

## **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>

---

*\* 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](http://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: Laying 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 Kenya’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 Question 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 Kenya’ (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 (CI Arb-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 (CI Arb-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.L.O. Lumumba and Dr. Mbondenyi Maurice.

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

---

*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](mailto:tomojienda@yahoo.com).*

<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) <<http://kenyalaw.org/kenyalawblog/pre-election-dispute-management-between-judicial-and-administrative-dispute-management-mechanisms/>>*.

<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.'*

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

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:

Inssofar 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>4</sup> SCoK Pet No 1 of 2015, para 121.

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

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

<sup>7</sup> Ibid para 101.



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>8</sup> See definition of “election” in section 2 of the Elections Act, 2011, Act No 21 of 2011, Laws of Kenya.

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

<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.

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



the information imbalance that may arise in post-election dispute resolution based on the expertise and preparedness 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>13</sup> Rebecca Green, 'Mediation and Post-Election Litigation: A Way Forward,' (2012), 27(2) *Ohio State Journal on Dispute Resolution* 325-379, 349 <<https://core.ac.uk/download/pdf/159589369.pdf>>.

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

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>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.

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>17</sup> *Ibid* rule 9.

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

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

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

<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>21</sup> *Ibid*.

				fifteen (15) days of presentation. <sup>22</sup>
When to respond to the petition	– Respondents, usually the persons declared as President-elect and deputy President-elect, IEBC, and the Chairperson of IEBC as the returning officer for presidential elections, <sup>23</sup> file a response to the petition (in Form B in the Second 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	– Respondents, usually the person whose election is challenged, the returning officer, and IEBC, <sup>24</sup> file a response to the election petition within seven (7) days of service of the petition and serve the response within seven (7) days of filing. <sup>25</sup>	– Respondents, usually the person whose election is challenged, the returning officer, and IEBC, <sup>26</sup> file a response to the election petition within seven (7) days of service of the petition and serve the response within seven (7) days of filing. <sup>27</sup>	– Respondents, usually the person whose election is challenged, the returning officer, and IEBC, <sup>28</sup> file a response to the election petition within seven (7) days of service of the petition and serve the response within seven (7) days of filing. <sup>29</sup>

<sup>22</sup> *Ibid.*

<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>24</sup> Definition of “respondent” in rule 2 of the of the Elections (Parliamentary and County Elections) Petitions Rules, 2017.

<sup>25</sup> *Ibid* rule 11.

<sup>26</sup> *Ibid* rule 2.

<sup>27</sup> *Ibid* rule 11.

<sup>28</sup> *Ibid* rule 2.

<sup>29</sup> *Ibid* rule 11.

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



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

	<p>election petition, or the court acting <i>suo moto</i>.</p> <p>– Section 86(1) of the Elections Act, 2011 – a certificate of court as to the validity of a presidential election.</p> <p>– Section 86A of the Elections Act, 2011 – procedure in case of invalidation of a presidential election under article 140(3) of the Constitution.</p> <p>– Section 87 of the Elections Act, 2011 – a determination and order of the election court on the occurrence of an electoral malpractice of a criminal nature, to be transmitted to the Director of Public Prosecutions (DPP) for criminal investigation and prosecution.</p>	<p>Prosecutions (DPP) for criminal investigation and prosecution.</p>	<p>– Section 87 of the Elections Act, 2011 – a determination and order of the election court on the occurrence of an electoral malpractice of a criminal nature, to be transmitted to the Director of Public Prosecutions (DPP) for criminal investigation and prosecution.</p>	<p>– Section 82 of the Elections Act, 2011 – an order for a scrutiny of votes and recounting of ballots cast, upon an application by a party during the hearing of an election petition, or the court acting <i>suo moto</i>.</p> <p>– Section 86(1) of the Elections Act, 2011 – a certificate of court as to the validity of a MCA election.</p> <p>– Section 87 of the Elections Act, 2011 – a determination and order of the election court on the occurrence of an electoral malpractice of a criminal nature, to be transmitted to the Director of Public Prosecutions (DPP) for criminal investigation and prosecution.</p>
When to appeal	No appeal.	– Section 85A(1) of the Elections Act, 2011 – an appeal from the High Court in an election petition concerning membership of the National Assembly or Senate shall lie to the	– Section 85A(1) of the Elections Act, 2011 – an appeal from the High Court in an election petition concerning the office of county governor shall lie to the Court of	Section 75(4) of the Elections Act, 2011 – an appeal lies to the High Court on matters of law only, which appeal must be filed within thirty

		<p>Court of Appeal on matters of law only and shall be:</p> <p>(a) filed within thirty (30) days of the decision of the High Court; and</p> <p>(b) be heard and determined within six (6) months of the filing of the appeal.</p> <p>– A first appeal to the Court of Appeal in accordance with article 164(3)(a) of the Constitution, the Court of Appeal Rules, 2010,<sup>30</sup> and Court of Appeal (Election Petition) Rules, 2017.</p> <p>– Rule 6 of the Court of Appeal (Election Petition) Rules, 2017 requires the notice of appeal (in the Form EPA 1 set out in the Schedule) to be filed within seven (7) days of the date of the decision appealed against, without necessarily extracting the decree or order of the High Court. Under Rule 7, a notice of appeal is to be served within five (5) days of 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</p>	<p>Appeal on matters of law only and shall be:</p> <p>(a) filed within thirty (30) days of the decision of the High Court; and</p> <p>(b) be heard and determined within six (6) months of the filing of the appeal.</p> <p>– A first appeal to the Court of Appeal in accordance with article 164(3)(a) of the Constitution, the Court of Appeal Rules, 2010,<sup>31</sup> and Court of Appeal (Election Petition) Rules, 2017.</p> <p>– 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.</p> <p>– A further appeal to the Supreme Court in accordance with article 163(3)(b)(i), (4) and (5) of the Constitution.</p>	<p>(30) days of the decision of the Resident Magistrate’s Court.</p> <p>– Rule 34 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 makes provision on appeals from Resident Magistrates’ Courts to the High Court, which take the form of a memorandum of appeal.</p>
--	--	--	--	--

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

<sup>31</sup> *Ibid.*

		<p>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.</p>		
--	--	---	--	--

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

## **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) ***Ferdinand 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) ***Ferdinand 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 Ndung'u 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.
- (l) ***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.
- (o) ***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.

- 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.