



REPUBLIC OF KENYA



**Parent Multipurpose Development Group & another v Republic & another (Judicial Review E003 of 2023) [2024] KEHC 965 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 965 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
JUDICIAL REVIEW E003 OF 2023  
DO OGEMBO, J  
FEBRUARY 2, 2024**

**BETWEEN**

**PARENT MULTIPURPOSE DEVELOPMENT GROUP ..... 1<sup>ST</sup> APPLICANT**

**JAPHETH MANYALA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... 1<sup>ST</sup> RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. This application dated 2-5-2023 has been brought as a Judicial Review application for orders of Certiorari and Mandamus. It is brought up in the name of the Republic as the applicant, whereas the substantive applicants are Parent Multipurpose Development Group and Japheth Manyala, indicated as the 1<sup>st</sup> and 2<sup>nd</sup> interested parties. The application seeks:
  - i. An order of Certiorari to remove into this Honourable court and quash the nomination list for members of County Assembly for 47 counties. 12 nominated members of the National Assembly. Nominated members of Senate, 16 women, 2 members, being one man and one woman, representing youths. Two members, being 1 man and 1 woman, representing persons with disabilities.
  - ii. An order of Mandamus directed at the Respondent to regulation of the process to nomination by women, persons with disabilities, youth, ethnic and other minorities, and marginalized communities in accordance with Articles 177, 97 and Article 38 of *the Constitution* of Kenya.
2. The application was served on the Respondent, the Independent Electoral and Boundaries Commission who duly entered appearance. The Respondent also filed a Notice of Preliminary



objection to this application. And following arguments by the parties, the court ruled that the preliminary objection, indicated to touch on the jurisdiction of the court, would be heard ahead of the application. The objection was heard orally in court.

3. In moving the Preliminary objection, Mr. Daudi for the Respondent submitted that this matter relates to the election conducted on the 7<sup>th</sup> and 9<sup>th</sup> September 2023 through gazette notices No. 10537 Vol. CX-IV, No. 181 and 10712 Vol. CXXIV No. 186 published by the Respondent. That this suit falls under the jurisdiction of the *Elections Act* as provided for under Section 25 of *Elections Act*, 2011, which confers on the lower court to determine the validity of the election of members of County Assembly, and the High Court, validity of elections of members of parliament. Counsel cited the case of *Moses Mwirigi and 14 others Vs IEBC and 5 Others* [2016]eKLR.
4. And the 3<sup>rd</sup> ground, that this suit relates to an election provided for under Article 90 of *the Constitution* and Section 36 of the *Elections Act*, 2011. And that this application ought to have been filed within 28 days after the publication in the Kenya Gazette pursuant to Section 76(i)(a) of the *Elections Act*.
5. The 4<sup>th</sup> objection was that if this court were to grant the prayers sought, it would disenfranchise 586 persons who came to office pursuant to the Gazette notices while those persons have not been enjoined in this application. And that the court would also disenfranchise 79 political parties who are the key stakeholders in the ownership and preparation of party lists and who have also not been enjoined in these proceedings.
6. On his part, Mr. Manyala the ideal Applicant herein, responded that this application is not about an election, but a denial of a right to participate in an election and that Article 22 gives the court the jurisdiction. That persons with disabilities have a right to elect a candidate and sit in the County Assembly.
7. On the 586 persons who stand to be disenfranchised, he maintained that the court has power to quash any person who was not elected rightly. And that in any case, persons with disability did not elect those persons and so the 568 are sitting unconstitutionally.
8. I have considered the submissions brought up by the 2 sides.
9. As I understand it, the applicant's application aims at challenging the manner in which the nominations to the 47 County Assemblies (and National Assembly and Senate) were done in that same did not consider the constitutional requirement regarding the nomination of persons with disabilities, women, youth and other minorities. The objection raised by the Respondent is on whether this court has the jurisdiction to entertain this matter and to grant the orders sought. The issue is therefore this court, has the jurisdiction over this matter in the first place.
10. Dealing on the issue of jurisdiction of the High Court, Article 165 (3) of *the Constitution* declares: -
  - " Subject to Clause (5), the High court shall have-
    - (a) -
    - (b) Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened,
    - (c) -
    - (d) Jurisdiction to hear any question respecting the interpretation of this constitution including the determination of: -



- i. the question whether any law is inconsistent with or in contravention of this Constitution.
  - ii. the question whether anything said to be done by authority of this constitution or any law is inconsistent or in contravention of this Constitution.
  - iii. Any matter relating to constitutional powers of state organs in respect of County governments, and any matter.....
11. This court gets guidance from the Court of Appeal decision in *IEBC -Vs- Maina Kiai & 5 Others* [2017]eKLR, at page 18, that even in a matter reserved for the Supreme Court, the jurisdiction of the High Court to interpret *the Constitution* is not taken away, and that the Supreme Court will in this event consider the matter in the context of its appellate jurisdiction. Applied in our case, this case may relate to election or nomination of members of the County Assemblies, whose challenge in the nature of election petitions would rightly lie with the magistrate's court. The jurisdiction of the High Court as to interpretation of any abridged rights would, and still hold, interest and exercisable.
  12. The same position was taken by the Supreme Court in *In Re the matter of the Interim Independent Electoral Commission, Const. Application 2(2011)*, in which the jurisdiction of the High Court would not be ousted.
  13. The Respondent has in this objection raised other issues, like the effect of the orders sought were the same to issue and whether or not such orders would affect persons not party in these proceedings. With respect, in my view these are matters that may be canvassed during the hearing of the main case and it is not competent to raise same as Preliminary objections.
  14. In view of the above observations, I am not persuaded that the objections raised by the Respondent have any merit. I dismiss the same with costs.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2024**

**D.O. OGEMBO**

**JUDGE**

**01.02.2024**

**Court:**

Ruling read out in the presence of Mr. Daudi for Respondent and Mr. Manyalla, the Applicant.

**D.O. OGEMBO**

**JUDGE**

**01. 02.2024**

