

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 251 of 2007

JOHN HARI GAKINYA.....PLAINTIFF

VERSUS

HON. PAUL KIBUGI MUIITE.....1ST DEFENDANT

REGINA GATHONI.....2ND DEFENDANT

(Sued as official of SAFINA PARTY)

ONESMUS KIMANI NGUNJIRI.....3RD DEFENDANT

RULING

This is an application brought under **Order XXXIX Rules 1, 2, 3 and I of the Civil Procedure Rules** and **Section 3A of the Civil Procedure Rules** by the plaintiff seeking to restrain the 3rd defendant by himself and or his servants from presenting a certificate of nomination to the Electoral Commission of Kenya

rdedly issued to him by Safina Party for the Subukia Constituency for the 2007 general elections. The plaintiff further sought an order of this court to restrain the 3rd defendant from presenting or acting upon the certificate of nomination purportedly issued to him by the Safina Party for the Subukia Constituency during the 2007 general elections. The application is supported by grounds of the face of the application and the annexed affidavit of the plaintiff. The defendants were served but did not file any papers in opposition to the application.

I have heard the rival submissions made by the parties to this application. The issue for determination by this court is vexed issue of political party nominations in Kenya. It is now in the public domain that political parties, during the nomination of the Parliamentary and Civic candidates for the 2007 election, conducted the said nominations in less than democratic and transparent manner. In the case of the Safina Party, it conducted its nomination by identifying candidates from various constituencies in the country. In the case of the plaintiff, he was duly nominated on the 23rd October 2007 and issued with a certificate of nomination to contest the Subukia parliamentary seat. The said nomination of the plaintiff by the Safina Party was in accordance with *Clause 13(3)* of its constitution. The said clause provides that once a parliamentary, or civil candidate has been duly nominated, the said nomination shall be final and binding. There was therefore no room for the nomination of another person. The purported nomination of the 3rd defendant – a non-member of the Safina Party - was therefore illegal, null and void. The application by the plaintiff is unopposed. I will grant it.

The 3rd defendant, Onesmus Kimani Ngunjiri, is hereby restrained by an order of injunction from presenting a certificate of nomination to the Electoral Commission of Kenya which was purportedly issued to him by the Safina Party. The Electoral Commission of Kenya is further ordered not to accept any nominee of the Safina party as the parliamentary candidate of Subukia Constituency other than John Hari Gakinya. The Returning Officer, Electoral Commissioner of Kenya, Subukia Constituency is directed to receive the certificate of nomination issued to John Hari Gakinya as the only valid certificate

of nomination issued by the Safina party. The plaintiff shall have the costs of the application.

DATED at NAKURU this 22nd November 2007

L. KIMARU

JUDGE