



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 302 OF 2017**

**IN THE MATTER OF ARTICLES 22(1), 23(1), 27, 83, 84, 85, 87, 88,**

**AND 193(1)(c)(ii) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL**

**RIGHTS AND FREEDOMS UNDER ARTICLES 27, 35, 47 AND 50 AND**

**ALSO 83, 84, 85, 87, 88, 193(1)(c)(ii) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE NOMINATION OF AN INDEPENDENT CANDIDATE**

**TO CONTEST THE SEAT OF MEMBER OF MEMBER OF NAKURU**

**COUNTY ASSEMBLY FOR THE MARIASHSHONI WARD**

**AND**

**IN THE MATTER OF THE ELECTIONS (GENERAL) REGULATIONS, 2012**

**BETWEEN**

**JOSEPH KIMAIYO TOWETT.....PETITIONER/APPLICANT**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....1<sup>ST</sup> RESPONDENT**

**RETURNING OFFICER MOLO SUB-COUNTY.....2<sup>ND</sup> RESPONDENT**

**RULING**

[1] The Petitioner/Applicant filed his Petition dated **19 June 2017** along with the Notice of Motion of even date, challenging the decision of the Respondents, which had the effect of barring him from vying in the forthcoming August 8, 2017 General Elections. The Notice of Motion was filed by the Petitioner pursuant to **Rule 23** of the **Legal Notice No. 117 of 2013** for the following orders:

[a] Spent

[b] Spent

[c] That the court be pleased to stay the Respondent's decision to bar the Applicant from contesting as an Independent Candidate for the seat of Member of County Assembly for **Mariashoni Ward** in the **August 8, 2017** General Elections;

[d] That the Court be pleased to set aside the 1<sup>st</sup> Respondent's decision of 9 June 2017 upholding the decision of the 2<sup>nd</sup> Respondent, who rejected the Petitioner's nomination papers on 30 June 2017;

[e] That the Court be pleased to order that the Respondents do accept the Petitioner's nomination papers forthwith;

[f] That the Court be pleased to order the Respondents to include the Applicant's name in the List of Candidates to contest the Mariashoni Ward Seat of Member of Nakuru County Assembly until further orders of the Court;

[g] That the costs of the application be provided for.

[2] The application was premised on the grounds that the Respondents acted arbitrarily, capriciously and unconstitutionally on 30 June 2017 and **9 June 2017** when they barred the Applicant from contesting in the August 8 General Elections, on the ground that there was a discrepancy in his name, which discrepancy was violative of Rule 39 of the **Elections (General) Regulations, 2012**, in that in the Voters' Register, the first name is his surname **Towett**, whilst in the nomination letter, his first name is **Joseph**. The Applicant's contention is that the two decisions are arbitrary, capricious, unreasonable, unconstitutional, illegal, null and void; and that the Respondents have wholly misunderstood their functions under **Article 88(4)** of the Constitution to conduct elections in democratic Kenya; and that in the premises, the Court has the power, under **Article 23** of the Constitution to grant the conservatory orders prayed herein.

[3] The Applicant relied on his Petition and the affidavit filed in support thereof, including the documents annexed thereto and although the application is unopposed, the Court takes judicial notice that the List of Candidates has already been published by the 1<sup>st</sup> Respondent, and that the printing of ballot papers is ongoing. I would accordingly fully endorse the sentiments of **Majanja, J** in **Francis Gitau Parsimei & 2 Others vs. The National Alliance Party & 4 Others, Petition No. 356 and 359 of 2012** that:

**"...it must be clear that political rights are exercised through a political process involving many actors; the citizens and institutions. This is the process provided for under the provisions of Chapter Seven of the Constitution titled, "Representation of the People." These provisions are operationalized by the Independent Electoral and Boundaries Commission Act, 2011, the Elections Act, 2011 and the Political Parties Act, 2011. Individual political rights and the electoral process cannot be divorced from one another but must go hand in hand. It is therefore proper that the political rights are realized within a structured process that takes into account the larger interests of the society and the need for a free and fair election which is enhanced by a self-contained dispute resolution mechanism underpinned by the Constitution itself and statutes enacted to give effect to its provisions."**

**[4] In the premises,** the 1<sup>st</sup> Respondent's decision of **9 June 2017** upholding the decision of the 2<sup>nd</sup> Respondent, who rejected the Petitioner's nomination papers on **30 June 2017** having largely been complied with, it is too late in the day for the Court to issue the orders sought herein vide prayers (4), (5) or (6) of the Notice of Motion dated **19 June 2017**. In the premises, that Notice of Motion is hereby dismissed with an order that the costs thereof be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2017**

**OLGA SEWE**

**JUDGE**