

**IN THE REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA AT NAIROBI**

**PETITION NO. \_\_\_\_\_ OF 2017**

**BETWEEN**

**RAILA AMOLO ODINGA.....1<sup>ST</sup> PETITIONER**

**STEPHEN KALONZO MUSYOKA.....2<sup>ND</sup> PETITIONER**

**AND**

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

**H.E. UHURU MUGAI KENYATTA.....2<sup>ND</sup> RESPONDENT**

**AFFIDAVIT 2 IN SUPPORT OF PETITION DATED 18<sup>TH</sup> AUGUST, 2017**

I, **DR. NYANGASI ODUWO** of Post Office Box Number 7411-00100 Nairobi and resident of the Nairobi County within the Republic of Kenya do make oath and state as follows:

1. **THAT** I am a Kenyan Citizen and a medical doctor by Profession. I have a Post-Graduate Diploma in Research Methods, a Masters in Project Management and Planning and a Second Masters in Economic Policy and Analysis.
2. **THAT** I am currently the economic advisor to the current Governor of Mombasa County Government.
3. **THAT** I am duly conversant with the subject matter of this Petition and therefore competent to swear this Affidavit in support of the Petition herein and further to my

earlier Affidavit in support of the Petition herein and I hereby wish to state as follows;

4. **THAT** on the 8<sup>th</sup> of August 2017, the 1<sup>st</sup> Respondent presided over the General Elections in the Republic of Kenya and subsequently, through its website and/or online platform, and which was being relayed by media houses to the general public, electronically transmitted results from various constituencies for the respective Presidential candidates.
5. **THAT** following the transmission, the National Super Alliance (NASA) Coalition raised concerns with the 1<sup>st</sup> Respondent over the mode of transmission demanding for the prescribed FORM 34As to accompany the result transmissions on the portal.
6. **THAT** the 1<sup>st</sup> Respondent made public announcement assuring the general public and the NASA Coalition that it shall avail the aforesaid prescribed FORM 34As.
7. **THAT** the 1<sup>st</sup> Respondent availed a few of the FORMS in its online portal and promised to avail the rest.
8. **THAT** subsequently, upon uploading the few FORMS on the aforesaid online portal, a number of anomalies were discovered which concerns were raised with the 1<sup>st</sup> Respondent. I was instructed by the Chief Executive Officer of NASA, one NORMAN MAGAYA, to scrutinize the various FORM 34s that had been availed by the 1<sup>st</sup> Respondent.
9. **THAT** upon analysing Forms 34B, I discovered a number of anomalies as highlighted hereunder;
10. **THAT** for instance in MANDERA EAST CONSTITUENCY (IEBC/NTC/120), the IEBC stamp used on the form 34B is rectangular, thus different from the circular stamp used on other forms; that only two agents signed the forms from the Petitioner and the 2<sup>nd</sup> respondent; there are only two signatures of the Returning Officer and only one of the two pages was signed; the RO that signed the Form did

not indicate his/her name or date. The total valid votes on form 34B is 26, 602 while the final valid votes add up to 26, 847. ***Annexed herewith is a copy of the aforesaid Forms.***

11. **THAT** in LAMU WEST CONSTITUENCY (IEBC/NTC/073), not all pages and or sheets were signed. ***Annexed herewith is a copy of the aforesaid Forms.***
12. **THAT** in BELGUT CONSTITUENCY (IEBC/NTC/168) there was not hand over note. ***Annexed herewith is a copy of the aforesaid Forms.***
13. **THAT** in TURKANA SOUTH CONSTITUENCY (IEBC/NTC/138), there is discrepancy in the number of valid votes - the total number of valid votes cast is 25,779 but when the number of votes for all candidates were summed up, it totalled to 22,590; some pages of the Forms have neither a stamp nor a signature; the hand over section has not been stamped. ***Annexed herewith is a copy of the aforesaid Forms.***
14. **THAT** in TRANS NZOIA CONSTITUENCY (IEBC/NTC/117), query on the table format includes columns on ‘rejected,’ objected to’ and ‘disputed’. These kinds of observations have not been made elsewhere; the form has been signed only by two ODM agents. Jubilee agents and/or any other party agents for that matter signed the form; there is no table of aggregated result as observed in other form 34Bs. ***Annexed herewith is a copy of the aforesaid Forms.***
15. **THAT** in MALAVA CONSTITUENCY (IEBC/NTC/160), the following form 34As were not stamped – BULUPI PRY SCHOOL, IMBIAKALO PRY SCHOOL, MUKHONE PRY SCHOOL, CHIMORONI PRY SCHOOL, ISANJIRO PRY SCHOOL, MACHEMO PRY SCHOOL, LWANDA KABRAS PRY SCHOOL, SHIANDA PRY SCHOOL and IKOLI PRY SCHOOL; handing over section was not signed; and not all sheets/pages of form 34B were stamped. ***Annexed herewith is a copy of the aforesaid Forms.***

16. **THAT** in BOMET CENTRAL CONSTITUENCY (IEBC/NTC/014), records of form 34As shows excessive use white-out and corrected figures; in BOMET PRY SCHOOL, Form 34A shows 1 rejected vote, however form 34B does not indicate any rejected vote; and in KABUSARE PRY SCHOOL, form 34A indicates 440 votes for the 2<sup>nd</sup> Respondent while 14 votes for the Petitioner. However, form 34B indicates 490 Votes for the 2<sup>nd</sup> respondent while 19 votes for the Petitioner; and Data from 63 polling stations are still missing. ***Annexed herewith is a copy of the aforesaid Forms.***
17. **THAT** in KITUI SOUTH CONSTITUENCY (IEBC /NTC/213), not all the pages have been stamped with the official RO stamp; the number of forms 34As submitted have not been indicated; the RO signed the form but did not indicate his name; and no Agent of the Petitioner signed the same, and no reason was given for the same. ***Annexed herewith is a copy of the aforesaid Forms.***
18. **THAT** in ELDAS CONSTUTUENCY (IEBC/NTC/120), the stamp used is not the official IEBC RO stamp; the RO has not indicated his name but has purportedly signed the same. ***Annexed herewith is a copy of the aforesaid Forms.***
19. **THAT** in KURESOI NORTH CONSTITUENCY (IEBC/NTC/120) no agent signed the form; the form shows no indication of receipt/submission of form 34As; it has no aggregate. ***Annexed herewith is a copy of the aforesaid Forms.***
20. **THAT** in GARSEN CONSTITUENCY (IEBC/NTC/089) in WARDEI PRY SCHOOL the stated total valid votes on form 34B is 160 while the actual tally of the vote is 169; total row shows 34,423 votes while the computer total is 34,203. Thus an excess of 220 votes; the total valid votes are 34, 373. ***Annexed herewith is a copy of the aforesaid Forms.***
21. **THAT** in WAJIR SOUTH CONSTITUENCY (IEBC NTC /080) the RO stamp shows the words ‘returning officer’ without the initial “IEBC.”; the Form has no

bar code prescribed form; the total valid votes are 113, however, the total summation is 146; the total number of valid votes do not add up as the total number received by candidates is 31,288, while the total number of valid votes is indicated to be 31,252; Only the agent of the 2<sup>nd</sup> Respondent has signed the form and no reason why others have not signed has been given. ***Annexed herewith is a copy of the aforesaid Forms.***

22. **THAT** in TURBO CONSTITUENCY (IEBC NTC/190) KAPKOROSS PRY SCHOOL indicates the total valid votes cast as 436, while the tally of the votes allocated to each candidate indicates that 200 votes have not been allocated according to form 34B, yet form 34A infers that the Petitioner received 279 votes; KAPSAOS PRY SCHOOL total votes cast is 407 while a tally of the candidates votes indicated that 2 votes have not been allocated; in TOWNSHIP PRY SCHOOL indicates the valid votes cast is 367 while a tally of the candidates votes indicates an excess of 100 votes; KIPKEINO PRY SCHOOL indicates valid votes cast is 563 while a tally reveals a total of 425, hence 138 votes are unaccountable. ***Annexed herewith is a copy of the aforesaid Forms.***

23. **THAT** in LIKONI CONSTITUENCY (IEBC/NTC/208) form 34A of MIRIMA PRY SCHOOL does not bear any official stamp; unstamped form 34A transferred to form 34B; USHINDI BAPTIST PRY SCHOOL does not have an official stamp; data of unstamped form 34A transferred to form 34 B. ***Annexed herewith is a copy of the aforesaid Forms.***

24. **THAT** in EMBAKASI CENTRAL (IEBC/NTC/176) form 34B has a column for number of valid votes and valid voted tally; the w]two columns do no match in the following instances:

A. KAYOLE NORTH – 18

B. IMARA PRY – 18

C. BONDENI PRY – 1

D. THWATU – 19

E. MWANGAZA- 11; Erroneous votes tally was observed in MWANGAZA while the total tallied votes is 481 valid votes; form 34As in the following polling stations have no stamp: Komarock Pry polling stations 4, 5, 6, 7, 9, 17, 22 and 24; Kayole Noth polling statio 3; not all the pages of the form are stamped by IEBC. *Annexed herewith is a copy of the aforesaid Forms.*

25. **THAT** in GEM constituency, no agents signed forms 34B; Stamps are inconsistent with other RO stamps from other constitution; final tally addition is inconsistent with the states constituency tally of 65,128 valid votes, thus, 461 votes are not accounted for. *Annexed herewith is a copy of the aforesaid Forms.*
26. **THAT** in MAKADAR CONSTITTUENCY (IEBC/NTC/186) there was no proper identification of the Petitioner's agent that the form; not all sheets/pages are stamped with the official IEBC RO stamp. *Annexed herewith is a copy of the aforesaid Forms.*
27. **THAT** in DAGORETTI NORTH CONSITUENCY, no agents signed form 34B; the second page is not stamped; the slated total valid votes is indicated as 104, 789 while a summation indicates 105 840 thus 1055 votes are not accounted for. *Annexed herewith is a copy of the aforesaid Forms.*
28. **THAT** in SIGOR CONSTITTUENCY (IEBC/NTC/044) the RO has only signed the form but has not indicated his/her name. *Annexed herewith is a copy of the aforesaid Forms.*
29. **THAT** in STAREHE CONSTITTUENCY (IEBC/NTC/195) form 34A of Parkroad Pry School indicates 1 rejected vote, while for 34B does not reflect the same; not all the pages are signed; the stamp used does not match the IEBC OR

stamp; only the Petitioners agents appended her signature. *Annexed herewith is a copy of the aforesaid Forms.*

30. **THAT** I swear this Affidavit in support of the Petition and humbly seek this Honourable Court’s intervention to secure the fundamental rights and freedoms of the residents of the affected counties.

31. **THAT** what is deponed to herein is true to the best of my knowledge save for facts and deposition to which sources I have disclosed.

**SWORN** at **NAIROBI** )

By the said ) .....

**DR. NYANGASI ODUWO** ) **DEPONENT**

This day **18<sup>TH</sup>** Day of **AUGUST** 2017 )

)

BEFORE ME )

COMMISIONER FOR OATHS )

**DRAWN & FILED BY:**

MURUMBA & AWELE ADVOCATES

MIRAGE PLAZA, MEZZANINE 1 – UNIT 7, WESTLANDS, CHIROMO ROAD

P.O BOX 22255-00505

**NAIROBI**