



**Mue & another v Chairperson of Independent Electoral and
Boundaries Commission & 3 others (Election Petition 4 of 2017)
[2017] KESC 28 (KLR) (Election Petitions) (14 November 2017) (Ruling)**

*Njonjo Mue & another v Chairperson of Independent Electoral
and Boundaries Commission & 3 others [2017] eKLR*

Neutral citation: [2017] KESC 28 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
ELECTION PETITIONS
ELECTION PETITION 4 OF 2017
DK MARAGA, CJ & P, PM MWILU, DCJ & VP, JB
OJWANG, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
NOVEMBER 14, 2017**

BETWEEN

NJONJO MUE 1ST PETITIONER

KHELEF KHALIFA 2ND PETITIONER

AND

**CHAIRPERSON OF INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION 1ST RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION 2ND
RESPONDENT**

H. E. UHURU MUIGAI KENYATTA 3RD RESPONDENT

NATIONAL SUPER ALLIANCE COALITION 4TH RESPONDENT

*(Being an Application by the 3rd Respondent to strike out internal correspondences
between members of the 2nd Respondent, pursuant to Article 50 of the Constitution,
Section 12(1), 24 and 31 of the Supreme Court Act, Rule 9 and 17 of the Supreme
Court (Presidential Election Rules), 2017 and all other enabling provisions of the law)*

**Supreme Court expunges internal correspondences between members of the Independent Electoral
and Boundaries Commission in the presidential election petition from the record of the court.**

Reported by Kakai Toili



Jurisdiction - jurisdiction of the Supreme Court - jurisdiction in presidential election petitions - whether the Supreme Court could expunge internal correspondences between members of the Independent Electoral and Boundaries Commission from the record of the court in a presidential election petition.

Brief facts

The applicant filed the instant notice of motion application dated November 11, 2017 seeking to strike out internal correspondences between members of the 2nd respondent from the record of the court.

Issues

Whether the Supreme Court could expunge from its record internal correspondences between members of the Independent Electoral and Boundaries Commission from a presidential election petition.

Held

The court expunged several documents from the record.

Application allowed.

Orders

- i. *The following documents were expunged from the record:*
 1. *The internal memo dated September 5, 2017 from the 1st respondent to the Chief Executive Officer of the Independent Electoral and Boundaries Commission (IEBC) marked NM-3 annexed to the affidavit of the 1st petitioner sworn on November 5, 2017.*
 2. *The internal memo dated October 9, 2017 from a former commissioner of the 2nd respondent, Roseylne Akombe to the 1st respondent marked NM-10 annexed to the affidavit of the 1st petitioner sworn on November 5, 2017.*
 3. *The internal memo dated October 14, 2017 from the Chief Executive Officer of the 1st respondent addressed to the directors, managers, CEMS and CECs of the 2nd respondent marked as NM-12 annexed to the affidavit of the 1st petitioner sworn November 5, 2017.*
 4. *Internal memo dated October 6, 2017 from a former commissioner of the 2nd respondent, Roseylne Akombe to the 1st respondent marked as NM-13 annexed to the affidavit of the 1st petitioner sworn on November 5, 2017.*
 5. *The internal memo dated October 16, 2017 from a former commissioner of the 2nd respondent, Roselyn Akombe to the 1st respondent marked as PA-7 annexed to the affidavit of Perpetua Adar sworn on November 5, 2017.*
 6. *No order as to costs.*

Editorial notes

The reasons for the instant decision were to be given on notice.

Citations

Cases

None referred to

Statutes

Kenya

1. Constitution of Kenya article 50 — Interpreted
2. Supreme Court (Presidential Election Petition) Rules, 2017 (cap 9B Sub Leg) rules 9, 17 — Interpreted
3. Supreme Court Act, 2011 (cap 9B) sections 12(1), 24, 31 — Interpreted

Advocates

None mentioned



RULING

1. In view of the issues raised by the parties in their affidavits and submissions and noting the very limited time this court has to consider and deliver a detailed and reasoned decision, having deliberated on the contested issues placed before us, our final orders regarding the notice of motion dated November 11, 2017 shall be as follows:
 - (i) The following documents are expunged from the record:
 - (a) The internal memo dated September 5, 2017 from the 1st respondent to the Chief Executive Officer, Mr Ezra Chiloba marked NM-3 annexed to the Affidavit of Njonjo Mue sworn on November 5, 2017.
 - (b) The Internal memo dated October 9, 2017 from a former Commissioner of the 2nd respondent, Ms Roseylne Akombe to the 1st respondent marked NM-10 annexed to the affidavit of Njonjo Mue sworn on November 5, 2017.
 - (c) The Internal Memo dated October 14, 2017 from the Chief Executive Officer of the 1st respondent addressed to the Directors, Managers, CEMS and CECs of the 2nd respondent marked as NM-12 annexed to the affidavit of Njonjo Mue sworn November 5, 2017.
 - (d) Internal Memo dated October 6, 2017 from a former Commissioner of the 2nd respondent, Ms Roseylne Akombe to the 1st respondent marked as NM-13 annexed to the affidavit of Njonjo Mue sworn on November 5, 2017.
 - (e) The Internal Memo dated October 16, 2017 from a former Commissioner of the 2nd respondent, Ms Roselyn Akombe to the 1st respondent marked as PA-7 annexed to the affidavit of Perpetua Adar sworn on November 5, 2017.
 - (ii) There shall be no orders as to costs.
2. The reasons for this decision shall be given on notice.

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. NDUNG’U

JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

