



**PRESS RELEASE**

**FOR IMMEDIATE RELEASE**

**NAIROBI, KENYA: 17<sup>TH</sup> AUGUST 2022**

**SUBJECT: STAFF MURDER, PROFILING AND MISLEADING REPORTS ON  
PRESIDENTIAL ELECTION**

**1) Murder of Returning Officer for Embakasi East Constituency, Mr. Daniel  
Musyoka**

The Commission is saddened by the murder of its Returning Officer for Embakasi East Constituency, Mr. Daniel Musyoka, and expresses its deepest condolences to the family and friends. The Commission condemns the murder of Mr. Musyoka, who went missing on 11th August 2022, and his body found at Loitoktok, Kajiado County on 15th August 2022.

Mr. Musyoka just like the late ICT Manager, Chris Msando, was murdered while on duty. This was a well-trained officer who performed his duty with utmost honesty, integrity, and dedication. It is unfortunate that his stand to do the right thing cost his life. As the Commission condoles with the family of Mr. Musyoka, we call on security agencies to speedily investigate and apprehend his killers.

The Commission assures the family that it will journey with them as they make plans to lay him to rest.

**2) Harassment of Members and Staff of the Commission**

The Commission is concerned that some of its critical staff who objectively and impartially performed their duties at the National Tallying Centre are being intimidated and harassed through profiling and/or arbitrary arrests. This has instilled fear within the staff, who are now unable to report to the office for duty. This harassment must stop forthwith.

During the announcement of the presidential results, the Chairman Wafula Chebukati, Commissioners Prof. Abdi Guliye and Boya Molu, and CS/CEO Marjan H. Marjan were physically attacked, assaulted, and injured by persons in the company of certain political leaders. We call for the arrest and prosecution of these assailants regardless of their political affiliation.

In view of the prevailing circumstances, the Commission has postponed the by-elections slated for 23<sup>rd</sup> August 2022, to a date to be announced through a gazette notice for the following positions:

- a) Gubernatorial positions – Mombasa and Kakamega Counties
- b) Member of National Assembly – Kitui Rural Constituency (Kitui County), Kacheliba Constituency (West Pokot County), Pokot South Constituency (West Pokot County) and Rongai Constituency (Nakuru County)
- c) Member of County Assembly Ward – Nyaki West (North Imenti Constituency - Meru County), Kwa Njenga (Embakasi South Constituency – Nairobi County)

### **3) Declaration of Presidential Results**

There have been public discussions on the role of the Chairperson and Commissioners in verification, tallying and declaration of Presidential results. For avoidance of doubt, the law provides that the Chairperson of the Commission is the Returning Officer of Presidential Election. This is emphasized in the Court of Appeal decision in *Independent Electoral Boundaries Commission vs Maina Kiai and 5 others* [2017] eKLR at page 36:

"It cannot be denied that the Chairperson of the appellant has a significant constitutional role under Sub-Article (10) of Article 138 as the authority with the ultimate mandate of making the declaration that brings to finality the presidential election process. Of course, before he makes that declaration his role is to accurately tally all the results exactly as received from the 290 returning officers country-wide, without adding, subtracting, multiplying or dividing any number contained in the two forms from the constituency tallying centre. If any verification or confirmation is anticipated, it has to relate only to confirmation and verification that the candidate to be declared elected president has met the threshold set under Article 138(4), by receiving more than half of all the votes cast in that election; and at least twenty- five per cent of the votes cast in each of more than half of the counties."

Further, Article 138(10) of the Constitution of Kenya 2010 empowers the Chairperson of the Commission to within seven (7) days declare the result of the election and a written notification of the result handed to the Chief Justice and the Incumbent President. Section 39(1h) provides that the Chairperson shall declare the results of the election of the President in accordance with Article 138(10) of the Constitution.

As per Article 86(c) of the Constitution of Kenya 2010, the results from the polling stations are openly and accurately collated and promptly announced by the Returning Officer. It is also important to note that Regulation 87 of the Elections General regulations provides:

Upon receipt of Form 34A from the constituency returning officers under sub regulation

(1) the Chairperson of the Commission shall—

- a) verify the results against Forms 34A and 34B received from the constituency returning officer at the national tallying centre;
- b) Tally and complete Form 34C;
- c) Announce the results for each of the presidential candidates for each County;

- d) Sign and date the forms and make available a copy to any candidate or the national chief agent present;
- e) Publicly declare the results of the election of the president in accordance with Articles 138(4) and 138(10) of the Constitution;
- f) Issue a certificate to the person elected president in Form 34D set out in the Schedule; and
- g) Deliver a written notification of the results to the Chief Justice and the incumbent president within seven (7) days of the declaration; Provided that the Chairperson of the Commission may declare a candidate elected as the President before all the Constituencies have delivered their results if in the opinion of the Commission the results that have not been received will not make a difference with regards to the winner on the basis of Article 138(4)(a) (b) of the Constitution.

This constitutional mandate falls squarely on the Chairman of the Commission, who is the National Returning Officer as gazetted in Notice No. 4956 of 28<sup>th</sup> April 2022. The role of National Returning Officer for Presidential Election is not a shared responsibility and not subject to Plenary decisions of the Commission.

All Returning Officers including the National Returning Officer for Presidential Election took an individual oath of secrecy before embarking on their duties. In addition, the Chairperson and Commissioners took oath of office at the time of appointment. It is an oath of office that the Chairperson faithfully executed, when he declared the results for the Presidential Election on Monday, 15<sup>th</sup> August 2022.

As the gazetted National Returning Officer and in the spirit of teamwork, the Chairperson involved all Commissioners including Juliana Cherera, Francis Wanderi, Justus Nyang'aya and Irene Masit in all activities of verification and tallying. Their duties were well defined in writing and allocated at the National Tally Center (NTC). They had access to all results beforehand and interchangeably announced them for six (6) days in full glare of live television.

However, during a briefing meeting held on 15<sup>th</sup> August 2022 at around 3.00pm before the final declaration of the Presidential Election results, the four Commissioners i.e. Juliana Cherera, Francis Wanderi, Justus Nyang'aya and Irene Masit demanded that the Chairperson moderates the results for purpose of forcing an election Re-run contrary to their oath of office. This is tantamount to subverting the Constitution and the sovereign will of the People of Kenya. The Chairperson refused to yield to this unconstitutional and illegal demand and proceeded to declare the results of the Presidential Election as received from the polling stations, and contained in Form 34A, in accordance with the law.

The 2022 General Election is the most transparent election that the Commission has ever held.

- a) All result Form 34As were uploaded in real time and are available in the public portal,

- b) The original Form 34As were delivered to the National Returning Officer for tallying and verification by the 290 Constituency Returning Officers and 1 (one) Diaspora Returning Officers,
- c) Agents of all Presidential candidates participated in an elaborate verification process, and
- d) Form 34C that contains the final tallies of all the 46,229 Form 34A from polling stations was uploaded on the public portal for access.
- e) The Commission also allowed media, observers, candidates and the general public to have access and tally the results announced at the polling stations.
- f) If any of the parties elects to file petition, it is within their constitutional right and the Commission shall have an opportunity to respond and demonstrate in further detail the circumstances under which the election was conducted, results verified and outcome declared in accordance with the constitution and the law.

The alleged 0.01 percent increase in the Presidential Election results raised by the four Commissioners namely Juliana Cherera, Francis Wanderi, Justus Nyang'aya and Irene Masit, is false and misleading. Please refer to the attached tabulation that provides a scientifically accurate analysis. We urge Kenyans to interact with these results and make an objective judgement.

The Commission takes this opportunity to thank its staff for the diligence and dedication to duty that they exhibited during the General Election. The Independent Electoral and Boundaries Commission is greatly indebted to their service for the country.



**W.W. CHEBUKATI**  
**CHAIRMAN**

REGISTERED VOTES	CANDIDATES	CANDIDATES VOTES CAST	COMPLETE COMPUTERPERCENTAGE	ROUNDED UP BY THE SYSTEM 4 DECIMAL PLACES	ROUNDED BY SYSTEM 2 DECIMAL PLACES	MANUAL KEYING OF PERCENT AGES
22,120,458.00	RAILA	6,942,930.00	0.488490594	0.4885	48.85	48.85
	RUTO	7,176,141.00	0.504898851	0.5049	50.49	50.49
	MWAURE	31,987.00	0.002250541	0.0023	0.23	0.23
	WAJACKOYA	61,969.00	0.004360014	0.0044	0.44	0.44
		14,213,027.00	1	1.0000	100.00	100.01
	TOTAL VALID CAST	14,213,137.00				

0.488486813

48.85

0.504894943

50.49

0.002250524

0.23

0.00435998

0.44

