

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW AND CONSTITUTIONAL DIVISION

IEBC NOMINATION APPEAL NO. 2 OF 2017

SHEM ODONGO OCHUODHO.....APPELLANT

VERSUS

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....1ST RESPONDENT

MICHAEL KOSGEI (HOMABAY COUNTY

RETURNING OFFICER IEBC).....2ND RESPONDENT

RULING

1. I have had a chance to peruse the papers filed herein by the Appellant. He has moved the court by way of a Memorandum of Appeal dated 9th June, 2017.
2. Among prayers sought is one seeking to have the judgement and decree of the 1st Respondent set aside.
3. The judgement and decree sought to be set aside is not annexed to the appeal or the supporting affidavit.
4. The Applicant has annexed a copy of a complaint Form without annexing the complaint which he presented to the 1st Respondent leading to the judgment and or decree he now challenges before this court.
5. The key issue in this appeal however is that of jurisdiction. This is an appeal against the decision of the IEBC. I asked Counsel for the Appellant to address me on this issue. All the Counsel did was to refer to the various Articles of the Constitution cited on the face of the Appeal. These are **Articles 1, 2, 3, 10, 19, 21, 22, 27, 32, 36, 38, 47** and **50** of the **Constitution**.
6. **Section 74(1)** of the **Elections Act** gives the IEBC responsibility inter alia, to settle disputes relating to or arising from nomination. This section does not however give any right of appeal to settlements reached by the IEBC. In fact even the Constitution does not give a right of appeal against the decision reached by the IEBC.
7. Had the Appellant in addition to invoking **Article 23** of the **Constitution** which he did, sought judicial review orders, the court could have considered this matter. Having not sought any writs the court has no jurisdiction on the matter.
8. For these reasons, I find that the Appeal is incompetent and is accordingly struck out with no order as to costs.

DATED AT NAIROBI THIS 13TH DAY OF JUNE, 2017.

LESIT, J.

JUDGE