



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
HC.MISC. CASE NO.169 OF 2011

COUNCILLOR PATRICK MAKASI MUINDI.....APPLICANT

VERSUS

THE MUNICIPAL COUNCIL OF KITUL.....1ST RESPONDENT

RULING

I have listened carefully to the several arguments advanced by both learned counsel for the applicant and the 1st Respondent.

On behalf of the Applicant, the court has been urged that the fifth, sixth, seventh, ninth and tenth Interested Parties were nominated illegally on the 2nd June, 2009. The Applicant take issue with them having participation in the actions which were placed at the AGM held on the 4th July, 2011.

In reply, the 1st Respondent has filed replying affidavit of the Town Clerk Lucy Waema and I have noted the contents of Paragraphs 5 and 6 thereof in particular. The Applicant has not sought leave to file a further affidavit in reply to the matters deponed to therein. He admits that he has not taken any legal action to challenge the legality of the nominations of the said Interested Party. The fact that he was not a party to the proceedings referred to in Paragraph 6 of the replying affidavit does not mean that any orders made in the judgment would not find the 1st Respondent.

I am not persuaded that the court should grant an order of stay on the basis on the arguments that the nominations were illegality because that is the very essence to be detained in the substantive motion. If the court finds that an illegality has indeed occurred, the court will nullify the elections and order that fresh elections take place. In the result, prayer No.6 in the Chamber Summons filed on the 8th July, 2011 is denied and dismissed.

The cost of the application be in the main.

Dated and delivered at Machakos this 13th day of **July**, 2011 at 6.10 p.m.

P. Kihara Kariuki
Judge