege, dated August 26, 2022 and filed on the even date, seeking to be enjoined in these proceedings as an interested party; and
2. Upon reading the supporting affidavit of Julius Orege, a Kenyan citizen and a registered voter, sworn on August 26, 2022; and
3. Upon considering the grounds adduced by the applicant in support of the orders to be enjoined as an interested party, wherein he postulates that he shall demonstrate that in a National Election, successful electoral fraud arising from voters register on a sufficient scale can have the effect of a *coup d'etat*, protest or corruption of democracy; and



4. Considering that the relevant law in that regard to interested parties is rule 17A (4) of the *Supreme Court (Presidential Election Petition) Rules, 2017*, which provides that an application by any person as an interested party shall not be allowed in a presidential election Petition, we find as follows:

Orders:

- a. The application dated August 26, 2022 and filed on the same date seeking joinder of Julius Orenge as interested party to this petition is hereby dismissed.
- b. There shall be no orders as to costs.
5. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 29TH 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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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

