



REPUBLIC OF KENYA

POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO. 299 OF 2017

RICKS KIUA NDUNDA.....COMPLAINANT

VERSUS

JUBILEE PARTY.....RESPONDENT

MICHAEL MUGO KIMANI.....INTERESTED PARTY

JUDGMENT

**Summary of the Case**

1. The Claimant was one of the contestants in the 1<sup>st</sup> Respondent repeat party primaries held on 17<sup>th</sup> May 2017 for the position of the Member of County Assembly, Karen Ward, Nairobi County. The Claimant averred that, in spite of being a contestant and duly registered voter in the Ward, his name, as was the case many other people, was missing from voters' register. As such, he stopped from voting.

2. The Claimant blamed the missing of names on the presentation of incomplete register of voters at the time of the said party nominations. As such, the Claimant termed the nomination as being shambolic and contrary to the law.
3. As a consequence, the Claimant approached this Tribunal seeking for the following reliefs:
  - a) An order stopping the Respondent from presenting the name of the Interested Party to the IEBC as the former's duly nominated nominee for Karen Ward.
  - b) An order for recount of all votes cast in Karen Ward.
4. When the matter came up for mention on 23<sup>rd</sup> May 2017, the Tribunal ordered the Claimant to serve the Respondent and the Interested Party. However, the Claimant failed to do so leaving this Tribunal without option but to proceed and make its determination.

#### **Issues for Determination**

5. The primary issue for determination is what would be the impact of failing to serve as ordered.

#### **Analysis**

6. *Section 20* of the *Civil Procedure Act* makes it mandatory for the defendant to be served where a suit has been duly instituted against such a person. *Order 5 rule 15* in this regard requires the person serving the summons or effecting the service

of court orders to swear an affidavit of service to confirm that service was indeed carried out.

7. *Order 15 rule 15 (1) provides, "The serving officer in all cases in which summons has been served under any of the foregoing rules of this Order shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons. The affidavit of service shall be in Form No 4 of Appendix A with such variations as circumstances may require."*
8. Upon careful perusal of the records before us, we noted that the Claimant failed to serve the Respondents as was ordered and no justifiable excuse or reason has been given to us in this respect. For that reason, we find no basis for entertaining the Claimant's complaint herein and dismiss the same.

#### **Orders**

9. In the premises, this Tribunal orders that:
  - a) *That the Claimant's case be and is hereby dismissed.*
  - b) *No orders as to cost.*
  - c) *Orders accordingly.*

**DATED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JUNE 017**

**Kyalo Mbobu (Chairman) .....**

**James Atema (Member).....**

**Hassan Abdi (Member).....**