

FAQs ON THE PRESIDENTIAL ELECTION PETITION 2017



What is a Presidential Election Petition?

This is the formal process of challenging the process, outcome or any other aspect of the election of a President in accordance with Articles 136, 139 (1) (b) and 146 (2) (b) of the Constitution of Kenya, 2010.

Which court has jurisdiction to hear an Election Petition?

The Supreme Court is the only court that has the power to hear and determine an Election Petition as enumerated under Article 163 (3) of the Constitution of Kenya, 2010. The jurisdiction of the court is exclusive (means that no other court can hear and determine such a petition) and original (dispute is filed at the Supreme Court in the first instant as opposed to appellate jurisdiction).

Will the decision of the Supreme Court alter/annul the results of the general election?

The Supreme Court does not have the jurisdiction to hear matters relating to the parliamentary, governor and county elections and therefore it shall not deal with matters affecting these elections as that would be beyond its powers. The decision on the

presidential election will therefore not affect the parliamentary, governor and county elections.

How long will the Supreme Court take to make its decision?

Under Article 140 of the Constitution of Kenya, 2010, the Supreme Court has fourteen (14) days after the petition is filed to hear and determine the petition. This therefore means that the Supreme Court has from 18th August 2017 to hear the petition and issue its findings on 1st September 2017. Further, the decision of the Supreme Court is final.

What happens if the court finds the Presidential Election valid?

By virtue of Article 141 (2) (b), the President-Elect will be sworn in the first Tuesday following the seventh day after the court's determination, hence in the event that the Petition is unsuccessful, the President-Elect shall be sworn in on 12th September 2017.

What happens if the court finds the Presidential Election invalid?

If the Supreme Court invalidated the Presidential Election, then under Article 140 (3) of the Constitution of Kenya, 2010 fresh Presidential elections shall be held within sixty days after the court's determination. The candidates of the fresh elections shall only be those Presidential Candidates that took part in the original election.

If the Presidential Elections are held to be invalid, does that mean that there will be a vacuum of power?

Article 142 (1) of the Constitution of Kenya, 2010 provides the term of office for the President and it clearly states that the President shall hold office for a term beginning on the date in which he/she is sworn in and ending on the date when the person elected as President in accordance with Article 136 (2) (a) is sworn in. this therefore means that the sitting president will continue his term until a new president is sworn in.

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