



Case Number:	Miscellaneous 169 of 2011
Date Delivered:	13 Jul 2011
Case Class:	Civil
Court:	High Court at Machakos
Case Action:	Ruling
Judge:	Paul Kihara Kariuki
Citation:	PATRICK MAKASI MUINDI v MUNICIPAL COUNCIL OF KITUI [2011] eKLR
Advocates:	-
Case Summary:	..
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
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 MACHAKOS

IN RE: CASE NO. 165 OF 2011

COUNCILLOR PATRICK MAKASI MUJINDI.....APPLICANT

VERSUS

THE MUNICIPAL COUNCIL OF KITUI.....1ST RESPONDENT

DECLINE

I have listened carefully to the several arguments advanced by both learned counsel for the applicant and the 1st Respondent.

On behalf of the Applicant, the court has been urged that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th interested Parties were nominated lawfully on the 27th June, 2008. The Applicant takes issue with them having participated in the actions which were placed at the AGM held on the 4th July, 2011.

In reply, the 1st Respondent has filed replying affidavit of the Town Clerk Lucy Wambui and I have noted the contents of Paragraphs 5 and 6 thereof in particular. The Applicant has not sought leave to file a further affidavit in reply to the matters disposed to therein. He admits that he has not taken any legal action to challenge the legality of the nominations of the said interested Party. The fact that he was not a party to the proceedings referred to in Paragraph 6 of the replying affidavit does not mean that any orders made in the judgment would not bind the 1st Respondent.

I am not persuaded that the court should grant an order of stay on the basis on the arguments that the nominations were illegal because that in the very essence to be debated in the substantive motion. If the court finds that an illegality has indeed occurred, the court will nullify the elections and order that fresh elections take place. In the result, paper No.6 in the Chamber Summons filed on the 8th July, 2011 is denied and dismissed.

The cost of the application be in the main.

Done and delivered at Mombasa this 13th day of July, 2011 at 6:52 p.m.

P. Khara Kariuki

Judge



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