



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELECTION PETITION APPEAL NO. 345 OF 2017

PITHON MUGAMBI NGURU.....APPELLANT

V E R S U S

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSIONS.....1ST RESPONDENT

DANIEL LENARUM.....2ND RESPONDENT

JUDGEMENT

1. Pursuant to the order of leave granted on 21.6.2017, Pithon Mugambi Nguru, the exparte Applicant herein, took out the motion dated 22nd June 2017 in which he sought for the following orders:

1. THAT an order of certiorari be and is hereby issued to bring into this honourable court for the purposes of being quashed, the decision made on 6th June, 2017 by the 1st respondent's Dispute Resolution Committee dismissing the Applicant's complaint no. DRC/IEBC.NM/12/2017.

2. THAT an order of certiorari be and is hereby issued to bring into this honourable court for the purpose of being quashed, the decision of the 2nd respondent to refuse to admit the Applicant's nomination papers to vie as the Senatorial candidate for Embu County under the banner of the Party of National Unity (PNU).

3. THAT an order of mandamus be issued to compel the respondents herein, to forthwith receive the Applicant's nomination papers and admit him as the nominated senatorial candidate for Party of National Unity for Embu County.

4. THAT the costs of this application be borne by the respondents.

2. The aforesaid motion is accompanied by a statutory statement and is verified by the affidavit of the Exparte Applicant. A perusal of affidavit of service of Daniel Mandala shows that service of the motion was effected upon the Independent Electoral and Boundaries Commissions and Daniel Lenarum, Isiolo North Returning Officer, the 1st and 2nd respondents respectively.

3. Despite having been served, the respondents did not deem it fit to respond to the motion. Consequently, the Exparte Applicant was granted leave to prosecute the motion exparte.

4. Mr, Kibe Mungai, learned advocate for the Applicant outlined in brief the background of the matter before this court. I have considered the grounds stated on the face of the statutory statement of facts and the facts deponed in the verifying affidavit of Pithon Mugambi Nguru. I have also considered the oral

submissions of the Applicant's learned counsel. Pithon Mugambi Nguru is said to have participated in the primaries of the Party of National Unity (P.N.U) and got elected as the party's candidate for the Embu Senatorial seat in the General Election slated for 8.8.2017. PNU, issued the Applicant with a nomination certificate on 29th May 2017 in the name of **Pitts Nguru** instead of **Pithon Mugambi Nguru**. Upon realizing the error, the Applicant stated that he took steps to have it corrected by personally travelling to PNU Headquarters in Nairobi.

5. The error was corrected and the Applicant issued with a fresh nomination certificate dated 5th May 2017 and signed by P.N.U. Party leader and it's Secretary General. The Applicant avers that on his way back to Embu from Nairobi, he was involved in a minor road traffic accident and was thus unable to present his new nomination certificate to the Returning Officer before four o'clock having arrived twenty three minutes late. It is the word of the Applicant that he contacted the Returning Officer to explain his predicament before the time fixed to present nomination certificates lapsed.

6. It is his submission that he made a request to be allowed to present the nomination certificate the next day i.e on 30.5.2017 but the Returning Officer refused to accept his papers despite giving verbal assurance. The applicant further stated that he was forced to file a complaint with IEBC Dispute Resolution Committee on 2/6/2017 which complaint was heard and dismissed on 7th June 2017.

7. The Applicant is now before this court seeking to impugn the decision of IEBC Dispute Resolution Committee. The main ground advanced is that the decision of the respondents was unreasonable. It was argued that the respondents did not address themselves to the fact that they had power to admit the Applicant's nomination papers once the reason for its invalidity was redressed. It was pointed out that upon assuring the Applicant that his nomination papers would be admitted the following day it was unreasonable for the 2nd respondent to refuse to admit them.

8. It is apparent from the decision of the I.E.B.C's Dispute Resolution Committee that the Applicant's complaint was dismissed on the basis that the nomination certificate contained errors and that the same was presented late. It also stated that if the Applicant knew he was going to be late he should have sent a representative to present his nomination certificate on his behalf. It is not disputed by the respondents that the Applicant had travelled to Nairobi to have the name on the nomination certificate to be corrected. It is also not disputed that while on his way back to Embu from Nairobi, the Applicant was involved in a road traffic accident and in the process he was delayed from arriving at 1st respondent's offices on time. This fact appears to have been specifically mentioned on the complaint form filed before the IEBC. When hearing the complaint, I.E.B.C Dispute Resolution Committee did not consider this aspect. Therefore, its assertion that the Applicant should have sent a representative to present his nomination papers was in the circumstances unreasonable.

9. The other ground which was put forward by the Applicant is that he kept contact with the 2nd respondent and that he assured him that he was going to accept his nomination certificate late. It is deponed by the Applicant that the 2nd respondent specifically committed himself that he was going to admit his nomination certificate the next day. This assertion was never controverted by the respondents. It cannot therefore be true to say that the 2nd respondent acted reasonably within his powers.

10. In the end, I find the decisions of the respondents to be unreasonable. The I.E.B.C Dispute Resolution Committee failed to consider that pursuant to Section 43(5) of the Elections (General) Regulations, 2012, it ought to have granted the Applicant leave to register as a candidate for senate in the General Election outside the stipulated time.

11. The motion is found to be meritorious. For the avoidance of doubt, and as a consequence of allowing the motion, the following orders are given:

i. An order of certiorari is issued to quash the decision of I.E.B.C Dispute Resolution Committee made on 7.6.2017 dismissing the Applicant's complaint no. DRC/IEBC/NM/12/2017.

ii. An order of certiorari is also issued to quash the decision of the 2nd respondent to refuse to consider for admission the Applicant's nomination papers to vie as the PNU senatorial candidate for Embu county.

iii. An order of mandamus is issued to compel the respondent to forthwith consider whether or not to admit the Applicant's nomination papers as a PNU Senatorial Candidate for Embu County notwithstanding that time to submit the nomination papers has lapsed.

iv. Each party to bear its own costs.

Dated, Signed and Delivered in open court this 29th day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent