



Case Number:	Election Petition Appeal 81 of 2017
Date Delivered:	05 Jun 2017
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	James wakiaga
Citation:	Michael Githii Gakungu v Mbogo John Joseph Njuguna & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Constitutional and Human Rights
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Petition allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**ELECTION PETITION APPEAL NO 81 OF 2017**

**MICHAEL GITHII GAKUNGU.....APPLICANT/APPELLANT**

**VERSUS**

**MBOGO JOHN JOSEPH NJUGUNA .....RESPONDENT**

**INDEPENDENT ELECTORAL AND**

**BOUNDARIES COMMISSION .....INTERESTED PARTY**

*(Being an Appeal from the Judgment and Decree of the Political Parties Disputes Tribunal in Complaint No. 268 of 2017 delivered on 25<sup>th</sup> May, 2017 at Nairobi.)*

**BETWEEN**

**MBOGO JOHN JOSEPH NJUGUNA .....CLAIMANT**

**VERSUS**

**JUBILEE PARTY OF KENYA ..... RESPONDENT**

**FURTHER JUDGMENT**

**DETERMINATION**

1. Further to my judgment, I called for affidavits from the Presiding Officers which have now been filed before the court. Most of the Presiding Officers have stated that most of those forms left their hands without any change. I have heard the Returning Officer who was cross examined by the Advocates herein.
2. From the documents presented before the court I am unable to determine who was the actual nominee of this nomination exercise taking into account the gap between the Appellant and the 1<sup>st</sup> Respondent in terms of votes received and therefore cannot establish the will of the people of Kiru Ward.
3. This is a matter where the party ought to carry out fresh nomination exercise in the entire ward so as to establish the will of the people.
4. In the final analysis, I hereby declare that there was no validly elected candidate in respect of the Kiru Ward of Mathioya Constituency.

5. The second Respondent is therefore directed to conduct fresh nomination exercise in Kiru Ward within the next 72 hours from the date herein and the Independent Electoral and Boundaries Commission to accept the candidate so nominated at the end of the exercise.

6. I therefore make the following orders.

1) The Judgment of the PPDT dated 25<sup>th</sup> May, 2017 declaring **MBOGO JOHN JOSEPH NJUGUNA** the duly nominated Jubilee Party of Kenya candidate for Kiru Ward member of County Assembly is hereby set aside.

2) The party to conduct fresh nominations in respect of Kiru Ward within the next 72 hours.

3) The candidate so nominated have his/her name forwarded and accepted by the independent electoral and boundaries commission notwithstanding any timelines in respect of the presentation of candidates

4) Each party to bear its own costs.

DATED, SIGNED and DELIVERED at Nairobi this 5<sup>th</sup> day **June, 2017**.

.....

**J. WAKIAGA**

**JUDGE**

**5/6/2017**



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