



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ELECTION PETITION APPEAL NO 118 OF 2017

BETWEEN

JAMES PARTRICK CHERUIYOT.....APPELLANT

VERSUS

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSIONS.....RESPONDENT

(Being an appeal from the Judgment and Decree of the Independent Electoral and Boundaries Commission Dispute Resolution committee at Nairobi delivered on 8th June, 2017 by chairperson, Wafula Chebukati, Member Margaret Wanjala Mwachaya and Member Noya Molu in Complaint No. 294 of 2017)

JUDGMENT

The Appellant has moved this court by way of a Memorandum of Appeal dated 20th June, 2017 wherein he has listed seven grounds of Appeal.

The appeal arises from the decision of the Independent Electoral and Boundaries Commission Dispute Resolution Committee which was delivered on the 8th day of June, 2017.

At the hearing of the Appeal, Counsel for the Appellant submitted that the Appellant who is vying for the position of a member of County Assembly for Kapkures Ward in Nakuru Town West Constituency, as an independent candidate, was not cleared by the respondent and being aggrieved, filed **Complaint No. 294 of 2017** with the Respondent's Nomination Dispute Resolution Committee. The said complaint was heard on the 8th day of June, 2017.

That upon hearing the complaint, a decision was rendered against the complainant/Appellant which decision he has appealed against in this appeal.

The gist of the Appeal is that the Appellant did not present his papers to run as a member of County Assembly for Kapkures the reason that he was denied access at the main gate to the I.E.B.C offices.

Counsel for the Appellant argued all the Grounds of Appeal but in response to the Appeal, counsel for the Respondents raised an issue of law which is on the jurisdiction of the court and in particular whether or not the decision of the Respondent through its committee is appealable to the High Court. He cited

Section 74 of the Elections Act and argued that under that Section, there is no provision that allows an Appeal from the decision of the Dispute Resolution Committee of the Respondent and submitted that if the legislature had intended otherwise, it would have provided for it.

In her response, counsel for the Appellant submitted that the court has jurisdiction under **Article 50(1) (2)** of the Constitution which provides for Right of Appeal. She also relied on **Article 165 (a) and (b)** of the Constitution. She argued that the provisions of Political Parties Act do not apply to the Appellant since he is vying as an independent candidate and not a member of a political party.

The court has considered the arguments by both parties. It is trite law that the jurisdiction of a court is conferred by either the Constitution or by a statute and if a court has no jurisdiction to handle a matter, it should not take any other step but has to down its tools. This was the holding in the celebrated case of **Owners of Motor Vessel “Lillian S” Vs Caltex Oil (Kenya) Limited (1989) KLR.**

The jurisdiction of the Respondent’s Dispute Resolution Committee to hear and determine disputes is donated by the Constitution under **Article 88 (4)** and **Section 74** of the **Elections Act**.

Section 74 aforesaid provides:

(1) Pursuant to Article 88(4) of the constitution, the commission shall be responsible for the settlement of Electoral Disputes including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.

The section gives timelines within which a dispute should be heard but it is silent on whether the High Court has jurisdiction to enter appeals arising from the decisions of the committee and so is **Article 88(4)** of the Constitution. The court cannot infer jurisdiction where non in specifically donated by the constitution or an act of Parliament.

Counsel for the Appellant has argued that Section 74 of the Elections Act does not apply to the Appellant because he is vying as an independent candidate. My understanding of subsection (1) of that Section which provides that the **IEBC Committee shall be responsible for the settlement of electoral disputes, including disputes relating to or arising from nominations** is that the committee shall be responsible to settle all disputes including those related to nominations.

It is clear to me that disputes relating to or arising from nominations are just but some of the disputes that the committee is responsible for settlement and for that reason Section 74 is also applicable to candidates seeking positions as independent candidates.

Having made that observation this court finds and holds that it has no jurisdiction to entertain the Appeal and the same is hereby struck out with costs to the Respondents.

DATED, SIGNED and DELIVERED at Nairobi this 27th day of June, 2017.

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L NJUGUNA

JUDGE

In the presence of:-

..... *for the Appellant*

..... *for the Respondent*

.....*court clerk*