



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELECTION PETITION APPEAL NO. 95 OF 2017

MOFFAT MAITHA MUIA..... APPELLANT/APPLICANT

- V E R S U S -

FRIDAH MUENDI1ST RESPONDENT

JUBILEE PARTY 2ND RESPONDENT

INDEPENDENT ELECTORAL & BOUNDARIES

COMMISSION..... INTERESTED PARTY

(Being an Appeal from the judgement and decree of the Political Parties Dispute Tribunal of Kenya at Nairobi delivered on 2nd June, 2017 by Hon. Kyalo Mbobu, Paul Ngotho and Desma Nungo vide Complaint No. 307 of 2017))

JUDGEMENT

1. On 2nd June 2017, the Political Parties Dispute Tribunal (PPDT) delivered its decision in respect of a complaint filed before it by Fridah Muendi, the 1st respondent herein. In the aforesaid decision, PPDT issued orders in which it *inter alia* directed Jubilee Party, the 2nd respondent herein to forward the name of Fridah Muendi to I.E.B.C, the Interested Party herein for gazette as the 2nd respondent's nominee for Member of County Assembly aspirant for Matungulu West Ward, Matungulu Constituency. In the same decision PPDT also issued an order to restrain the Interested Party from including the name Moffat Maitha Muia as the 2nd Respondent's nominee for member of County Assembly for Matungulu West Ward, Matungulu Constituency in the Kenya gazette.

2. When the decision of PPDT was brought to the attention of Moffat Maitha Muia, the appellant herein, he preferred this appeal.

3. On appeal, the appellant put forward the following grounds.

1. THAT the Tribunal erred in law and in fact by issuing orders to the effect that the 1st respondent be issued with a nomination certificate.

2. THAT the Tribunal misdirected itself in substantially determining the case without giving the appellant a fair opportunity to be heard and substantially and consider the merits of his case.

3. THAT the Tribunal erred in law and in fact by failing to call for the 1st respondent's evidence in support of her purported victory.

4. THAT the Tribunal erred in law and in fact by failing to consider that the appellant on 9th May 2017 was issued with a nomination certificate by the 2nd respondent officials after successful nominations.

5. The Tribunal erred in law and in fact by ignoring and/or failing to consider the affidavit sworn by the 2nd respondent, in respect to the outcome of the aforesaid nomination exercise.

4. When the appeal came up for hearing, this court identified the

ground challenging service to be the main ground to determine this appeal. Consequently, learned counsels appearing in the matter were invited to make submissions over the issue of service.

5. It is the submission of Mr. Kuria, learned advocate for the appellant that the appellant was issued with the nomination certificate by the 2nd respondent on 9.5.2017 as the Jubilee Party nominee aspirant for Member of County Assembly, Matungulu West Ward. The appellant avers that on 2.6.2017 Mr. Tom Musau, the Jubilee candidate for Matungulu Constituency informed him that his nomination certificate had been set aside by PPDT. He also avers that he immediately instructed his advocate to verify the position. The appellant further states that his advocate confirmed that there were further proceedings in the Jubilee Party Appeals Tribunal where he had been named as the 1st respondent but there was no evidence of service by the complainant, the 1st respondent herein. The appellant also submitted that he was surprised by the latest decision by PPDT which was made without giving him a chance to ventilate his position over the dispute in respect to primary nominations. In short, the appellant argued that he was never served with the pleadings filed before both the Jubilee Party Appeals Tribunal and the subsequent proceedings before the Political Parties Dispute Tribunal.

6. When served with the appeal and the motion, Fridah Muendi, the 1st respondent, filed a replying affidavit to oppose the same. Attached to the replying affidavit is the affidavit of service sworn by Fred Osoro, a licensed process server.

7. In paragraph 6 of the affidavit of service, the process server avers that on 26.5.2017, he visited the appellant's home in Kisikioni Market where he effected service upon an elderly lady said to be the appellant's wife.

8. It is the submission of Mr. Nyangayo, learned advocate for the 1st respondent that the appellant was properly served since he did not controvert the aforesaid averments by another affidavit. Miss Mboche, admitted that there was no service effected upon the appellant in respect of both the proceedings before the Jubilee Party Appeals Tribunal and PPDT.

9. I have also examined the file of PPDT and it is apparent that PPDT did not give serious attention to the question as to whether or not the appellant was served. It is not in dispute that the appellant did not participate in the proceedings before PPDT. It would appear PPDT relied on the affidavit of service of Fred Osoro and believed that the appellant had been served. It is clear that the process server took an easier route to serve an elderly lady who allegedly said to be the appellant's wife. It is curious to note that the process server visited Kisikioni Market where the appellant resided and was said to be conducting political campaigns at the time yet the process server failed to take due diligence to effect personal service. PPDT did not interrogate the evidence of service before proceeding to hear the 1st respondent *ex parte*.

10. In the end, I am convinced that there was no proper service effected upon the appellant. On this singular ground, I find the appeal to be meritorious. The appeal is allowed. Consequently the decision of PPDT delivered on 2nd June, 2017 is set aside. The complaint before the PPDT is restored and should be heard afresh before another panel comprising of members other than Kyalo Mbobu, Paul Ngotho and Desma Nungo.

11. Each party to bear its own costs.

Dated, Signed and Delivered in open court this 15th day of June, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent



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