



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**MISC. ELECTION PETITION APPEAL NO. 7 OF 2017**

**IN THE MATTER OF CONTEMPT OF COURT ACT,**

**NO. 46 OF 2016**

**AND**

**IN THE MATTER OF POLITICAL PARTIES ACT, 2011,**

**LAWS OF KENYA**

**AND**

**IN THE MATTER OF POLITICAL PARTIES DISPUTES TRIBUNAL COMPLAINT NUMBER  
178 OF 2017**

**BETWEEN**

**HON. LAWISES JUMA OTETE.....CLAIMANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT..... RESPONDENT**

**IN THE MATTER**

**REPUBLIC .....APPLICANT**

**AND**

**ORANGE DEMOCRATIC MOVEMENT..... 1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....2<sup>ND</sup> RESPONDENT**

***Exparte:-***

**LAWISES JUMA OTETE**

## RULING

1. The *ex parte* applicant Lawises Juma Otete was a claimant before the Political Parties Disputes Tribunal (“Tribunal”) in Complaint No. 178 of 2017 in which he complained against the Orange Democratic Party (the 1<sup>st</sup> respondent). This followed the nomination conducted on 30<sup>th</sup> April 2017 to pick the Member of County Assembly candidate for West Karachuonyo Ward in Karachuonyo Constituency in Homa Bay County during the forthcoming general elections. He alleged that he had won in the nomination by garnering 2000 votes but the returning officer had declared one Samuel Okuta Leita to be the winner. He complained to the 1<sup>st</sup> respondent’s Special County Appeals Tribunal which declared him the winner. He followed up the decision to be issued with the provisional certificate to no avail. That was when he complained to the Tribunal where a consent order was entered on 10<sup>th</sup> May 2017 restraining the 1<sup>st</sup> respondent from issuing a provisional certificate to any other aspirant pending the hearing and determination of the matter. The other orders were that the 1<sup>st</sup> respondent be restrained from forwarding any other name to the 2<sup>nd</sup> respondent Independent Electoral and Boundaries Commission (“the IEBC”); that the 1<sup>st</sup> respondent be ordered to issue the provisional certificate to the *ex parte* applicant; the 1<sup>st</sup> respondent be ordered to forward the *ex parte* applicant’s name to the IEBC; and the consent be forwarded to the IEBC. On that basis, the matter was settled. The order was issued in the presence of all counsel, and was served on the IEBC.

2. The *ex parte* applicant’s case was that, notwithstanding the order, the 1<sup>st</sup> respondent had refused to issue him with the nomination certificate and had instead gone ahead and published the name of Samwel Okuta Leita as the nominee for the seat.

3. There was no dispute that the consent order was served on the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent did not, although served, defend this application. The application sought that the 1<sup>st</sup> respondent’s Secretary General, Executive Officer and/or Chairman National Elections Board be summoned to show cause why they should not be held in contempt of the consent order; the IEBC be restrained and prohibited from receiving and accepting the certificate of nomination issued by the 1<sup>st</sup> respondent to any other person than him; the above officials of the 1<sup>st</sup> respondent be cited for contempt; and the respondents be ordered to fully comply with the consent order.

4. I have considered the application which was prosecuted by M/s Mburu. I have considered counsel’s written submissions.

5. When the Tribunal heard the complaint by the *ex parte* applicant it was acting in pursuant to its jurisdiction conferred under **section 40** of the **Political Parties Act (No. 11 of 2011)**. Under **section 41(3)** of the **Act**, it is provided that –

**“3. A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrate’s Court.”**

The magistrates’ courts’ powers are contained in the **Magistrates’ Courts Act No. 26 of 2015**. Under **section 10 (1), (2) and (3)** of the **Act**, it is provided as follows:-

**“(1) Subject to the provisions of any other law; the Court**

**shall have power to punish for contempt.**

**(2) A person who, in the face of the Court –**

**(a) assaults, threatens, intimidates, or insults a magistrate, court administrator, judicial officer, or a witness, during a sitting or attendance in Court, on in going to or returning from the Court;**

**(b) interrupts or obstructs the proceedings of the Court; or**

**(c) without lawful excuse disobeys an order or direction of the Court in the course of the hearing of a proceeding, commits an offence.**

**(3) In the case of civil proceedings, the wilful disobedience of any judgment, decree, direction order, or other process of a court or wilful breach of an undertaking given to a court constitutes contempt of court.”**

6. It follows that the Tribunal has powers to enforce its own orders, and has powers to punish any person who is in wilful disobedience of its judgment, decree, direction or order. This is the same way a magistrate’s court can punish for contempt.

7. Under **section 41(2)** of the **Political Parties Act**, this court has only appellate jurisdiction over the decisions of the Tribunal. The present application is not an appeal. Consequently, the court lacks the jurisdiction to hear and determine the *ex parte* applicant’s application. The same is struck out.

**DATED, DELIVERED and SIGNED at NAIROBI this 25<sup>TH</sup> day of MAY 2017.**

**A.O. MUCHELULE**

**JUDGE**