



**Odinga & another v Independent Electoral and Boundaries Commission  
& 8 others; Waihiga (Intended Interested Party) (Presidential Election  
Petition E005 of 2022) [2022] KESC 52 (KLR) (29 August 2022) (Ruling)**

Neutral citation: [2022] KESC 52 (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 ..... 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 NYANGAYA ..... 6<sup>TH</sup> RESPONDENT  
FRANCIS WANDERI ..... 7<sup>TH</sup> RESPONDENT  
IRENE MASSIT ..... 8<sup>TH</sup> RESPONDENT  
WILLIAM SAMOEI RUTO ..... 9<sup>TH</sup> RESPONDENT**

**AND**

**DAVID MWAURE WAIHIGA ..... INTENDED INTERESTED PARTY**

*(Being an application by David Mwaure Waihiga to be enjoined as an interested Party)*



## **No person may be joined as an interested party in a presidential election petition**

Reported by Kakai Toili

***Electoral Law** - election petitions - presidential election petitions - parties in presidential election petitions - interested parties - whether one could be enjoined as an interested party in a presidential election petition - Supreme Court (Presidential Election Petition) Rules, 2017, rule 17A(4).*

### **Brief facts**

The applicant filed the instant application seeking joinder as an interested party. The applicant was one of the four presidential candidates in the presidential election held on August 9, 2022 under the Agano Party Ticket. The applicant argued that he actively participated in the elections from the point of campaigns, casting of ballots, tallying and counting of ballot papers, up to the declaration at Bomas of Kenya and that the court needed to take his evidence into account to ensure that the final judgment of the court was based on available evidence.

### **Issues**

Whether one could be enjoined as an interested party in a presidential election petition.

### **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 would not be allowed in a presidential election petition. None of the intended interested party's averments demonstrated the prejudice he would suffer if he was not enjoined. The arguments the applicant proposed to make could be adequately argued by other parties in the petition.

*Application dismissed.*

### **Orders**

*No orders as to costs.*

### **Citations**

#### **Cases**

None referred to

#### **Statutes**

#### **Kenya**

Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rules 2, 17, 17A(4) - (Interpreted)

#### **Advocates**

None mentioned

## **RULING**

1. Upon perusing the notice of motion dated August 26, 2022 and filed on August 27, 2022, pursuant to rule 2 and 17 of the [Supreme Court \(Presidential Petition\) Rules 2017](#), seeking joinder of David Waihiga, the party leader of Agano Party as interested party; and
2. Upon reading the supporting affidavit of Mr David Waihiga Mwaure, the party leader of Agano Party sworn on August 26, 2022; and
3. Upon perusing the grounds adduced by the applicant in support of the orders to be enjoined as interested party that is, he was one of the four presidential candidates in the presidential election held on August 9, 2022 under the Agano Party Ticket; he actively participated in the said elections from the



point of campaigns, casting of ballots, tallying and counting of ballot papers, up to the declaration at Bomas of Kenya; and the court needs to take his evidence into account to ensure that the final judgment of the court is based on available evidence; and

4. Noting that no party has filed a response to the application; and
5. Considering the provisions of rule 17A (4) of the *Supreme Court (Presidential Election Petition) Rules 2017*, which provide that an application by any person as an interested party shall not be allowed in a presidential election petition.
6. Furthermore, none of the intended interested party's averments demonstrate the prejudice he will suffer if he was not enjoined. It is also our finding, that the arguments he proposes to make can be adequately argued by other parties in the petition.
7. For the foregoing reasons, the final orders of the court are as follows:

**Orders:**

- a. The application dated August 26, 2022 and filed on August 27, 2022 seeking joinder of David Waihiga Mwaure as interested party to this petition is hereby dismissed.
- b. There shall be no orders as to costs.
8. Orders accordingly.

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

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**M.K KOOME**

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

.....

**P.M MWILU**

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

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**M.K IBRAHIM**

**JUSTICE OF THE SUPREME**

.....

**S.C. WANJALA**

**JUSTICE OF THE SUPREME**

.....

**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**

