



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

JOHN NDIRANGU KARIUKI.....COMPLAINANT  
VERSUS  
JUBILEE PARTY NATIONAL APPEALS TRIBUNAL.....1<sup>ST</sup> RESPONDENT  
BENJAMIN GATHIRU MWANGI.....2<sup>ND</sup> RESPONDENT  
JUBILEE PARTY.....3<sup>RD</sup> RESPONDENT

JUDGMENT

*Background and Procedural History*

1. This dispute relates to the 3<sup>rd</sup> Respondent's nominations for member of national assembly, Embakasi Central Constituency. Ex parte judgment had initially been delivered on 16<sup>th</sup> May, 2017 in favour of the Claimant. However, Wakiaga J of the High Court, on appeal, directed the matter to be re-heard on merit.
2. The Complainant asserts the nominations were allegedly a sham and abuse of electoral processes and laws. The irregularities included claims of pre-marked ballot papers, failure to seal ballot boxes, double voting, and failure to use indelible ink.
3. As a result, he filed an appeal Number 118 of 2017 before the Jubilee Party Appeals Tribunal. However the appeal was neither heard expeditiously, nor its outcome communicated to him timeously. It was submitted that a copy of the

JPAT judgment dated 2<sup>nd</sup> May, 2017 was belatedly obtained long after this complaint had been filed.

4. The 2<sup>nd</sup> Respondent submits that the Tribunal lacks jurisdiction to adjudicate the claim because the complainant is not challenging or appealing the JPAT judgment dated 2<sup>nd</sup> May, 2017. It was also submitted that the complainant had not discharged the burden of proving electoral offences on a standard higher than the balance of probabilities, but lower than beyond reasonable doubt.
5. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents submitted that the issues raised had been considered by the 1<sup>st</sup> Respondent which dismissed them for want of proof. The complainant's complaints were localized to a single polling station- Kayole with 1,500 registered voters. As a result, the result of the election would not be affected even if the allegations of irregularities were proved.

### *Analysis*

6. Two issues arise for determination. The first issue concerns the Tribunal's jurisdiction to determine the claim, while the second issue is whether the complainant has established his case. On the jurisdictional point raised by the 2<sup>nd</sup> Respondent we hold that the Tribunal has both original and appellate jurisdiction over political party disputes. The Tribunal is therefore not necessarily bound by the findings of the JPAT. We hold that the Tribunal has jurisdiction to adjudicate the claim and reject the 2<sup>nd</sup> Respondent's submissions to the contrary.
7. We next turn to the allegations of irregularities in the conduct and outcome of the nominations. We are bound by the verdict of the Court of Appeal in *Moses Masika Wetang'ula v Musikari Nazi Kombo [2014] eKLR at 33* where it was held that:

It is an accepted fact that no human activity can be perfect. The conduct of an election is therefore no exception. That notwithstanding, however, for an election to be valid, substantial compliance with the law governing that election is mandatory. For instance, no election can be valid if it is not based on the principle of universal suffrage; if it is not by secret ballot; if it is not transparent and free from violence, intimidation, improper influence or corruption; and if it is not conducted by an independent body and administered in an impartial, neutral, efficient, accurate and accountable manner. No election can be valid if, whatever method of voting is employed, it is not “simple, accurate, verifiable, secure, accountable and transparent”; as well as if “appropriate structures and mechanisms to eliminate electoral malpractice are [not] put in place”; and the counting and collation of votes and announcement of the results are not open and accurate. What Section 83 of the Elections Act excuses are minor infractions of these principles or requirements that arise from inadvertent, not deliberate or negligent, human activities in the effectuation of these principles but do not affect the result of the election.

8. In this case, we are not persuaded that the electoral process was marked with non-compliance of electoral laws to warrant its nullification. The complainant did not place sufficient evidence on record to discharge the burden of proof incumbent upon him. For instance, the following questions were left begging in

our minds: What were the names of the agents who were ejected from the polling stations? How many people were allowed to vote twice and at which polling stations? Who witnessed the delivery of open ballot boxes?

9. Accordingly, the irregularities, if any were minor infraction of electoral laws arising from inadvertent human error and which did not affect the result of the election. We note that the complainant did not even plead the number of votes he garnered against the 2<sup>nd</sup> Respondent's to enable us determine the margin between them and how any irregularities could have affected that margin.
10. The claim is fit for dismissal which we hereby do. As the complaint was necessitated by the 3<sup>rd</sup> Respondent's late delivery of the judgment dated 2<sup>nd</sup> June, 2017 it shall bear the Complainant's costs of this suit.

**Dated at Nairobi this 12<sup>th</sup> day of June 2017**

1. **M.O. Lwanga ..... (Presiding Member)**
2. **Desma Nungo ..... (Member)**
3. **Paul Ngotho ..... (Member)**