



**Odinga & another v Independent Electoral and Boundaries Commission & 9 others
(Presidential Election Petition E005 of 2022) [2022] KESC 45 (KLR) (29 August 2022) (Ruling)**

Neutral citation: [2022] KESC 45 (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

PROF 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

MILTON NYAKUNDI ORIKU 10TH RESPONDENT

Applications to be admitted as an interested party in a presidential election petition are inadmissible.

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 the applicant 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, rule 17A(1) and (2)

Brief facts

The applicant sought to be joined as an interested party in the presidential election petition on grounds that he had an inherent interest in the outcome of the petition as it raised fundamental issues which were integral to the protection of his rights as enshrined under articles 10, 38, 73, 81, 86 and 140 of the Constitution, and that he had substantial issues to raise about the legitimacy of Forms 34A and 34B, which were central to the petition. No party filed a response to the petition.

Issues

Whether the applicant could be admitted as an interested party in the 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

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

Application dismissed. No order as to costs.

Citations

Cases

None referred to

Statutes

Kenya

1. Constitution of Kenya articles 10, 38, 73, 81, 86, 140 - (Interpreted)
2. Supreme Court (Presidential Petition) Rules, 2017 (cap 9B Sub Leg) rule 17A(4) - (Interpreted)

RULING

1. Upon perusing the notice of motion application by Milton Nyakundi Oriku, the applicant, dated August 23, 2022 and filed on August 28, 2022, seeking to be enjoined in these proceedings as an interested party; and
2. Upon reading the supporting affidavit sworn on August 23, 2022, of the said Milton Nyakundi Oriku, a Kenyan citizen, who is a registered voter and works as a journalist; and
3. Upon considering the said application together with his written submissions dated August 23, 2022 and filed on August 28, 2022, wherein the applicant argues that he has an inherent interest in the outcome of the petition as it raises fundamental issues which are integral to the protection of his rights as enshrined under articles 10, 38, 73, 81, 86 and 140 of the *Constitution*; and that he has substantial issues to raise about the legitimacy of Forms 34A and Forms 34B which are central to Petition; and



4. Noting that no party has filed a response to the application; and
5. We note that the relevant law in this regard is rule 17A (4) of the [Supreme Court \(Presidential Petition\) Rules 2017](#), which provides that an application by any person as an interested party shall not be allowed in a presidential election petition.
6. Having carefully considered the application, responses and submissions by the respective parties herein, we find no merit in the application. We accordingly, dismiss it.

Orders:

- a. The application dated August 23, 2022 and filed on August 28, 2022 seeking joinder of Milton Nyakundi Oriku as interested party to this petition is hereby dismissed.
 - b. There shall be no orders as to costs.
7. 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 JUSTICE 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

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NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

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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**

