



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL & HUMAN RIGHTS DIVISION
PETITION NO. 102 AND 145 OF 2015

GODFREY MWAKI KIMATHI

JOSEPH NJUGUNA.....1ST PETITIONERS

BENSON RIITHO MUREITHI.....2ND PETITIONER

VERSUS

JUBILEE ALLIANCE PARTY..... 1ST RESPONDENT

INDEPENDENT ELECTORAL

AND BOUNDARIES COMMISSION..... 2ND RESPONDENT

FERDINAND NDUNGU WAITITU.....1ST INTERESTED PARTY

KIRIRO WA NGUGI.....2ND INTERESTED PARTY

DIRECTIONS

Introduction

1. On 21st April, 2015 these two petitions were consolidated. However when the same came up for hearing on 24th April, 2015, on the application of **Mr Wambugu**, learned counsel for the 1st petitioners, who had filed petition no. 102 of 2015, **Godfrey Mwaki Kimatha** and **Joseph Njuguna**, applied to withdraw petition no. 102 of 2015. However the petitions having been consolidated, and as there was only one petition before the Court, instead of the Court allowing the withdrawal of petition no. 102 of 2015, which had in effect merged with petition No. 145 of 2015, the Court allowed the said two petitioners' case to be withdrawn with half costs to the Respondents and interested parties.

2. That decision clearly determined the matter in so far as the case for the said petitioners were concerned.

3. It therefore followed, and the Court expressly stated so, that the only matter pending before this Court was the case of the 2nd petitioner, **Benson Riitho Mureithi**.

4. On 28th April, 2015, I delivered a ruling herein in which I struck out with half costs to the respondents and the 1st interested party. In arriving at the said decision I expressly stated that my decision was informed by the fact that the Respondents and the 1st interested party had already been awarded half the costs in the withdrawn case.

5. When the matter went to the Taxing master for taxation, it was contended that the 2nd interested party should similarly bear the costs of the Respondents and the 1st interested party. This position was based on the fact that the said 2nd interested party supported the petitioners' case.

6. Dealing with the position of the interested party, the Court of Appeal in **Transouth Conveyors Ltd and Another. vs. Kenya Revenue Authority and 3 Others [2008] KLR 216** expressed itself as follows:

“The learned Judge made a decision as to the status of parties who were referred to as interested parties. They were not essential parties in the litigation but requested to be heard merely because they too had a cause or causes of action which happened to be based on the same set of facts. None of them is a party in these consolidated appeals. The learned Judge did deal with all the basic issues between the parties who had filed motions and whose causes of action he set out at the beginning of his ruling. While it would have been more prudent to assign reasons for his decision regarding the *locus standi* of those “interested parties” we do not think in the peculiar circumstances of these appeals the failure to assign reasons vitiated the ruling. The case of those “interested parties” is severable in the sense that it cannot be said that their matters were determined in the consolidated suits. Besides, the absence of those reasons in no way prejudiced either appellant.”

7. A holistic consideration of this Court's decision clearly shows that the costs were only awarded as against the Petitioners. This is clearly discernible from the fact that after the petitioners in petitioner no. 102 of 2015 withdrew their cases, the Court awarded the costs against them. There was no issue of the 2nd interested party bearing any of the said costs. This issue was taken into consideration when whatever remained of the petition was finally determined.

8. It follows that there was no question of the 2nd interested party bearing the costs in the consolidated petitions.

9. In the result I hereby direct that the costs are only taxable as against the petitioners.

10. It is so ordered.

Dated at Nairobi this 7th day of June, 2017.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Agwara for Mr Issa for the 2nd interested party

Mr Naikuni for Mr Kinyanjui for the 1st interested party

Mr Nanyuki for Mr Jilo for the 2nd Petitioner

CA Mwangi