



**Odinga & another v Independent Electoral and Boundaries Commission & 8 others; Law Society of Kenya (Amicus Curiae) (Presidential Election Petition E005 of 2022) [2022] KESC 50 (KLR) (Election Petitions) (29 August 2022) (Ruling)**

Neutral citation: [2022] KESC 50 (KLR)

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

**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**

**(BEING AN APPLICATION BY THE LAW SOCIETY OF KENYA FOR LEAVE TO BE  
ADMITTED AS AMICUS 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)**

**BETWEEN**

**RAILA AMOLO ODINGA ..... 1<sup>ST</sup> PETITIONER**

**MARTHA WANGARI KARUA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**WANYONYI WAFULA CHEBUKATI ..... 2<sup>ND</sup> RESPONDENT**

**BOYA MOLU ..... 3<sup>RD</sup> RESPONDENT**

**PROF. ABDI YAKUB GULIYE ..... 4<sup>TH</sup> RESPONDENT**

**JULIANA WHONGE CHERERA ..... 5<sup>TH</sup> RESPONDENT**

**JUSTUS NYANG'AYA ..... 6<sup>TH</sup> RESPONDENT**

**IRENE MASSIT ..... 7<sup>TH</sup> RESPONDENT**

**WILLIAM SAMOEI RUTO ..... 8<sup>TH</sup> RESPONDENT**



AND

LAW SOCIETY OF KENYA ..... AMICUS CURIAE

AND

LAW SOCIETY OF KENYA ..... AMICUS CURIAE

## The Law Society of Kenya joined as amicus curiae in the Presidential Election Petition

Reported by Kakai Toili

**Electoral Law** – presidential election petition- parties - application to be joined as amicus curiae - requirements - what were the requirements to be met for a party to join a suit as an amicus curiae in a presidential election petition - Supreme Court Rules, 2020, rule 19; Supreme Court (Presidential Election Petition) Rules, 2017, rules 17A(1) and (2).

### Brief facts

The instant application was filed by the Law Society of Kenya, seeking leave to be joined as *amicus curiae* in the Presidential Election Petition No. E005 of 2022. The application was brought 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.

### Issues

What were the requirements to be met for a party to join a suit as an *amicus curiae* in a presidential election petition?

### Held

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

*Application allowed,*

### Orders

- i. *The applicant was admitted as an amicus curiae in Petition No. E005 of 2022.*
- ii. *The amicus would not make oral submissions and would rely solely on its written brief.*

### Citations

#### Cases

#### Kenya

1. *Muruatetu, Francis Kariuki & another v Republic & 5 others* Petitions 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. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rule 17A(1)(2) - (Interpreted)
2. Supreme Court Rules, 2020 (cap 9B Sub Leg) rule 19- (Interpreted)

#### Advocates

None mentioned



## RULING

1. This application is dated the August 27, 2022 and filed on the August 28, 2022 by the Law Society of Kenya, seeking leave to be joined as *amicus curiae* in the Presidential Election Petition No E005 of 2022. It is supported by the affidavit of Florence Wairimu Muturi, sworn on the August 27, 2022 and filed on the August 28, 2022. It is brought 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](#). The applicant has annexed an amicus Brief to its application for the court's consideration.
2. We have considered the application, affidavit in support thereof, and the amicus 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 & 5 others](#), SC Petition No 15 & 16 of 2015 (Consolidated): [2016] eKLR for admission of *amici curiae*; and the requirements of rule 17A(1) and (2) of the Supreme Court (Presidential Election Petition) Rules, 2017 and rule 19 of the [Supreme Court Rules, 2020](#).
3. Consequently, the applicant is hereby admitted as an *amicus curiae* in Petition No E005 of 2022. The *amicus* will not make oral submissions and shall rely solely on its written brief.

**DATED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF AUGUST, 2022.**

.....  
**M. K. KOOME**

**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT**  
.....

**M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT**  
.....

**M. K. IBRAHIM**

**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**

.....

**JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR, SUPREME COURT OF KENYA**

