



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**ELECTION PETITION NO. 357 OF 2017**

**IN THE MATTER AN APPLICATION BY EUNICE KHALWALI MIIMA FOR ORDERS OF  
CERTIORARI AND MANDAMUS**

**AND**

**IN THE MATTER OF AND/OR THE VIOLATION OF ARTICLES 10, 24 (1), 25, 27, 38, 41, 50 &  
81 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE ELECTIONS ACT**

**AND**

**IN THE MATTER OF POLITICAL PARTIES ACT**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT, CHAPTER 26 LAWS  
OF KENYA**

**AND**

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

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION....RESPONDENT**

**UNITED DEMOCRATIC PARTY.....1<sup>ST</sup> INTERESTED PARTY**

**EUNICE KHALWALI MIIMA.....EX PARTE APPLICANT**

**RULING**

The applicant herein has moved this hounourable court under order 53 Rule 1 (2) of the civil Procedure Act Cap 26 laws of Kenya seeking for orders

1. Leave to apply for an order of CERTIORARI to move into this court for purposes of being quashed a decision of the respondent's Tribunal made on 8<sup>th</sup> June, 2017
2. Leave to apply for an order of MANDAMUS to compel the respondents to include the name of the Exparte applicant as the united Democratic Party nominee as a candidate for Kakamega Country nominee Representative in the forth coming August 8<sup>th</sup> 2017 Elections.
3. That this court do direct that as a measure of protection in the interim, the respondent do include the name of the Exparte Applicant in the list of candidates list to be published in the Kenya Gazettee.
4. That the grant of leave to operate as a stay to stop implementation of the impugned decision.
5. That this honourable Court be pleased to grant such other or further relief as it many deem fit in the circumstances.
6. Costs of the application to be provided for.

The application is supported by the annexed affidavit of Eunice Khalwali Miima sworn on the 20<sup>th</sup> June, 2017.

The application was filed under certificate of urgency and when it was placed before me, I directed that the respondents be served so that parties can canvass the issue of stay.

The application proceeded by way of oral submissions. Counsel for the applicant in her submissions told the court that the applicant was nominated by United Democratic Party to contest the position of Women Representative for Kakamega County. That when she appeared before the respondent for clearance, on the 31<sup>st</sup> May, 2017, it declined to clear her on the ground that she had resigned on the 25<sup>th</sup> May, 2017 which was way out of the deadline period slated for 8<sup>th</sup> May, 2017.

In declining to clear the Applicant, the respondent relied on a letter dated 29<sup>th</sup> May, 2017 from the Ministry of Industry, Trade and Co-operatives wherein the date was erroneously indicated as 24/5/2017.

That she filed a complaint to the respondent's Dispute Resolution Committee being complaint No. 72/2017 which was dismissed without being given a hearing. She has sought leave of the court to file Judicial Review application and that the said leave to operate as a stay of the impugned decision.

In her response, counsel for the Respondent submitted that the issues tabled before the I.E.B.C committee should have been dealt with by the PPDT and that the Respondent should not be faulted.

The court has considered the application and the submissions by the parties. The applicant is granted leave to apply for orders of certiorari and Mandamus as prayed in the application. The said leave shall operate as a stay to stop the implementation of the impugned decision..

For avoidance of doubt prayers 2, 3, and 5 of the application dated 20th June, 2017 are granted as prayed. Costs of the application shall abide the outcome of the substantive Judicial Review Application.

**Dated, signed and delivered at Nairobi this 27<sup>th</sup> day of June, 2017.**

.....

**L. NJUGUNA**

**JUDGE**

*In the presence of*

.....*for the Appellant.*

..... *For the Respondent.*