



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPEAL NO. 157 OF 2017**

**HON. SAMUEL KALII KIMINZA.....APPELLANT**

**VS**

**JUBILEE PARTY.....1<sup>ST</sup> RESPONDENT**

**HON RACHAEL NYAMAI.....2<sup>ND</sup> RESPONDENT**

***(An appeal from the Judgment and Decree of the High Court***

***of Kenya at Nairobi (the Hon Mr. Justice Aggrey***

***Muchelule) dated 22<sup>nd</sup> May 2017***

***in***

***Election Petition Appeal No. 58 of 2017)***

**JUDGMENT OF THE COURT**

1. This is a second appeal from the initial decision of the Political Parties Disputes Tribunal (the Tribunal) arising out of the political parties primaries.
2. Briefly, the facts leading to this appeal are that the Hon. Samuel Kalii Kiminza (the Appellant), and the Hon. Rachael Nyamai (the 2<sup>nd</sup> Respondent) being members of the Jubilee Party (the 1<sup>st</sup> Respondent) were to take part in party primaries conducted for the position of Member of the National Assembly for the Kitui South Constituency. However, it would appear that no nominations for that position were conducted by the 1<sup>st</sup> Respondent. The Appellant lodged an initial complaint before the Tribunal which complaint was dismissed for the reason that the Appellant had ignored the internal dispute resolution mechanisms for the Jubilee Party. Meanwhile, the 1<sup>st</sup> Respondent directly nominated the 2<sup>nd</sup> Respondent and issued her with a Nomination Certificate.
3. The Appellant, through its advocates, wrote to the 1<sup>st</sup> Respondent on the 10th May 2017 seeking to know why the 2<sup>nd</sup> Respondent was given direct nomination, as well as why the nomination exercise did not take place. This letter did not elicit any response from the 1<sup>st</sup> Respondent, and consequently the Appellant filed another complaint at the Tribunal. The Tribunal, after hearing the complaint decided that the 1<sup>st</sup> Respondent had failed to conduct free and fair nominations and directed that a fresh nomination

exercise be held.

4. The 2<sup>nd</sup> Respondent was aggrieved by the Judgment and appealed to the High Court. Muchelule J after hearing the Appeal allowed it and set aside the orders of the Tribunal. In allowing the Appeal the learned Judge held that the Appellant had not exhausted the 1<sup>st</sup> Respondent's Internal Dispute Resolution Mechanisms and therefore the Tribunal did not have jurisdiction to hear the matter.

5. The Appellant was dissatisfied with this decision and filed an appeal before this Court relying on three grounds, namely that:-

a. The Honourable Judge erred in law in finding that the Political Parties Disputes Tribunal lacked jurisdiction to hear and determine Complaint No. 121 of 2017

b. The Honourable Judge erred in law in ignoring section 19 of the Political Parties (Amendment) (No. 2) Act, 2016 which amended section 40 (1) of the Political Parties Act, 2011 to give the Political Parties Tribunal Original and Direct Jurisdiction over disputes arising out of Party Primaries.

c. The Honourable Judge erred in law in failing to uphold the decision of the Political Parties Disputes Tribunal even after it found that the direct nomination of the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent was irregular.

6. The 2<sup>nd</sup> Respondent filed a cross-appeal on the ground that the learned Judge had erred in failing to make a determination on the legality or otherwise of her direct nomination.

7. 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 render its decision but reserve its reasons for such decision. Therefore, we shall give our reasons on the reserved judgment.

8. In our view, this Appeal is merited.

Accordingly, and for reasons which we shall give on the 21<sup>st</sup> July, 2017 in our reserved judgment, we hereby allow this appeal with costs, set aside the judgment of the High Court given on the 22<sup>nd</sup> May, 2017, and order the 1<sup>st</sup> Respondent to conduct fresh nominations for Member of the National Assembly for the Kitui South Constituency within the next forty eight (48) hours from 4:00 pm today the 16<sup>th</sup> June, 2017. Orders accordingly.

**Dated and delivered at Nairobi this 16<sup>th</sup> day of June, 2017.**

**P. KIHARA KARIUKI, PCA**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCI Arb**

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**JUDGE OF APPEAL**

**A. K. MURGOR**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**