



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**JR APPLICATION NO. 400 OF 2017**

**REPUBLIC.....APPLICANT**

**VERSUS**

**GEORGE NDUNG’U KOIMBURI.....1<sup>ST</sup> RESPONDENT**

**THE INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION...2<sup>ND</sup> RESPONDENT**

**FARMERS PARTY OF KENYA.....3<sup>RD</sup> RESPONDENT**

**JUBILEE PARTY OF KENYA.....INTERESTED PARTY**

***EX PARTE: ALICE NJOGU***

**JUDGMENT**

1. The *ex parte* applicant, Alice Njogu, by her Motion dated 11<sup>th</sup> June 2017 seeks the judicial review orders of *certiorari* and prohibition against the respondents herein. The decision being challenged was made by the 2<sup>nd</sup> respondent on 13<sup>th</sup> April 2017 when the 1<sup>st</sup> respondent’s name was published in the *Kenya Gazette* of the said date as the candidate cleared by the 2<sup>nd</sup> respondent to vie for the parliamentary seat for Juja Constituency Kiambu on a Farmers Party ticket. She would like the name of the 1<sup>st</sup> respondent removed as a candidate.

2. The *ex parte* applicant’s case is that the 1<sup>st</sup> respondent had participated in the party primaries of the interested party and lost, whereupon he ‘party-hopped’ to the Farmers Party. She contends that ‘party-hopping’ was permissible only if done 120 days before the general election. She avers that the interested party’s nominations were conducted towards the end of April 2017; she has annexed copy of a poster bearing the image and name of the 1<sup>st</sup> respondent indicating that the interested party’s nominations for Juja were to be conducted on 21<sup>st</sup> April 2017. She submits that to avoid being caught up in the 120 days rule, the 1<sup>st</sup> respondent ought to have changed political parties by 8<sup>th</sup> April 2017. She asserts that the 1<sup>st</sup> respondent was not validly nominated as such to contest under the Farmers Party umbrella.

3. There is an affidavit of service on record indicating that the Motion was served on all the respondents. Only the 2<sup>nd</sup> respondent responded to the application, through an affidavit sworn by one its officers, Douglas Bargoret, on 19<sup>th</sup> July 2017. He cited Article 88 of the Constitution to argue that the *ex parte* applicant ought to have moved the 2<sup>nd</sup> respondent’s dispute resolution committee appropriately, arguing

that the court in *The Speaker of the National Assembly vs. Njenga Karume* (2008) 1 KLR 425 had held that the mechanisms envisaged in that provision ought to be exhausted first before the matter goes to court.

4. Article 88(4)(e) of the Constitution states as follows regarding the 2<sup>nd</sup> respondent –

*‘The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established under this Constitution, and any other election prescribed by an Act of Parliament and, in particular, for –*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

*(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 elections results ...*

*(f) ...’*

5. The constitutional provision quoted above is given effect by section 74 of the Elections Act, No. 24 of 2011, which states 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 results.*

*(2) ...’*

6. The Court of Appeal in the decision cited by the 2<sup>nd</sup> respondent, *Speaker of the National Assembly vs. James Njenga Karume* (1992) eKLR, said as follows-

*‘In my view there is considerable merit in the submission that where there is a clear procedure of redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. We observe ... that order 53 of the Civil Procedure Rules cannot oust clear constitutional and procedural provisions.’*

7. I have carefully perused through the application, the statutory statement and the affidavit by the *ex parte* applicant, and I have noted that she did not file any complaint with the 2<sup>nd</sup> respondent in keeping with the constitutional and statutory provisions cited above. Her case should therefore fall by the wayside going by the tenor of *Speaker of the National Assembly vs. James Njenga Karume*.

8. I have also noted that the *ex parte* applicant did not exhibit any proof from the Registrar of Political Parties regarding the 1<sup>st</sup> respondent’s status as a member of the interested party and the 3<sup>rd</sup> respondent. There is nothing to indicate the stage at which the 1<sup>st</sup> respondent allegedly resigned from the interested party and became a member of the 3<sup>rd</sup> respondent, to support the claim that the move happened less the 120 days allowed in law. All that the *ex parte* applicant is relying on is copy of a poster ostensibly emanating from the 1<sup>st</sup> respondent with the date of 21<sup>st</sup> April 2017 emblazoned on it. The authenticity of the alleged poster has not been established.

9. In view of everything that I have said so far, I am moved to find that the Motion before me, dated 11<sup>th</sup> June 2017, is wholly without merit, and I hereby dismiss the same with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>TH</sup> DAY OF JULY, 2017.**

**W. MUSYOKA**

**JUDGE**