

Nairobi, Kenya, September 3 (Infosplusgabon) - Kenyan President Uhuru Kenyatta, whose election was nullified on Friday, is still in shock over the decision of the Supreme Court, purposely set up by the 2010 constitution to decide on the validity of Presidential elections.

In its decision, which was billed as the make-or-break decision of the highest court in Kenya after its 2013 ruling, the Kenyan judges were determined to re-write history and to demonstrate their absolute independence.

Opposition leader Raila Odinga, who petitioned the Court on the declaration of President Kenyatta as the winner of the election, did not claim victory in his petition, but claimed the election was marred by irregularities which made it impossible to tell whether Kenyatta actually won the vote.

The petitioners stated in sworn statements the Presidential elections were conducted in a manner not consistent with the requirements of the constitution and the Elections Act.

Odinga told the Court in sworn statements the laid down procedures for declaring the results such as announcements by poll officials at the constituency tallying centres were ignored.

The Kenyan constitution requires an election to be held in an environment free of voter intimidation and must conform to a high standard of transparency.

Odinga said Kenyatta actually used ministers to campaign for him and used his influence to intimidate state officials.

The Supreme Court did not find evidence to warrant punishment for the allegations.

In the petition filed in court, Odinga said his National Super Alliance (NASA) was greatly affected by the lack of transparency and the interference with the results sent through the electronic vote transmission system.

In an effort to avoid foul play and tampering with the election results, Kenya acquired various forms of technology, which includes a system of identifying voters using finger prints and facial features.

Upon being identified through the electronic system, the voter would be given six mandatory ballot papers to cast for the President, Governor, Member of Parliament, Senator, Woman Member of Parliament and Member of County Assembly.

In his petition, Odinga stated some 395,000 votes were illegally deducted from his vote tally and added to those of President Kenyatta.

He also told the Court the number of voters who cast the Presidential ballot were much higher than those who voted for Governors and MPs by another 500,000.

When the lawyers for the Independent Electoral and Boundaries Commission (IEBC) were asked in Court to respond, said an error analysis showed that only 41,000 votes were cast over and above those cast for Governors and MPs and not 500,000.

The Supreme Court judges probed the issue further and the IEBC lawyers said the extra ballots were “stray ballots” but could not explain how these were treated.

To further strengthen their case, the petitioners requested the Court to order access to the IEBC servers, original forms used in the declaration of the Presidential vote, logs showing activity on the IEBC servers and specific scrutiny of votes cast in 14,000 polling centres.

The petitioner, Odinga, insisted the IEBC did not subject a total of 7 million votes to scrutiny and verification as required by the election law.

The other grounds for seeking the nullification of the vote was that the results were declared without all the primary result declaration documents from the poll centres, numbering 40,833 stations.

An order for the access to the IEBC servers was not fully complied with, prompting the chief justice to declare that he would make an appropriate ruling.

An examination of the servers showed several unauthorised entries and attempts by people impersonating the IEBC Chairman to delete documents.

At least 8,300 orders for the deletion of documents were requested on the server, 7,000 of them being successfully executed, leading the Court appointed IT experts to conclude the servers lacked security features.

Earlier, Odinga claimed there was hacking of result transmission system which altered the results.

He said the entire system was not accepting field results after the authors of the hacking wrote programmes to stop computers from receiving the results from the field.

During a six-hour period to address the Court, Odinga's lead lawyer James Orengo laid before the court, evidence of various forms used in the declaration of the election results which lacked security features as outlined by the IEBC.

They also gave evidence of result forms which were not specifically signed by the poll officers.

At least 14,000 of those forms used to declare the results, lacked the requirements for authenticity and Odinga claimed they were enough evidence to invalidate the results.

Odinga also stated the irregularities, which also include the IEBC firing election officials and replacing them with others not officially appointed in accordance with the elections laws, and the presence of some unofficial polling stations which produced results, were proof of a rigged election.

The findings of the Supreme Court on these allegations has not been made public as the President of the Court, Justice David Maraga, appealed for 21 days to offer explanations on how it determined the elections were rigged.

The Court President insisted on the need to adhere to the constitution and noted that an election is not an event but a process.

Justice Maraga is revered for his steadfastness and fidelity to his calling. He is held in high esteem, as among the few judges who have never fallen to the temptation to pick a bribe.

Justice Maraga has been in charge of the election court through most of his career in the judiciary.

His conduct of the proceedings was seen as more neutral and his verdict, reached on majority of 4-2, was ground-breaking.

Odinga hailed it as a precedent-setting judgement which shows that nobody is above the rule of law and a pointer to others in ending electoral disputes.

The process was witnessed by other Supreme Court judges and Chiefs of Justice from African commonwealth member states.

A devoted Seventh-Day Adventist, Maraga would not compromise on his time of worship and he told the Judicial Service Commission which hired him that he would not break the traditional worship period to meet the deadline for making a determination on the Presidential elections.

President Kenyatta, stung by the ruling, has promised to revisit the judiciary.

The ruling by the Court nullifying the results was received by wild national celebrations.

Several opposition supporters chanted “Uhuru Must Go” and the opposition leader Odinga said the celebrations was a spontaneous response to the ruling removing Kenyatta from swearing in for a second term.

An new election must be held within 60 days.

The IEBC chairman Wafula Chebukati said internal changes would be made to the staff of IEBC before a new election timeframe is issued.

William Ruto, Deputy President, said the IEBC should immediately announce the date for the new elections.

Odinga said before the new elections, the entire IEBC should immediately be forced out and

another team should be appointed through a bi-partisan process.

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