



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW NO. 4 OF 2017**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**HONOURABLE JUDITH PARENO & 2 OTHERS**

**Sued as chairperson, secretary and**

**member of Orange Democratic Movement ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL ELECTION BOARD ..... 2<sup>ND</sup> RESPONDENT**

**ORANGE DEMOCRATIC PARTY ..... 3<sup>RD</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES**

**COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**JACKTON OTIENO ONUNGA ..... INTERESTED PARTY**

**JACKTON ONYANGO OGENDO ..... EX-PARTE APPLICANT**

**RULING**

The Chamber Summons dated 22<sup>nd</sup> May 2017 has been brought by the ex-parte applicant, Jackton Onyango Ogendo seeking leave to commence judicial review proceedings for an order of *certiorari* to quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> respondent, the National Election Board of the Orange Democratic Movement Party and the Orange Democratic Party to forward the name of the interested party, Jackton Otieno Onunga as nominee for the party for the member of County Assembly Ward seat for Nyalenda 'A' within Kisumu East Constituency of Kisumu County.

The ex-parte applicant's contention is that he was the official party nominee having been duly elected at the party nomination held on 25<sup>th</sup> April 2017. A nomination certificate was issued to him on 29<sup>th</sup> April 2017. Unknown to him and without giving him an opportunity to be heard, the party forwarded the name of the interested party as the duly elected nominee of the Orange Democratic Movement party. He contends that the act amounted to a breach of his due process rights.

At this stage, I am concerned whether there is an arguable case in order to grant leave. It is true that *prima facie* the ex-parte applicant has made out a case against the party which the respondents may need to answer.

However, there is another principle at play, it is that this is a dispute between a member of the party and the party. Under **section 40** of the ***Political Parties Act***, the Political Parties Tribunal has jurisdiction to determine disputes between a member of the political party and a political party and also disputes arising out of party primaries. In my view, this disputes falls squarely within the provisions of **section 40(i) (a)** and **(fa)** of the ***Political Parties Act***. In such a case, the salutary principle that where the Constitution or legislature has enacted a process for resolution of disputes, such a process should be used, is applicable. It is in light of this principle that I would decline to grant leave.

Counsel for the ex-parte applicant has pointed out that when the list of nominated candidates has been submitted to the Independent Electoral and Boundaries Commission (IEBC) in accordance with **section 32** of the ***Elections Act*** hence the Political Parties Tribunal or the party, through its internal mechanism, have no jurisdiction to determine the matter. In my view, once the list has been submitted to the IEBC according to the statute, then the IEBC assumes jurisdiction over any matters that may arise over that list. I do not think the door is shut to the applicant who should now lodge his complaint with the IEBC since he holds a valid certificate issued by the party.

I also take into account that the electoral cycle is a time bond process which is constitutionally cast and bound by the election date scheduled on 8<sup>th</sup> August 2017. The Constitution, the ***Elections Act*** and the ***Independent Elections and Boundaries Commission Act*** all set out specific time lines towards ensuring a free, fair and timely election and the IEBC as an independent constitutional commission retains ultimate authority to set out timelines to govern the elections. Unless there are exceptional reasons, this court is reluctant to give any order that would interfere or extend those timelines.

I am satisfied that the applicant has an alternative remedy and as such I decline to grant leave. Accordingly, the Chamber Summons dated 22<sup>nd</sup> May 2017 is dismissed with no order as to costs.

**DATED** and **DELIVERED** at **KISUMU** on this 25<sup>th</sup> day of May, 2017.

**D. S. MAJANJA**

**JUDGE**