



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**JUDICIAL REVIEW NO. 356 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND  
MANDAMUS**

**AND**

**IN THE MATTER OF THE VIOLATION OF ARTICLES 10, 24(1), 25, 27, 38, 41, 47 50 AND 51  
OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER THE ELECTIONS ACT, 2016**

**AND**

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

**AND IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT, CHAPTER 26  
OF THE LAWS OF KENYA AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010**

**BETWEEN**

**AND**

**REPUBLIC.....APPLICANT**

**VERSUS**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION.....RESPONDENT**

**PETER KIHANDA KAHUKI.....EX PARTE APPLICANT**

**RULING**

**[1]** The *ex parte* Applicant, **Peter Kihanda Kahuki** moved the Court vide his Chamber Summons application dated **20 June 2017** for orders, inter alia, that the Court be pleased to direct that:

[a] As a measure of protection in the interim, his name be included by the Respondent in the August 2017 General Elections list of candidates to be published in the Kenya Gazette;

[b] that there be an order of stay to stop the implementation of the impugned decision.

[2] The prayers aforementioned were sought on the grounds that the application will be rendered nugatory unless stay is granted; and that unless the order of stay is granted to the Ex parte Applicant, the people of Gaichanjiru Ward would be denied the right to equal benefit of the law and thereby undermine their right to participate in free, fair and democratic elections. The application was supported by the affidavit annexed thereto sworn by the Applicant on **20 June 2017** and the documents annexed thereto.

[3] The application was opposed by the Respondent on the grounds that the Applicant had neither established a prima facie case nor shown that the application, if successful, will be rendered nugatory if stay is not granted. It was further argued, on the authority of **Taib A. Taib vs. Minister for Local Government & 3 Other [2006] eKLR** that, there being no positive acts required of the Respondent by the impugned decision, the application for stay is misconceived. As for the prayer for the interim measure of protection sought, the Respondent's argument was that, as matters stand, the Applicant has not qualified to run for an elective position; and that it would not be the mandate of this Court to assume the role of the Respondent in imposing the Applicant's candidature at this stage of the proceedings. The cases of George **Philip M. Wekulo vs Law Society of Kenya & Another [2005] eKLR** and **Lady Justice Joyce N. Khaminwa vs. Judicial Service Commission & Another [2014] eKLR** were also relied on by the Respondent's Counsel to buttress his arguments.

[4] Having carefully considered the application in the light of the prayers sought at this interim stage, and having given due consideration to the Decision of the Respondent's Dispute Resolution Committee in the light of the submissions made herein by Learned Counsel for the parties, I note that the Applicant's complaint was dismissed and therefore to grant the orders sought would, in effect be to reverse that decision at this preliminary stage, noting that the Applicant is yet to file his substantive application. In this respect, I would entirely agree with the conclusion reached by **Maraga, J** (as he then was) in **Taib A. Taib vs Minister for Local Government & 3 Others [2006] eKLR** that:

**"The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made ... A stay is only appropriate to restrain a public body from acting. It is, however, not appropriate to compel a public body to act..."**

[5] In the premises, I would decline to grant Prayers (4) and (5) of the Applicant's Chamber Summons application dated **20 June 2017**, with an order that costs of the Chamber Summons be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE, 2017**

**OLGA SEWE**

**JUDGE**