



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELECTION PETITION APPEAL NO, 26 OF 2017

STEPHEN P. O AGULO.....APPELLANT

VERSUS

JULIUS S. NYAMBOK.....1ST RESPONDENT/APPLICANT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

ODUOR ONG'WEM.....3RD RESPONDENT

DR. AGNES ZANI.....4TH RESPONDENT

HON. JUDITH PARENO.....5TH RESPONDENT

INDEPENDENT ELECTORAL

& BOUNDARIES COMM.....INTERESTED PARTY

RULING

Background

The Appellant and the 1st Respondent who is the Applicant in this application participated in the nomination exercise conducted by the 2nd Respondent on 24th April 2017 for the position of Member of the County Assembly for Homa Bay Central Ward. The Appellant was declared the winner Returning Officer. This aggrieved the Applicant who filed a Claim at the Homa Bay County Tribunal. The Tribunal ruled in his favour. The Applicant moved to the Political Parties Disputes Tribunal (PPDT) seeking an injunction to restrain the 2nd Respondent or its servants or agents from issuing the nomination certificate to the Appellant. He also sought an order restraining the Appellant from presenting nomination certificate to Independent Electoral and Boundaries Commission (IEBC) and an order to restrain IEBC from accepting the nomination certificate from the Appellant. PPDT ruled in his favour. The decision of the PPDT was contested before this court on appeal by the Appellant. The Appeal was dismissed.

The Applicant has now moved this court by way of Notice of Motion dated 25th May 2017 brought under Section 3A of the Civil Procedure Act, Section 24 of the Contempt of Court Act and all other Enabling Provisions of the Law. He is seeking the following orders:

- (i) Leave to institute contempt of court proceedings against the 2nd, 3rd, 4th and 5th Respondents;

(ii) An order of committal to prison to be made against the 2nd, 3rd, 4th and 5th Respondents for such period as this court may deem fit and just for disobeying the order of the PPDT upheld by this court compelling and directing the 2nd Respondent to issue the final nomination certificate for the position of Member of County Assembly, Homa Bay Central Ward to the Applicant;

(iii) In the alternative, an order directing IEBC to include the name of the Applicant in the list submitted by the 2nd Respondent in respect of the Member of County Assembly, Homa Bay Central Ward, Homa Bay County;

(iv) Costs of this application be paid to the Applicant by the 2nd, 3rd, 4th and 5th Respondents

The application is supported by a Statement drawn by the firm of Lumumba & Ayieko Advocates and the supporting affidavit by the Applicant deposing on the facts giving rise to this application.

The matter was presented in court on 30th May 2017 when this court directed that the application and the hearing notice be served personally on all the Respondents. The matter was fixed for hearing today 31st May 2017 at 2.30pm. At the appointed time, this court satisfied itself that service was effected. By the Affidavit of Service filed by Nicholas Koskey on 31st May 2017 it is indicated that the process server could not access the Respondents as he was barred from accessing the Respondents and advised to serve the 2nd Respondent's legal department. He did as advised and received a stamp as acknowledgement of service. This court allowed Mr. Ayieko to proceed with the application. Mr. Ayieko submitted briefed and informed the court that the Respondents have failed to comply with the court order. He urged the court to grant the application.

I have considered the application. I wish to state that leave is no longer a requirement in contempt of court proceedings. Section 3A of the Civil Procedure Act states as follows:

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

I have subjected this matter to due consideration and have invoked the inherent powers of this court as provided under Section 3A. I will and do hereby allow the application on the following terms:

(i) The Orange Democratic Movement (2nd Respondent) is hereby ordered to issue the nomination certificate for Member of County Assembly, Homa Bay Central Ward in Homa Bay County, to Julius S. Nyambok, the Applicant in this matter in line with the order of the Political Parties Disputes Tribunal on 10th May 2017 and upheld by this Court on 17th May 2017.

(ii) In the event the Orange Democratic Movement fails to comply with the above order of this court, this court directs the Independent Electoral and Boundaries Commission to accept the order of this court as constituting nomination of Julius S. Nyambok Member of the County Assembly Homa Bay Central Ward in Homa Bay County.

(iii) The Independent Electoral and Boundaries Commission is hereby restrained from receiving nomination certificate from the Orange Democratic Movement in any other name other than the name of Julius S. Nyambok as duly nominated Member of County Assembly for Homa Bay Ward in Homa Bay County.

(iv) I make an order that the Applicant bears his own costs for this application.

(v) Order 2 is declined.

Orders shall issue accordingly.

Dated, signed and delivered this 31st day of May 2017.

S. N. MUTUKU

JUDGE