



REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (FIRST SESSION)

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CONVEYANCE OF PETITIONS

(No. 12 of 2022)

REGARDING REMOVAL OF MEMBERS OF THE INDEPENDENT  
ELECTORAL AND BOUNDARIES COMMISSION

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Honourable Members,

1. Standing Order 225(2) of the National Assembly Standing Orders requires the Speaker to report to the House any Petition other than those presented by a Member. In this regard, I wish to convey to the House that my office is in receipt of **four (4) Petitions** seeking the removal of Commissioners of the Independent Electoral and Boundaries Commission (IEBC) pursuant to the provisions of Article 251 of the Constitution.
2. **Hon. Members**, Article 251 of the Constitution grants any citizen the right to petition the National Assembly for the removal of a member of a constitutional commission or holder of an independent office for either **serious violation of the Constitution or statute, gross misconduct, or incompetence.**

The Petitions received are as follows—

**A. Petition by the Republican Party**

3. The Petition seeks the removal from office of **Ms. Juliana Cherera, Mr. Justus Nyang'aya, Ms. Irene Masit and Mr. Francis Wanderi** on the grounds of violation of the Constitution and other laws. In the Petition, the Republican Party states that the four (4) Commissioners, through their action of issuing a press statement rejecting election results on grounds that the Chairperson of the IEBC had conducted the verification and tallying process in an opaque manner—

- (a) failed to promote public confidence in the integrity of the office they hold and brought dishonour to the nation and lack of dignity for the office, contrary to Article 73(1)(a) of the Constitution;
- (b) failed to adhere to the guiding principles of leadership and integrity under Article 73(2) of the Constitution;
- (c) failed to act in a manner that avoids demeaning the office that they hold, contrary to Article 75 of the Constitution;
- (d) failed to adhere to the values and principles of public service, contrary to Article 232 of the Constitution; and



(e) failed to adhere and take into account the provisions of section 9 of the Leadership and Integrity Act, No. 19 of 2012 and should therefore take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

4. **Hon. Members**, The Republican Party ultimately prays for the consideration of the Petition to His Excellency the President pursuant to Article 251(3) of the Constitution.

**B. Petition by Rev. Dennis Ndwiga Nthumbi**

5. **Hon. Members**, This second Petition seeks the removal from office of **Ms. Juliana Cherera, Ms. Irene Masit, Mr. Francis Wanderi, and Mr. Justus Nyang'aya** on the grounds of serious violations of the Constitution and the law; gross misconduct; and incompetence.
6. In the Petition, the petitioner one Rev. Nthumbi, states that the Commissioners committed serious violations of the Constitution by—

(a) demonstrating partiality and biased conduct in agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run-off contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, and 249 of the Constitution; Sections 9, 26 and 30 of the

IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

(b) agreeing to the incentives and giving in to the proposal by the National Security Advisory Council (NSAC) to alter the results of the presidential election contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

(c) disowning the results of the 2022 presidential elections in which the commissioners had participated in the verification and tallying, contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

(d) accepting the proposal to alter the results of the election to subvert the will of the people of Kenya contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, and 24 of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act;

(e) issuing press statements, with close semblance with the press statements by Azimio La Umoja One Kenya presidential candidate contrary to Articles 10, 73 (2) (b) (c), 75, 232 and 249 of the Constitution; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16 and 24 of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act; and

(f) failing to follow the well set out guidelines for the verification, tallying and announcement of the presidential elections contrary to Articles 10, 73 (2) (b) (c), 75, 232 and 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16 and 24 of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

**7. Hon. Members,** Rev. Nthumbi further states that the four Commissioners grossly misconducted themselves by—

- (a) concurring to support the unlawful attempt to alter the results of the presidential elections in favour of one candidate or in the alternative to force a run off;
- (b) acting in liaison with one faction in a presidential election;
- (c) refusing to follow the well set-out guidelines for the verification and tallying announcement of the presidential elections; and

(d) swearing affidavits in support of petitions challenging the presidential elections.

8. Additionally, **Hon. Members**, Rev. Nthumbi also states that the four commissioners demonstrated incompetence by—

(a) agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run off;

(b) failing to follow the set-out guidelines for the verification and tallying announcement of the presidential elections;

(c) swearing affidavits in support of petitions challenging the presidential elections;

(d) disowning the results of the 2022 presidential elections;

(e) convening and attending meeting purportedly to discuss and appoint counsels to represent the commission in the presidential election petitions; and

(f) attempting to appoint counsels to represent the commission in the presidential election petitions.

9. Rev. Nthumbi concludes his Petition by urging the House to find that the Petition discloses sufficient grounds for the removal from office of the four Commissioners and transmit the Petition to His Excellency the President for further action.



### **C. Petition by Mr. Geoffrey Langat**

**Honourable Members,**

**10.** This third Petition seeks the removal from office of **Ms. Irene Masit, Ms.**

**Juliana Cherera, Mr. Francis Wanderi and Mr. Justus Nyang'aya** on the grounds of serious violation of the Constitution and other relevant laws; gross misconduct in the performance of their functions; and incompetence. In the Petition, Mr. Geoffrey Lang'at states that conduct of the four (4) Commissioners violated Article 3(2) and Article 81(e)(v) of the Constitution and sections 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2012.

**11.** Mr. Lang'at concludes his Petition by praying that the National Assembly takes the necessary steps as per Article 251(3) of the Constitution on removal of Commissioners

### **D. Petition by Mr. Owuor Steve Gerry**

**12.** The fourth and final Petition seeks the removal from office of **Ms. Juliana**

**Cherera, Mr. Francis Mathenge, Ms. Irene Masit and Mr. Julius Abonyo** for violating the provisions of Article 3(2); Article 10 (2); Article 81 (e) (iii), (iv) and (v); and Article 88(2) of the Constitution in their conduct leading up to the declaration of the presidential results in the 2022 General Election.

13. Mr. Gerry calls upon the House to consider his petition, urgently vote on it and transmit it to His Excellency the President for the appointment of a tribunal to investigate the conduct and violations committed by the four Commissioners as outlined in the Petition.

14. **Hon. Members**, in accordance with paragraph 3 of Standing Order 230, the four (4) Petitions now stand committed to **the Departmental Committee on Justice and Legal Affairs** for consideration. The work of the Committee is to guide the House, by way of a comprehensive Report, on whether the Petitions satisfy the grounds for removal of any or all of the cited members of a Constitutional Commission as set out in Clauses 1 and 2 of Article 251 of the Constitution. The Committee has 14 days within which to submit a report to the House as required under Paragraph 4 of Standing Order 230.

15. My predecessor, the Hon. Justin Muturi has previously guided this House that **proceedings relating to the removal of persons from office are quasi-judicial in nature and require judicious attention and sobriety.**

16. Indeed, **Hon. Members**, even the High Court has had occasion with regard to the Petition for the removal from office of the then Auditor-General, Mr. Edward Ouko, to remind the House that it must conduct any quasi-judicial proceedings in strict compliance with Article 47 of the Constitution and section 4 of the Fair Administrative Action Act, 2015. Section 4 of the Fair Administrative Action Act, 2015 reads as follows—

4. (1) *Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.*

(2) *Every person has the right to be given written reasons for any administrative action that is taken against him.*

(3) *Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—*

*(a) prior and adequate notice of the nature and reasons for the proposed administrative action;*

*(b) an opportunity to be heard and to make representations in that regard;*

*(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;*

*(d) a statement of reasons pursuant to section 6;*

*(e) notice of the right to legal representation, where applicable;*

*(f) notice of the right to cross-examine or where applicable; or*

*(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.*

(4) *The administrator shall accord the person against whom administrative action is taken an opportunity to—*

*(a) attend proceedings, in person or in the company of an expert of his choice;*

*(b) be heard;*

*(c) cross-examine persons who give adverse evidence against him; and*

*(d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.*

*(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.*

*(6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.*

**17. Hon. Members,** quasi-judicial proceedings for the removal from office of a member of a constitutional commission or the holder of an independent office differ significantly from the exercise of the investigatory powers of the House under Article 125 of the Constitution. Whereas the House or its committees may actively question witnesses to elicit evidence in an Inquiry, Article 251 (3) of the Constitution only requires the House to “**consider**” a petition and satisfy itself whether the petition discloses a ground for removal.



Interrogation and confirmation of the allegations contained in the Petition shall be the work of a tribunal appointed by the President for that purpose, if a ground for removal is disclosed.

Honourable Members,

18. In light of the foregoing and previous challenges encountered in the consideration of petitions for removal of constitutional office holder, permit me to direct as follows with regard to the manner in which the Committee shall conduct its hearings—

- (1) Upon receipt of the Petitions, the Committee shall adopt a timetable for its consideration of the Petitions;
- (2) The Committee shall transmit copies of the Petitions to the affected Commissioners and inform them of the time(s), date(s) and venue(s) that it intends to conduct its hearings over the Petitions. In transmitting the Petitions, the Committee shall allow the affected Petitioners at least seven (7) days to prepare for any hearing over the Petition(s);
- (3) The Committee shall afford the affected Commissioners the right to appear in person or through legal representative and the right to cross-examine the Petitioners under oath over all matters relating to the Petitions;

- (4) The Committee shall afford the affected Commissioners an opportunity to respond to the Petitions either orally or in writing;
- (5) The Committee shall transmit copies of any additional documentation presented by the Petitioners to the affected Commissioners as soon as is practicably possible and allow the Commissioners an opportunity to respond to such additional documentation; and
- (6) The Committee **MUST** refrain from prosecuting the Petitions on behalf of the Petitioners. Instead it shall allow each Petitioner to present their case, and permit the affected Commissioners to present their responses and thereafter consider whether a ground for removal has been disclosed.

**Honourable Members,**

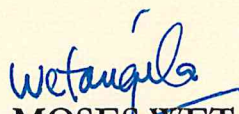
19.I therefore call upon the Committee to hear both the Petitioner and the affected Commissioners with minimal interventions. The Committee is to provide a forum for hearing the competing claims and not a forum for advancing the interests of either the Petitioners or the affected Commissioners. The Committee must remain decorous at all times and civil towards all parties that appear before it. I would urge the Committee to borrow a leaf from the conduct of quasi-judicial proceedings such as the one now referred to it from comparative parliamentary jurisdictions, including our very own Senate.

**Honourable Members,**

**20.** The Committee has 14 days within which to submit a report to the House as required under Paragraph 4 of Standing Order 230. Further, **Hon. Members**, once the Committee tables its Report, the House will have **10 days** to decide whether or not the Petition contains valid grounds for removal of the Members of the Commission.

**21. Honourable Members**, Cognizant of the multiple Petitions referred to the Committee and the fact that the Petitions relate to four (4) Commissioners of the IEBC, the Committee may, if it becomes necessary, seek an extension of the foregoing timelines to enable it to comprehensively interrogate the Petitions and report to the House.

I thank you.

  
**THE RT. HON. MOSES WETANG'ULA, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

**Tuesday, 15<sup>th</sup> November, 2022**

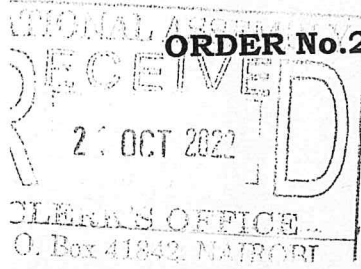




T. 10 ①

**IN THE MATTER OF A PUBLIC PETITION IN UNDER  
ARTICLES 1,3,10,13,21,22,24,27,37,38,73,75,76,77,78,81,86,99,119,  
193,232,249 & 251 OF THE CONSTITUTION (2010) OF KENYA AND  
IN THE MATTER OF SUBMISSION UNDER STANDING**

**ORDER No.219, 221&223 OF THE NATIONAL ASSEMBLY**



**PETITION**

*DL S*  
*Please advise.*  
*21/10/22*

**We the undersigned, Republican Liberty Party; registered as No. 058 of the Registered Political Parties; under the Political Parties Act (No. 11 of 2011),**

**Laws of Kenya; do hereby DRAW the attention of the House to the following;**

**1. THAT,** the following Commissioners, now popularly known as the Four (4) commissioners, Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi (hereinafter referred to jointly as "**the Four Commissioners**") jointly and severally:

1. Have seriously violated the Constitution of the Republic Kenya and other relevant laws as shall be demonstrated in this Petition including contravention of Chapter Six.
2. Have been involved in gross misconduct in the performance of their duties in their offices.
3. Are grossly incompetent for reasons as shall be demonstrated in this Petition.

**2. THE FACTS**

**THAT,** The Four Commissioners attempted to subvert the will of the people and overturn the sovereignty of the People of Kenya.

- 2.1 On the **15<sup>th</sup> of August 2022**, as the Petitioners, among other Kenyans, were eagerly and with bated breath, waiting for results which had been set for 3pm and later postponed to 4pm, e treated to a split screen by our media stations and the Four Commissioners, led by the vice chair, Juliana Cherera, issued a statement in which they said the following;

"Part of the Commissioners are here because this is what we want to say. We have done the 2022 General Elections in the most effective

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and efficient manner. We have ensured that all the challenges have been contained but, as you can see, we are part of the commissioners in the IEBC. We have ensured we have improved the standards and we have ensured we have consistently communicated what is happening. We have partnered with all stakeholders and we it for a

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fact that as the commission we have done a good job. But some things need to be put out there. As you can see the 4 of us are not at Bomas of Kenya where the results are going to be announced because of the opaque nature of how this phase has been handled. We therefore cannot take ownership of the results that is going to be announce. However, we have an open door that people can go to court and because of the same we urge Kenyans to be peaceful because the rule of law is going to prevail. We will give a comprehensive statement."

- 2.2 On 16th August 2022, the Four Commissioners issued another statement which was read by the vice chair Juliana Cherera stating as follows:

**"THAT**, our reasons to decline to take ownership of the results so declared and announced are:

One, that the aggregation of the percentages of the result scored by the 4 presidential candidates who were on the ballot as declared by Mr. Chebukati presented to us are mathematical absurdity that defies logic. Take notice that Mr. Chebukati aggregation is as follows: Raila Odinga 48.85%, William Ruto 50.49%, Mwaure Waihiga 0.27% and George Wajackoyah 0.44%. This summation gives us a total of 100.01%. The 0.01% translates to approximately 142,000 votes which will make a significant difference in the final result. We therefore decline to take ownership of the result because the aggregation resulted in a total exceeding percentage of 100 which cast doubt on the accuracy of the source of figures tallied and when we demanded that we verify our records, the chairman declined, overruled us and insisted on announcing and declaring the said result.

Two, Contrary to the Constitution and legislation the results declared and announced did not indicate the total number of registered voters, total number of votes cast or the number of rejected votes, if any. In this regard, the results announced by Mr. Chebukati lacked a critical

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ingredient namely the total number of valid votes cast to support the percentages scored by the 4 candidates. Unless demonstrated otherwise, we all know that the percentage is essentially a fraction of a whole number hence if for example the 7.17 million valid votes cast in favour of the winning candidate as declared and announced by Mr. Chebukati translates to 50.49% then it 50.49 of what? Further take notice that Mr. Chebukati claimed that Raila Odinga attained 25% of voted in 34 counties while William Ruto attained 25% in 39 counties. The question is, which figures in the 34 and 39 counties respectively constituted the independent variable to warrant the conclusion of 25% in 34 counties and 25% in the 39 counties for Raila Odinga and William Ruto respectively? In the absence of a verifiable explanation we concluded that the process that went into generation of Form 34C which he used to declare results was opaque and incapable of earning our ownership and confidence.

Three, Guided by the authority of Maina Kiai case Petition No. 106 of 2016 as upheld by the Court of Appeal in Civil Appeal No. 105 of 2017 and affirmed by the Supreme Court of Kenya, we state categorically that the results of the presidential elections held on 9<sup>th</sup> August 2022 and declared and announced by Wafula Chebukati on 15<sup>th</sup> August 2022 belonged to himself and do not represent the declaration and announcement by the Independent Electoral and Boundaries Commission. The Commission has to process the results before they are declared and announced by the chairperson. For the avoidance of doubt, let me quote the Maina Kiai case. It says (states the Maina Kiai case). The emphasis commission chairperson has conducted the election as though he is the national returning officer, a non-existent role, and his role in declaring results that were not approved by plenary by all seven members renders the results unconstitutional to the extent that this is his own results as opposed to those of IEBC. In keeping to Article 138(2) of the Constitution there is no national presidential election in Kenya, but rather presidential election is held in each constituency.

Four, that in contrary to the constitution and legislation by the time the chairman declared and announced the final results, results from certain constituencies had not been announced. "

2.3 **THAT**, during the Press statement on 16<sup>th</sup> August 2022, in response to questions by the media, the vice chair Juliana Cherera responded as



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follows: "Let me answer at what point did we realize the opaqueness. As I said yesterday, we have conducted the election and we did it to the best. We have improved in the processes as IEBC. We have upped the bar. We have considered all the stages and processes that are supposed to be taken care of. But come to the last phase, the tallying phase. As I said yesterday, that at the end there was opaqueness. Things were not being shown to the public. You have been there even at Bomas of Kenya and the screens were supposed to show cumulative numbers of the presidential candidates votes as they garnered as we continued to read the results. Isn't it? The same was not displayed to the public and the same was not given to the commissioners. Just like the public was not aware, the same, the commissioners was not aware of the cumulative results as the day goes by. So 2 days to the end, it was not given out so you could not clearly say that we have tallied 10 million and this 10 million this is how it is distributed. We have tallied 15, we have tallied 12 million. How is it distributed? The public needed to know. Progressively. The same the commissioners didn't know."

2.4 **THAT**, during the Press statement on 16<sup>th</sup> August 2022, in response to questions by the Francis Wanderi responded as follows: "As a commission we were not, as the vice chair has said, we were not doing the tallying. The tallying that was being done by our technical staff was not known to the commissioners until the moment around 4.30 when Mr. Chebukati brought the results tabulated in the format. And he did not give us an opportunity to discuss the results. He just said these are the results of each particular candidate, they have scored this and they have met the constitutional threshold and therefore he is going to read the results and he did not allow us to discuss to see whether there were any discrepancies so as a commissioners we did not have other results. Those are the results that we were supposed to have discussed before they are declared in accordance with the legal requirements. So we don't have and we did not have because we were not doing any other results. It is those ones that he was doing. That is simple".

He further stated as follows when asked whether they believe there would have been a difference from the Forms 34B that had been uploaded and ones Kenyans had already tabulated and the final results: "We have given you our statement and the statement has indicated 100 and 01%, the rest is for you to decide. We will give you



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to go and look at it. We do not know the actual numbers but even if you looked at the screen before the results were announced by Chebukati, they were required to announce constituencies that had not been announced. There were about 20 or slightly 20, between 20 and 30 because we know that Prof. Guliye was carrying those results to go and announce before Chebukati announces presidential results.

2.5 When the matter was taken to court, and the Four Commissioners were enjoined in the Petitions as Respondents, the Four Petitioners filed responses supporting the Petitions and calling for the annulment of the Presidential elections in clear contravention of Section 2(2)(a) of the Fourth Schedule of the Independent Electoral and Boundaries , 2011 which states that a member of the Commission may not whether y indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating in a referendum, or any of the issues in contention between parties, candidates or sides (emphasis ours).

2.6 **THAT**, during the tallying process ongoing at Bomas of Kenya, both Petitioners had been accredited by IEBC as observers for County and Parliamentary elections and at the National Tallying Centre and on diverse days and dates went to the Bomas of Kenya to observe the process. We clearly saw the announcement of the presidential results by the Four Commissioners. Both Petitioners were also closely following up on the tallying of results which IEBC had made accessible through a public portal where all members of the public were able to download the results and do their individual and independent tallies.

2.7 We take cognizance of the December 2007 election which was the fourth electoral exercise in Kenya since the return of the multiparty era in the early 1990s. The statements by the Commissioners were akin to the statements by the then Chairman of the defunct Electoral Commission of Kenya in 2007 where he said 'As I told you previously, I am not happy to see results coming the way they are coming because there's no reason why results should be delayed. There cannot be any excuse and I don't find any excuse at all. Because the sole purpose of introducing counting at the polling station was to hurry up the process. And, although I agree there was a challenge because this time there were more voters, the turnout was higher than ever before. That is no excuse for us not to be here on a Saturday for elections we

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held on a Thursday.' He further stated that some people 'may have been cooking results'. We cannot downplay the role of language in this case. Language is important as a facilitator of effective communication among actors. Language is an object of conflict and the language used by politicians, policy makers, the civil society or the general citizens of states, play a key role in the security of a country and consequently peace and stability of a nation.

2.8 The statements by the Four Commissioners came at a time when Kenyans had begun to get used to the perception that they could make a difference through the vote, whether in county, parliamentary or presidential elections. The 2022 General Elections were also the Fourth in respect of presidential elections after the annulment of the first presidential elections in 2017. They came at a time when Kenya had gone through a robust learning process on how to conduct elections. Those statements failed to maintain the integrity of the tallying process bringing about the validity of the presidential election into question.

2.9 We further take cognizance of the nature of presidential elections in Kenya. In any presidential election, the stakes are generally high. Considering the magnitude of a presidential election and the consequences thereof, as said by Thomas Hobbes in *T Hobbes Leviathan* (Sydney: Broadview Press, 2002) p 215 and Justice Breyer in *George Bush v Albert Gore* 531 US 98 (2000) at 153 (Stevens and Ginsburg JJ concurring) it is quite risky to interfere intentionally with this poll. As the post-2007 election events in Kenya demonstrate, flawed presidential elections can have tragic disastrous and catastrophic consequences. In 2007, following the announcement of the much-disputed election results, we witnessed an outbreak of riots and violence in the country. The violence caused considerable suffering to thousands of people. Within days of the announcement of the presidential result, close to 500,000 people were forced to flee from their homes, over 1000 people lost their lives and property worth billions of shillings was also destroyed.

2.10 Through their statements and documents filed in the supreme court of Kenya, the four commissioners alleged that the presidential election was irredeemably and irretrievable flawed. Flawed presidential elections affect the right of citizens to participate in regular elections, which is a fundamental guarantee in states that are

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governed by the rule of law. Courts in many jurisdictions have underlined the value of the ballot. The supreme courts of India and the USA, two of the world's largest democracies, have emphasized the value of voting rights as can be seen in *Mohinder Gill v The Chief Election Commissioner* (1978) 1 SCR 405 at 419 where the Indian Supreme Court (Lyer J) termed this right as 'basic' and *Wesberry v Sanders* 376 US 1 (1964) at 17 where Justice Black of the US Supreme Court argued that the right to vote is 'precious'.

2.11 Following the Press statements by the Four Commissioners, the Petitioners, as indeed many other Kenyans, as can be borne out of social media reports have been asking themselves a lot of questions. For instance,

2.11.1 If the National Returning Officer role is non-existent as they allege, why didn't the commissioners raise this issue as soon as Mr. Chebukati gazetted himself as the National Returning officer vide gazette notice number 4955 Vol. CXXIV - No. 79 of 28<sup>th</sup> April 2022? Why did they wait until 16<sup>th</sup> August 2022, when Mr. Chebukati had announced Presidential Elections for them to now tell Kenyans that such a position did not exist in law? Is it a clear dereliction of duty, negligence, recklessness, carelessness, ineptitude or utter and sheer incompetency?

2.11.2 Going by the statement of Commissioner Francis Wanderi, that the commissioners did not know of any results until when Mr. Chebukati brought Form 34C to them at about , 30, what then were the commissioners doing at the National Tallying Centre for the 7 Jays before announcement of Results? Is it again not a clear dereliction of duty, negligence, recklessness and disregard for the taxpayers who pay them to work to ensure that our elections are credible, is that even an honest and truthful representation of issues as is required of them by our constitution and legislation particularly on the conduct and public officers?

2.11.3 The Four Commissioners further informed us that there was a discrepancy of the total tally of 0.01% which is approximately 142,000 votes. Is that even mathematically correct and accurate? That statement alone brings the Four Commissioners into disrepute, shame, dishonor, opprobrium and discredit.



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2.11.4 Commissioner Francis Wanderi said Mr. Chebukati went to them and just said these are the results of each particular candidate, they have scored this and they have met the constitutional threshold and therefore he is going to read the results and he did **not allow us to discuss to see whether there were any discrepancies** (emphasis ours) so as a commissioners we did not have other results'. This then begs the question: If they did not have other results, which discrepancies were they to see? According to the oxford dictionary discrepancy means an illogical or surprising lack of compatibility or similarity between two or more facts. The Cambridge dictionary gives its meaning as a difference between two things that should be the same while the Merriam Webster dictionary gives it as the quality or state of disagreeing or being at variance. So, what exactly were they to compare them with?

2.11.5 If the Four Commissioners were aware that Prof. Guliye was going to announce the results of the 27 constituencies, why then turn around and sensationalize them? To an ordinary Kenyan, it meant that the results of the 27 constituencies had not been received, verified and tallied, which essentially would mean the result would have been different had that happened.

2.11.6 What was the real motive by the Four Commissioners in issuing the statement and alleging that the 2022 General Elections were opaque when observers, both local and international declared that Kenya had the most transparent elections so far, a fact that was confirmed by the Supreme Court of Kenya?

2.11.7 Did the Four Commissioners understand their role as electoral managers in the peace and stability of our country taking into consideration that the 2007 elections, pointedly, made the link between elections and violence? Did they understand or take into consideration the impact of their statements to the peace and security of the country? Having participated in the preparations and conduct of the elections, as electoral managers as they said, did they understand that due to the high stakes and polarizing nature of electoral competition; from party primaries, campaigns, casting of ballot, counting and tallying of results to declaration of winners; all elections have the potential of engendering conflict and resulting in violence? Why were they so keen to thrust this country



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into a 2007 scenario by issuing non-factual, contradictory, dishonest and untruthful statements as has been demonstrated herein? Where is their loyalty? To self or to the country?

- 2.11.8 Was it a coincidence that on or about the 18<sup>th</sup> July 2022, the Daily Nation newspapers had a catchy headline "The Making of an Opaque Election" to which the Four Commissioners being IEBC Commissioners neither reacted to nor responded and would later use the same terms of an "opaque election". Was this part of a wider scheme to subvert the will of the people?
- 2.12 It is because of these questions that the petitioners aver that the Four Commissioners failed inter alia in the following critical ingredients of the law;
- 2.12.1 Their joint and several actions failed to promote public confidence in the integrity of the office they hold and brings dishonor to the nation and lack of dignity for the office contrary to Article 73(1)(a) of the Constitution of Kenya.
- 2.12.2 They failed, jointly and severally, to adhere to the guiding principles of leadership and integrity under Article 73(2) of the Constitution of Kenya including inter alia personal integrity and suitability; objectiveness and impartiality in making decisions, such as the enormous decision they made; honesty in the execution of a public duty; and accountability to Kenyans for their decisions and actions.
- 2.12.3 They failed, jointly and severally, to act in a manner that avoids demeaning the office that they held contrary to Article 75 of the Constitution of Kenya.
- 2.12.4 They failed, jointly and severally to adhere to the Values and principles of public service Contrary to Article 232 of the Constitution of Kenya including exercising high standards of professional ethics and transparency and provision to the public of accurate information.

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2.12.5 They failed, jointly and severally, to adhere to and take into consideration the provisions of Sections 8 and 9 of the Leadership and Integrity Act by failing to act in the best interest of the people of Kenya. Section 9 provides that Subject to the Constitution and any other law, a State officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

2.13 The Four Commissioners in their pleadings as filed in court purported to hire a firm of lawyers to represent the IEBC. Their lawyer, Paul Muite SC, stated "We rely on a resolution by four the seven Commissioners. We have stated in our pleadings that we are legitimately representing the commission. Our colleagues have filled the pleadings on the basis of instructions, I believe, by the CEO, who we say is the CEO implements instructions by the commission". This act is contrary to the provisions of Section 10(7) of the Independent Electoral and Boundaries Commission Act, 2011 as read together with the Public Finance Management Act and the Public Procurement and Asset Disposal Act, 2015.

### **3. THE LAW**

**THAT**, the Four Commissioners jointly and severally acted in contravention of the following provisions of the Law:

#### **A. THE CONSTITUTION OF KENYA, 2010**

Article 1(1) and (2) provides that

- 1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
- 2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

**Article 3(1)** provides that every person has an obligation to respect, uphold and defend this Constitution.

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**Article 10 provides for the National values and principles of governance as follows:**

- 1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them:-
  - a) Applies or interprets this Constitution;
  - b) Enacts, applies or interprets any law; or
  - c) Makes or implements public policy decisions.
- 2) The National values and principles of governance include-
  - a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - b) Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;
  - c) Good governance, integrity, transparency and accountability; and
  - d) Sustainable development.

**Article 21 provides for the implementation of rights and fundamental freedoms**

- 1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

**Article 27 provides for Equality and freedom from discrimination**

- 1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- 2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

**Article 38 provides for Political rights**

- (1) Every citizen is free to make political choices, which includes the right-

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- a) To form, or participate in forming, a political party;
  - b) To participate in the activities of, or recruit members for, a political party; or
  - c) To campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for;
- a) Any elective public body or office established under this Constitution,  
or
  - b) Any Office of any political party of which the citizen is a member.
- (3) Every Adult citizen has the right, without unreasonable restrictions-
- a) To be registered as a voter;
  - b) To vote by secret ballot in any election or referendum; and
  - c) To be a candidate for public office, or office within a political party of which the citizen is a member and, if elected, to hold office.

**Article 73 provides for the responsibilities of leadership**

- (1) Authority assigned to a State officer;
- a) is a public trust to be exercised in a manner that;
    - i) Is consistent with the purposes and objects of this Constitution; ii) Demonstrates respect for the people; iii) Brings honor to the nation and dignity to the office; and iv) Promotes public confidence in the integrity of the office; and
    - v) Vests in the State officer the responsibility to serve the people, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include;
- a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
  - b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices,
  - c) Selfless service based solely on the public interest demonstrated by



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- (i) honesty in the execution of public duties; and
- (ii) the declaration of any personal interest that may conflict with public duties;
- d) Accountability to the public for decisions and actions, and
- e) Discipline and commitment in service to the people.

**Article 75 provides for the conduct of State Officers**

(1) A state officer shall behave, whether in public and official life, in private life or in association with other people, in a manner that avoids;

- a) Any conflict between personal interests and public or official duties'
- b) Compromising any public or official interest in favour of a personal interest; or
- c) Demeaning the office the officer holds.

(2) A person who contravenes clause (1), or **Article 76, 77 or 78(2)-**

- a) Shall be subject to the applicable disciplinary procedure for the relevant office; and
- b) May, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

**Article 81 provides for the General principles for the electoral system**

The electoral system shall comply with the following principles;

- a) Freedom of citizens to exercise their political rights under **Article 38**;
- b) Universal suffrage based on the aspiration for fair representation and equality of vote; and
- c) Free and fair elections, which are;-
  - i) By secret ballot ii) Free from violence, intimidation, improper influence or corruption;
  - iii) Conducted by an independent body; iv) Transparent; and
  - v) Administered in an impartial, neutral, efficient, accurate and

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**Article 86 provides for Voting**

At every election, the Independent Electoral and Boundaries Commission shall ensure that:-

- a) Whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent.
- b) The votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station.
- c) The results from the polling stations are openly and accurately collated and promptly announced by the returning officer.

**Article 13(8)c** provides that after counting the votes in the polling stations, the Independent Electoral & Boundaries Commission shall tally and verify the count and declare the result.

**Article 232 provides for the Values and Principles of public service**

(1) The values and principles of public service include-

- a) High standards of professional ethics;
- b) Accountability for administrative acts;
- c) Transparency and provision to the public, timely, accurate information;

(2) The values and principles of public service apply to public service in;-

- a) All state organs in all levels of government; and
- b) All state corporations.

**Articles 249 provides for the objects, authority and funding of commissions and independent offices.**

(1) The objects of the commission and the independent offices are to;-

- a) Protect the sovereignty of the people

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- b) Secure the observance by all State organs of democratic values and principles; and
  - c) Promote constitutionalism.
- (2) The commission and the holders of Independent offices- a)
- Are subject only to this constitution and the law; and
  - b) Are independent and not subject to direction or control by any person by any person or authority.

**Article 251 provides for the Removal from officer**

- (1) A member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from officer only for;-
- a) A serious violation of this constitution or any other law, including a contravention of Chapter six;
  - b) Gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
  - c) Physical or mental incapacity to perform the functions of office.
  - d) Incompetence; or
  - e) Bankruptcy
- (2) A person desiring the removal of a member of a commission or a holder of an independent officer on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.
- (3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the president.

**B. LEADERSHIP AND INTEGRITY ACT**

**Section 3** on the guiding values, principles and requirements provides that;-

- (1) The primary purpose of this Act is to ensure that State Officers respect the values, principles and requirements of the Constitution.

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(2)A State Officer shall respect the values, principles and the requirements of the Constitution, including;

- a) The national values and principles provided for under **Article 10** of the constitution.
- b) The rights and fundamental freedoms provided for under Chapter Four of the Constitution;
- c) The responsibilities of leadership provided for under **Article 73** of the Constitution.
- d) The principles governing the conduct of State Officers provided for under **Article 75** of the constitution.
- e) The educational, ethical and moral requirements in accordance with **Articles 99(1)(b)** and **193(1)(b)** of the Constitution.
- f) In so far as is relevant, the values and principles of Public Services as provided for under **Article 232** of the Constitution.

**Section 4** provides that every person has the responsibility of implementing the provisions of this Act to the extent required by this Act.

**Section 7 provides that;-**

- (1)A state officer shall respect and abide by the Constitution and the law.
- (2)A state officer shall carry out the duties of the office in accordance with the law.
- (3)In carrying out the duties of the office, a state officer shall not violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with **Article 24** of the Constitution.

**Section 8** provides that a State Office is a position of public trust and the authority and responsibility vested in a state officer shall be exercised by the state officer in the best interest of the people of Kenya.

**Section 9** provides that Subject to the Constitution and any other law, a state officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.

**Section 10 provides that;-**

A state officer shall, to the best of their ability;-

- a) Carry out the duties of the office efficiently and honestly.
- b) Carry out the duties in a transparent and accountable manner.



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- c) Keep accurate records and documents relating to the functions of the office; and
- d) Report truthfully on all matters of the organization which they represent.

**Section 11 provides that**

A State Officer shall;

- a) Carry out duties of the office in a manner that maintains public confidence in the integrity of the office.
- b) Treat members of the public and other public officers with courtesy and respect.
- c) Not discriminate against any person, except as is expressly provided by the law.
- d) To the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organization.

**Section 13 provides for the Moral and ethical requirements as follows:-**

- (1) For the purposes of **Articles 99(1)** and **193(1)** of the Constitution, a person shall observe and maintain the following ethical and moral requirements:-
  - a) Demonstrate honestly in the conduct of public affairs subject to the Public Officer Ethics Act (No. 4 of 2003).
  - b) Not to engage in activities that amount to abuse of office
  - c) Accurately and honestly represent information to the public.
  - d) Not engage in wrongful conduct in furtherance of personal benefit.
  - e) Not misuse public resources.
  - f) Not discriminate against any person, except as expressly provided for under the law.
  - g) Not falsify any records.

**Section 23 provides for political neutrality**

- (1) An appointed State Officer, other than a Cabinet Secretary or a member of a County Executive Committee shall not, in the performance of their duties:-
  - (a) Act as an agent for, or further the interests of a political party or candidate in an election; or manifest support for or opposition to any political party or candidate in an election.

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- (b) An appointed State Officer or Public Officer shall not engage in any political activity that may compromise the political neutrality of the office subject to any laws relating to elections.

Without prejudice to the generality of subsection (2) a public officer shall not:-

- (a) Engage in activities of any political party or candidate or act as an agent of a political party or candidate in an election.  
(b) Publicly indicate support for or opposition against any political party or candidate participating in an election.

**Section 24 provides for impartiality of State Officers**

- (1) A state officer shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with **Articles 10, 27, 73(2)(b)** and **232** of the constitution and shall not practice favoritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices.

**Section 29** provides that a State Officer shall not knowingly give false or misleading information to any institution or the public.

**Section 30** provides that state officer shall not falsify any records or misrepresent information to the public.

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION  
ACT, 2022 FOURTH SCHEDULE ON THE CODE OF CONDUCT FOR  
MEMBERS AND EMPLOYEES OF THE COMMISSION.**

**Section 1 provides for the impartiality and independence of members.**

- (1) Every member and employee of the commission shall impartially and independently perform functions of the Commission in good faith and without fear, favor or prejudice, and without influence from:- (a)  
Any arm of the Government;  
(b) Any State Officer;  
(c) Any Public Officer;  
(d) Any Political Party;

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(e) Candidate participating in an election; or (f) Any other person, authority or organization.

**Section 2 (2)(a) provides that;**

A member of the Commission may not whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating;

(a) In a referendum, or any of the issues in contention between parties, candidates or sides.

**Section 4 provides that;**

(1) A member or employee of the Commission shall;

(a) Treat the public and colleagues with courtesy and respect;

(b) Discharge all their duties in a professional, timely and efficient manner and in line with the rule of law; and

(c) Respect the rights and freedom of all persons that he may interact with.

**PUBLIC OFFICER ETHICS ACT, 2003**

**Section 3 provides for;**

The determination of responsible Commission.

(1) This section determines what body is the responsible Commission for a public officer for the purposes of this Act.

(2) The Committee of the National Assembly responsible for the ethics of members is the responsible for;

(a) Members of the Electoral Commission and the Public Service Commission; and

**Section 8 provides that;**

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- (1) A Public Officer, shall to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

**Section 9 provides that;**

- (1) A Public Officer shall;-

- (a) Carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) Treat the public and his fellow public officers with courtesy and respect;
- (c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organization;
- (d) Discharge any professional responsibilities in a professional manner.

**Section 10 provides that;**

A Public Officer shall carry out his duties in accordance with the law. In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the constitution.

**Section 16 provides that;**

- (1) A public officer shall not, in or in connection with the performance of his duties as such:-
- (a) Act as an agent for, or so as to further the interest of, a political party;  
or
  - (b) Indicate support for or opposition to any political party or candidate in an election.
  - (c) A public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.

**Section 19 provides that;**



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A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

- 4. THAT,** we confirm that Parliament is the only body mandated by the Constitution of Kenya to deal with this matter.
- 5. THAT,** we are not aware of any matter pending before a court of law, constitutional or legal body in regards to the issues raised in this Petition.

**HEREFORE, YOUR HUMBLE PETITIONERS PRAY THAT PARLIAMENT**

1. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi seriously violated the Constitution of Kenya, 2010 and other relevant laws including contravention of Chapter Six of the Constitution of Kenya.
2. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi were involved in gross misconduct in the performance of their office holder's functions as Commissioners of the Independent Electoral and Boundaries Commission.
3. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are grossly incompetent.

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4. Finds that the Four Commissioners, namely Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are unfit to hold state or Public Office.
5. Pursuant to the provisions of Article 251(3) of the Constitution, send this Petition to the president.

**AND YOUR PETITIONERS WILL EVER PRAY**

**DATED at Nairobi this 13<sup>th</sup> day of October 2022**

<b>1. Name of the Petitioner</b>	<b>Full Address</b>	<b>National ID</b>	<b>Signature</b>
<b>ZACHARIAH .M. MATAYO NATIONAL CHAIRPERSON REPUBLICAN LIBERTY PARTY</b>	<b>P.O BOX 20148 00100 NAIROBI KENYA</b>	<b><u>10908992</u></b>	<i>Momanyi</i> .....

**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR  
IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

TO:  
THE CLERK OF THE NATIONAL ASSEMBLY,  
OFFICE OF THE CLERK,  
MAIN PARLIAMENT BUILDING,  
P.O. BOX 41842-00100,  
NAIROBI.

RE: PETITION TO THE NATIONAL ASSEMBLY UNDER ARTICLES 37 AND 119 OF  
THE CONSTITUTION OF KENYA, 2010; PETITION TO PARLIAMENT  
(PROCEDURE) ACT (2012) AND THE STANDING ORDERS 219 AND 223 OF  
THE NATIONAL ASSEMBLY

I, the undersigned, a citizen of the Republic of Kenya, in the interest of the public lodge this petition to the National Assembly towards the removal of the following four commissioners of the Independent Electoral and Boundaries Commission (IEBC); Juliana Cherera (Vice Chair), Irene Masit, Francis Wanderi, and Justus Nyang'aya on the grounds to be stated hereunder:

I humbly draw the attention of the House to the following;

**1) The Constitution**

- 1) The Preamble to the Constitution of Kenya recognizes the aspirations of all Kenyans for a government based on essential values of human rights, equality, freedom, democracy, social justice and the rule of law and the exercise by the people of Kenya of their sovereign and



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*[Signature]*  
2/nov. 2022

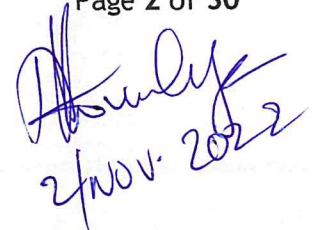
② CNA - Having perused through the Petition, the Prayer is in order & we may proceed to process. It complies with the requirements of the Law. 2/11/2022  
① Dips / DKS To process in accordance with the S.O.s and the Cok. 2/11/2022  
③ Mr. Kabana, please deal. 2/11/2022  
NO. 2



**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR**  
**IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

inalienable right to determine the form of governance of Kenya and having participated fully in the making of this Constitution.

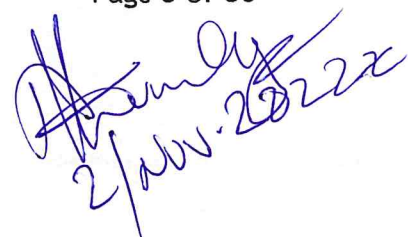
- 2) **Article 1 (1) of the Constitution** provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.
- 3) **Article 2(1) of the Constitution of Kenya** pronounces the supremacy of the Constitution and provides that the Constitution binds “all persons and all State Organs at both levels of government”.
- 4) **Article 2(4) of the Constitution** provides among other things, any act or omission in contravention of the Constitution is invalid.
- 5) **Article 3 of the Republic of Kenya** obligates every person to respect, uphold and defend the Constitution.
- 6) **Article 10(1) of the Constitution** states that the national values and principles of governance bind all states organs, State Officers, Public officers and all persons whenever any of them enacts, applies or interprets any law. The National values and principles of governance include patriotism and national unity.
- 7) **Article 19 (2) of the Constitution** provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and realization of the potential of all human beings.

  
24 NOV 2022



**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR**  
**IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

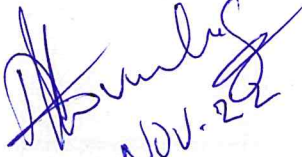
- 8) Under Article 20(1) of the Constitution, the Bill of Rights applies to all and binds all State organs and all persons. Further, under subsection (2), every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- 9) Under article 37 of the Constitution, every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.
- 10) Article 73 of the Constitution provides for responsibilities of leadership and under Clause 1(a), the Constitution provides that the authority assigned to the state officer is a public trust to be exercised in a manner that “brings honour to the nation and dignity to the office” and “promotes public confidence in the integrity of the office”. Clause 2 thereof provides for the guiding principles of leadership and integrity to include “selection on the basis of personal integrity, competence and suitability”.
- 11) Article 73 (2) (b) (c) contains provisions on the guiding principles and integrity to include *inter alia* objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices; and selfless service based on the public interest, demonstrated by honesty in the execution of public duties and ii) the declaration of any personal interest that may conflict with public duties.
- 12) Article 75 provides that a state officer shall behave, whether in public and official life, in private life, or in association with other

  
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persons, in a manner that avoids: a) any conflict between personal interest and public or official duties; b) compromising any public or official interest in favour of a personal interest; or c) demeaning the office the officer holds. Additionally, it provides that a person who contravenes clause (1) or Article 76, 77, 78 (2) shall be subject to the applicable disciplinary procedure for the relevant office, and b) may in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

- 13) **Article 88 of the Constitution of Kenya 2010**, establishes the IEBC. It further provides that the IEBC shall be responsible for conducting or supervising referenda and elections of any elective body or office by this constitution, and any other election prescribed by an Act of Parliament.
- 14) **Article 95 of the Constitution** states that the National Assembly represents the people of the constituencies, special interests, deliberates on and resolves issues of concern to the people.
- 15) **Article 118 of the Constitution** states that Parliament shall conducts its business in an open manner, and its sittings and those of its committees shall be open to the public; and facilitate public participation and involvement in the legislative and other business of the Parliament and its committees.
- 16) **Article 119 of the Constitution** provides that every person has a right to petition Parliament to consider any matter within its authority,

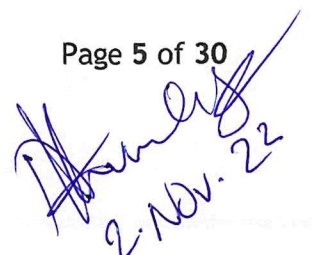
  
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including enacting, amending or repealing any legislation, and Parliament shall make provisions for the exercise of this right.

- 17) **Article 138 (10) (a)** provides that the chairperson of the Independent Electoral and Boundaries Commission shall declare the result of the election.
- 18) **Article 232(1)** on values and principles of public service, provides *inter alia* that the values and principles of public service include high standards of professional ethics, transparency and provision to the public of timely, accurate information.
- 19) **Article 248 of the Constitution** applies to the commissions and independent offices which *inter alia* includes the Independent Electoral and Boundaries Commission.
- 20) **Article 249 of the Constitution of Kenya** provides the objects of the Commissions and the independent offices are to: protect sovereignty of the people of Kenya; secure observance by all state organs of democratic values and principles; promote constitutionalism.
- 21) **Article 249** further provides that the holders of and the commissions and holders of independent offices are only subject to the Constitution and the law and are independent and not subject to direction or control by any person.

  
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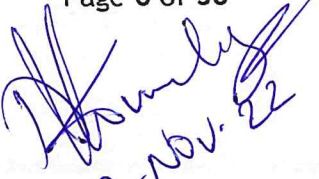
22) Article 251 of the Constitution provides that a member of a commission may be removed from office only for *inter alia*: serious violation of this constitution or any other law, including a contravention of chapter six; and gross misconduct, whether in the performance of the member's or office holder's functions or otherwise.

**2) THE LEADERSHIP AND INTEGRITY ACT, NO. 19 OF 2012**

23) The Leadership and Integrity Act was enacted to give effect to, and establish procedures and mechanisms for the effective administration of chapter six of the Constitution of Kenya 10.

24) The Leadership and Integrity Act dedicates the entire **part II** to the **General Leadership and Integrity Code**. **Section 6** of the Act provides that the whole of part II shall be the general leadership and integrity code for state officers. Further, it provides that provisions of **chapter six of the constitution** and the provisions of the **Public Officer Ethics Act, 2003** shall form part of the general code of public officers and in the event there is conflict, the provisions of the Leadership and integrity Act shall prevail.

25) **Section 7** of the Leadership and integrity Act provides on observance of the rule of law by state officers. It requires a state officer to respect and abide by the constitution and the law. It also requires state officers to carry out their duties in strict observance of the law and in doing

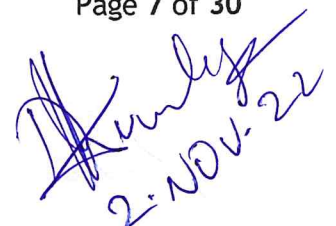
  
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this they are required not to violate rights and freedoms of any persons except as provided under Article 24 of the Constitution.

- 26) **Section 8** provides that the state office is a position of trust and the **authority and responsibility vested in a state officer shall be exercised by the state officers in the best interest of the people of Kenya.**
- 27) **Section 9** provides that subject to the constitution and any other law, a state officer shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office.
- 28) **Section 10** provides that a state officer shall to the best of their ability carry out the duties of the office efficiently and honestly; in a transparent and accountable manner; keep accurate records and documents relating to the functions of the officer and report truthfully on all matters of the organization which they represent.
- 29) **Section 11** requires a state officer to *inter alia* carry out their duties in a manner that maintains public confidence in the integrity of the public office and maintain high standards of performance and professionalism.
- 30) **Section 16** on the provisions of conflict of interest provides among other things that a public officer shall use their best efforts to avoid being in a situation where personal interests conflict or appear with the state officer's official duties.

  
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- 31) On misuse of official information, section 22 states that a state officer shall not directly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether official or otherwise.
- 32) Section 24 on impartiality requires that a state officer shall at all times carry out the duties of the office they hold and objectivity in accordance with articles 10, 27, 73(2) (b) and 232 of the Constitution and shall not *inter alia* practice favouritism or engage in corrupt or unethical practices.
- 33) Section 29 states that a state officer shall not knowingly give false or misleading information to any person.

**3) THE PUBLIC OFFICER ETHICS ACT, NO. 4 OF 2003**

- 34) The Public Officer Ethics Act ("the POEA") was enacted to advance the ethics of public officers by providing for a code of conduct and ethics for public officers and requiring financial declarations from certain public officers and for connected purposes.
- 35) Section 3 of the POEA determines what body is the responsible commission for a public officer for the purposes of POEA. Sub-section 2 provides *inter alia* that the committee of National Assembly shall be responsible for ethics of members is the responsible Commission for the

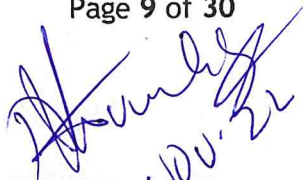
  
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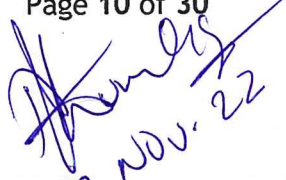
members of the Electoral Commission and the Public Service Commission.

- 36) **Part II of POEA** provides for specific codes of conduct and ethics. **Section 5** provides that each commission shall establish a specific code of conduct and Ethics for the public officers for which it is responsible.
- 37) **Section 7 of POEA** sets out the general code of conduct and Ethics for public Officers.
- 38) **Section 8** provides that a public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.
- 39) **Section 9** on professionalism provides that a public officer shall *inter alia*: a) Carry out his own duties in a way that maintains public confidence in the integrity of his office; treat the public and his fellow public officers with courtesy and respect; to the extent appropriate to his office seek to improve the standards of performance and level of professionalism in his generation; and discharge any professional responsibilities in a professional manner.
- 40) **Section 10** provides that a public officer shall carry out his duties in accordance with the law, and in carrying out the said duties they shall not violate the rights and freedoms of any person under the constitution.

  
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- 41) **Section 12** on public interest provides that a public officer shall use his best efforts to avoid being in a position in which his personal interest conflicts with his official duties. In subsection six (6) the act defines ***personal interest*** to include the interest of a spouse, relatives or business associates.
- 42) **Section 16** provides that a public officer **shall not**, in or in connection with the performance of his duties as such; act as an agent for, or so as to further the interest of a, political party or indicate support for opposition to any political party or candidate in an election. The Section further provides that a public officer shall not engage in political activity that may compromise or be seen to compromise the political neutrality of his office.
- 43) **Section 17** provides that a public officer shall not practice nepotism or **favouritism**.
- 44) **Section 19** provides that a public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.
- 45) **Section 35** of the Act regarding investigations provides that the responsible commission for a public officer may investigate to determine whether the public officer has contravened the code of conduct an ethics. Such commission may refer a matter to another appropriate body or pursuant to a complaint by any person. Further the commission may refer the matter to another appropriate body for

  
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investigation and that body shall investigate the matter within a reasonable time and submit the report to the commission on its findings.

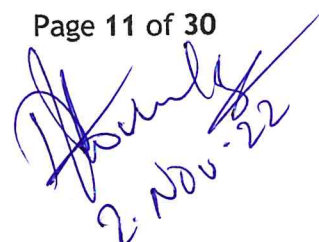
**46)** Section 36 provides that if an investigation discloses that the public officer has contravened the code of conduct and ethics, the responsible Commission shall, within the prescribed time; take appropriate disciplinary action or if responsible commission does not have the power to take the appropriate action, refer the matter to a body or person who does have that power.

**47)** Section 38 of POEA provides that if a result of an investigation under this part, the commission is of the view that the civil or criminal proceedings ought to be considered, the commission shall refer the matter to the Attorney General or other appropriate authority.

**4) THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION, ACT NO. 9 OF 2011**

**48)** The IEBC Act, is established to make provision for the appointment and effective operation of the IEBC as established by Article 88 of the Constitution. At Section 4, the IEBC Act sets out the functions of the commission similar with the functions set out in Article 88 of the Constitution.

**49)** The IEBC Act at section 9 requires that all members of the IEBC and including the Chairperson to take and subscribe to the oath of office

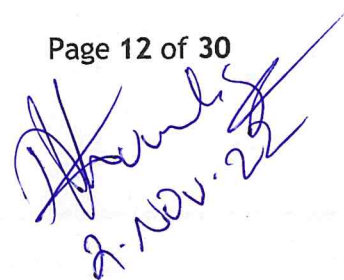
  
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and affirmation before assuming office. The relevant part of the oath states that

***“... I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my ability, discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour bias, affection, ill-will or prejudice”***

- 50) Section 26 of the IEBC Act affirms the independence of the IEBC. It provides that the IEBC shall in the performance of its functions, not be subject to control or any person or authority but shall observe the principle of participation and the requirement for the consultation with stakeholders.
- 51) Section 30 of the IEBC Act provides that a member of the commission who knowingly subverts the process of free and fair elections or who knowingly obstructs the commission in the discharge of its functions or otherwise interferes with the functions of the commission commits an offence and is liable to a term of imprisonment not exceeding three years or to a fine of not more than one million shillings or to both. Additionally, a person so convicted shall not be eligible to hold public office for a period of ten years following the conviction.

  
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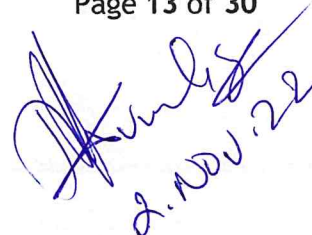
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**5) FACTUM OF THE PETITION**

52) The Constitution of Kenya, 2010 provides that general elections of Members of Parliament (Article 101), the President (Article 136(2)(2), the Members of County Assembly (Article 177(a) and Governor (Article), shall be held on the second Tuesday in August in every fifth year. The Constitution of Kenya bestows upon the IEBC the duty to conduct the general elections. The Constitutional framework is reinforced by an array of legislation whose objective is to guarantee fairness, credibility and legitimacy of the electoral process.

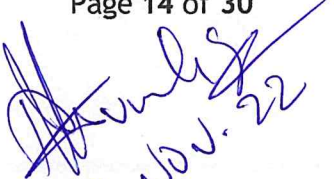
53) Early in the year 2022, the IEBC commenced the preparations of Kenya's 2022 general elections. The IEBC held pressers and issued press statements in connection and by way of updates on the general elections. The statements of the IEBC were conducted mostly in the presence of all the members of the commission.

54) The preparations for the general elections was completed and the general elections were held on the **9<sup>th</sup> of August 2022**. The general elections in some parts of the Country were held and completed on the same day of 9<sup>th</sup> August, 2022 and the Commission through its various agents proceeded with the process of verification and tallying in the various polling stations. For the election of MCA, MP, and Governor, the elections were announced on the same day while others delayed to later dates.

  
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- 55) The Elections for the President were tallied at the polling stations on the same day of the elections and were transmitted to the National Tallying Center (NTC) for verification and tallying. All the members of the Commission were present at the NTC and took part in the tallying and verification of the presidential votes cast. This is in accordance with the responsibility placed on the Commission collectively under Article 138 (3) (c) of the Constitution.
- 56) During the tallying and verification of the results for the election of the President, all the commissioners actively participated in the verification of the results at the NTC. In fact, they took turns in announcing the results as verified and tallied, and were present and active during the actual verification at the NTC.
- 57) The verification and tallying process continued without any hitch until the 15<sup>th</sup> August 2022 when the elections results for the election of the President were expected to be announced. On 15<sup>th</sup> August, between 3pm and 5pm, at the NTC where the results of the President were to be announced, violence broke out but were immediately quelled by the security forces present.
- 58) Just before the Chairperson of the IEBC could declare the presidential election results pursuant to **Article 138 (10)** the Constitution, Four Commissioners of the IEBC **Juliana Cherera** (Vice Chair of IEBC), **Irene Masit**, **Francis Wanderi**, and **Justus Nyang'aya** held a presser at Serena Hotel, Nairobi announcing their rejection of

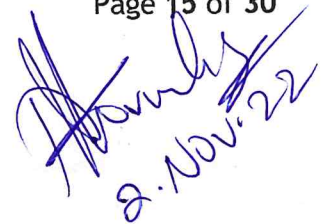
  
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the yet to be announced results on the grounds that they were opaque due to the manner the Chairperson of IEBC had been conducting the verification and tallying exercise.

- 59) The four commissioners complained that they were excluded from the tallying and verification process of the presidential elections at the NTC. They also complained that they had been assigned peripheral roles that were not connected to the tallying and verification process.
- 60) The walk-out of the four commissioners from the NTC and the various press statements casted doubt on the credibility of the results of the General elections, despite having been present at the NTC for the verification and tallying of the presidential results. They did not offer explanation as to why they had, in the first place, been part of the process of the verification and tallying of the presidential results if they knew it was opaque and despite having admitted that the elections had been managed efficiently and credibly.
- 61) The Petitioners in the 2022 Presidential Election Petition anchored their Petitions on the pressers by the four Commissioners of IEBC at Serena. The Supreme Court held that:
- “[242] But are we to nullify an election on the basis of a last-minute boardroom rupture (the details of which remain scanty and contradictory) between the Chairperson of the Commission and some of its members? In the absence of any evidence of violation of the Constitution and our electoral laws, how can we***

  
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*upset an election in which the people have participated without hindrance, as they made their political choices pursuant to Article 38 of the Constitution? To do so, would be tantamount to subjecting the sovereign will of the Kenyan people to the quorum antics of IEBC. It would set a dangerous precedent on the basis of which, the fate of a Presidential Election, would precariously depend on a majority vote of IEBC Commissioners. This we cannot do. Clearly the current dysfunctionality at the P. E. P No. E005 OF 2022 (Consolidated with) P. E. P Nos. E001, E002, E003, E004, E007 & E008 OF 2022 Page 104 of 133 Commission impugns the state of its corporate governance but did not affect the conduct of the election itself.”*

- 62) The press statements by the four commissioners had the following effects: -
- a) It called into question the credibility of the entire elections held;
  - b) It formed the main basis of the Presidential petitions filed by the Petitioners in *P. E. P No. E005 OF 2022 (Consolidated with) P. E. P Nos. E001, E002, E003, E004, E007 & E008 OF 2022 (hereinafter “P. E. P No. E005 OF 2022”); and*
  - c) Due to the closely contested elections, the pressers by the four commissioners reasonably inflamed the violence at the NTC, unrest around the Country and a threat to the peace and security of the country.

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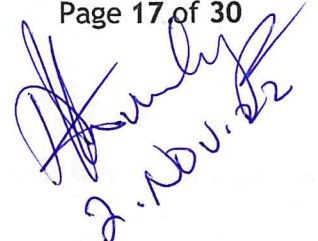
63) The Supreme Court in considering the evidence presented to it during the Hearing of the consolidated presidential election petition, 2022 found that:

- i) All the four commissioners were involved in the activities relating to the processing of results;
- ii) The four commissioners did not controvert the evidence that they announced results from several constituencies upon them being verified and tallied; and
- iii) The four commissioners actively participated in the verification and tallying exercise from beginning, up to and until just before the declaration of the results by the chairperson.

64) It is paramount for the National Assembly to consider the averments of the Chairperson in his Affidavit in response to the consolidated election petition. Importantly, it is also worth noting that the Supreme Court could not make a finding and/or any determination on the conduct of the four commissioners because of the jurisdictional limit under Article 140 of the constitution.

65) The Chairperson stated in his Affidavit in response to the Presidential Election Petitions, sworn on and dated 26<sup>th</sup> August 2022 stated as follows;

- a. THAT at about 3am on the morning of 15<sup>th</sup> August, 2022, I was visited by Hon. Raphael Tuju, Senator Amos Wako and Advocate Kyalo Mbohu.*

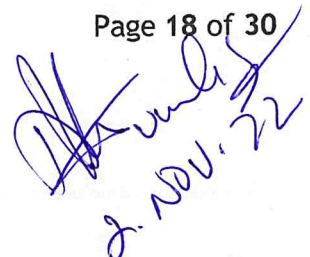
  
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*They indicated that they had made several attempts to see me to discuss the tallying and results. I told them that I could only meet them in the presence of all Commissioners.*

- b. THAT shortly after, all the Commissioners joined us and Senator Wako was the first to speak. His message was that the Commission should not operate in a vacuum and that it must consider the link between the election results to be declared and stability of the country which he described to be the bigger picture. He proceeded to indicate that in his tenure as Attorney General he was the election supervisor and would moderate results guided by the need to achieve law and stability.*
- c. THAT Hon. Raphael Tuju spoke after Senator Wako. He indicated that it was necessary for the results to be 'moderated in favour of baba' and that any contrary declaration of results would 'plunge the country into chaos'. As an alternative, he suggested that in the event that it was not possible to declare 'baba' as the President- Elect, then the Commission should force a run-off. For this, he indicated that should his request be granted it would be adequately rewarded.*
- d. THAT Mr. Kyalo Mbobu did not make any remarks at the meeting.*
- e. THAT having heard the sentiments of Hon. Tuju and Senator Wako, I invited the Commissioners to comment. Commissioners Juliana*

  
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Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi agreed with the remarks of both Senator Wako and Hon. Tuju. On the other hand, Commissioner Prof. Abdi Guliye took the view that they did not even know the result by then and that the issue could not fall for discussion, a view that was shared by Commissioner Molu and the CEO. On my part, I took the firm view that I will respect the will of the people and announce the results as per the final tally from all the polling stations. As regards the incentive, I was categorical that I am adequately remunerated and do not want anything from anyone. Prof. Guliye and Commissioner Molu supported this view. The team left after about an hour.

- f. THAT on the same morning, at about 10am I was informed by Commissioner Prof. Guliye that a team from the National Security Advisory Committee ("NSAC") had arrived at the tallying center and wanted to meet me. I later learnt that they had arrived and gone to the office of the Deputy Inspector General of Police, Mr. Noor Gabow who in turn relayed the message to Commissioner Prof. Guliye.
- g. THAT the arrival of the NSAC delegation was preceded by a call from the Head of Public Service informing me that he had sent a team that would like to discuss 'assumption of office'.
- h. I was still engaged in my duties as Returning Officer and was unable to meet them immediately due to ongoing engagements that had to be completed within the limited time available. I indicated that I would

  
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*only be able to meet them alongside the other Commissioners at 2pm when a commission meeting had been scheduled.*

- i. THAT shortly after 2pm, the Commissioners and I had a meeting to be briefed on the final results by the Commission Secretary/ CEO and alternate leader of the tallying center. The briefing was to be done before my declaration in accordance with Article 138(10) of the Constitution. Since the NSAC delegation had already been ushered in, we proceeded to listen to their message first.*
- j. THAT the meeting with the NSAC delegation started with a round of introductions. The delegation was led by Mr. Kennedy Kihara (Principal Administrative Secretary at the Office of the President). The other participants were Mr. Kennedy Ogeto (Solicitor General); Mr. Hillary Mutyambai (Inspector General of Police); and Lieutenant General Francis Omondi Ogolla (Vice Chief of Defence Forces).*
- k. THAT after introductions, Mr. Kennedy Kihara reiterated that the team was visiting on behalf of the entire NSAC and that the composition of the members in attendance had been deliberately chosen considering the magnitude of the message to be passed to us.*
- l. THAT after drawing our attention to their level and rank, Mr. Kennedy Kihara proceeded to relay the message. The message was that if I declared the final election results with Hon. William Samoei Ruto as the President-Elect,' the country is going to burn. He proceeded to indicate that skirmishes between the Kikuyu and Luo communities had*

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*already started in several slums including Kibera and Mathare' on the basis of alleged 'betrayal by the Kikuyus'.*

- m. THAT Mr. Kihara proceeded to caution that if we proceeded with declaration of the results with Hon. Ruto as the President-Elect and chaos erupts, 'then the blood of the dead Kenyans' will be on our hands, and that the seven of us (Commissioners) will be held responsible.*
- n. THAT the second part of the message from the NSAC delegation was that if we cannot announce Hon. Raila Amolo Odinga as the outright winner, then we must ensure that there is a run-off.*
- o. THAT only Mr. Kennedy Kihara spoke at the meeting and as he concluded his remarks, he indicated that they wanted from us a message that they could take back to the National Security Advisory Committee.*
- p. THAT after Mr. Kihara concluded his remarks, I invited my colleagues, the Commissioners to share their views. Commissioners Nyang'aya, Masit, Wanderi and Vice Chairperson Cherera were first to comment and said that the message warrants serious consideration and that they supported adoption of the communication by the NSAC 'before taking a decision as to the results to be announced'.*
- q. THAT after the remarks of the first four Commissioners, Commissioner Prof. Guliye weighed in and his view was that the Commission has a*

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*constitutional mandate and that in declaring the results it will be guided by the same constitution and applicable law. He nonetheless indicated that we had heard them, Commissioner Molu expressed the position that he will support the declaration of verified results by the Returning Officer of the presidential election.*

- r. THAT after the NSAC team had left, the Commission Secretary/Chief Executive Officer who was also the alternate team leader of the tallying centre, Marjan Hussein Marjan walked into the boardroom. The purpose of the meeting was to receive final tally of the results of the presidential election before I could proceed to declare.*
- s. THAT copies of the results were handed to all Commissioners. A debate ensued. Four Commissioners (Vice Chair Juliana Cherera and Commissioners Justus Nyang'aya, Irene Masit and Francis Wanderi) protested and insisted that the results should be changed in the light of the NSAC delegation's communication.*
- t. THAT Commissioners Masit and Wanderi were of the view that the results should be pushed towards a re-run, which in their view would be a win-win situation. Commissioner Prof. Guliye questioned how that would be done, to which Vice Chair Cherera suggested that the margin is not too big and could be manipulated by moving 233,211 votes from Hon. Ruto to rejected ballots category. From my observation of the position taken by Commissioners Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi, it appeared that they had a*

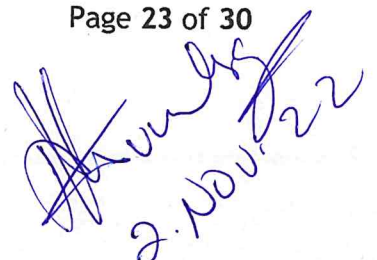




**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF  
FOUR IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

*prearranged consensus towards altering the results. Commissioners Prof. Guliye and Molu insisted that the Commission should act strictly in accordance with the Constitution and the law.*

- 66) Additionally, the press statement by the Chief Agent of Azimio la Umoja One Kenya and the one issued by the Vice Chair of IEBC (Juliana Cherera) in the presence of the other three commissioners minutes apart on 15<sup>th</sup> August 2022, was strikingly similar. Additionally, the presser issued by the Presidential candidate of the Azimio la Umoja One Kenya on 16th August 2022, was strikingly similar with the one issued by the Four Commissioners of IEBC on the same day.
- 67) From the above, it is clear that the four commissioners acted in concert with one faction of the presidential candidates and/or their agents and that they had a prearranged, well-coordinated and deliberate efforts to subvert the will of the people.
- 68) In view of the foregoing, the Petitioners pray that the National Assembly do look attentively and carefully consider the background facts given above by the Petitioners towards the removal of the four commissioners of IEBC, and make a finding that the four commissioners committed serious violations of the Constitution, the IEBC Act, and the Leadership and Integrity Act, Public Officer Ethics Act; and their conduct in the performance of their duties as commissioners in the 2022 presidential elections demonstrates amounted to serious violation of the Constitution, gross misconduct and incompetence.

  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR  
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**6) GROUNDS FOR THE REMOVAL OF THE COMMISSIONERS**

**1) Serious violations of the Constitution and the law**

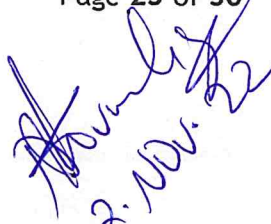
- a) The commissioners demonstrated partiality and biased conduct by agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run-off contrary to: Articles 10, 73 (2) (b) (c), 75, 138, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- b) By agreeing to the incentives and giving in to the proposal by the NSAC to alter the results of the presidential election, the commissioners committed serious violations of the constitution contrary to: Articles 10, 73 (2) (b) (c), 75, 138, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- c) By disowning the results of the 2022 presidential elections which the commissioners had participated in the verification and tallying, the commissioners committed serious violations of the constitution contrary to: Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act;

  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF  
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Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

- d) By accepting the proposal to alter the results of the election to subvert the will of the people of Kenya, the commissioners committed serious violations of the Constitution contrary to: Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- e) By issuing press statements, with close semblance with the press statements by Azimio la umoja one Kenya presidential candidate, the Commissioners committed serious violations of the Constitution contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- f) By failing to follow the well set out guidelines for the verification, tallying and announcement of the presidential elections, the commissioners committed serious violations of the Constitution contrary to: Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity

  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR  
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Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

**2) Gross misconduct**

- a. By concurring to support the unlawful attempt to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run off, the commissioners committed gross misconduct contrary to section Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- b. By acting in liaison with one faction of presidential elections, the commissioners committed gross violation of the constitution and the law contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- c. By refusing to follow the well set-out guidelines for the verification and tallying announcement of the presidential elections, the commissioners committed gross misconduct contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11,

  
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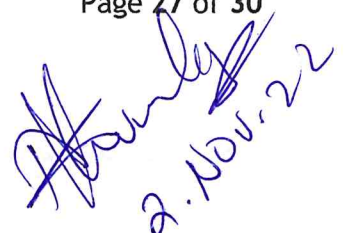
**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF  
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16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

- d. By swearing affidavits in support of petitions challenging the presidential elections, the commissioners committed gross misconduct contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

**3) Incompetence**

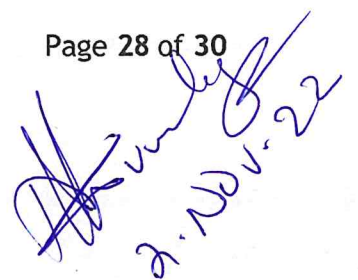
- a. By agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run off, the commissioners demonstrated incompetence contrary to Articles 10, 73 (2) (b) (c), 75, 138 (10) (a), 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- b. By failing to follow the set-out guidelines for the verification and tallying announcement of the presidential elections, the commissioners demonstrated incompetence contrary to Articles 10, 73 (2) (b) (c), 75, 138 (10) (a), 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8,

  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR  
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9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

- c. By swearing affidavits in support of petitions challenging the presidential elections, the commissioners demonstrated incompetence contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- e. By disowning the results of the 2022 presidential elections the commissioners demonstrated gross incompetence contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.
- f. By convening and attending meeting purportedly to discuss and appoint counsels to represent the commission in the presidential election petitions, the commissioners demonstrated gross incompetence contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF  
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- g. By attempting to appoint counsels to represent the commission in the presidential election petitions, the commissioners demonstrated incompetence Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the IEBC Act; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act.

**PRAYERS**

- 69) Based on the foregoing, we pray that;
- (a) The Petition be admitted and considered by the National Assembly;
- (b) The National Assembly be satisfied that the petition discloses sufficient grounds for removal of Commissioners **Juliana Cherera (Vice Chair), Irene Masit, Francis Wanderi, and Justus Nyang'aya** of the IEBC under Article 251(1) of the Constitution of Kenya; and
- (c) The National Assembly upon making a finding under (b) above, be pleased to send the Petition to the President for further action.

Name of the Petitioner	Full Address	National ID OR Passport No.	Signature/ Thumb Impression
Rev. Dennis Nthumbi		14882805	
	60024-00200		
	Nairobi		

2/Nov/2022

*[Signature]*  
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**PETITION TO NATIONAL ASSEMBLY OF KENYA FOR THE REMOVAL OF FOUR  
IEBC COMMISSIONERS UNDER THE CONSTITUTION.**

**CC:**

**THE SPEAKER OF NATIONAL ASSEMBLY,**

**HON. MOSES MASIKA WETANGULA**

**P.O. BOX 41842-00100,**

**NAIROBI.**



2/NOV. 2022



**REPUBLIC OF KENYA**  
**IN THE MATTER OF OATHS AND STATUTORY DECLARATION ACT,**  
**CAP. 15 LAWS OF KENYA.**

**AND**

**IN THE MATTER OF PETITION TO THE NATIONAL ASSEMBLY**  
**UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA**  
**2010;**

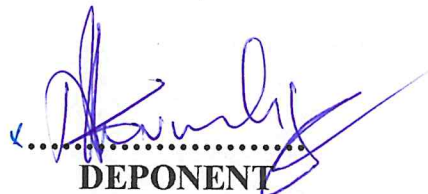
**PETITION TO PARLIAMENT AND STANDING ORDERS 219 AND 223**  
**OF THE NATIONAL ASSEMBLY**

**AN AFFIDAVIT**

I, **DENNIS NDWIGA NTHUMBI**, of Post Office Box Number 60024-00200 Nairobi, within the Republic of Kenya do make oath and state as follows;

1. **THAT** I am an adult male of sound mind holder of National Identity Card No. 14582805 and therefore competent to swear this affidavit.
2. **THAT** I am the author and originator of the contents of the document presented herein as the Petition to the National Assembly.
3. **THAT** I am fully aware of the contents in the said document and take full responsibility to answer any questions and clarifications if need be.
4. **THAT** I present a copy of the said document as an annexure herein.
5. **THAT** I swear this affidavit in support of the above stated.
6. **THAT** the facts deponed to herein are true to the best of my knowledge, information and belief.

**SWORN at NAIROBI**  
by the said  
**DENNIS NDWIGA NTHUMBI**  
This 2<sup>ND</sup> day of NOVEMBER 2022.

  
.....  
**DEPONENT**

**BEFORE ME**  
**ADVOCATE &**  
**COMMISSIONER FOR OATHS**

**DRAWN BY**  
**M.M. MURIUKI & CO. ADVOCATES**  
**OLYMPIC HOUSE**  
**P.O. BOX 60024-00200**  
**NAIROBI.**



P  
NO  
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~~DEPS~~  
DLS

Please review and  
advise. *[Signature]*

14/09/22



National Assembly of Kenya

C/O The Clerk Kenya National Assembly

Parliament Buildings

P.O Box 41842 - 00100, Nairobi, Kenya

**PETITION ON THE REMOVAL OF FOUR MEMBERS OF INDEPENDENT  
ELECTORAL AND BOUNDARIES COMMISSION-IRENE MASIT, JULIANA  
CHERERE, FRANCIS WANDERI AND JULIUS NYANGAYA-PERSUANT TO  
ARTICLE 251 OF THE CONSTITUTION OF KENYA**

I, **Geoffrey Langat**, an Advocate of the High court of Kenya and as informed by the provisions of Article 251 of the constitution of Kenya hereby draw the attention of parliament to the following:

1. The Constitution of Kenya at Article 1 provides that all sovereign power belongs to the People of Kenya and that power may be exercised directly or indirectly through elected representatives.
2. The Constitution of Kenya at Article 2 provides that the constitution binds all persons and state organs at both levels of government.
3. On the 15<sup>th</sup> day of August 2022, Kenyans witnessed a debacle where, Independent Electoral and Boundaries Commissioners (IEBC) JULIANA CHERERE, FRANCIS WANDERI, IRENE MASIT and JULIUS NYANGAYA, (*the four commissioners*) issued a press statement at serena hotel to the extent that the result to be announced by the chairperson of the commission were not handled according to the law, terming the result to be declared by the chairperson of the commission as opaque.
4. On the 16<sup>th</sup> of August 2022, the four commissioners called a further press statement effectively disowning the result and gave their reasons stating mathematical figures which were factually incongruent and erroneous. The same made a lot of buzz on social media platforms, trending on twitter and exposed the level of incompetence of the whole team.

Page 1 of 5

*Petition on the Removal of four Members of Independent Electoral and Boundaries Commission-Irene Masit, Juliana Cherere, Francis Wanderi and Julius Nyangaya- Pursuant to Article 251 of The Constitution of Kenya*

*M. Duma Duma - Phc*  
*Please assign a*

*Ms. Brigitta Muri L.C*  
*Kindly process and advise CNA*



5. On the same day, almost immediately after the four Commissioners issued a presser, nearly a replica of their statement was issued by the Azimio La umoja-One Kenya Coalition Party (*Azimio La Umoja*) candidate, Raila Odinga at KICC.
6. On 17<sup>th</sup> day of August 2022, the chairperson of the Commission issued a statement detailing the events leading to the declaration of the result and clearly stated that the four commissioners were pushing for moderation of result to force a run off of the presidential elections.
7. Azimo La umoja Presidential candidate RAILA ODINGA together with other petitioners filed a petition challenging the declaration of the presidential election result declared by the Commission's Chairperson.
8. The four commissioners and entered appearance and responded to the petition in support of the petitioners.
9. The four commissioners while responding to the petition, made far reaching statements under oath which were finally dismissed by the supreme court.
10. The four commissioners appointed a law firm to act for the commission against the procurement laws and regulations purporting to be the commission's decision.
11. Commissioner JULIS NYANGAYA in his capacity as chair of ICT committee accessed and supplied RTS logs in support of the petition contrary to his oath of office and the law.
12. The response to the petition by the chairperson of the commission detailed the events leading to declaration of result on the 15<sup>TH</sup> of August 2022.
13. The Chairperson, in his response made revelations that he was visited by Mr. RAPHAEL TUJU and former AG. AMOS WAKO and later some members of National Security Advisory Committee (NSAC) and demanded for moderation of the result to either declare AZIMIO La Umoja presidential candidate Raila Odinga as president Elect or cause a re-run.
14. The foregoing is a clear pointer of attempts and maneuvers to tamper with the final presidential election result contrary to the law and the constitution.
15. The revelation under oath by the chairperson of the commission that the four commissioners were agreeable to moderation of the result, proposed and pushed by the two group of visitors is clearly showing a nexus between the serena media presser and the KICC media presser.
16. The NSAC does not have any legal authority to advise the IEBC on security issues at any given time, but only complementary role to ensure safety and security of the commission members, the election process and during the election period.



17. Mr. RAPHAEL TUJU is the Executive Director of Azimio La Umoja-One Kenya Coalition Party and RAILA ODINGA being the Coalition's candidate in the recently concluded presidential election of 9<sup>th</sup> August 2022 is a clear pointer of collusion between the four commissioners and AZIMIO LA UMOJA -ONE KENYA COALITION PARTY, Party leaders and or its agents. The conduct of the four commissioners, in this regard is contrary to the code of conduct of the members of the commission.
18. In the petition, the Azimio la Umoja candidate's contention was against the IEBC declared results citing irregularities and violation of the law by IEBC and its chairperson.
19. The Four commissioners filed replying affidavits in support of the petition and argued fully against the chairperson and IEBC.
20. The actions and conduct of the four commissioners were a confirmation of the existence of a cosy and flourishing relationship with the Azimio La Umoja-One Kenya Coalition Party and/or its agents. The same is contrary section 26 and 30 of Independent Electoral and Boundaries Commission Act ,2011.
21. Their actions were a violation of their oath office. They swore to uphold the constitution and the law.
22. Their manifest partiality and attempt to subvert the will of the people was a threat to National Security, peace and order.
23. The press statement issued by the Four Commissioners and the resulting chaos at the bomas of Kenya Tallying center clearly shows a connection.
24. The four commissioners were individually and collectively acting as an agent to the Azimio La Umoja-One Kenya Coalition Party and its associates within the commission. The same is contrary to section 30 of Independent Electoral and Boundaries Commission Act ,2011.
25. Despite the four commissioners supporting the petition at the supreme court, the court on 5<sup>th</sup> of September upheld the decision of the declaration of the president elect as within the constitution and law.
26. Upon the court decision being made, the four commissioners did not accompany the chairperson while issuing a statement on the 5<sup>th</sup> of September but issued a separate statement signed by all of them.
27. The conduct of the four commissioners depicts a divided commission which according to their averments is dysfunctional. It is paradoxical to make such a



claim yet they were proxies of external forces to foment division within the commission.

28. The three commissioners, WAFULA CHEBUKATI, BOYU MOLU and ABDI GULIYE will have served their six years in office by end of January 2023 thus leaving the four commissioners in office.
29. The structure and composition of the commission will be dented if left to the four commissioners: indeed, it is unimaginable how the commission will be run by renegade commissioners who took side with the petitioners in the 2022 supreme court petition.
30. How will the four commissioners work with the secretariat which they could not agree on tallied and verified results, appointment of law firm to represent the commission in court and many other issues which are in public domain?
31. The four commissioners violated the principles of chapter six of the constitution and hence unacceptable to have Commissioners who are in office and their actions are contrary to the expectations of the constitution.
32. The independence of the commission is cardinal in running the affairs of the commission. The four commissioners defiled the principles of neutrality contrary to Article 81 (e) (v) of the constitution. They were openly working with one party in the 2022 election and thus openly biased.
33. It is untannable to have commissioners who contravened the law and constitution which they swore to abide to remain in office.
34. The conduct of working in cohort with others to form government against the constitutional provision of Article 3(2) is unacceptable in an open and democratic society.
35. The heinous act of attacking the chairperson and other commissioners, at bomas national tallying center while in in full glare of the public media was meant to create national disharmony and violence. The end results would be post-election violence with severe consequences.
36. The actions of the four commissioners AMOUNT to total insubordination of the commission contrary to section 30 of Independent Electoral and Boundaries Commission Act, 2011.
37. Several calls have been made for the commissioner to resign but have not resigned and in respect in which this petition is made and pray that the matter be placed before the relevant house committee and or as you may deem it fit.



38. The subject matter herein and the issues of which this petition is made are not pending before any court of law, or constitutional or legal body.

**Hereof** your humble petitioner prays that the national assembly and due to the urgency of the matter take the necessary steps as per article 251 (3) on removal of commissioners and grant the following prayers.

- A. To find that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA, have committed serious violations of the constitution and the law, including contravention of chapter six of the constitution of Kenya.
- B. To find that that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA are guilty of gross misconduct while performing their duties as members of the commission.
- C. To find that Independent Electoral and Boundaries commission commissioners, IRENE MASIT, JULIANA CHERERE, FRANCIS WANDERI and JULIUS NYANGAYA are incompetent to hold the office of commissioners.

And your petitioner will ever pray

**PETITIONED AND DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF SEPTEMBER 2022**

GEOFFREY LANGAT    ID NO 25154044    P.O BOX 26903-00100 NAIROBI

Signed.....



TO;

The Clerk of the National Assembly,  
National Assembly of the Republic of Kenya  
Parliament Buildings  
P.O. Box 41842-00100  
NAIROBI.

DLs (NO 4)  
To review and  
advise.  
20/09/22

**PETITION TO PARLIAMENT UNDER ARTICLE 251(1) OF THE CONSTITUTION OF KENYA, 2010 AND STANDING ORDER NUMBER 230 OF THE NATIONAL ASSEMBLY STANDING ORDERS ON THE REMOVAL OF A MEMBERS OF INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.**

I, the undersigned,

Bona fide citizen of the Republic of Kenya;

**DRAWS the attention of the Honourable House to the following:-**

1. On the 2<sup>nd</sup> day of September, 2021, **Juliana Cherera, Francis Mathenge, Irene Masit** and **Justus Abonyo** hereinafter referred to as "**the four Commissioners**" took oath of office as Commissioners of the Independent Electoral and Boundaries Commission (IEBC).
2. By dint of the oath of office the four Commissioners took on the aforementioned date, the four Commissioners were required and expected to perform their functions competently and diligently and jealously defend and guard the Constitution.
3. Upon taking oath of office, the four Commissioners did participate and took part in the 9<sup>th</sup> August, 2022 General Elections preparedness to wit voter registration, voter education, procurement and logistical arrangements as well as nomination of candidates for various elective positions.
4. At the conclusion of the voting exercise, IEBC including the four Commissioners actively took part in the counting, collation, tabulation, verification and tallying of the votes cast on the 9<sup>th</sup> day of August, 2022. For instance, Commissioner Juliana Cherera announced to the Nation at the IEBC National Tallying Center (NTC) in Bomas the presidential election results tabulated in Form 34B from Juja Constituency. Her counterpart Mr.

***Petition for the removal of Members of a constitutional Commission under Article 251 of the Constitution of Kenya, 2010***

Mr Dennis Abisai DLS

Please assign counsel  
Sympson # 26/9/2022





Francis Mathenge on the other hand took his turn to the podium and announced the results from Funyula Constituency, Busia County.

5. On the 15<sup>th</sup> day of September, 2022 after **six (6) days** of rigorous exercise of verification and tallying of the votes, just before the Chairperson of the Commission could declare the presidential election results, the four commissioners walked out of the NTC in revolt to hold a press conference at Serena Hotel wherein they stated that the results that the Chairperson was about to announce and which they had actively participated in verifying, collating and tallying were **opaque** and as a result they could not take ownership of the said results.
6. On the 16<sup>th</sup> day of September, 2022, the four Commissioners released a detailed statement on their ILLOGICAL reasons for disowning the results that were declared by the Chairperson of the IEBC as follows:-
  - i. **THAT** the results as declared by the Chairperson of the IEBC did not take into account the registered number of voters and rejected votes;
  - ii. **THAT** the aggregate of the percentile received by the four presidential candidates exceeded 100% by 0.01 ergo constituted a mathematical absurdity; and
  - iii. **THAT** the declaration that President Dr. William Ruto received 25% of the total votes cast in 39 counties and former Prime Minister Rt. Honourable Raila Odinga attainment of 25% of the votes cast in 34 counties was not based on any independent variables to warrant the declaration of the results as was declared by the Chairperson of the IEBC.
7. **IN ADDITION AND WITHOUT PREJUDICE TO THE FOREGOING**, the appointment of Commissioner Irene Masit was in violation of the Constitution for the reason that at the time of her appointment as a Commissioner for the IEBC, five years had not lapsed from the time she contested for the elective position of Member of Parliament.
8. **Honourable Members of the 14<sup>th</sup> August House**, the totality of the surmise of the conduct of the four Commissioners in light of the above leads to an



inevitable conclusion of serious violation of the Constitution, incompetence and gross misconduct in the performance and discharge of the duties of the office bearer of an independent constitutional office as we lay down bare herein below:-

9. **Article 81 of the Constitution of Kenya, 2010** behooved the four Commissioners to be independent, impartial, neutral and accurate in conducting and managing the 2022 general elections.
10. Additionally, the said Article at **81(e) (ii)** further mandated and obligated the four Commissioners to conduct a free and fair election which is free from violence, intimidation, **improper influence** or corruption.
11. **Articles 2 & 3 of the Constitution** restates the supremacy of the Constitution and binds **all persons** including the four Commissioners to protect, uphold and defend the Constitution.
12. **Article 10 of the Constitution** establishes the rule of law and good governance as infallible principles of governance. These principles are reflected in many parts of the constitution including **Article 2** above which provides that 'any law **or action** that is in contravention of the constitution is void to the extent of the inconsistency and contravention.'
13. The rule of law and good governance principles requires that every state organ or state officer/public officer acts only within the powers conferred upon them by and in accordance with the Constitution. But the Principles also requires every state organ/officers to discharge a legal obligation required of them by the Constitution or any other law. Crucially, the rule of law requires state and public officers **to act in accordance with the law, including and without equivocation, good governance, integrity, transparency and accountability.**
14. The rule of law is instructive that **any action undertaken by a state/public officer should be based strictly on the Constitution and the law.** Even where a public/state officer undertakes an action on the premise of a discretion, that discretion has to be exercised in strict adherence to the principles of the rule of law and good governance.



15. Specifically, the four Commissioners are required to discharge the functions of the holder of an independent constitutional commission under **Article 251(1) of the Constitution of Kenya, 2010** *inter alia* with utmost competence, strict adherence to the Constitution devoid of any gross misconduct and violation of the Constitution including contravention of Chapter Six on integrity and leadership.
16. **Article 88(2)(i) of the Constitution** abhors and prohibits a person from holding the position of a Commissioner of the Commission if that person has, in the past five years, preceding his/her appointment as a Commissioner of the Commission held office or stood for election as a member of Parliament or of a county assembly.

**PARTICULARS OF VIOLATION OF THE CONSTITUTION, GROSS MISCONDUCT AND INCOMPETENCE OF THE FOUR COMMISSIONERS.**

17. **TO THE EXTENT THAT** the our Commissioners staged a dramatic revolt at the eleventh and a half hour on the presidential election results of an election they participated in managing from its incept, supervising and overseeing on reasons advanced by them in their press statements of 15<sup>th</sup> and 16<sup>th</sup> August, 2022, the four Commissioners acted in total violation of the Constitutional rule of law and good governance principles enunciated under **ARTICLE 10(2) OF THE CONSTITUTION** which by and at large constitute a serious violation of the Constitution as well as gross misconduct.
18. **TO THE EXTENT THAT** that the four commissioners' dramatic revolt on the election results that they had themselves generated through the rigorous verification, collation, tallying and tabulation, the four commissioners' individual and collective conduct amounted to a constitutional coup in violation of the provisions of **ARTICLE 3(2) OF THE CONSTITUTION.**
19. **TO THE EXTENT THAT** Commissioner Irene Masit was appointed as a commissioner to the Commission having stood for election in 2017, being within **FIVE** years preceding her appointment as a Commissioner for IEBC, Irene Masit's appointment as an IEBC Commissioner was unlawful,



unconstitutional and illegal for being in gross violation of **Article 88(2) of the Constitution of Kenya, 2010.**

20. **TO THE EXTENT THAT** the four Commissioners reckoned that the results as were announced were opaque because of the Chairperson's failure to include the rejected votes in the computation of the constitutional threshold of 50% + 1 posited under **Article 138(4)(a) of the Constitution of Kenya, 2010** despite the Supreme Court's pronouncement on the issue in the case of **Raila Odinga & 5 Others –v- Independent Electoral and Boundaries Commission & 4 Others (Petition 5,3 & 4 of 2013 (Consolidated) [2013] KESC 6 (KLR)** that a rejected vote/ballot is not a valid vote/ballot, the four Commissioners' conduct demonstrated utter incompetence and gross misconduct in the performance of the duties of their office.
21. **TO THE EXTENT THAT** the four Commissioners' conduct by way of their pleadings and submissions, both oral and written, at the hearing of the Presidential Election Petitions before the Supreme Court amounted to a petition to the Supreme Court for the nullification of the results of an election that they actively participated in managing, supervising and conducting, the four Commissioners' conduct amounted to concerted external efforts, partisan in nature, to ensure that no declaration of results could be made, the said conduct of the four commissioners amounted to gross misconduct and violation of the Constitution contra **Article 81(e)(ii), (iii), (iv) & (v) of the Constitution of Kenya, 2010.**
22. The particulars set forth hereinabove out rightly reveals serious violation of the Constitution, gross misconduct and utter incompetence by the four Commissioners.

**THEREFORE, the Petitioners reverently pray as follows:-**

- a) That this Petition be certified as urgent and dispensed with in the first instance;
- b) That the Honourable House proceed to debate on this petition and consider it fair and justly on its merits and thereafter urgently vote on it;



- c) That depending on the outcome of the vote of the Honourable House on (b) above, this Petition be urgently transmitted to the President for the appointment of a Tribunal to investigate the conducts of and violations committed by the four Commissioners complained of in this Petition.

PETITIONED and DATED at NAIROBI this <sup>19<sup>th</sup></sup> day of September 2022

NAME OF PETITIONER	FULL ADDRESS	NATIONAL IDENTIFICATION NO./PASSPORT	SIGNATURE
OWUOR STEVE GERRY	5 <sup>TH</sup> AVENUE OFFICE SUITES, 5 <sup>TH</sup> NGONG AVENUE, 6 <sup>TH</sup> FLOOR SUITE NO. 15  TEL.: 0720102393  Email: gerrydebby95@gmail.com	32487760	