



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, OUKO & GATEMBU, JJA)

CIVIL APPEAL NO. 159 OF 2017

BETWEEN

ASWIM FAUD RUDAINY.....APPELLANT

AND

KAZUNGU WANJE BAYA.....1ST RESPONDENT

JUBILEE PARTY.....2ND RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....3RD RESPONDENT

(Appeal from the Judgment of the High Court of Kenya at Nairobi (Riech, J.) dated 28th May, 2017

in

Election Petition Appeal No. 69 of 2017)

JUDGMENT OF THE COURT

1. Aswin Faud Rudainy, the appellant, and Kazungu Wanje Baya, the 1st respondent were contestants for nomination by Jubilee Party, the 2nd respondent for the position of Member of County Assembly Shella Ward, Malindi Constituency, Kilifi County in a nomination exercise held on 26th April 2017.
2. A dispute arose over the manner in which those nominations were conducted. The Jubilee National Appeals Tribunal dealt with the dispute in what is said to have been ex parte proceedings and ordered that results of one polling station be excluded from the final tally of votes cast on the basis that that polling station was arbitrarily and abruptly been moved to a different location. The effect of the decision by Jubilee National Appeals Tribunal being that the appellant emerged as the 2nd respondent's nominee for the position of Member of County Assembly Shella Ward, Malindi Constituency, Kilifi County.
3. With a view to enforcing that decision, the appellant made an application before the Political Parties Disputes Tribunal (PPDT) to nullify a nomination certificate that had apparently been issued by the 2nd

respondent to the 1st respondent in respect of the position of Member of County Assembly Shella Ward. In a judgment delivered on the 19th May 2017, the Political Parties Disputes Tribunal (PPDT) declined to do so and dismissed the appellant's application.

4. Aggrieved, the appellant appealed to the High Court. In its judgment delivered on the 28th May 2017, the High Court at Nairobi (Riechi, J) did not find merit in the appeal and dismissed the same.

5. The appellant then lodged the present appeal challenging the decision of the High Court. At the hearing of the appeal before us, the parties were represented by Mr. Akusala and Mr. Saluny for the appellant, Mr. Washe for the 1st respondent, Mr. Omugunda for the 2nd respondent and Mr. Lawi for the 3rd respondent.

6. Having considered the appeal and the submissions filed by the parties herein and highlighted by their respective counsel together with the authorities relied on, we are not persuaded, for reasons to be given by the Court on 21st July 2017, that the appeal has any merit. We accordingly dismiss the appeal. We order each party to bear its own costs of the appeal.

Dated and delivered at Nairobi this 16th day of June, 2017.

R. N. NAMBUYE

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JUDGE OF APPEAL

W. OUKO

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR