



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
ELECTION NOMINATION APPEAL NO 19 OF 2017

JUBILEE PARTY OF KENYA.....APPELLANT/APPLICANT

VERSUS

HENRY WANYOIKE WAHU.....RESPONDENT

(being an appeal from the Judgment and Decree of the Political Parties Disputes Tribunal of Kenya at Nairobi made on the 28th July 2017 by Honourable Kyalo Mbobu, James Atema Hassan Abdi and Dr Adelaide Mbithi in Complaint Number 424 of 2017)

BETWEEN

HENRY WANYOIKE WAHU.....COMPLAINANT

VERSUS

JUBILEE PARTY OF KENYA.....RESPONDENT

JUDGMENT

1. This is an appeal from the Judgment and decree of the Political Parties Dispute Tribunal, PPDT, dated 28th July 2017. The appellant is the Jubilee Party, the respondent before the PPDT.
2. By that judgment, PPDT nullified the Jubilee Party nomination list for Kiambu County for failure to comply with the constitution in that it did not reflect ethnic diversity of the people of Kiambu. The party was directed to re constitute the party nomination list and include the respondent's name therein.
3. The complaint before PDDT had been filed by Henry Wanyoike Wahu, the respondent herein, who had applied for nomination as person with disability, but his name did not make it for the final list.
4. Jubilee party was dissatisfied with that decision and filed this appeal before this Court and raised 5 grounds of appeal that;

1. The Tribunal erred in law and fact in entertaining hearing and determining the complaint before it without properly addressing itself whether or not it had jurisdiction.

2. That the Tribunal erred in law and fact in ordering re constitution of the party list for nominees in the Kiambu County Assembly.

3. The Tribunal erred in law and fact in ordering specifically that the appellant includes the respondent's name in the list of marginalized persons.

4. That the Tribunal erred in law and in fact in failing to appreciate the provisions of the Constitution, IEBC Act, Elections Act and Regulations made there under and Elections (Party Primaries and Party Lists) Regulations 2017 with regard to compiling and submission of party lists.

5. And that the tribunal erred in law and fact in failing to take into account the respondent's response.

5. At the hearing of this appeal, Miss Mboshe, learned counsel for the appellant urged the Court to allow the appeal arguing that the tribunal erred in ordering re constitution of the party list.

6. According to learned counsel the order of the Tribunal was not clear on what the party had not complied with. Counsel submitted that the Party's list had been submitted to IEBC which rejected the list and returned it to the party. The party corrected the list and resubmitted it to IEBC. Counsel submitted therefore, that the Tribunal's order was vague and should for that reason be set aside.

7. Henry Wanyoike who is visually impaired was accosted in Court by Stanley Kinyua Wanjiku, told the Court that his name was in the list but had been omitted without any explanation. He therefore opposed the appeal and asked that it be dismissed.

8. This being an appeal from PPDT under section 41(2) of the Political Parties Act, it lies to this Court on both facts and law. It is a normal appeal which has to comply with the Civil Procedure Rules. Order 42 rule 13(4) provides as follows;

"Before allowing the appeal to go for hearing, the judge shall be satisfied that the following documents are on the court record, and that such of them that are not in the possession of either party have been served on that party, that is:-

a) The memorandum of appeal,

b) The pleadings,

c) The notes of the trial magistrate at the hearing,

d) The transcript of any official shorthand typist notes, electronic recording or palantypist,

e) All affidavits, maps and other documents whatsoever put in evidence before the magistrate, f).the judgment, order or decree appealed from, and where appropriate, the order (if any) giving leave to appeal."

9. There is a proviso to this rule, that the Judge can dispense with the production of all documents or part of a document which is not relevant, ***other than those specified in paragraphs (a), (b) and (f)***. That means the memorandum of appeal, pleadings and judgment order or decree of the Court the appeal arises from must be on the record.

10. I have perused the record of appeal filed herein. It does not contain the complaint filed by the respondent before PPDT. There is also no response filed by the appellant before PPDT. This means the record of appeal does not comply with the rules of procedure in this respect because pleadings are missing.

11. This Court does not know what complaint was before the PPDT and does not know what the petitioner's response to the complainant's case was. One of the appellant's complaints in this appeal is that the PPDT failed to consider the appellant's response.

12. From the record of PPD's proceedings, PPDT ordered that the complaint be served on the appellant who was also ordered to file a response. If the complaint was served and the respondent filed a response thereto, there is no explanation why the record of appeal is devoid of these documents. These are documents that are supposed to be in the appellants possession, but were omitted from the record of appeal.

13. In the absence of these vital documents, the Court will be addressing its mind on an abstract appeal. For the foregoing reasons, I find that the appeal is incompetent and is hereby struck out with no order as to costs.

Dated, Signed and Delivered at Nairobi this 7th Day of August, 2017

E C MWITA

JUDGE