



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
ELECTION PETITION APPEAL NO 70 OF 2017

BETWEEN

JOEL KIPKOSGE SIGEI.....APPELLANT

VERSUS

KENYA AFRICAN NATIONAL UNION RESPONDENT

BETWEEN

(Being an appeal from the entire Judgment & Decree delivered by The Political Parties Dispute Resolution Tribunal on the 18th May, 2017 at Nairobi Complaint NO. 222 of 2017.)

JUDGMENT

1. The Appellant **Joel Kipkosge Sigei** is a member of the Respondent **KANU PARTY** and was an aspirant for seat of member of the Parliament for **Kipkelion East Constituency** in Kericho County as per his affidavit sworn before PPDT he alleged that the Party Primaries/ nominations set for 24/4/2017 were not carried out and the Respondent postponed the exercise and assured all the candidates / aspirants that they would conduct the voting process through consensus and the winner issued with certificate. He stated that the Party Elections Tribunal refused to accept his appeal thereby forcing him to file complaint No. 222/2017 before PPDT.

2. At the PPDT the Appellant in his statement of claim sought the following prayers:-

1. A declaration that the certificate issued by the Respondent to any of the nominee member of Parliament for Kipkelion East Constituency in Kericho County be null and void.

2. The Respondent to conduct a free and fair exercise through voting or through consensus as required by the Law and as per the Party's Nominations Laws and Regulation for Kipkelion East constituency in Kericho County.

3. The cost of claim

4. Any other or further relief that the Hounable court may deem fit to grant.

3. In response to the said claim the Respondent filed a replying affidavit, through **Edward Kivuvani**, The Chairman of **KANU NATIONAL ELECTIONS BOARD** in which he deponed that the Appellant amongst many other aspirants for various positions in the county of Kericho at Garden Hotel had unanimously agreed to indentify a single candidate for those positions but the Appellant and his competitors did not agree on who was to vie for the position and they therefore signed an agreement submitting to the authority Of the NEB to use the independent survey report(intelligence report) in determining who amongst them would be best suited candidate.

4. It was deponed that the Respondent under the provision of its Article 24(9) reserved the right to nominate a candidate directly where voting has not taken place. It was deponed that the Respondent had submitted himself to the aforesaid Rule and cannot therefore turn around and plead violation of his rights.

5. Based upon the said pleadings together with written submissions the PPDT rendered its Judgment on the following terms:

8. As to whether the Respondent should conduct a nomination exercise, we note that the Respondent reserves the right to directly nominate a candidate under its constitution. There is sufficient evidence that indeed all aspirants were called upon to build a consensus on the nomination exercise. The aspirants resolved to allow the Respondent to undertake a survey report to determine the favorite candidate. The claimant (Appellant) and his competitors are among those who signed the solution. To this extent therefore we are satisfied that the process was democratic and transparent and all the interests of the aspirants were taken into account.

9. The claimant (Appellant) has not advanced any evidence to countermand the resolutions by the aspirants or to indicate that a nomination exercise was to be conducted. The Tribunal notes that its mandate is to ensure adherence to the political party constitution and not to re-write it.

APPEAL

6. Being dissatisfied by the said determination, the Appellant filed this appeal and raised the following grounds in his memorandum of Appeal.

1. The Tribunal erred in Law and in fact in finding that the complaint was seeking blanket orders while appellants was seeking specific orders to compel the respondent to hold free and fair party primaries at Kipkelion East Constituency in Kericho County.

2. The Tribunal erred in Law and in fact in its analysis of evidence and the law applicable thereby making wrong conclusions.

3. That the Tribunal erred in Law and in fact by failing to appreciate and to take into consideration the evidence in the affidavit filed by the Appellant and thereby arriving at the wrong conclusion.

4. The Tribunal erred in Law and in fact in failing to look at the evidence by the Appellants contained in his affidavit and therefore ended up at the wrong conclusion in terms.

5. The Tribunal erred in Law and in fact by finding that the appeal should fail for failure to disclose the status of the other nominees of the Respondent's party and in the process disregarded the evidence by the Appellant.

6. The Tribunal totally misapprehended the facts of the case leading to erroneous application of the facts into law.

7. The Appellant therefore sought the following prayers:

The Judgment of the Tribunal No.222 of 2017 be set aside and Respondent herein KANU Party do hold party primaries and to nominate a candidate in accordance with the party nomination rules involving the appellant and all aspirants.

SUBMISSIONS

8. At the hearing hereof Mr. kariuki Advocate submitted that the Appellant was never accorded a fair hearing by the Respondent and therefore the Tribunal was in error in holding that the Respondent had complied with its rules. Mr. Makau on behalf of the Respondent submitted that the Respondent acted within the provision of its Constitution Election and nomination Rules after the Appellant and other aspirants signed an agreement to submit the matter to NEB.

9. Upon perusing the records of appeal the proceedings before the PPDT and the submission before me, I formed an opinion that the appeal lacked merit and in view of the urgency of the matter dismissed the appeal on 26/05/2017 and reserved giving details thereon which I now do.

ANALYSIS AND DETERMINATION.

10. Political parties are creatures of the constitution of Kenya 2010 and the political parties Act with Article 38 of the Constitution providing as follows:

38(1) Every citizen is free to make political choices which includes the right:-

- a. To form or participate in forming a political party.**
- b. To participate in the elections of or recruit members for, a political party or**
- c. To campaign for a political party in cause.**

11. This constitutional right is reinstated in section 3(2) of political parties Act. In its **First Schedule** establishes the **Code Of Conduct For Political Parties** which as regards the Appeal herein provide as follows:

5(a) Every political party shall respect the right of all persons to participate in the political process including youth, minorities and marginalized group.

6. Every political party shall:-

c) Respect, uphold and defend their respective political party constitutions political party Election Rules, Political party nomination Rules and any other political party rules and regulations developed and agreed upon in accordance with this code of conducts.

d) Respect uphold and promote human dignity, equality, social justice inclusiveness and non discrimination and protection the marginalized.

h) Respect, uphold and promote governance, integrity, respect, tolerance, transparency and accountability.

l) Respect, uphold and promote democratic practices through free, fair and credible political party nominations.

12. In compliance with the requirements of the political parties Act, the Respondent formulated its Election Nomination Rules in which at Article 24 it provides as follows:

24(8) The nomination of KANU candidate for parliamentary and county level seats shall be done by secret ballots, directly by all members of the party who are registered as voters in the

electoral area where the elections is to be held.

9) The National Executive Council shall reserve the right to nominate a candidate directly provided direct nomination shall not be applicable where a nomination by voting has already taken place.

10) The decision of the National Executive Council shall be final subject to Article 21 and the person declared by the National Elections Board as nominated shall from the date of such declaration be, the party's candidate for applicable elections.

Article 21 Dispute Resolution provides:

No member, as a condition precedent for membership of the party shall resort to court of Law for the resolution of any dispute arising out of the conduct of any party matter, issue or affair unless the machinery herein established has been exhausted.

It proceeds to establish KANU National Appeals Tribunal with powers to hear and resolve all party disputes relating to nominations and or elections.

13. Whereas the Appellant had not exhausted the internal dispute resolution of the party, The PPDT was right to assume jurisdiction under the provisions of section 40(fa) of Political Parties Act which gives the Tribunal the Jurisdiction to hear matter arising from party primaries.

14. From the materials presented before PPDT and before this court it is clear that the Appellant had consented to the Respondent determining the suitable candidate by way of survey (Intelligence Report) which is one of the methods provided for in the Rules of the Respondent and therefore find no fault with the Tribunal finding thereon since there is no rationale to allow the Appellant to go against the commitment he had given to the party without justifiable cause and without sufficiently weighty reasons.

15. In the final analysis I find no merit to appeal herein save that in the future for said Order to NEB ought to include representatives of the Aspirants at the time when the Intelligence Survey is done in line with the rule of Law which is the mightiest sovereign in a civilized society. The Appeal is therefore dismissed with no order as to cost.

DATED, SIGNED and DELIVERED at Nairobi this 26th day of May, 2017.

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J. WAKIAGA

JUDGE

In the presence of:-

Kariuki for the Appellant

Mr. Makau for the Respondent

Tabitha court clerk