



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**  
**CIVIL SUIT NO.141 OF 2011**

**JOHN WEKESA**  
**WASIKE.....PLAINTIFF/APPLICANT**

**VS**

**THE ATTORNEY GENERAL.....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**HUMPHREY M. MWANGI.....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**SAULO WANAMBISI BUSOLO.....3<sup>RD</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff's case is that on 17/7/2011 he was duly nominated as a candidate for the election of directorship to the Kenya Sugar Board to represent Nzoia Sugar Belt cane growers. The elections were to be held on 21/7/2011. The returning officer was the 2<sup>nd</sup> Defendant. He unjustifiably and without notice or reasons removed his name from the list of candidates. The elections were eventually held without him and the 3<sup>rd</sup> Defendant declared to be the winner. This suit was filed on 8/12/2011 for a declaration that the elections and the results thereof in respect of Nzoia electoral area were null and void because he was denied his right to contest the same and because the electorate was denied the opportunity to elect him. He also sought general and exemplary damages. With the suit was filed an application by way of motion seeking that pending the hearing and determination of the suit the *status quo* prevailing be maintained by the parties. The Plaintiff was asking that the 3<sup>rd</sup> Defendant should not be gazetted until the suit is heard and determined.

When the application came for hearing Mr. Masinde for the 3<sup>rd</sup> Defendant had filed grounds of opposition. One of the grounds was that this court did not have the jurisdiction to hear and determine the suit in view of the Sugar Act no.10 of 2001 and the Sugar (Elections) Regulations, 2011. He was referring to Regulation 13 which provides as follows:

*“13. (1) A person aggrieved by the decision of the returning officer to reject his candidature or right to vote may appeal to the Tribunal within fourteen days of the date of rejection and such appeal shall not operate as a stay of the elections unless the Tribunal so orders.*

*(2) Notwithstanding the provisions of paragraph (1) all disputes arising out of an election under these regulations shall be lodged with the Tribunal for determination.”*

The regulations relate to the election of grower and miller representatives to the Kenya Sugar

Board. They have been made by the Minister for Agriculture under section 33 of the Act. Under section 33 (1) of the Act the Sugar Arbitration Tribunal is established “*for the purpose of arbitrating disputes arising between any parties under this Act.*”

It is clear that the dispute herein is between a candidate and a returning officer. It is therefore a dispute under the Act. The contention by Mr. Masinde for the 3<sup>rd</sup> Defendant was that the dispute should have been referred to the Sugar Arbitration Tribunal for arbitration, and not to this court. He relied on the decision in **Narok County Council v. Trans Mara County Council and Another, Civil Appeal no.25 of 2002 at Kisumu** to submit that the Act and regulations have ousted the jurisdiction of this court.

Mr. Nyamu for the Plaintiff took the position that the High Court has unlimited original jurisdiction in both criminal and civil cases under Article 165 (3) of the Constitution of Kenya, 2010 and that the Sugar Act, or the regulations made thereunder, cannot limit or oust its jurisdiction to hear and determine the present dispute. He went on that, to the extent that the Act and Regulations have sought to limit or oust the jurisdiction of the court in regard to the dispute they contravene the Constitution and are under article 2 (4) void. Counsel’s contention was that the **Narok County Council case** was irrelevant to the dispute and that, in any case, the Sugar Act was enacted before the Constitution was promulgated. He relied on the decision in **Johana Nyokwoyo Buti v. Walter Rasugu Omariba & 2 others, Civil Application no.182 of 2006 at Kisumu** to say that the court had jurisdiction now that all that is sought is a declaratory judgment.

I have considered all these arguments as they relate to the issue of jurisdiction. This issue is critical because without jurisdiction the court cannot deal with the substance of the application or suit (**Owners of the Motor Vessel “Lilian S” v. Caltex Oil (Kenya) Ltd, Civil Appeal no.50 of 1989 at Mombasa**). The issue of jurisdiction is a preliminary one which, if successful, will bring the application and suit to an end (**Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696**).

In the instant case, Parliament saw it fit to enact the Sugar Act to

*“provide for the development, regulation and promotion of the sugar industry, to provide for the establishment, powers and functions of the Kenya Sugar Board, and for connected purposes.”*

It decided to set up the Sugar Arbitration Tribunal and give it the exclusive jurisdiction to deal with, among other things, all disputes arising out of an election under the Act and regulations, and specifically, disputes by a person aggrieved by the decision of a returning officer to reject his candidature or deny the right to vote. The effect of the Act was to limit and oust the jurisdiction of the High Court in as far as the specified sugar industry disputes are concerned. All was not lost, however, as the Minister for Agriculture, the Kenya Sugar Board and the Sugar Arbitration Tribunal are ultimately subject to the judicial review process of the High Court. (**Narok County Council Case**).

In the case of **Adero & Another v. Ulinzi Sacco Society Ltd [2002] 1 KLR 577** the High Court was dealing with a dispute between a registered cooperative society and its members. The Cooperative Act, 1997 in its section 76 mandated a Cooperative Tribunal to deal with all disputes between members and any registered society. The court declined to either hear the dispute or to transfer the same to the Tribunal. This was because it found it had no jurisdiction in view of the provisions of the Act.

I accept that the Sugar Act and regulations preceded the Constitution. However, they were saved by the Constitution under Article 7 of Part 2 of the Sixth Schedule of the Transitional and Consequential Provisions. Until the Act is amended or repealed it is acknowledged by the Constitution as being part of our laws.

In conclusion, the objection by the 3<sup>rd</sup> Defendant to jurisdiction is sustained. The suit and application are incompetent and are struck out with costs.

Dated, signed and delivered at Bungoma this 2<sup>nd</sup> day of March, 2012.

**0. O. MUCHELULE**

**JUDGE**