

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR APPLICATION NO. 449 OF 2017

REPUBLIC.....APPLICANT

VERSUS

THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION..1ST RESPONDENT

ERICK ONYANGO2ND RESPONDENT

EX PARTE: NETO ADHOLA

JUDGMENT

1. The *ex parte* applicant, Neto Adhola, by his Motion dated 20th July 2017 seeks the judicial review orders of *certiorari* and *mandamus* against the Electoral Code of Conduct Enforcement Committee (hereinafter referred to as the Committee) 1st respondent herein. He targets decisions delivered by the 1st respondent on 22nd June 2017 and 14th July 2017 and a press release of 4th July 2017. He would like the decisions and the press release quashed. Subsequent to that, he prays that the 1st respondent be commanded to include his name in the ballot as an independent candidate for Member of National Assembly for Rarieda Constituency in the upcoming general elections slated for 8th August 2017.

2. His case is that the 2nd respondent had lodged complaints against him with the relevant Committee of the respondent. Charges were drawn up against him, and summonses issued for his attendance before the Committee. He appeared, was heard and a verdict was passed, finding that he had violated the Electoral Code of Conduct. As punishment for that violation, he was ordered to pay a fine, among other orders, of Kshs. 250, 000.00 within forty-eight (48) hours. He did not pay the fine within the time stipulated as the said time, according to him, was eaten up as he raced up and down trying to obtain a typed and certified copy of the ruling, and also because part of the 48 hour period fell on a weekend. He complains that the timelines given to him were thin, and in any event no timelines were in fact set out in the relevant law. Unable to meet the deadline he requested the 1st respondent for extension, but got no response. He then moved the High Court by way of appeal for extension of the time within which to pay the fine, but his appeal was dismissed. He caused a banker's cheque to be drawn on 1st July 2017 in the name of the 1st respondent, he had it delivered but the same was returned to him.

3. The decision of the Committee that was delivered on 22nd June 2017 has been placed before me. From its body, it is clear that the Committee accorded hearing to the *ex parte* applicant herein and the 2nd respondent, before it came to the conclusion that there had been a violation of the Electoral Code of Conduct, and fined the *ex parte* applicant a sum of Kshs. 250,000.00 payable within 48 hours, in default of which he was to be disqualified from participation in the elections. The ruling of this court in HC Election Petition Appeal No 124 of 2017 has also been placed before me. It arose from an interlocutory application filed by the *ex parte* applicant where he sought extension of time to comply with the order of the Committee. The application was dismissed on 30th June 2017 as no reasons had been given by the *ex parte* applicant for his non-compliance.

4. Subsequent to the dismissal of the application by the High Court, the Committee of the 1st respondent invoked the default clause of its decision of 22nd June 2017 and disqualified the *ex parte* applicant from contesting the elections. The *ex parte* applicant then embarked on the process that led up to the decision

of the 1st respondent of 14th July 2017. He filed an appeal, dated 7th July 2017, in the said Committee of the 1st respondent against his disqualification from participating in the elections. The appeal was heard on 13th July 2017, and a decision rendered on 14th July 2017, dismissing the appeal, on the grounds that the *ex parte* applicant made no effort to comply with the orders of 22nd June 2017, instead he had sought to appeal against the said decision losing critical time in the process.

5. I have carefully perused through the statutory statement filed herein, together with its verifying affidavit. I have noted that the *ex parte* applicant has not called to question the process that led up to the decision of 22nd June 2017. I shall therefore not train my mind to the issues of jurisdiction or legality of that process. His concern is with the process that followed after the orders made on 22nd June 2017. Even then, he concedes to having disregarded the orders of the Committee, and of acting in contempt, and, upon coming to realise his folly, submitting to that jurisdiction and attempting to purge the contempt. The only complaint that he appears to be making is that of the Committee having acted wrongly in disqualifying him from contesting.

6. Was there any wrongdoing on the part of the Committee in terms of acting in breach of rules of natural justice or improperly or wrongly or in abuse of power? I do not think so. The Committee made an order on 22nd June 2017, which was to be complied with within 48 hours. The said order had a default clause, that failure to comply with it within the period stipulated therein would invite the sanction of disqualification. There was non-compliance, which, in my view, was deliberate, for there was no mistake or inadvertence or incapacity or disability on the part of the *ex parte* applicant; the *ex parte* applicant had sought to appeal the decision in the courts instead of complying with the order. He only sought to comply after he was unsuccessful in courts. It cannot be said that the Committee was in error in any way. The *ex parte* applicant was a victim of his own folly. In any event, the *ex parte* applicant did not seek to demonstrate that the Committee lacked jurisdiction to order disqualification.

7. In view of everything that I have said so far, I do hereby find that there is no merit in the Motion dated 20th July 2017. I shall accordingly dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 27TH DAY OF JULY, 2017.

W. MUSYOKA

JUDGE