Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

# **Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions**

By: Prof. Tom Ojienda, SC\*

## 1 Introduction

Electoral dispute resolution (EDR) is a key component of the electoral process, especially in furtherance of democracy and **the principle of free and fair elections**. Electoral disputes can occur pre-election or post-election. EDR mechanisms in Kenya are provided for under the Constitution of Kenya, 2010 (the Constitution), electoral statutes and regulations, and political party documents such as political party constitutions; the electoral laws. EDR mechanisms are administrative and quasi-judicial, especially as pertains to intra-party pre-election disputes, and judicial, more so as concerns post-election disputes.<sup>1</sup>

<sup>\*</sup> Prof. Ojienda holds a Doctor of Laws (LL.D.) degree from the University of South Africa, a Master of Laws (LL.M.) degree from King's College London, and a Bachelor of Laws (LL.B.) degree from the University of Nairobi (UoN). He is an Associate Professor of Public Law at Moi University and a practising Advocate of the High Court of Kenya of the rank of Senior Counsel. He is The Managing Partner at Prof. Tom Ojienda & Associates and has practised law for over 25 years. He is a former chair of the Law Society of Kenya (LSK), former President of the East African Law Society (EALS), and former Vice President and Financial Secretary of Pan African Lawyers Union (PALU). He has also served as a Commissioner in the Judicial Service Commission (JSC), Commissioner in the Truth Justice and Reconciliation Commission (TJRC) established after the 2007-2008 post-election violence in Kenya, Chair of the Land Acquisition Compensation Tribunal, and member of the National Environment Tribunal. Previously, he was also a Council Member of the International Bar Association, and Member of the Board of American Biographical Society, the Council of Legal Education, the Public Law Institute of Kenya, and the Kenya Industrial Property Institute.

As a robust litigation counsel, Prof Ojienda, SC, has successfully handled numerous landmark cases at the Supreme Court of Kenya, on Constitutional Law, Administrative Law, Land and Environment Law, Electoral Law, Employment Law, Commercial Law, Family Law, and other areas of law. He represents various individuals, State agencies, private entities, county governments and multinational agencies. He has represented these entities before Kenyan courts, from the subordinate courts, all the way to the Supreme Court of Kenya. Some of his landmark cases at the apex Court

include, In the Matter of the Speaker of the Senate & another [2013] eKLR - Speaker of the Senate & another v Attorney-General & 4 others (Advisory Opinion Reference No 2 of 2013); Independent Electoral and Boundaries Commission & 2 others v Evans Kidero (Petition 20 of 2014); Justus Kariuki Mate & another v Hon. Martin Nyaga Wambora (Petition 32 of 2014); In the Matter of the National Land Commission [2015] eKLR - National Land Commission v Attorney General & 5 others (Advisory Opinion Reference No 2 of 2014); Lemanken Aramat v Harun Meitamei Lempaka & 2 others [2014] eKLR (Petition No 5 of 2014); Cyprian Awiti & another v Independent Electoral and Boundaries Commission & 2 others [2019] eKLR (Petition No 17 of 2018); Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamad & 3 others; Ahmed Ali Muktar (Interested Party) [2019] eKLR (Petition No 7 of 2018); Martin Wanderi & 106 others v Engineers Registration Board & 10 others [2018] eKLR (Petition No 19 of 2015); Moi v Rosanna Pluda [2017] eKLR; Town Council of Awendo v Nelson O. Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR (Petition No 37 of 2014); Wilfrida Arnodah Itolondo v Attorney General & 9 others [2021] eKLR (Application No 3 of 2021 (E005 of 2021)); and Speaker Nairobi City County Assembly & another v Attorney General & 3 others (Interested parties) [2021] eKLR (Advisory Opinion Reference No 1 of 2020), among many others available at www.proftomojiendaandassociates.com.

Prof. Ojienda, SC is an ardent scholar and has edited and published over 15 books and over 40 articles on diverse areas of the law. The books include "Conveyancing: Theory and Practice" published by T.O. Ojienda and A.D.O. Rachier, Faculty of Law Moi University; "Constitution Making and Democracy in Kenya" edited by T.O. Ojienda ISBN: 9966-9611-3-6; "The Dawn of a New Era 2004" edited by Tom Ojienda, ISBN-9811-4-4; "A General Introduction to the New Law of the Sea" Published by T.O. Ojienda and Kindiki Kithure; "The Legal Profession and Constitutional Change in Kenya; Anti-Corruption and Good Governance in East Africa: Laying Foundations for Reform" edited by Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor, ISBN.9966-7121-1-9, 221 pages; "Conveyancing Principles and Practice" by Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor, 521 pages; 'Conveyancing Principles and Practice' by Dr. Tom O. Ojienda and published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor (Revised edition); "Professional Ethics" by Prof. Tom Ojienda & Katarina Juma published by Law Africa Publishing (K) Ltd, Co-op Trust Plaza, 1st Floor. (Revised Edition) 195 pages; "The Enforcement of Professional Ethics in Kenya" (with Prof. Cox), Amazon Publishers, 2014; "Constitutionalism and Democratic Governance in Africa" (with Prof Mbodenyi), pulp publishers, 2013; "Mastering Legal Research" published by Law Africa, 2013; "Professional Ethics, A Kenyan Perspective" published by Law

*Africa* 2012; "Anti-Corruption and Good Governance in East Africa" published by Law Africa, 2007; "Conveyancing Theory and Practice" published by Law Africa, 2002; and "Land Law and Conveyancing: Principles and Practice" published by Law Africa Publishing (K) Ltd, 2015, ISBN: 9789966031846 9966031847 (274 pages).

His published articles include: "Sustainability and The Ivory Trade. Whither the African Elephant?" published in the 2002 issue of the East African Law Review; "Pitfalls in the Fight against Corruption in Kenya: Corruption or Inertia?" in "Anti-Corruption and Good Governance in East Africa: Laving Foundations for Reform" by T. O. Ojienda (eds) pages 95 – 131; "Exploring New Horizons in the Discipline of Advocates, Towards a Review of the Existing Regime of Law" published in "The Advocate; Learning Law by Doing Law: The Theoretical Underpinnings and Practical Implications of Clinical Legal Education in Kenya"; and "An Inventory of Kenva's Compliance with International Rights Obligations: A Case Study of the International Covenant on Civil and Political Rights" the East African Journal of Human Rights and Democracy Vol. 1, Issue No. 1, September 2003 at page 91-104; "Sectoral Legal Aid in Kenya: The Case of the Rift Valley Law Society Juvenile Legal Aid Project", published in various journals including the Advocate, the Lawyer, and the Newcastle Law Bulletin; "Surrogate Motherhood and the Law in Kenya: A Comparative Analysis in a Kenya Perspective"; "Polygamous Marriages and Succession in Kenya: Whither "the other woman?"; "Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya" published in the International Journal of Clinical Education Edition No. 2, June 2002 at page 49-63; "Taking a Bold Step Towards Reform: Justifying Calls for Continuing Legal Education and Professional Indemnity" published in Law society of Kenya Publication (2003); "Terrorism: Justifying Terror in Kenya?" published in The East African Lawyer, Issue No. 5 at pages 18-22; "Land Law and Tenure Reform in Kenya: A Constitutional Framework for Securing Land Rights"; "A Commentary on Understanding the East African Court of Justice" published in the East African Lawyer, Issue No. 6 at pages 52-56; "Where Medicine Meets the Law: The Case of HIV/AIDS Prevention and Control Bill 2003" published in The Advocate at page 36-40; "The Advocates Disciplinary Process-Rethinking the Role of the Law Society" published in The Lawyer, Issue No. 78 at pages 15-16; "Ramifications of a Customs Union for East Africa" published in The East African Lawyer, Issue No. 4 at pages 17-25; "Gender Question: Creating Avenues to Promote Women Rights after the Defeat of the proposed Constitution" published in the Moi University Journal Vol. 1 2006 No.1, pages 82–92; "Of Mare Liberum and the Ever Creeping State Jurisdiction: Taking an Inventory of the Freedom of the Seas" published in the Moi University Journal Vol. 1 2006 No. 1, pages 105 – 131; "Legal and Ethical Issues Surrounding HIV and AIDS: Recommending Viable Policy and Legislative

Interventions" published in The East African Lawyer, Issue No. 12 at pages 19-24; "Implementing the New Partnership for Africa's Development (NEPAD): Evaluating the Efficiency of the African Peer Review Mechanism" published in the Kenya Law Review, 2007 Vol. 1, pages 81-119; "Protection and Restitution for Survivors of Sexual and Gender Based Violence: A case for Kenya." (with R. A. Ogwang and R. Aura) 90 Pages, ISSN:1812–1276; "Legal and Institutional Framework of the TJRC - Way Forward" published in the Law Society of Kenya Journal Vol. 6 2010 No. 1, pages 61 - 95; "A Critical Look at the Land Ouestion in the New Constitution" published in Nairobi Law Monthly, Vol. 1, Issue No. 1 of 2010 at pages 76 – 81; "Researching Kenyan Law" (Globalex, Hauser Global Law School Program, New York University School of Law [updates: November 2006 and March 2008 (with Leonard Obura Oloo); September 2011 (with Matthews Okoth); February 2016; and March/April 2020 (with Brian Ojienda and Gregory Otieno); "Access to Justice in the Era of COVID-19: Adaptations and Coping Mechanisms of the Legal Services Industry in Kenva' (with Lydia Mwalimu Adude) published in Journal of Conflict Management & Sustainable Development, Vol. 6, Issue 2, 2021, ISBN: 978-9966-046-15-4, pages 1-46; "Criminal Liability of Corporate Entities and Public Officers: A Kenyan Perspective" (with Lydia Mwalimu Adude) published in Journal of Conflict Management & Sustainable Development, Vol. 6, Issue 2, 2021, ISBN: 978-9966-046-15-4, pages 117-212; "Changes to Civil Litigation and Mediation Practice Under the Mediation Bill, 2020: What of the Right of Access to Justice and the Independence of the Judiciary?" published in Alternative Dispute Resolution Journal (CIArb-Kenya), Vol. 9, Issue 2, 2021, ISBN: 978-9966-046-14-7, pages 44-65; "Access to Justice: A Critique of the Small Claims Court in Kenya' (with Lydia Mwalimu Adude) published in Alternative Dispute Resolution Journal (CIArb-Kenya), Vol 9, Issue 2, 2021, ISBN: 978-9966-046-14-7, pages 170-201; "The Dynamics of Public Procurement of Legal Services in Kenya" published in Journal of Conflict Management & Sustainable Development, Vol 6(3), 2021, ISBN: 978-9966-046-15-4, pages 17-45; "Reflections on the Structure and Leadership of the Senior Bar in Kenya: Some Thoughts" published in Journal of Conflict Management & Sustainable Development, Vol 6(3), 2021, ISBN: 978-9966-046-15-4, pages 136-165; "Conflict of Interest and Public Office in Kenya" (with Lydia Mwalimu Adude) published in Journal of Conflict Management & Sustainable Development, Vol 6, Issue 5, 2021, ISBN: 978-9966-046-15-4, pages 1-68; "Professional Ethics: An Advocate's Relationship with other Advocates" published in Journal of Conflict Management & Sustainable Development, Vol 7, Issue 2, 2021, ISBN: 978-9966-046-15-4, pages 57-78; and a Book Chapter entitled "Land Law in the New Dispensation" in a book edited by P.LO. Lumumba and Dr. Mbondenyi Maurice.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

Administrative and quasi-judicial EDR mechanisms are the political parties' internal dispute resolution mechanisms (IDRM), the Independent Electoral and Boundaries Commission (IEBC) mechanisms (that is, the Dispute Resolution Committee, the Electoral Code of Conduct Enforcement Committee, and the Constituency Peace Committees), and the Political Parties Disputes Tribunal (PPDT). Judicial EDR mechanisms means the election courts, which are vested with special electoral jurisdiction, that is, designated Resident Magistrates' Courts, the High Court, the Court of Appeal, and the Supreme Court of Kenya when sitting as such.

Effective EDR mechanisms are central in ensuring **a peaceful and credible electoral process** and must, therefore, be able to deal with any form of challenge that may arise due to a disputed electoral process and outcome. As a consequence, it is imperative that the administrative, quasi-judicial, and judicial bodies mandated to hear and determine electoral disputes adjudicate the process in a free and fair manner pursuant to **article 50(1) of the Constitution**.<sup>2</sup> In *Moses Mwicigi & 14 others v Independent Electoral and Boundaries Commission & 5 others*,<sup>3</sup> the Supreme Court was categorical that:

One of the objectives of our Constitution is the establishment of firm institutions, that have a pivotal role in its implementation. Our electoral dispute-resolution regime has a

<sup>3</sup> [2016] eKLR, SCoK Pet No 1 of 2015.

He has also peer reviewed articles, consulted for various agencies, including the World Bank, USAID, UNIFEM, and presented scholarly papers in many countries across the globe.

Prof. Tom Ojienda, SC can be reached through tomojienda@yahoo.com.

<sup>&</sup>lt;sup>1</sup> See e.g., The Judiciary Working Committee on Election Preparations, 'Pre-election Dispute Management: Between Judicial And Administrative Dispute Management Mechanisms' (Kenya Law Blog; 17 September 2012) <<u>http://kenyalaw.org/kenyalawblog/pre-election-dispute-management-between-judicial-and-administrative-dispute-management-mechanisms/</u>>.

<sup>&</sup>lt;sup>2</sup> Article 50(1) of the Constitution guarantees the right to a fair hearing and provides that, 'Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.'

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

continuum of institutions that require strengthening, through the judicial system: namely, the political parties; the Political Parties Disputes Tribunal; and the IEBC. These have to comply with the Constitution, and the electoral laws and regulations.<sup>4</sup>

Election petitions are a judicial mechanism for resolving post-election disputes. With an awareness of the entirety of EDR mechanisms available in Kenya towards the resolution of both pre-election and post-election disputes, and the legal framework and principles that underlie the electoral system in Kenya, this paper focuses on the litigation of election petitions. In doing so, the paper looks into the parameters and tools for managing team dynamics in litigating election petitions.

# 2 Election Petitions

Election petitions are instituted in court subsequent to the declaration of election results by IEBC's returning officers.<sup>5</sup> In *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others*,<sup>6</sup> the Supreme Court stated:

Insofar as the Constitution (Article 87(2)) provides that: "Petitions concerning an election other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results...," while the Elections Act, 2011 (Section 76 (1)) provides that: "A petition – a. to question the validity of an election shall be filed within twenty-eight days after the date of publication of the results of the election in the Gazette...," and as it is clear that expedition in the disposal of electoral disputes is a fundamental principle under the Constitution, we hold the said provision of the Elections Act to be inconsistent with the terms of the Constitution.<sup>7</sup>

<sup>&</sup>lt;sup>4</sup> SCoK Pet No 1 of 2015, para 121.

<sup>&</sup>lt;sup>5</sup> Constitution of Kenya, 2010, art 87(2); Elections Act, 2011, s 39.

<sup>&</sup>lt;sup>6</sup> [2014] eKLR, SCoK Pet No 10 of 2013.

<sup>&</sup>lt;sup>7</sup> Ibid para 101.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

Election petitions can arise in respect of **presidential**, **parliamentary and county elections and include by-elections**.<sup>8</sup> Presidential elections concern elections to the office of President. **Articles 140**, **163(3)(a)**, **and 165(5)(a) of the Constitution of Kenya**, **2010** (**the Constitution**) give the Supreme Court exclusive original and final jurisdiction to hear and determine disputes relating to presidential elections.<sup>9</sup> Parliamentary elections concern elections of members of the National Assembly or the Senate, which together comprise Members of the Parliament of Kenya. **Article 105(1) of the Constitution** gives the High Court jurisdiction to hear and determine any question as to whether a person has been validly elected as a Member of Parliament, or whether the seat of a Member of Parliament has become vacant.<sup>10</sup>

County elections concern elections of county governors and members of county assemblies.<sup>11</sup> Section 75(1) of the Elections Act, 2011 gives the High Court within the county or nearest to the affected county, jurisdiction in respect of a question as to the validity of an election of a county governor. On the other hand, section 75(1A) of the Elections Act, 2011 gives Resident Magistrates Courts to be designated as such by the Chief Justice, jurisdiction in respect of a question as to the validity of the election of a member of a county assembly (MCA).

<sup>&</sup>lt;sup>8</sup> See definition of "election" in section 2 of the Elections Act, 2011, Act No 21 of 2011, Laws of Kenya.

<sup>&</sup>lt;sup>9</sup> Articles 136-140 of the Constitution of Kenya, 2010 concern election of the president; qualifications and disqualifications for election as president; procedure at presidential election; procedure to be followed in case of death of a president-elect after being declared elected as president, but before assuming office; and questions as to validity of presidential election.

<sup>&</sup>lt;sup>10</sup> Articles 97-105 of the Constitution of Kenya, 2010 concern elections to and membership of the Parliament of Kenya.

<sup>&</sup>lt;sup>11</sup> Articles 177 and 193 of the Constitution of Kenya, 2010 concern the membership of county assembly and qualifications for election as member of county assembly; Article 180 of the Constitution concerns election of county governor and deputy county governor.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

Election petitions are heard and determined by an election court.<sup>12</sup> Section 2 of the Elections Act, 2011 defines an 'election court' to mean: 'the Supreme Court in exercise of the jurisdiction conferred upon it by Article 163 (3) (a) or the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3) (a) of the Constitution and the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of [the Elections] Act.'

Litigating election petitions often brings together more than one advocate or firm to represent a party to the dispute (litigation team). The subsequent parts of this paper consider the dynamics of litigating election petitions in teams, especially in terms of the stringent timelines and special procedures in respect of election petitions that necessitate the need to manage litigation team dynamics towards an ultimate desirable and expeditious resolution of an election petition.

## **3** Litigating Election Petitions

The special nature of election petitions as a component of the larger EDR mechanisms makes them complex, urgent, and demanding of thought and skill. As a result, a one-man job may not be able to pull through, thereby necessitating the need for a litigation team for the proper execution of an election petition. There are stringent timelines to be met. There are special laws and rules of procedure applicable in the context of election petitions. There is need to strategize quickly to best represent your client and outsmart the opponent. There is urgent need for research and analysis of voluminous documents, including documents and materials to be relied on as evidence, and the opponent's pleadings. There is need to draft proper and stellar pleadings to articulate your client's case with accuracy, correctness and completeness. There is limited time to present the best and winning argument before the election court covering all the vital aspects of your client's case.

These multiple components involved in the litigation of election petitions necessitates that a litigation team be on top of their game. Rebecca Green notes

<sup>&</sup>lt;sup>12</sup> See rule 6 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 regarding constitution of an election court.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

the information imbalance that may arise in post-election dispute resolution based on the expertise and preparednesss of a litigation team in comparison to the opponent; an imbalance which may have devastating effects for both the candidate (the client) and the voters:

One campaign might hire a sophisticated legal team that understands how various process decisions affect its candidate. If the other campaign has not hired a sophisticated election attorney (or if the attorney hired proves to be less skillful than opposing counsel) this imbalance might prove a great disadvantage. This disadvantage is not just problematic for the candidate, but also for the voters who selected that candidate. In a recount scenario, poor or uninformed lawyering can result in the disenfranchisement of voters. (...) [S]tate election administrators and judges also vary widely in process sophistication.<sup>13</sup>

That notwithstanding, generally, and as concerns election petitions, litigating in teams is wrought with both advantages and disadvantages.<sup>14</sup> Election petitions in particular tend to draw large litigation teams. The outstanding advantage of such large litigation teams includes the ability to divide up the necessary tasks and the various issues that are up for determination amongst the advocates or firms based on their skill sets and expertise. Dividing up the tasks and issues among the advocates or firms constituting a litigation team is actually necessary to allow an advocate or team of advocates to pay special and particular attention to one or two issues, keeping in mind the tight timelines for the hearing and determination of election petitions. The disposal of election petitions is done on the foundation of expeditious disposal of

 <sup>&</sup>lt;sup>13</sup> Rebecca Green, 'Mediation and Post-Election Litigation: A Way Forward,' (2012),
 27(2) Ohio State Journal on Dispute Resolutionp 325-379, 349
 <a href="https://core.ac.uk/download/pdf/159589369.pdf">https://core.ac.uk/download/pdf/159589369.pdf</a>>.

<sup>&</sup>lt;sup>14</sup> See e.g., Law Offices of Stimmel, Stimmel & Roeser, 'Team Dynamics in the World of Litigation' <<u>https://www.stimmel-law.com/en/articles/team-dynamics-world-litigation</u>>.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

matters and in tandem with article 87(1) of the Constitution, 'timely settling of election disputes'.

## 4 Timelines and Procedure in Respect of Election Petitions

Section 85 of the Elections Act, 2011 is categorical that an election petition is to be heard and determined within the period specified in the Constitution. The timelines and procedure in respect of election petitions are provided for in the Constitution, the Elections Act, 2011, Elections (Parliamentary and County Elections) Petitions Rules, 2017, as applicable to parliamentary and county elections,<sup>15</sup> the Court of Appeal (Election Petition) Rules, 2017, and the Supreme Court (Presidential Election Petition) Rules, 2017. Rule 4(1) of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 is categorical that the objective of the Rules is to facilitate the just, expeditious, proportionate, and affordable resolution of election petitions, in this case, parliamentary and county elections.

**Rule 8 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017** provides for the form and content of a parliamentary or county election petition. The election petition, which is supported by an affidavit sworn by the Petitioner,<sup>16</sup> is drafted using **Form 1 in the First Schedule of the Rules**. The election petition is divided into paragraphs confined to a distinct subject and numbered consecutively. The election petition will state: the name and address of the petitioner; the date when the election in dispute was conducted; the results of the election, if any, and however declared; the date of the declaration of the results of the election; the grounds on which the petition is presented; and the name and address of the petitioner's advocate, if any, which shall be the address for service.

<sup>&</sup>lt;sup>15</sup> As provided in **rule 3 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017**, the rules only apply in respect of election of members of Parliament, county governors, and members of county assemblies. **Rule 2** defines an "election court" to mean "the High Court in the exercise of the jurisdiction conferred upon it by Article 165 (3)(a) of the Constitution or the Resident Magistrate's Court designated by the Chief Justice in accordance with section 75 of the [Elections] Act." <sup>16</sup> See Ibid rules 8(4)(b) and 12.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

The election petition will also set out the relief(s) sought, such as a declaration on whether or not the candidate whose election is questioned was validly elected; a declaration of which candidate was validly elected; an order as to whether a fresh election should be held; scrutiny and recounting of the ballots cast at the election in dispute; payment of costs; or a determination as to whether or not electoral malpractice of a criminal nature may have occurred.

**IEBC is a Respondent in every election petition.**<sup>17</sup> A response to a parliamentary or county election petition is filed within seven (7) days of service of the petition on the Respondents and is drafted as in **Form 4 in the First Schedule to the Rules.**<sup>18</sup>

The precise timelines and procedure in respect of election petitions as concerns the various political offices can be summarised as follows:

<sup>&</sup>lt;sup>17</sup> Ibid rule 9.

<sup>&</sup>lt;sup>18</sup> Ibid rule 10 and 11 on service of the election petition on the Respondent and response to the petition, respectively.

|            | Presidential           | Parliamentary               | County                     | County               |
|------------|------------------------|-----------------------------|----------------------------|----------------------|
|            | Elections              | Elections                   | Elections:                 | Elections:           |
|            |                        |                             | County                     | МСА                  |
|            |                        |                             | Governor                   |                      |
| When and   | Article 140(1) of the  | - Article 87(2) of the      | Article 87(2) of the       | Article 87(2) of the |
| where to   | Constitution - file    | Constitution and sections   | Constitution and sections  | Constitution and     |
| file the   | the petition in the    | 76(1) and 77(1) of the      | 76(1) and 77(1) of the     | sections 76(1) and   |
| petition   | Supreme Court          | Elections Act, 2011 - file  | Elections Act, 2011 - file | 77(1) of the         |
|            | within seven (7)       | the petition within         | the Petition within        | Elections Act,       |
|            | days after the date of | twenty-eight (28) days      | twenty-eight (28) days     | 2011 - file the      |
|            | the declaration of     | after the declaration of    | after the declaration of   | petition within      |
|            | the results of the     | the election results by     | the election results by    | twenty-eight (28)    |
|            | presidential election; | IEBC.                       | IEBC.                      | days after the       |
|            | and before 1400 hrs    | - Article 105(1) of the     | - Section 75(1) of the     | declaration of the   |
|            | if filed on the last   | Constitution - the petition | Elections Act, 2011 - the  | election results by  |
|            | day available for      | is filed in the High Court. | petition is filed in the   | IEBC.                |
|            | filing (Rule 7(3) of   |                             | High Court within the      | - Section 75(1A)     |
|            | the Supreme Court      |                             | county or nearest to the   | of the Elections     |
|            | (Presidential          |                             | county.                    | Act, 2011 - the      |
|            | Election Petition)     |                             |                            | petition is filed in |
|            | Rules, 2017).          |                             |                            | the Resident         |
|            | - See also articles    |                             |                            | Magistrate's Court   |
|            | 163(3)(a) and          |                             |                            | designated by the    |
|            | 165(5)(a) of the       |                             |                            | Chief Justice.       |
|            | Constitution.          |                             |                            |                      |
| When       | - Section 78(1) of     | - Section 78(1) of the      | - Section 78(1) of the     | - Section 78(1) of   |
| Petitioner | the Elections Act,     | Elections Act, 2011 -       | Elections Act, 2011 -      | the Elections Act,   |
| is to      | 2011 - within ten      | within ten (10) days after  | within ten (10) days after | 2011 - within ten    |
| deposit    | (10) days after the    | the presentation of the     | the presentation of the    | (10) days after the  |
| security   | presentation of the    | parliamentary election      | gubernatorial election     | presentation of the  |
| for costs  | presidential election  | petition.                   | petition.                  | MCA election         |
|            | petition.              | - Section 78(2)(b) of the   | - Section 78(2)(b) of the  | petition.            |
|            | - Section 78(2)(a) of  | Elections Act, 2011 -       | Elections Act, 2011 -      | - Section 78(2)(c)   |
|            | the Elections Act,     | deposit KES 500,000/= in    | deposit KES 500,000/= in   | of the Elections     |
|            | 2011 – deposit KES     | respect of a parliamentary  | respect of a gubernatorial | Act, 2011 -          |
|            | 1 Million in respect   | election petition.          | election petition.         | deposit KES          |
|            | of a presidential      | - Section 78(3) of the      | - Section 78(3) of the     | 100,000/= in         |
|            | election petition.     | Elections Act, 2011 - the   | Elections Act, 2011 - the  | respect of a MCA     |
|            | -Section 78(3) of      | Respondent may apply        | Respondent may apply       | election petition.   |
|            | the Elections Act,     | for dismissal of the        | for dismissal of the       | - Section 78(3) of   |
|            | 2011 – the             | petition with costs if the  | petition with costs if the | the Elections Act,   |
|            | Respondent may         |                             |                            | 2011 - the           |

| r         |                        |                             |                             | · - · ·              |
|-----------|------------------------|-----------------------------|-----------------------------|----------------------|
|           | apply for dismissal    | Petitioner fails to deposit | Petitioner fails to deposit | Respondent may       |
|           | of the petition with   | security as required.       | security as required.       | apply for dismissal  |
|           | costs if the           | - Section 84 of the         | - Section 84 of the         | of the petition with |
|           | Petitioner fails to    | Elections Act, 2011 - an    | Elections Act, 2011 - an    | costs if the         |
|           | deposit security as    | election court shall award  | election court shall award  | Petitioner fails to  |
|           | required.              | the costs of and incidental | the costs of and incidental | deposit security as  |
|           | - Section 84 of the    | to a petition, which costs  | to a petition, which costs  | required.            |
|           | Elections Act, 2011    | shall follow the cause.     | shall follow the cause.     | - Section 84 of the  |
|           | - an election court    |                             |                             | Elections Act,       |
|           | shall award the costs  |                             |                             | 2011 – an election   |
|           | of and incidental to a |                             |                             | court shall award    |
|           | petition, which costs  |                             |                             | the costs of and     |
|           | shall follow the       |                             |                             | incidental to a      |
|           | cause.                 |                             |                             | petition, which      |
|           |                        |                             |                             | costs shall follow   |
|           |                        |                             |                             | the cause.           |
| When and  | Article 87(3) of the   | - Article 87(3) of the      | - Article 87(3) of the      | - Article 87(3) of   |
| how to    | Constitution -the      | Constitution and section    | Constitution and section    | the Constitution     |
| serve the | petition may be        | 77(2) of the Elections      | 77(2) of the Elections      | and section 77(2)    |
| petition  | served directly or by  | Act, 2011 - the petition    | Act, 2011 - the petition    | of the Elections     |
|           | advertisement in a     | may be served personally    | may be served personally    | Act, 2011 - the      |
|           | newspaper with         | upon a Respondent or by     | upon a Respondent or by     | petition may be      |
|           | national circulation.  | advertisement in a          | advertisement in a          | served personally    |
|           | - Served within 24     | newspaper with national     | newspaper with national     | upon a Respondent    |
|           | hours of filing the    | circulation.19              | circulation.                | or by                |
|           | petition and served    | - Section 76(1)(a) of the   | - Section 76(1)(a) of the   | advertisement in a   |
|           | through electronic     | Elections Act, 2011 - a     | Elections Act, 2011 - a     | newspaper with       |
|           | means within 6         | petition to question the    | petition to question the    | national             |
|           | hours of filing the    | validity of an election     | validity of an election     | circulation.         |
|           | petition - Rule 10 of  | shall be served within      | shall be served within      | - Section 76(1)(a)   |
|           | the Supreme Court      | fifteen (15) days of        | fifteen (15) days of        | of the Elections     |
|           | (Presidential          | presentation.20             | presentation.21             | Act, 2011 – a        |
|           | Election Petition)     |                             |                             | petition to question |
|           | Rules, 2017).          |                             |                             | the validity of an   |
|           |                        |                             |                             | election shall be    |
|           |                        |                             |                             | served within        |
|           |                        |                             |                             |                      |

 <sup>&</sup>lt;sup>19</sup> Rule 2 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017
 defines "direct service" as "personal service or service on a duly authorized agent."
 <sup>20</sup> See Ibid rule 10.

<sup>&</sup>lt;sup>21</sup> Ibid.

|            |                       |  |  | fifteen (15) days of                        |
|------------|-----------------------|--|--|---|
|            |                       |  |  | presentation.22                             |
| When to    | - Respondents,        | - Respondents, usually                 | - Respondents, usually                 | - Respondents,                              |
| respond to | usually the persons   | the person whose election              | the person whose election              | usually the person                          |
| the        | declared as           | is challenged, the                     | is challenged, the                     | whose election is                           |
| petition   | President-elect and   | returning officer, and                 | returning officer, and                 | challenged, the                             |
|            | deputy President-     | IEBC, <sup>24</sup> file a response to | IEBC, <sup>26</sup> file a response to | returning officer,                          |
|            | elect, IEBC, and the  | the election petition                  | the election petition                  | and IEBC, $^{\scriptscriptstyle 28}$ file a |
|            | Chairperson of        | within seven (7) days of               | within seven (7) days of               | response to the                             |
|            | IEBC as the           | service of the petition and            | service of the petition and            | election petition                           |
|            | returning officer for | serve the response within              | serve the response within              | within seven (7)                            |
|            | presidential          | seven (7) days of filing.25            | seven (7) days of filing.27            | days of service of                          |
|            | elections,23 file a   |  |  | the petition and                            |
|            | response to the       |  |  | serve the response                          |
|            | petition (in Form B   |  |  | within seven (7)                            |
|            | in the Second         |  |  | days of filing.29                           |
|            | Schedule plus         |  |  |   |
|            | replying affidavit)   |  |  |   |
|            | within 4 days of      |  |  |   |
|            | service of the        |  |  |   |
|            | petition - Rule 11 of |  |  |   |
|            | the Supreme Court     |  |  |   |
|            | (Presidential         |  |  |   |
|            | Election Petition)    |  |  |   |
|            | Rules, 2017); or file |  |  |   |
|            | notice of intention   |  |  |   |
|            | not to oppose the     |  |  |   |
|            | petition (in Form C   |  |  |   |
|            | in the Second         |  |  |   |
|            | Schedule) within      |  |  |   |
|            | three (3) days of     |  |  |   |

<sup>&</sup>lt;sup>22</sup> Ibid.

<sup>&</sup>lt;sup>23</sup> See e.g., Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR, Supreme Court of Kenya, Presidential Election Pet No 1 of 2017.

<sup>&</sup>lt;sup>24</sup> Definition of "respondent" in rule 2 of the of the Elections (Parliamentary and County Elections) Petitions Rules, 2017.

<sup>&</sup>lt;sup>25</sup> *Ibid rule 11.* 

 $<sup>^{26}</sup>$  Ibid rule 2.

<sup>&</sup>lt;sup>27</sup> *Ibid rule 11.* 

<sup>&</sup>lt;sup>28</sup> Ibid rule 2.

<sup>&</sup>lt;sup>29</sup> Ibid rule 11.

|            | service of the           |                              |                              |                     |
|------------|--------------------------|------------------------------|------------------------------|---------------------|
|            | petition and serve on    |                              |                              |                     |
|            | the petitioner.          |                              |                              |                     |
| Procedure  | - Section 79 of the      | – Section 79 of the          | – Section 79 of the          | – Section 79 of the |
| of the     |                          |                              |                              |                     |
|            | Elections Act, 2011      | Elections Act, 2011 –        | Elections Act, 2011 –        | Elections Act,      |
| Court      | – upon receipt of a      | upon receipt of a petition,  | upon receipt of a petition,  | 2011 – upon         |
| upon       | petition, an election    | an election court will       | an election court will       | receipt of a        |
| receipt of | court will peruse the    | peruse the petition and:     | peruse the petition and:     | petition, an        |
| the        | petition and:            | (a) if it considers that no  | (a) if it considers that no  | election court will |
| petition   | if it considers that     | sufficient ground for        | sufficient ground for        | peruse the petition |
|            | no sufficient ground     | granting the relief          | granting the relief          | and:                |
|            | for granting the         | claimed is disclosed         | claimed is disclosed         | (a) if it considers |
|            | relief claimed is        | therein may reject the       | therein may reject the       | that no sufficient  |
|            | disclosed therein        | petition summarily; or       | petition summarily; or       | ground for          |
|            | may reject the           | (b) fix a date for the trial | (b) fix a date for the trial | granting the relief |
|            | petition summarily;      | of the petition.             | of the petition.             | claimed is          |
|            | or                       |                              |                              | disclosed therein   |
|            | fix a date for the trial |                              |                              | may reject the      |
|            | of the petition.         |                              |                              | petition            |
|            |                          |                              |                              | summarily; or       |
|            |                          |                              |                              | (b) fix a date for  |
|            |                          |                              |                              | the trial of the    |
|            |                          |                              |                              | petition.           |
| How long   | - Article 140(2) of      | - Article 105(2) of the      | Section 75(2) of the         | Section 75 of the   |
| the court  | the Constitution -       | Constitution - the High      | Elections Act, 2011 - the    | Elections Act,      |
| has to     | within fourteen (14)     | Court is to hear and         | High Court is to hear and    | 2011 does not       |
| determine  | days after the filing    | determine a                  | determine a gubernatorial    | specify the         |
| the        | of a presidential        | parliamentary election       | election petition within     | timeline for the    |
| petition   | election petition, the   | petition within six (6)      | six (6) months of the date   | hearing and         |
| petition   | Supreme Court shall      | months of the date of        | of lodging the petition.     | determination of a  |
|            | hear and determine       | lodging the petition.        | - Section 79 of the          | MCA election        |
|            | the petition and its     | - Section 79 of the          | Elections Act, 2011 –        | petition, which is  |
|            | decision shall be        | Elections Act, 2011 –        | interlocutory matters in     | heard by Resident   |
|            |                          | ,                            | 2                            | 2                   |
|            | final. See also Rule     | interlocutory matters in     | connection with a petition   | Magistrate's Court  |
|            | 23 of the Supreme        | connection with a petition   | challenging results of       | designated by the   |
|            | Court (Presidential      | challenging results of       | gubernatorial elections      | Chief Justice.      |
|            | Election Petition)       | parliamentary elections      | shall be heard and           | - Section 79 of the |
|            | Rules, 2017).            | shall be heard and           | determined by the            | Elections Act,      |
|            | - Section 79 of the      | determined by the            | election court.              | 2011 -              |
|            | Elections Act, 2011      | election court.              |                              | interlocutory       |
|            | - interlocutory          |                              |                              | matters in          |
|            | - interlocutory          |                              |                              |                     |
|            | matters in               |                              |                              | connection with a   |

|         | petition challenging  |                              | 1                          | challenging results   |
|---------|-----------------------|------------------------------|----------------------------|-----------------------|
|         | results of            |                              |                            | of MCA elections      |
|         | presidential          |                              |                            | shall be heard and    |
|         | elections shall be    |                              |                            |                       |
|         |                       |                              |                            | determined by the     |
|         | heard and             |                              |                            | election court.       |
|         | determined by the     |                              |                            |                       |
|         | election court.       |                              |                            |                       |
| Relief  | Article 140(3) of the | - Section 80(4) of the       | Section 75(3) of the       | Section 75(3) of      |
| granted | Constitution – if the | Elections Act, 2011 – an     | Elections Act, 2011- the   | the Elections Act,    |
|         | Supreme Court         | election court may by        | court may grant            | 2011- the court       |
|         | determines the        | order direct IEBC to issue   | appropriate relief,        | may grant             |
|         | election of the       | a certificate of election to | including:                 | appropriate relief,   |
|         | President-elect to be | a Member of Parliament       | (a) a declaration of       | including:            |
|         | invalid, a fresh      | if—                          | whether or not the         | (a) a declaration of  |
|         | election shall be     | (a) upon recount of the      | candidate whose election   | whether or not the    |
|         | held within sixty     | ballots cast, the winner is  | is questioned was validly  | candidate whose       |
|         | days (60) after the   | apparent; and                | elected;                   | election is           |
|         | determination.        | (b) that winner is found     | (b) a declaration of which | questioned was        |
|         | - Section 80(4) of    | not to have committed an     | candidate was validly      | validly elected;      |
|         | the Elections Act,    | election offence.            | elected; or                | (b) a declaration of  |
|         | 2011 - an election    | - Section 82 of the          | (c) an order as to whether | which candidate       |
|         | court may by order    | Elections Act, 2011 - an     | a fresh election will be   | was validly           |
|         | direct IEBC to issue  | order for a scrutiny of      | held or not.               | elected; or           |
|         | a certificate of      | votes and recounting of      | - Section 82 of the        | (c) an order as to    |
|         | election to a         | ballots cast, upon an        | Elections Act, 2011 - an   | whether a fresh       |
|         | President if-         | application by a party       | order for a scrutiny of    | election will be      |
|         | (a) upon recount of   | during the hearing of an     | votes and recounting of    | held or not.          |
|         | the ballots cast, the | election petition, or the    | ballots cast, upon an      | - Section 80(4) of    |
|         | winner is apparent;   | court acting suo moto.       | application by a party     | the Elections Act,    |
|         | and                   | - Section 86(1) of the       | during the hearing of an   | 2011 - an election    |
|         | (b) that winner is    | Elections Act, 2011 – a      | election petition, or the  | court may by order    |
|         | found not to have     | certificate of court as to   | court acting suo moto.     | direct IEBC to        |
|         | committed an          | the validity of a            | - Section 86(1) of the     | issue a certificate   |
|         | election offence.     | parliamentary election.      | Elections Act, 2011 – a    | of election to a      |
|         | - Section 82 of the   | - Section 87 of the          | certificate of court as to | MCA if:               |
|         | Elections Act, 2011   | Elections Act, 2011 - a      | the validity of a          | (a) upon recount of   |
|         | - an order for a      | determination and order      | gubernatorial election.    | the ballots cast, the |
|         | scrutiny of votes and | of the election court on     | - Section 86(1A), (1B)     | winner is apparent;   |
|         | recounting of ballots | the occurrence of an         | and (1C) of the Elections  | and                   |
|         | cast, upon an         | electoral malpractice of a   | Act, 2011 – procedure in   | (b) that winner is    |
|         | application by a      | criminal nature, to be       | case of invalidation of a  | found not to have     |
|         | party during the      | transmitted to the           | gubernatorial election.    | committed an          |
|         | hearing of an         | Director of Public           | -                          | election offence.     |
|         |                       |                              |                            |                       |

| election petition, or<br>the court acting suo<br>moto.Prosecutions (DPP) for<br>iminal investigation and<br>prosecution Section 8 Act, 2011 – a<br>elections Act, 2011 – a<br>of the election court on<br>the court acting of<br>a scrutiny of votes<br>a acrutiny of votes<br>a scruting of<br>ballots cast, upon<br>a order for<br>a scruting of<br>ballots cast, upon<br>a order for<br>a scruting of<br>ballots cast, upon<br>a order for<br>a scruting of<br>a papelication by a<br>upidity of a<br>presidential election.<br>- Section 8 Act, 2011 – a<br>certificate<br>presidential election.<br>- Section 8 Act, 2011<br>a certificate- Section 8 Act, 2011<br>election for the court acting<br>prosecution Section 8 Act, 2011<br>a application by a<br>party during the<br>hearing of an<br>election petition, or<br>or finvalidation of a<br>prosecution Section 8 Act, 2011<br>election for the<br>prosecution Section 8 Act, 2011<br>election for the<br>court as to the<br>validity of a MCA<br>election act, 2011<br>election act, 2011<br>election for the<br>election act, 2011<br>election ac  | -       |                       |                          |                            |                      |
|---|---------|-----------------------|--------------------------|----------------------------|----------------------|
| moto.prosecution.determination and order<br>of the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a<br>presidential election.<br>- Section 86 of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)prosecution.2011 - a order for<br>a scrutiny of votes<br>and recounting of<br>ballots cast, upon<br>a application by a<br>party during the<br>hearing of an<br>election sect, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)2011 - a certificate<br>or the court as to the<br>validity of a MCA<br>election section 87 of the<br>Elections Act, 2011<br>- a determination<br>a determination<br>investigation and<br>prosecution.2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election and order of the<br>election and prosecution.2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election and order of the<br>election and order of the<br>election and prosecution.2011 - a certificate<br>of a criminal inture,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a certificate<br>of a criminal investigation and<br>order of the<br>election court on the<br>occurrence of an<br>election alpractice of<br>an electoral<br>malpractice of<br>public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a certificate<br>of a criminal investigation and<br>order of the<br>election court on the<br>occurrence of an<br>election court on the<br>occurrence of<br>an electoral<br>malpractice of<br>public<br>Prosecutions<br>(DPP) for criminal<br>investi   |         | election petition, or | Prosecutions (DPP) for   | - Section 87 of the        | - Section 82 of the  |
| - Section 86(1) of<br>the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a<br>presidential election.<br>- Section 86A of the<br>Elections Act, 2011<br>- Section 86A of the<br>Elections Act, 2011<br>- Section 86A of the<br>Elections Act, 2011<br>presidential election<br>- Section 86A of the<br>Elections Act, 2011<br>presidential election<br>of invalidation of a<br>presidential election<br>presidential election<br>of invalidation of a<br>presidential election<br>presidential election<br>of invalidation of a<br>presidential election<br>presidential election<br>of invalidation of a<br>presidential election<br>the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election and presidential election<br>the Director of Public<br>Public Prosecutionsof the Constitution.<br>section 87 of the<br>election act of the<br>clection act of the<br>clection act of the<br>clection act of the<br>election act of the<br>ele |         | Ũ                     | 6                        | ,                          | ,                    |
| the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a<br>presidential election.<br>- Section 86A of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>- procedure in case<br>of invalidity of a<br>- section 86A of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election and procedure<br>of a construction.and recounting of<br>hearing of an<br>election of Public<br>Prosecutions (DPP) for<br>criminal investigation and<br>prosecution.and recounting of<br>hearing of an<br>election protection of a<br>sum moto.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>elector and and protecte<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>and order of the<br>election and protecte<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>prosecutionsand recounting of<br>hearing of<br>an application by a<br>mathematica<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>election and<br>prosecutions- Section 85A(1) of the<br>election and<br>order of the<br>election and<br>prosecutions- Section 85A(1) of the<br>election act, 2011 - an<br>an electoral<br>malpractice of a<br>criminal nature, to<br>the Director of<br>public<br>Prosecutions- Section 85A(1) of the<br>elections Act, 2011 - an<br>an electoral<br>malpractice of a<br>criminal nature, to<br>the Director of<br>public<br>Prosecutions- Section 85A(1) of the<br>election act, 2011 - an<br>an electoral<br>malpractice of a<br>criminal nature, to<br>the Director of<br>public<br>Prosecutions- Section 85A(1) of the<br>the Director of<br>public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>the Director   |         |                       | prosecution.             |                            |                      |
| 2011 - a certificate<br>of court as to the<br>validity of a<br>presidential election.<br>- Section 86 of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>elector of a<br>elector of public<br>Public Prosecutionsballots cast, upon<br>an application by a<br>party during the<br>hearing of an<br>elections (DPP) for<br>criminal investigation and<br>prosecution.ballots cast, upon<br>an application by a<br>party during the<br>hearing of an<br>elections (DPP) for<br>criminal investigation and<br>prosecution.ballots cast, upon<br>an application by a<br>party during the<br>hearing of an<br>election act,<br>2011 - a certificate<br>of a criminal nature, to be<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.ballots cast, upon<br>an application by a<br>party during the<br>hearing of an<br>election act,<br>2011 - a<br>determination and<br>order of the<br>election court on the<br>occurrence of an<br>elector of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.ballots cast, upon<br>an application by a<br>party during the<br>hearing of an<br>election act,<br>2011 - a<br>determination and<br>order of the<br>election court on<br>the occurrence of<br>an electoral<br>malpractice of a<br>criminal instruct, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning the<br>office of courty goveron<br>shall lie to the Court of<br>appeal   |         |                       |                          |                            | 5                    |
| of court as to the<br>validity of a<br>presidential election.<br>- Section 86A of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>tunder article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election and prosecution.an application by a<br>party during the<br>hearing of an<br>election sAct,<br>2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>elector of the<br>Director of<br>Public Prosecutionsan application by a<br>party during the<br>hearing of an<br>election Act,<br>2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>elector or of the<br>public Prosecutionsan application by a<br>party during the<br>hearing of an<br>election - Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>elector of manapractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.an application by a<br>party during the<br>hearing of an<br>election acting<br>a moto.<br>- Section 85A(1) of the<br>Elections Act, 2011 - a<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court on an election<br>ties to the High<br>Court on anters<br>of law only, which<br>appeal must  |         | ·                     |                          |                            | -                    |
| validity of a<br>presidential election.<br>- Section 86A of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>electori on the<br>occurrence of an<br>electori of a criminal inture,<br>to be transmitted to the<br>Director of<br>Posecution.transmitted to the<br>Director of Public<br>Prosecution.party during the<br>hearing of an<br>election section 80(1) of<br>the Elections Act, 2011<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>electori or of the<br>bectoring mainted to the<br>Director of<br>Public Prosecutionstransmitted to the<br>Director of<br>- Section 87 of the<br>Elections Act, 2011 - a<br>determination and<br>electoral malpractice<br>of a criminal nature,<br>to the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.transmitted to the<br>Director of<br>Public<br>Prosecutions<br>Director of<br>Public<br>Prosecutionsparty during the<br>hearing of an<br>electoral malpractice of a<br>criminal nature, to<br>the Director of<br>Public<br>Prosecutionsparty during the<br>hearing of an<br>electoral<br>malpractice of a<br>criminal nature, to<br>the Director of<br>Public<br>Prosecutionsparty during the<br>hearing of an<br>electoral<br>malpractice of a<br>criminal nature, to<br>the Director of<br>Public<br>ProsecutionsWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petitio concerning<br>the<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal must be<br>appeal must be<br>appeal must be  |         |                       |                          |                            | · •                  |
| presidential election.<br>- Section 86A of the<br>Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election and order of the<br>election and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions.Director of Public<br>Prosecution.hearing of an<br>election petition,<br>or the court acting<br>su moto.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions.Director status<br>prosecution.hearing of an<br>election court on<br>the occurrence of<br>a determination and<br>order of the<br>electoral malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions.Director status<br>prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>court in an election<br>petition concerning<br>membership of the<br>Maional Assembly or- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal membership of the<br>shall lie to the Court of<br>shall lie to the Court ofSection 75(4) of<br>the Elections Act,<br>2011 - an appeal<br>court in an election<br>petition concerning the<br>office of county governor<br>shall lie to the Court of   |         |                       |                          |                            |                      |
| - Section 86A of the<br>Elections Act, 2011    Prosecutions (DPP) for<br>criminal investigation and<br>prosecution.    election petition,<br>or the court acting<br>suo moto.      - procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.    - Section 850(1) of<br>the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election.    - Section 85(1) of<br>the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election.      - section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>elector ourt on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.    - Section 85A(1) of the<br>Elections Act, 2011 - a<br>determination and<br>order of the<br>electoral malpractice of<br>a nelectoral<br>malpractice of a<br>electoral<br>malpractice of a<br>public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.    - Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in a nelector<br>appeal from the High<br>Court in a nelection<br>petition concerning<br>membership of the<br>National Assembly or    - Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal must be  |         | validity of a         |                          | transmitted to the         | party during the     |
| Elections Act, 2011<br>- procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.criminal investigation and<br>prosecution.or the court acting<br>suo moto.<br>- Section S6(1) of<br>the Elections Act,<br>2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 87 of the<br>Elections Act, 2011 - a<br>determination and<br>order of the<br>election court on the<br>occurrence of a<br>electoral malpractice of a<br>(DPP) for criminal<br>investigation and<br>prosecutions- Section 87 of the<br>Elections Act,<br>2011 - a<br>determination and<br>order of the<br>election court on<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - an<br>a peeal from the High<br>Court in an electorWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electorSection 75(4) of<br>the Elections Act, 2011 - an<br>appeal from the High<br>Court in an electorWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electorSection 75(4) of<br>the Elections Act, 2011 - an<br>appeal from the High<br>Court in an electorWhen to<br>appealNo appeal Section 85A(1) of the<br>Election concerning<br>membership of the<br>National Assembly or- Section sthe High<br>Court in antelection<   |         | F                     |                          | Director of Public         | hearing of an        |
| - procedure in case<br>of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>election court on the<br>occurrence of an<br>election acture of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecution.prosecutionsue mote.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination and<br>order of the<br>election court on the<br>occurrence of an<br>elector of The<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.sue mote.sue mote.<br>- Section 85A(1) of the<br>Elections SAct, 2011 - a<br>determination and<br>order of the<br>elector of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections SAct, 2011 - an<br>determination<br>and peeal from the High<br>Court in an election<br>Appeal from the High<br>Court in an election- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>Petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Election court on<br>the Elections Act, 2011 - an<br>appeal must be<br>appeal must be   |         | - Section 86A of the  |                          | Prosecutions (DPP) for     | election petition,   |
| of invalidation of a<br>presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - a<br>determination and<br>order of the<br>elector of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - a<br>determination and<br>order of the<br>elector of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - a<br>determination and<br>order of the<br>election court on<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>2011 - an appeal<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Elections Act 2011 - an<br>appeal must be   |         | Elections Act, 2011   |                          | criminal investigation and | or the court acting  |
| presidential election<br>under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.He Elections Act,<br>2011 - a<br>determination and<br>order of the<br>electoral court on the<br>occurrence of a<br>currence of a<br>currence of a<br>public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.The Election s Act,<br>elector of<br>public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>a papeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal must be  |         | - procedure in case   |                          | prosecution.               | suo moto.            |
| under article 140(3)<br>of the Constitution.<br>- Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a certificate<br>of court as to the<br>validity of a MCA<br>election.<br>- Section 85A(1) of the<br>Elections Act, 2011 - a<br>determinal investigation and<br>prosecution.2011 - a certificate<br>of a criminal<br>malpractice of a<br>currence of a<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - an<br>determinal<br>more staging and<br>prosecution Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal must be   |         | of invalidation of a  |                          |                            | - Section 86(1) of   |
| of the Constitution Section 87 of theof court as to the<br>validity of a MCA<br>election Section 87 of theElections Act, 2011- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>elections Act, 2011 - a<br>determination and<br>order of the<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>elections Act, 2011 - an<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>appeal- Section 85A(1) of the<br>elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning the<br>membership of the<br>National Assembly or- Section court as to the<br>validity of a MCA<br>election.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning the<br>membership of the<br>National Assembly or- Section court on<br>the Election appeal must be   |         | presidential election |                          |                            | the Elections Act,   |
| - Section 87 of the<br>Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.validity of a MCA<br>election<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Qourt in an election<br>Petition concerning the<br>petition concerning the<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Section 75(4) of<br>Court in an election<br>for appeal in a pepal must be  |         | under article 140(3)  |                          |                            | 2011 - a certificate |
| Elections Act, 2011<br>- a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.election 85A(1) of the<br>elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>erite to the Court of<br>appeal must be   |         | of the Constitution.  |                          |                            | of court as to the   |
| - a determination<br>and order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85 of the<br>Election court on<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution Section 85A(1) of the<br>election 85A(1) of the- Section 85A(1) of the<br>elections Act,<br>appealWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>appeal from the High<br>court in an election- Section 85A(1) of the<br>elections Act, 2011 - an<br>appeal from the High<br>court in an election- Section 85A(1) of the<br>is to the High<br>court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 0I an electoral<br>malpractice of a<br>court in appeal must be  |         | - Section 87 of the   |                          |                            | validity of a MCA    |
| And order of the<br>election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>the Director of<br>public Prosecutions<br>investigation and<br>prosecution.Elections Act,<br>2011 - a<br>determination and<br>order of the<br>election court on<br>the occurrence of a<br>n electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>investigation and<br>prosecution.Elections Act,<br>2011 - a<br>determination and<br>order of the<br>election court on<br>the occurrence of<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.Elections SA(1) of the<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.Section 75(4) of<br>the Elections Act, 2011 - an<br>appeal from the High<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act,<br>2011 - an appeal<br>files to the High<br>Court in an election<br>petition concerning the<br>petition concerning the<br>petition concerning the<br>membership of the<br>National Assembly orShall lie to the Court of<br>appeal must be   |         | Elections Act, 2011   |                          |                            | election.            |
| election court on the<br>occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a<br>determination and<br>order of the<br>election court on<br>the occurrence of a<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a<br>determination and<br>order of the<br>election court on<br>the occurrence of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.2011 - a<br>determination and<br>order of the<br>election of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section 85A(1) of the<br>Electons det appeal<br>office of county governor<br>shall lie to the Court of<br>appeal must be  |         | - a determination     |                          |                            | - Section 87 of the  |
| occurrence of an<br>electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.determination and<br>order of the<br>election court on<br>the Director of<br>criminal nature, to<br>be transmitted to<br>investigation and<br>prosecution.determination and<br>relector of<br>be transmitted to<br>the Director of<br>be transmitted to<br>the Director of<br>prosecution.determination and<br>electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.determination and<br>relector of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>appeal from the High<br>Court in an election<br>appeal from the High<br>petition concerning the<br>membership of the<br>National Assembly or- Section fice of county governor<br>shall lie to the Court of<br>shall lie to the Court of   |         | and order of the      |                          |                            | Elections Act,       |
| electoral malpractice<br>of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.order of the<br>election court on<br>the occurrence of<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section recent and<br>shall lie to the Court of<br>appeal must be   |         | election court on the |                          |                            | 2011 – a             |
| of a criminal nature,<br>to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.election court on<br>the occurrence of a<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>PublicWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election- Section 85A(1) of the<br>appeal from the High<br>Court in an electionSection 75(4) of<br>lies to the High<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>appeal from the High<br>Court in an election- Section 75(4) of<br>lies to the High<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>appeal from the High<br>Court in an electionCourt on matters<br>of lies to the High<br>Court on mattersMulticeNo appeal Section 95 fullCourt on matters<br>office of county governor<br>shall lie to the Court of   |         | occurrence of an      |                          |                            | determination and    |
| to be transmitted to<br>the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.the occurrence of<br>an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>PublicWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election- Section 85A(1) of the<br>appeal from the High<br>Section 75(4) ofWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning<br>membership of the<br>National Assembly or- Section the Court of<br>shall lie to the Court of<br>appeal must be   |         | electoral malpractice |                          |                            | order of the         |
| the Director of<br>Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.an electoral<br>malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act,<br>2011 - an appeal<br>Court in an electionWhen to<br>appealCourt in an election<br>petition concerning the<br>membership of the<br>National Assembly orCourt of county governor<br>shall lie to the Court of<br>appeal must be   |         | of a criminal nature, |                          |                            | election court on    |
| Public Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.malpractice of a<br>criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election<br>petition concerning the<br>membership of the<br>National Assembly or- Section to Court of<br>shall lie to the Court of<br>appeal must be  |         | to be transmitted to  |                          |                            | the occurrence of    |
| (DPP) for criminal<br>investigation and<br>prosecution.criminal nature, to<br>be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal<br>Court in an electionSection 75(4) of<br>the Elections Act, 2011 - an<br>appealWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act, 2011 - an<br>appeal<br>Court in an electionWhen to<br>AppealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionCourt on matters<br>office of county governor<br>of law only, which<br>appeal must be   |         | the Director of       |                          |                            | an electoral         |
| investigation and<br>prosecution.be transmitted to<br>the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecutionsWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election- Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act,<br>2011 - an appeal<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionCourt in an election<br>the Elections Act,<br>2011 - an appeal<br>Court on matters<br>office of county governor<br>of law only, which<br>appeal must be  |         | Public Prosecutions   |                          |                            | malpractice of a     |
| prosecution.the Director of<br>Public<br>Prosecutions<br>(DPP) for criminal<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election- Section 75(4) of<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act, 2011 - an<br>investigation and<br>prosecution.When to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an electionSection 75(4) of<br>the Elections Act, 2011 - an<br>appeal<br>Court in an electionWhen to<br>appealNo appeal Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Petition concerning the<br>Membership of the<br>National Assembly or- Section 2011 - an<br>shall lie to the Court of<br>appeal must be   |         | (DPP) for criminal    |                          |                            | criminal nature, to  |
| When to    No appeal.    - Section 85A(1) of the    - Section 85A(1) of the    Section 75(4) of      appeal    Elections Act, 2011 – an    Elections Act, 2011 – an    the Elections Act, 2011 – an      Court in an election    Court in an election    Court on matters      petition concerning    petition concerning the    Court on matters      membership of the    office of county governor    of law only, which      National Assembly or    shall lie to the Court of    appeal must be  |         | investigation and     |                          |                            | be transmitted to    |
| When to    No appeal.    - Section 85A(1) of the    - Section 85A(1) of the    Section 75(4) of      appeal    Elections Act, 2011 – an    Elections Act, 2011 – an    the Elections Act, 2011 – an      Court in an election    Court in an election    Court in an election    lies to the High      petition concerning    petition concerning the    Court or matters    of law only, which      National Assembly or    shall lie to the Court of    appeal must be  |         | prosecution.          |                          |                            | the Director of      |
| When to    No appeal.    - Section 85A(1) of the    - Section 85A(1) of the    Section 75(4) of      appeal    Elections Act, 2011 – an    Elections Act, 2011 – an    the Elections Act, 2011 – an      Court in an election    Court in an election    Court in an election    lies to the High      petition concerning    petition concerning the    Court on matters    of law only, which      National Assembly or    shall lie to the Court of    appeal must be  |         |                       |                          |                            | Public               |
| When to<br>appeal  No appeal.  - Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election  - Section 85A(1) of the<br>Elections Act, 2011 - an  Section 75(4) of    Court in an election  Elections Act, 2011 - an<br>appeal from the High<br>Court in an election  Elections Act, 2011 - an  the Elections Act,<br>2011 - an appeal    Court in an election  Court in an election  Court in an election  lies to the High    petition concerning  petition concerning the  Court on matters    membership of the  office of county governor  of law only, which    National Assembly or  shall lie to the Court of  appeal must be  |         |                       |                          |                            | Prosecutions         |
| When to<br>appeal      No appeal.      - Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election      - Section 85A(1) of the<br>Elections Act, 2011 - an<br>appeal from the High<br>Court in an election      Section 75(4) of<br>the Elections Act,<br>2011 - an appeal        Court in an election      Court in an election      Court in an election      lies to the High        Petition concerning      petition concerning the<br>membership of the      office of county governor<br>shall lie to the Court of      of law only, which  |         |                       |                          |                            | (DPP) for criminal   |
| When to    No appeal.    - Section 85A(1) of the    - Section 85A(1) of the    Section 75(4) of      appeal    Elections Act, 2011 – an    Elections Act, 2011 – an    the Elections Act, appeal from the High    2011 – an appeal      Court in an election    Court in an election    Court in an election    Court on matters      membership of the    office of county governor    of law only, which      National Assembly or    shall lie to the Court of    appeal must be   |         |                       |                          |                            | investigation and    |
| appeal    Elections Act, 2011 – an    Elections Act, 2011 – an    the Elections Act, appeal from the High      Court in an election    Court in an election    Court in an election    lies to the High      petition concerning    petition concerning the    Court on matters      membership of the    office of county governor    of law only, which      National Assembly or    shall lie to the Court of    appeal must be  |         |                       |                          |                            | prosecution.         |
| appeal from the Highappeal from the High2011 – an appealCourt in an electionCourt in an electionlies to the Highpetition concerningpetition concerning theCourt on mattersmembership of theoffice of county governorof law only, whichNational Assembly orshall lie to the Court ofappeal must be   | When to | No appeal.            | - Section 85A(1) of the  | - Section 85A(1) of the    | Section 75(4) of     |
| Court in an electionCourt in an electionlies to the Highpetition concerningpetition concerning theCourt on mattersmembership of theoffice of county governorof law only, whichNational Assembly orshall lie to the Court ofappeal must be   | appeal  |                       | Elections Act, 2011 - an | Elections Act, 2011 - an   | the Elections Act,   |
| petition concerningpetition concerning theCourt on mattersmembership of theoffice of county governorof law only, whichNational Assembly orshall lie to the Court ofappeal must be   |         |                       | appeal from the High     | appeal from the High       | 2011 – an appeal     |
| membership of theoffice of county governorof law only, whichNational Assembly orshall lie to the Court ofappeal must be   |         |                       | Court in an election     | Court in an election       | lies to the High     |
| National Assembly or shall lie to the Court of appeal must be   |         |                       | petition concerning      | petition concerning the    | Court on matters     |
|   |         |                       | membership of the        | office of county governor  | of law only, which   |
| Senate shall lie to the filed within thirty   |         |                       | National Assembly or     | shall lie to the Court of  | appeal must be       |
|   |         |                       | Senate shall lie to the  |                            | filed within thirty  |

#### Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

|                              |                                       | (20) 1 6.1          |
|------------------------------|---------------------------------------|---------------------|
| Court of Appeal on           | Appeal on matters of law              | (30) days of the    |
| matters of law only and      | only and shall be:                    | decision of the     |
| shall be:                    | (a) filed within thirty (30)          | Resident            |
| (a) filed within thirty (30) | days of the decision of               | Magistrate's Court. |
| days of the decision of      | the High Court; and                   | - Rule 34 of the    |
| the High Court; and          | (b) be heard and                      | Elections           |
| ( <i>b</i> ) be heard and    | determined within six (6)             | (Parliamentary and  |
| determined within six (6)    | months of the filing of the           | County Elections)   |
| months of the filing of the  | appeal.                               | Petitions Rules,    |
| appeal.                      | - A first appeal to the               | 2017 makes          |
| - A first appeal to the      | Court of Appeal in                    | provision on        |
| Court of Appeal in           | accordance with article               | appeals from        |
| accordance with article      | 164(3)(a) of the                      | Resident            |
| 164(3)(a) of the             | Constitution, the Court of            | Magistrates'        |
| Constitution, the Court of   | Appeal Rules, 2010, <sup>31</sup> and | Courts to the High  |
| Appeal Rules, 2010,30 and    | Court of Appeal (Election             | Court, which take   |
| Court of Appeal (Election    | Petition) Rules, 2017.                | the form of a       |
| Petition) Rules, 2017.       | - Section 85A(2) of the               | memorandum of       |
| - Rule 6 of the Court of     | Elections Act, 2011 - an              | appeal.             |
| Appeal (Election             | appeal to the Court of                |                     |
| Petition) Rules, 2017        | Appeal under section                  |                     |
| requires the notice of       | 85A(1) of the Act shall               |                     |
| appeal (in the Form EPA      | act as a stay of the                  |                     |
| 1 set out in the Schedule)   | certificate of the election           |                     |
| to be filed within seven     | court certifying the                  |                     |
| (7) days of the date of the  | results of an election until          |                     |
| decision appealed against,   | the appeal is heard and               |                     |
| without necessarily          | determined.                           |                     |
| extracting the decree or     | - A further appeal to the             |                     |
| order of the High Court.     | Supreme Court in                      |                     |
| Under Rule 7, a notice of    | accordance with article               |                     |
| appeal is to be served       | 163(3)(b)(i), (4) and (5)             |                     |
| within five (5) days of      | of the Constitution.                  |                     |
| filing and the Respondent    |                                       |                     |
| is to file a notice of       |                                       |                     |
| address of service within    |                                       |                     |
| five (5) days of service.    |                                       |                     |
| Per Rule 9, a record of      |                                       |                     |
| appeal is to be filed        |                                       |                     |
| appear is to be filled       |                                       |                     |

<sup>30</sup> Rule 35 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017.
 <sup>31</sup> Ibid.

|  | within thirty (30) days of   |  |
|--|------------------------------|--|
|  | the date of the judgment     |  |
|  | of the High Court, and is    |  |
|  | to be served within five     |  |
|  | (5) days of filing. Under    |  |
|  | Rules 10 and 11, a notice    |  |
|  | of cross-appeal (in the      |  |
|  | Form EPA 2 set out in the    |  |
|  | Schedule) is filed within    |  |
|  | seven (7) days of service    |  |
|  | of the record of appeal      |  |
|  | and served with five (5)     |  |
|  | days of service;             |  |
|  | application to strike out    |  |
|  | the notice of appeal and     |  |
|  | the record also follow the   |  |
|  | same timelines (Rule 19).    |  |
|  | N.B.: The notice of          |  |
|  | appeal acts as a stay of     |  |
|  | the                          |  |
|  | judgment/order/decree of     |  |
|  | the High Court but shall     |  |
|  | lapse if no record of        |  |
|  | appeal is filed within       |  |
|  | thirty (30) days of the      |  |
|  | judgment of the High         |  |
|  | Court (Rule 18).             |  |
|  | - Section 85A(2) of the      |  |
|  | Elections Act, 2011 - an     |  |
|  | appeal to the Court of       |  |
|  | Appeal under section         |  |
|  | 85A(1) of the Act shall      |  |
|  | act as a stay of the         |  |
|  | certificate of the election  |  |
|  | court certifying the         |  |
|  | results of an election until |  |
|  | the appeal is heard and      |  |
|  | determined.                  |  |
|  | - A further appeal to the    |  |
|  | Supreme Court in             |  |
|  | accordance with article      |  |
|  | 163(3)(b)(i), (4) and (5)    |  |
|  | of the Constitution.         |  |
|  |                              |  |
|  |                              |  |

#### Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

| How long   | Not applicable | - Rule 23 of the Court of  | - Rule 23 of the Court of  | Section 75(4)(b) of |
|------------|----------------|----------------------------|----------------------------|---------------------|
| for the    |                | Appeal (Election           | Appeal (Election           | the Elections Act,  |
| court to   |                | Petition) Rules, 2017 -    | Petition) Rules, 2017 -    | 2011, appeals from  |
| determine  |                | the appeal shall be heard  | the appeal shall be heard  | the Resident        |
| the appeal |                | and determined within six  | and determined within six  | Magistrate Court    |
|            |                | (6) months of the date of  | (6) months of the date of  | to the High Court,  |
|            |                | judgment of the High       | judgment of the High       | on points of law    |
|            |                | Court.                     | Court.                     | only, must be       |
|            |                | - Rule 27 of the Court of  | - Rule 27 of the Court of  | heard and           |
|            |                | Appeal (Election           | Appeal (Election           | determined within   |
|            |                | Petition) Rules, 2017 -    | Petition) Rules, 2017 -    | six (6) months      |
|            |                | upon filing an appeal, the | upon filing an appeal, the | from the date of    |
|            |                | Appellant must deposit a   | Appellant must deposit a   | filing of the       |
|            |                | sum of KES 500,000/= as    | sum of KES 500,000/= as    | appeal.             |
|            |                | security for costs of the  | security for costs of the  |                     |
|            |                | appeal.                    | appeal.                    |                     |
|            |                |                            | 11                         |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |
|            |                |                            |                            |                     |

# 5 Case Studies on Team Dynamics in Litigating Election Petitions

Prof. Tom Ojienda & Associates has handled a number of election petitions before the election courts, including other electoral disputes handled via other judicial means. Some of the cases handled are:

(a) Joseph Oyugi Magwanga & another v Independent Electoral and Boundaries Commission & 3 others [2018] eKLR, HC (Homa Bay), Election Pet No 1 of 2017, (Karanja, J), judgment dated 20 February 2018:

- Appearing for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.
- Challenging the election of the County Governor for the County of Homa Bay that declared the 3<sup>rd</sup> Respondent as the winner.
- Election of the 3<sup>rd</sup> Respondent (County Governor, Homa Bay County) invalidated.
- (b) Cyprian Awiti & another v Independent Electoral and Boundaries Commission & 3 others [2018] eKLR, CoA (Kisumu) Election Pet Appeal No 5 of 2018 (Waki, Sichale & Otieno-Odek JJA), judgment dated 19 July 2018 (being an appeal from the High Court of Kenya at Homa-Bay in Election Pet No 1 of 2017):
  - Appearing alongside James Orengo SC and Otiende Amollo SC for the Appellants.
  - Challenging the High Court's decision to invalidate the election of the County Governor, Homa Bay County and that declared the 1<sup>st</sup> Appellant as the winner.
  - Appeal dismissed.
- (c) Cyprian Awiti & another v Independent Electoral and Boundaries Commission & 2 others [2019] eKLR, SCoK (Nairobi) Pet No 17 of 2018, (Maraga, CJ & P; Ibrahim, Ojwang, Wanjala, Njoki Ndungu & Lenaola, SCJJ), judgment dated 7 February 2019 (being an appeal from the judgment and decree of the Court of Appeal at Kisumu in Court of Appeal Election Pet No 5 of 2018):
  - Appearing alongside James Orengo, SC and Otiende Amollo, SC for the Appellants.
  - Challenging the Court of Appeal's decision in affirming the trial court's decision in invalidating the Appellant's election as declared by IEBC.
  - Appeal allowed and the election results for County Governor, Homa Bay County found to be valid.

- (d) Lenny Maxwell Kivuti v The Independent Electoral and Boundaries Commission (IEBC) & 3 others [2018] eKLR, HC (Embu), Election Pet No 1 of 2017, (Musyoka, J), judgment dated 22 February 2018:
  - Appearing for the Petitioner.
  - Challenging the declaration of the 3<sup>rd</sup> Respondent as the County Governor, Embu County.
  - Election of the 3<sup>rd</sup> Respondent (County Governor, Embu County) invalidated.
- (e) Martin Nyaga Wambora v Lenny Maxwell Kivuti & 3 others, CA (Nyeri) Election Pet Appeal No 6 of 2018 (Being an appeal from the High Court of Kenya at Embu in Election Pet No 1 of 2017), (Ouko, Musinga and Sichale, JJA), judgment dated 17 August 2018:
  - Appearing for the 1<sup>st</sup> Respondent.
  - Challenging the High Court's decision to invalidate the election of County Governor, Embu County and that declared the Appellant as the winner.
  - Appeal allowed, judgment of the HC set aside.
- (f) Lenny Maxwell Kivuti v Independent Electoral and Boundaries Commission (IEBC) & 3 others [2019] eKLR, SCoK (Nairobi) Pet No 17 of 2018, (Maraga, CJ & P; Ibrahim, Ojwang, Wanjala, Njoki Ndungu & Lenaola, SCJJ) judgment dated 30 January 2019 (being an appeal from the judgment and decree of the Court of Appeal at Nyeri in Court of Appeal Election Pet No 6 of 2018):
  - Appearing alongside Ngatia, SC for the Petitioner.
  - Challenging the Court of Appeal's decision in dismissing the trial court's decision in invalidating the 3<sup>rd</sup> Respondent's election as declared by IEBC.

- Appeal dismissed.
- (g) Ferdinard Ndung'u Waititu v Independent Electoral & Boundaries Commission (IEBC) & 8 others [2013] eKLR, HC (Nairobi), Election Pet No 1 of 2013, (Mwongo, PJ):
  - Appearing for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.
  - Petition challenging the declaration of the 4<sup>th</sup> Respondent as County Governor, Nairobi County.
  - Election of the 4<sup>th</sup> Respondent (County Governor, Nairobi County) upheld.
- (h) Ferdinard Ndung'u Waititu v Independent Electoral & Boundaries Commission (IEBC) & 8 others [2014] eKLR, CoA (Nairobi) Election Pet Appeal No 324 of 2013 (Warsame, Kariuki and Kiage, JJA) (being an appeal from the High Court of Kenya at Nairobi in Election Pet No 1 of 2013):
  - Appearing alongside Mr. Mugambi, for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.
  - An election petition appeal challenging the High Court's decision in upholding the election results for County Governor, Nairobi County.
  - Appeal allowed.
- (i) Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others [2014] eKLR, SCoK (Nairobi) Pet No 18 of 2014 (Mutunga, CJ & P; Rawal, DCJ &V-P, Tunoi, Ibrahim, Ojwang, Wanjala & Njoki Ndungu, SCJJ) (being an appeal from the judgment and decree of the Court of Appeal at Nairobi in Court of Appeal Election Pet No 324 of 2013):
  - Appearing alongside Nowrojee, SC and Oduol for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.

- Challenging the Court of Appeal's decision in dismissing the trial court's decision in upholding the 1<sup>st</sup> Appellant's election as declared by IEBC.
- Appeal allowed.
- (j) Dickson Mwenda Kithinji v Gatirau Peter Munya & 2 others [2013] eKLR, HC (Meru), Election Pet No 1 of 2013, (Makau, J), judgment dated 23 September 2013:
  - Challenging the declaration of the 1<sup>st</sup> Respondent as County Governor, Meru County.
  - Election of the 1<sup>st</sup> Respondent (County Governor, Meru County) upheld.
- (k) Dickson Mwenda Githinji v Gatirau Peter Munya & 2 others [2014] eKLR, CoA (Nyeri) Election Pet Appeal No 38 of 2013, (Visram, Mohammed and Otieno-Odek, JJA), judgment dated 12 March 2014 (being an appeal from the High Court of Kenya at Meru in Election Pet No 1 of 2013):
  - Challenging the High Court's decision in upholding the election results for County Governor, Meru County.
  - Appeal allowed.
- Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 others [2014] eKLR, SCoK (Nairobi), Pet No 2B of 2014 (Mutunga, CJ & P; Rawal, DCJ &V-P, Tunoi, Ibrahim, Ojwang, Wanjala & Njoki Ndungu, SCJJ) (being an appeal from the judgment and decree of the Court of Appeal at Nairobi in Court of Appeal Election Pet No 38 of 2013):
  - Appearing alongside Okong'o Omogeni, SC for the Appellant.

- Challenging the Court of Appeal's decision in dismissing the trial court's decision in upholding the Appellant's election as declared by the 2<sup>nd</sup> Respondent.
- Appealed allowed.
- (m) Aziz Kassim Ibrahim v Independent Electoral and Boundaries Commission (IEBC) & 4 others [2017] eKLR, CMCC (Milimani, Nairobi), Election Pet No 6A of 2017, (Hon Gesora, CM), judgment dated 24 January 2018:
  - Appearing for the Petitioner.
  - Challenging the election results for the position of Member of County Assembly, Kwa Njenga Ward, which declared the 5<sup>th</sup> Respondent as the winner.
  - Election of the 5<sup>th</sup> Respondent (MCA, Kwa Njenga Ward) upheld.
- (n) Musa Cherutich Sirma v Independent Electoral and Boundaries Commission (IEBC) & 2 others [2018] eKLR, HC (Kabarnet), Election Pet No 1 of 2017, (Muriithi J), judgment dated 2 March 2018:
  - Appearing for the Petitioner.
  - Challenging the election results for the position of Member of National Assembly, Eldama Ravine Constituency, which declared the 3<sup>rd</sup> Respondent as the winner.
  - Election of the 3<sup>rd</sup> Respondent (Member of National Assembly, Eldama Ravine Constituency) upheld.
- Hussein Abshiro Herin & 23 others v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR, HC (Nairobi), Election Pet No 7 of 2017, (Ong'udi J), judgment dated 27 February 2017:
  - Appearing for the Petitioners.

- Challenging the election results for the position of Member of National Assembly, Mandera North Constituency, which declared the 3<sup>rd</sup> Respondent as the winner.
- Election of the 3<sup>rd</sup> Respondent (Member of National Assembly, Mandera North Constituency) upheld.
- (p) Geoffrey Okuto Otieno v Orange Democratic Movement & 2 others
  [2017] eKLR, HC (Nairobi), Election Pet Appeal No 61 of 2017,
  (Riechi, J), judgment dated 25 May 2017 (being an appeal from the decision of the PPDT in case No 177 of 2017):
  - Appearing for the Appellant.
  - Challenging the decision of the PPDT directing the 1<sup>st</sup> Respondent to undertake a fresh nomination process for MCA Hospital Ward, Mathare Constituency.
  - Appeal dismissed and 1<sup>st</sup> Respondent directed to conduct fresh nomination exercise.
- (q) Joseph Mboya Nyamuthe v Orange Democratic Movement & 4 others [2017] eKLR, HC (Nairobi), Election Pet Appeal No 5 of 2017, (Onyiego, J), judgment dated 10 May 2017 (being an appeal from the decision of the PPDT in Complaint No 69 of 2017):
  - Appearing for the 2<sup>nd</sup> Respondent.
  - Challenging the decision of the PPDT to dismiss the Appellant's claim that it lacked jurisdiction to hear the matter.
  - Appeal allowed and the dismissal by the PPDT set aside.
- (r) Abdirahman Adan Abdikadir & another v Independent Electoral & Boundaries Commission & 2 others [2018] eKLR, HC (Nairobi), Election Pets No 13 & 16 of 2017, (Mwongo, PJ), judgment of 31 January 2018:
  - Appearing for the 1<sup>st</sup> Petitioner.

- Challenging the declaration of the 3<sup>rd</sup> Respondent as Senator, Wajir County.
- Election of the 3<sup>rd</sup> Respondent (Senator, Wajir County) upheld.
- (s) Hassan Noor Hassan v The Independent Electoral and Boundaries Commission (IEBC) & 3 others [2018] eKLR, HC (Nairobi), Election Pet No 1 of 2017, (F A Ochieng, J):
  - Appearing for the Petitioner.
  - Challenging the declaration of the 3<sup>rd</sup> Respondent as County Governor, Mandera County.
  - Election of the 3<sup>rd</sup> Respondent (County Governor, Mandera County) upheld.
- (t) Harun Meitamei Lempaka v Lemanken Aramat & 2 others [2013] eKLR, CoA (Nairobi), Election Pet Appeal No 276 of 2013, (Waki, Musinga and Gatembu, JJA), judgment dated 28 March 2014 (being an appeal from the High Court of Kenya at Nakuru in Election Pet No 2 of 2013):
  - Challenging the High Court's decision in upholding the election results for the Member of the National Assembly, Narok East Constituency.
  - Appeal dismissed.
- (u) Lemanken Aramat v Harun Meitamei Lempaka & 2 others [2014] eKLR, SCoK (Nairobi), Pet No 5 of 2014 (Rawal, DCJ &V-P, Tunoi, Ibrahim, Ojwang, Wanjala & Njoki Ndungu, SCJJ), judgment dated 6 August 2014 (being an appeal from the judgment and decree of the Court of Appeal at Nairobi in Court of Appeal Election Pet No 276 of 2013):
  - Appearing for the Appellant.

Electoral Dispute Resolution: Managing Team Dynamics in Election Petitions: Prof. Tom Ojienda, SC

- Challenging the Court of Appeal's decision in setting aside the trial court's judgment and ordering for recount, thus invalidating the election results.
- Appeal allowed.

# 6 Conclusion

Litigation teams handling election petitions, like in other matters, must adhere to professional rules and guidelines for advocates under the Advocates Act (Cap 16) and the attendant practice rules and regulations in their interactions with one another. Professional etiquette and civility in personal interactions and correspondences is necessary, especially timely service and response to pleadings. In any case, litigating election petitions requires the sacrifice of time in terms of working long hours into the night to be able to file stellar pleadings within the stipulated timelines.