



REPUBLIC OF KENYA



**Odinga & another v Independent Electoral and Boundaries Commission
& 7 others; Walubengo & 2 others (Amicus Curiae) (Presidential Election
Petition E005 of 2022) [2022] KESC 44 (KLR) (29 August 2022) (Ruling)**

Neutral citation: [2022] KESC 44 (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 AMOLO 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

PROF ABDI YAKUB GULIYE 4TH RESPONDENT

JULIANA WHONGE CHERERA 5TH RESPONDENT

JUSTUS NYANG'AYA 6TH RESPONDENT

IRENE MASSIT 7TH RESPONDENT

WILLIAM SAMOEI RUTO 8TH RESPONDENT

AND

JOHN WALUBENGO AMICUS CURIAE

MARTIN MIRERO AMICUS CURIAE

DR JOSEPH SEVILLA AMICUS CURIAE



(Being an Application by John Walubengo, Dr. Joseph Sevilla and Martin Mirero for Leave to be admitted as Amici Curiae pursuant to Rule 17A (1) and(2)of the Supreme Court (Presidential Election Petition) Rules, 2017 and Rule 19 of the Supreme Court Rules, 2020)

Amicus curiae admitted in the Presidential Election Petition 2022.

Reported by John Ribia

Electoral Law – presidential election petition – joinder application – application to be enjoined as amicus curiae - circumstances when could a party be admitted as amicus – what principles should a court consider in an application to be enjoined as an amicus curiae – Supreme Court (Presidential Election Petition) Rules 2017, rule 17A(1) and (2); Supreme Court Rules, 2020 rule 19(1)

Brief facts

John Walubengo, Dr. Joseph Sevilla and Martin Mirero, sought leave to be joined as *amici curiae* in the Presidential Election Petition No. E005 of 2022.

Issues

Whether the applicants met the standard set in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR and *Francis Muruatetu & another v Republic & 5 others* [2016] eKLR for admission as *amici curiae*.

Held

1. The contents of the said *amici* brief satisfied the test established by the instant court in *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* [2015] eKLR and *Francis Muruatetu & another v Republic & 5 others* [2016] eKLR for admission of *amici curiae*; and the requirements of rule 17 A (1) and (2) of the Supreme Court (Presidential Election Petition) Rules, 2017 and rule 19 of the Supreme Court Rules, 2020.

Application allowed.

Orders

Applicants admitted as *amici curiae*. The *amici* will not make oral submissions and shall rely solely on their written brief.

Citations

Cases

Kenya

1. *Muruatetu, Francis & another v Republic & 5 others* Petition No 15 & 16 of 2015; [2016] eKLR (Consolidated) - (Followed)
2. *Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others* Petition No 12 of 2013; [2015] eKLR - (Followed)

Statutes

Kenya

1. Constitution of Kenya articles 10, 22, 28, 38, 140, 159, 163 - (Interpreted)
2. Supreme Court (General) Practice Directions Rules, 2020 (cap 9B Sub Leg) rule 19 - (Interpreted)
3. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B) rule 17A - (Interpreted)
4. Supreme Court Act, 2011 (cap 9B) sections 3A, 12 - (Interpreted)

Advocates

None mentioned



RULING

1. This application is dated the August 28, 2022 and filed on even date by John Walubengo, Dr Joseph Sevilla and Martin Mirero, seeking leave to be joined as amici curiae in the Presidential Election Petition No E005 of 2022. It is supported by the affidavit of John Walubengo, sworn on the August 28, 2022 and filed on the August 28, 2022. It is brought pursuant to articles 10, 22, 38, 140, 159 and 163 of the Constitution; sections 3A and 12 of the Supreme Court Act, 2011; and rule 17A of the Supreme Court (Presidential Election Petition) Rules, 2017. The applicants have annexed an Amici Brief to their application for the court's consideration.
2. We have considered the application, affidavit in support thereof, and the *amici* Brief thereto. On the basis of the contents of the said Brief, we are satisfied that the application satisfies the test established by this court in Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others, SC Petition No 12 of 2013; [2015] eKLR and Francis Muruatetu & another v Republic and 5 others, SC Petition No 15 & 16 of 2015 (Consolidated): [2016] eKLR for admission of *Amici Curiae*; and the requirements of rule 17 A (1) and (2) of the Supreme Court (Presidential Election Petition) Rules, 2017 and rule 19 of the Supreme Court Rules, 2020.
3. Consequently, the applicants are hereby admitted as amici curiae in Petition No E005 of 2022. The *amici* will not make oral submissions and shall rely solely on their written Brief.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF AUGUST, 2022.

M. K. KOOME

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CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

P. M. MWILU

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DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

M. K. IBRAHIM

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JUSTICE OF THE SUPREME COURT

S. C. WANJALA

.....

JUSTICE OF THE SUPREME COURT

NJOKI NDUNGU

.....

JUSTICE OF THE SUPREME COURT

I. LENAOLA

.....

JUSTICE OF THE SUPREME COURT



W. OUKO

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JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR,

SUPREME COURT OF KENYA

