



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO 127 (CONSOLIDATED) WITH CLAIM 152 OF 2017

WILFRED ODALO OLUOCH.....COMPLAINANT

VERSUS

HEBERT MUGANDA.....1ST RESPONDENT

JOHN OTIENO OBONYO.....2ND RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....3RD RESPONDENT

RULING

Introduction

1. This is an application for stay of execution, setting aside and review of our judgment dated 11th May, 2017. The application was filed by the 3rd Respondent herein. The application is sought on the grounds that the Respondent/Claimant had obtained judgment through fraudulent misrepresentation and non-disclosure of material facts.

1st Applicant/1st Respondent's Case

2. By a Notice of Motion application dated 8th May, 2017 the applicant claims that the Returning Officer was Jared Owande while the presiding officer was Michael Omolo. He also submits that, Thomas Odoyo Omune, the person who issued a nomination certificate to the Claimant/Respondent was a stranger to the party's nomination process who did not preside over any elections and had no power or authority to declare any results or issue any certificates.
3. He avers that the bona fide Returning Officer Jared Owade declared Herbert Muganda and issued him with a provisional certificate. Thereafter, based on the

declaration by the Returning Officer, the 3rd Respondent issued him with a nomination certificate.

4. Other candidates issued with certificates based on the declaration of the Returning Officer were Ali Ginchu (Kiamaiko Ward); Geoffrey Ngereza (Mlango Kubwa Ward); Redson Otieno (Ngei Ward). These certificates are valid and have not been contested.

The application is supported by the Affidavit of Anthony Muturi.

2nd Applicant/ 2nd Respondent's Case

5. Herbert Muganda, adopts the contents of the 3rd Respondent's application and wishes to reiterate the averments made in it. He contends that the Tribunal proceeded on a misrepresentation of facts by recognizing Thomas Odoyo as a Ward Returning Officer for the Constituency. He submits that the 3rd Respondent has provided information that Thomas Odoyo was not a recognized officer of the party in the nomination process and did not have authority to declare any results. Based on this information, he contends that the Claimant could not hold a valid nomination certificate.
6. He further submits that the Tribunal erred in fact by holding that the Constituency returning Officer had no authority to declare the member of County Assembly results. He further contends that this finding was contrary to Rule 18.6

3rd Applicant/2nd Claimant's Case

7. The 2nd Respondent/2nd Claimant did not participate in these proceedings for review.

Respondent/1st Claimant's Case

8. The Respondent/1st Claimant filed an affidavit sworn by Anthony Moturi on 15th May, 2017 denouncing the affidavit sworn in his name in support of the application for review.

Analysis

9. Order 45 of the Civil Procedure Rules, 2010 provides:

Any person considering himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or from a decree or order from which no appeal is allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

10. The applicant seeks review on the grounds of “discovery of new and important matter” and “error on the face of the record”.

11. First, no copy of the decree or order appealed from is attached to the application for review. It is trite law that an application for review cannot be entertained if the order sought to be reviewed has not been extracted; an applicant for review must be aggrieved by a formal order or decree and not a ruling or judgment. We are bound by the decisions of the High Court in this regard in *Evans Bwire v Andrew Ngida* [2000] eKLR and *Nathan Ondego Mdeizi v National Housing Corporation* [2000] eKLR.

12. Second, it has also not been established that the suggested clarifications from the 3rd Respondents amount to the “discovery of new and important matter or evidence” which, after the exercise of due diligence, were not within the knowledge of, or could not be produced by, counsel for the applicants at the time when the decree was passed. *See Kuria v Shah [1990] eKLR*.
13. We are persuaded that what is purported to be new and material evidence was at all times in the possession of the 3rd Respondent and what is sought is not a review, but a re-hearing of the dispute.
14. Third, to warrant a review of an error alleged to be on the face of a record, such an error ought to be so clear as to be without dispute. On the other hand, the applicant contends that “Tribunal erred in fact by holding that the Constituency returning Officer had no authority to declare the member of County Assembly results”.
15. As held by the Court of Appeal in *Origo v Mungala [2005] 2 KLR 307* an erroneous conclusion of fact or evidence is not a ground for review but may be a good ground for appeal. We are also bound by the decision of the High Court in *Njoroge v Savings & Loan Kenya Ltd [1990] eKLR* that an erroneous view of evidence or law is no ground for a review though it may be a good ground for an appeal. An application for review should not be taken as a form of appeal.

Reliefs

16. We are therefore persuaded that there are no proper grounds of review in this application. It is dismissed with costs to the Respondent/Complainant - Wilfred Odalo Oluoch. We so order.

DATED and DELIVERED at Nairobi this 17th day of May 2017

Kyalo Mbobu
Chairperson

James Atema
Member

Hassan Abdi
Member