

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

PETITION NO.....OF 2007

IN THE MATTER OF: SECTIONS 1, 1A, 3, 5, 34 AND 84 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS ACT (CHAPTER 7 OF THE LAWS OF KENYA)

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 1, 1A, 3, 5 (3) (a) AND (b), 34 (d) 70, 71, 77, 80 and 82 OF THE CONSTITUTION OF KENYA

BETWEEN:

KAMAU KING'ARA.....1ST PETITIONER

MUTHOMI THIANKOLU.....2ND PETITIONER

AND

SAMUEL MUTUA KIVUITU.....1ST RESPONDENT

THE ELECTORAL COMMISSION OF KENYA2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

TO: THE HIGH COURT OF KENYA

The humble petition of KAMAU KING'ARA of Post office Box Number 9099-00200 and MUTHOMI THIANKOLU of Post Office Box Number 19893-00100 in the Republic of Kenya is as follows:-

- 1 The Petitioners in common with other Kenyans are entitled to a fundamental and inalienable right to a free and fair General Election conducted in strict compliance with the Constitution of Kenya and in particular with section 5 (3) (a) and (b) as read with 34 (d) thereof.
- 2 The Petitioners in common with other Kenyans are entitled to a fundamental and inalienable right to a free and fair General Election conducted in strict compliance with the provisions of the National Assembly and Presidential Elections Act and in particular with section 17 thereof.

- 3 The Petitioners in common with other Kenyans are entitled to a fundamental and inalienable right to a free and fair General Election conducted in strict compliance with the provisions of the National Assembly and Presidential Elections Act and in particular with Regulation 11 of the *Presidential and Parliamentary Election Regulations*.
- 4 Section 5 (3) (a) and (b) as read with section 34 (d) of the Constitution of Kenya requires every political party participating in a general election to nominate from among its members one person for election as President.
- 5 Section 17 of the National Assembly and Presidential Elections Act as read with Regulation 11 of the *Presidential and Parliamentary Elections Regulations* requires every political party participating in a general election to nominate from among its members one person for election as President.
- 6 Political parties are ineligible to participate in a General Election unless they singly and severally nominate one candidate from among their members for election to the office of the President of the Republic of Kenya.
- 7 Political parties are singly and severally ineligible to nominate parliamentary and civic candidates at a general election unless they singly and severally nominate one person from among their members for election to the office of the President of the Republic of Kenya.
- 8 Sections 1, 1A and 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya preclude two or more political parties from jointly nominating same person/individual for election to the office of the President of the Republic of Kenya.
- 9 The 1st and 2nd Respondents have infringed and intend to continue to infringe the Petitioners' right in common with other Kenyans to a lawful, free and fair election which right is expressed and/or implied in *inter alia* sections 1, 1A, 3, 5 (3) (a) and (b), 70 and 77 of the Constitution of Kenya.
- 10 The 1st and 2nd Respondents have conducted past general elections and intend to conduct this year's General Election in flagrant contravention of the provisions of section 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya and thereby perpetuate infringement and vitiation of the Petitioners' and other Kenyans' fundamental and inalienable right to a free and fair General Election.

- 11 The 1st and 2nd Respondents have contravened and intend to continue to contravene the Petitioners' and other Kenyans' fundamental right to protection from discrimination by allowing some political parties to participate in this year's General Election without fielding a presidential candidate contrary to the express provisions of sections 5 (3) (a) and (b) as read with 34 (d) and 82 of the Constitution of Kenya.
- 12 The 1st and 2nd Respondents have conducted past general elections and intend to conduct this year's General Election in a manner inconsistent with the letter and spirit of section 1A of the Constitution of Kenya thereby infringing and vitiating the Petitioners' and other Kenyans' fundamental and inalienable right to a multiparty and democratic system of government.
- 13 The 1st and 2nd Respondents have conducted past general elections and intend to conduct this year's General Election unlawfully, whimsically, arbitrarily and iniquitously thereby infringing and vitiating the Petitioners' and other Kenyans' fundamental and inalienable right to the rule of law which right is expressed and/or implied in *inter alia* sections 1, 1A, 3, and 77 of the Constitution of Kenya.
- 14 The 1st and 2nd Respondents have neglected, abandoned and/or otherwise abdicated their constitutional duty to conduct general elections in strict compliance with the laws of the land and in particular section 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya thereby infringing and vitiating the Petitioners' and other Kenyans' fundamental and inalienable rights aforesaid.
- 15 The 1st and 2nd Respondents have ignored, disregarded and/or otherwise refused to heed to the Petitioners' pleas to conduct this year's General Election in strict compliance with the Constitution of Kenya and thereby infringed and/or threatened to infringe the Petitioners' and other Kenyans fundamental and inalienable rights aforesaid.
- 16 The 3rd Respondent has chronically refused, neglected, ignored and/or otherwise failed to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public on the legal framework for the conduct of general elections and in particular on the meaning and/or implications of section 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya.

- 17 The 3rd Respondent has chronically refused, neglected, ignored and/or otherwise failed to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public that section 5 (3) (a) and (b) as read with section 34 (d) of the Constitution of Kenya requires every political party participating in a general election to nominate from among its members one person for election as President.
- 18 The 3rd Respondent has chronically refused, neglected, ignored and/or otherwise failed to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public that section 17 of the National Assembly and Presidential Elections Act as read with Regulation 11 of the *Presidential and Parliamentary Elections Regulations* requires every political party participating in a general election to nominate from among its members one person for election as President.
- 19 The 3rd Respondent has chronically refused, neglected, ignored and/or otherwise failed to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public that political parties are singly and severally ineligible to nominate parliamentary and civic candidates at a general election unless they singly and severally nominate one person from among their members for election to the office of the President of the Republic of Kenya.
- 20 The 3rd Respondent has chronically refused, neglected, ignored and/or otherwise failed to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public that sections 1, 1A and 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya preclude two or more political parties from jointly nominating same person/individual for election to the office of the President of the Republic of Kenya.
- 21 The 3rd Respondent's abdication of his constitutional duties and functions has perpetuated and continues to perpetuate infringement and vitiation of the Petitioners' and other Kenyans fundamental and inalienable rights aforesaid.
- 22 The Petitioners' insistence on strict observance of the provisions of the Constitution of Kenya and the National Assembly and Presidential Elections Act in the conduct of this year's General Election has exposed the Petitioners to death threats from anonymous persons describing themselves as "friends of the Government."

23 The Petitioners reasonably apprehend that the 1st and 2nd Respondents will conduct this year's General election in flagrant breach of the letter and spirit of the Constitution of Kenya and in particular with sections 1, 1A, 3, 5 (3) (a) and (b) and 34 (d) thereby infringing the Petitioners and other Kenyans' fundamental and inalienable rights to *inter alia* a free and fair General Election and a multiparty democratic system of government.

24 The Petitioners reasonably apprehend that the 1st and 2nd Respondents will conduct this year's General election in flagrant breach of the letter and spirit of the National Assembly and Presidential Elections Act and in particular with section 17 and Regulation 11 of the *Presidential and National Assembly Regulations*.

Your Petitioners therefore humbly pray for-

1 A declaration that the Petitioners in common with other Kenyans are entitled to a fundamental and inalienable right to a free and fair General Election conducted in strict compliance with the laws of the land and in particular with section 5 (3) (a) and (b) as read with 34(d) of the Constitution of Kenya.

2 A declaration that the Petitioners in common with other Kenyans are entitled to a fundamental and inalienable right to a free and fair General Election conducted in strict compliance with the laws of the land and in particular with Section 17 of the National Assembly and Presidential Elections Act and Regulation 11 of the *Presidential and National Assembly Elections Regulations*.

3 An order compelling the 1st and 2nd Respondents and/or their successors in office to conduct this year's General Election in strict compliance with the laws of the land and in particular with the provisions of sections 1, 1A, 5 (3) (a) and (b) and 34 (d) of the Constitution of Kenya.

4 An order compelling the 1st and 2nd Respondents and/or their successors in office compelling to conduct this year's General Election in strict compliance with the laws of the land and in particular with the provisions of section 17 of the National Assembly and Presidential Elections Act and Regulation 11 of the *Presidential and National Assembly Elections Regulations*.

- 5 An order prohibiting the 1st and 2nd Respondents and/or their successors in office from allowing any political party without a presidential candidate to participate in this year's General Election.
- 6 An order prohibiting the 1st and 2nd Respondents and/or their successors in office from conducting this year's General Election in a discriminatory manner whether by allowing some political parties to participate in the election without a presidential candidate or otherwise.
- 7 An order compelling the 1st and 2nd Respondents and/or their successors in office to conduct this year's General Election in strict compliance with the dictates of a multiparty and democratic system of government as required by inter alia section 1 and 1A of the Constitution of Kenya.
- 8 An order prohibiting the 1st and 2nd Respondents and/or their successors in office from conducting this year's General Election unlawfully, whimsically and/or arbitrarily.
- 9 An order compelling the 3rd Respondent to discharge his constitutional duty to advise the 1st and 2nd Respondents and the general public on the legal framework for the conduct of general elections and in particular on the meaning and/or implications of section 5 (3) (a) and (b) as read with 34 (d) of the Constitution of Kenya.
- 10 An order compelling the 3rd Respondent to require the Commissioner of Police to secure the safety of the Petitioners generally and in particular to protect the Petitioners from any physical harm from persons opposed to the views of the Petitioners on the matters raised in this Petition.
- 11 An order compelling the 3rd Respondent to require the Commissioner of Police to investigate and identify for purposes of prosecution the anonymous callers threatening the Petitioners and more particularly those callers describing themselves as "friends of the Government."
- 12 The costs of and incidental to this petition.
- 13 Such other or further orders or remedies as this Honourable Court shall deem just and expedient.

DATED at Nairobi this.....day of2007.

Kiiru Wainaina & Co
ADVOCATES FOR THE PETITIONERS

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