

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA AT NAIROBI
PETITION NUMBER 5 OF 2013

BETWEEN

RAILA ODINGA PETITIONER

AND

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 1ST RESPONDENT

AHMED ISSACK HASSAN 2ND RESPONDENT

UHURU KENYATTA 3RD RESPONDENT

WILLIAM SAMOEI RUTO 4TH RESPONDENT

FURTHER AFFIDAVIT

I, **Janet Ong’era**, resident of Nairobi within the Republic of Kenya and of Post Office Box 2478 – 00202 Nairobi do hereby make oath and state as follows:

1. **That** I am a female Kenyan adult of sound mind residing and working for gain in Nairobi within the Republic of Kenya. I am also a lawyer by profession.
2. **That** I am the Executive Director of the Orange Democratic Movement (hereinafter known as “the party”), a political party registered as such under the Political parties Act 2011 with the knowledge of the facts and matters deponed to in this affidavit hence I am competent to swear this affidavit.
3. **That** I swear this affidavit to supplement the details, data and analyses that are set out in my earlier supporting affidavit sworn on 15.03.2013.
4. **That** I prior to the filling of the Petition herein, the Petitioner had through his party office requested for documents that were used in the election and that were at the centre of the dispute now before court.
5. **That** the Commission initially declined forcing the director of the Petitioner to apply to the High Court for the supply of the required information.

6. **That** owing to limited time, I did some random analysis of the forms that were supplied and the contents of that analysis were made part of the material in support of the petition filed in this court on March 16, 2013.
7. **That** I nonetheless carried on with the process of analysis of documents and material supplied the Petitioner pursuant to the said court order and my analysis has revealed certain patterns of electoral malpractices in the handling of the said forms.
8. **That** I also in the course of my analysis discovered a scheme of inflation of the 3rd Respondent's votes and reduction of the Petitioner's votes in the course of; (a) transfer of figures from form 34 to form 36, (b) addition of figures within form 36, and, (c) transfer of figures from form 36 to the Final National Tally as finally published by the 1st and 2nd Respondents. The trends were discovered in the following cases which were just but a part of my analysis:

Instances where the 3rd Respondents votes were inflated when you compare the entries in Forms 34 and the corresponding entries in form 36

Constituency name & No	Polling station name and number	3rd Respondent's Form 34 results	Corresponding 3rd Respondent's form 36 results	Variance
018 - Garsen	049 - Onkolde Primary School	15	210	195
052 - Igembe Central	50 - Nthambiro Primary School	432	505	73
061 - Chuka Igambang'ombe	122 - Chera Primary	411	531	120
063 - Manyatta	092 - Kamiu Primary School	836	864	28
063 - Manyatta	114 - Plan Social Hall Dallas	816	839	23

092 – Ol Jorok	032 – Kahingo Primary	593	597	4
098- Mukurweini	048 – Tambaya Coffee Factory	389	401	12
119 - Kabete	007 - Ndurarua	939	940	1
145 - Kapseret	018 – Kapteldon Health Centre	197	199	2
151 - Tinderet	033 – Kapteldon Primary School	197	199	2
157 - Tiaty	134 – Lomerimeri Nursery School	58	140	82
183 – Kajiado North	012 – Lemelepo Water Project	2740	3004	264
195 - Chepalungu	062 – Sigor Primary School	273	282	9
195 - Chepalungu	138 – Chemagel Primary School	235	257	22
198 - Konoin	054 – Kapken Primary School	265	335	70
198 - Konoin	080 – Kimari Primary School	257	285	28
214 - Luanda	050 – Asiongo Primary School	6	60	54
230 - Funyula	050 – Bujwang'a Secondary School	25	35	10
272 – North	027 – Monyara	149	169	20

Mugirango	Primary School			
272 – North Mugirango	049 – Mogongo Primary School	3	236	233
272 – North Mugirango	058- Mesobwa Primary School	121	131	10
Total				1451

Instances where the 3rd Respondents results were inflated when you compare the entries in Form 36 and the corresponding entries in the Final Published National Tally

Constituency No.	Constituency Name	3rd Respondent's Form 36 Tally	3rd Respondent's Final Tally	Variance
003	Kisauni	10366	10894	528
055	Tigania East	37292	38019	727
059	South Imenti	62481	63271	790
064	Runyenjes	54408	54898	490
080	Mavoko	14530	15109	579
097	Othaya	42431	42957	526
099	Nyeri Town	55721	55726	5
103	Kirinyaga Central	53017	53610	593
106	Kiharu	80475	80967	492
122	Lari	53865	55232	1367
186	Kajiado West	22335	22358	23
202	Lurambi	2327	2366	39
213	Hamisi	929	939	10
216	Mr Elgon	28786	29286	500
222	Webuye West	1279	1288	9
241	Seme	58	60	2
261	Bonchari	6890	7040	150
272	North Mugirango	13764	14149	385
Total variance (Votes)				7215

inflated)				
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Instances where the total tallies of the 3rd Respondent were inflated when you carry out an addition of the votes per polling station in the form itself

9. **That** I have also established that in a number of instances, from the statutory documents, the Petitioner's votes were tampered with to the Petitioner's disadvantage as shown below:

Instances where the Petitioner's votes were reduced when you compare the entries in Forms 34 and the corresponding entries in form 36

Constituency name & No	Polling station name and number	Petitioner's Form 34 results	Corresponding Petitioner's form 36 results	Variance
003 - Kisauni	005 – Nasia Junior Academy	267	7	- 260
003 - Kisauni	010 – Assistant Chief's Camp - Machafuko	1431	741	- 690
003 - Kisauni	013 – Kiembeni Primary School	2395	1935	- 460
003 - Kisauni	021 – Kiembeni Baptist Primary School	1458	718	- 740
003 - Kisauni	035 – Mwembelegeza Nursery School	1285	965	- 320
003 - Kisauni	037 – Bamburi Primary	964	614	- 350

	School			
020 - Bura	072 – Mororo Primary School	663	411	- 252
228 - Matayos	061 – Busia Stadium	804	397	- 407
054 – Tigania West	016 – Mucuune Primary School	52	32	- 20
055 – Tigania East	063 – Kiremu Primary School	7	4	- 3
057 - Buuri	014 – Pyrethrum House	23	22	- 1
059 – South Imenti	008 – Mitunguu primary School	112	82	- 30
059 – South Imenti	022 – St Joseph Primary School	57	27	- 30
059 – South Imenti	098 – Giumpu Primary School	10	0	- 10
059 – South Imenti	105 – Gumpira Tea Buying Centre	10	0	- 10
061 – Chuka Igambang’ombe	060 – Magumoni Primary	28	10	- 18
063 - Manyatta	092 – Kamiu Primary	77	47	- 30
063 - Manyatta	114 – Plan Social Hall Dallas	98	88	- 10
064 - Runyenjes	015 – Muchagori Primary School	29	18	- 11
071 – Kitui	039 –	144	143	- 1

Rural	Muambani Primary School			
082 - Mwala	106 – Nthuluni Primary School	109	04	- 105
086 - Makueni	051 – Yekanga Primary School	132	04	- 128
086 - Makueni	083 – Mukameni Primary School	273	126	- 147
088 – Kibwezi East	089 – Kiyaani Primary School	436	128	- 308
096 - Mathira	032 – Gathaithi Primary School	5	1	- 4
099 – Nyeri Town	001 – Nyaribo Primary School	19	9	- 10
099 – Nyeri Town	010 – Mwenji Primary School	05	0	- 5
113 - Juja	022 - Kiaora	34	4	- 30
119 - Kabete	014 – Muguga Youth Polytechnic	28	20	- 8
120 - Kikuyu	008 – Kandeng'wa Primary School	303	3	- 300
122 - Lari	018 – Kimende Primary Schoo	21	2	- 19
122 - Lari	034 – Kagwe primary School	01	0	- 1
122 - Lari	054 – Kirenga Primary School	19	9	- 10
125 – Turkana Central	004 – Nangitony Nursery School	21	1	- 20
125 – Turkana Central	086 – Handcraft Hall	1174	1164	- 10

125 – Turkana Central	104 - Kanamkemer	971	85	- 886
125 – Turkana Central	Napuu Primary School	685	675	- 10
133 – Samburu West	77 – Pura primary School	119	115	- 4
152 - Aldai	063 – Kapkorio Nursery School	79	0	- 79
157 - Tiaty	030 – Tugomoi Primary School	37	7	- 30
159 – Baringo Central	081 – Kituro Youth Polytechnic	4	0	- 4
159 – Baringo Central	119 – Titelon Primary School	4	0	- 4
164 – Laikipia East	086 – Kalalu Primary School	20	2	- 18
182 – Narok West	029 – Enelerai Primary School	29	22	- 7
182 – Narok West	037 – Olmuseregi Primary School	502	396	- 106
182 – Narok West	071 – Oldisare Nursery School	326	0	- 326
183 – Kajiado North	008 – Arap Moi Primary School	1951	1735	- 216
183 – Kajiado North	022 – Nkai Murunya Mixed day Secondary School	749	582	- 167
195 - Chepalungu	039 – Kaplele Primary School	12	2	- 10
195 - Chepalungu	041 – Tebeswet Primary School	13	3	- 10
195 -	062 – Sigor	11	1	- 10

Chepalungu	Primary School			
195 - Chepalungu	079 – Chepkosa Primary School	15	0	- 15
195 - Chepalungu	124 – Atebwa Primary School	80	0	- 80
195 - Chepalungu	138 – Chemagel Primary School	20	0	- 20
85 - Kaiti	061 – Nunguni Secondary School	787	427	- 360
205 – Mumias East	008 – Kamashia primary School	444	234	- 210
205 Mumias East	016 – Ekeru PAG Nursery School	259	59	- 200
205 – Mumias East	031 – Malaha Primary School	254	54	- 200
205 – Mumias East	038 – Mahola Primary School	618	308	- 310
209 - Shinyalu	013 – Shianda Pre-Primary School	103	3	- 100
209 - Shinyalu	086 – Munasio Primary School	441	295	- 146
214 - Luanda	045 – Emmaloba Primary School	349	343	- 6
215 - Emuhaya	019 – Esirulo Primary School	478	48	- 430
215 - Emuhaya	021 – Elununi Primary School	301	201	- 100
215 - Emuhaya	038 – Esiamatete	142	42	- 100

	Nursery School			
217 - Sirisia	006 – Chwele Boys Primary School	467	237	- 230
217 - Sirisia	020 – Butunde primary School	203	3	- 200
217 - Sirisia	031 – Yabeko primary school	310	10	- 300
217 - Sirisia	044 – Namunyu Primary School	149	1	- 148
217 - Sirisia	057 – Malakisi CPK Primary School	114	4	- 110
222 – Webuye West	001 – Sirisia Primary School	240	178	- 62
224 - Tongaren	025 – Sango S A Primary School	188	88	- 100
272 – North Mugirango	009 – Matierio Primary School	142	122	- 20
272 – North Mugirango	019 – Nyanchoka Primary School	424	224	- 200
272 – North Mugirango	046 – Gitwebe Primary School	140	0	- 140
272 – North Mugirango	049 – Mogongo Primary School	406	242	- 164
279 Roysambu	001 – Wonderland Integrated Primary School	1475	1325	- 150
279 - Roysambu	004 – Kahawa West Baptist	920	813	- 107

	Academy			
279 - Roysambu	008 – Kiwanja Primary School	609	463	- 146
279 - Roysambu	020 – Kahawa West Primary School	566	565	- 1
Total Variance				- 11000

Instances where the Petitioner’s results were reduced when you compare the entries in Form 36 and the corresponding entries in the Final Published National Tally

Constituency No.	Constituency Name	Petitioner’s Form 36 Tally	Petitioner’s National Tally	Variance
064	Runyenjes	1813	1812	- 1
097	Othaya	950	424	- 526
120	Kikuyu	3350	3256	- 94
146	Kesses	6665	5914	- 751
Total Vote Reduction				- 1372

Instances where the total tallies of the Petitioner were reduced when you carry out an addition of the votes per polling station in the form itself

I attach hereto and mark **JO - Supp. - 1** being forms 34 and 36 from the polling stations and counties named above.

10. **That** I have also read, had explained to me and understood the contents of the answers to petition as well as Replying Affidavits by or on behalf of the 1st and 2nd Respondents (hereinafter referred to as “the Commission’s Affidavits”) the 3rd Respondent (hereinafter referred to as

“the 3rd Respondent’s Affidavits”) and the 4th Respondent (hereinafter referred to as “the 4th Respondent’s Affidavits”) and hereby respond to the same as below.

Response to the Commission’s Affidavit

A. The Affidavit of Ahmed Issack Hassan sworn on 19th March 2013

11. **That** in response to the contents of paragraph 9 of the Commission’s affidavit, I aver that the 1st and 2nd Respondent’s are engaging the court in a matter of semantics. The correct position, as I know it, and which is also judicially noticeable from anyone who followed the electoral process in Kenya on 4th March 2013 as well as the public statements made by officers of the 1st Respondent in the course of the conduct of the general election of March 4, 2013 was that the 1st Respondent deployed a biometric voter identification devices for purposes of identifying voters which system failed either at the commencement of or in the course of the voting exercise and was never eventually used as one of the checks in the electoral process. It is that unceremonious stoppage of the use of the electronic voter identification system in the conduct of the election of March 4, 2013 that the Petitioner describes as “abandoning” the use of the devices.
12. **That** it is not correct that the electronic system in the course of voting, counting, transmission, tallying and announcement of election results was merely decorative as the 2nd Respondent suggests at paragraph 10 of the Commission’s affidavit. The correct position is that the electronic system in these electoral processes was a key pillar of guaranteeing the integrity, credibility, transparency, accountability and efficiency of the electoral process. These are fundamental principles of Kenya’s electoral process that are demanded by Article 81 of the Constitution. A system designed to guarantee these principles cannot be wished away as having been merely decorative.

13. **That** in response to paragraphs 12, 13, 14 and 15 of the Commission's affidavit, I wish to state that reiterate the contents of paragraph 13 above. Further, the attempt by the Commission to de-emphasise the significance of the various technological systems in the election such as the Biometric Voter Registration (BVR) technology flies in the face of a number of legal provisions as well as the Commissions public statements on the centrality of the electronic system to the elections as communicated to the Kenyan general public eg:
- a) Section 2 of the Elections Act that defines a "Principal Register of Voters" to include a register that is compiled electronically.
 - b) Regulation 60 of the Elections (General) Regulations.
 - c) Documents at pages 180 to 182 of the Petitioner's bundle accompanying the Petition which show the purpose for which
14. **That** in response to paragraph 16 of the Commission's affidavit, I state that it is true that the use of technology in the elections was intended to act as a check and control system. A failure of a check and control system in the electoral process,, as happened in the election of March 4, 2013, cannot be wished away as a minor failure since part of guaranteeing a free and fair election entails securing checks and controls in the electoral process. I verily believe that it is to completely take the common intellect of the people of Kenya for granted for the 2nd Respondent to state on oath that the technological system deployed for purposes of the elections of March 4, 2013, achieved its objectives as is asserted at paragraph 16 of the 2nd Respondent's Affidavit since it is now in the public domain that literally every component of the electronic system deployed to act as a control and check in the election of March 4, 2013 failed and the failure was publicly admitted by the officers of the 1st Respondent.
15. **That** in response to paragraph 18 of the Commission's Affidavit, I wish to reiterate the contents of the Affidavit of Lilian R A Omondi which sets out the particulars of the register as published on 18th February

2013 and which was downloaded by the said Lilian R A Omondi on March 4, 2013. I attach hereto and mark **JO - Supp - 2** being a true copy of the said register. Further, I have noted an internal contradiction between the position taken by the Second Respondent in his affidavit and the affidavit of Immaculate Kassait. Whereas the 2nd Respondent's affidavit at paragraph 18 asserts the finality of the register as certified by the Commission on 18th February 2013, the affidavit of Immaculate Kassait, and in particular annexures I.K 1 (Vol. 2 page 201- 211) shows that as late as February 18th 2013, long after the 1st Respondent had published the final voter's register, the 1st Respondent was purportedly still reconciling the said register. It is instructive that the 1st and 2nd Respondents do not finally furnish evidence of minutes of any meetings where the finally

16. **That** whereas, the 2nd Respondent at paragraph 18 of the Commission's affidavit creates the impression that there was only one official register for purposes of the elections of March 4, 2013 which register was the officially certified principal register of February 18, 2013, I have noted the following contradictory information from the details provided in the affidavit of Immaculate Kassait (Vol 2 page 184 *et seq*):

- a) The term Principal Register is a term of art which is defined at Section 4(1) of the Elections Act to comprise of:
 - (i) A poll register in respect of every polling station
 - (ii) A ward register in respect of every ward
 - (iii) A constituency register in respect of every constituency
 - (iv) A county register in respect of every county; and
 - (v) A register of voters residing outside Kenya.
- b) The 2nd Respondent at paragraph 18 of the Commission's Affidavit asserts that the foregoing register was officially certified by the Commission on February 18, 2013.
- c) The minutes of the Commission's Special Plenary Meeting (Vol 2 page 201) of 18th February 2013 show that "the plenary advised

that the secretariat continues to resolve both the negative and positive variances in the register so as to eliminate the errors between the Green Book and the Certified Register.

- d) It is also noticeable that during the same meeting of February 18th 2013, “members approved the process of production of the register as follows:
 - (i) Register compilation and data preparation to start on 19th February 2013 to 22nd February 2013.
 - (ii) Generation of register by electoral units to commence on 23rd February 2013 and to end on 26th February 2013.
- e) The foregoing state of affairs begs the question, when was the principal register published in light of the fact general of the register by electoral units (which is what the law recognizes as a principal register) was to be completed on 26th February 2013?
- f) The minutes of the Commissions Special Plenary Meeting (Vol. 2 page 204) of 19th February 2013 seem to indicate a further review and certification of the voters register. It further indicates an identification of variances by the Commission regarding the register which a team of officers from voter registration, ICT and Internal Audit was constituted to report on.
- g) The minutes of 23rd February 2013 of the Commission’s Special Plenary meeting show further corrections, that is, correction of names, wrong placements and non-inclusions, being discussed.
- h) It is in the meeting of 23rd February 2013 at minute 9/2/2013 paragraph 9.9 that the Commission seems to resolve that “a special register is to be generated and will be used to allow the voters to vote”. It is further resolved that “The special register will be as per the format presented by ICT.
- i) It is noteworthy that the Commission has not presented any minutes of a meeting where this special register was finally approved and when it was gazette noting that the resolution for its

creation was made long after the gazettelement of the register of February 18, 2013.

17. **That** paragraph 19 of the Commission's affidavit is not correct.

Whereas it is correct that the Registrar of Political parties issued a provisional register to political parties in the run up to the January 17, 2013 party nomination exercise, the register I refer to in my earlier affidavit in support of the Petition was issued to political parties on or about February 20, 2013, well after the gazettelement of the principal register by the Commission. Further I have noted that there is a material internal inconsistency of the number of registered voters on the principal register of voters from the 2nd Respondent's own deposition as follows:

(a) The 2nd Respondent at Paragraph 18 of the Replying Affidavit avers that the tally of registered voters has remained the same, that is, **14,352,545**.

(b) The 2nd Respondent then proceeds to give the formula of how he reaches the above number as follows: **14, 352, 533 + 12** voters from Soy Constituency + **31, 318** voters whose biometric information was not captured during the voter registration exercise. This specifics should arithmetically give a total of **14,383,863**. This internal contradiction by the 2nd Respondent far from clarifying matters regarding the voters register raises more questions on the same. I verily believe that a questionable voters register cannot be a foundation of a free and fair election conducted in accordance with the law.

18. **That** it is not correct as alleged at paragraph 20 of the Commission's affidavit. If indeed the Commission had established accurate, secure, verifiable, accountable and transparent systems for conducting elections as alleged, the basic transgressions particularized at paragraphs 8, 9 and 10 above would not have occurred in abundance. Further the basic transgressions referred to at paragraphs 51, 54, 55, 56, 57, 58 and 60 of my former affidavit would not have occurred.

19. **That** in response to paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Commission's affidavit, I reiterate the contents of paragraphs 16, 17 and 18 above.
20. **That** in response to paragraphs 39, 41 and 422 of the Commission's Affidavit, I wish to reiterate that the data I used to ascertain the figure referred to was the data on the CD ROM supplied to me by the Registrar of Political parties on or about the 20th February 2013 two days after gazettelement of the Principal register of voters by the 1st and 2nd Respondents.
21. **That** in response to paragraph 43 of the Commission's Affidavit and in particular the Commission's reliance on the external evaluation reports of various electoral observers and monitors which allegedly confirm that the process of voting, counting of ballots and the transmission and tallying of results was required as required by law, I wish to state as follows:
- a) Such confirmation, whose existence is denied, does not validate a process which is shown, as has been done by the Petitioner herein, was in violation of the law.
 - b) Such confirmation, whose confirmation is denied, does not take away this court's jurisdiction to independently audit the processes and actions of the various players in the electoral process to satisfy itself of their (non) compliance with the relevant law.
 - c) The Report by the Election Observation Group (ELOG) at page 66 (Vol 1) at paragraph 2 demonstrates that ELOG deployed 580 constituency supervisors and 7000 observers (inclusive of 1000 Parallel Vote Tabulation Observers) to cover the process in 33,000 polling stations, 290 constituency tallying centres, 47 county tallying centres and 1 national tallying centre. Such Parallel Tallying would, at best be presumptuous, inefficient and unreliable.

- d) The report by ELOG confirms that it carried out tallying by sample which is nothing better than opinion polling which may have minimal significance on auditing actual final outcomes based on real data.
- e) The report by ELOG at page 71- 72 (vol. 1) on observer access inside polling stations shows major handicaps suffered by ELOG observers and one wonders where in the circumstances, they obtained the data for purposes of their parallel tallying.
- f) The ELOG report at page 75 (Vol 1) confirms that in the course of the manual tallying of results that was resorted to by the IEBC following “IEBC’s **abandoning** of the electronic tallying process”, **“what clearly is lost is efficiency and transparency hence the delay and anxiety”**. It is noteworthy that such loss acknowledged from a source whose authority the 1st and 2nd Respondent desires to rely on to prove its case was not a minor loss. I verily believe that Article 81 of the Constitution prescribes, as one of the principles of the electoral system in Kenya, that elections must be **transparent** and administered in an **efficient** manner.
- g) The report by the Carter Centre and in particular at page 86 (Vol 1) of the Commission’s Affidavit, confirms that the results process was still ongoing at the time of preparation of the said report. It is, therefore, presumptuous for the 2nd Respondent to rely on that report as giving a clean bill of health to the tallying process in the elections under question.
- h) The report by the law society of Kenya and in particular the conclusion at page 99 (vol. 1) is clear in its scope. It says that “this report is preliminary in nature and it is too early to make any determination or conclusions on the electoral process”. Yet again, it is presumptuous for the 2nd Respondent to assert that such a report had validated an otherwise questionable electoral process.

22. **That** in response to paragraph 44- 46 of the Commission's Affidavit, I reiterate the contents of paragraphs 33 – 43 of my affidavit accompanying the Petition filed herein.
23. **That** in response to paragraphs 53 and 56 of the Commission's Affidavit, I reiterate the contents of paragraph 8 above.
24. **That** paragraph 58 of the Commissions affidavit which suggests that the tallying process was transparent contradicts annexed exhibit AIH 10 – A (at page 75) of the same affidavit which states that “***what clearly is lost is efficiency and transparency hence the delay and anxiety. While not much can be done to make the process much more efficient, we take this opportunity to urge IEBC to open the manual tallying process to thorough scrutiny in order to retain the transparency which ought to have been enhanced by the electronic tallying system***”.
25. **That** it is not true that the allegation in the Petition of cast ballots exceeding the number of registered voters is a result of the Petitioner's misconception between the provisional number of voters and the certified principal Register of Voters and our misconception of the tallying process as alleged at paragraph 60 of the Commission's affidavit. The analysis that I undertook entailed comparison of the votes returned as validly cast as against the register obtained on the 1st Respondent's site on 04.03.2013. Further, the forms 36 from a number of constituencies clearly show entries in the registered voters column per polling station as being less than the valid votes cast and these were entries made by the staff of the 1st Respondent. This latter category of incidents include; Lomerimeri polling station in Tiaty Constituency where the form 36 itself shows 68 registered voters against 163 valid votes cast; King'atua Primary School in Lari Constituency where the form 36 itself shows 319 registered voters against 762 valid votes cast; Boroon Primary School in Marakwet West Constituency where the form 36 itself shows 218

registered voters against 228 valid votes cast. These are returns by the Commission's own staff and not mere allegations by the Petitioner.

Response to the 3rd Respondent's Affidavits

a. The Affidavit of Hon. Uhuru Kenyatta sworn on 19th March 2013

26. **That** after reading the entirety of the Hon Uhuru Kenyatta's affidavit, I wish to state that the said affidavit fails, refuses or neglects to address any of the specific factual and evidentiary matters raised by the petitioner and affidavits in support of the Petition and takes on a generalized and insolent attack of the person of the Petitioner.
27. **That** in response to paragraphs 4 and 5 of Hon. Kenyatta's affidavit, and in particular the contention that the results declared by the 1st and 2nd Respondents were accurate, I reiterate the contents of paragraphs 9, 10 and 25 above.
28. **That** in response to paragraph 6 of Hon Uhuru Kenyatta's affidavit I verily believe that evaluation of the validity of an electoral process is both a quantitative and qualitative test. Paragraph 9 above demonstrates that the presidential election held on March 4, 2013 failed both the quantitative and the qualitative tests.
29. **That** in response to paragraph 7 of the Hon Uhuru Kenyatta's affidavit I reiterate the contents of paragraphs 22 and 25 above.
30. **That** in response to paragraph 11 of the Hon Uhuru Kenyatta's affidavit, I wish to state as follows:
- a)** That the mismanagement of the 2007 General Election is a matter that is notorious enough to attract judicial notice. A duly constituted Commission of Inquiry into the said election returned an indictment of the manner in which the said election was conducted. It is, therefore, not fair and just for the deponent of the affidavit, together with all the other Respondent's therein to take

issue with the Petitioner's rejection of the results/outcome of the said election.

- b) The Petitioner's position of not taking the dispute regarding the 2007 presidential election to court has since been vindicated by the radical and far reaching reforms that have since been undertaken on the Kenya's judiciary since the said period.

b. Affidavit of Winifred Waceke Guchu sworn on 18th March 2013

31. **That** in response to paragraphs 8, 9, 10, 11, and 12 of the Affidavit of Winifred Waceke Guchu, I wish to state as follows:

- a) It is not correct that I have ever been a party to a meeting where “a complimentary list of registered voters” was provided to political parties. It is instructive to note that no minutes of such meeting have been produced by any of the deponents of the multiplicity of Replying Affidavits that have been filed in this matter.
- b) It was the obligation of the 1st and 2nd to compile and publish an entire principal register of voters and not to publish one register of voters, then issue political parties with another “complimentary register of voters.
- c) The fact that there was “no objection from any political party or quarter concerning this complimentary register” as alleged by Winifred Waceke Guchu at paragraph 12 of her affidavit does not in and of itself make such register valid or in conformity with the law.
- d) It is curious that whereas Ms Winifred Waceke Guchu recollects that the said “complimentary register of voters” had **36,236** registered voters, the 2nd Respondent, in his affidavit sworn on 19th March 2013 at paragraph 18 recollects that the said register had **31,318** registered voters, which begs this question, “if this was

part of a certified and gazetted register why does it attract such variance in the number of the registered voters that it contained?”.

- e) It is instructive to note that the 2nd Respondent at paragraph 18 of his affidavit alludes to another **12** voters from Soy Constituency in uasin Gishu which not even Ms Winifred Waceke Guchu in her affidavit seems to recollect or allude to.
32. **That** in response to paragraph 32 of the affidavit of Winifred Waceke Guchu, I reiterate the contents of paragraph 26 above.
33. **That** in response to paragraphs 36, 37 and 38 of the affidavit of Winifred Waceke Guchu, I wish to state that first, the electronic system of transmission of result was not an act of benevolence on the part of the 1st and 2nd Respondents but a requirement of the Election Regulations. I further verily believe that the electronic system of transmission of results was not decorative in the electoral system but rather a major check against electoral malpractices, inefficiency and lack of transparency.
34. **That** in response to paragraph 48 of the affidavit of Winifred Waceke Guchu, I reiterate the contents of paragraph 9 above which demonstrate tampering with votes even in forms 34 and indeed in every other form used in the tallying process.
35. **That** in response to paragraph 49 of the affidavit of Winifred Waceke Guchu, I reiterate the contents of paragraph 26 above.
36. **That** in response to paragraph 51 of the affidavit of Winifred Waceke Guchu, I reiterate the contents of paragraph 54 of my Supporting Affidavit. Further I wish to state that the forms supplied by the Ms Winifred Waceke Guchu and marked as WG – 7 (a) and (b) evince lack of internal integrity in the documents that the deponent used to advance the 3rd Respondent’s case. This is because of among other things: At page 752 of the documents attached to the affidavit of Winifred Waceke Guchu is a form 34 from Webuye ACK Primary School polling

station of Webuye East Constituency where the valid votes cast are 441 against a registered voter's number of 411 voters.

37. **That** in response to paragraph 51 (ii) of the affidavit of Winifred Waceke Guchu, I reiterate the relevant content of paragraph 54 of the Supporting Affidavit. The documents in support of the averments in that affidavit were supplied to the Petitioner's team by the 1st Respondent following an order of court. Further, the forms 34 annexed by Winifred Waceke Guchu to establish a defence against the claim lack the requisite electoral documentary integrity as follows: the form 34 at pages 828, 854, 884, 926 and 970 has no agents' signatures and no reasons are supplied for the failure of the agents to sign, pages 832, 838 and 842 have forms 34 signed by only one agent and no reason is given for the refusal of the other agents to sign

38. **That** I have also looked at the other forms 34 signed attached to the affidavit of Winifred Waceke Guchu and I have equally noticed that they fail the test of integrity of electoral documents as follows:

- (a) The form 34 at page 1213 lacks agents signature.
- (b) The form 34 at page 1353 lacks agents' names and signatures.
- (c) The form 34 at page 1375 lacks agents' names and signatures.
- (d) The form 34 at page 1385 lacks agents' names and signatures
- (e) Form 34 at page 1391 has only one agent's name and signature and no reasons are supplied for the refusal of the other agents to sign
- (f) The form 34 at page 1405 lacks agents names and signatures
- (g) The form 34 at page 1445 lacks agents names and signatures.
- (h) The form 34 at page 1523 lacks agents' signatures.
- (i) The form 34 at page 1567 lacks agents names and signatures
- (j) The form 34 at page 1587 has only one agent's signature with no reason supplied for the failure of the other agents to sign.
- (k) The form 34 at page 1589 reflects a registered voter population of **545** against a valid voter turn out of **561** votes.

