

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



STATEMENT BY THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

We the undersigned commissioners of the Independent Electoral and Boundaries Commission (IEBC), took an oath of office to defend the constitution and the law in discharge of our duties independently. We have remained faithful to our oath of office and shall continue to do so.

We collectively and unanimously make the following statement pursuant to the media briefing we held yesterday evening on August 15 2022 at the Serena Hotel Nairobi where we promised to issue a comprehensive statement with regard to the results of the August 9, 2022 presidential election declared and announced by Mr. Wafula Chebukati in his capacity as Chairperson.

In the Serena media briefing, we stated that we would **NOT** take ownership of the results of the August 15, 2022 presidential election declared and announced by Mr Chebukati. In this regard, our reasons to decline to take ownership of the results so declared and announced by Mr. Chebukati are as follows;

1. THAT the aggregation of the percentages of the results scored by the four presidential candidates who were on the ballot as declared by Mr. Chebukati presented to us a mathematical absurdity that defies logic. TAKE NOTICE that Mr. Chebukati's aggregation was as follows;

RAILA ODINGA—48.85%
WILLIAM RUTO—50.49%
WAIHIGA MWAURE—0.23%
WAJAKOYA GEORGE—0.44%

TOTAL	<hr/>	100.01%
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0.1% translates to approximately 142,000 votes, which would make a significant difference in the final result.

We therefore declined to take ownership of the said results because the aggregation resulted in a total exceeding the 100 percentage which cast doubt on the accuracy of the source of the figures tallied, and when we demanded that we verify our record, Mr. Chebukati declined, overruled us and insisted on declaring and announcing the said figures.

2. THAT contrary to the Constitution and legislation, the results declared and announced DID NOT indicate the total number of registered voters, the total number of votes cast or the number of rejected votes, if any. In this regard, the results announced by Mr. Chebukati lack a critical ingredient namely the total number of valid votes cast to support the percentages scored by the four candidates. Unless demonstrated otherwise, we all know that a percentage is essentially a fraction of a whole number. Hence, if, for example, the 7.176 million valid votes cast in favour of the winning candidate as declared and announced by Chebukati translate to 50.49%, then it was 50.49% of what? Further TAKE NOTICE that Mr. Chebukati claimed that Raila Odinga attained 25% of votes in 34 counties while William Ruto attained 25% in 39 counties—the question is; which figures in the 34 and 39 counties respectively constituted the independent variables to warrant Mr. Chebukati's conclusion of 25% in 34 counties and 25% in 39 counties for Raila and Ruto respectively? In the absence of a credible and verifiable explanation, we concluded that the process that went into the generation of FORM 34C which Chebukati used to declare results of the presidential election was opaque and incapable of earning our ownership and confidence.
3. Guided by the authority of the Maina Kiai case (Petition No.106 of 2016 as upheld by the Court of Appeal in Civil Appeal No.105 of 2017 and affirmed by the Supreme Court of Kenya) we state categorically that the results of the presidential election held on August 9, 2022 declared and announced by Mr Wafula Chebukati on August 15, 2022 belong to Mr Chebukati himself and do not represent a declaration and announcement by the Independent Electoral Boundaries Commission. The Commission has to process the results before they are declared and announced by the chairperson.

For the avoidance of doubt, let me quote the Maina Kiai Case

"we reiterate, as we conclude that there is no doubt from the architecture of the laws we have considered that the people of Kenya did not intend to vest or

concentrate such sweeping and boundless powers in one individual , the chairperson of the appellant”. The emphasis is that

The Commission chairperson has conducted the election as though he is the National Returning Officer, a non existent role, and his role in declaring results that were not approved at plenary by all 7 commissioners renders the results unconstitutional to the extent that this are Chebukati’s results as opposed to those of the IEBC. In keeping with Article 138(2) of the Constitution, there is no national presidential election in Kenya but rather the presidential election is held in each constituency.

4. THAT contrary to the Constitution and legislation, by the time Mr. Chebukati declared and announced final results, results from certain constituencies had not been announced.

DATED AT NAIROBI this 16 DAY OF AUGUST 2022

JULIANA W. CHERERA

VICE CHAIR AND COMMISSIONER

FRANCIS WANDERI

COMMISSIONER

JUSTUS ABONYO

COMMISSIONER

IRENE MASIT

COMMISSIONER