



Case Number:	Presidential Election Petition 2 & 4 of 2017 (Consolidated)
Date Delivered:	20 Nov 2017
Case Class:	Civil
Court:	Supreme Court of Kenya
Case Action:	Determination
Judge:	David Kenani Maraga, Jackton Boma Ojwang, Isaac Lenaola, Philomena Mbeti Mwilu, Smokin C Wanjala, Susanna Njoki Ndungu
Citation:	John Harun Mwau & 2 others v Independent Electoral and Boundaries Commission & 3 others [2017] eKLR
Advocates:	None mentioned
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petitions 2 & 4 of 2017 dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

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

*(Coram: Maraga, CJ & P, Mwilu, DCJ & V-P, Ojwang, Wanjala, Njoki N. S. Ndung'u  
and Lenaola, SCJJ)*

**PRESIDENTIAL ELECTION PETITION NO.2 OF 2017**

**- BETWEEN -**

**HON. JOHN HARUN MWAU.....PETITIONER**

**- AND -**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**WAFULA WANYONYI CHEBUKATI.....2<sup>ND</sup> RESPONDENT**

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

**- AND -**

**PRESIDENTIAL ELECTION PETITION NO.4 OF 2017**

**- BETWEEN -**

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

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

**- AND -**

**CHAIRPERSON OF INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND**

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

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

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

**(CONSOLIDATED ON 14<sup>TH</sup> NOVEMBER, 2017)**

## **DETERMINATION OF PETITIONS WITHOUT REASONS**

*(Pursuant to Rule 23(1) of the Supreme Court (Presidential Election Rules) 2017*

[1] Two Petitions, Nos.2 and 4 of 2017 both challenging the election of Hon. Uhuru Kenyatta as President elect under Article 140 of the Constitution were filed on 6<sup>th</sup> November 2017. By an Order of this Court issued on 14<sup>th</sup> November 2017, because of the limited time, the two petitions were consolidated, and heard together, with each party being allowed to submit on those issues which the party had separately raised. The Judges of this Court, thereafter, retired to deliberate upon each of those issues, which were later summarized as hereunder.

[2] Petition No.2 of 2017 raised five main issues. They are as follows:

***(i) Whether the 1<sup>st</sup> Respondent was required to conduct fresh nominations prior to the presidential election held on 26<sup>th</sup> October, 2017 and what steps were required to be undertaken, if at all"***

***(ii) Were the nominations conducted for the presidential candidates for the elections held 8<sup>th</sup> August, 2017 valid, after the nullification of that presidential election by the Supreme Court in its decision delivered on 1<sup>st</sup> September, 2017" When were the elections held on 8<sup>th</sup> August, 2017 deemed to have been concluded" Did another electoral cycle commence"***

***(iii) What is the impact if at all, of the defined timeframe provided under Article 140(3) of the Constitution, for the holding of a fresh election, on the conduct of nominations" How is this comparable with other forms of presidential elections contemplated in the Constitution"***

***(iv) What is the effect of a declaration of invalidity of a Presidential election under Article 140 of the Constitution" What are the criteria for qualifying candidates to participate in a fresh election"***

***(v) Are the 1<sup>st</sup> and 2<sup>nd</sup> Respondents guilty of disobedience of the Supreme Court Order to conduct the fresh election strictly in accordance with the Constitution and the applicable laws"***

[3] Petition No.4 of 2017 raised nine main issues. They are as follows:

***(i) What is the locus standi of the petitioners, and are they 'persons' in terms of Article 140(1) of the Constitution" Are the petitions properly filed as Public Interest Litigation"***

***(ii) What is the legal effect of the withdrawal of a Presidential election candidate before election" Did any of the Presidential candidates validly or properly withdraw from the Presidential election held on 26<sup>th</sup> October, 2017"***

***(iii) Did the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conduct the Presidential election held on 26<sup>th</sup> October, 2017 in strict conformity with the Constitution and the applicable laws"***

***(iv) Did the election conducted on 26<sup>th</sup> October, 2017 meet the constitutional threshold of a free and fair election under Article 81 of the Constitution"***

***(v) What are the legal consequences of not holding a Presidential election in each constituency under Article 138(2) of the Constitution" Are the results declared thereon valid"***

***(vi) Was the presidential election held on 26<sup>th</sup> October, 2017 marred with illegalities and irregularities" If yes, what are the effects of these on the validity of the election"***

***(vii) What is the effect of the Election Laws (Amendment) Act, 2017 on the conduct of the Presidential election held on 26<sup>th</sup> October, 2017" Is Section 83 of the Elections Act (as amended) unconstitutional"***

***(viii) Was the election held on 26<sup>th</sup> October, 2017 and its results, legitimate and credible both in law and in fact"***

***(ix) What Orders should the Court issue, including Orders on costs"***

**[4]** Having carefully considered the above issues, the specific prayers in each petition, as well as the Constitution and the applicable laws, the Court has unanimously determined that the petitions are not merited, and the final Orders pursuant to Article 140(2) of the Constitution, as read with Rule 22(c)(iii) of the Supreme Court (Presidential Election Petition) Rules, 2017 are as follows:

***(i) Petition No.2 of 2017, Hon. John Harun Mwau v. Independent Electoral and Boundaries Commission & 2 Others), as consolidated, is hereby dismissed.***

***(ii) Petition No.4 of 2017, Njonjo Mue and Anor v. the Chairperson of the Independent Electoral and Boundaries Commission & 3 Others, as consolidated, is hereby dismissed.***

***(iii) As a consequence, the presidential election of 26th October 2017 is hereby upheld, as is the election of the 3<sup>rd</sup> respondent.***

***(iv) Each party shall bear his/its own costs.***

**[5]** A detailed and reasoned Judgment shall be issued within 21 days of this determination, in conformity with Rule 23(1) of the Supreme Court (Presidential Election Petition) Rules, 2017.

**[6]** It is so ordered.

**DATED and DELIVERED at NAIROBI this 20<sup>th</sup> Day of November, 2017**

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**D. K. MARAGA**

**CHIEF JUSTICE & PRESIDENT**

**OF THE SUPREME COURT**

.....

**J. B. OJWANG**

**JUSTICE OF THE SUPREME COURT**

.....

.....

**P. M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE**

**PRESIDENT OF THE SUPREME COURT**

.....

**S. C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**N. S. NDUNG’U**

**I. LENAOLA**

**JUSTICE OF THE SUPREME COURT**

**JUSTICE OF THE SUPREME COURT**

**I certify that this is a**

**true copy of the original**

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**SUPREME COURT OF KENYA**



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