



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ELECTION NOMINATION APPEAL NO. 21 2017
IN THE MATTER OF LIST OF NOMINEES, MOMBASA COUNTY
BETWEEN
JUBILEE PARTY OF KENYA.....APPELLANT
AND
PATRICK KABUNDU MUKIRI.....RESPONDENT
PETER GICHAMBA MATHINGI.....INTERESTED PARTY
RULING

[1] The application before the court for determination is dated **3 August, 2017**, filed under the certificate of urgency on the **4 August, 2017** for orders:

[a] **THAT** this matter be certified as urgent and the same be heard and dispensed with ex-parte in the first instance.

[b] **THAT** there be a stay of execution of the Judgment and Decree of the Honourable Tribunal dated **1 August, 2017** pending the hearing and determination of this application.

[2] The application was based on the grounds, inter alia, that on the **1 August, 2017**, the **Political Parties Disputes Tribunal** delivered a Judgment and Decree ordering the applicant to reconstitute its list of nominees for the Mombasa County Assembly, and that the said Judgment and Decree was served upon and effected by the Independent **Electoral and Boundaries Commission (IEBC)** the Respondent and that many members of the Appellant/Applicant who were never party to the proceedings before the Tribunal stand to be irreparably affected by the said decision; and that the Tribunal erred in law and in fact in entertaining, hearing and in determining the complaint without properly addressing itself as to whether it had the jurisdiction to do so.

[3] The application is supported by the affidavit of **Peter Mwangi Kahara**, in which it was deponed that the appellant received numerous applications from interested party members for consideration as its nominees on the Party List, and that considering the number of positions available for nomination against the number of applications received, the natural outcome was that not all the applicants could be included in the Party List. The deponent averred from his own knowledge that there were therefore many applicants from the Mombasa County whose applications were rejected. Consequently, the Applicant compiled and submitted its Party List in compliance with the Constitution of Kenya, the Independent

Electoral and Boundaries Commission Act, 2011, the Elections Act, 2011, the Elections (General) Regulations, 2012 and the Elections (Party Primaries and Party Lists) Regulations, 2017 and that neither the name of the Respondent nor that of Interested Party was on that List.

[4] It was therefore the contention of the Tribunal to entertain the Appeal by the Respondent and Interested Parties and hold that the Applicant had not complied with its own rules in the preparation of the Party List. The Applicant faulted the Tribunal for directing it to reconstitute its Party List by its Judgment of **1 August 2017**. It has therefore filed the instant Appeal to have that Judgment and the Decree extracted therefrom set aside.

[5] It is however clear that there were only two prayers sought by the Applicant and both of them are spent. There is no prayer for stay pending appeal and it is now trite that the Court can only issue those orders that have been prayed for by the parties. The Court was faced with a similar dilemma in **Atlas Copco Customer Finance Ltd vs. Polarize Enterprises Ltd [2014] eKLR** and it held that:

"On this ground and bearing in mind that this court has inherent power under Section 3A of Civil Procedure Act Cap 21 (laws of Kenya) to make such order as may be necessary for the ends of justice, this court could very well order that the Defendant deposits the decretal sum while parties litigate the matter herein...Indeed, this court finds itself in a dilemma because if it cannot order for restitution of the motor vehicle when the same has not been sought by the Plaintiff...The court cannot purport to assume to know what the Plaintiff was actually seeking in its application as there is a lot of confusion. In view of the fact that the orders sought by the Defendant were not properly couched, this court can only grant the orders as sought to avoid descending into the arena of the dispute between the Plaintiff and the Defendant.

[5] In the premises, it is my finding that the application is spent and deserves no further consideration by the Court.

Orders accordingly.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 30 AUGUST, 2017

OLGA SEWE

JUDGE