



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELECTION PETITION APPEAL NO. 87 OF 2017

ABDUL SALAM KASSIM.....APPELLANT

VERSUS

HAZEL NYAMOKI KATANA.....1ST RESPONDENT

JUBILEE PARTY KENYA.....2ND RESPONDENT

(Being an Appeal from the judgment of the Jubilee Appeals Tribunal on 27th day of May, 2017 in JAT Case No. 346 of 2017)

RULING

1. This appeal arises out of the decision made on 27th May, 2017 by the Jubilee Appeals Tribunal (hereinafter JAT) in which it upheld the 1st Respondent's complaint in Complaint No. 346 of 2017. The Appellant prays that the orders granted on 27th May, 2017 by the JAT be set aside and be substituted therefore with an order dismissing the 1st Respondent's Complaint. Further that the court do restrain the 2nd Respondent from presenting the 1st Respondent to IEBC and/or revoking the nomination certificate issued by the IEBC in his favour for the position of Senator, Mombasa County.

2. The Appellant's appeal is premised on grounds that the JAT erred in law and fact in:

- i. Upholding the 1st Respondent's Complaint;
- ii. Failing to give the Appellant time to lodge his defence or make appearance against the 1st Respondent's complaint;
- iii. Finding that 1st Respondent had discharged her evidential burden whilst he had not furnished any evidence to vary his declaration of nomination;
- iv. In cancelling the results of two polling stations that fundamentally affected the voters therein without any legal basis and on misrepresentation by the 1st Respondent;
- v. In declaring the 1st Respondent the duly nominated aspirant based on 4 polling stations rather than 6.

3. The jurisdiction of the High Court in matters pertaining to Party primaries is provided by **Section 41(2) Political Parties Act 2011** which states as follows:

“An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to both the Court of Appeal and the Supreme Court.” (*emphasis mine*)

The jurisdiction of the High Court in disputes of this nature is therefore confined to appeals from the Political Parties Dispute Tribunal.

4. Section 40(2) of the Political Parties Act stipulates that disputes between party members and the party are first to be referred to the Internal Dispute Resolution Mechanism of the party, in this case the Jubilee Appeals Tribunal. Thereafter it is the Political Parties Dispute Tribunal which has jurisdiction to determine disputes of this nature in the manner set out under **Section 40(1) and (2) of the Political Parties Act.**

5. The powers that this court has over matters falling under **Section 40** of the **Political Parties Act** are appellate from the decisions of Political Parties Dispute Tribunal. It has no powers to hear matters directly from the Internal Dispute Resolution Mechanisms of the respective parties.

6. Reasons where for the court finds that the Appellant is improperly before this court and consequently the appeal and the application flowing therefrom are struck out for want of jurisdiction.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF May, 2017.

L. ACHODE

JUDGE

In the presence offor the Appellant

In the presence offor the Respondents



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