

John Ndirangu Kariuki v Jubilee Party National Appeals Tribunal & 2
others [2017] eKLR



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO. 196 OF 2017

HON. JOHN NDIRANGU KARIUKI COMPLAINANT

VERSUS

JUBILEE PARTY NATIONAL APPEALS TRIBUNAL 1ST RESPONDENT

BENJAMIN GATHIRU MWANGI 2ND RESPONDENT

JUBILEE PARTY 3RD RESPONDENT

JUDGMENT

Case summary

1. The Complainant is the incumbent Member of Parliament for Embakasi Central Constituency. He participated in the 3rd Respondent's, Jubilee Party primaries conducted in April 2017. He alleges that the same nomination primaries were marred with irregularities; hence the declaration of the 2nd Respondent as the winner and his issuance with a nomination certificate was irregular. He states that being aggrieved, he filed a complaint with the 1st Respondent but it has received no consideration, a move he argues that is calculated to bar him from participation in the 8th August 2017 General Elections.
2. On 9th May, 2017, he filed an application under certificate of urgency seeking interim orders. We certified the matter urgent and issued an interim injunction

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order against the 1st and 3rd Respondents restraining them from presenting the 2nd Respondent as the duly nominated candidate for the Member of Parliament Seat in Embakasi Central Constituency on a Jubilee Party.

3. The Complainant seeks for orders:

- (i) *Nullifying the nomination certificate issued to the 2nd Respondent to vie for Embakasi Central Parliamentary Seat on Jubilee Party ticket.*
- (ii) *A repeat of the nomination exercise for the entire Embakasi Constituency Jubilee Party on a date to be appointed by the Tribunal.*
- (iii) *In the alternative, a declaration that the appellant was the duly nominated candidate for the Jubilee party ticket for Embakasi Constituency for the 8th August 2017 General Elections.*

4. On 9th May, 2017, an application for interim orders was filed under a certificate of urgency. The matter was certified urgent and an interim order issued against the 1st and 2nd Respondents restraining them from presenting the 2nd Respondent as the duly nominated candidate for the Member of Parliament Seat in Embakasi Central constituency on Jubilee Party ticket pending the hearing and determination of this matter.

Submissions

5. The Complainant's case is that the nomination in the party primaries were marred with massive irregularities in that: his agents were thrown out of 3 polling stations being Komarock Primary School, Kayole 1 Primary School, and Imara Primary School; pre-cast votes inserted into boxes way before the exercise began and boxes with ballots were delivered while open; there was no sealing of

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cartons with ballots especially at Kayole 1 Primary; and voters were not marked with indelible ink to forestall irregularities. Hence, he contends that the 2nd Respondent was irregularly declared winner.

6. The Complaint is undefended.

Determination

7. It is evident that the 3rd Respondent, Jubilee Party, was served but did not file a response. There is an affidavit of service by Erick Agumba, a process server that the Respondents were served on 10th May, 2017. It behooves all political parties to entrench the values of democracy and rule of law in their operations. The rule of law is well served where political parties are ready and willing, where their actions are challenged and they are served, to appear before courts/tribunals and help reach a reasoned decision. Where a party, like the 1st Respondent herein, fails to appear in court in a dispute between two of its members, to impartially give evidence, it leaves matters for speculation. Hence, we must state in no uncertain terms that the 1st Respondent's non-appearance in this matter was an act in contravention of the Kenya Constitution and its own constitution and values.
8. This Tribunal takes cognizance of the fact that, nullification of results of an election is not a matter to be taken lightly as it goes to the political rights of an electorate in Article 38 of the Constitution and the sovereign power of the people to determine their representatives. Hence, it is not an act to be undertaken lightly, a good basis has to be laid. Where such a basis is laid and not rebutted, a tribunal should not have any hesitation in nullifying the elections since the right under Article 38 of the Constitution has to be exercised in a free and fair environment.

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9. Consequently, we find that the irregularities alleged by the Complainant are substantial enough and without a rebuttal, this Tribunal is unable to uphold the Party’s nomination exercise. The Complainant has placed on record photographic evidence of some of the allegations and as there is an affidavit evidence by the Complainant which is not challenged, hence a case of substantial irregularities has been made.

10. Consequently, we make the following orders:

- (i) *The Statement of Claim dated 9th May, 2017 is allowed.*
- (ii) *The nomination certificate issued to the 2nd Respondent by the 3rd Respondent, to vie for Embakasi Central Parliamentary seat on Jubilee party ticket is hereby nullified.*
- (iii) *The 3rd Respondent, Jubilee Party, is hereby directed to determine the Party nominee for Embakasi Central Parliamentary seat on its ticket in a manner compatible with the Party constitution, Election and Nomination Rules*
- (iv) *The 3rd Respondent shall bear the costs of the Complainant.*
- (v) *Other parties to bear their own costs*

11. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MAY 2017

Kyalo Mbobu

Chairman

James Atema

Member

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Hassan Abdi

Member