



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Miscellaneous Application 377 of 2009

**MATTER OF APPLICATION PARTY OF DEMOCRATIC UNITY OR LEAVE TO
APPLY FOR PREROGATIVE ORDERS OF JUDICIAL REVIEW**

AND

**THE MATTER OF SOCIETIES ACT, CAP 108 LAWS OF KENYA AND IN THE
MATTER OF THE POLITICAL PARTIES ACT, 2007**

ISAIAH GICHU NDIRANGU..... APPLICANT

VERSUS

THE REGISTRAR OF POLITICAL PARTIES RESPONDENTS

JUDGMENT

This application is brought by Isaiah Gichu Ndirangu who describes himself as the Chairman of the Party of Democratic Unity. He seeks orders of Judicial Review to compel the Registrar of Political parties the Respondent herein, to register the party of Democratic Unity and issue it with a registration certificate and order of prohibition to bar the Registrar from declaring the party unlawful. The Registrar opposed the Notice of Motion.

The issue for determination is whether the Registrar of Political Parties' decision to decline to register the Party of Democratic Unity is illegal and irregular.

The Notice of Motion is dated 22/6/09, supported by the verifying affidavit of the Applicant dated 16/6/09 and statutory statement of the same date. Ndirangu who represented himself also filed submissions. He deponed that he filed Misc. App. 725/08 on 10/11/08 seeking Judicial Review orders of mandamus to compel the Registrar to issue the party of Democratic Unity (PDU), with a registration certificate and prohibition to stop the Registrar from declaring the party unlawful. The court in its ruling granted the order of mandamus compelling the Registrar to issue Ndirangu with a certificate of registration. The ruling of the court is undated certified as a true copy on 19/12/08. He wrote to the Registrar on 19/12/08 seeking extension of time of 180 days to comply with the order so that the party could comply with the new Act. The said application was made pursuant to S 44 of the Political parties Act (IGN 5) so that he could comply with S 23 of the Act. However, on 30/12/08 the Respondent instructed the Applicant to amend the party's

constitution as required by the Political Parties Act (section 9) within 3 months (IGN 6). That in her letter, (IGM 7) the Registrar indicated that the application under S 23 must be accepted or rejected before a party can be declared unlawful. He duly complied and amended the party's constitution (IGN 9) and the Respondent did not reject it but received it and stamped it and asked for the list of voters as required by S 23 of the Political Parties Act. He submitted his documents on 5/6/09 and applied for full registration but the Registrar declined to accept the documents for reasons that the Electoral Commission of Kenya had been disbanded. He blames the Registrar for being malicious because that was not a new party but only that it had not been issued with registration certificate within the time stipulated by law. That the Registrar advised him to apply under S 18 of the Societies Act which would require him to pay a further Kshs.1000,000/=. That the Registrar has discretion to extend time of complying with S 44 of the Political Parties Act and failure to accept their documents will render the party unlawful after 180 days. In opposing the Notice of Motion, Lucy Ndungu, the Registrar of political parties deponed that on 14/12/08, the Registrar wrote to PDV party highlighting the transitional provisions under section 44 of the Political Parties Act (RPPI). That the provisions specify that the political parties that were in existence when the Act came into force had 180 days to apply for full registration and the period was to expire on 31/12/08. That the Applicant failed to meet that deadline and the voters register ceased to exist after the Constitutional Amendment Act, 2008 came into force on 29/12/08. That after the Electoral Commission of Kenya was disbanded there is no Voters' Register and the Registrar is ready to register the party in accordance with section 18 and 23 Political Parties Act once the Voters Registrar is put in place. Mr. Kipkogey argued the matter on behalf of the Respondent.

Justice Nyamu granted the Applicant's application in HMISC 725/08 that the Registrar do Register the party in December 2008 just before the Constitutional Amendment Act came into force on 29/12/08. The Constitution of Kenya (Amendment) Act No.10 of 2008 commenced on 29/12/08 and S 2 thereof amended S 41 of the Constitution which created the Interim Independent Electoral Commission, that became the successor of the Electoral Commission that stood repealed by the repealing of S 41.

Section 18 of the Political Parties Act requires all organizations which function as political parties to be registered in accordance with the Political Parties Act. S 18 (2) allows for provisional registration of a proposed party. A provisional registration is required to be in writing, signed by the Applicant, set out the income of the party, an abbreviation of its name where necessary, be accompanied with its Constitution and then comply with S 19. S 19 reads:

“19 (1) The Constitution or rules of every political party formed after the commencement of this Act shall provide, to the satisfaction of the Registrar, for all the matters specified in the schedule to this Act and shall not be amended so as to cease to so provide.

(2) The Registrar shall by order in writing, require any political party which, at the commencement of this Act, is registered to amend its Constitution or rules within three months of that date of the order to provide for all or any of the matters specified in the Schedule.

(3)

(4) if a registered political party contravenes an order given under subsection (2) that political party shall be deregistered.”

The matters provided for under the schedule to the Act are inter alia, the objects of the party be stated, indicate the situation of the registered office of the party, admission and resignation of members, rights and duties of members, disciplinary measures against members, district organizations of the party etc. The court had ordered that the Registrar do issue Ndirangu with a certificate so that he could comply with the Political Parties Act. What the court ordered was provisional registration which meant that the Applicant had to comply with the rest of the requirements before full registration.

S 23 sets out the requirements for full registration. A proposed party must have been previously registered, must have not less than (200) two hundred members who are registered voters for purpose of parliamentary elections from each province. Ndirangu does contend that after amendment of their Constitution, he took it to the Registrar within three months which the Registrar accepted and it was agreed that he submits his documents within 180 days which he did in June 2009. By June 2009, the Constitution of Kenya (Amendment) Act had come into operation and the Electoral Commission of Kenya and the voters Register had been done away with. There is no way the Applicant could comply with S 23 of the Political Parties Act in order to be fully registered. What the Applicant had in their register had nothing to compare with to confirm membership of the party, the voters' register having been done away with. The Registrar was therefore correct in declining to accept the Applicants documents till the Interim Independent Electoral Commission comes up with another voters' register. S 41 A (d) of the Constitution of Kenya (Amendment) Act gives the Interim Independent Electoral Commission the mandate to create a new voters register and undertake registration of voters. As Mr. Kipkogey rightly observed, the Applicant was caught up in the web of time between the repealed provisions of the

Constitution and the coming into force of the Political Parties Act. The Registrar has not acted illegally but strictly in accordance with the law. The party cannot be registered in contravention of requirements precedent to registration. For an act to be illegal the Registrar must have acted contrary to the provisions of the law or misunderstood the law that regulates his decision i.e. the Political Parties Act and the Constitution of Kenya (Amendment) Act. Lord Diplock, in **COUNCIL OF CIVIL SERVICE UNIONS V MINISTER FOR THE CIVIL SERVICE HC (1985) 1 AC 374** or pg.410 said;

“By ‘illegality’ as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates this decision making power and must give effect to it.....”

The Registrar’s decision is within the law and cannot be faulted. Ndirangu will have to await the Interim Independent Electoral Commission to come up with another voters register so that he can comply with S 18 and 23 of the Political Parties Act.

In Judicial Review the grounds to be relied upon in the Notice of Motion are those pleaded in the statutory statement and none can be introduced during the hearing of the Notice of Motion. Order 53 Rule 4 (1) Civil procedure Rules bars an Applicant from relying on any other grounds except those set out in the statement. In his arguments the Applicant purported to introduce other grounds of malice or bias etc but those were not pleaded and are unacceptable.

In sum, I find the Notice of Motion dated 22/7/09 to be premature and lacking in merit and it is hereby dismissed. I direct each party to bear its own costs.

Dated and delivered at Nairobi this 16th day of February 2010.

R.P.V. WENDOH

JUDGE

Present:

Isaiah Gichu Ndirangu for Applicant

Mr. Kipkoge for Respondent

Muturi: Court Clerk