



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
JUDICIAL REVIEW NO. 642 OF 2016

REPUBLIC.....APPLICANT

VERSUS

THE REGISTRAR OF POLITICAL PARTIES RESPONDENT

MWAJUMA RAJAB ABDALLAH.....1ST INTENDED INTERESTED PARTY

IRENE MURONJI KOPI.....2ND INTENDED INTERESTED PARTY

EX-PARTE: PARTY OF NATIONAL UNITY

RULING

1. This matter first and foremost, was heard by Honourable Justice Odunga J on 30th March 2017 and he reserved the file for writing of judgment which is scheduled for 11th May 2017. The learned judge then proceeded on leave.

2. On 6th April 2017, the interested parties appeared under certificate of urgency with an application seeking to be enjoined to these proceedings and to set aside/ vacate the stay orders issued by Honourable Odunga J when granting leave. I certified the matter as urgent and directed the interested parties to appear before Odunga J when he returns from leave on priority basis.

3. However, the interested parties wrote to the court and filed another certificate of urgency seeking that their application be considered on priority basis as they were being prejudiced if they were to await the return of Honourable Justice Odunga J from leave on 11th May 2017. It is at that point that I directed the interested party's counsels, Mr Awele, to consult the Principal Judge, Honourable R. Mwongo who gave administrative directions and also contacted Honourable Odunga J via an email of 17th April 2017 and who authorized that the file which was pending judgment be accessed for whatever urgent action that was required. However the file was not traced immediately and on 21st April 2017 Mr Awele filed a certificate of urgency urging the court to consider his client's complaints urgently.

4. As I had the authority from Honourable Odunga J in writing, I proceeded and considered the certificate of urgency, I granted leave to join the interested parties herein and temporarily suspended the party primary nomination exercise which was scheduled for Saturday 22nd April 2017 and today 24th April 2017.

5. I did so after satisfying myself that the interested parties deserved the orders sought in the interim. I also directed that the interested parties do serve the respondents/ ex parte applicant for consideration of the matter today before Honourable Odunga J.

6. This morning, Honourable Odunga J personally availed the original file to me in my chambers and directed that I proceed with the matter as may be appropriate.

7. The parties are now before the court and Mr Okongo Mogeni Senior Counsel for the ex parte applicant seeks for expunging of the proceedings of 21st April 2017 and the setting aside of the temporary orders of 21st April 2017 on the grounds among others, that the interested parties misled the court into issuing those orders and secondly, that the dispute between his client and the respondent Registrar of Political Parties is now settled vide gazettment on 21st April 2017 of party officials who have gone ahead to conduct party nominations on 22nd April 2017 and those due for today prior to issuance of the orders of 21st April 2017. The applicant and respondent have also signed a consent which has been adopted by this court, settling the dispute between them and it has gone ahead to withdraw the entire proceedings against all the remainder of the parties.

8. Mr Awele for the interested party acknowledges that the proceedings are overtaken by events but is firm that his clients did not mislead the court and that they had a good claim before the court which granted a mandatory stay contrary to Order 53 Rule 4 of the Civil Procedure Rules.

9. I have considered the submissions by all the parties advocates and in my humble view, in view of the consent order recorded between Mr Mogeni Senior Counsel and Mr Imende for the Registrar of Political Parties, there is nothing before this court for determination, as the proceedings and issues being raised by Mr Awele's clients have been overtaken by events of the gazette notice No. 3956 of 21st April 2017 gazetting Party of National Unity officials.

10. On the issue of proceedings of 21st April 2017, they were regular proceedings prompted by an aggrieved party who raised very serious issues of law and which issue, though overtaken by events, cannot be said to be an abuse of court process as the court has not been given the opportunity to determine those issues on merit.

11. On costs, I see no reason why I should award any party costs as the applicant was not responsible for the delay in considering the interested party's application which delay as I have explained, was caused by the non availability of the original file which was pending before Honourable Odunga J for judgment to be delivered on 11th May 2017.

12. On whether I should vacate the orders of 21st April 2017, I note that those orders were for joinder and temporary suspension of Party of National Unity party primaries. The order for joinder has been overtaken by events as the proceedings herein have been terminated by the applicant. Similarly, the order temporarily suspending nominations was made too late in the day. It falls by the wayside. Accordingly the same lapses with the proceedings of today.

13. In the end, I hereby mark these proceedings as withdrawn with no orders as to costs and the file is hereby closed.

Dated, signed and delivered in open court in Nairobi this 24th day of April, 2017.

R.E. ABURILI

JUDGE