



Case Number:	Election Petition Appeal 87 of 2017
Date Delivered:	31 May 2017
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Ruling
Judge:	Lydia Awino Achode
Citation:	Abdul Salam Kassim v Hazel Nyamoki Katana & another [2017] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Constitutional and Human Rights
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	JAT Case 346 of 2017
Case Outcome:	Application struck
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**

**ELECTION PETITION APPEAL NO. 87 OF 2017**

**ABDUL SALAM KASSIM.....APPELLANT**

**VERSUS**

**HAZEL NYAMOKI KATANA.....1<sup>ST</sup> RESPONDENT**

**JUBILEE PARTY KENYA.....2<sup>ND</sup> RESPONDENT**

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

**RULING**

1. This appeal arises out of the decision made on 27<sup>th</sup> May, 2017 by the Jubilee Appeals Tribunal (hereinafter JAT) in which it upheld the 1<sup>st</sup> Respondent's complaint in Complaint No. 346 of 2017. The Appellant prays that the orders granted on 27<sup>th</sup> May, 2017 by the JAT be set aside and be substituted therefore with an order dismissing the 1<sup>st</sup> Respondent's Complaint. Further that the court do restrain the 2<sup>nd</sup> Respondent from presenting the 1<sup>st</sup> 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 1<sup>st</sup> Respondent's Complaint;
- ii. Failing to give the Appellant time to lodge his defence or make appearance against the 1<sup>st</sup> Respondent's complaint;
- iii. Finding that 1<sup>st</sup> Respondent had discharged her evidential burden whilst he had not furnished any evidence to vary the 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 1<sup>st</sup> Respondent;
- v. In declaring the 1<sup>st</sup> 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 31<sup>st</sup> DAY OF May, 2017.**

**L. ACHODE**

**JUDGE**

In the presence of .....for the Appellant

In the presence of .....for the Respondents



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