



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL DIVISION**

**PETITION NO. 7 OF 2017**

**NANCY LUNGUAAHI**

**MUDEHELI.....PETITIONER**

**VERSUS**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....1<sup>ST</sup>  
RESPONDENT**

**GRANCE RONO.....2<sup>ND</sup>  
RESPONDENT**

**THE CHAIRPERSON IEBC NOMINATION DISPUTE RESOLUTIONS COMMITTEE...3<sup>RD</sup>  
RESPONDENT**

**RULING**

**Introduction**

1. The petitioner is a politician within the Kakamega County and is seeking to vie for the position of Kakamega County Women Member of Parliament through the Federal Party of Kenya herein after referred to as "F.P.K."
2. In her petition dated 9<sup>th</sup> June, 2017, she claims to be a member and the nominated candidate of F.P.K. to vie for the elective post of Kakamega County Women Member of the National Assembly.
3. As such she presented her documents for assessment and approval by the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent did not clear her on grounds that she had been gazetted as a participant in the party primaries of Amani National Congress ( A.N.C) Vide Gazette Notice CXIX No. 49 of 13<sup>th</sup> April, 2017. This prompted her to approach the chief Executive Officer of Amani National Congress who wrote a letter stating that the above gazette was a mistake and that the petitioner was not a member of the A.N.C. but despite the said letter the 2<sup>nd</sup> respondent declined to clear her. She claims that the 2<sup>nd</sup> respondent's action was unjustified and that she read unfairness, biasness and discrimination in the 2<sup>nd</sup> respondent's action. Through her advocates she lodged a complaint with the 1<sup>st</sup> respondent on the 3<sup>rd</sup> June, 2017 but she claims that she was not informed of the date of hearing of her complaint by the 3<sup>rd</sup> respondent.
4. On the 6<sup>th</sup> June, 2017 she was informed by a friend that her complaint had been dismissed for non-attendance. She wrote a protest letter explaining circumstances for her non-attendance, but was informed

that her case had been called on the 5<sup>th</sup> June, 2017 and the ruling dismissing the complaint made on 6<sup>th</sup> June, 2017

5. The Petitioner felt that her rights had been violated and that only the constitutional court herein could protect her. She maintains that the 2<sup>nd</sup> Respondent contravened her right to participate in elections and to vie for an elective post as she met all the required criteria. She also claims that her right to proper administrative action and fair consideration had been violated. She also claims that she was not accorded the right to a fair hearing to prosecute her complaint by the respondent.

6. She also says she is aggrieved by the actions of the respondents and she feels her rights to human dignity have been violated since she is a well-known public figure. She wants this court to declare that the decision by the 2<sup>nd</sup> respondent had no proper legal basis and is null and void as it violated her rights as enshrined in the constitution of Kenya at Articles 19,27,28,37,28,55,57,.73,81 and 99. She also wants this court to declare that the decision by 1<sup>st</sup> respondent to lock her out of the election threatens her rights to equality and freedom from discrimination/political rights as enshrined under Articles 27 and 38 of the Constitution.

7. Further that the 3<sup>rd</sup> respondent's action has violated her rights to fair and just trial and her right to be heard as enshrined under Articles 25,28, 50 and 87 of the constitution. She also wants this court to declare that she satisfied all requirement needed to be cleared to vie for the election as the Kakamega County Women Member of National Assembly on the F.P.K. ticket and order the 1<sup>st</sup> respondent to register her as an aspirant to contest in the 2017 elections.

### **The Response**

8. The petition is opposed. The 2<sup>nd</sup> respondent has filed her response vide the replying affidavit dated 17<sup>th</sup> June, 2017 on behalf of the 1<sup>st</sup> respondent. In her affidavit she explains the legal provisions governing elections, and specifically Section 28(1)(2) of the Elections Act and Gazette Notice No. 2696 of 26<sup>th</sup> March, 2017.

9. The 2<sup>nd</sup> respondent depones that she refused to clear the petitioner because under the Gazette Notice No. 2696 of 26<sup>th</sup> March, 2017 Amani National Congress submitted the Petitioner's name to the 1<sup>st</sup> respondent as its member and a candidate in its primaries for Kakamega Women Representative. She states that with such Gazettement the petitioner was legally incapable of being cleared as an FPK or any other party nominee. The deponent acknowledges the petitioners appeal to the 1<sup>st</sup> respondent's dispute resolution committee where she was summoned to appear but the petitioner failed to appear. She adds that the petitioner's complaint was dismissed as she was found to have party hopped which is against the law. She prays that the petition dismissed.

### **Submissions**

10. The petition herein was canvassed orally. Mr. Matete appeared for the petitioner while Mr. Obondi for the Respondent. Mr. Matete maintains that the petitioner did not party hop but was cleared by the letter from the CEO of ANC party. He further submits that the petitioner's complaint came up for hearing but petitioner did not attend because she was not notified of the hearing date. Her appeal was also declined. He maintains that all these acts by the respondent's contravened the petitioner's right to proper administrative action of being able to participate in an election. He prays for the orders sought.

11. In his submissions Mr. Obondi for the respondents relies on the gazette Notice No. 2696 on 17.03.2017 and explains that under general regulations, political parties have to submit names of those intending to participate in primaries and the I.E.B.C then has a duty to publish such names.

12. Mr. Obondi produced a copy of the gazette notice No. 3796 of 13<sup>th</sup> April, 2017 of persons contesting for Kakamega Woman Representative on A.N.C ticket. The petitioner's name and ID are indicated in the

said gazette notice. Counsel has raised three issues which include jurisdiction of this court, the letter from ANC dated 31<sup>st</sup> May, 2017 and the decision of I.E.B.C Dispute's Resolutions Committee.

**Determination**

13. Having heard the rival submissions by counsel and having carefully considered the petition, it imperative that I deal with the issue of jurisdiction before making any further step.

14. It has been stated clearly by the courts that jurisdiction is everything and when the court realises it does not have the jurisdiction to hear a matter it immediately downs its tools. See the decision in Owners of the Motor Vessel. "Lilian S" vs – Caltex Oil Kenya Ltd (1989) KLR 14, 15.

15. Mr. Obondi for the respondents has submitted that the petitioner's complainant having been dismissed, she had a right of appeal to I.E. B.C Disputes Resolution Committee which dismissed the complaint. Counsel submitted that that Committee having dismissed the petitioner's complaint, the High Court should have been moved by way of judicial review and that as for now the decision of the I.E. B.C has not been challenged.

16. He added that the proper course of action which the petitioner should have taken would have been to challenge her gazettement by A.N.C. On his part Mr. Matete maintains that the petitioner's rights were violated and that they are praying for declaration by way of mandamus or certiorari.

17. On the issue at hand, there are laid down procedures by legislation to resolve election disputes like the one facing the petitioner. The petitioner correctly made a complaint to the 1<sup>st</sup> respondent although she never tried to have the matter resolved at the party level. She had the opportunity of taking her grievances to the Political Parties Disputes Tribunal but she failed to do so and instead came to this court by way of a constitutional reference. I find this to be premature as the petitioner has not exhausted all the available avenues to resolve her issues. For those reasons, this court has no jurisdiction to entertain the petitioner's petition at this stage. The same is dismissed as it lacks merits. Costs to the respondents.

It is so ordered

Ruling delivered, dated and signed in open court at Kakamega this 27<sup>th</sup> day of June 2017

RUTH N. SITATI

JUDGE

In the presence of;-

.....Mr. Matete.....for Petitioner

.....Mr. Kubebea for Nburuga.....for Respondents

.....Polycap .....Court Assistant