



**Aluochier v Independent Electoral and Boundaries Commission & 19 others (Civil Application 2 of 2013) [2013] KESC 16 (KLR) (Election Petitions) (25 March 2013) (Ruling)**

*ISAAC ALUOCH POLO ALUOCHIER v INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 19 others [2013] eKLR*

Neutral citation: [2013] KESC 16 (KLR)

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

**CIVIL APPLICATION 2 OF 2013**

**WM MUTUNGA, CJ & P, PK TUNOI, MK IBRAHIM,  
JB OJWANG, SC WANJALA & N NDUNGU, SCJJ**

**MARCH 25, 2013**

**APPLICATION BY MR. ALUOCH POLO ALUOCHIER FOR JOINDER  
IN THE PETITIONS**

**IN THE MATTER OF ARTICLES 22, 138 AND 140 OF THE CONSTITUTION**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES  
2, 10, 27, 77(2), 88, 99, 137 AND 148 OF THE CONSTITUTION**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION  
OF SECTIONS 22, 23, 59 AND 72 OF THE ELECTIONS ACT**

**IN THE MATTER OF RULE 25(2) OF THE SUPREME COURT  
(PRESIDENTIAL ELECTION PETITION) RULES, 2013**

**IN THE MATTER OF RULE 50 OF THE SUPREME COURT RULES, 2012**

**BETWEEN**

**ISAAC ALUOCH POLO ALUOCHIER ..... PETITIONER**

**AND**

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

**HON. RAILA AMOLLO ODINGA ..... 2<sup>ND</sup> RESPONDENT**

**UHURU MUIGAI KENYATTA ..... 3<sup>RD</sup> RESPONDENT**

**WYCLIFFE MUSALIA MUDAVIDI ..... 4<sup>TH</sup> RESPONDENT**



PETER KENNETH .....	5 <sup>TH</sup> RESPONDENT
STEPHEN KALONZO MUSYOKA .....	6 <sup>TH</sup> RESPONDENT
WILLIAM SAMOEI RUTO .....	7 <sup>TH</sup> RESPONDENT
ORANGE DEMOCRATIC MOVEMENT .....	8 <sup>TH</sup> RESPONDENT
THE NATIONAL ALLIANCE .....	9 <sup>TH</sup> RESPONDENT
UNITED DEMOCRATIC FORUM PARTY .....	10 <sup>TH</sup> RESPONDENT
KENYA NATIONAL CONGRESS .....	11 <sup>TH</sup> RESPONDENT
AHMED ISAAC HASSAN .....	12 <sup>TH</sup> RESPONDENT
LILIAN BOKEEYE MAHIRI - ZAJA .....	13 <sup>TH</sup> RESPONDENT
YUSUF A NZIBO .....	14 <sup>TH</sup> RESPONDENT
MOHAMED ALAWI HUSSUIN .....	15 <sup>TH</sup> RESPONDENT
ABDULLAHI M. SHARAWA .....	16 <sup>TH</sup> RESPONDENT
THOMAS LETANGULE .....	17 <sup>TH</sup> RESPONDENT
J. MUTHONI WANGAI .....	18 <sup>TH</sup> RESPONDENT
ALBERT CAMUS ONYANO BWIRE .....	19 <sup>TH</sup> RESPONDENT
KULE GALMA GODANA .....	20 <sup>TH</sup> RESPONDENT

### Entitlement to be enjoined as a party to a presidential election petition

Reported by Emma Kinya Mwobobia

***Election Law** - presidential election petition – joinder of parties in a presidential election petition – application to be enjoined as a party in an existing presidential election petition – entitlement for joinder in the petition – provision under the Supreme Court (Presidential Election Petition) Rules - court consideration of the applicant’s entitlement for joinder in the petition – whether the applicant was entitled to be enjoined as a party in the presidential election petition in the circumstances – Supreme Court (Presidential Election Petition) Rules, 2013 rule 17.*

#### **Brief facts**

The applicant made an application to be enjoined in the presidential election petition proceedings which had been lodged and consolidated with various other petitions with regard to the presidential election. However, none of the advocates having conduct of the presidential election petition supported the application to be enjoined as a party to the petition. Counsel for the respondents submitted that the application for joinder could only have served the purpose of delaying the dutiful prosecution of the petition and further, that the applicant had not complied with the rules regulating the lodging of a presidential election petition and his issues were by no means related to the petitioner’s issue in the petition he had applied to be enjoined as a party. It was therefore submitted that the applicant’s motion was prejudicial to the petitioners in the said petition and there would be no basis for allowing it.

#### **Issues**

- i. Whether the applicant was entitled to be enjoined as a co-petitioner in another existing presidential election petition under the electoral laws.



**Relevant provisions of the Law**

**Supreme Court (Presidential Election Petition) Rules, 2013**

**Rule 17**

*(2) any person who was entitled to be a petitioner in the petition may apply and be joined as a co-petitioner at any time before the conclusion of the hearing of the petition.*

**Held**

1. The applicant had not addressed the question of entitlement to be enjoined as a petitioner in respect of the existing presidential election petition but had devoted his attention to important issues of constitutional principle which he sought to have adequately ventilated.
2. The applicant's case appeared more distinct by its academic element than by the object of securing the 'righting' of an electoral wrong. It was therefore not surprising that the petitioners in the petition that the applicant sought to be enjoined perceived the application as an encumbrance upon the setting of their case towards expeditious disposal.
3. Settlement of disputes of a practical nature was the primary purpose for which the judicial establishment was conceived and must have been regarded as the real justification for any proceedings that may have been lodged.
4. The applicant's case as perceived against a context of judicial engagement had an improbable ring and by necessity, all the advocates in the petition would not welcome the applicant by way of joinder as the applicant sought.
5. There was no practicability or sincerity in the applicants claim and therefore the court could not have allowed it.

*Application dismissed.*

**Citations**

**Statutes**

None referred to

**Advocates**

None mentioned

**RULING**

**Application By Mr. Aluoch Polo Aluochier for Joinder in the Petitions**

1. After giving this application due consideration, we have come to the conclusion that it cannot be allowed at this stage. While we have a commitment to hear and determine the three petitions on the basis of which the court has been moved, time is of the essence – and judicial notice is to be taken of this fact. In our assessment of the present setting for the resolution of the issues before us, the belated application now being brought can only cause unnecessary delay. Accordingly, we hereby disallow the application.
2. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MARCH, 2013.**

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**W.M. MUTUNGA**

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

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**P.K. TUNOI**  
**JUSTICE OF THE SUPREME COURT**

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**M.K. IBRAHIM**  
**JUSTICE OF THE SUPREME COURT**

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**J.B. OJWANG**  
**JUSTICE OF THE SUPREME COURT**

.....

**S.C. WANJALA**  
**JUSTICE OF THE SUPREME COURT**

.....

**N.S. NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

I certify that this is a true Copy of the original.

**REGISTRAR**  
**SUPREME COURT OF KENYA**

