



THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ELECTION NOMINATION APPEALS NO. 12 OF 2017

IN THE MATTER OF I.E.B.C.

IN THE MATTER OF NATIONAL ASSEMBLY, NAKURU EAST CONSTITUENCY, NAKURU COUNTY

FRANCIS CHEGE WACHIRA.....PETITIONER

VERSUS

INDEPENDENT ELECTORAL &

BOUNDARIES COMMISSION..... RESPONDENT

RULING

1. THE Appellant has filed this appeal in person. He has approached this court by way of a Certificate of urgency and Notice of Appeal invoking sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Articles 22, 33, 35, 38, 47, 48, 50, 73, 78, 232 and 260 of the Constitution. Also filed is a Memorandum of Appeal raising 7 grounds and seeking 5 prayers.

2. The court directed the Appellant to begin by addressing the court on the issue of jurisdiction. It is clear from the submissions the appellant made, that he did not appreciate what the court asked him to do. He read out the sections of the law which he invoked to bring this appeal and then proceeded to argue his appeal. So the Appellant has ably demonstrated the process that he went through trying to be registered as an independent candidate for Biashara Ward of the Nakuru County Assembly. He also demonstrated that his papers were rejected and he was barred from presenting his papers on grounds that he was time barred.

3. The Appellant now seeks relief from this court asking that the decision of the Respondent rejecting his papers be set aside for reason it was made in error.

4. The application has been opposed. Mr. Malonza for the Respondent urged that the decision being challenged was not before the court as the ruling or judgment of the respondent was not annexed with the pleadings filed. Counsel urged a preliminary point that the Appellant approach the court on appeal while the only way he would approach the court was through Judicial Review as the decision challenged emanated from quasi – judicial body.

5. Mr. Malonza for the Respondent also urged that the appellant was time barred at the time he presented his papers to the Returning Officer of the Respondent having not completed the process by the last

gazetted day for MCAs which is 31st May 2017. He also urged that it was within the powers of the Returning Officer under Regulation 43(2)(g) of the Election General Regulation 2012 to declare a nomination paper invalid be presented after the prescribed period had lapsed.

6. This appeal was not lodged on the 15th June 2017 and is challenging the decision of the Returning Officer, Nakuru East. I am unable from this record to see the formal complaint filed before the Respondent by the Appellant. This court is therefore unable to confirm whether any complaint was filed before the Dispute Committee of the IEBC. Further to that, there is no decision of the Committee attached to this appeal. There are also no proceedings of any Dispute Committee of the Respondent. What has been attached is a statement of a complaint signed by the Appellant, an affidavit signed by the Appellant which is dated 5th June 2017 and a Complaint Form filled by the Appellant on a Standard Form from the Respondent. All these documents are not stamped by the Respondent and if they are the stamp is not clear to me.

7. Assuming that there was a dispute filed with the IEBC Committee and that a decision in respect of the same was delivered by the Committee on 9th June 2017, as stated in the Appellant's affidavit, that Committee would have proceeded to hear the Complaint by virtue of **Article 88 (4) of the Constitution** which defines the responsibilities of IEBC including the responsibility under (4)(e) **"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"**.

8. Section 74 of the Elections Act also gives IEBC jurisdiction to hear disputes and it is worded as follows:

(1) Pursuant to Article 88(4)(e) 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.

(2) At electoral dispute under subsection (1) shall be determined within ten days of the lodging of the dispute with the Commission.

(3) Notwithstanding subsection (2), where a dispute under subsection (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable.

9. These two provisions of the law are silent on the issue whether this court has jurisdiction to hear appeals from the IEBC Dispute Committee. The **Constitution** under **Article 165** creates jurisdiction of the High Court to hear and determine matters specified in that Article. Again, that Article is silent on the jurisdiction of this court to hear and determine appeals from the IEBC Dispute Committee. **Article 165(3)(e)** of the **Constitution** confers jurisdiction to this court in the following terms:

"any other jurisdiction, original or appellate, conferred on it by legislation."

10. Jurisdiction is conferred by the Constitution or by statute whether that jurisdiction is to determine a matter first instance or on appeal. In **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1**, Nyarangi, JA held as follows:

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

11. The only conclusion to be drawn from the silence of the Constitution and the statutes on the matters of

appeals to the High Court from IEBC is that such jurisdiction does not exist. There is also unsettled issue as to whether any dispute was filed with the IEBC Dispute Committee. This court therefore has no alternative than to find that the Appellant has no right of Appeal to this court and that this court has no jurisdiction to hear this appeal.

12. Consequent to those findings, this appeal is incompetent and is hereby struck out with no order as to costs.

DATED AT NAIROBI THIS 17TH DAY OF JUNE, 2017.

LESIIT, J.

JUDGE