



Institute for Democratic Governance v Odinga & 4 others; Independent Electoral and Boundaries Commission & another (Interested Parties) (Election Petition 3 of 2017) [2017] KESC 8 (KLR) (Election Petitions) (14 November 2017) (Ruling)

Institute for Democratic Governance v Raila Amolo Odinga & 6 others [2017] eKLR

Neutral citation: [2017] KESC 8 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
ELECTION PETITIONS
ELECTION PETITION 3 OF 2017
DK MARAGA, CJ & P, PM MWILU, DCJ & VP, JB
OJWANG, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
NOVEMBER 14, 2017**

BETWEEN

INSTITUTE FOR DEMOCRATIC GOVERNANCE PETITIONER

AND

RAILA AMOLO ODINGA 1ST RESPONDENT

STEPHEN KALONZO MUSYOKA 2ND RESPONDENT

MUSALIA MUDAVIDI 3RD RESPONDENT

JAMES AGGREY BOB ORENGO 4TH RESPONDENT

MOSES WETANGULA 5TH RESPONDENT

AND

**THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION INTERESTED PARTY**

THE HON. ATTORNEY GENERAL INTERESTED PARTY

Presidential election petitions and other Supreme Court petitions cannot be heard and determined together.

Reported by Beryl Ikamari

Civil Practice and Procedure - institution of suits - suits capable of being consolidated or heard and determined together - presidential election petitions and other Supreme Court petitions - whether presidential election petitions



which were to be concluded within 14 days could be heard and determined together with other petitions for which similar timelines were not applicable - Constitution of Kenya 2010, article 140 and 163(3).

Constitutional Law - presidential election petitions - differences between presidential election petitions and other petitions filed at the Supreme Court - the requirement that presidential election petitions filed at the Supreme Court were to be concluded within 14 days - whether a petition that did not entail a challenge to the election of the President-elect but sought to have it heard at the same time as other petitions which challenged the validity of the presidential elections could be heard and determined together with other petitions which entailed a challenge to the election of the President-elect - Constitution of Kenya 2010, article 140 and 163(3).

Brief facts

The petition did not entail a challenge to the election of the President-elect but there were attempts to have it handled at the same time as other petitions which challenged the validity of the presidential elections held on October 26, 2017. The Supreme Court was engaged in hearing two other petitions under article 140 which challenged the election of Hon. Uhuru Muigai Kenyatta and Hon. William Samoei Ruto as President and Deputy President-elect respectively. Those petitions were brought under the provisions of article 140 of the Constitution and they constituted time-bound litigation for which a determination was required within 14 days.

Jubilee Party applied to be joined as an interested party in the petition. Meanwhile, counsel for the respondents raised a preliminary objection challenging the jurisdiction of the Supreme Court to hear the petition.

Issues

- i. Whether a petition that did not entail a challenge to the election of the President-elect but court orders were sought to have it heard at the same time as other petitions, which challenged the validity of the presidential elections, could be heard and determined together with other petitions which entailed a challenge to the election of the President-elect.

Held

1. The instant petition did not challenge the election of the President-elect. It was brought under article 163(3) of the Constitution. It was therefore not a time-bound litigation under the provisions of article 140 of the Constitution which would need to be determined within 14 days. It was therefore not a petition which could be heard together with Petitions Nos 2 and 4 which entailed a challenge to the election of the President-elect. It ought to be taken out of the cause list of matters to be heard within the 14 days which would conclude on December 13, 2017.
2. There was no time to rule on the application by Jubilee Party or the respondent's preliminary objection. The ruling on the applications made was deferred to a date to be given on notice.

Ruling deferred to a date to be given on notice.

Citations

Cases

None mentioned

Statutes

Kenya

Constitution of Kenya articles 140, 163(3) — (Interpreted)

Advocates

None mentioned



RULING

1. Jubilee party has applied to be joined as an interested party in this petition. In the course of hearing that application counsel for the respondents have raised a preliminary objection challenging the jurisdiction of this court to entertain the petition.
2. Today and for the next two (2) to three (3) days, this court will be engaged in hearing two petitions under article 140 challenging the election of Hon Uhuru Muigai Kenyatta and Hon William Samoei Ruto as President and Deputy President elect respectively.
3. Petitions under article 140 are time bound litigation which must be determined within 14 days as required by clause (3) of that article.
4. This petition does not challenge the election of the President elect. It is brought under article 163(3) of the *Constitution*. It is therefore not a time bound petition under article 140 of the *Constitution* that we must hear within 14 days. It cannot therefore be heard along with Petition Nos 2 and 4. It is accordingly taken out of the cause list of matters to be heard between today and the December 13, 2017.
5. We do not even have time to rule on the said application to join Jubilee or on the preliminary objection raised by the respondents. In the circumstances we defer our ruling to a date to be given on notice.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2017

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D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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P. M. MWILU

DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF THE SUPREME COURT

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J. B. OJWANG

JUSTICE OF THE SUPREME COURT

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S. C. WANJALA

JUSTICE OF THE SUPREME COURT

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N. S. NDUNGU

JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA

JUSTICE OF THE SUPREME COURT



I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

