



RUPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
PETITION NO 15 OF 2017
IN THE MATTER OF:
Independent Electoral and Boundaries Act
And
Elections Act, Act No 24 of 2011
And
Political Parties Act, Act No 11 of 2011
And
Leadership and Integrity Act, Act No 19 of 2012
And
Validity of Nomination by Party of National Unity of Candidates Vying for Meru County
Gubernatorial and Senatorial Seats

BETWEEN

BONIFACE KOOME.....1ST PETITIONER

BERNARD KITHINJI.....2ND PETITIONER

Versus

HON PETER GATIRU MUNYA.....1ST RESPONDENT

MILTON MUGAMBI IMANYARA.....2ND RESPONDENT

JOHN OKEMWA ANUNDA.....3RD RESPONDENT

PETER KABERIA.....4TH RESPONDENT

PARTY OF NATIONAL UNITY.....5TH RESPONDENT

RULING ON PRELIMINARY OBJECTION

Action based on Judgment that was stayed

[1] The Respondents raised preliminary objections to the Motion as well the entire petition herein. In their submission before court on 13th July 2017, it emerged that their major objection is a twinning of these two complaints:

(1) That this Petition is founded of the judgment of Political Parties Tribunal which was delivered on 20th June 2017 which judgment was stayed by the NBI High Court in NBI HC JR NO 384 OF 2017; and

(2) That this petition is similar to and or substantially in issue as NBI High Court in NBI HC JR NO 384 OF 2017. Thus, the Petition is incompetent and should be dismissed. I will not re-invent the wheel.

It is now abundantly clear that a “preliminary objection” consist in a point of law which must not be blurred with factual details that require probing of evidence; it must be straight-forward point with complete potency of disposing of the entire case. On this see the opinion by **Law JA** in the case of ***Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696*** when he rendered himself thus:

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Similarly **Sir Charles Newbold** in the same case stated that:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. This improper practice should stop.”

See also the case of ***Oraro vs. Mbaja [2005] 1 KLR 141Ojwang, J*** (as he then was).

[2] Applying this test, and simply looking at the pleadings, is this objection a preliminary objection in the true sense of the law? Mr. Kiogora for the Petitioner attempted to disapprove the request to dismiss the Petition and stated that, other than the decision of the Political Parties Tribunal, this Petition is based on other provisions of the Constitution and raises important issues including integrity issues. He also argued that stay of the judgment by Political Parties Tribunal did not set aside that decision; the decision stillsubsists. He therefore beseeched the court to be guided by article 159 of the Constitution. I have perused the Petition and it is readily discernible that it is solely founded upon the judgment of the Political Parties Tribunal delivered on 20th June 2017: that is the linchpin cause of action. The said decision is subject of NBI HC JR NO 384 OF 2017 and has been stayed by an order of the court. The stay order has been provided to the court; all parties agree on that fact. In law, the Petitioner is under an

obligation to make full disclosures to the court through his pleadings especially of existence of any other suits in which issues in the current petition are or are substantially in issue as a matter of statutory obligation as well as administration of justice. But, it is regrettable these matters are being brought to the attention of the court through a preliminary objection. That notwithstanding, the raising of these facts at this stage will still save precious court's time from being expended on these proceedings which appears to be duplication of cases. However, I will not be quick to declare these proceedings to be incompetent and dismiss them for now; instead I will take a wider view of justice and stay these proceedings to await the decision in NBI HC JR NO 384 OF 2017. It is so ordered.

Dated, signed and delivered in open court at Meru this 24th day of July 2017

F. GIKONYO

JUDGE

In the presence of:

Gitonga advocate for 2nd respondent

Kiogora advocate for Petitioner

Ojiambo advocate for 1st, 3rd and 5th respondents

F. GIKONYO

JUDGE