



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 354 OF 2013

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

THE INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION 2ND RESPONDENT

RULING

1. Mr Okiya Omtatah Okoiti, a renowned civil activist, has moved this court by a petition dated 8th July 2013. In particular he states that the rights of certain persons have been violated and he seeks, inter alia, the following orders;

[b] A declaration that the rights of the parties in the complaint challenging the nominations of Diana Kethi Kilonzo and Philip Kaloki to the equal protection and benefit of the law, under Article 27 of the Constitution, have been violated, breached and or threatened.

[c] A declaration that the rights of the parties in the petitions challenging the nominations of Diana Kethi Kilonzo and Philip Kaloki to fair administrative action, under Article 47 of the Constitution, has been violated, breached and or threatened.

[d] A declaration that the rights of the parties in the petition challenging the nominations of Diana Kethi Kilonzo and Philip Kaloki to a fair trial, under Article 50 of the Constitution have been violated, breached and or threatened.

2. The petitioner in his deposition confirms that the Independent Electoral and Boundaries Commission (“IEBC”) constituted as a tribunal is hearing certain complaints relating to the nomination of Philip Kaloki and Kethi Kilonzo as candidates for the forthcoming senatorial by election for Makueni County. The proceedings of the IEBC Dispute Resolution Committee

(“Committee”) are still ongoing.

3. The petitioner has urged the court in the Chamber Summons dated 8th July 2013 to restrain the proceedings of the Committee from proceeding. He argues that he has brought these proceedings on behalf of Philip Kaloki and Kethi Kilonzo and the public interest to ensure that the Committee follows the Constitution.
4. He also avers that the IEBC Committee is acting in breach of the rules of natural justice and that the IEBC cannot be a judge and prosecutor on its own cause as this is a breach of **Article 50** which protects the right to a fair hearing. This right under **Article 50**, he avers, cannot be limited by virtue of **Article 24**.
5. **Article 22** of the Constitution has broadened the horizons of *locus standi* to institute proceedings to enforce fundamental rights and freedoms thus a person is entitled to act on his own to protect his own rights and in terms of **Article 22(2)(a)**, **“to act on behalf of another person who cannot act in their own name.”**
6. These proceedings are an attempt to interpose the proceedings before the Committee and there is nothing in the petition to show that Philip Kaloki and Diana Kethi Kilonzo cannot act in their own name or on their own behalf. They are part of ongoing proceedings and they are able to defend themselves in those proceedings. To permit the petitioner to proceed in the manner he suggests would interfere with the rights of third parties who are not even party to these proceedings.
7. Flowing from above reasoning, I decline to permit parallel proceedings to interfere with a body that *prima facie* has jurisdiction to determine electoral disputes under **Article 88(4)(e)** of the Constitution which provides that **“The Commission is responsible for ... the settlement of electoral disputes including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results.”**
8. The result of my finding is that the proposed proceedings are an abuse of the court process. I have warned myself that the court ought not exercise its drastic power to terminate proceedings at an ex-parte stage but this is a clear case for the Court to act for the reasons I have outlined. To permit the proceedings to go on would impose unnecessary costs on third parties, embarrass a tribunal exercising lawful jurisdiction and bring justice in disrepute by entertaining such parallel proceedings.
9. The petition and application are struck out.

DATED and DELIVERED at NAIROBI this 8th July 2013.

D.S. MAJANJA

JUDGE

Mr Okiya Omtatah Okoiti, the petitioner in person *ex-parte*.