



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

Misc Civ Appli 83 of 2006

REPUBLIC.....APPLICANT

VERSUS

MINISTER FOR AGRICULTURE.....RESPONDENT

AND

DANIEL WACHIRA MWAGO.....INTERESTED PARTY

RULING

By Notice of Motion dated 20/7/2006 seeks Orders of Certiorari to quash the elections organized by the Respondent Minister for Agriculture and held on 6/7/2005 at Karatina for the election of member of Coffee Board of Kenya where Daniel Wachira Mwago was elected as member of the Board of the Coffee Board of Kenya representing the Co-operative Sector Zone 3 –Nyeri and Kirinyaga.

The grounds upon which the orders are sought are set out in the statutory statement summarized as hereinunder:-

1. protection of the right of the ex parte applicant his right to be represented at the Board of Coffee Board of Kenya only on a properly elected member and his right to participate as a candidate for election as a member of board in accordance with section 4 (1) (b) of the Coffee Act 2002 do not permit the delegation of powers and responsibility to organize
2. Coffee (Election) Rules 2002 do not permit the delegation of powers and responsibility to organize and conduct hold election of the Board of Coffee Board representing share holder (Coffee Growers under section 4 (1) (b) or under section 4 (4) cited by the Minister.

However the power allowing a Minister to delegate, the exercise of a power of performance of a duty conferred upon him to another person is Section 38 of the Interpretation and General Provisions Act (Cap 2) Subsection 4 thereof expressly provides that no delegation under subsection 1 of a power or duty shall exclude the exercise of the power or the performance of the duty by the person by whom the delegation was made. “Consequently the responsibility for the complaints remained with the Minister- (Respondent).

Ms Grace Ndung’u (Provincial Director of Agriculture Central Province) was appointed as the presiding officer and three persons were appointed her deputy presiding officers and election officials. These officers were delegated to perform duties concerning this election did not carry their duties properly or with good faith. As a consequence the applicants right were breached as the election was marred by several irregularities malpractices corruptive bribery and vote buying and outright dishonestly. Therefore the applicant lost by 7 votes to the winner Daniel Wachira Mwago, the interested party who

was subsequently Gazetted as a member of the board of the Coffee Board of Kenya. The Jurisdiction of the High Court to issue orders of Certiorari Mandamus is granted under Law Reform Act Cap 26 Laws of Kenya. The rules under which the law is operated are provided under Order 53 Civil Procedure rules.

The only orders available are Certiorari, Mandamus and Prohibition. Other orders such as declarations and damages and injunctions are obtained under the Civil Procedure Code under the Civil Procedure Act. The Order of Certiorari is issued by High Court to command an inferior court or tribunal to transmit the record of a cause or matter decided hearing it to the superior court to be dealt there and if the order is found to be without jurisdiction or bad in law it is quashed. The superior court merely quashes the order of the inferior court or tribunal but does not substitute its own order in place of the order that is quashed. It does not examine the case on merit. The jurisdiction is limited. Order of Certiorari is issued only to question a judicial or quasi-judicial order not orders passed by a body or authority performing purely administrative a Ministerial functions. It was held in ***Republic vs Electricity Commissioner. Exparte London Electricity Joint Co. [1924] I KB 171*** that an act would be quasi-judicial and amenable to Order of Certiorari provided it satisfies three conditions namely:-

- (a) that there is a body of persons who have legal authority to determine questions.
- (b) that the questions which they have to determine affect the rights of subjects.
- (c) that the body of persons is under a duty to act judiciary.

In 1964 the case of ***Ridge vs Baldwin [1964] AC 40*** it was said that if the nature of the duty is such that it ought to be performed judicially then the body of the persons are under a duty to act judicially. Therefore where there is necessity to follow judicial procedure and observe principles of natural justice so that the party to whose prejudice the order is intended to be passed is entitled to a hearing applies alike to judicial tribunal and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. The principles on which Orders of Certiorari are issued are well known namely where there is want of jurisdiction, where there is violation of procedure or disregard of the principles of natural justice, where there is error of law apparent on the face of the record.

In this case under the Coffee Act 2001 and rules made therein (Coffee Election Rules) 2002. It is the duty of the Minister (Respondent) to organize and conduct the elections of members of the board of Coffee Board of Kenya.

There is no complaint that he did not follow the rules as set out under the Act. It is even admitted that apart from the powers given to the Minister to delegate his powers under the Coffee Act and Rules thereunder he is also empowered by provisions of interpretation and General Provisions Act, Cap 2.

2. to delegate Section 38 thereof.

The complaint is that the Minister delegated his powers to people not competent to conduct elections. I have examined the grounds set out in paragraph (d) of the statement and verified in the accompanying affidavit. The Minister was not under a duty to act Judiciary. In the proceedings of Judicial Review the court is to examine the process of decision making process to ensure the statutory body is acting within the law. An examination of the allegations made shows that irregularities alleged such as dishing out money to influence voting was criminal activities and those involved should have been reported to law enforcement authorities immediately. Other alleged irregularities that recount was rejected, there was refusal to scrutinize the spoilt ballots, or illiterates voters questions are all not substantiated. These are issues that can best be tried a procedure allowing for taking of evidence to ascertain the truth thereof.

It is my view therefore that the orders of Certiorari cannot issue in this application. The Minister was bound by law to organize and conduct the Coffee Board elections in accordance with the rules set out in the Act. There is no complaint that he failed to comply with rules. In conducting the elections he was not required to follow judicial procedures. He was not required to make inquiries of a judicial nature. It is my finding that the remedy if any, lies elsewhere.

I do not therefore grant Orders of Certiorari as prayed and consequently Order for Mandamus to conduct fresh elections is not granted.

The application is therefore dismissed with costs to the interested family.

Orders accordingly.

Dated this 15th March, 2007.

J. N. KHAMINWA

JUDGE

15/3/2007

Khaminwa - Judge

Njue - Clerk

Mr. Momanyi HB

Ruling read in open court

J. N. KHAMINWA

JUDGE