



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE MATTER OF IEBC TRIBUNAL ELECTION NOMINATIONS APPEAL NO. 3 OF 2017

**IN THE MATTER OF ARTICLES 10, 22, 23, 24, 36, 38, 91, 258(1) OF THE CONSTITUTION OF
KENYA 2010**

IN THE MATTER OF THE POLITICAL PARTIES ACT

IN THE MATTER OF THE ELECTIONS ACT 2011

IN THE MATTER OF THE ELECTION LAWS (AMENDMENT) ACT, 2017

BETWEEN

PETER GATAWA MUNYOGA.....1ST PETITIONER

STEPHEN THIONGO WAMUHU.....2ND PETITIONER

JULIUS NGURE KINUTHIA.....3RD PETITIONER

NAHASHON MWANIKI MUGI.....4TH PETITIONER

JOHNSON MACHARIA GACHURU.....5TH PETITIONER

WILLARD MBIRI MWANGI.....6TH PETITIONER

JANE WANGECHI IRUNGU.....7TH PETITIONER

JANE WAMBUI MAINA8TH PETITIONER

TERESIA MUGURE.....9TH PETITIONER

MAGDELINE MUCHERU KAMURI.....10TH PETITIONER

VERSUS

MOSES NDUNG’U MWANGI.....1ST RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION... 2ND RESPONDENT

JUDGMENT

The Petitioners are registered voters in Murang'a County. They have sued the 1st Respondent, an aspirant for the position of Governor Murang'a County on Mzalendo Saba Saba Party ticket, and the 2nd Respondent, the Independent Electoral & Boundaries Commission (IEBC) whose responsibilities are spelt out under Article 88 of the Constitution and include conducting or supervising elections and referenda, regulating the process by which parties nominate candidates for elections and registration of voters and monitoring compliance with the legislation required by Article 82 1(b) of the Constitution relating to nomination of candidates by parties. The Petitioners have approached this court through a Petition filed on 9th June 2017 and amended on 12th June 2017. The Petition is anchored under various articles of the Constitution of Kenya 2010 including Articles 10, 22, 23, 24, 36, 38, 91 and 258(1), the Political Parties Act No. 11 of 2011 and the Elections Act 2011. They are claiming violation of the provisions of the Constitution and the law.

The Petition claims that the 1st Respondent is a member of the Jubilee Party and has been such member at all times relevant to this case and that he was gazetted on 13th April 2017 vide Gazette Notice No. 3796 as a candidate for nomination for the position of Governor Murang'a County on Jubilee Party ticket; that the 1st Respondent participated in the Jubilee Party nominations held on 21st April 2017 and repeated on 26th April 2017 in that capacity but lost the nomination; that the 1st Respondent has never been de-gazetted as a Jubilee Party candidate for the Party's nominations and that in total disregard to the fact that the 1st Respondent was a member of the Jubilee Party and its nominee for the position of Governor Murang'a County, the 2nd Respondent's Returning Officer for Murang'a County cleared the 1st Respondent to vie for the position of Governor of Murang'a County on a Mzalendo Saba Saba Party ticket contrary to Sections 10, 13, 31 (2B) and (2C) and 74 of the Elections Act, 2011 as read with Section 14 (4) of the Political Parties Act 2011. The Petitioners were aggrieved by that decision and filed Complaint No. 95 of 2017 with the 2nd Respondent's Nominations Dispute Committee. The Complaint was dismissed on 7th June 2017.

The Petitioners have particularized the alleged violations of the Constitution as follows:

- (i) Failure by IEBC to enforce compliance with the relevant Election Laws in contravention of the express mandate of the 2nd Respondent under the provisions of Article 88 (4) (k) of the Constitution of Kenya 2010.
- (ii) The 1st Respondent's clearance by the 2nd Respondent to run on Mzalendo Saba Saba Party ticket having been gazetted as a Jubilee party candidate on 13th April 2017 and having participated in the said party's primaries is unlawful and thereby a clear contravention of Article 10 of the Constitution of Kenya and that the decision by the 2nd Respondent in Complaint No. 95 of 2017 upholding the clearance of the 1st Respondent is unconstitutional to that extent and thereby null and void.
- (iii) The 1st Respondent's clearance to run on Mzalendo Saba Saba Party ticket, outside the deadline provided by the law constitutes preferential treatment of a candidate over the others contrary to the provisions of Article 27 (1) of the Constitution.

The Petitioners are seeking four (4) orders as follows:

- (a) A declaration that in view of Sections 10, 13, 31 (2B) and (2C) and 74 of the Elections Act and Section 14 of the Political Parties Act 2011, a person cannot resign from a political party after the Independent Electoral and Boundaries Commission's deadline for the submission of party membership list and gazette ment thereof, join another political party and contest in the elections in the new political party.
- (b) A declaration that the decision of the Independent Electoral and Boundaries Commission to clear Moses Ndung'u Mwangi to vie for the position of Governor Murang'a County on Mzalendo

Saba Saba Party despite being a member of Jubilee Party and gazetted as its candidate on the 13th April 2017 for the nominations held on 26th April 2017 and having fully participated in the said nominations for its primaries for the position of Governor Murang'a County contrary to the provisions of Sections 10, 13, 31 (2B) and (2C) and 74 of the Elections Act and Section 14 of the Political Parties Act 2011, violates Article 27 (1) of the Constitution and is therefore null and void.

(c) An order of certiorari be issued to quash the decision of the Independent Electoral and Boundaries Commission to clear Moses Ndung'u Mwangi to vie for the position of Governor Murang'a County on Mzalendo Saba Saba Party ticket.

(d) An order of certiorari be issued by this court to quash the entire decision of the Independent Electoral and Boundaries Commission in Complaint No. 95 of 2017 dismissing the Complaint thereon and to the effect that the said Complaint is allowed to the extent that it seeks a declaration that the decision of the Independent Electoral and Boundaries Commission to clear the 1st Respondent to run as the Mzalendo Saba Saba candidate for the position of Governor Murang'a County is null and void.

The 1st Petitioner on behalf of the other Petitioners and with their authority has sworn an affidavit dated 9th June 2017 in support of the Petition and a Supplementary Affidavit dated 14th June 2017. The gist of the two affidavits is that the 1st Respondent is a member of the Jubilee Party and never resigned from that Party and that the purported letter of resignation dated 5th April 2017 is intended to procure fraudulent clearance by the 2nd Respondent. It is also claimed that the letter of resignation was never received by the Jubilee Party and that although it is stamped by Jubilee Party that stamp is not signed by Jubilee. It is further claimed that although the said letter is copied to the 2nd Respondent and the Registrar Political Parties these two institutions never acknowledged receipt of that letter and that the letter has been fabricated.

The petitioners are represented by Mr. Waweru Gatonye, Mr. Wanyama and Mr. Njenga. Mr. Wanyama submitted that the 1st Respondent is a member of Jubilee Party; that his name was submitted by the party to the IEBC as the party's aspirant for the position of Governor in Murang'a County and was gazetted in Gazette Notice No. 3796 dated 13th April 2017; that the 1st Respondent actively participated in Jubilee Party campaigns; that once the Jubilee Party submitted the name of the 1st Respondent to IEBC as its candidate for gazettelement there was no window for him to resign and join another party; that the gazettelement was done before the deadline of 5th April 2017 and that the 1st Respondent took part in the Jubilee Party's Primaries with results showing he received 6210 votes.

Mr. Wanyama exhibited a letter dated 14th June 2017 written by Nicodemus Bore a Director of Membership Development in the Jubilee Party confirming to the effect that the 1st Respondent is a member of Jubilee Party bearing membership number JP207837. The letter further goes on to state that the 1st Respondent participated in Jubilee Party's primaries and had paid Kshs. 500,000 nomination fee and that he never resigned from Jubilee Party. Mr. Wanyama challenged the letter from the Registrar of Political Parties dated 25th April 2017 submitting that this letter was issued after Party Primaries and it confirms that the 1st Respondent is a member of Mzalendo Saba Saba Party contrary to Section 14 of the Political Parties Act that prohibits persons from being members of more than one political party. He submitted that the gazette notice was not challenged nor did the 1st Respondent complain to the Jubilee Party, the IEBC or the Registrar of Political Parties. He submitted that political rights are not absolute and referred this court to **Council of County Governors v Attorney General & Another, Constitutional Petition No. 56 of 2017 reported in [2017] eKLR** in which the court dismissed a case questioning the constitutionality of Section 28 of the Elections Act of the Elections Laws (Amendment) Act 2016.

The Petition is opposed. The 1st Respondent has filed a Replying Affidavit dated 13th June 2017. He describes himself as the aspirant for the gubernatorial position in Murang'a County on Mzalendo Saba Saba Party and that he has been registered by the Registrar of Political Parties. He deposes that he was a

member of Jubilee Party but has since resigned through a letter dated 5th April 2017 addressed to the Secretary General of Jubilee Party. He deposes that through the advice of his legal counsel he believes that resignation of a member of a political party takes effect upon receipt of a notice of resignation by virtue of Section 14 (2) of the Political Parties Act; that it was not his duty to follow up on the de-gazettement process but the duty of Jubilee Party to notify the Registrar of Political Parties who proceeds to have the name removed from the Political Parties Register. He deposes that the resignation letter was unequivocal and categorical that he did not wish to participate in the Jubilee Party's Primaries and that it was not his duty to follow up on the publication of candidates on the ballot papers. He deposes that he was issued with an extract by the Registrar of Political Parties on 8th April 2017 confirming that he was a member of Mzalendo Saba Saba Party, membership number MSS2302824, and that this was consistent with and meets the requirement of 120 days' timeline before elections. He deposes that the gazette notice published on 13th April 2017 did not reflect the correct position since he had resigned from the Jubilee Party.

Mr. Regeru for the 1st Respondent submitted that the Petition lacks merit both in law and in fact and that it is not a proper constitutional petition. He submitted that the onus is on the Petitioners to provide solid evidence to prove that the 1st Respondent is guilty of "party hopping" or that he is a member of both the Jubilee Party and the Mzalendo Saba Saba Party. He submitted that the 1st Respondent is not "party hopping" because he had resigned from the Jubilee Party before he became a member of Mzalendo Saba Saba Party as deposed in his Replying Affidavit. Mr. Regeru stated that the 1st Respondent's letter of resignation dated 5th April 2017 was submitted to the Jubilee Party and was received on the same day as evidenced by the stamp of the Jubilee Party appended on the face of it. Mr. Regeru further submitted that the letter from the Jubilee Party written by Nicodemus Bore, the Director Membership Development, dated 14th June 2017 to the effect that the 1st Respondent is a member of the Jubilee Party is not enough to dislodge the letter of resignation by the 1st Respondent; that the letter is part of the evidence presented to court by the Petitioners who have no authority to speak on behalf of the Jubilee Party on the issue of 1st Respondent's membership with that Party; that what was required was affidavit evidence from an authorized officer of Jubilee Party confirming that the 1st Respondent is their member and that he never resigned from the party.

Mr. Regeru cited Section 14 (2) of the Political Parties Act to show that resignation of a member of a political party takes effect upon receipt by the political party of a resignation letter from the member. He submitted that the 1st Respondent had no duty under the law to follow up on his resignation once he tenders the resignation letter and that it was upon the Jubilee Party to notify the Registrar of Political Parties of such resignation. He submitted that Jubilee Party failed to act as required by law and failed to do due diligence to ensure that the name of the 1st Respondent is not retained in their records and is not forwarded to the 2nd Respondent for gazettement. Counsel submitted that even assuming that the resignation letter was not received by the Jubilee Party as claimed by the Petitioners, there are other methods of ceasing to be a member of a political party such as those found under Section 14 (5) of the Political Parties Act including joining another political party or promoting the ideology, interests or policies of another political party.

On the issue that the 1st Respondent participated in the campaigns for party primaries for Jubilee Party it was submitted that there is no evidence to support that allegations; for instance the Petitioners did not display before the court the 1st Respondent's campaign material such as billboards, advertising posters, digital or print media material, 1st Respondent's manifesto and affidavits by party agents that the 1st Respondent participated in the Jubilee Party campaigns for its party primaries after he had resigned. It was submitted that the 1st Respondent did not participate in the campaigns because he was no longer a member of Jubilee Party having resigned.

It was further submitted that there is no evidence tendered to prove that the 1st Respondent paid the nomination fee of Kshs. 500,000 or if he paid, when this payment was done, whether it was before or after resignation. It was submitted that there is no proof of infringement of Petitioners' constitutional

rights by the 1st Respondent and discrimination by the 2nd Respondent and that the authority cited by the Petitioners, **Petition No. 56 of 2017** (supra), is irrelevant to this case. Mr. Regeru urged this court to reject the amended petition with costs to the 1st Respondent.

Mr. Obodi for the 2nd Respondent opposed the Petition. He associated himself with the submissions of the 1st Respondent and submitted that there are no violations of fundamental rights and that the purported constitutional petition sounds more like an appeal; that the supplementary affidavit introduces new matter that was not before the 2nd Respondent's Committee without leave of the court; that the decision by the IEBC Dispute Committee is sound in law; that during the hearing before the Committee the resignation letter was addressed and the Committee found that the 1st Respondent had resigned from the Jubilee Party on 5th April 2017. He submitted that the resignation by law took effect on 5th April 2017 and therefore the 1st Respondent could not have been involved in subsequent party primaries of the Jubilee Party. On question of gazettement it was submitted that the 2nd Respondent gazettes names as submitted by political parties and that the name of the 1st Respondent was submitted by the Jubilee Party among other names and were accordingly gazetted; that the 2nd Respondent takes no blame in effecting such gazettement and therefore the decision of the 2nd Respondent's Committee is sound in facts and in law. Counsel asked this court to uphold it.

In reply to the issues raised by the Respondents in their respective submissions, Mr. Gatonye submitted that the petition is well founded in law and that violations of the constitution have been proved. He submitted that Article 258 of the Constitution gives Petitioners legal standing to come to this court and that by clearing the 1st Respondent as nominated candidate for Governor for Murang'a County on another party when he was a member of the Jubilee Party the respondents violated the Constitution. Counsel further submitted that this court is clothed with jurisdiction under Article 165 (6) to supervise the IEBC Dispute Committee. He further submitted that party primaries is a regulated process and is a matter of public interest; that the 1st Respondent did not deny that he participated in campaigns and did not file an affidavit to counter evidence that he campaigned in Jubilee Party primaries. He also submitted that the letter from the Jubilee Parties Director of Membership Development attached to the Petitioners' supplementary affidavit is written by a bona fide officer of the Jubilee Party and it has not been challenged by the respondents.

On his part Mr. Njenga emphasized that the totality of the evidence in court is that the status of membership of the 1st Respondent has been unequivocally clarified by the Jubilee Party and that the entire decision of the IEBC Committee is based on the letter of resignation and therefore it is unfounded and cannot stand.

Determination

I have taken time to examine, analyze and understand the issues brought before me. I want to determine this matter by addressing what I consider the main issues which in my view are two: firstly, whether the Respondents violated the Constitution and the law and secondly, whether the Petitioners are entitled to the orders of certiorari.

Whether the Respondents violated the Constitution and the law

This issue is centered on the claim that the 2nd Respondent cleared the 1st Respondent to vie for the position of Governor in Murang'a County on Mzalendo Saba Saba Party ticket when he was also a member of the Jubilee Party who had been gazetted as such on 13th April 2017 and who on 26th April 2017 participated in the Jubilee Party primaries as a candidate for the position of Governor in Murang'a County on Jubilee ticket. The 2nd Respondent is accused of failing to enforce compliance with the relevant election laws as required under Article 88 (4) (k) of the Constitution. The 2nd Respondent is also accused of preferential treatment of the 1st Respondent by clearing him to run on Mzalendo Saba Saba Party outside the deadline provided contrary to Article 27 (1) of the Constitution that guarantees equal

treatment and freedom from discrimination. The argument is that the 2nd Respondent did not accord equal treatment to all aspirants who were faced with the same circumstances as the 1st Respondent.

To prove that the 1st Respondent had not resigned from Jubilee Party when he was nominated on Mzalendo Saba Saba Party, the Petitioners presented special gazette notice number 3796 dated 13th April 2017 containing the list of names of persons scheduled to participate in the Jubilee Party primaries on 26th April 2017. The name of the 1st Respondent appears on the list for aspirants for the position of Governor for Murang'a County. The Petitioners also questioned the authenticity of the letter of resignation by the 1st Respondent dated 5th April 2017. They attached a letter from the Director of Membership Development dated 14th June 2017 showing that the 1st Respondent is a member of Jubilee Party.

I have examined the applicable law, the evidence presented in court including submissions by all counsels on this matter and the cited authorities. Article 36(1) of the Constitution guarantees every person the right to freedom and association. This includes the right to form, join or participate in the activities of an association of any kind. A Political Party is one such association. Article 38 of the Constitution guarantees every citizen right to make political choices freely which includes the right to form, or participate in forming, a political party and to participate in the activities to that party. Even with these constitutional guarantees, a person in enjoying these rights must do so within the law. He/she cannot belong to more than one party in the name of enjoying his constitutional rights. Section 14 (4) of the Political Parties Act, 2011 states that ***“A person shall not be a member of more than one political party at the same time.”***

The 1st Respondent's case is that he is not, and was not a member of Jubilee Party or a member of both Jubilee Party and Mzalendo Saba Saba Party. He maintains that he resigned from the former and joined the latter. His evidence in support of this is the letter of resignation dated 5th April 2017 attached to his Replying Affidavit marked “MNM1”. The letter is stamped “Received” by Jubilee Party and the Stamp bears the same date 5th April 2017. It is written in capital letters, perhaps for emphasis, and it categorically states as follows:

“I HEREBY FORTHWITH TENDER MY RESIGNATION AS A MEMBER OF JUBILEE PARTY, REFERENCE NUMBER JP207837. PLEASE NOT AND IMMEDIATELY REMOVE MY MEMBERSHIP FROM THE PARTY REGISTER. CONSEQUENTLY, I ALSO HEREBY DULY WITHDRAW FROM PARTICIPATING IN THE JUBILEE PARTY NOMINATIONS FOR GOVERNOR MURANG'A COUNTY SCHEDULED FOR FRIDAY 21ST APRIL 2017. ANY INCONVENIENT CAUSED IS DEEPLY REGRETTEED.”

He has also attached a document from the Office of the Registrar of Political Parties marked “MNM2”. It shows that the 1st Respondent is a member of Mzalendo Saba Saba Party, Member Number MSS2302824 and shows that he was registered to that party on 8th April 2017. I have looked at Section 14 (1), (2), (3) and (3A) of the Political Parties Act 2011. I have cited it below:

14. Resignation from political party

(1) A member of a political party who intends to resign from the political party shall give a written notice prior to his resignation to—

(a) the political party;

(b) the clerk of the relevant House of Parliament, if the member is a member of Parliament; or

(c) the clerk of a county assembly, if the member is a member of a county assembly.

(2) The resignation of the member of the political party shall take effect upon receipt of such notice by the political party or clerk of the relevant House or county assembly.

(3) The political party of which the person is a member, the member, or the clerk of the relevant House of Parliament or of a county assembly of which the person is a member shall notify the Registrar of such resignation within seven days of the resignation.

(3A) Upon receiving the notification under subsection (3), the Registrar shall cause the name of such member to be removed from the membership list of that political party.

(Emphasis is mine)

These provisions are clear and unambiguous. On the face of facts presented by the 1st Respondent he served a notice of resignation that was in written form. It was received by Jubilee Party and was stamped. This was on 5th April 2017 and within the legal times lines. Under the provisions cited above this notice took effect upon receipt by Jubilee Party. In **William Omondi v Independent Electoral and Boundaries Commission & 2 others, Petition No. 288 of 2014 reported in [2014] eKLR** cited by counsel for the 1st Respondent, Justice Lenaola, as he then was, dealt with a similar issue. He was of the view that resignation of a member from a political party takes effect, becomes operational and comes into force when the political party receives the letter of resignation. In this matter the authenticity of the Jubilee Stamp acknowledging receipt of the letter of resignation has been questioned. Evidence is required to support that questioning. The evidence available is a letter from Jubilee Party showing that the 1st Respondent is a member of that party. There is also gazette notice mentioned above in this judgment and a copy of a letter from the Office of the Registrar of Political Parties dated 25th May 2017 addressed to Simon Kabiru showing that according to the records held by that office as at the date of that letter the 1st Respondent was a member of Mzalendo Saba Saba Party.

As submitted by the Respondents through their legal representatives, there is no affidavit by an authorized officer of Jubilee Party confirming that the 1st Respondent is still their member, that he never resigned from Jubilee Party and that he participated in the campaigns for the primaries of Jubilee Party. There is no evidence by affidavit from an authorized officer of Jubilee Party that the party never received the resignation letter from the 1st Respondent or that the stamp of the Jubilee Party appended to that letter acknowledging receipt is not genuine but a forgery. I agree with judge in **Geoffrey King'ang'I Muriri v Peter Kamau Nyutu & another, Election Petition No. 49 of 2017 reported in [2017] eKLR**, that material evidence from institutions like the Jubilee Party has not been presented to court. In that case the court found that the possession of the party's membership card per se was not proof that the person was still a member of that party. In our case, without evidence by way affidavit from an authorized officer from Jubilee Party that Jubilee Party did not receive the letter of resignation in issue or that the Party's stamp was stolen or forged, this court is left with the evidence of the 1st Respondent that he resigned from the Jubilee Party. On a balance of probability, the evidence by the 1st Respondent holds sway.

Further, it was submitted that the 1st Respondent actively participated in the campaigns for party primaries for Jubilee Party. This court agrees with the respondents that there is no evidence in court of participation by the 1st Respondent in that campaign, perhaps by exhibiting campaign material like billboards, digital or print media material, affidavits by Party agents or even photographs. The Petitioners are relying on gazette notice bearing 1st Respondent's name. This court harbours doubts as to the reason that name was gazetted. Could it be due to the Jubilee Party's negligence in taking action and effecting the resignation letter? Evidence from Jubilee Party on this issue, which is lacking, would have cleared that issue.

I have considered the letter from the Director of Membership Development of Jubilee Party. It says nothing about the resignation letter. It only talks about 1st Respondent being a member of that party and payment of nomination fee. Evidence of that payment, and when it was paid is not proved. The copy of a letter to one Simon Kabiru from the Registrar of Political Parties is categorical that as at 25th May 2017 when the enquiry was made, the 1st Respondent was a member of the Mzalendo Saba Saba Party. It does

not state say that he was not a member by 8th April 2017 as shown in the other document “MNM2” presented to court by the 1st Respondent states.

To settle this issue, it is my considered view that the Petitioners have failed to prove, on a balance of probability, that the 1st Respondent is, and was, a member of the Jubilee Party at all material times relevant to this case. The Petitioners have failed to enjoin the Jubilee Party to these proceedings to provide evidence that the 1st Respondent did not resign and is still a member of it, or that the letter of resignation was not received by that Party or that the Party’s Stamp was forced or stolen. I find evidence by the 1st Respondent that has not been controverted, that he had resigned from the Jubilee Party; that his resignation letter became operative upon receipt by the Jubilee Party on 5th April 2017. The law is clear that it is upon the political party to notify the Registrar of Political Parties of such resignation to enable formalization of the process of removing such a member from the Political Parties records. It is also upon the party to reconcile its records and ensure that such a member’s name is not retained in their record. The 1st Respondent was not under a duty to present his own name to IEBC for gazette to participate in the party primaries of Jubilee Party.

With that conclusion, it is my view that the Petitioners have failed to prove that the Respondents have violated the Constitution and the law as claimed in the Petition. The 1st Respondent, having duly resigned from the Jubilee Party, exercised his constitutional rights of association and participation in a political party of his choice, the Mzalendo Saba Saba Party.

Whether the Petitioners are entitled to the orders of certiorari

In granting the order of certiorari the court is exercising its discretionary powers. This Petition seeks orders of certiorari in addition to declarations. It is brought in a manner that is not specifically a constitutional petition or a matter for judicial review. Indeed it is because of this lack of clarity that the counsels for respondents raised issues as to whether it is an appeal and whether the Petition is merited. That notwithstanding, this court will not lay undue emphasis to procedural technicalities but would rather deal with substantive issues.

In **Cortec Mining Kenya Limited v Cabinet Secretary, Attorney General & 8 others**, [2015] eKLR, the Court of Appeal stated as follows:

“In general, where a matter of public law as opposed to private law is directly involved, proceedings for orders of certiorari, mandamus, and prohibition may be resorted to. It is important to appreciate that these orders are public law remedies. They issue against public officers or public bodies performing public duties. Certiorari issues to quash decisions for errors of law in making such decisions or for failure to act fairly towards the person who may be adversely affected by such decision. Prohibition is directed to an inferior tribunal or body and forbids such tribunal or body from continuing proceedings in excess of its jurisdiction or in contravention of the laws of the land. It lies not only for lack of jurisdiction or excess of it, but also for departure from rules of natural justice.”

In **Arthur Wamiti Njoroge v The Disciplinary Tribunal and another (interested party)**, Constitutional Petition No. 555 of 2015, the court stated that:

The legitimacy of judicial review is based on the rule of law, and the need for public bodies to act according to law. Judicial review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the courts is to uphold the fundamental and enduring values that constitute the rule of law. As with any other form of governmental authority, discretionary exercise of public power is subject to the courts supervision in order to ensure the paramountcy of the law. As long as the processes followed by the decision-maker are proper, and the decision is within the confines of the law, a court will not interfere.”

The Petitioners bear the onus of proving that they are entitled to the order of certiorari. They have to prove that the decision of the IEBC Dispute Committee is illegal, irrational or unreasonable or it offends the principle of natural justice. The Committee was acting within its legal mandate to listen to a dispute involving clearance of the 1st Respondent. Parties appeared before it and presented evidence. The Committee singled out one issue: whether the Respondent's nomination to vie for the governorship of Murang'a County under Mzalendo Saba Saba Party is valid. The Committee analysed the evidence and the law and concluded that the 1st Respondent had resigned from the Jubilee Party and that his letter of resignation dated 5th April 2017 and served on the Jubilee Party on the same day had not been challenged by the Complainants. The Committee found the letter valid and that the nomination of the 1st Respondent in Mzalendo Saba Saba Party was not disputed and confirmed the same.

In a matter where certiorari is sought, it is not the merits of the decision that is challenged but its legality. My finding is that the IEBC Dispute Committee's decision dated 7th June 2017 is based on available evidence and applicable law. There is nothing illegal about it. Consequently, the Petitioners are not entitled to the orders of certiorari they are seeking. In the same breath, it is my view that the declarations sought in prayers (A) and (B) are not available to the Petitioners given my reasoning in this judgment.

In conclusion therefore and in view of my analysis of the facts, the law and the cited authorities, I find that the Petitioners have failed to prove the case against the Respondents. Consequently, the Petition dated 9th June 2017 and amended on 12th June 2017 is hereby dismissed with costs to the Respondents.

Orders shall issue accordingly.

Signed, delivered and dated at Nairobi this 15th day of June 2017.

S. N. MUTUKU

JUDGE