



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WAKI, OUKO & GATEMBU, JJ.A)

CIVIL APPEAL NO. 214 OF 2017

BETWEEN

JUDITH ANYANGO ELIZABETH OYUGI APPELLANT

AND

INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION (IEBC)

(DISPUTES RESOLUTION COMMITTEE OF THE INDEPENDENT ELECTORAL

& BOUNDARIES COMMISSION).....1ST RESPONDENT

JOSEPH NUNDA AWICH2ND RESPONDENT

ORANGE DEMOCRATIC MOVEMENT PARTY..... 3RD RESPONDENT

(Being an appeal from the Ruling and the Order of the High Court at Siaya, (Makau, J.) delivered on 30th June, 2017

in Judicial Review Appl. No. 2 of 2017 Original No. 332 of 2017 Arising from Complaint No. 334 of 2017 – Nairobi)

JUDGMENT OF THE COURT

The High Court sitting at Siaya (Makau, J.) in dismissing the appellant’s notice of motion for orders of judicial review brought pursuant to **Articles 22, 23, 47, and 258** of the Constitution, **sections 8 and 9** of the Law Reform Act and **Order 53 Rule 1(1)(2) and (4)** of the Civil Procedure Rules, determined in a ruling delivered on 30th June, 2017 that the appellant was gazetted as an independent candidate for Member of County Assembly for East Asembo Ward, having withdrawn her membership of the 3rd respondent; that her gazettement as the 3rd respondent’s nominee was of no effect as it contravened the law and the 3rd respondent’s own nomination rules; and that, in view of the strict timelines in the nomination process, personal service upon the appellant was not practical; that in any case the appellant herself frustrated all efforts to effect service on her; and that having been informed of the complaint lodged against her through a telephone call by the 1st respondent, the appellant was duly given an opportunity to be heard but squandered it.

On those two grounds the learned Judge declared that the motion was bereft of any merit, dismissed it and

directed each party to bear own costs. It ultimately directed that the 2nd respondent's name be gazetted as the nominee of the 3rd respondent for Member of the County Assembly, East Asembo Ward, Rarieda Constituency.

This appeal has been brought to challenge that ruling.

We heard the oral highlights by learned counsel on the written submissions, considered the authorities relied upon, and for the reasons to be given on **29th September, 2017**, we are of the considered opinion that the learned Judge misdirected himself on the law and as a result arrived at an erroneous conclusion on the questions placed before him.

Accordingly, we allow the appeal, set aside the ruling and orders of the High Court made on 30th June, 2017. By this judgment the 1st respondent is ordered to gazette the name of the appellant, **Judith Anyango Elizabeth Oyugi**, as the nominee of the 3rd respondent for Member of the County Assembly, East Asembo, Rarieda Constituency, Siaya County and to revoke the Kenya Gazette No. 6759 of 14th July, 2017 in the Sixth Schedule, Serial No.1467.

Parties to bear their own costs of this appeal.

Dated and delivered at Nairobi this 21st Day of July, 2017.

P.N. WAKI

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JUDGE OF APPEAL

W. OUKO

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR