



Case Number:	Presidential Election Petition 4 of 2017
Date Delivered:	14 Nov 2017
Case Class:	Civil
Court:	Supreme Court of Kenya
Case Action:	Ruling
Judge:	David Kenani Maraga, Jackton Boma Ojwang, Isaac Lenaola, Philomena Mbeti Mwilu, Smokin C Wanjala, Susanna Njoki Ndungu
Citation:	Njonjo Mue & another v Chairperson of the Independent Electoral and Boundaries Commission & 3 others [2017] eKLR
Advocates:	-
Case Summary:	<p style="text-align: center;"><b>Circumstances under which the Supreme Court would grant orders for scrutiny of votes.</b></p> <p style="text-align: center;"><b>Njonjo Mue &amp; another v Chairperson of the Independent Electoral and Boundaries Commission &amp; 3 others</b></p> <p style="text-align: center;"><b>Presidential Election petition No 4 of 2017</b></p> <p style="text-align: center;"><b>Supreme Court at Nairobi</b></p> <p style="text-align: center;"><b>D K Maraga, CJ &amp; P, P M Mwilu, DCJ &amp; V-P, J B Ojwang, S C Wanjala, N S Njoki and I Lenaola, SCJJ</b></p> <p style="text-align: center;"><b>November 14, 2017</b></p> <p style="text-align: center;"><b>Reported by Beryl A Ikamari</b></p>

**Electoral Laws**-presidential election petition-scrutiny of votes-principles applicable to the grant of orders of scrutiny of votes-circumstances under which the Court would grant orders of scrutiny of votes.

### **Brief facts**

The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners made an application for orders of scrutiny dated October 13, 2017. The application contained 20 prayers in total.

### **Issue**

1. Circumstances under which orders for scrutiny of votes would be granted.

### **Held**

1. The principles laid down in *Peter Gatirau Munya* regarding applications and orders for scrutiny would guide the Supreme Court in making its determination. Additionally, the Supreme Court would also be guided by its ruling of October 28, 2017 in *Raila Odinga & Kalonzo Musyoka v IEBC & others* wherein it clarified the grounds upon which an order for scrutiny would be granted or partially granted or declined.

*Application allowed.*

*Orders:-*

1. *The 2<sup>nd</sup> Respondent was to grant access to all original Forms 34A, Forms 34B, and Forms 34C to the Petitioners herein. (Prayer 14).*
2. *The 2<sup>nd</sup> Respondent was to avail a certified copy of the Voter Register to the Petitioners at the cost of the latter*

	<p><i>(Petitioners) (Prayer 17).</i></p> <p>3. <i>Prayers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18 and 19 were declined. The said prayers were declined on the basis of very clear grounds which would be elaborated in a detailed version of the ruling to be issued by the Court at a later date. Some of the prayers were declined due to the sheer impracticability of their implementation given the short time left for the determination of the petitions at hand. Others were declined because they were not pleaded with sufficient particularity in the petition. Yet others, were declined on grounds that they were couched in such general terms as to be no more than fishing expeditions.</i></p>
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Maraga, CJ & P, Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

PRESIDENTIAL ELECTION PETITION NO. 4 OF 2017

- BETWEEN -

NJONJO MUE.....1<sup>ST</sup> PETITIONER

KHELEF KHALIFA.....2<sup>ND</sup> PETITIONER

- AND -

1. THE CHAIRPERSON OF THE INDEPENDENT

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

2. INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....2<sup>ND</sup> RESPONDENT

3. H. E. UHURU MUGAI KENYATTA.....3<sup>RD</sup> RESPONDENT

4. NATIONAL SUPER ALLIANCE COALITION.....4<sup>TH</sup> RESPONDENT

**RULING OF THE COURT**

[1] We have considered the application for scrutiny dated, 13<sup>th</sup> October 2017, by the 1<sup>st</sup> and 2<sup>nd</sup> petitioners in Election Petition no. 4 of 2017. The application contains 20 prayers in all. We have also considered the affidavits in support of and opposition to the said application. We have paid due regard to the oral submissions of counsel for the petitioners and the respondents. In arriving at the Orders we are about to make, we have been guided by the principles laid down by this Court in ***Peter Gatirau Munya***; regarding applications and Orders for scrutiny. We are further guided by our Ruling of 28<sup>th</sup> October, 2017 in ***Raila Odinga & Kalonzo Musyoka v. IEBC & Others***; wherein following an application for scrutiny by the petitioners, this Court further clarified the grounds upon which an Order for scrutiny may be granted, or partially granted, or declined altogether.

[2] Pursuant to the foregoing, by unanimous decision, we hereby make the following Orders:

***(i) The 2<sup>nd</sup> respondent do grant access to all original Forms 34A, Forms 34B, and Forms 34C to the petitioners herein. (Prayer 14).***

***(ii) The 2<sup>nd</sup> respondent do avail a certified copy of the Voter Register to the petitioners at the cost of the latter (petitioners) (Prayer 17).***

***(iii) Prayers 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18 and 19 are hereby declined. The said prayers have been declined on the basis of very clear grounds which will be elaborated in a***

*detailed version of this ruling to be issued by the Court at a later date. Some of the prayers have been declined due to the sheer impracticability of their implementation given the short time left for the determination of the petitions at hand. Others have been declined because they were not pleaded with sufficient particularity in the Petition. Yet others, were declined on grounds that they are couched in such general terms as to be no more than fishing expeditions.*

**DATED and DELIVERED at NAIROBI this 14th Day of November, 2017.**

.....

**D. K. MARAGA**

**CHIEF JUSTICE & PRESIDENT OF**

**THE SUPREME COURT  
SUPREME COURT**

.....

**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE**

.....

**J. B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

.....

**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**N. S. NDUNG’U**

**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**



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