REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIRST SESSION – 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

.....

REPORT ON THE PETITIONS FOR THE REMOVAL FROM OFFICE OF JULIANA CHERERA; IRENE MASIT; JUSTUS NYANG'AYA; AND FRANCIS WANDERI AS COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC).

(VOLUME II)
ANNEXURES

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'IRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
AIROBI

DECEMBER 2022

THE NATIONAL ASSEMBLY
RECEIVED
DATE: 01 DEC 2022
THURSDAY
CHAIR, DC-JUSTICE & LEGAL AFFAIRS
HON. GEORGE MURUGARA, MP
Benson Inzofu

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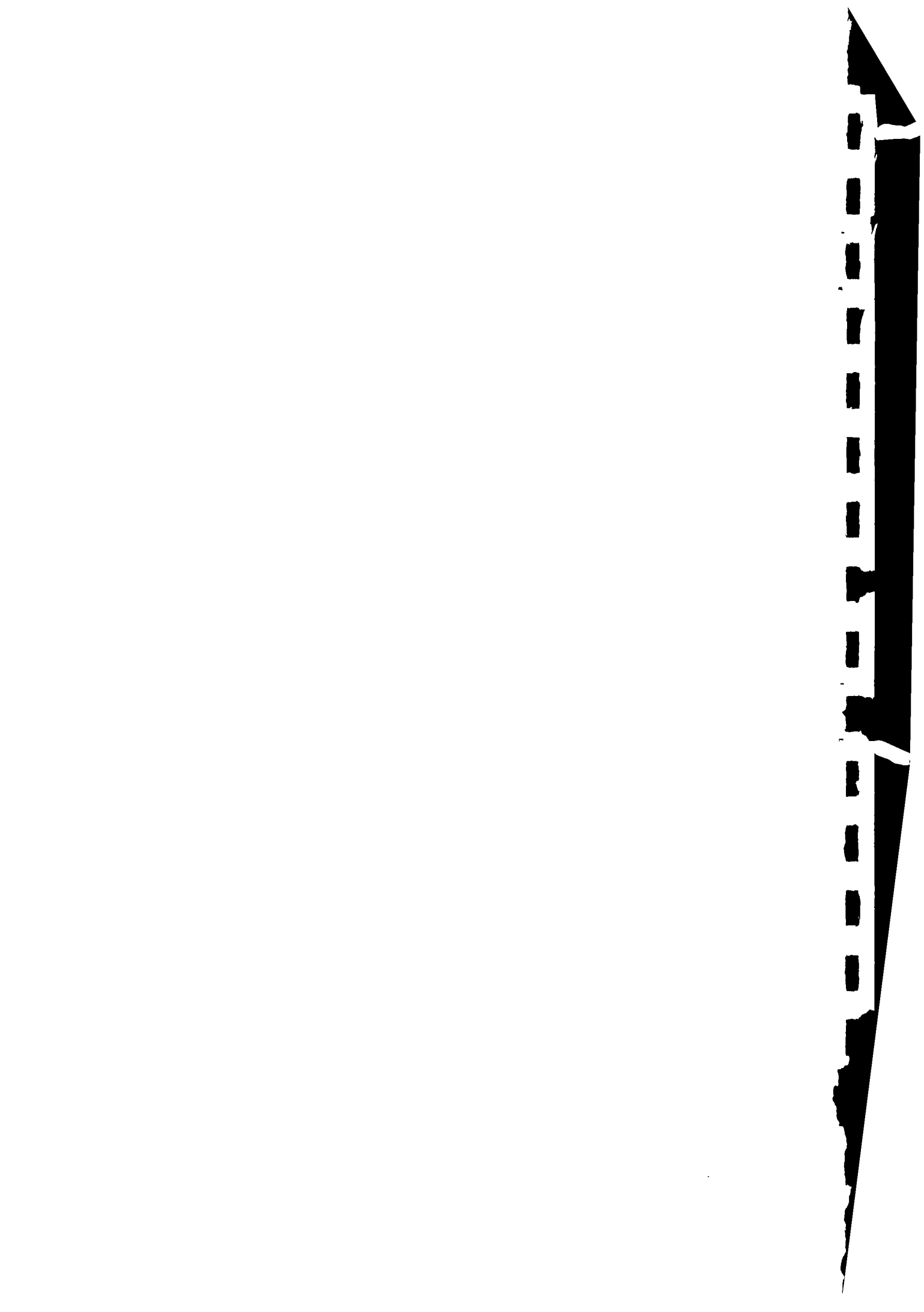

ANNEXURE 3:

CONVEYANCE

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT (FIRST SESSION)

CONVEYANCE OF PETITIONS

(No. 12 of 2022)

REGARDING REMOVAL OF MEMBERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

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 vioalting 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 of 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.

Wetangula

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

Tuesday, 15th November, 2022

ANNEXURE 4:

PETITIONS

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

NATIONAL ASSEMBLY
RECEIVED
21 OCT 2022
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

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

DLS
Please advise.
21/10/22

PETITION

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 **15th** 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

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

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

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 9th August 2022 and declared and announced by Wafula Chebukati on 15th 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 16th August 2022, in response to questions by the media, the vice chair Juliana Cherera responded as

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 16th 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

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.

.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

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.

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.

) 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

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 at '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 28th April 2022? Why did they wait until 16th 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.

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

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 18th 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(l)(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.

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.

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

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-

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

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

(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

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

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 or 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

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.

(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.

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

(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 BOUNDERIES 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;

(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;

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

(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;

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

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.

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

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 **13th** day of **October 2022**

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

(2) CNA - Having perused through the Petition, the Prayer is inorder & we may proceed to process. It complies with the requirements of the Law. RAK 2/11/2022

P NO. 2

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.

(1) Dips / Urs to process in accordance with the S.O.s and the CoK. 2/11/2022

(2) Mr. Kalama, please deal. RAK 2/11/2022

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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P O Box 41842, NAIROBI

2/Nov. 2022

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.

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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,

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

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.

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 **9th of August 2022.** The general elections in some parts of the Country were held and completed on the same day of 9th 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 15th August 2022 when the elections results for the election of the President were expected to be announced. On 15th 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

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.

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 26th August 2022 stated as follows;

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

They indicated that they had made several attempts to see me to discuss the tallying and results. 1 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*

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 Liutenant 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*

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

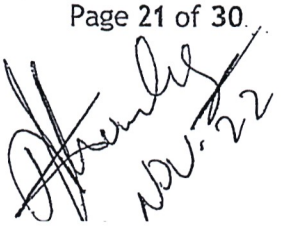
m. *THAT Mr. Kihara proceeded to caution that if we proceeded with declaration of the results with Hon. Ruto as the President-Elect and chaos erupts, 'then the blood of the dead Kenyans' will be on our hands, and that the seven of us (Commissioners) will be held responsible.*

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*



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*

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 15th 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.

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

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;**

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

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,**

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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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.

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 Mthumbi		14582805	
	60029-00200		
	NAIROBI		

2/Nov./2022

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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 2ND day of NOVEMBER 2022.) **DEPONENT**

BEFORE ME)
COMMISSIONER FOR OATHS)

L. MUGO
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. BOX 60620,
NAIROBI

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

NO 3

DLS

Please review and advise. 14/09/22

NATIONAL ASSEMBLY
MAIN RECORDS UNIT
13 SEP 2022
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NAIROBI - KENYA

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 ARTICL 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 15th day of August 2022, Kenyans witnessed a debacle where, Independent Electoral and Boundaries Commissioners (IEBC) JULIANAA 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 16TH 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.

Ms. Brigitta Mati L.
Kindly process and advise

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 17th 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 15TH 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 9th 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 5th 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 5th 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 forment 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 Independ 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 9TH DAY OF SEPTEMBER 2022

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

Signed.....

DLS
To review and advise.
20/09/22

TO;

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

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 2nd 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 9th 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 9th 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.

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Mr Denis Abisai DDLS
Please assign and

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.

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;

the petition, the Prayer is Inorder & we may proceed to process. It complies with the requirements of the Law. RK 2/11/2022

P NO. 2

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.

(1) DLPS / DLS To process in accordance with the S.Os and the Cok. 2/11/2022

(2) Mr. Kalama, Please deal. RK 2/11/2022

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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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.

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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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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 **9th of August 2022.** The general elections in some parts of the Country were held and completed on the same day of 9th 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 15th August 2022 when the elections results for the election of the President were expected to be announced. On 15th 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 26th August 2022 stated as follows;

a. THAT at about 3am on the morning of 15th August, 2022, I was visited by Hon. Raphael Tuju, Senator Amos Wako and Advocate Kyalo Mbobu.

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They indicated that they had made several attempts to see me to discuss the tallying and results. 1 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 Liutenant 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*

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 15th 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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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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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

2. Nov. 22

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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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,

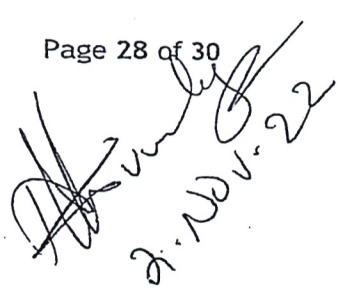
2. Nov. 22

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.



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 Mthumbi		14582805	
	60029-00200		
	NAIROBI		

2/NOV/2022

2 NOV 22

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 2ND day of NOVEMBER 2022.) **DEPONENT**

BEFORE ME)
COMMISSIONER FOR OATHS)

ADVOCATE &
COMMISSIONER FOR OATHS
P.O. BOX 00620,
NAIROBI

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

(3)

DLS
Please review and advise.
14/09/22

NATIONAL ASSEMBLY
MAIN RECORDS UNIT
09 SEP 2022
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NAIROBI - KENYA

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 ARTICL 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 15th day of August 2022, Kenyans witnessed a debacle where, Independent Electoral and Boundaries Commissioners (IEBC) JULIANAA 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 16TH 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.

Ms. Brigitta Mati L.C
Kindly process and advise
CNA 11

M. Dum Dum - PLC
Please assign

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 17th 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 15TH 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 9th 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 5th 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 5th 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 forment 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 Independ 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 9TH DAY OF SEPTEMBER 2022

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

Signed.....

DLS
To review and advise.
20/09/22

TO;

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

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 2nd 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 9th 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 9th 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.

Mr Denis Abisai DLS
Please assign and

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

5. On the 15th 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 16th 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 14th 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 15th and 16th 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.

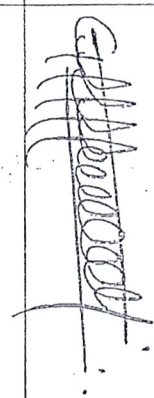
THEREFORE, the Petitioners reverently pray as follows:-

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 19th day of September 2022

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

ANNEXURE 5:

ADVERTISEMENT

REPUBLIC OF KENYA

13TH PARLIAMENT-FIRST SESSION (2022)

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

In the matter of Consideration by the National Assembly on the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission

NOTIFICATION OF THE CONDUCT OF HEARINGS BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

WHEREAS Article 251(2) of the Constitution provides that "*a person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground*"

WHEREAS on 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the **Republican Liberty Party**, **Reverend Dennis Ndwiga Nthumbi**, **Mr. Geoffrey Langat** and **Mr. Owour Steve Gerry** seeking the removal from office of **Ms. Juliana Cherera**; **Ms. Irene Masit**; **Mr. Justus Nyang'aya**; and **Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) on various grounds, including serious violation of the Constitution and other laws; gross misconduct; and incompetence and referred the Petitions to the **Departmental Committee on Justice and Legal Affairs.**

FURTHER WHEREAS Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Departmental Committee on Justice and Legal Affairs to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution.

NOTING THAT Article 118(1)(b) of the Constitution provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees*".

IT IS NOTIFIED for the information of the general public that the Departmental Committee on Justice and Legal Affairs shall commence hearings on the four (4) Petitions for the removal of Commissioners of the IEBC as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, as per the Schedule hereunder—

SCHEDULE OF HEARINGS
Thursday, 24th November, 2022

10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
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11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

SAMUEL J. NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

21st November 2022

For the Welfare of Society and the just Government of the People

ANNEXURE 6:

LETTERS FROM THE CLERK OF THE NATIONAL ASSEMBLY INVITING THE PETITIONERS AND THE RESPONDENTS FOR THE HEARINGS

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk.@parliament.go.ke



Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(261)

17th November 2022

Geoffrey Langat
P.O Box 26903- - 00100
NAIROBI.

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly "*on the removal of four Members of Independent Electoral and Boundaries Commission*" and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

In its sitting of 16th November, 2022, the Committee resolved to commence hearings on your Petition and three (3) other Petitions as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder—

SCHEDULE OF HEARINGS	
Thursday, 24th November, 2022	
10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi

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3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
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11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

This is to invite you to attend before the Departmental Committee on Justice and Legal Affairs to present your Petition on **Friday, 25th November, 2022** where the Commissioners shall be at liberty **to cross-examine you.**

Additionally, you are invited to attend before the Committee on **Monday, 28th November, 2022** and **Tuesday, 29th November, 2022** where you shall be at liberty **to cross-examine** the Commissioners on their responses. You may attend the hearings in person or by legal representative, or both.

TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalasembly@parliament.go.ke.

Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(262) 17th November 2022

Reverend Dennis Ndwiga Nthumbi
P.O Box 60024 - 00200
NAIROBI.

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly "*for the removal of four IEBC Commissioners under the Constitution*" and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

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Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalassembly@parliament.go.ke.

Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Fax: 243694
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National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote
NA/CNA/CORR/2022(263)

17th November 2022

The Republican Liberty Party
P.O Box 20148 - 00100
NAIROBI.

Attn: Mr. Zachariah M. Matayo

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition dated 13th October, 2022 and referred it to the Departmental Committee on Justice and Legal Affairs.

Upon receipt of a Petition, Standing Order 230(4) of the National Assembly Standing Orders mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.

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Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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NA/CNA/CORR/2022(264)

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

17th November 2022

Mr. Owuor Steve Gerry
5th Avenue Office Suites
6th Floor, Suite No. 15
5th Ngong Avenue
NAIROBI.

Tel: 0720102393
Email: gerrydebby@gmail.com

Dear

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF A PETITION FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed your Petition to the National Assembly *"for the removal of Members of a constitutional Commission under Article 251 of the Constitution of Kenya, 2010"* and referred it to the Departmental Committee on Justice and Legal Affairs.

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TAKE NOTE that should you choose not to attend before the Committee on the dates and time specified in this invitation, the Committee, and thereafter Parliament, shall proceed with this matter in accordance with the Constitution and the law, without further reference to you.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalasembly@parliament.go.ke.

Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
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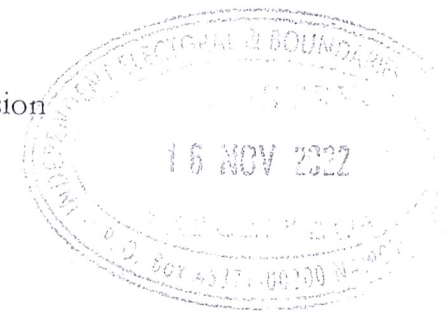
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(253)

16th November 2022

Mr. Francis Wanderi
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear Sir,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS

The above matter refers.

On 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the Republican Liberty Party, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owour Steve Gerry and referred them to the Departmental Committee on Justice and Legal Affairs.

The four (4) Petitions (Copies enclosed) seek your removal from office on various grounds, including serious violation of the Constitution and other laws, gross misconduct and incompetence, particulars of which are contained in the Petitions.

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11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
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This is to notify you of the referral of the aforesaid Petitions and invite you to attend before the Departmental Committee on Justice and Legal Affairs during the presentation of the Petitions on Thursday, 24th November, 2022 and Friday, 25th November, 2022 where you shall be at liberty to cross-examine the Petitioners.

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Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalasembly@parliament.go.ke.

Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
Encl.

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote
NA/CNA/CORR/2022(251)

15th November 2022

Ms. Irene Masit
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

INDEPENDENT ELECTORAL & BOUNDARIES
16 NOV 2022
P.O Box 45371-00100 NAIROBI

Dear Ms Masit,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS

The above matter refers.

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Once the Committee tables its Report, the House is required to resolve whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution within 10 days.
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Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and clerk.nationalasembly@parliament.go.ke.

Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
Encl.

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 221291
Fax: 243694
E-mail: clerk@parliament.go.ke



Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(252)

16th November 2022

Ms. Juliana Cherera
Vice-Chairperson
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear Madam,

RE: NOTIFICATION OF PETITIONS PRESENTED FOR YOUR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS

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Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
Encl.

REPUBLIC OF KENYA

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Clerk's Chambers
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NAIROBI, Kenya

When replying please quote

NA/CNA/CORR/2022(254)

16th November 2022

Mr. Justus Nyang'aya
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.



Dear Sir,

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Yours



SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY
Encl.

ANNEXURE 7:

CORRESPONDENCES

KTK ADVOCATES
(MEMBER OF AN INTERNATIONAL LEGAL NETWORK OF LEADING INDEPENDENT BUSINESS LAW FIRMS)
LEGALINK

Our Ref M/0253/001 *Date*: 1st December, 2022

Your Ref: NA/CNA/CORR/2022(275)

Hon. Gitonga Murugara,
Chairman,
Departmental Committee on Justice
& Legal Affairs,
National Assembly,
Parliament Buildings,
NAIROBI.

Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.

VERY URGENT

Dear Sirs,

RE: DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS
REPUBLICAN LIBERTY PARTY
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
~VERSUS~
COMMISSIONER IRENE MASIT

We refer to the above and ours dated **30.11.22.**

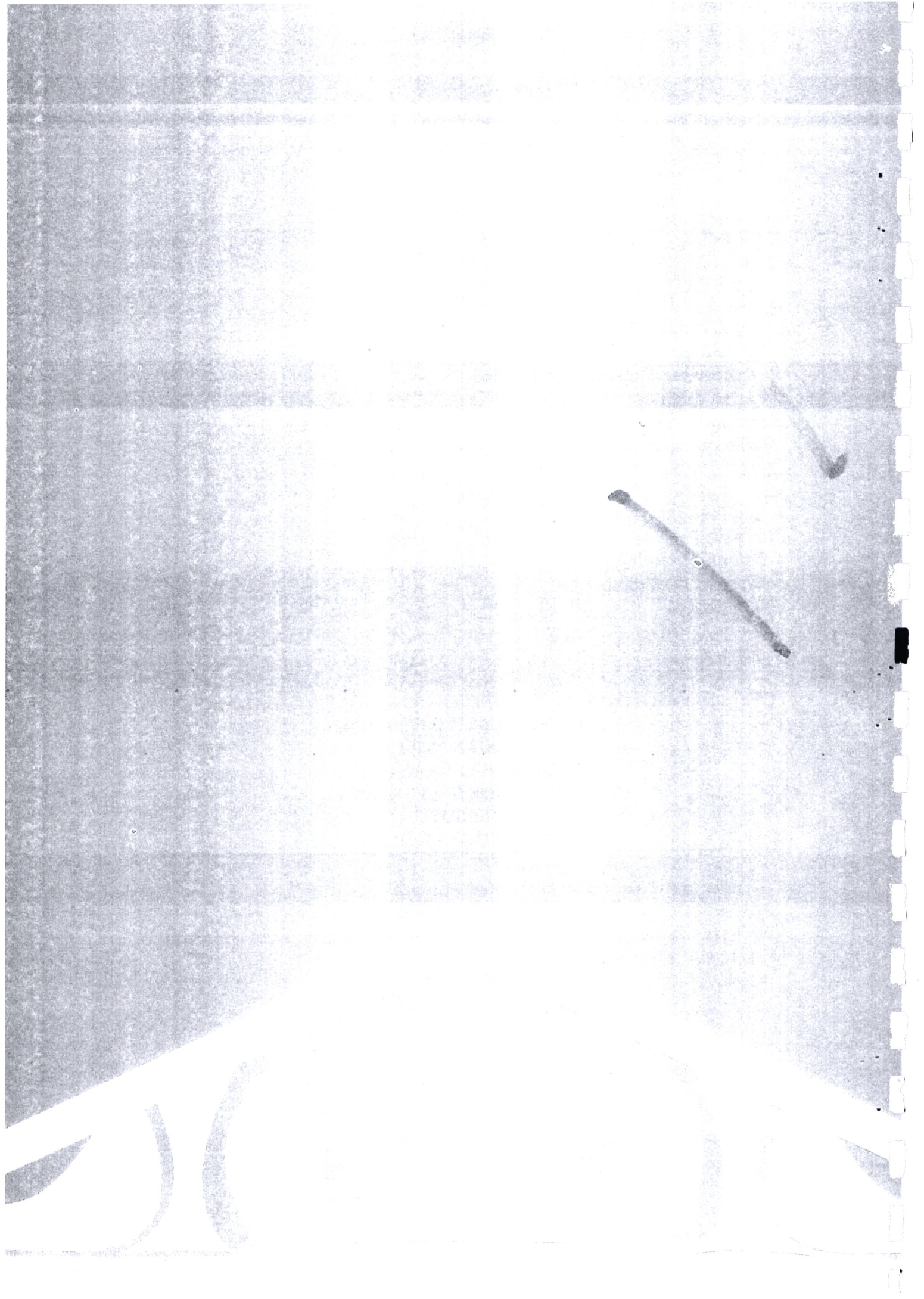
We have been informed through Media Reports that you have tabled your Report in the National Assembly.

onald B. Kipkorir
Wanja S. Gitau
Victoria M. Mbithi
orence A. Otieno
orine N. Wanjeru

IFLR 100 RECOGNISED FIRM 2020
IFLR 100 RECOGNISED FIRM 2021

4th Floor, KeMU Towers, University Way / Uhuru Highway. P.O. Box 10176, 00100 - Nairobi.
Tel: (+254) 20 2250544, 2250554, Cell: (+254 788) 646 283, (+254 712) 113 888. Email: mail@ktk.co.ke
www.ktk.co.ke

PIN: P0511234181
VAT: 0110006S



ADVOCATES, COMMISSIONERS FOR OATHS, NOTARIES PUBLIC

We will appreciate if we can have your **immediate** response to our said letter of **30.11.22.** Any delay or default to **immediately** respond will violate *Articles 47 (1)* & *27, 48* and *50 (2) of The Constitution.*

Yours Sincerely,

DONALD B. KIPKORIR
KTK ADVOCATES

Cc: Hon. Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

DBK/sn

KTK ADVOCATES
COMMERCIAL · CORPORATE LAW PRACTICE
(MEMBER OF AN INTERNATIONAL LEGAL NETWORK OF LEADING INDEPENDENT BUSINESS LAW FIRMS

Our Ref M/0253/001 *Date*: 30th November, 2022

Your Ref: NA/CNA/CORR/2022(275)

Hon. Gitonga Murugara,
Chairman,
Departmental Committee on Justice
& Legal Affairs,
National Assembly,
Parliament Buildings,
NAIROBI.

Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.

Dear Sirs,

RE: DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS
REPUBLICAN LIBERTY PARTY
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
~VERSUS~
COMMISSIONER IRENE MASIT

We refer to the above matter and our previous correspondence.

Kindly and urgently, let us have the following information:-

i. Extract of the Recording Book that received the Four Petitions. We want copies of each page that has the receipt entry records of each Petition which must indicate name of person or courier who delivered the Petition and the person who received.

ii. Postal address plus postal code, telephone number and e-mail address of each of the Four Petitioners, which must be registered in their names.

iii. Hansard Report of the Committees proceedings from the time it was seised of the Four Petitions until its final recommendations/Report and the annexures to the Report to the whole House.

We await the above information and copies on completion of your proceedings but before you deliver to the whole House and/or concurrently.

We await the above response before the whole House considers the Report.

Yours Sincerely,

DONALD B. KIPKORIR
KTK ADVOCATES

Cc: Hon. Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

DBK/sn

RACHIER & AMOLLO LLP

ADVOCATES · COMMISSIONERS FOR OATHS · NOTARIES PUBLIC

PARTNERS

A.D.O Rachier	LLB (Dar) LLM (Nbi)
* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla	LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya	LLB (Moi) CPM
Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACIArb
Bryson Ometo	LLB (Moi)

Your Ref: TBA

Our Ref: C/5957/22

Date: 29th November 2022

The Clerk
National Assembly
Parliament Buildings
Nairobi.

Douglas Katho
for facilitate
30/11/22

D/Department Committees
Mr. Wakaba
for attention of
JLAC
29/11/22

Dear Sir,

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY AGAINST OUR CLIENT – JUSTUS NYANG'AYA

We refer to the above matter and to the ruling given by the Chairman, Departmental Committee of Justice and Legal Affairs to the effect that our client can now call witnesses, and adduce evidence in his defence and wish to advise that our client intends to call a number of witnesses, some of whom will require witness summons, which are yet to be applied for. Accordingly, we are requesting for a period of **FOURTEEN (14) DAYS** which we believe will be sufficient.

We should therefore be grateful if you would kindly allow our client to present his defence to the four petitions on **13th December 2022**. We believe that it is possible for the Committee to seek additional time as permitted by the provisions of Standing Orders No. 256A of the Parliamentary Standing Orders.

Yours faithfully,
RACHIER & AMOLLO LLP

DR. JOTHAM OKOME ARWA
lawtechs@rachieradvs.co.ke

NATIONAL ASSEMBLY
RECEIVED
29 NOV 2022
CLERK'S OFFICE
P O Box 41842, NAIROBI

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.

DIRECTOR
Directorate of Departmental Committees

Mayfair Centre, 5th Floor
Ralph Bunche Road
P O Box 55645 – 00200
Nairobi, Kenya
lawtechs@rachieradvs.co.ke,

0185055T
P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

+254722204778
+254733616662
+254202716012
+254202716013
+254202716015

*on leave of absence

Apollo & Co. Advocates
Advocates for Oaths, Notaries & Company Secretaries
Email:apollo@aca.co.ke
Website:www.aca.co.ke
(+254)-733725482,770473800
B2 Kindaruma Court,
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/DDC/JLAC/2022/004 Date:29th November 2022

Hon. Murungara George Gitonga, MP
Chairperson
Justice and Legal Affairs Committee
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROB

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Advance Copy via
cna@parliament.go.ke, rwalala@gmail.com

Dear Sirs,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to the directives of the Departmental Committee on Justice and Legal Affairs Committee that we be furnished with the requested Ruling and Hansard Reports immediately after the morning session of yesterday 28th November 2022 for us to appear before the Committee today 29th November 2022 at 8.00 am.

The undersigned in compliance stood in wait for the documents within the Mini Chamber, County Hall for several hours until I was informed to leave because the Clerk of the National Assembly must endorse and forward the documents officially.

By yesterday 5.00 pm. I had not been furnished with the documents only for me to check my email this morning to find the documents forwarded by douglasskatho@gmail.com on 28th November 2022 at 5:32:01 pm well past office hours. Attached find the email with time stamp.

It is now manifestly evident that, there is an elaborate machinations to ensure that we are denied adequate time to prepare a response of our client **Commissioner Juliana Cherera** who we could not consult for instructions on the said documents.

In the circumstances and having been denied a ten (10) day adjournment of the proceedings to facilitate fair hearing including adequate time and facilities to prepare a response, we regret that we shall not participate further in the proceedings before the Honourable Departmental Committee.

We would appreciate that this letter and its attachment is placed on record of the proceedings of the Departmental Committee.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client.

Telegraphic Address
'Bunge', Nairobi
Tel. +254-020-2848000
Fax: +254-020-2243694
E-mail: cna@parliament.go.ke
www.parliament.go.ke

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/004

28th November 2022

Apollo & Co. Advocates
Commissioner for Oaths, Notaries & Company Secretaries
Email: Apollo@aca.co.ke, Website: www.aca.co.ke
B2 Kindaruma Court, Kindaruma Road-Kilimani
P.O. Box 2073-00100 Nairob
NAIROBI.

Dear Apollo & Co,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The above matter refers.

During the Departmental Committee on Justice and Legal Affairs Sitting on 28th November, 2022 in its consideration of the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission; the Committee acceded to your requests vide your letter Ref. No. ACA/NA/1/2022 dated 25th November, 2022.

The Committee wishes to respond as follows-

1. The Speaker conveyed only four (4) Petitions to the Justice and Legal Affairs Committee. Those are the only Petitions relevant to the current proceedings. The Petitions were forwarded to the Commissioners on the 16th November, 2022.

2. The Minutes and Hansard of the proceedings of the 24th November 2022 are enclosed.

3. The Hansard of the entire sessions of the Departmental Committee from 24th November, 2022 and 25th November, 2022 are herewith enclosed.

4. There is no additional evidence that has been submitted with regard to all the four (4) Petitions; the Commissioner is therefore only required to respond to the issues raised in the petitions. If the Petitioner is unable to respond in person she remains at liberty to file a written response on or before 29th November, 2022 at 5 p.m preferably under oath.

Our Liaison Officers on this subject are Mr. Douglas Katho, who may be contacted on Tel. 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke

PETITION FOR REMOVAL FROM OFFICE OF COMMISSIONER OF THE IEBC

DO douglaskatho@gmail.com
Mon, 28 Nov 2022 5:32:01 PM +0300
To "apollo" <apollo@aca.co.ke>

The above matter refers.

Attached for your action.
Regards
JLAC Secretariat

JLAC 8th Sitting.pdf

JLAC 9th Sitting.pdf

JLAC 10th Sitting.pdf

JLAC Hansard 24th Afternoon.pdf

JLAC HANSARD 24th Morning.pdf

JLAC HANSARD 25th Afternoon.pdf

JLAC HANSARD 25th Morning Sitting.pdf

1 Attachment

Apollo and Co..pdf
1.7 MB

Yours Sincerely,

PETER K. CHEMWENO
FOR: CLERK OF THE NATIONAL ASSEMBLY

Ms. Juliana Cherera
Vice-Chairperson
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P O Box 45371 - 00100
NAIROBI.

Apollo & Co. Advocates
Advocates for Oaths, Notaries & Company Secretaries
Email:apollo@aca.co.ke
Website:www.aca.co.ke
(+254)-733725482,770473800
BZ Kindaruma Court,
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(310) Date:29th November 2022

Hon. Murungara George Gitonga, MP
Chairperson
Justice and Legal Affairs Committee
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROB

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Advance Copy via
cna@parliament.go.ke, cwalala@gmail.com

Dear Sirs,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We acknowledge receipt of the letter of today from the clerk admitting delay in endorsement of the copies of Hansard and minutes, which resulted, to the same being sent to us via email at 5.32 pm yesterday. We only accessed the email this morning at 7.00 am upon reporting to office and therefore we lost in excess of 20 hours from 11.00 am yesterday to 7.00 am today.

We thank the Departmental Committee most profusely for understanding the circumstances and for adjourning the morning session to 4.00 pm today. However, the adjournment of the committee only compensates eight (8) hours of the constraining time that the Departmental Committee had directed for four client Commissioner Juliana Cherera to file her memoranda to the four Petitions.

Even with the further squeezed time granted by the Departmental Committee, the undersigned had a court matter from 10.00 am which I had to attend to after the initially scheduled morning appearance before the Departmental Committee.

Due to the delay to furnish us with documents as ordered by the Departmental Committee, we were been unable to take instructions from our client yesterday during the day. After which we would have burnt the midnight oil to work on a response for our scheduled appearance before the Departmental Committee on Justice and Legal Affairs Committee at 8.00 am today.

In view of the above and the desire of our client to participate, we ask the Honourable Committee to grant us seven (7) days to enable us take instructions from the client and file documents for consideration of the Committee.

We would appreciate that this letter is placed on record of the proceedings of the Departmental Committee and hope that our reasonable request will be granted.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client.

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'Bunge', Nairobi
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THE NATIONAL ASSEMBLY

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National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/007

28th November 2022

Gichamba and Company
Advocates Commissioner for Oath Notaries Public Patent Agents
Ngong Hills Office Suites 3rd floor
P.O. Box 74871-00200
NAIROBI.

Dear Gichamba & Co,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The above matter refers.

During the Departmental Committee on Justice and Legal Affairs' Sitting on 28th November, 2022 in its consideration of the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission; the Committee resolved to forward to you the following:-

1. The Minutes and Hansard of the proceedings of the 24th November, 2022.
2. The Hansard of the entire sessions of the Departmental Committee on 24th November, 2022 and 25th November, 2022.

Our Liaison Officer on this subject are Mr. Douglas Katho, who may be contacted on Tel. 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke.

Yours Sincerely,

PETER K. CHEMWENO
FOR: CLERK OF THE NATIONAL ASSEMBLY

Copy to-

Mr. Francis Wanderi
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

Telegraphic Address
'Bunge', Nairobi
Tel. +254-020-2848000
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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

Clerk's Chambers
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/006

28th November 2022

Rachier and Amollo LLP
Mayfair Centre, 5th floor
lawtechs@rachieradv.co.ke
Ralph Bunche Road
P.O. Box 55645-00200 Nairobi
NAIROBI.

Dear

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The above matter refers.

During the Departmental Committee on Justice and Legal Affairs' Sitting on 28th November, 2022 in its consideration of the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission; the Committee acceded to your requests vide your letter Ref. No. C/5957/22 dated 24th November, 2022.

The Committee wishes to respond as follows-

1. The Ruling and Hansard of the proceedings of the 24th November, 2022 before the Departmental Committee on Justice and legal Affairs are enclosed.

2. The Hansard of the entire sessions of the departmental Committee from 24th November, 2022 and 25th November, 2022 are enclosed.

Our Liaison Officesr on this subject are Mr. Douglas Katho, who may be contacted on Tel. 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke.

Yours Sincerely,

PETER K. CHEMWENO
FOR :CLERK OF THE NATIONAL ASSEMBLY

Copy to-

Mr. Justus Nyang'aya
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

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THE NATIONAL ASSEMBLY

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National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/005

28th November 2022

KTK ADVOCATES
Commercial Corporate Law Practice
4th Floor KeMU Towers, University Way / Uhuru Highway
P.O. Box 10176, 00100
NAIROBI.

Dear Mr. Kipkorir,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

The above matter refers.

During the Departmental Committee on Justice and Legal Affairs' Sitting on 28th November, 2022 in its consideration of the Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission; the Committee resolved to forward to you the following:-

1. The Minutes and Hansard of the proceedings of the 24th November, 2022
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Our Liaison Officer on this subject are Mr. Douglas Katho, who may be contacted on Tel. 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke.

Yours Sincerely,

PETER K. CHEMWENO
FOR:CLERK OF THE NATIONAL ASSEMBLY

Copy to-

Ms. Irene Masit
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

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'Bunge', Nairobi
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NAIROBI, Kenya

Ref: NA/DDC/JLAC/2022/006

28th November 2022

Rachier and Amollo LLP
Mayfair Centre, 5th floor
lawtechs@rachieradv.co.ke
Ralph Bunche Road
P.O. Box 55645-00200 Nairobi
NAIROBI.

Dear Rachier & Amollo LLP

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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Yours Sincerely,

PETER K. CHEMWENO
FOR :CLERK OF THE NATIONAL ASSEMBLY

Copy to-

Mr. Justus Nyang'aya
Commissioner,
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

Telegraphic Address
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Parliament Buildings
P.O. Box 41842-00100
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Ref: NA/DDC/JLAC/2022/004

28th November 2022

Apollo & Co. Advocates
Commissioner for Oaths, Notaries & Company Secretaries
Email: Apollo@aca.co.ke, Website: www.aca.co.ke
B2 Kindaruma Court, Kindaruma Road-Kilimani
P.O. Box 2073-00100 Nairob
NAIROBI.

Dear Apollo & Co,

RE: CONSIDERATION OF PETITIONS FOR THE REMOVAL FROM OFFICE OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BY THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

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2. The Minutes and Hansard of the proceedings of the 24th November, 2022 are enclosed.

3. The Hansard of the entire sessions of the Departmental Committee from 24th November, 2022 and 25th November, 2022 are herewith enclosed.

4. There is no additional evidence that has been submitted with regard to all the four (4) Petitions; the Commissioner is therefore only required to respond to the issues raised in the petitions. If the Petitioner is unable to respond in person she remains at liberty to file a written response on or before 29th November, 2022 at 5 p.m. preferably under oath.

Our Liaison Officers on this subject are Mr. Douglas Katho, who may be contacted on Tel. 0722333145 or email: douglas.katho@parliament.go.ke and Mr. Clive Onyancha, Tel 0725993500 or email: clive.onyancha@parliament.go.ke.

Yours Sincerely,

PETER K. CHEMWENO
FOR: CLERK OF THE NATIONAL ASSEMBLY

Ms. Juliana Cherera
Vice-Chairperson
The Independent Electoral and Boundaries Commission
Anniversary Towers, 6th Floor,
University Way,
P.O Box 45371 - 00100
NAIROBI.

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

AND

REV. DENNIS NDWIGA NTHUMBI----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

AND

GEOFFREY LANGAT ----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

AND

OWUOR STEVE GERRY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE TO SEEK ADJOURNMENT

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein on 28th November 2022 shall seek adjournment of the proceedings in respect of the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022, Petition of **REV. DENNIS NDWIGA NTHUMBI** dated 2nd November 2022, Petition of **Geoffrey Langat** dated 9th September 2022 and Petition of **Owuor Steve Gerry** dated 19th September 2022 on the grounds THAT:

1. The Clerk to the National Assembly has refused, neglected and/o declined to comply with request to information pursuant to **Article 35** **the Constitution of Kenya** and the **Access to Information Act No. 31** **2016** to furnish **Commissioner Juliana Cherera** with information that required for her defence as follows:

   1.1 The total number and copies of **Petitions received by the Nationa Assembly Main Records Unit** on the removal of the curren Commissioners of Independent Electoral and Boundarie Commission.

   1.2 The **Hansard** report of the Departmental Committee that drew the schedule for the hearings

   1.3 The **Ruling** and **Hansard** of the proceedings of 24th November 2022 before the Departmental Committee on Justice and Legal Affairs.

   1.4 The **Hansard** of the entire session of the Departmental Committee from 24th November 2022 to date.

   1.5 All the evidence presented by the petitioners before the Departmental Committee in support of their allegations.

2. **Commissioner Juliana Cherera,** in exercise of her unlimited fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial requires adequate time and facilities to prepare responses to each of the four (4) petitions.

3. The proceedings before this Honourable Departmental Committee for removal, which are sui generis constitutional and political process, is *quasi-judicial* in nature that must adhere to **the rules of natural justice and fair administrative action.**

4. There is need to obtain better and further particulars on the nexus between the petitions before this Honourable Departmental Committee and the tweet of **President William Ruto** on **25/11/2022 at 8.50 am** to ascertain whether the process is already predetermined taking into account that the President who may end up forming a Tribunal referred to the Four (4) Commissioners of the Independent Electoral and Boundaries Commission as rogue officials.

5. **Standing Order 256A. (1)** permits the National Assembly to extend a period prescribed for doing an act by the National Assembly or its Committee, upon a motion.

6. **Commissioner Juliana Cherera** will be prejudiced if the adjournment is not granted.

This Notice is supported by the following:

a) Letter dated 18thethe November 2022 requesting for information
b) Letter dated 23rd November 2022 forwarding preliminary objections and reminder on request for information
c) Letter dated 25th November 2022 requesting for Ruling, Hansard & Information
d) Letter dated 25th November 2022 further requesting for Ruling, Hansard & Information
e) Tweet of 25/11 2022 8.50 am by **President William Ruto**

Dated at Nairobi this 27th Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly
Clerk's Chambers
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Dr. Jotham Arwa, Advocate
Rachier & Amollo LLP
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Email: lawtechs@rachieradvs.co.ke

Donald B. Kipkorir, Advocate
KTK Advocates
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P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:18the November 202

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

NATIONAL ASSEMBLY
MAIN RECORDS UNIT
2 NOV 2022
RECEIVED
NAIROBI - KENYA

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated today in respect the Petitions for removal of our client, **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission.

We have noted that presentations of the four (4) petitions shall be on **24th** and **25th November 2022**. Thereafter our client is required to respond to the four(4) petitions within 4 days from the dates of presentations of the four (4) petitions on 28th and 29th November 2022.

As you are aware, the proceedings of the Departmental Committee for removal are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature where **the rules of natural justice** and **fair administrative action** must be observed.

The fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence must be accorded to person who is likely to suffer from the adverse finding. In order for our client to adequately prepare to respond to each of the four (4) petitions, our client requires a minimum of fourteen (14) days for each petition.

In view of the above, we take this early opportunity to bring to your attention that the scheduled for the proceedings before the Departmental Committee does not conform to the constitutional tenets of fair hearing.

As you are aware, **Article 35** of the Constitution of Kenya bestows on every citizen the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom. Pursuant to the said constitutional provisions and the statutory provision in the **Access to Information Act No. 31 of 2016**, this is to request to be furnished with the following:

1. Hansard report of the Conveyance of the four (4) petitions to the Departmental Committee from the House.

2. The Hansard report of the Departmental Committee that drew the schedule for the hearings

3. The total number and copies of Petitions received by the National Assembly Main Records Unit in respect of the removal of the current Commissioners of Independent Electoral and Boundaries Commission.

4. Updated Hard Copy of Standing Orders of the National Assembly

5. All the proceedings and decisions of the Departmental Committee and the House in respect of the Petitions for removal of Constitutional Office Holders from the year 2010 to date.

The said information and documents are required by our client to facilitate our client to prepare to respond to the four(4) petitions within the requested period of fourteen 14 days for each of the Petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
NAIROBI
Tel.0722204778
Email: lawtechs@rachieradvs.co.ke

cc: **Donald B. Kipkorir, Advocate**
KTK Advocates
KeMU Towers, 4th Floor,
Uhuru Highway/University Way,
P.O. BOX 10176 – 00100
NAIROBI
Tel.0788646283, 0712 113888
Email: mail@ktk.co.ke

Apollo & Co. Advocates
Commissioners for Oaths, Notaries & Company Secretaries
Email:apollo@a
Website:www.ac
(+254)-733725482,770
B2 Kindaruma
Kindaruma Road,K
P.O.Box 2073-00100 Nairobi

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:23rd November

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated 18th November 2022 which elicited no response despite that we sought to be furnished with information pursuant to **Access to Information Act No. 31 of 2016**,.

Forwarded herewith are preliminary objections by our client Juliana Cherera to the four petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
NAIROBI
Tel.0722204778
Email: lawtechs@rachieradvs.co.ke

cc: **Donald B. Kipkorir, Advocate**
KTK Advocates
KeMU Towers, 4th Floor,
Uhuru Highway/University Way,
P.O. BOX 10176 – 00100
NAIROBI
Tel.0788646283, 0712 113888
Email: mail@ktk.co.ke

Cc: **Gichamba & Co. Advocates**
Ngong Hills Hotel Office Suites, 3rd Floor
P.O.Box 74871-00200
NAIROBI
Tel. 0722643813
Email: info@gichambaadvs.co.ke

REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022 on the following grounds:

1. **THAT** the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. **THAT** the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. **THAT** the proceedings before this Honourable Departmental Committee for removal which are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. **THAT** the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. **THAT** the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and (iii) **Standing Order 230.**

6. **THAT** the petitioner is corporate entity with a common seal pursuant to section of the political parties Act No 11 of 2011 but the signatory to the petition is one **Zacharia M. Matayo** who has not demonstrated that he has authority to sign the Petition on behalf of the political party nor affixed the common seal of the party on the petition.

7. **THAT** the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

8. **THAT** the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

11. **THAT** there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly
Clerk's Chambers
National Assembly
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REV. DENNIS NDWIGA NTHUMBI----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **REV. DENNIS NDWIGA NTHUMBI** dated 2nd November 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph **(a) (i), (ii)** and **(iii) Standing Order 230.**

6. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

7. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

10. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

GEOFFREY LANGAT ----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **Geoffrey Langat** dated 9th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and (iii) **Standing Order 230.**

6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.

7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

11. THAT there is no petition before the Honourable House and Committee capable of being investigated.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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Clerk's Chambers
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

OWUOR STEVE GERRY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **Owuor Steve Gerry** dated 19th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of Standing Order 223 (Form of Petition) and paragraph (a) (i), (ii) and (iii) Standing Order 230.

6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.

7. THAT there is no prayer for removal of Constitutional Office holder in the petition.

8. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

9. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

12. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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Website:www.aca.co.ke
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B2 Kindaruma Court,
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(302) Date:25the November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Advance Copy via
cna@parliament.go.ke, rwalala@gmail.com

Dear Sir,

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF THE PETITIONS PRESENTED FOR REMOVAL OF JULIANA CHERERA

We refer to your letter dated 25th November 2022 sent via email at 8.09 pm on the same day.

As you are aware by our letter dated 23rd November 2022 we requested for among others information the total number and copies of Petitions received by the National Assembly Main Records Unit on the removal of the current Commissioners of Independent Electoral and Boundaries Commission. The same is not been supplied to date.

Again by our letter dated 25th November 2022, we again requested to be supplied with the same information and with certified copy of the **Ruling** and the **Hansard** of the proceedings of 24th November 2022 before the Departmental Committee on Justice and Legal Affairs. The same is yet to be supplied.

The proceedings of the Departmental Committee are *sui generis* constitutional and political process that is *quasi-judicial* in nature where **the rules of natural justice** and **fair administrative action** must be observed. Our client is entitled to the fundamental rights and freedoms in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence. **Article 35** of the Constitution of Kenya and the statutory provision in the **Access to Information Act No. 31**

of 2016 bestows on every citizen the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom.

This is therefore to request you once again, that you supply us with the following:

1. The total number and copies of Petitions received by the National Assembly Main Records Unit on the removal of the current Commissioners of Independent Electoral and Boundaries Commission.

2. The **Ruling** and **Hansard** of the proceedings of **24th November 2022** before the Departmental Committee on Justice and Legal Affairs.

3. The **Hansard** of the entire session of the Departmental Committee from **24th November 2022 to date.**

4. All the evidence presented by the petitioners before the Departmental Committee in support of their allegations

In addition, we would appreciate to get a confirmation that our client is permitted to:-

a) cross examine the Petitioners
b) call her witnesses
c) present evidence

The information and the confirmation requested is to enable our client prepare adequately to defend herself.

We would appreciate to get the information and the confirmation requested before the end of today.

Yours faithfully,
Apollo & Company Advocates



APOLLO MBOYA, HSC, 'ndc'(K)

cc: **Client,**

Apollo & Co. Advocates
Commissioners for Oaths, Notaries & Company Secretaries
Email:apollo@aca.co.ke
Website:www.aca.co.ke
(+254)-733725482,770473800
B2 Kindaruma Court,
Kindaruma Road-Kilimani,
P.O.Box 2073-00100 Nairobi-Kenya.

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:18th November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

NATIONAL ASSEMBLY
MAIN RECORDS UNIT
18 NOV 2022
RECEIVED (2)
NAIROBI - KENYA

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We have instruction from our client **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission to acknowledge receipt of your letter dated 16th November 2022.

We shall attend the proceedings and file the response.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client,

REPUBLIC OF KENYA

Telegraphic Address
Bunge, Nairobi
Telephone 2221291
Fax: 2243694
Email: cna@parliament.go.ke
Website: www.parliament.go.ke



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P. O. Box 4184200100
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (296)
Your Ref: C/5957/22

25th November, 2022

Rachier & Amollo LLP
Mayfair Centre, 5th Floor
Ralph Bunche Road
P. O. Box 55645 – 00200
NAIROBI.
lawtechs@rachieradvs.co.ke

"ADVANCE COPY by email"

Attn: **Dr. J. O. Arwa**

Dear Sir,

RE: IMPEACHMENT PROCEEDINGS AGAINST OUR CLIENT–JUSTUS NYANG'AYA

The above matter refers.

We advise that we have conveyed your letter to the Departmental Committee on Justice and Legal Affairs for urgent consideration of the request for the Ruling and the *Hansard* of its proceedings.

Yours faithfully,

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Website: www.parliament.go.ke



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NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (301)
Your Ref: TBA

25th November, 2022

Mr. Francis Wanderi
Commissioner
Independent Electoral and Boundaries Commission
C/o Gichamba & Company Advocates
3rd Floor, Ngong Hills Hotel Office Suites
P.O. Box 74871-00200
NAIROBI
gichamba@gichambaadvs.co.ke

"ADVANCE COPY by email"

Attn: Mr. Nduru Gichamba

Dear Sir,

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF PETITIONS PRESENTED FOR YOUR REMOVAL – REMINDER

The above matter refers.

In its sitting of 16th November, 2022, the Departmental Committee on Justice and Legal Affairs resolved to commence hearings on the four (4) Petitions seeking your removal from office as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder –

SCHEDULE OF HEARINGS	
Thursday, 24th November, 2022	
10.00a.m. – 11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
11.30a.m. – 12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m. – 3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
3.30p.m. – 4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi

Friday, 25th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

Further to our letter dated 16th November, 2022, this a reminder of your invitation to attend before the Committee on **Tuesday, 29th November, 2022** to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided.

In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to cna@parliament.go.ke.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and cna@parliament.go.ke.

Yours faithfully,

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
Bunge, Nairobi
Telephone 2221291
Fax: 2243694
Email: cna@parliament.go.ke
Website: www.parliament.go.ke



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Parliament Buildings
P. O. Box 4184200100
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (299)
Your Ref: M/0253/001

25th November, 2022

Ms. Irene Masit
Commissioner
Independent Electoral and Boundaries Commission
C/o KTK Advocates
4th Floor, Kemu Towers
University Way/Uhuru Highway
P. O. Box 10176 – 00100
NAIROBI
mail@ktk.co.ke;
dkipkorir@ktk.co.ke

"ADVANCE COPY by email"

Attn: **Mr. Donald Kipkorir**

Dear Madam,

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF PETITIONS PRESENTED FOR YOUR REMOVAL – REMINDER

The above matter refers.

In its sitting of **16th November, 2022**, the Departmental Committee on Justice and Legal Affairs resolved to commence hearings on four (4) Petitions seeking your removal from office as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder:

SCHEDULE OF HEARINGS	
Thursday, 24th November, 2022	
10.00a.m. – 11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
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Further to our letter dated 16th November, 2022, this a reminder of your invitation to attend before the Committee on **Monday, 28th November, 2022** to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided.

In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to cna@parliament.go.ke.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and cna@parliament.go.ke.

Yours faithfully,

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (302)
Your Ref: ACA/NA/1/2022

25th November, 2022

Ms. Juliana Cherera
Vice-Chairperson,
Independent Electoral and Boundaries Commission
C/o Apollo & Company Advocates
B2 Kindaruma Court
Kindaruma Road, Kilimani
P. O. Box 2073 - 00100
NAIROBI.
apollo@aca.co.ke

"ADVANCE COPY by email"

Attn: **Mr. Apollo Mboya, HSC**

Dear Madam,

RE: INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS IN ITS CONSIDERATION OF PETITIONS PRESENTED FOR YOUR REMOVAL – REMINDER

The above matter refers.

In its sitting of 16th November, 2022, the Departmental Committee on Justice and Legal Affairs resolved to commence hearings on the four (4) Petitions seeking your removal from office as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule hereunder –

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11.30a.m. – 12.30p.m.	Cross-examination of the Republican Liberty Party
2.00p.m. – 3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)

3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
Friday, 25th November, 2022	
10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
Monday, 28th November, 2022	
10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit
Tuesday, 29th November, 2022	
10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
11.30a.m.—12.30p.m.	Cross-examination of by Mr. Francis Wanderi
2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya

Further to our letter dated 16th November, 2022, this a reminder of your invitation to attend before the Committee on Monday, 28th November, 2022 to present your response. You may attend the hearings in person or by legal representative, or both, and may be cross-examined on any response provided.

In the event you intend to submit a written response to the Committee on any matter, kindly do provide fifteen (15) copies of the response at least one (1) day in advance to the Office of the Clerk of the National Assembly. A soft copy of any response should also be sent to cna@parliament.go.ke.

Our Liaison Officer on this matter is Mr. Walala Ronald who may be contacted on Tel. 0721896580 or email ronald.walala@parliament.go.ke and cna@parliament.go.ke.

Yours faithfully,

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
Bunge, Nairobi
Telephone 2221291
Fax: 2243694
Email: cna@parliament.go.ke
Website: www.parliament.go.ke



Clerks Chambers
National Assembly
Parliament Buildings
P. O. Box 41842001 00
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (296)
Your Ref: C/5957/22

25th November, 2022

Rachier & Amollo LLP
Mayfair Centre, 5th Floor
Ralph Bunche Road
P. O. Box 55645 – 00200
NAIROBI.
lawtechs@rachieradvs.co.ke

"ADVANCE COPY by email"

Attn: **Dr. J. O. Arwa**

Dear Sir,

RE: IMPEACHMENT PROCEEDINGS AGAINST OUR CLIENT–JUSTUS NYANG'AYA

The above matter refers.

We advise that we have conveyed your letter to the Departmental Committee on Justice and Legal Affairs for urgent consideration of the request for the Ruling and the *Hansard* of its proceedings.

Yours faithfully,

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

RACHIER & AMOLLO LLP

• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

A.D.O Rachier	LLB (Dar) LLM (Nbi)
* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla	LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya	LLB (Moi) CPM
Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) AClArb
Bryson Ometo	LLB (Moi)

Your Ref: Our Ref: C/5957/22 Date: 24th Nov. 2022

The Chairman
Justice & Legal Affairs Committee
National Assembly
NAIROBI

Douglas Katho
to facilitate consideration
28/11/22
D/Departmental Committees
Mr. K. Wakaba, SAC
To deal
25/11/22

Through

The Clerk
National Assembly
Parliament Buildings
NAIROBI

ATTENTION: MR. SAMUEL NJOROGE

Dear Sir

RE: IMPEACHMENT PROCEEDINGS AGAINST OUR CLIENT – JUSTUS NYANG'AYA

We refer to the above matter and herein request you to kindly but urgently furnish us with a certified copy of the Ruling delivered today on our Preliminary Objection together with a copy of the Hansard Report for today's proceedings.

Your prompt action will be highly appreciated.

Yours faithfully
RACHIER & AMOLLO LLP

DR. J. O. ARWA

DIRECTOR
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28 NOV 2022
Directorate of Dep...

NATIONAL ASSEMBLY
RECEIVED
25 NOV 2022
CLERK'S OFFICE
P O Box 41842, NAIROBI

Mayfair Centre, 5th Floor
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PIN NO. P051222196B

WHEN REPLYING PLEASE
QUOTE OUR REFERENCE

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+254733616662
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+254202716013
+254202716015

www.rachieradvs.co.ke
*on leave of absence

REPUBLIC OF KENYA

Telegram "Bunge"
Telephone: +254 20 2221 291
+254 20 2848 000
E-mail: speaker.nationalassembly@parliament.go.ke

HARAMBEE
PARLIAMENT

Speaker's Chamber
National Assembl
Parliament Building
P. O. Box 41842-0010
Nairobi, Keny

OFFICE OF THE SPEAKER NATIONAL ASSEMBLY

KNA-MW/2022-13/022

24th November, 2022

The Hon. Junet Mohamed, CBS, MP.
Minority Party Whip, National Assembly
Parliament Buildings,
P. O. Box 41842 – 00100
NAIROBI.

Dear SN,

Douglas Katho
P/s facilitate
25/11/22

D/Departmental Committee
for attention of the Committee
24/11/22

RE: REQUEST FOR THE SPEAKER'S RULING IN THE MATTER OF THE CONSIDERATION BY THE NATIONAL ASSEMBLY ON THE THREE PETITIONS FOR THE REMOVAL FROM OFFICE OF THE COMMISSIONERS ON THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above matter and your letter dated 23rd November, 2022 refer.

I have noted your request for a ruling over matters relating to the consideration of the four (4) Petitions that I conveyed to the Departmental Committee on Justice and Legal Affairs on 15th November, 2022.

Standing Order 196 of the National Assembly Standing Orders Procedure provides that the procedure in select committees should be, as nearly as possible, the same as that in the Committee of the whole House *except as and to the extent to which the chairperson may otherwise direct for the purpose of facilitating full consideration and discussion of a matter referred to a Committee.*

In accordance with settled parliamentary practice, a Committee Chairperson is mandated to guide the Committee on any procedural question that arises within a Committee.

Further, as you are aware, it is considered imprudent for the Speaker or a Member presiding in the House to rule on a matter under **active** consideration by a Committee at the **plenary** of the House. Given your position as part of the Leadership of the House, I have taken the liberty to offer guidance to you on the concerns raised by way of this letter. Indeed, Parliamentary practice requires the Speaker to **refrain** from making rulings on matters active in a Committee of the House, unless in exceptional instances such as questions of privilege or grave disorder as may be reported in the House.

DIRECTOR
RECEIVED
25 NOV 2022

NATIONAL ASSEMBLY
RECEIVED
24 NOV 2022
CLERK'S OFFICE

I have had sight of the document titled "*RULES OF PROCEDURE ON MATTERS RELATING TO THE PETITIONS FOR THE REMOVAL OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION*" containing twelve (12) rules under the following headings—

a) Citation
b) Interpretation
c) Speaker's guidelines
d) Conduct of Members
e) Duties of Chairperson
f) Schedule of hearings
g) Attendance by non-members of the Committee
h) Public access to the meetings of the Committee
i) Allocation of time to Parties
j) Decisions of the Committee
k) Amendment of Rules of Procedure
l) Application of the Constitution, Statute and precedents

You will recall that, in conveying the four (4) Petitions to the Committee, I did outline several guidelines to be observed by the Committee to ensure that the quasi-judicial proceedings adhere to the requirements of Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act, 2015. I also did urge the Committee to borrow a leaf from the conduct of **quasi-judicial proceedings** from comparative parliamentary jurisdictions, including the Senate in guiding further or other details not expressly covered under the Standing Orders. In addition, I reminded the Committee of the timelines prescribed under Standing Order 230 and highlighted the need for the Committee to adopt a timetable for its consideration of the Petitions.

The Rules severally cite existing provisions of the Standing Orders and require the Chairperson to be guided by the Constitution, the Fair Administrative Action Act, 2015 and parliamentary usages, forms, precedents, customs, procedures and traditions in resolving procedural matters not covered by the Standing Orders. **I therefore do not find the content of the Rules unusual or objectionable in any way**. Indeed, they are in keeping with my guidance and established parliamentary practice and merely augment the Standing Orders in the conduct of proceedings in which the House has encountered challenges in navigating.

I note that if adopted by the Committee, the Rules shall be limited in their application only to the proceedings of the Committee in the instant hearings and they are not to be treated as an amendment of the Standing Orders.

Please accept, dear Leader, the assurances of my highest consideration.

THE RT. HON. (SEN.) MOSES F.M. WETANG'ULA, EGH, M.P.
SPEAKER OF THE NATIONAL ASSEMBLY

Cc: The Hon. James Opiyo Wandayi, MP
Leader of the Minority Party
National Assembly, Parliament Buildings
Nairobi

The Hon. George Murugara, MP
Chairperson
Departmental Committee on Justice and Legal Affairs
National Assembly, Parliament Buildings
Nairobi

The Clerk of The National Assembly,
Parliament Buildings
Nairobi

MW
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NATIONAL ASSEMBLY
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CLERK'S OFFICE
P O Box 41842, NAIROBI

REPUBLIC OF KENYA
PARLIAMENT

Hon. Junet Mohamed, CBS, MP.
Suna East Constituency
Minority Whip - National Assembly

Parliament Buildings
P. O. Box 41842 - 00100 Nairobi, Kenya

Tel: +254 20 2221291
E-mail: Junet.mohamed@gmail.com

KNA-MW/2022-13/022

23rd November, 2022

The Rt. Hon. Moses M. Wetangula, EGH, MP
Speaker of the National Assembly
Parliament Buildings
NAIROBI

Dear Sir,

REQUEST FOR THE SPEAKER'S RULING IN THE MATTER OF THE CONSIDERATION BY THE NATIONAL ASSEMBLY ON THE THREE PETITIONS FOR THE REMOVAL FROM OFFICE OF THE COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.

Hon. Speaker, I write in my capacity as the Minority Whip and member of the Departmental Committee on Justice and Legal Affairs concerning the manner in which the Committee has proceeded to deliberate on preliminary issues regarding Rules and Procedure to be adopted in the hearing of the three Petitions for the removal of Commissioners of the Independent Electoral and Boundaries Commission (IEBC) committed to the committee vide the Communication from the Chair dated Tuesday 15th November 2022.

The Committee has adopted what it terms as **Rules and Procedure** for Departmental Committee on Justice and Legal Affairs of the National Assembly relating to the hearing of the three petitions.

NATIONAL ASSEMBLY
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23 NOV 2022
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

Mr. Speaker, the following issues are of grave concern to me for which I seek your determination and direction:

1. Whether a departmental committee functioning under Standing Order 216 (4), (5), as read with Standing Order 230 has the legal authority or mandate to make Rules and Procedure on a matter before it without reference to the House Rules and Procedure Committee.
2. Whether the same Rules and Procedure made by the departmental committee are inconsistent with Article 117 (1) of the Constitution of Kenya and Standing Orders governing rules of debate to the extent that the rules purport to limit or feter Freedom of Speech of Member of Parliament in Committee guaranteed by the Constitution of Kenya and Standing Orders.
3. Whether, in the absence of a specific legislation, a departmental committee has legal authority to make rules *suo moto*.
4. Whether the Rules are in excess of jurisdiction of the Committee and therefore invalid to the extent that they are inconsistent with Fair Administrative Action Act (No.4 of 2015).
5. Whether the Rules purportedly drawn by the Departmental Committee on Justice and Legal Affairs makes the Chair of the Committee on Justice and Legal Affairs an imperial or executive chairman to the detriment of other members all of whom are his peers.
6. Whether the purported Rules and Procedure as drafted by the Departmental Committee on Justice and Legal Affairs amounts to an unlawful amendment of the Standing Orders without the input of the House Rules and Procedure Committee.
7. Whether the rules purported to be drawn by the Departmental Committee meets the standard of parliamentary legislative practice either by custom, tradition, usage in Kenya or any known comparative jurisdiction.
8. Whether in the Communication from the Chair dated Tuesday November 15, 2022; the Speaker ever instructed the Committee to make Rules and Procedure for the conduct of the petition.

9. Whether the Rules made by the Departmental Committee meets the legislative policy threshold of standardization and uniformity in the general legislative formulation in parliamentary practice in Kenya.

10. Whether the Rules and Procedure drawn by the Departmental Committee on Justice and Legal Affairs shall be limited to the hearing of the current Petitions only or shall set a precedent for universal application to all Parliamentary Committees in similar matters concerning general petitions or removal of Constitutional Office Holders.
11. Whether Rules and Procedure whose foundation is not grounded on any statute law will adversely prejudice the hearing of the Petitions.
12. Whether the Standing Orders are complete in themselves and self-executing as comprehensive Rules and Procedure in Departmental Committees.

Mr. Speaker, this matter is urgent as the Committee has prepared a Schedule for the hearing of the Petitions beginning tomorrow (Thursday November 24th 2022) and, if not disposed of instantly, the rights of the Petitioners and Respondents will be jeopardized, parliamentary practice will suffer irreparable damage and an unusual precedent will be set that may lead to confusion in committee work in the National Assembly.



Hon. Junet Mohamed, CBS, MP
Suna-East Constituency
Minority Whip-National Assembly

Cc: **Hon. James Opiyo Wandayi, MP**
Minority Leader, NA

REPUBLICAN LIBERTY PARTY

Republican House, Githurai 45
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Nairobi-Kenya
rlibertyparty@yahoo.com
www.rlibertyparty.com

23rd November, 2022

Douglas Katho
to facilitate
24/11/22

TO,
THE CLERK OF THE
NATIONAL ASSEMBLY,
P.O. BOX 41842-00100,
NAIROBI, KENYA.

Dear Sir / Madam,

RE: PARTY REPRESENTATIVES TO JUSTICE AND LEGAL AFFAIRS COMMITEE OF NATIONAL ASSEMBLY ON 24TH NOVEMBER, 2022 ON OUR PETITION DATED 13TH OCTOBER, 2022.

The above subject matter refers to our petition dated **13th October, 2022** which is scheduled for hearing on **24th November, 2022.**

We hereby appoint **Kennedy .M. Okong'o** and other **Party Officials** to be in the said hearing and or proceedings.

Thank you.

Kind regards,

Momanyi

ZACHARIAH .M. MATAYO
NATIONAL CHAIRMAN

NATIONAL ASSEMBLY
RECEIVED
24 NOV 2022
CLERK'S OFFICE
P.O Box 41842, NAIROBI

DIRECTOR
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24 NOV 2022
Directorate of Departmental Committees

Pillars of Democracy and Social Justice

GICHAMBA AND COMPANY

ADVOCATES • COMMISIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

DIRECTOR RECEIVED 23 NOV 2022 Directorate of Departmental Committees

Your Ref: TBA Our Ref: CO/13/18/NG Date: 22nd November 2022

The Honourable Clerk
National Assembly
Parliament Buildings
NAIROBI

Douglas Katho to facilitate LQ 24/11/22

D/Legal Committees Mr. Kisiara, KC Pls provide the information/papers/orders/application to the Committee 23/11

Kind Attention: Honourable Samuel Njoroge

Dear Sir

RE: PETITIONS AS FILED BY

a) **REPUBLICAN LIBERAL PARTY**
b) **DENNIS N. NTHUMBI**
c) **GEOFFREY LANGAT AND**
d) **OWUOR STEVE GERRY**

OUR CLIENT: COMMISSIONER FRANCIS WANDERI

We refer to the above matter and to our instructions by Commissioner Francis Wanderi to address you hereinunder.

We confirm receipt of the 4 separate Petitions as filed against our client by the Petitioners and equally note the time frame as set out for the Hearings of the Petitions therein. We further note that from a reading of the stated Petitions our client has been adversely mentioned therein allegations of which are far reaching on our clients professional and social standing, yet no documentation has been annexed and provided in the Petitions as would be expected in allegations of these nature. We further do note that the stated hearings have been scheduled for the 24th November 2022 through to the 29th November 2022 a time frame that is not only suspicious but equally one that fails to take into consideration the fact that our client would be entitled to adequately prepare his defence under Article 50 of the Constitution that entitles him to fair hearing.

Accordingly, and in light of the stated allegations. there is indeed an urgent need for our client to be furnished with additional information and material substantiating and in support of the ill timed petition.

NDURU GICHAMBA, LLB

Cell: +254 733264381 | Tel: +254 720 465500 | gichamba@gichambaadvs.o ke | info@gichambaadvs.o.ke

PIN: A004233186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

WHEN REPLYING PLEASE QUOTE OUR REFERENCE

NATIONAL ASSEMBLY RECEIVED 22 NOV 2022 CLERK'S OFFICE P. O Box 41842, NAIROBI

The main accusations against our client, as captured in all the four petitions, may be summarized as follows:

(a) That our client in his capacity as a Commissioner allegedly filed an Affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.

(b) That our client allegedly acquiesced to the alleged recommendations by Officials of National Security Advisory Committee (NSAC) that the results of the presidential election were to be altered to avert alleged chaos that would erupt if a certain presidential candidate was declared the winner.

(c) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.

(d) That our client agreed participated, contributed and gave recommendations at a meeting held between his fellow IEBC Commissioners and members of the Opposition as it were.

In line with Article 50 (1) of the Constitution of Kenya, the same provides that every person has a right to a fair trial before any body constitute, including a Committee of the Parliament as the case is herein.

Further to the above provision of the constitution we opine and rightfully so, that in line with the allegations as set out by the Petitioners our clients do have:

a) The right to be granted adequate time and facilities to prepare and execute their defence.

b) The right to be availed with all the material and evidence that has and shall be used against them the very obvious right to confront and challenge the evidence as presented against them.

In light of the context of the various Constitutional and Statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) *ALLEGATION THAT OUR CLIENT FILED AN AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT*

From a reading of the Petitions it is indeed the Petitioners contention that our client SUPPORTED the Petitions, as filed before the Supreme Court. Our client indeed vehemently denies the position as alluded to by the Petitioners and seeks to be furnished with a copy of the impugned Affidavit to enable him to adequately respond to the stated allegations therein.

(b) *ALLEGATION THAT OUR CLIENT WAS IN SUPPORT OF THE ALLEGED RECOMMENDATIONS OF THE NATIONAL SECURITY ADVISORY COMMITTEE*

It is alleged by all the Petitioners that our client supported the alleged proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner. Noting the far reaching effect of such an allegation and the consequences thereof our client seeks to be furnished with the following:

i) CCTV footage of the events leading upto the Officials of the National Security Advisory Committee visit to Bomas of Kenya and the meeting held between themselves and the IEBC Commissioners at the stated venue.

ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.

iii) The form in which the alleged **"agreement"** was conveyed, whether orally, by conduct or in writing,

iv) If in writing, a copy of the written document,

v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "**agreement**" with NSAC proposal.

(c) ***ALLEGATIONS THAT OUR CLIENT AGREED WITH A REQUEST TO MODERATE RESULTS***

In line with the aforementioned accusations our client wishes to be immediately furnished by the respective Petitioners, with the following:

a. The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
b. CCTV footage indicating the persons who attended that meeting.
c. The specific mode of communication that was used by our client to remotely convey such agreement.

(d) ***ALLEGATIONS THAT OUR CLIENTS ALLEGED STATEMENT WAS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE***

In line of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

(i) CCTV footage which would show if any meeting was held at Bomas during which our client could have been given details of all the County Results that had been verified and tallied.

(ii) CCTV footage showing our client announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.

(iii) A copy of Form 34C which was shown to our client by IEBC Chairman Wafula Chebukati, and which triggered the protest from our client, which alone would confirm whether any of the results read by our client was indicated on the face of the Form 34C, that contained the final presidential results.

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PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

(iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.

(v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.

(vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

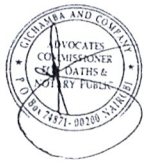
Consequently, our instructions are to request as we hereby do, that our client be allowed a minimum of **FOURTEEN (14) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. This will be in line with the Provisions of Article 50 (1) of the Constitution on the right to a fair trial, and Article 35 therein on the right to access to information, a Constitution which this Honourable House has vowed to abide to and protect above all else. The stated hearing programme as shared with our client is unfortunately not adequate to enable our clients to properly prepare for their defenses.

Noting that the Petitioners have extensively quoted the Honourable Chairman Mr. Wafula Chebukati as the main source and backbone of their Petition, our client shall call upon this House Committee to summon Mr. Wafula Chebukati to enable and allow our client the opportunity to cross examine him .

We shall further seek either through this House Committee and or through availed mechanisms at the disposal of our clients to seek that the alleged individuals adversely mentioned in the Petitions including officials of the National Security Advisory Council be summoned herein to testify as to our clients involvement and/or alleged acquiescence to their alleged recommendations and or directives. Our clients legacy being on the line we confirm that indeed the summonses as sought shall be an irreduciable minimum as our client prepares his defence.

Your kind but very urgent response will be highly appreciated.

Yours faithfully,
GICHAMBA & COMPANY



NDURU GICHAMBA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.
Cc. Dr. Jotham Arwa Esq c/o Rachier & Amollo Advocates LLP
Cc. Donald. B Kipkorir Esq c/o KTK Advocates
Cc. Apollo Mboya Esq c/o Apollo & Company Advocates

GICHAMBA AND COMPANY

ADVOCATES • COMMISIONERS FOR OATH • NOTARIES PUBLIC • PATENT AGENTS

Your Ref: TBA Our Ref: CO/13/18/NG Date: 22nd November 2022

The Honourable Clerk
National Assembly
Parliament Buildings
NAIROBI

Douglas Katho
to facilitate consideration
24/11/22

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NDURU GICHAMBA, LLB

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PIN: A004231186K | Ngong Hills Hotel Office Suites 3rd Floor | P.O BOX 74871-00200

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a) The right to be granted adequate time and facilities to prepare and execute their defence.

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In light of the context of the various Constitutional and Statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) *ALLEGATION THAT OUR CLIENT FILED AN AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT*

From a reading of the Petitions it is indeed the Petitioners contention that our client SUPPORTED the Petitions, as filed before the Supreme Court. Our client indeed vehemently denies the position as alluded to by the Petitioners and seeks to be furnished with a copy of the impugned Affidavit to enable him to adequately respond to the stated allegations therein.

(b) *ALLEGATION THAT OUR CLIENT WAS IN SUPPORT OF THE ALLEGED RECOMMENDATIONS OF THE NATIONAL SECURITY ADVISORY COMMITTEE*

It is alleged by all the Petitioners that our client supported the alleged proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner. Noting the far reaching effect of such an allegation and the consequences thereof our client seeks to be furnished with the following:

i) CCTV footage of the events leading upto the Officials of the National Security Advisory Committee visit to Bomas of Kenya and the meeting held between themselves and the IEBC Commissioners at the stated venue.

ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.

iii) The form in which the alleged "**agreement**" was conveyed, whether orally, by conduct or in writing,

iv) If in writing, a copy of the written document,

v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "**agreement**" with NSAC proposal.

(c) ***ALLEGATIONS THAT OUR CLIENT AGREED WITH A REQUEST TO MODERATE RESULTS***

In line with the aforementioned accusations our client wishes to be immediately furnished by the respective Petitioners, with the following:

a. The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
b. CCTV footage indicating the persons who attended that meeting.
c. The specific mode of communication that was used by our client to remotely convey such agreement.

(d) ***ALLEGATIONS THAT OUR CLIENTS ALLEGED STATEMENT WAS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE***

In line of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

(i) CCTV footage which would show if any meeting was held at Bomas during which our client could have been given details of all the County Results that had been verified and tallied.

(ii) CCTV footage showing our client announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.

(iii) A copy of Form 34C which was shown to our client by IEBC Chairman Wafula Chebukati, and which triggered the protest from our client, which alone would confirm whether any of the results read by our client was indicated on the face of the Form 34C, that contained the final presidential results.

(iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.

(v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.

(vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

Consequently, our instructions are to request as we hereby do, that our client be allowed a minimum of **FOURTEEN (14) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. This will be in line with the Provisions of Article 50 (1) of the Constitution on the right to a fair trial, and Article 35 therein on the right to access to information, a Constitution which this Honourable House has vowed to abide to and protect above all else. The stated hearing programme as shared with our client is unfortunately not adequate to enable our clients to properly prepare for their defenses.

Noting that the Petitioners have extensively quoted the Honourable Chairman Mr. Wafula Chebukati as the main source and backbone of their Petition, our client shall call upon this House Committee to summon Mr. Wafula Chebukati to enable and allow our client the opportunity to cross examine him .

We shall further seek either through this House Committee and or through availed mechanisms at the disposal of our clients to seek that the alleged individuals adversely mentioned in the Petitions including officials of the National Security Advisory Council be summoned herein to testify as to our clients involvement and/or alleged acquiescence to their alleged recommendations and or directives. Our clients legacy being on the line we confirm that indeed the summonses as sought shall be an irreducible minimum as our client prepares his defence.

Your kind but very urgent response will be highly appreciated.

Yours faithfully,
GICHAMBA & COMPANY

GICHAMBA AND COMPANY ADVOCATES COMMISSIONER FOR OATHS & NOTARY PUBLIC P.O Box 74871-00200 NAIROBI

NDURU GICHAMBA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.
Cc. Dr. Jotham Arwa Esq c/o Rachier & Amollo Advocates LLP
Cc. Donald. B Kipkorir Esq c/o KTK Advocates
Cc. Apollo Mboya Esq c/o Apollo & Company Advocates

NDURU GICHAMBA, LLB

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WHEN REPLYING PLEASE QUOTE OUR REFERENCE

RACHIER & AMOLLO LLP

• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

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* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

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Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACIArb
Bryson Ometo	LLB (Moi)

Your Ref:

Our Ref: C/5957/22

Date: 21st Nov. 2022

The Clerk
National Assembly
Parliament Buildings
NAIROBI

ATTENTION: SAMWEL NJOROGE

Dear Sir

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY

We refer to the above matter and to our letter dated 18th November 2022 and note, with great concern, that you have not been it fit to favour us with any response thereto, in spite of the fact that our client urgently needs your response on the issues raised in that letter for him to be able to prepare his defence strategy. Your continued silence is therefore highly prejudicial to our client.

We further wish to advise that upon careful scrutiny of the accusations made against our client, we have encountered numerous challenges in our endeavour to unravel exactly what our client is alleged to have done wrong and which is said to constitute violations of the constitution or to amount to gross misconduct, as alleged by the petitioners. Accordingly, there is an urgent need for our client to be furnished with additional information and materials.

The main accusations against our client, as captured in all the four petitions, may be summarised as follows:

(a) That he agreed to moderate the results of the just concluded presidential elections at a meeting between IEBC commissioners and certain individuals including Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu.
(b) That he filed an affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.
(c) That he agreed to certain proposals by the National Security Advisory Committee (NSAC) to the effect that the results of the presidential election should be changed to avert chaos that would erupt if a certain presidential candidate was declared the winner.

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*on leave of absence

(d) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.

To be able to make sense of the above accusations, in the context of the various constitutional and statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) CONTENTION THAT HE AGREED WITH A REQUEST TO MODERATE RESULTS

With respect to the accusation that our client agreed to a request by Raphael Tuju and Amos Wako to moderate results of the presidential election, our client maintains that he never attended that meeting. The Petitioners however insist that he agreed with such proposals. In these circumstances, it is not possible for our client to defend himself unless he is furnished by each of the petitioners, with the following:

(i) CCTV footage indicating the persons who attended that meeting.
(ii) The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
(iii) The specific mode of communication that was used by our client to remotely convey such agreement.

(b) CONTENTION THAT HE FILED AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT

While all the petitioners maintain that our client SUPPORTED the petitions, our client insists that he OPPOSED the petitions which were filed challenging the results of the presidential election (save for specific concerns that he raised with respect to access to the server by unauthorised persons). The petitioners further insist that he filed an affidavit SUPPORTING the petitions. In these circumstances our client is unable to respond to such accusation, unless he is furnished with a copy of the affidavit which our client allegedly filed before the Supreme Court and in which he SUPPORTED the petitions.

(c) CONTENTION THAT HE AGREED WITH NSAC PROPOSALS

Although all petitioners maintain that our client supported the proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner, our client maintains that he never uttered a word when NASC members visited IEBC at Bomas. In these circumstances, it is not possible for our client to defend himself unless each of the petitioners furnish him with the following:

(i) CCTV footage showing exactly what happened when NSAC visited IEBC Commissioners at Bomas of Kenya.
(ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.
(iii) The form in which the alleged **"agreement"** was conveyed, whether orally, by conduct or in writing,
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With respect to this particular accusation, the Petitioners claim that because they saw our client announcing some results, he was actively involved in the electoral exercise and consequently he could not have honestly and sincerely believed that the results were opaque. This then leads them to the conclusion that such statements were merely intended to subvert the will of the electorate. On the other hand, our client maintains that he was not involved in the process of developing Form 34C which contained the results that were announced by the chairman, and that while he only announced a few constituency results, he did not know and could not verify whether such results had been included in the Form 34C, which contained presidential elections at county level, and which was prepared without his involvement or input, and finally, whose content he was not given any opportunity to verify.

In these circumstances, and in view of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

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In addition to the foregoing, and contrary to our earlier letter, we have instructions to notify you that our client will require slightly more time – upon being furnished with the above details – to prepare and deliver his defence. We are aware that Rule 230(4) of the Standing Orders allocate a maximum of **FOURTEEN (14) DAYS** for "**EACH**" petition. The program that has been published and which allocates to **FOUR** petitions filed against **FOUR** Commissioners (i.e. each commissioner must prepare and respond to four independent petitions) a period of **FOURTEEN (14) DAYS for ALL** the petitions, and **ONE (1) HOUR** for each commissioner, is too tight to permit a meaningful response to the weighty issues raised in each of the petitions, taking into account the likely impact of the said petitions upon our client. That programme

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Consequently, our instructions are to request as we hereby do, that our client be given a minimum of **SEVEN (7) DAYS** to prepare and deliver his response, excluding the period taken by the petitioners to present their case. Kindly but urgently therefore furnish us with the amended programme to enable us prepare with our client.

Finally, we should also be grateful if you would kindly but urgently confirm to us if our client will be given the opportunity to cross-examine the Chairman of IEBC, Wafula Chebukati, in view of the fact that virtually all the allegations made in the four petitions are premised on the affidavit he filed before the Supreme Court, the contents of which was treated by all petitioners as Gospel truth which is the reason why all the petitioners completely ignored the contents of all other affidavits which were also filed before the Supreme Court and which denied those allegations.

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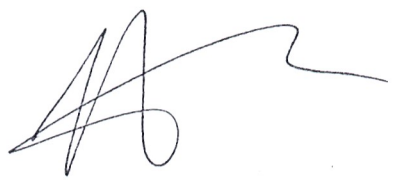

DR. JOTHAM OKOME ARWA

Cc: The Speaker, National Assembly
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Cc: The Minority Leader, National Assembly
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159

RACHIER & AMOLLO LLP

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PARTNERS

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Your Ref: Our Ref: C/5957/22 Date: 21st Nov. 2022

Douglas Katho to facilitate 29/11/22

The Clerk
National Assembly
Parliament Buildings
NAIROBI

NATIONAL ASSEMBLY
RECEIVED
23 NOV 2022
CLERK'S OFFICE
P O Box 41842, NAIROBI

D/D Procedural Committees Mr. please check, see to deal, urgently. 29/11/22

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DELIVERED BY Office of the Clerk of the National Assembly Committees 29 NOV 2022

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Yours faithfully
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DR. JOTHAM OKOME ARWA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.

② D/Departmental Committees
For attention of JLAC
21/11

KTK

KTK ADVOCATES
COMMERCIAL - CORPORATE LAW PRACTICE
(MEMBER OF AN INTERNATIONAL LEGAL NETWORK OF LEADING INDEPENDENT BUSINESS LAW FIRMS

LEGALINK

Our Ref M/0253/001 *Date*: 21st November, 2022

Your Ref: NA/CNA/CORR/2022(251)

Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.

Douglas Katho
pls facilitate
21/11/22

VERY URGENT

① M. Kilakala, LC.
Pls provide the information required urgently.
21/11/2022

Dear Sir,

RE: **IMPEACHMENT PROCEEDINGS**
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
~AND~
COMMISSIONER IRENE MASIT

We refer to the above and ours dated **18.11.22**, the response which we are yet to receive.

We re-state the following:-

i. Our Client is facing the most serious Charges under ***Article 251 of The Constitution*** of a Public Servant. The outcome of the Charges will determine the future of her personal integrity and Public Service and thus the highest importance to the Proceedings.

ii. ***Article 50 of The Constitution*** and ***Section 4 of The Fair Administrative Action, No. 4 of 2015*** makes it mandatory that a person facing Judicial or quasi-judicial must have the following:-

1. Adequate Notice, nature and reasons of the allegations or Charges.

2. Opportunity to be heard and by an Advocate of choice.

Directorate of Departmental Committees
21 NOV 2022
DIRECTOR

NATIONAL ASSEMBLY
RECEIVED
21 NOV 2022
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

Donald B. Kipkorir
Wanja S. Gitau
Victoria M. Mbithi
Florence A. Otieno
Dorine N. Wanjeru

IFLR 1000 RECOGNISED FIRM 2020

IFLR 1000 RECOGNISED FIRM 2021

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Tel: (+254) 20 2250544, 2250554, Cell: (+254 788) 646 283, (+254 712) 113 888. Email: mail@ktk.co.ke

PIN: P0511234181
VAT: 0110006S

3. Right to cross-examine the Petitioners.

4. Information, materials and evidence to be relied by the Petitioner or the body that shall make the decision.

Your **Notice** is that the Proceedings against our Client shall be on **28.11.22.**

The information and documents we have sought in our letter dated **18.11.22** are **Mandatory** to enable us adequately prepare for the hearing.

NOTE that unless we receive your response **immediately,** we will be constrained to file Constitutional Reference to Stay the Proceedings until you meet our request.

We await your prompt response.

Yours Sincerely,

DONALD B. KIPKORIR
KTK ADVOCATES

Cc: Dr. Joram O. Arwa,
Rachier & Amollo LLP,
Mayfair Centre, 5th Floor,
Ralph Bunche Road,
NAIROBI (REF: TBA)

Cc: Apollo Mboya,
Apollo & Co.
Advocates,
B2 Kindaruma Court,
Kindaruma Road,
KILIMANI.

Cc: Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

DBK/sn



Apollo & Co. Advocates
Commissioners for Oaths, Notaries & Company Secretaries
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Website: www.aca.co.ke
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B2 Kindaruma Court
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:18th November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

VERY URGENT

NATIONAL ASSEMBLY
RECEIVED
21 NOV 2022
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated today in respect the Petitions for removal of our client, **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission.

We have noted that presentations of the four (4) petitions shall be on **24th** and **25th November 2022**. Thereafter our client is required to respond to the four(4) petitions within 4 days from the dates of presentations of the four (4) petitions on 28th and 29th November 2022.

As you are aware, the proceedings of the Departmental Committee for removal are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature where **the rules of natural justice** and **fair administrative action** must be observed.

The fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence must be accorded to person who is likely to suffer from the adverse finding. In order for our client to adequately prepare to respond to each of the four (4) petitions, our client requires a minimum of fourteen (14) days for each petition.

In view of the above, we take this early opportunity to bring to your attention that the scheduled for the proceedings before the Departmental Committee does not conform to the constitutional tenets of fair hearing.

21 NOV 2022

As you are aware, **Article 35** of the Constitution of Kenya bestows on every citizen the right of access to information held by the State and information held by another person and required for the exercise or protection of any right or fundamental freedom. Pursuant to the said constitutional provisions and the statutory provision in the **Access to Information Act No. 31 of 2016**, this is to request to be furnished with the following:

1. Hansard report of the Conveyance of the four (4) petitions to the Departmental Committee from the House.

2. The Hansard report of the Departmental Committee that drew the schedule for the hearings

3. The total number and copies of Petitions received by the National Assembly Main Records Unit in respect of the removal of the current Commissioners of Independent Electoral and Boundaries Commission.

4. Updated Hard Copy of Standing Orders of the National Assembly

5. All the proceedings and decisions of the Departmental Committee and the House in respect of the Petitions for removal of Constitutional Office Holders from the year 2010 to date.

The said information and documents are required by our client to facilitate our client to prepare to respond to the four(4) petitions within the requested period of fourteen 14 days for each of the Petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
NAIROBI
Tel.0722204778
Email: lawtechs@rachieradvs.co.ke

cc: **Donald B. Kipkorir, Advocate**
KTK Advocates
KeMU Towers, 4th Floor,
Uhuru Highway/University Way,
P.O. BOX 10176 – 00100
NAIROBI
Tel.0788646283, 0712 113888
Email: mail@ktk.co.ke

153

Apollo & Co. Advocates
Commissioners for Oaths, Notaries & Company Secretaries
Website:www.aca.co.ke
(+254)-733725482,770473800
B2 Kindaruma Court,
Kindaruma Road-Kilimani
P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:18the November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Douglas Katho
to facilitate consideration
24/11/22

Dear Sir,

Departmental Committee
Mr. R. Wadada, SLC
To deal, urgently
23/11/22

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated today in respect the Petitions for removal of our client, **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission.

We have noted that presentations of the four (4) petitions shall be on **24th** and **25th November 2022**. Thereafter our client is required to respond to the four(4) petitions within 4 days from the dates of presentations of the four (4) petitions on 28th and 29th November 2022.

As you are aware, the proceedings of the Departmental Committee for removal are ***sui generis*** constitutional and political process that is *quasi-judicial* in nature where **the rules of natural justice** and **fair administrative action** must be observed.

The fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence must be accorded to person who is likely to suffer from the adverse finding. In order for our client to adequately prepare to respond to each of the four (4) petitions, our client requires a minimum of fourteen (14) days for each petition.

In view of the above, we take this early opportunity to bring to your attention that the scheduled for the proceedings before the Departmental Committee does not conform to the constitutional tenets of fair hearing.

DIRECTOR
Directorate of Departmental Committees
NATIONAL ASSEMBLY
RECEIVED
23 NOV 2022

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4. Updated Hard Copy of Standing Orders of the National Assembly

5. All the proceedings and decisions of the Departmental Committee and the House in respect of the Petitions for removal of Constitutional Office Holders from the year 2010 to date.

The said information and documents are required by our client to facilitate our client to prepare to respond to the four(4) petitions within the requested period of fourteen 14 days for each of the Petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
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Tel.0722204778
Email: lawtechs@rachieradvs.co.ke

cc: **Donald B. Kipkorir, Advocate**
KTK Advocates
KeMU Towers, 4th Floor,
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P.O.Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:18th November 2022

Douglas Katho to facilitate
21/11/22
D/Dep'tal Committee
Please note

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

DIRECTOR
RECEIVED
21 NOV 2022
Directorate of Departmental Committees

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We have instruction from our client **Juliana Cherera**, the Vice Chairperson of the Independent Electoral and Boundaries Commission to acknowledge receipt of your letter dated 16th November 2022.

We shall attend the proceedings and file the response.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

Mr Wakaya, LC
Pls cleared
21/11

cc: Client,

NATIONAL ASSEMBLY
RECEIVED
18 NOV 2022
CLERK'S OFFICE
P.O. Box 41842, NAIROBI

RACHIER & AMOLLO LLP

• ADVOCATES • COMMISSIONERS FOR OATHS • NOTARIES PUBLIC

PARTNERS

A.D.O Rachier	LLB (Dar) LLM (Nbi)
* Otiende Amollo	LLB (Nbi) LLM (Nbi) Litt.D,CPM
J. Okome Arwa	LLB (Nbi) LLM (Nbi)
Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

ASSOCIATES

Jean Ogolla	LLB (Moi) MA-ICM (Nbi)
Kevin Wakwaya	LLB (Moi) CPM
Ezekiel Munyua	LLB (Mak)
William Ongoro	LLB (KU)
Marren Adunga	LLB (KU)
Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACIArb
Bryson Ometo	LLB (Moi)

DIRECTOR RECEIVED 21 NOV 2022 Directorate of Departmental Committees

Your Ref: Our Ref: Date: 18-Nov-22

NATIONAL ASSEMBLY RECEIVED 18 NOV 2022 CLERK'S OFFICE P O Box 41842, NAIROBI

- D/Departments, Committees
- Mr. R. Wakwaya, Ke
To urgently clear, and respond, 18/11/22

The Clerk
National Assembly
Parliament Buildings
Nairobi

Attention Mr. Samuel Njoroge

Dear Sir, Douglas Katho to facilitate 21/11/22

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY
OUR CLIENT - JUSTUS NYANG'AYA

We refer to the above petitions and wish to bring to your attention the fact that we have been retained to act for our above-named client in connection therewith. Before we file any response on behalf of our client however, our first responsibility is to confirm the completeness of the record. Accordingly, we should be grateful if you would kindly but urgently confirm to us whether any other documents, affidavits or annextures may have been filed with yourselves as against our client, apart from the following documents, which are the only documents served upon our client.

1. Petition filed and signed by Owuor Steve Gerry

2. Petition filed and signed by Rev. Dennis Nthumbi, which is supported by an affidavit sworn on 2nd November 2002, which merely confirms that the deponent is the author and originator of the petition.

3. Petition by Republican Liberal Party filed and signed by Zachariah M Matayo

4. Petition filed and signed by Geoffrey Langat of ID No. 25154044

Furthermore, we should be grateful if you would also kindly but urgently confirm to us whether our client will be given the opportunity to attend the Parliamentary Committee proceedings during the presentation of the case against him by the petitioners for purposes of listening to the factual allegations being made against him by all the petitioners.

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WHEN REPLYING PLEASE QUOTE OUR REFERENCE

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www.rachieradvs.co.ke
*on leave of absence

As you are no doubt aware, the allegations made against our client in the four petitions are extremely serious and the reliefs sought as against our client are likely to visit disastrous consequences on him socially, professionally and even politically. Our client is therefore entitled to a fair trial.

Article 50(1) of the Constitution of Kenya provide that every person has a right to a fair trial before a court, a tribunal or any other "**body**". A Parliamentary Committee hearing a petition seeking to remove a state officer is therefore "**a body**" within the meaning of Article 50(1) aforesaid, which must conduct its proceedings in such a manner as to ensure that any person who might be adversely affected by its decisions is given a fair hearing.

The ingredients of a fair hearing under International Human Rights Law includes the following:

a. The right to be informed of the charge against the person accused of any wrongdoing with sufficient details to answer it;
b. The right to be given adequate time and facilities to prepare a defence to the accusations;
c. The right to be present when the accusations are being levelled against oneself;
d. The right to be availed all evidence that is sought to be used against the person accused in good time before he can be called upon to defend himself; and
e. The right to confront and challenge the evidence presented by his accusers.

Our instructions are therefore to demand, as we hereby do as follows:

i. That our client be allowed to attend all the Parliamentary Committee proceedings from the beginning to the end of the presentation of the case against him, whether personally or by advocate, so that he is enabled to listen to all the accusations that will be levelled against him by all the petitioners, and to confront the said petitioners.

ii. That our client be allowed, whether personally or through his advocate, to cross-examine each of the petitioners to ascertain the veracity of their accusations against our client.

iii. That if no cross-examination of the petitioners will be permitted, then our client be permitted to submit questions to the petitioners before the commencement of the proceedings, which questions should be answered either before the commencement of the proceedings or during hearing.

iv. That after the conclusion of the presentation of the case against our client, that our client be furnished with the complete record of all the proceedings containing all the evidence and/or allegations made against him by each of the petitioners, as well as all the questions asked by the Committee members, and the answers given to all such questions, at least **ONE (1) DAY** before he can be called to appear before the same Committee to defend himself.

v. That our client be given the opportunity to call such witnesses as he will require not only to controvert the allegations made against him by the petitioners but also to support his own evidence.

vi. That if witnesses are not permitted, then our client be allowed to submit witness statements from such persons as are ready and willing to appear as his witnesses before the Parliamentary Committee.

vii. That our client be given at least **THREE (3) HOURS** to defend himself before the Parliamentary Committee.

viii. That the date and time already set for the appearance of our client before the Parliamentary Committee be adjusted in such a manner as to permit full compliance with the basic touchstones of a fair trial as summarised above.

Your kind but urgent response to the issues raised above will be highly appreciated.

Yours Faithfully
RACHIER & AMOLLO LLP



DR. J.O ARWA

CC: CLIENT

KTK ADVOCATES
COMMERCIAL CORPORATE LAW PRACTICE
(MEMBER OF AN INTERNATIONAL LEGAL NETWORK OF LEADING INDEPENDENT BUSINESS LAW FIRMS
LEGALINK

Our Ref M/0253/001 *Date:* 17th November, 2022

Your Ref: NA/CNA/CORR/2022(251)

Samuel Njoroge,
Clerk,
National Assembly,
Parliament Buildings,
NAIROBI.

Douglas Katho
to facilitate
18/11/22

D/Departmental Committees
2. Mr. Wakeka - LC
To note and facilitate
17/11/2022

Dear Sir,

RE: IMPEACHMENT PROCEEDINGS
REV. DENNIS N. NTHUMBI
GEOFFREY LANGAT
OWUOR STEVE GERRY
~AND~
COMMISSIONER IRENE MASIT

We have retained by **Commissioner Irene Masit** to act for her in the above-cited proceedings by the three Petitioners.

We will file her response before the scheduled date.

Yours Sincerely,

DONALD B. KIPKORIR
KTK ADVOCATES

DIRECTOR
RECEIVED
17 NOV 2022
Directorate of Departmental Committees

Cc: Irene Masit,
Commissioner,
Independent Electoral &
Boundaries Commission (IEBC),
Anniversary Towers, 6th Floor,
University Way,
NAIROBI.

NATIONAL ASSEMBLY
RECEIVED
17 NOV 2022
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P.O Box 41842, NAIROBI

DBK/sn

ld B. Kipkorir
anja S. Gitau
ctoria M. Mbithi
ce A. Otieno
N. Wanjeru

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IFLR
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ANNEXURE 8:

RULES

RULES OF PROCEDURE ON MATTERS RELATING TO THE PETITIONS FOR THE REMOVAL OF COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

committee clerks to note
28/11/24

Citation

1. These Rules may be cited as the Rules of Procedure for the Parliamentary Committee on Justice and Legal Affairs relating to the petitions for the removal of Commissioners of the Independent Electoral and Boundaries Commission.

Interpretation

2. In these Rules unless the context otherwise requires—

"Clerk" means the Clerk of the National Assembly and includes any person for the time being performing the duties of the Clerk of the National Assembly or the Clerk of the Senate;

"Committee" means the Justice and Legal Affairs Committee relating to the removal of Commissioners of the Independent Electoral and Boundaries Commission;

"House" means the National Assembly;

"Petition" means a document presented by a person desiring the removal of a member of a commission or of a holder of an independent office pursuant to Article 251(2) of the Constitution;

"Respondent" means a Commissioner of the Independent Electoral and Boundaries Commission against whom a Petition has been filed;

"Speaker" means the Speaker of the National Assembly; and

"Standing Orders" means the Standing Orders of the National Assembly.

Speaker's guidelines

3. Pursuant to Speaker's conveyance of petitions against four (4) Commissioners—

(a) Each Respondent shall be given at least seven (7) days' notice before the date of the hearing. The notice shall specify the time, place and venue of the hearing of the Petition;

(b) Each Respondent shall be given adequate time to respond to any additional documentation presented by the petitioners;

(c) The Committee shall consider a Petition as presented, save for additional information or documentation presented to clarify the contents of the Petition;

DIRECTOR RECEIVED 28 NOV 2022 Directorate of Departmental Committees

NATIONAL ASSEMBLY RECEIVED 24 NOV 2022 CLERK'S OFFICE P.O. BOX 41842, NAIROBI

COPY

(d) A Respondent may appear in person or through legal representative for the hearing and the cross-examination of the petitioners; and

(e) A Respondent may respond orally or in writing.

Conduct of Members

4. (1) A Member of the committee shall not advance or defend the interests of either party

(2) A Member of the committee shall remain decorous and civil towards all parties that appear before the Committee.

(3) The Committee conduct the hearing with minimal interventions.

Duties of Chairperson

5. Pursuant to Standing Order 180 the Chairperson shall—

(a) preside at meetings of the committee;

(b) perform the functions and exercise the powers assigned to the office of the Chairperson by the committee, resolutions of the Assembly or legislation; and

(c) be the spokesperson of the committee.

Schedule of hearings

6. The Committee shall adopt a schedule of hearings which shall serve as the notice of meetings for the Committee and the parties to a Petition.

Attendance by non-members of the Committee

7. (1) Pursuant to Standing Order 195, a Member may attend the hearings of the Committee.

(2) A Member who intends to participate in a hearing of the Committee shall submit a written request to the Chairperson at least twenty-four hours before the hearing, or such other period the Chairperson may in exceptional circumstances allow.

(3) The request shall indicate any matter which the Member intends to raise at the meeting.

(4) Where the Chairperson allows a request for participation under paragraph (2), the Member may attend the meeting and raise any matters indicated in his or her request.

(5) The Chairperson shall, before allowing a non-member to participate in a matter before the committee, give priority to the Members of the Committee.

(6) The Chairperson may order a non-member of the committee to withdraw from a hearing for disorderly conduct.

Public access to the meetings of the Committee

8. Pursuant to Standing Order 198, the proceedings of the Committee shall be open to the public unless, in exceptional circumstances, the Speaker has determined that there are justifiable reasons for the exclusion of the public.

Allocation of time to Parties

9. (1) Pursuant to Standing Order 67(b), the Committee shall allow a Respondent not more two hours or such further time as it may, in each case determine, to respond to the Petitions.

(2) Where more than one Respondent intends to cross-examine a Petitioner, the Committee shall allocate the available time equally between the Respondents and the Petitioner, for purposes of reply.

(3) Where more than one Petitioner intends to cross-examine a Respondent, the Committee shall allocate the available time equally between the Petitioners and the Respondent, for purposes of reply.

(4) The Committee shall determine, from within the time allocated to a party, the period to be used for introduction and closing remarks.

Decisions of the Committee

10. Subject to Standing Order 199, decisions of the Committee shall be made by—

(a) a consensus among the members; or

(b) a majority vote of the Members of the Committee present.

Amendment of Rules of Procedure

11. (1) A Member may propose an amendment to these Rules.

(2) The Committee may pass an amendment to these rules by a majority vote of all the members of the Committee.

Application of the Constitution, Statute and precedents

12. In all cases where matters are not expressly provided for by the Standing Orders or these Rules, any procedural question shall be decided by the Chairperson based on the Constitution of Kenya, the Fair Administrative Action Act, 2015 and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya.

ANNEXURE 9:

PRELIMINARY OBJECTIONS

Apollo & Co. Advocates
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82 Kindaruma Court
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P.O Box 2073-00100 Nairobi-Kenya

Our Ref: ACA/NA/1/2022 Your Ref: NA/CNA/CORR/2022(252) Date:23rd November 2022

Samuel Njoroge,
Clerk of the National Assembly
Clerk's Chambers
National Assembly
Parliament Buildings
P.O.Box 45371-01000
NAIROBI

Dear Sir,

RE: PETITION FOR REMOVAL FROM OFFICE AND INVITATION TO ATTEND BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

We refer to your letter dated 16th November 2022 and to our earlier letter dated 18th November 2022 which elicited no response despite that we sought to be furnished with information pursuant to **Access to Information Act No. 31 of 2016**,.

Forwarded herewith are preliminary objections by our client Juliana Cherera to the four petitions.

Yours faithfully,
Apollo & Company Advocates

APOLLO MBOYA, HSC, 'ndc'(K)

cc: Client

cc: **Dr Jotham Arwa, Advocate**
Rachier & Amollo LLP
Mayfair Centre, 5th floor
Ralph Bunche Road,
P.O Box 55645-00200
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Tel.0722204778
Email: lawtecns@rachieradvs.co.ke

cc: **Donald B. Kipkorir, Advocate**
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KeMU Towers, 4th Floor,
Uhuru Highway/University Way,
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Cc: **Gichamba & Co. Advocates**
Ngong Hills Hotel Office Suites, 3rd Floor
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPUBLICAN LIBERTY PARTY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **REPUBLICAN LIBERTY PARTY** dated 13th October 2022 on the following grounds:

1. **THAT** the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. **THAT** the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. **THAT** the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. **THAT** the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and **(iii) Standing Order 230.**

6. THAT the petitioner is corporate entity with a common seal pursuant to section of the political parties Act No 11 of 2011 but the signatory to the petition is one **Zacharia M. Matayo** who has not demonstrated that he has authority to sign the Petition on behalf of the political party nor affixed the common seal of the party on the petition.

7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

11. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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Clerk's Chambers
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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REV. DENNIS NDWIGA NTHUMBI----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **REV. DENNIS NDWIGA NTHUMBI** dated 2nd November 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes Article 250(9) of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and (iii) **Standing Order 230.**

6. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

7. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

10. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

GEOFFREY LANGAT ----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **Geoffrey Langat** dated 9th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs **(a); (b), (c), (d), (h),(i),(j),(l)** and **(m)** of **Standing Order 223** (Form of Petition) and paragraph **(a) (i), (ii)** and **(iii) Standing Order 230.**

6. THAT the petition is incompetent as it is seeking the removal of one Juliana Cherere who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.

7. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

8. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

11. THAT there is no petition before the Honourable House and Committee capable of being investigated.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC
APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

OWUOR STEVE GERRY----------PETITIONER

-VERSUS-

COMMISSIONER JULIANA CHERERA----------RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **Commissioner Juliana Cherera**, the respondent herein shall raise the Preliminary Objection to the Petition of **Owuor Steve Gerry** dated 19th September 2022 on the following grounds:

1. THAT the proceedings before this Honourable Departmental Committee contravenes **Article 250(9)** of the Constitution of Kenya which grant immunity to a member of a commission, or the holder of an independent office, for anything done in good faith in the performance of a function of office.

2. THAT the proceedings before the Honourable Departmental Committee of Justice and Legal Affairs are in contravention of **paragraph 4 of the Standing Order 230** which require the Committee to investigate the matter and report to the House within fourteen days.

3. THAT the proceedings before this Honourable Departmental Committee for removal which are *sui generis* constitutional and political process that is *quasi-judicial* in nature is not in adherence to **the rules of natural justice** and **fair administrative action.** .

4. THAT the proceedings before this Honourable Departmental Committee contravenes the fundamental rights and freedoms envisaged in **Article 50** of the Constitution of Kenya on fair trial including adequate time and facilities to prepare a defence.

5. THAT the petition is not in compliance with the requirements of paragraphs (a), (b), (c), (d), (h),(i),(j),(l) and (m) of **Standing Order 223** (Form of Petition) and paragraph (a) (i), (ii) and **(iii) Standing Order** 230.

6. THAT the petition is incompetent as it is seeking the removal of one **Juliana Cherere** who is not a Constitutional Office holder in Independent Electoral and Boundaries Commission.

7. THAT there is no prayer for removal of Constitutional Office holder in the petition.

8. THAT the Petitioner has not demonstrated the threshold in Article 251 of the Constitution of Kenya for removal of the Commissioner from office on any of the counts of serious violation of the Constitution or any other law, gross misconduct, whether in the performance of the member's or office holder's functions or otherwise, physical or mental incapacity to perform the functions of office incompetence; or bankruptcy.

9. THAT the Petition is a vain attempt to re-litigate the proceedings of the Supreme Court of Kenya Presidential Election Petition No. E005 of 2022 (Consolidated with) Presidential Election Petition Nos. E001, E002, E003, E004, E007 & E008 of 2022 in which the Supreme Court issued its judgment which contained legal and policy recommendations to improve the electoral landscape.

12. THAT there is no petition before the House and Committee capable of being investigated by the Honourable Departmental Committee.

Dated at Nairobi this 23rd Day of November 2022

APOLLO MBOYA, HSC

APOLLO & COMPANYADVOCATES FOR JULIANA CHERERA

TO BE SERVED UPON

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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

REPUBLICAN LIBERTY PARTY.....PETITIONER

-VERSUS-

COMMISSIONER IRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NJOROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF: NA/CAN/CORR/2022 (251)

In response to the Petition dated 13.10.22 by the Republican Liberty Party, the Respondent, Commissioner Irene Masit, shall relying solely on the filed Petition *ex facie* raise Preliminary Objection that this Committee has no jurisdiction to hear this Perition on *inter alia* the following grounds:-

1. THAT, the Petition doesn't comply with *Section 16 (1) of The Political Parties Act, No. 11 of 2011.*

2. THAT, the signatory, Zachariah M. Matayo hasn't evidenced how he is *sine qua non* Republican Liberty Party.

3. THAT, the Petition refers to *Articles 1, 3, 10, 13, 21, 22, 24, 37, 37, 38, 73, 75, 76, 77, 78, 81, 86, 99, 119, 193, 232, 249* and *251 of The Constitution, Sections 3, 4, 7, 8, 9, 10, 11, 13, 23, 24, 29* and *30 of The Leadership & Integrity Act, Sections 1, 2,* and *4 of The IEBC Act,* and *Sections 3, 8, 9, 10* and *16 of The Public Office Ethics Act* such that the Petition is muddled, expansive, ambiguous and superfluous for the Respondent to answer.

4. THAT, the Petition isn't supported by an Affidavit deposing to each and every allegation *seriatim* and thus it remains a hollow statement.

5. THAT, the Petition isn't supported by any exhibit, document or evidence.

6. THAT, the Petition is hearsay, gossip and empty rhetoric.

7. THAT, THE Petition doesn't demonstrate in any way or at all, Serious Violation or Any Violation of the Constitution on the Part of the Respondent.

8. THAT, the Petition doesn't demonstrate in any way or at all Gross Misconduct or Any Misconduct on the part of the Respondent.

9. THAT, the Petition doesn't in any way demonstrate Gross Incompetence or Any Incompetence on the part of the Respondent.

10. THAT, the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.

11. THAT, the Petition is politically biased

12. THAT, the Petition is actuated by ulterior political motive.

13. THAT, the Petition is filed *mala fide*.

14. THAT, the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided and available.

15. THAT, the reliefs sought are not proportionate to the allegations.

16. THAT, the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under *Article 251 of The Constitution*.

17. THAT, the Petition is fatally defective for lacking Constitutional, Statutory and legal *substratum*.

18. THAT, the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.

19. THAT, the Petition doesn't meet the mandatory requirements of the law.

20. THAT, the Petition is for Striking Out ***in limine***.

Dated at Nairobi this _____ day of _____ 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

KTK ADVOCATES,
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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

REV. DENNNIS NTHUMBI.....PETITIONER

-VERSUS-

COMMISSIONER IRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NJOROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF: NA/CAN/CORR/2022 (251)

In response to the Petition dated 02.11.22 by Rev. Dennis Nthumbi, the Respondent, Commissioner Irene Masit, shall raise Preliminary Objection pursuant the Petition *ex facie* that this Committee has no jurisdiction to hear this Petition on *inter alia* the following grounds:-

1. THAT, the Petition refers to *Articles 1, 2, 3, 10, 19, 20, 37, 73, 75, 86, 95, 118, 119, 138, 232, 248, 249, 251* and preamble to The Constitution; *Sections 7, 8, 9, 10, 11 16, 24,* and *29 of The Leadership & Integrity Act, Sections 3, 7, 9, 10, 12, 16, 17, 19, 35, 36,* and *38 of The Public Office Act. Sections 4, 9, 26,* and *30 of IEBC*

Act such that the petition is muddled, expansive, ambiguous and superfluous in the applicable provisions of the law and thus incapacitating the Respondent from adequately responding to it.

2. THAT, the Petition isn't supported by an Affidavit deposing to each and every allegation ***seriatim*** and thus it remains a hollow statement.

3. THAT, the Petition isn't supported by any exhibit, document or evidence.

4. THAT, the Petition is hearsay, gossip and empty rhetoric.

5. THAT, the Petition doesn't demonstrate in any way or at all **Serious Violation** or **Any Violation** of the Constitution on the Part of the Respondent,

6. THAT, the Petition doesn't demonstrate in any way or at all **Gross Misconduct** or **Any Misconduct** on the part of the Respondent.

7. THAT, the Petition doesn't in any way demonstrate Gross Incompetence or Any Incompetence on the part of the Respondent.

8. THAT, the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.

9. THAT, the Petition is politically biased.

10. THAT, the Petition is actuated by ulterior political motive

11. THAT, the Petition is filed *mala fide*.

12. THAT, the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided and available.

13. THAT, the reliefs sought are not proportionate to the allegations.

14. THAT, the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under *Article 251 of The Constitution.*

15. THAT, the Petition is fatally defective for lacking Constitutional, Statutory and legal *substratum.*

16. THAT, the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.

17. THAT, the Petition doesn't meet the mandatory requirements of the law.

18. THAT, the Petition is for Striking Out *in limine.*

Dated at Nairobi this _____ day of _____ 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

KTK ADVOCATES,
KeMU TOWERS,
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1. REV. DENNIS NTHUMBI
P.O. BOX 60024,
00200-NAIROBI.

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3

VERY URGENT

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

GEOFFREY LANGAT.....PETITIONER

~VERSUS~

COMMISSIONER IRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NJOROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF: NA/CAN/CORR/2022 (251)

In response to the **Petition** dated 09.09.22 by **Geoffrey Langat**, the Respondent, **Commissioner Irene Masit**, shall raise a **Preliminary Objection** pursuant the Petition *ex facie* that this Committee has no jurisdiction to hear this Petition on *inter alia* the following grounds:-

1. THAT, the Petition wholly fails to specifically plead the specific *Articles of The Constitution* or provisions that were allegedly violated by the Respondent

2. THAT, the Petition isn't supported by an Affidavit deposing to each and every allegation ***seriatim*** and thus it remains a hollow statement.

3. THAT, the Petition isn't supported by any exhibit, document or evidence.

4. THAT, the Petition is hearsay, gossip and empty rhetoric.

5. THAT, the Petition doesn't demonstrate in any way or at all **Serious Violation** or **Any Violation** of the Constitution on the Part of the Respondent,

6. THAT, the Petition doesn't demonstrate in any way or at all **Gross Misconduct** or **Any Misconduct** on the part of the Respondent.

7. THAT, the Petition doesn't in any way demonstrate **Gross Incompetence** or **Any Incompetence** on the part of the Respondent.

8. THAT, the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.

9. THAT, the Petition is politically biased.

10. THAT, the Petition is actuated by ulterior political motive.

11. THAT, the Petition is filed *mala fide*.

12. THAT, the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided and available.

13. THAT, the reliefs sought are not proportionate to the allegations.

14. THAT, the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under *Article 251 of The Constitution.*

15. THAT, the Petition is fatally defective for lacking Constitutional, Statutory and legal *substratum.*

16. THAT, the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.

17. THAT, the Petition doesn't meet the mandatory requirements of the law.

18. THAT, the Petition is for Striking Out ***in limine.***

Dated at Nairobi this 23rd day of February 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

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VERY URGENT

4

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

PETITION FOR REMOVAL OF IEBC COMMISSIONERS

OWUOR STEVE GERRY.....PETITIONER

~VERSUS~

COMMISSIONER IRENE MASIT.....RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

SAMUEL NJOROGE,
CLERK,
NATIONAL ASSEMBLY,
PARLIAMENT BUILDING,
PARLIAMENT ROAD,
NAIROBI. (REF: NA/CAN/CORR/2022 (251)

In response to the Petition dated 19.09.22 by **Owour Steve Gerry**, the Respondent, **Commissioner Irene Masit**, shall raise a **Preliminary Objection** pursuant the Petition *ex facie* that this Committee has no jurisdiction to hear this Petition on *inter alia* the following grounds:-

1. THAT, the Petition wholly fails to specifically plead the specific *Articles of The Constitution* or provisions that were allegedly violated by the Respondent

2. THAT, the Petition isn't supported by an Affidavit deposing to each and every allegation ***seriatim*** and thus it remains a hollow statement.

3. THAT, the Petition isn't supported by any exhibit, document or evidence.

4. THAT, the Petition is hearsay, gossip and empty rhetoric.

5. THAT, the Petition doesn't demonstrate in any way or at all **Serious Violation** or **Any Violation** of the Constitution on the Part of the Respondent,

6. THAT, the Petition doesn't demonstrate in any way or at all **Gross Misconduct** or **Any Misconduct** on the part of the Respondent.

7. THAT, the Petition doesn't in any way demonstrate **Gross Incompetence** or **Any Incompetence** on the part of the Respondent.

8. THAT, the Petition doesn't give adequate notice of the nature and reasons for the proposed reliefs.

9. THAT, the Petition is politically biased.

10. THAT, the Petition is actuated by ulterior political motive.

11. THAT, the Petition is filed ***mala fide***.

12. THAT, the allegations set out in the Petition don't warrant Petitions for Impeachment when alternative remedies are provided.

13. THAT, the reliefs sought are not proportionate to the allegations.

14. THAT, the Petition doesn't establish Constitutional, Statutory or legal basis for Impeachment Proceedings under *Article 251 of The Constitution.*

15. THAT, the Petition is fatally defective for lacking Constitutional, Statutory and legal *substratum.*

16. THAT, the Petition or its file is an egregious and violent violation of The Constitution, Statutes and established law.

17. THAT, the Petition doesn't meet the mandatory requirements of the law.

18. THAT, the Petition is for Striking Out ***in limine.***

Dated at Nairobi this 23rd day of February 2022

DONALD B. KIPKORIR
KTK ADVOCATES
ADVOCATES FOR THE RESPONDENT

DRAWN & FILED BY:-

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DBK/sn

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITIONS FILED BY:

1. **REV. DENNIS NTHUMBI;**
2. **REPUBLICAN LIBERAL PARTY;**
3. **GEOFFREY LANGAT; AND**
4. **OWUOR STEVE GERRY**

SEEKING REMOVAL OF JUSTUS NYANG'AYA AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **JUSTUS NYANG'AYA** (Hereinafter called "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUNDS:**

a) That this departmental committee on Justice and Legal Affairs has no jurisdiction to entertain the four petitions filed against the Objector pursuant to the provisions of Standing Order Number 223(f) as read together with sections 3(2) 35 and 36 of the Public Officer Ethics Act.

b) All the FOUR petitions facing the Objector are incompetent because they violate the provisions of Standing Order No. 223(f) [as read together with Standing Order Number 230(1)] which provide that a petition cannot be admitted to hearing unless it indicates whether any efforts have been made to have the matter addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory.

c) That these proceedings contravene Standing Order No. 230(4) of the National Assembly which require **EACH PETITION** to be heard and determined within **FOURTEEN (14) DAYS.**

d) Since FOUR (4) petitions have been filed seeking removal of the Objector from being a member of IEBC, it follows logically that each of the FOUR petitions should have been allocated a period of **FOURTEEN (14) DAYS** totalling to **FIFTY-SIX (56) DAYS** which would have been sufficient for the Objector to prove his innocence.

e) According to the programme that was sent to the Objector, he has been given only **ONE (1) HOUR** to respond to a total of **FOUR (4)** separate and independent petitions, which is not sufficient to permit a fair trial.

f) Under Article 50(1) of the Constitution, every person has a right to a fair trial before a court, a tribunal or any "**other body**" conducting a hearing which may culminate into the making of a decision that may adversely affect his rights and interests.

g) A Parliamentary Committee conducting a hearing which is intended to kick-start the process of removing a constitutional office holder from office is therefore under a duty to ensure its proceedings comply with the minimum standards of fair trial under the constitution.

h) The basic ingredients of a fair trial under the constitution as well as the international human rights law include the following:

(i) The right to be given sufficient details to understand the charges with a view to preparing a defence thereto;
(ii) The right to be given **ADEQUATE TIME** and **FACILITIES** to prepare for a defence;
(iii) The right to be given **IN ADVANCE** evidence that is intended to be used against the accused person;
(iv) The right to be given the opportunity to call witnesses to support the person accused's version of truth and to controvert his accuser's version of truth; and
(v) The right to challenge evidence presented against the person accused.

i) Each of the above rights, which are all comprised within the broader rubric of the right to fair trial are threatened with violation in the context of the impending impeachment proceedings instituted as against the Objector unless the orders sought herein are granted by this committee.

j) The charges laid against the Objector lack critical details without which the Objector cannot understand exactly what actions attributable to him are alleged to have constituted violations of the constitution, or to have amounted to gross misconduct or incompetence.

k) By his advocate's letter dated 22nd November 2022, the Objector has requested for such details but this committee intends to start the hearings even before the

Objector receives such information and materials as will enable the Objector to understand exactly what charges are facing him.

l) Calling a person to defend himself against charges which he does not understand is the clearest violation of the right to fair trial.

m) In the circumstances, it is only fair that these proceedings be IMMEDIATELY HALTED or at the very least stayed pending the receipt by the Objector, from the Petitioners of such information and materials that he needs to fully understand the charges facing him, particulars whereof are detailed in the letter dated 21st November 2022 from the Objector's lawyers.

n) As already explained above, although the Objector is entitled to FIFTY-SIX (56) DAYS to be heard with respect to the FOUR (4) petitions, while according to the program already circulated this committee, he is being given barely ONE (1) HOUR, which is far insufficient.

o) Besides, although there are adequate facilities that prove the innocence of the Objector in the possession power and custody of the petitioners as well as other agencies (such as Bomas of Kenya and IEBC) and although the Objector has requested such persons to furnish him with such facilities for purposes of proving his innocence and such persons are in the process of preparing such facilities for purposes of releasing the same to the Objector (as evidenced by the IEBC's letter to Bomas of Kenya dated 22nd November 2022) this committee insists on kick starting these proceedings even before he receives such facilities. *(The letter dated 22nd November from IEBC to Bomas of Kenya is annexed)*.

p) None of the four petitions which were served upon the Objector contained the evidence on which it is grounded, which mean that the evidence in support of each of the petitions will only be known once the hearings begin.

q) The Objector cannot therefore prepare with his advocate on how to defend himself against the evidence which he does not know.

r) The Objector has requested the petitioners, through the office of the Clerk, to furnish him with such evidence ahead of the commencement of the hearings, and is still waiting to be furnished with that evidence. However, even before the Objector is furnished with such evidence, these proceedings have been

commenced. This essentially means that the Objector will have been denied a fair trial.

s) The Objector has several witnesses who are ready and willing to appear before the appropriate committee to demonstrate the falsity of the allegations made against the him in the four petitions.

t) In his advocate's letter dated 18th November, 2022, the Objector sought to know whether he will be permitted to call witnesses. Vide the letter dated 22nd November, 2022 written by the clerk of the National Assembly the Objector was told that no decision has been taken by this committee on the question whether he will be permitted to call witness. *(A copy of that letter is annexed).*

u) The Objector cannot prepare with his potential witness unless he has been given the requisite green light. Nevertheless, even as the Objector is waiting for guidance on the question whether he will be permitted to call witnesses the departmental committee hearings are set to commence.

v) All the four petitions are primary premised on the affidavit that was filed by IEBC Chairman Wafula Chebukati before the Supreme Court and deal with matters which none of the Petitioners can depone to from their own knowledge.

w) The Petitioners cannot be cross-examined with respect to allegations made in the affidavit which was filed by Wafula Chebukati before the Supreme Court. Consequently, it is only Wafula Chebukati who can be cross-examined with respect to such issues. In his Advocate's letter dated 21st November 2022 the Objector's Advocate sought to know whether the Objector will be allowed to cross-examine Wafula Chebukati with reference to the contents of his affidavit which has given rise to the four petitions facing the Objector.

x) In spite of the fact that no response has so far been given to the Objector with regards to the question whether he will be allowed to cross-examine Wafula Chebukati as aforesaid, these proceedings are set to begin.

y) These proceedings are likely to have devastating effect upon the Objector in view of the fact that any adverse determination resulting therefrom will lead to automatic suspension of the Petitioner.

z) Any adverse determination against the Objector deriving from these proceedings will also visit devastating social, economic, political and professional consequences upon the Objector.

In these circumstances, it is practically impossible for the petitioner to defend himself of the accusations levelled against him in the Four petitions. Consequently, the Objector R**EQUESTS**:

(a) That these proceedings be **IMMEDIATELY HALTED** or in the alternative that these proceeds be stayed until:

(i) This committee gives directions with regards to the issues raised in the letter dated 18th November 2022 (copy whereof is annexed).

(ii) This committee gives its directions with regards to the issues raised in the letter dated 21st November 2022.

(iii) The Objector is given all the information and facilities that he needs to fully defend himself of the accusations levelled against him in the four petitions.

(iv) The Objector is given in advance details of the evidence that the petitioners intend to adduce as against him.

(v) The Objector is given adequate time to put together all the evidence he needs to defend himself before this committee.

(vi) This committee gives directions on the question whether the Objector will be allowed to call witnesses.

(vii) This committee gives directions on whether the Objector will be given the opportunity to cross-examine his main accuser (Wafula Chebukati).

Dated at Nairobi this 23rd day of November, 2022

DR. JOTHAM ARWA
RACHIER & AMOLLO LLP
ADVOCATES FOR JUSTUS NYANG'AYA

DRAWN & FILED BY:

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TO BE SERVED UPON:

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RACHIER & AMOLLO LLP

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Francis Olalo	LLB (Goa) CPS (K)
Stephen Ligunya	LLB (Nbi) LLM (Nbi)
Alvin Rachier	LLB(Wrk)LLM(Ucl)

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Samantha Mangla	LLB (CUEA)
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Bryson Ometo	LLB (Mol)

Your Ref: Our Ref: Date: 18-Nov-22

The Clerk
National Assembly
Parliament Buildings
Nairobi

Attention Mr. Samuel Njoroge

Dear Sir,

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY
OUR CLIENT - JUSTUS NYANG'AYA

We refer to the above petitions and wish to bring to your attention the fact that we have been retained to act for our above-named client in connection therewith. Before we file any response on behalf of our client however, our first responsibility is to confirm the completeness of the record. Accordingly, we should be grateful if you would kindly but urgently confirm to us whether any other documents, affidavits or annextures may have been filed with yourselves as against our client, apart from the following documents, which are the only documents served upon our client:

1. Petition filed and signed by Owuor Steve Gerry

2. Petition filed and signed by Rev. Dennis Nthumbi, which is supported by an affidavit sworn on 2nd November 2002, which merely confirms that the deponent is the author and originator of the petition.

3. Petition by Republican Liberal Party filed and signed by Zachariah M Matayo

4. Petition filed and signed by Geoffrey Langat of ID No. 25154044

Furthermore, we should be grateful if you would also kindly but urgently confirm to us whether our client will be given the opportunity to attend the Parliamentary Committee proceedings during the presentation of the case against him by the petitioners for purposes of listening to the factual allegations being made against him by all the petitioners.

As you are no doubt aware, the allegations made against our client in the four petitions are extremely serious and the reliefs sought as against our client are likely to visit disastrous consequences on him socially, professionally and even politically. Our client is therefore entitled to a fair trial.

Article 50(1) of the Constitution of Kenya provide that every person has a right to a fair trial before a court, a tribunal or any other "body". A Parliamentary Committee hearing a petition seeking to remove a state officer is therefore "a body" within the meaning of Article 50(1) aforesaid, which must conduct its proceedings in such a manner as to ensure that any person who might be adversely affected by its decisions is given a fair hearing.

The ingredients of a fair hearing under International Human Rights Law includes the following:

a. The right to be informed of the charge against the person accused of any wrongdoing with sufficient details to answer it;
b. The right to be given adequate time and facilities to prepare a defence to the accusations;
c. The right to be present when the accusations are being levelled against oneself;
d. The right to be availed all evidence that is sought to be used against the person accused in good time before he can be called upon to defend himself; and
e. The right to confront and challenge the evidence presented by his accusers.

Our instructions are therefore to demand, as we hereby do as follows:

i. That our client be allowed to attend all the Parliamentary Committee proceedings from the beginning to the end of the presentation of the case against him, whether personally or by advocate, so that he is enabled to listen to all the accusations that will be levelled against him by all the petitioners, and to confront the said petitioners.

ii. That our client be allowed, whether personally or through his advocate, to cross-examine each of the petitioners to ascertain the veracity of their accusations against our client.

iii. That if no cross-examination of the petitioners will be permitted, then our client be permitted to submit questions to the petitioners before the commencement of the proceedings, which questions should be answered either before the commencement of the proceedings or during hearing.

iv. That after the conclusion of the presentation of the case against our client, that our client be furnished with the complete record of all the proceedings containing all the evidence and/or allegations made against him by each of the petitioners, as well as all the questions asked by the Committee members, and the answers given to all such questions, at least **ONE (1) DAY** before he can be called to appear before the same Committee to defend himself.

v. That our client be given the opportunity to call such witnesses as he will require not only to controvert the allegations made against him by the petitioners but also to support his own evidence.

vi. That if witnesses are not permitted, then our client be allowed to submit witness statements from such persons as are ready and willing to appear as his witnesses before the Parliamentary Committee.

vii. That our client be given at least THREE (3) HOURS to defend himself before the Parliamentary Committee.

viii. That the date and time already set for the appearance of our client before the Parliamentary Committee be adjusted in such a manner as to permit full compliance with the basic touchstones of a fair trial as summarised above.

Your kind but urgent response to the issues raised above will be highly appreciated.

Yours Faithfully
RACHIER & AMOLLO LLP

DR. J.O ARWA

CC: CLIENT

RACHIER & AMOLLO LLP

◦ ADVOCATES ◦ COMMISSIONERS FOR OATHS ◦ NOTARIES PUBLIC

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Rodney Amollo	LLB (Nbi)
Samantha Mangla	LLB (CUEA)
Grace Maina	LLB (JKUAT) ACIArb
Bryson Ometo	LLB (Moi)

Your Ref: Our Ref: C/5957/22 Date: 21st Nov. 2022

The Clerk
National Assembly
Parliament Buildings
NAIROBI

ATTENTION: SAMWEL NJOROGE

Dear Sir

RE: PETITIONS FILED BY REPUBLICAN LIBERAL PARTY, DENNIS N. NTHUMBI, GEOFFREY LANGAT AND OWUOR STEVE GERRY

We refer to the above matter and to our letter dated 18th November 2022 and note, with great concern, that you have not seen it fit to favour us with any response thereto, in spite of the fact that our client urgently needs your response on the issues raised in that letter for him to be able to prepare his defence strategy. Your continued silence is therefore highly prejudicial to our client.

We further wish to advise that upon careful scrutiny of the accusations made against our client, we have encountered numerous challenges in our endeavour to unravel exactly what our client is alleged to have done wrong and which is said to constitute violations of the constitution or to amount to gross misconduct, as alleged by the petitioners. Accordingly, there is an urgent need for our client to be furnished with additional information and materials.

The main accusations against our client, as captured in all the four petitions, may be summarised as follows:

(a) That he agreed to moderate the results of the just concluded presidential elections at a meeting between IEBC commissioners and certain individuals including Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu.
(b) That he filed an affidavit in support of the petition filed before the Supreme Court challenging the presidential elections results.
(c) That he agreed to certain proposals by the National Security Advisory Committee (NSAC) to the effect that the results of the presidential election should be changed to avert chaos that would erupt if a certain presidential candidate was declared the winner.

(d) That since our client was seen on television announcing results, alongside other commissioners, statements that were read by four commissioners to the effect that the presidential election was opaque did not reflect what they truly and sincerely believed in. On the contrary, they comprised of false, but incendiary, statements that were targeted at subverting the will of the electorate.

To be able to make sense of the above accusations, in the context of the various constitutional and statutory provisions cited, our client requires the petitioners to furnish him with the information and materials outlined hereunder with respect to each of the above accusations.

(a) CONTENTION THAT HE AGREED WITH A REQUEST TO MODERATE RESULTS

With respect to the accusation that our client agreed to a request by Raphael Tuju and Amos Wako to moderate results of the presidential election, our client maintains that he never attended that meeting. The Petitioners however insist that he agreed with such proposals. In these circumstances, it is not possible for our client to defend himself unless he is furnished by each of the petitioners, with the following:

(i) CCTV footage indicating the persons who attended that meeting.
(ii) The specific words that were allegedly uttered by our client which, according to the petitioners, could be interpreted to mean that he agreed with the alleged proposal to moderate results.
(iii) The specific mode of communication that was used by our client to remotely convey such agreement.

(b) CONTENTION THAT HE FILED AFFIDAVIT SUPPORTING THE PETITIONERS BEFORE THE SUPREME COURT

While all the petitioners maintain that our client SUPPORTED the petitions, our client insists that he OPPOSED the petitions which were filed challenging the results of the presidential election (save for specific concerns that he raised with respect to access to the server by unauthorised persons). The petitioners further insist that he filed an affidavit SUPPORTING the petitions. In these circumstances our client is unable to respond to such accusation, unless he is furnished with a copy of the affidavit which our client allegedly filed before the Supreme Court and in which he SUPPORTED the petitions.

(c) CONTENTION THAT HE AGREED WITH NSAC PROPOSALS

Although all petitioners maintain that our client supported the proposals that were allegedly made by one Kennedy Kihara on behalf of NSAC to the effect that a particular presidential candidate should not be declared as a winner, our client maintains that he never uttered a word when NASC members visited IEBC at Bomas. In these circumstances, it is not possible for our client to defend himself unless each of the petitioners furnish him with the following:

(i) CCTV footage showing exactly what happened when NSAC visited IEBC Commissioners at Bomas of Kenya.
(ii) Minutes of the meeting between IEBC Commissioners and the NSAC members.
(iii) The form in which the alleged "**agreement**" was conveyed, whether orally, by conduct or in writing,
(iv) If in writing, a copy of the written document, and

(v) If orally, then the specific words uttered by our client which were interpreted by each of the petitioners to constitute "**agreement**" with NSAC proposal.

(d) CONTENTION THAT THE FOUR COMMISSIONERS' STATEMENTS TO THE EFFECT THAT THE RESULTS WERE OPAQUE WERE INTENDED TO SUBVERT THE WILL OF THE ELECTORATE

With respect to this particular accusation, the Petitioners claim that because they saw our client announcing some results, he was actively involved in the electoral exercise and consequently he could not have honestly and sincerely believed that the results were opaque. This then leads them to the conclusion that such statements were merely intended to subvert the will of the electorate. On the other hand, our client maintains that he was not involved in the process of developing Form 34C which contained the results that were announced by the chairman, and that while he only announced a few constituency results, he did not know and could not verify whether such results had been included in the Form 34C, which contained presidential elections at county level, and which was prepared without his involvement or input, and finally, whose content he was not given any opportunity to verify.

In these circumstances, and in view of the specific allegations made against our client by the petitioners, our client needs the following information and materials to be able to defend himself:

(i) CCTV footage which would show if any meeting was held at Bomas during which the four commissioners could have been given details of all the County Results that had been verified and tallied.
(ii) CCTV footage showing the four commissioners announcing constituency results which would reveal the ACTUAL RESULTS that were read by them in the full glare of the cameras.
(iii) A copy of Form 34C which was shown to the four commissioners by IEBC Chairman Wafula Chebukati, and which triggered the protest from the four commissioners, which alone would confirm whether any of the results read by the four commissioners was indicated on the face of the Form 34C, that contained the final presidential results.
(iv) Details of the facts supporting the petitioners' contention that our client did not sincerely and honestly believe that the results were opaque.
(v) Details of any provision of the constitution, or any statute which makes it illegal for a Commissioner of IEBC to state his opinion with respect to the opacity or any other characteristic of the results of any election.
(vi) Details of any provision of the constitution, or any statute which makes it mandatory for IEBC Commissioners to be present when election results are being declared by the Chairman of IEBC.

In addition to the foregoing, and contrary to our earlier letter, we have instructions to notify you that our client will require slightly more time – upon being furnished with the above details – to prepare and deliver his defence. We are aware that Rule 230(4) of the Standing Orders allocate a maximum of **FOURTEEN (14) DAYS** for "**EACH**" petition. The program that has been published and which allocates to **FOUR** petitions filed against **FOUR** Commissioners (i.e. each commissioner must prepare and respond to four independent petitions) a period of **FOURTEEN (14) DAYS for ALL** the petitions, and **ONE (1) HOUR** for each commissioner, is too tight to permit a meaningful response to the weighty issues raised in each of the petitions, taking into account the likely impact of the said petitions upon our client. That programme

violates our client's right to fair trial, as well as his right to fair administrative action, and needs to be amended in the interests of justice.

Consequently, our instructions are to request as we hereby do, that our client be given a minimum of SEVEN (7) DAYS to prepare and deliver his response, excluding the period taken by the petitioners to present their case. Kindly but urgently therefore furnish us with the amended programme to enable us prepare with our client.

Finally, we should also be grateful if you would kindly but urgently confirm to us if our client will be given the opportunity to cross-examine the Chairman of IEBC, Wafula Chebukati, in view of the fact that virtually all the allegations made in the four petitions are premised on the affidavit he filed before the Supreme Court, the contents of which was treated by all petitioners as Gospel truth which is the reason why all the petitioners completely ignored the contents of all other affidavits which were also filed before the Supreme Court and which denied those allegations.

Your kind but very urgent response will be highly appreciated.

Yours faithfully
RACHIER & AMOLLO LLP

DR. JOTHAM OKOME ARWA

Cc: The Speaker, National Assembly
Cc: The Majority Leader, National Assembly
Cc: The Minority Leader, National Assembly
Cc: The Chairperson, Justice & Legal Affairs Committee
Cc: Each Member of the Justice and Legal Affairs Committee.

REPUBLIC OF KENYA

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Website: www.parliament.go.ke

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National Assembly
Parliament Buildings
P. O. Box 4184200100
NAIROBI, KENYA

OFFICE OF THE CLERK – NATIONAL ASSEMBLY

When replying please quote
Ref: NA./CNA/CORR/2022 (274)

21st November, 2022

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Ralph Bunche Road
P. O. Box 55645 – 00200
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lawtechs@rachieradvs.co.ke

"ADVANCE COPY by email"

RACHIER & AMOLLO ADVOCATES
RECEIVED
22 NOV 2022

Attn: Dr. J. O. Arwa

Dear

RE: PETITIONS FILED BY REPUBLICAN LIBERTY PARTY, DENNIS N. NTHUMBI, GEOFFREY LANGAT & OWOUR STEVE GERRY—COMMISSIONER JUSTUS NYANG'AYA

The above matter refers.

We confirm that the documents forwarded are the complete record of the documents submitted by the four (4) Petitioners and conveyed to the Departmental Committee on Justice and Legal Affairs by the Hon. Speaker of the National Assembly on 15th November, 2022.

We note that our letter to your client dated 16th November, 2022 *Ref: NA/CNA/CORR/2022(254)*, did invite your client to attend the hearings of the Committee to be conducted on **Thursday, 24th November,2022**, and **Friday 25th November, 2022** in person or by Advocate. In line with the guidance made by the Hon. Speaker, your client shall be at liberty to cross-examine each of the four (4) Petitioners as indicated in the Schedule of hearings contained in the letter.

We have conveyed your letter to the Departmental Committee on Justice and Legal Affairs that is now seized of the matter and shall be able to guide on paragraphs (iv), (v), (vi), (vii) and (viii) of your demand in accordance with its Schedule and the applicable provisions of the National Assembly Standing Orders.

Yours

SAMUEL NJOROGE
CLERK OF THE NATIONAL ASSEMBLY

21st November 2022

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
21 NOV 2022
CHIEF EXECUTIVE OFFICER
COMMISSION SECRETARY
RECEIVED

The Chief Executive Officer
Independent Electoral and Boundaries Commission
Anniversary Towers
NAIROBI

RE: REQUEST FOR CCTV FOOTAGE RECORDS

As you are no doubt aware, a petition has been presented to Parliament seeking to remove me as a Commissioner for IEBC, on the basis of the events that transpired during the just concluded presidential election.

In order to defend myself, I urgently need the following:

(i) CCTV footage giving details of all the presidential election results that were read out to the public between 9th and 15th August 2022;

(ii) CCTV footage showing what transpired during the meeting that was alleged in the Affidavit of Chairman Wafula Chebukati to have taken place on 15th August 2022 at 3.00am between the Commissioners of IEBC and Raphael Tuju, Senator Amos Wako and Advocate Kyalo Mbobu;

(iii) CCTV footage of what transpired during the meeting that was alleged to have taken place between the Commissioners of IEBC and members of the National Security Advisory Committee; and

(iv) Minutes of all plenary meetings that were held by the Commissioners at Bomas of Kenya between 9th August 2022 and 15th August 2022.

I should be grateful if I would receive the same by close of business today.

JUSTUS NYANG'AYA
COMMISSIONER

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya
phone: +254 (0) 2769000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

REF: IEBC/CS-CEO/BOMAS/22/11/2022

22nd November, 2022

Mr. Peter Gitaa
General Manager/CEO
Bomas of Kenya
P. O. Box 40689 – 00100
NAIROBI

Dear Mr. Gitaa,

RE: REQUEST FOR CCTV FOOTAGE RECORDINGS

Further to various petitions presented to Parliament to remove the (4) four IEBC Commissioners, the Commission requests CCTV footage recordings of the following events:-

1. CCTV footage giving details of all the presidential election results that were read out to the public between 9th August, 2022 and 15th August, 2022 at the Auditorium.

2. CCTV footage showing what transpired during the meeting that took place on 15th August, 2022 at 3:00 am between the Commissioners of IEBC and Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu at the Auditorium.

3. CCTV footage of the meeting held at the Chairman's Boardroom at the Call Centre Hall Building between the Commission and the members of the National Security Advisory Committee.

The Commission will appreciate your urgent response.

Yours sincerely,

Marjan Hussein Marjan
Commission Secretary/CEO

N.O.O: Commissioner Justus Nyang'aya

...y, P.O Box 45371-00100 Nairobi, Kenya
T: info@iebc.or.ke, website: www.iebc.or.

OPPO A76

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

TO: Commissioner Justus Nyang'aya

FROM: Commission Secretary/CEO

REF: IEBC/CS-CEO/22/11/22

DATE: 22nd November, 2022

SUBJECT: REQUEST FOR CCTV FOOTAGE RECORDINGS AND PLENARY MINUTES HELD AT THE BOMAS OF KENYA

Reference is made to your memo dated 21st November, 2022 requesting for the CCTV footage recordings and all plenary minutes held between 9th August, 2022 and 15th August, 2022 at Bomas of Kenya.

In respect to your request to have the CCTV footage recordings, enclosed please find the letter sent to the General Manager/CEO Bomas of Kenya requesting him to avail them as per your request. These will be shared upon receipt.

As regards the request to have the minutes for all the plenary meetings held between 9th August, 2022 and 15th August, 2022, the Commission did not hold any plenary meetings during the specified dates.

Marjan Hussein Marjan

Encls

OPPO A76

BOMAS

LANGATA/FOREST EDGE ROAD
P.O. BOX 40689-00100 NAIROBI, KENYA
TEL: +254 208891802, 8890793/5/8
020 8068400, 8891575
EMAIL: info@bomasofkenya.co.ke
Website: www.bomasofkenya.co.ke

BOK/GM/IEBC/2022-20

22nd November 2022

Marjan Hussein Marjan
Commission Secretary/CEO
Independent Electoral and Boundaries Commission
Po Box 45371-00100
NAIROBI

Dear Mr. Marjan,

REQUEST FOR CCTV FOOTAGE RECORDINGS

Reference is made to the above subject matter and your letter ref. IEBC/CS-CEO/BOMAS/22/11/2022 dated 22nd November 2022.

We write to inform you that the Commission is hereby granted access to the requested CCTV footage recordings.

In accordance with our contractual obligation to the Commission, we provide the following:-

1. CCTV Camera surveillance footage of all presidential election results that were read out to the Public between 9th August 2022 and 15th August 2022 at the Auditorium;
2. CCTV Camera surveillance footage showing what transpired during the meeting that took place on 15th August 2022 at 3:00 am between the Commissioners of IEBC and Raphael Tuju, Amos Wako and Advocate Kyalo Mbobu at the Auditorium;
3. CCTV Camera surveillance footage of the meeting held at the Chairman's Boardroom at the Call Centre Hall Building between the Commission and the National Security Advisory Committee members.

Kindly note that we do not have CCTV Camera surveillance footage of the interior rooms of all the boardrooms, VIP rooms, Lounges and offices.

In addition, the Commission will be required to send a technical Officer(s) to fetch the requested information by liaising with our Property Manager, Mr. Joseph Njoroge, at info@bomasofkenya.co.ke and/or 0721 614 139.

Yours Sincerely,

PETER GITAA
GENERAL MANAGER/CHIEF EXECUTIVE OFFICER

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITION FILED BY:
REV. DENNIS NTHUMBI AGAINST FRANCIS WANDERI;

SEEKING REMOVAL OF FRANCIS WANDERI AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **FRANCIS WANDERI** (Hereinafter referred to as "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUNDS:**

1. That the Petition as filed does not meet the threshold as set out in Article 251 of the Constitution of Kenya.

2. The House Committee herein through the office of the Clerk of the National Assembly has blatantly ignored and/or refused to respond to the Objectors letter dated 22nd November 2022 whose contents sought information that was in tandem with the Provisions of Article 50 of the Constitution of Kenya. Herein annexed for ease of reference.

3. The Petition as filed and the directions as issued by the House Committee on the hearings thereof contravene and fall foul of the Provisions as set out in Standing Order No. 230 (4) on the the issue of allowable time required to respond and defend a petition as filed herein.

4. The allowable time that the Objector has been granted to defend himself falls foul of Article 50 and Article 31 of the Constitution of Kenya.

5. That committee on Justice and Legal Affairs has no jurisdiction to entertain the Petition as filed against the Objector pursuant to the provisions of Standing Order Number 223(f) as read together with sections 3(2) 35 and 36 of the Public Officer Ethics Act.

6. The Petition as filed are incompetent as they violate the provisions of Standing Order No. 223(f) (as read together with Standing Order Number 230(1) which provide that a petition cannot be admitted to hearing unless it indicates whether any efforts have been made to have the matter addressed

by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory.

7. The alleged grievances as laid out in the Petition are scanty at best and lack critical details on the exact nature of the Objectors omission and/or commission that would have constituted violations of the constitution, or to have amounted to alleged gross misconduct or incompetence.

8. None of the four Petition which were served upon the Objector contained the evidence on which it is grounded, which mean that the evidence in support of each of the Petition will only be known once the hearings begin.

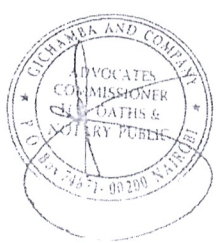
9. The Objector is thus unable to adequately prepare his defence in the absence of critical information that has been sought through this Honourable House.

10. The Petition as filed before this House are primarily premised on the affidavit as filed by IEBC Chairman Wafula Chebukati before the Supreme Court and deal with matters which none of the Petitioners can depone to from their own knowledge and as such it is only proper that the deponent of the said affidavit is summoned before this House for purposes of cross-examination.

11. Any adverse determination against the Objector deriving from these proceedings will visit devastating social, economic, political and professional consequences upon the Objector on account of gross violation of his constitutional rights.

12. In the circumstances, it is only fair that these proceedings be stayed pending the receipt by the Objector, from the Petitioners of such information and materials that he needs to fully understand the charges facing him, particulars whereof are detailed in the letter dated 22nd November 2022 from the Objector's counsel.

Dated at Nairobi this 23RD day of NOVEMBER 2022



GICHAMBA & COMPANY ADVOCATES
ADVOCATES FOR COMMISSIONER FRANCIS WANDERI

DRAWN & FILED BY:

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NGONG HILLS HOTEL OFFICE SUITES
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NAIROBI
Email: gichamba@gichambaadvs.co.ke
TEL: 0722 643 813

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   NAIROBI
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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITION FILED BY:
REPUBLICAN LIBERAL PARTY AGAINST FRANCIS WANDERI;

SEEKING REMOVAL OF FRANCIS WANDERI AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **FRANCIS WANDERI** (Hereinafter referred to as "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUNDS:**

1. That the Petition as filed does not meet the threshold as set out in Article 251 of the Constitution of Kenya.

2. The House Committee herein through the office of the Clerk of the National Assembly has blatantly ignored and/or refused to respond to the Objectors letter dated 22nd November 2022 whose contents sought information that was in tandem with the Provisions of Article 50 of the Constitution of Kenya. Herein annexed for ease of reference.

3. The Petition as filed and the directions as issued by the House Committee on the hearings thereof contravene and fall foul of the Provisions as set out in Standing Order No. 230 (4) on the the issue of allowable time required to respond and defend a petition as filed herein.

4. The allowable time that the Objector has been granted to defend himself falls foul of Article 50 and Article 31 of the Constitution of Kenya.

5. That committee on Justice and Legal Affairs has no jurisdiction to entertain the Petition as filed against the Objector pursuant to the provisions of Standing Order Number 223(f) as read together with sections 3(2) 35 and 36 of the Public Officer Ethics Act.

6. The Petition as filed are incompetent as they violate the provisions of Standing Order No. 223(f) (as read together with Standing Order Number 230(1) which provide that a petition cannot be admitted to hearing unless it indicates whether any efforts have been made to have the matter addressed

by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory.

7. The alleged grievances as laid out in the Petition are scanty at best and lack critical details on the exact nature of the Objectors omission and/or commission that would have constituted violations of the constitution, or to have amounted to alleged gross misconduct or incompetence.

8. None of the four Petition which were served upon the Objector contained the evidence on which it is grounded, which mean that the evidence in support of each of the Petition will only be known once the hearings begin.

9. The Objector is thus unable to adequately prepare his defence in the absence of critical information that has been sought through this Honourable House.

10. The Petition as filed before this House are primarily premised on the affidavit as filed by IEBC Chairman Wafula Chebukati before the Supreme Court and deal with matters which none of the Petitioners can depone to from their own knowledge and as such it is only proper that the deponent of the said affidavit is summoned before this House for purposes of cross-examination.

11. Any adverse determination against the Objector deriving from these proceedings will visit devastating social, economic, political and professional consequences upon the Objector on account of gross violation of his constitutional rights.

12. In the circumstances, it is only fair that these proceedings be stayed pending the receipt by the Objector, from the Petitioners of such information and materials that he needs to fully understand the charges facing him, particulars whereof are detailed in the letter dated 22nd November 2022 from the Objector's counsel.

Dated at Nairobi this 23RD day of NOVEMBER 2022

GICHAMBA AND COMPANY ADVOCATES COMMISSIONER FOR OATHS & NOTARY PUBLIC P.O. Box 74871 - 00200 NAIROBI

GICHAMBA & COMPANY ADVOCATES
ADVOCATES FOR COMMISSIONER FRANCIS WANDERI

DRAWN & FILED BY:

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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITION FILED BY:
OWUOR STEVE GERRY AGAINST FRANCIS WANDERI;

SEEKING REMOVAL OF FRANCIS WANDERI AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that **FRANCIS WANDERI** (Hereinafter referred to as "**The Objector**") shall raise a preliminary objection at the hearing of the above proceedings on the following **GROUNDS:**

1. That the Petition as filed does not meet the threshold as set out in Article 251 of the Constitution of Kenya.

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Dated at Nairobi this 23RD day of NOVEMBER 2022

GICHAMBA AND COMPANY ADVOCATES COMMISSIONER FOR OATHS & NOTARY PUBLIC P O BOX 74971 - 00200 NAIROBI

GICHAMBA & COMPANY ADVOCATES
ADVOCATES FOR COMMISSIONER FRANCIS WANDERI

DRAWN & FILED BY:

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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF PETITION FILED BY:
GEOFFREY LANGAT AGAINST FRANCIS WANDERI;

SEEKING REMOVAL OF FRANCIS WANDERI AS IEBC COMMISSIONER

NOTICE OF PRELIMINARY OBJECTION

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Dated at Nairobi this 23RD day of NOVEMBER 2022

GICHAMBA AND COMPANY ADVOCATES COMMISSIONER FOR OATHS & NOTARY PUBLIC P.O. Box 74871 - 00200 NAIROBI

GICHAMBA & COMPANY ADVOCATES
ADVOCATES FOR COMMISSIONER FRANCIS WANDERI

DRAWN & FILED BY:

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NGONG HILLS HOTEL OFFICE SUITES
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ANNEXURE 10:

GAZETTE NOTICE NO. 182 OF 2021

SPECIAL ISSUE

THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. CXXIII—No. 182 **NAIROBI, 1st September, 2021** **Price Sh. 60**

GAZETTE NOTICE NO. 9082

THE CONSTITUTION OF KENYA

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT

(No. 9 of 2011)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 5 (2) of the Independent Electoral and Boundaries Commission Act, 2011 and Paragraph 4 of the First Schedule to the Act, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Juliana Whonge Cherera (Ms.),
Francis Mathenge Wanderi,
Irene Cherop Masit (Ms.),
Justus Abonyo Nyang'aya,

to be members of the Independent Electoral and Boundaries Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.

GAZETTE NOTICE NO. 9083

THE CONSTITUTION OF KENYA

THE TEACHERS SERVICE COMMISSION ACT

(No. 20 of 2012)

APPOINTMENT

IN EXERCISE of the powers conferred by Article 250 (2) of the Constitution as read with section 8 (10) of the Teachers Service Commission Act, 2012, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint—

Nicodemus Ojuma Anyang (Dr.),
Christine K. Kahindi (Ms.),
Sharon Jelagat Kisire (Ms.),
Annceta G. Wafukho (Ms.),
Salesa Adano Abudo,

to be members of the Teachers Service Commission, for a period of six (6) years.

Dated the 1st September, 2021.

UHURU KENYATTA,
President.

PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

Annexure 11:

House Resolution (Order Paper)

REPUBLIC OF KENYA

Telegraphic Address
"Bunge" Nairobi
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Fax: +254-020-243694
E-mail: clerk@parliament.go.ke

When replying, please quote

OFFICE OF THE CLERK
National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

THE NATIONAL ASSEMBLY

NA/DLP/TBO/CERT/2022 (010) **1st December 2022**

Mr. Felix K. Kosgei
Chief of Staff and Head of the Public Service
Executive Office of the President
State House
NAIROBI

Dear Felix,

RE: PETITIONS ON THE REMOVAL FROM OFFICE OF FOUR SPECIFIED COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

The above mentioned subject matter refers.

Enclosed herewith, please find a Certificate in respect of the **decision** of the National Assembly on consideration of four Petitions seeking the removal of **Ms. Juliana Whonge Cherera, Ms. Irene Cherop Masit, Mr. Francis Mathenge Wanderi** and **Mr. Justus Abonyo Nyang'aya** as Commissioners of the Independent Electoral and Boundaries Commission, pursuant to the provisions of Article 251(3) of the Constitution of Kenya, for onward transmission to H.E. the President.

Yours sincerely

Wetangula

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

//Encls.

REPUBLIC OF KENYA

Telephone 2848000
E-mail: cna@parliament.go.ke
Fax: 254-020-243694

National Assembly
Clerk's Chambers
Parliament Buildings
P O Box 41842 - 00100
NAIROBI, Kenya

THE NATIONAL ASSEMBLY

CERTIFICATE

(No. 010/13th/2022)

REMOVAL FROM OFFICE OF FOUR SPECIFIED COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

I, SAMUEL J. NJOROGE, Clerk of the National Assembly, do hereby certify **THAT-**

WHEREAS, the National Assembly received four Petitions from the Republican Liberty Party, Rev. Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owuor Steve Gerry seeking the removal of Ms. Juliana Whonge Cherera, Ms. Irene Cherop Masit, Mr. Francis Mathenge Wanderi and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) pursuant to the provisions of Article 251(2) of the Constitution;

AND WHEREAS, the National Assembly considered the Report of the Departmental Committee on Justice and Legal Affairs on Thursday, 1st December, 2022 and **SATISFIED** itself –

(i) **THAT,** the Petition by the **Republican Liberty Party discloses** serious violations of the Constitution or other laws as a ground for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission;

Signature: _____

Clerk of the National Assembly

(ii) **THAT,** the Petition by **Rev. Dennis Ndwiga Nthumbi discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission;

(iii) **THAT,** the Petition by **Geoffrey Langat discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission; and,

(iv) **THAT,** the Petition by **Owuor Steve Gerry discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission.

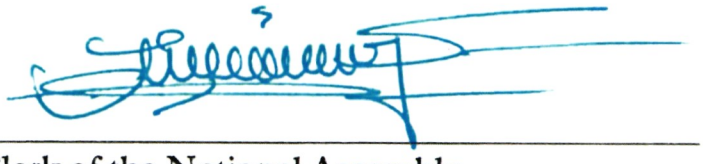
FURTHER WHEREAS, the National Assembly also **resolved** -

1. **THAT,** the Petitions together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 (3) of the Constitution;
2. **THAT,** His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution; and,
3. **THAT,** His Excellency the President suspends the Commissioners herein pending the determination by the tribunal.

Signature: _____

Clerk of the National Assembly

NOW THEREFORE, in accordance with the provisions of Article 251(3) of the Constitution and Standing Order 230(6) of the National Assembly Standing Orders, I hereby certify that the National Assembly considered the Public Petitions on removal from Office of the four specified Commissioners of the Independent Electoral and Boundaries Commission and was SATISFIED that the petitions disclose ground for removal from Office of the four named Commissioners.

Signature: 

Clerk of the National Assembly

Given under my hand on this 1st **day of December, 2022**

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (FIRST SESSION)

THE NATIONAL ASSEMBLY

SUPPLEMENTARY

ORDERS OF THE DAY

THURSDAY, DECEMBER 1, 2022 AT 2.30 P.M.

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

8*. **PROCEDURAL MOTION** - **EXTENSION OF SITTING UNTIL CONCLUSION OF BUSINESS**
(The Leader of the Majority Party)

THAT, pursuant to the provisions of Standing Order 30(3)(a), this House resolves to extend the sitting time for today's Afternoon sitting until conclusion of business appearing on the Order Paper.

9*. **MOTION** – **CONSIDERATION OF THE REPORT ON STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY) REGULATIONS, 2022**
(The Chairperson, Committee on Delegated Legislation)

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Statutory Instruments (Exemption from Expiry) Regulations, 2022, *laid on the Table of the House on Thursday, December 1, 2022*, and pursuant to the provisions of section 21(2) of the Statutory Instruments Act, 2013, **approves** the Statutory Instruments (Exemption from Expiry) Regulations, 2022 published as *Legal Notice No. 214 of 2022.*

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10*. MOTION – CONSIDERATION OF THE REPORT ON STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY) REGULATIONS, 2022
(The Chairperson, Committee on Delegated Legislation)

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Statutory Instruments (Exemption from Expiry) Regulations, 2022, *laid on the Table of the House on Thursday, December 1, 2022*, and pursuant to the provisions of section 21(2) of the Statutory Instruments Act, 2013, as read together with the Revision of Laws Act (Cap.1), **approves** the Statutory Instruments (Exemption from Expiry)(No.2) Regulations, 2022 published as *Legal Notice No. 218 of 2022.*

11*. MOTION – CONSIDERATION OF THE REPORT ON ADJUSTMENT OF RATES OF EXCISE DUTY FOR INFLATION REGULATIONS, 2022
(The Chairperson, Committee on Delegated Legislation)

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Adjustment of Rates of Excise Duty for Inflation Regulations, 2022, *laid on the Table of the House on Thursday, December 1, 2022*, and pursuant to the provisions of section 10(3) of the Excise Duty Act, 2015, **approves** the Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 published as *Legal Notice No. 176 of 2022.*

12*. MOTION – CONSIDERATION OF THE REPORT ON ADJUSTMENT OF RATES OF EXCISE DUTY FOR INFLATION REGULATIONS, 2022
(The Chairperson, Committee on Delegated Legislation)

THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Adjustment of Rates of Export Levy for Inflation Regulations, 2022, *laid on the Table of the House on Thursday, December 1, 2022*, and pursuant to the provisions of section 15(4) of the Statutory Instruments Act, 2013, **approves** the Adjustment of Rates of Export Levy for Inflation Regulations, published as *Legal Notice No. 177 of 2022.*

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13*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Administration and Internal Affairs)

THAT, taking into consideration the findings of the Departmental Committee on Administration and Internal Affairs in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Julius Korir** – State Department for Cabinet Affairs;

(ii) **Ms. Aurelia Rono** – State Department for Parliamentary Affairs;

(iii) **Mr. Raymond Omollo** – State Department for Interior & National Administration;

(iv) **Amb. (Prof) Julius Bitok** – State Department for Citizen Services; and

(v) **Ms. Esther Ngero** – State Department for Performance & Delivery Management.

14*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Agriculture & Livestock)

THAT, taking into consideration the findings of the Departmental Committee on Agriculture & Livestock in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Phillip Kello Harsama** – State Department for Crop Development; and

(ii) **Mr. Harry Kimtai Kachuwai, CBS** – State Department for Livestock Development.

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15*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Blue Economy & Irrigation)

THAT, taking into consideration the findings of the Departmental Committee on Blue Economy & Irrigation in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Ms. Betsy Muthoni Njagi** - State Department for Blue Economy & Fisheries;
(ii) **Mr. Gitonga Mugambi** - State Department for Irrigation;
(iii) **Dr. Paul Ronoh** - State Department for Water & Sanitation.

16*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Communication, Information and Innovation)

THAT, taking into consideration the findings of the Departmental Committee on Communication, Information and Innovation in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Prof. Edward Kisiangani** – State Department for Broadcasting & Telecommunication; and
(ii) **Eng. John Kipchumba Tanui** – State Department for ICT & Digital Economy.

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17*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Defence, Intelligence & Foreign Relations)

THAT, taking into consideration the findings of the Departmental Committee on Defence, Intelligence & Foreign Relations in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Patrick Mariru** – State Department of Defence;
(ii) **Dr. Korir Sing'oei** – State Department for Foreign Affairs;
(iii) **Ms. Roseline Njogu** – State Department for Diaspora; and
(iv) **Mr. Abdi Dubat** – State Department for East African Community Affairs.

18*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Education)

THAT, taking into consideration of the Departmental Committee on Education in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Dr. Belio Kipsang** – State Department for Basic Education;
(ii) **Ms. Esther Thaara Muoria** – State Department for TVET; and
(iii) **Ms. Beatrice Inyangala** – State Department for Higher Education & Research.

19*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Energy)

THAT, taking into consideration the findings of the Departmental Committee on Energy in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of the following persons as Principal Secretaries –

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(i) **Mr. Alex Wachira** – State Department for Energy; and
(ii) **Mr. Mohamed Liban** – State Department for Petroleum.

20*. SPECIAL MOTION - **CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES**
(The Chairperson, Departmental Committee on Environment, Forestry and Mining)

THAT, taking into consideration the findings of the Departmental Committee on Environment, Forestry and Mining in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Festus Ngeno** – State Department for Environment;
(ii) **Mr. Ephantus Kimotho** – State Department for Forestry; and
(iii) **Mr. Elijah Mwangi** – State Department for Mining.

21*. SPECIAL MOTION - **CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES**
(The Chairperson, Departmental Committee on Finance & National Planning)

THAT, taking into consideration the findings of the Departmental Committee on Finance & National Planning in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Dr. Chris Kiptoo** – State Department for National Treasury; and
(ii) **Mr. James Muhati** – State Department for Economic Planning.

22*. SPECIAL MOTION - **CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES**
(The Chairperson, Departmental Committee on Health)

THAT, taking into consideration the findings of the Departmental Committee on Health in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*,

...../22*(Cont'd)

and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Eng. Peter Tum** – State Department for Medical Services; and
(ii) **Dr. Josephine Mburu** – State Department for Health Standards & Professional Management.

23*. **SPECIAL MOTION** - **CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES**
(The Chairperson, Departmental Committee on Housing, Urban Planning & Public Works)

THAT, taking into consideration the findings of the Departmental Committee on Housing, Urban Planning & Public Works in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Charles Hinga** – State Department for Housing & Urban Development; and
(ii) **Mr. Joel Arumonyang** – State Department for Public Works.

24*. **SPECIAL MOTION** - **CONSIDERATION OF NOMINEE FOR APPOINTMENT AS A PRINCIPAL SECRETARY**
(The Chairperson, Departmental Committee on Justice and Legal Affairs)

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its report on the Vetting of a Nominee for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of **Ms. Mary Muthoni Muriuki** as Principal Secretary, State Department for Correctional Services.

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25*. SPECIAL MOTION - CONSIDERATION OF NOMINEE FOR APPOINTMENT AS A PRINCIPAL SECRETARY

(The Chairperson, Departmental Committee on Labour)

THAT, taking into consideration the findings of the Departmental Committee on Labour in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Geoffrey Kaituko** – State Department for Labour & Skills Development; and
(ii) **Mr. Amos Gathecha** – State Department for Public Service.

26*. SPECIAL MOTION - CONSIDERATION OF NOMINEE FOR APPOINTMENT AS A PRINCIPAL SECRETARY

(The Chairperson, Departmental Committee on Lands)

THAT, taking consideration the findings of the Departmental Committee on Lands in its report on the Vetting of a Nominee for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of **Hon. Nixon Korir** as Principal Secretary, State Department for Lands & Physical Planning.

27*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Regional Development)

THAT, taking into consideration the findings of the Departmental Committee on Regional Development in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, **approves** the appointment of the following persons as Principal Secretaries –

(i) **Ms. Teresia Mbaika Malokwe** – State Department for Devolution; and

(ii) **Mr. Idris Dokota** – State Department for ASALs & Regional Development.

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28*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Social Protection)

THAT, taking into consideration the findings of the Departmental Committee on Social Protection in its report on the Vetting of Nominee for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries-

(i) **Ms. Veronica Mueni Nduva** – State Department for Gender & Affirmative Action;
(ii) **Mr. Joseph Mogosi Motari** – State Department for Social Protection & Senior Citizens Affairs; and
(iii) **Mr. Ismail Madey** – State Department for Youth Affairs

29*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Sports & Culture)

THAT, taking into consideration the findings of the Departmental Committee on Sports & Culture in its report on the Vetting of Nominee for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Jonathan Mueke** - State Department For Sports and Arts; and
(ii) **Mr. Ummi Mohamed Bashir** - State Department for Culture and Heritage

30*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Tourism and Wildlife)

THAT, taking into consideration the findings of the Departmental Committee on Tourism and Wildlife in its report on the Vetting of Nominees for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. John Olotuaa** - State Department for Tourism; and
(ii) **Ms. Silvia Museiya Kihoro** - State Department for Wildlife.

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31*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Trade, Industry & Cooperatives)

THAT, taking into consideration the findings of the Departmental Committee on Trade, Industry & Cooperatives in its report on the Vetting of Nominee for Appointment as Principal Secretary, *laid on the Table of the House on Thursday, December 1, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Alfred K'ombundo** – State Department for Trade;
(ii) **Mr. Abubakar Hassan** – State Department for Investment Promotion
(iii) **Mr. Juma Mukhwana** – State Department for Industry;
(iv) **Mr. Patrick Kiburi Kilemi** – State Department for Cooperatives
(v) **Ms. Susan Mangeni** – State Department for Micro, Small & Medium Enterprises Development

32*. SPECIAL MOTION - CONSIDERATION OF NOMINEES FOR APPOINTMENT AS PRINCIPAL SECRETARIES

(The Chairperson, Departmental Committee on Transport and Infrastructure)

THAT, taking into consideration the findings of the Departmental Committee on Transport & Infrastructure in its report on the Vetting of Nominees for Appointment as Principal Secretaries, *laid on the Table of the House on Thursday, December 01, 2022*, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of the following persons as Principal Secretaries –

(i) **Mr. Joseph Mungai Mbugua** – State Department for Roads;
(ii) **Mr. Mohammed Daghar** – State Department for Transport; and
(iii) **Mr. Shadrack Mwadime** – State Department for Shipping & Maritime Affairs.

33*. MOTION – CONSIDERATION OF THE REPORT ON A PETITION UNDER STANDING ORDER 230

(The Chairperson, Departmental Committee on Justice and Legal Affairs)

THAT, this House **considers and adopts** the Report of the Departmental Committee on Justice and Legal Affairs on petitions by the Republican Liberty Party, Rev. Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owuor Steve Gerry seeking the removal of four specified Commissioners of the Independent Electoral and Boundaries Commission (IEBC), *laid on the Table of the House on Thursday, December 1, 2022*, **and pursuant to the provisions of Article 251(3) of the Constitution-**

...../33*(Cont'd)

1. FINDS —

a) **THAT**, the Petition by the **Republican Liberty Party discloses** serious violations of the Constitution or other laws as a ground for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission.

b) **THAT,** the Petition by **Rev. Dennis Ndwiga Nthumbi discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission.

c) **THAT,** the Petition by **Geoffrey Langat discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission.

d) **THAT**, the Petition by **Owuor Steve Gerry discloses** serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of Ms. Juliana Whonge Cherera; Ms. Irene Cherop Masit; Mr. Francis Mathenge Wanderi; and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission.

2. RESOLVES –

(i) **THAT,** the Petitions herein together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 (3) of the Constitution;

(ii) **THAT,** His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution; and,

(iii) **THAT,** His Excellency the President suspends the Commissioners herein pending the determination by the tribunal.

34*. **THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2022)**

(The Leader of the Majority Party)

Second Reading

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35*. COMMITTEE OF THE WHOLE HOUSE

The Independent Electoral and Boundaries Commission (Amendment) Bill (National Assembly Bill No. 42 of 2022)
(The Leader of the Majority Party)

(with leave of the House)

Denotes Orders of the Day

...../Notices*

NOTICES

LIMITATION OF DEBATE

The House resolved on Wednesday, October 12, 2022 as follows-

Limitation of Debate on Motions

I. **THAT**, each speech in a debate on any **Motion, including a Special Motion** shall be limited in the following manner:- A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and **THAT** ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in **THAT** order.

Limitation of Debate on Bills sponsored by Committees or Parties

II. **THAT**, each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** shall be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each (if the Bill is not sponsored by either of them); and **THAT** priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in **THAT** order.

Limitation of Debate on Committee Reports

THAT, each speech in a debate on **Other Committee Reports**, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House for which limitation of time has not been specified, shall be limited as follows:- A maximum of two and a half hours, with not more than twenty (20) minutes for the Mover in moving and five (5) minutes for any other Member speaking, **including** the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Committee Report is not moved by the Chairperson of the relevant Committee), and **THAT** ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in **THAT** order.

...../Notices(Cont'd)*

ADJOURNMENT

IV. NOTIFICATION OF RECESS (2nd December, 2022 – 13th February, 2023)

Pursuant to the provisions of Standing Order 28(3) relating to the Calendar of the Assembly, and the resolution of the House of Wednesday, 12th October, 2022, the Speaker notifies that, upon the rise of the House at the appointed time today, regular sittings will resume on **Tuesday, 14th February 2023 at 2:30 p.m.**

(Thereafter, the House to adjourn without question put)

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APPENDIX

NOTICE OF PETITIONS, QUESTIONS & STATEMENTS

ORDER NO.7 - QUESTIONS

It is notified that, pursuant to the provisions of Standing Order 42A (5), the following Members will ask **questions** for reply before the specified Committees-

QUE. NO. **ORDINARY QUESTIONS**

088/2022 **The Member for Saboti (Hon. Caleb Amisi, MP) to ask the Attorney General: -**

(i) Could the Attorney General explain the circumstances under which the defunct *Barclay Bank of Kenya Limited* rebranded and registered as *Absa Kenya Limited* in 2017 considering that the *Absa* name was already registered and patented in 2007, issued with a Certificate of Incorporation *No.C130654* whose Director is one Mr. Edward Njuguna, and the patent renewed in 2007 for a ten-year period?

(ii) Could the Attorney General outline the steps that the government is taking to address the concerns raised in (i) above and in particular, confirm whether any user rights for the name were transferred to the Bank?

(To be replied before the Departmental Committee on Finance and National Planning)

089/2022 **The Member for Juja (Hon. George Koimburi, MP) to ask the Cabinet Secretary for Roads and Transport -**

(i) Could the Cabinet Secretary provide the status of *Juja High-Point (Centurion) footbridge* along the Thika Super Highway, whose proposed construction was advertised by the Kenya National Highways Authority through a tender notice on 24th May, 2022?

(ii) Could the Cabinet Secretary provide the timelines for commencement of the construction of the above-mentioned footbridge considering that the lack of a bridge in this area has seen many pedestrians lose their lives when crossing the highway?

(To be replied before the Departmental Committee on Transport and Infrastructure)

090/2022 **The Member for Nyeri County (Hon. Rahab Mukami, MP) to ask the Cabinet Secretary for Water, Sanitation & Irrigation:-**

Could the Cabinet Secretary-

(i) Explain the status of the progress of the approved but stalled *Naromoru* and *Karemenu* dams in Kieni, Nyeri County?

(ii) What measures has the Ministry put in place to ensure that the said dams are completed in a timely manner so as to help to alleviate the biting drought in the County?

(iii) What measures the Ministry has put in place to ensure irrigation water from these dams is distributed to the constituents in an efficient and cost-effective way that will boost the profitability of their farming activities?

(To be replied before the Departmental Committee on Blue Economy and Irrigation)