IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KIHARA KARIUKI, PCA, GATEMBU & MURGOR, JJ.A.)

CIVIL APPEAL NO. 154 OF 2017

HON. JOHN NDIRANGU KARIUKI……..…….....……APPELLANT

VS

BENJAMIN GATHIRU MWANGI……...…..…... 1ST RESPONDENT

JUBILEE PARTY…...……...2ND RESPONDENT

(An appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (the Hon Mr. Justice J. Wakiaga dated 29th May, 2017

in

Election Petition Appeal No. 60 of 2017)

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JUDGMENT OF THE COURT

(1) This appeal arises out of the political parties primaries carried out by the Jubilee Party (the 2nd Respondent) on diverse dates within the month of April, 2017.

(2) Under **Section 41 (2)** of the **Political Parties Act**, this Court is vested with jurisdiction to hear appeals from the High Court sitting on appeal from decisions emanating from the **Political Parties Disputes Tribunal** (the Tribunal). However this jurisdiction is restricted on points of law only.

(3) Briefly the facts leading to this appeal are that the Hon. John Ndirangu Kariuki (the Appellant) and Benjamin Gathiru Mwangi (the 1st Respondent) being members of the 2nd Respondent took part in party primaries conducted by the 2nd Respondent on the 26th April, 2017, for the position of Member of the National Assembly for the Embakasi Central Constituency. The 1st Respondent was declared the winner and was issued with the Party's Nomination Certificate. The Appellant being aggrieved by that declaration filed an Appeal with the 2nd Respondent's Appeals Tribunal. The 2nd Respondent's Appeals Tribunal dismissed the Appellant's Appeal after finding that the Appellant did not prove his case beyond the required standards.

(4) On the 9th May, 2017, the Appellant lodged a complaint at the Tribunal under a certificate of urgency. The matter was certified urgent and the Tribunal directed the Appellant to serve the Respondents and the

parties to file their submissions. On the 12th May, 2017, when the matter was scheduled for hearing the Respondents did not appear and the matter proceeded undefended. The Tribunal rendered its decision on 15th May, 2017, and allowed the complaint by the Appellant and directed the 2nd Respondent to determine its nominee for the Embakasi Central Parliamentary seat in a manner compatible with its Constitution, Election and Nomination Rules.

(5) The 1st Respondent was aggrieved by this decision of the Tribunal and proffered an appeal against it in the High Court. The 1st Respondent contended *inter-alia* that the Appellant did not serve him with the pleadings filed before the Tribunal which was the reason why he did not enter appearance culminating in the matter proceeding *ex-parte*. The Appellant on the other hand argued that there was proper service of the pleadings and an affidavit of service was filed to that effect.

(6) The High Court allowed the Appeal after making a determination that there was no service of the hearing notice upon the 1st Respondent. The High Court further directed that the Nomination Certificate that had initially been issued to the 1st Respondent be reinstated and directed further that the matter be heard afresh on merit before the Tribunal.

(7) The Appellant being dissatisfied with that decision now brings this appeal before us. The Appeal is based on four grounds namely, that:

a) the learned judge erred in law by holding and finding that the Respondents were not served with the hearing notice for the case when in fact the said Respondents had ignored appearing at the date and time appointed by the Tribunal's orders;

b) the learned judge erred in law by holding that there was no service of the hearing notice whereas there was no holding of the non-service of the initial pleadings which by themselves had indications and directions as to hearing on account of the affidavit of service on record;

c) the learned judge erred in law by allowing the appeal to proceed for determination when the court lacked jurisdiction to hear it on account of the parallel nature of the proceedings and the non disclosure thereof by the 1st Respondent; and

d) the learned judge erred in law by disturbing the judgment in the Appellant's favour legally obtained through prosecution of the claim at the Tribunal.

(8) The parties filed their written submissions which were highlighted before us. We have considered the record, the respective submissions by learned counsel and the authorities cited. Under **Rule 32 (5)** of this **Court's Rules**, this Court is allowed after hearing of an appeal to give its decision but reserve its reasons. The Rule Provides that:-

"Notwithstanding sub-rule (1), the Court may at the close of the hearing of an application or appeal, give its decision but reserve its reasons and in such a case the reasons may be delivered in court or deposited in the Registry or sub-registry in the place where the application or appeal was heard within ninety days and where the reasons are so deposited, copies thereof shall be available to the parties and they shall be so informed".

(9) In our view this Appeal is not merited.

Accordingly and for reasons which we shall give on the 21st July, 2017 in our reserved judgment, we hereby dismiss this appeal with costs.

Orders accordingly.

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

P. KIHARA KARIUKI, PCA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

……..…

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR