

REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA AT NAIROBI  
PRESIDENTIAL ELECTION PETITION NO. E005 OF 2022

BETWEEN

RAILA ODINGA.....1<sup>ST</sup> PETITIONER  
MARTHA WANGARI KARUA.....2<sup>ND</sup> PETITIONER

AND

INDEPENDENT ELECTORAL &  
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 NYANG'AYA.....6<sup>TH</sup> RESPONDENT  
FRANCIS WANDERI.....7<sup>TH</sup> RESPONDENT  
IRENE MASIT.....8<sup>TH</sup> RESPONDENT  
WILLIAM SAMOEI RUTO.....9<sup>TH</sup> RESPONDENT

AFFIDAVIT OF BOYA MOLU  
*(In support of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' case)*

I, **BOYA MOLU**, a resident of Nairobi County within the Republic of Kenya and of P.O. Box 45371-00100 Nairobi, do hereby make oath and solemnly state as follows:

1. THAT I am one of the Commissioners of the Independent Electoral and Boundaries Commission (the "1<sup>st</sup> Respondent" or "Commissioner"). I was appointed vide gazette Notice No. 400 dated 18<sup>th</sup> January, 2017 and sworn into office on 20<sup>th</sup> January, 2017.
2. THAT I am conversant with the matters deponed to herein hence competent to swear this affidavit, which I swear in further support of the responses and Affidavits by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
3. THAT I have read and understood, and where necessary had explained to me, the Petition dated 21<sup>st</sup> August, 2022 and filed in court on 22<sup>nd</sup> August, 2022 together with the Supporting Affidavits sworn by Raila Odinga, Martha Wangari Karua, Saitabao Kanchory, John Mark Githongo, Arnold Ochieng Oginga, Dr. Edgar Ouko Otumba, Bernard Adongo, Dr. Nyangasi Oduwo, Celestine Anyango Opiyo, Susan

Wambugu, Benson Wesonga, Ezra Sunguti, Benjamin Agina, Nathan Githinji Mwangi, Prof. Walter Richard Mebane, Arnold Kakenyi Lenny Muteti and Martin E. Papa as well as the annexures thereto (together "the Petition"). I oppose the Petition.

4. THAT while I note that the Petitioners have named me as the 3<sup>rd</sup> Respondent in this Petition, I verily believe that I have been wrongly joined in the matter for the reasons that:

- a) the issues raised in the Petition relate to events, acts or omissions which purportedly arose while I was executing my official duties as a Commissioner of the 1<sup>st</sup> Respondent;
- b) the Petitioner's case as pleaded does not disclose any cause of action whatsoever against me in my personal capacity;
- c) even if the Petitioners were to raise any grievances against me, I verily believe that a Presidential Election Petition under Article 140 of the Constitution is not the appropriate forum and form for seeking redress; and
- d) the decision by the Petitioners to join Commissioners of the 1<sup>st</sup> Respondent as substantive Respondents in the matter is diversionary and a manifest abuse of the Court process which should not be countenanced.

5. THAT I have read the Affidavit of Wafula Wanyonyi Chebukati, the Chairperson of the 1<sup>st</sup> Respondent as well as the Affidavit of my colleague, Prof. Abdi Yakub Guliye both sworn on 26<sup>th</sup> August, 2022.

6. THAT I confirm that the Affidavits of the Chairperson Wafula Wanyonyi Chebukati and that of Prof. Abdi Yakub Guliye referred to above provide a correct account of the events which occurred at the national tallying centre in Bomas of Kenya where I was also present. I reiterate and adopt the contents of these two Affidavits in entirety.

7. THAT I wish to add that following written Communication by the Chairman, all Commissioners as well as staff working with the Secretariat were allocated tasks within the tallying centre at Bomas of Kenya and that we worked in a collaborative manner. (Attached and marked "BM-1" is a copy of the letter addressed to me by the Chairman in that respect).


8. THAT to avoid repetition, I adopt the contents of the affidavit of Wafula Wanyonyi Chebukati fully in relation to the following headings of his Affidavit, namely:
- a) Pre-poll preparations and issues arising.
  - b) The election day.
  - c) Transmission of results.
  - d) Procedures at the National Tallying Centre.
  - e) Declaration of results.
  - f) Responses to allegations arising from the declared results.
  - g) Responses to cross-cutting allegations contained in various Affidavits.
9. THAT I also confirm the contents of the Part 4 of the affidavit of the Chairman titled "Procedures at the National Tallying Centre" and in particular the portions relating to the concerted but unsuccessful attempts by the named actors to subvert the will of the people. — 10
10. THAT as a Commissioner and a State Officer I understood my role which required diligent service and fidelity to the Constitution. It was at all times my desire to oversee the conduct of a free fair and credible elections which met the threshold of the Constitution and the law. I performed my duties in strict compliance with the Constitution and the law.
11. THAT as a Commissioner, and having been involved throughout every stage of the electoral process, I verily believe that the Commission conducted a free and fair election and that the Commission lived up to the expectation in Article 81 (e) which requires it to remain independent. The election was conducted in the most transparent, impartial, neutral, efficient, accurate and accountable manner and I am aware that the Commission has received accolades from numerous quarters for delivering a credible election. — 20
12. THAT regrettably, while the election was conducted in a free and fair manner, it has been held at a heavy cost to the Commission's staff and service providers who have had to endure incessant harassment, intimidation, abductions, threats to life and even loss of life in the course of duty. I verily believe that in a democracy, the sovereign will of the people should always prevail and that the Commission's role is limited to conducting a legally compliant electoral process and declare the choice of the people. — 30

- 04
13. THAT the presidential election was conducted in accordance with the Constitution and the Elections Act and all other relevant statutes and a valid declaration of the outcome of the presidential election made.
  14. THAT for the reasons stated, I urge the Honourable Court to dismiss the Petition and uphold the process and outcome of the elections held on 9<sup>th</sup> August, 2022.
  15. THAT I swear this affidavit in opposition to the Petition filed herein.
  16. THAT the facts deponed to herein are true to the best of my knowledge, save for facts deposed to on information and belief, sources and grounds whereof I have disclosed.

SWORN at **NAIROBI**  
 This ... 26<sup>th</sup> .....day of ... August .....2022  
 By the said  
**PROF. BOYA MOLU**

I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I

-10

.....  
  
 DEPONENT

**BEFORE ME**

**COMMISSIONER FOR OATHS**



**DRAWN & FILED BY:**

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-20

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**COPIES TO BE SERVED ON**

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**NAIROBI**

[PMLAWCHAMBERS12@GMAIL.COM](mailto:PMLAWCHAMBERS12@GMAIL.COM)

This is the exhibit marked BM-2 referred to in the annexed affidavit of OB EXTRACT.

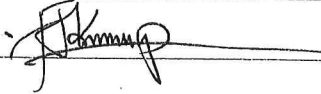
Boya Moku  
sworn before me on the 26th day of August at 29/15/08/2022  
declared day of AT 2000 HRS

at  
declared before me on the  
sworn  
6  
referred to in the annexed affidavit of  
This is the exhibit marked

COMMISSIONER FOR OATHS  
NAIROBI POLICE STATION.

INCIDENT REPORT: Today the 15<sup>th</sup> day of August, 2022 at around ~~1700~~ 1715 hrs in Uhaguzi Hall, Bomas of Kenya Auditorium which had capacity of 2000 persons mainly members of public, IEBC officials, observers, diplomats as well as Azimio and Kenya Kwanza elected leaders and supporters who were gathered to witness the declaration of presidential results, when the following Azimio Agents; Ledama Oleking, Saitabao Ole Kauduri and Gladys Wangari among others jumped over the barriers and entered into the auditorium stage where the IEBC Chairman Mr. Wafu Chibukali was preparing to announce the -20 presidential results. The above agents advanced menacingly toward the IEBC Chairman and Commissioners with an intention of grabbing documents which were in possession of the IEBC Chairman in order to disrupt the process. During the commotion, several people were injured among them; IEBC CEO Marjan Hussein Marjan sustained an injury on the head, Prof. Abdi Yakub Gulye sustained injury on both legs. Chairs and tables were also -30 damaged and value to follow. Police officers intervened and order was restored. The function proceeded to the end without any incident ending at 1830 hrs. Signed [Signature]

were in attendance ① Prof. George W. Jackson  
② Maurice Watkins and ③ Dr. William Lawrence  
Ruto was declared President-Elect. During  
the event, over two thousand people were in  
attendance. The event started at about 1630 hrs  
and ended at about 1830 hrs.

Signed: 

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

This is the exhibit marked BM-1  
referred to in the annexed affidavit of  
Boya Molu declaration  
sworn before me on the 26th  
declared day of August 2022 at NAIROBI  
C. O. Ouma  
COMMISSIONER FOR OATHS



REF: No. IEBC/ CO/CORR/GEN/VOL. I (11)

22<sup>nd</sup> July, 2022

Vice Chairperson Juliana Cherera  
Commissioner Boya Molu

RE: APPOINTMENT TO THE MEDIA AND CALL CENTRE MANAGEMENT TEAM AT THE  
PRESIDENTIAL TALLYING CENTRE – BOMAS OF KENYA

Reference is made to the above-stated subject matter.

Pursuant to Section 39 of the Elections Act and Regulations 83 and 84 (1) and 2(a) the Commission has designated Bomas of Kenya as the Presidential Election Tallying Centre for the 9<sup>th</sup> August 2022 General Election.

Consequently, You are hereby appointed as the media and incident reporting team of the Presidential Election Tallying Centre as follows; -10

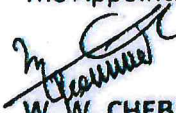
Vice Chairperson Juliana Cherera - Team Leader  
Commissioner Boya Molu - Alternate Team Leader

The Terms of Reference of your appointment are:

1. Provide liaison between the Presidential Returning Officer (PRO) and the National Communication Centre.
2. Preparing periodic briefs for the PRO to address the media.
3. Briefing the PRO on electoral activities across the country.

A copy of letter of appointment of the team is attached herein for your information, record and further necessary action.

The Appointment takes effect immediately.

  
W. W. CHEBUKATI  
CHAIRMAN -20

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya  
phone: +254 (0) 2769000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke



P.2B



This is the exhibit marked BM-3 referred to in the annexed affidavit of Boya Mohu declaration sworn before me on the 26th day of August 2022 at Nairobi

(1)

# Statement Form 8

DATE 24.8.2022

TIME 16:40HRS

PLACE PANAFRIC

HOTEL

COMMISSIONER FOR OATHS

BOYA MOHU

ID NO. 22253514

90 IEBC

TEL. 0725245638.

## HOME PARTICULARS:

COUNTY: MARSABIT

SUB COUNTY: MARSABIT NORTH.

DIVISION: MATKONA.

LOCATION: KALACHA

SUB LOC: EL-GADHE.

OCCUPATION: IEBC COMMISSIONER.

PLACE OF OCC: IEBC.

-10

## STATES AS FOLLOWS:

I am the above the named male adult of sound mind able and capable of making this statement. I am an Commissioner of Independent Electoral and Boundaries Commission

MB  
4th Aug 2022

This is the exhibit marked.....  
referred to in the annexed affidavit of  
declaration

(2)

P.2B



SWORN  
declared  
day of

before me on the

at

# Statement Form 10

DATE

TIME

PLACE

(FBC) COMMISSIONER FOR OATHS

I am the Chairman of the ad Administration Committee. During the election, at the National Tallying Centre, I was in charge of Media Centre and Call Centre. I shared this responsibility with my Colleague Commission Juliana Chereera.

I do wish to state - 10 that on the 12<sup>th</sup> August, 2022, which was the day for declaration of the winner of presidential election, I was present at the main Auditorium where the tallying was done and announcement of the president elect was to be made.

MB  
12<sup>th</sup> Aug. 2022

OL



DATE

TIME

PLACE

③

Statement Form **11**

I do wish to add that although the larger part of the events went on as planned, there were moments when people gathered at the auditorium became chaotic, rowdy, flouted sitting arrangement. These were mainly politicians most of whom are well known to me as 1. Hedana Ole Kuni, who was carrying - 10 a bungu, 2. Otiende Amallo, 3. James Orenge, 4. Gladys Wangi and Saitabal Ole Kauchery who was the Chief Agent for Azimio Coalition Party. They were being followed by people unknown to me mainly goons who finally attacked us late.

Bo  
1st Aug. 2022  
LL



# Statement Form 12

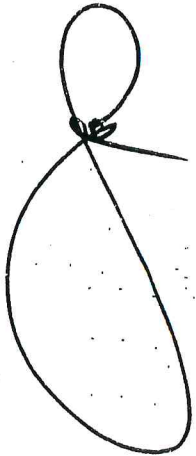
DATE

TIME

PLACE

I do wish to add that the communication was deduced 3 pm of that day for the announcement. But when that time came, the place was so crowded and chaotic. The Commissioner asked Deputy Inspector General Mr. Gargow to intervene and restore sanity to allow us proceed with the 10 planned event. In the meantime, we had a meeting with the Chief Agents of Presidential Candidates where they signed the form C (which contains total tally for the whole country)

I do wish to add that all the presidential agents signed 20



KB

4th Aug. 2022

12



DATE

TIME

PLACE

③

## Statement Form 13

The form except Azimio  
~~Preside~~ presided Chief Agent  
 Mr. ~~Kandhari~~ Saitabao De  
 Kandhari who said that  
 he wanted to scrutinize the  
 form which is 459 pages  
 before signing and returned out.  
 When the chairman of the  
 Commissionery told him that there is  
 was no time for such.

I do wish to add that  
 at about 1700hrs, the chairman  
 led the Commissionery to the main  
 dia where the ~~council~~ was  
 to be done. There was a  
 commotion but at the same  
 we still managed to access the  
 main dia where seats for the  
 Commissionery had been set. As we 20

Handwritten signature  
 22/5/22



(6)

# Statement Form 14

DATE

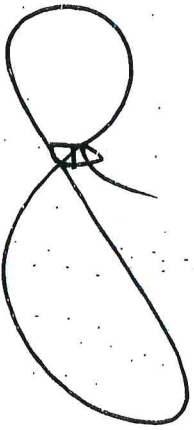
TIME

PLACE

Sat down, the politicians I have already mentioned forced their way to the main dia and stood in between of the podium. They were in company of their guards who surrounded the main dia.

I do wish add that the rowdy politicians and their goons became violent hurling abuses at the Chairman and Commissioners as they turned tables. We were evacuated by the police to the hot holding room. During that process, most Commissioners were injured. I was injured below the left knee where I sustained bruise and bled abit.

I do wish to add all the 20  
 ... Prof. ...



4th Aug 22  
 [Signature]



(7)

# Statement Form 15

DATE 24.8.22

TIME 16 HOURS

PLACE PANAFRIC HOTEL.

and myself) as the other Commissioners had boycotted the announcement.

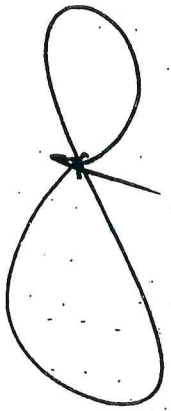
The Chairman was provided with security and went back to make the declaration. He declared H.E. William Pinto as the President - Elot.

I do wish to add that ~~the~~ we remained in the place fearing for our lives. I was unable to seek medical aid because of personal security.

Today I have recorded a statement and provided all the information with my knowledge.

That is all.

*[Signature]*  
24th Aug 2022



*[Signature]*  
4th Aug 2022  
15