



THE SUPREME COURT OF KENYA

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION VS. HON.
SABINA WANJIRU CHEGE**

SC PETITION NO. 23 (E026) OF 2022

DATE OF JUDGMENT: 12th September 2023

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Order: The Court partially allows the appeal.

Background

The appellant, the Independent Electoral and Boundaries Commission (IEBC), filed an appeal before the Supreme Court challenging the Judgment of the Court of Appeal, which found *inter alia* that the Second Schedule to the Elections Act is unconstitutional because it empowered the IEBC to conduct hearings, hear complaints and to summon witnesses; that the IEBC is not empowered to settle disputes relating to breaches of the Electoral Code of Conduct.

The appellant argued that the Second Schedule to the Elections Act and Code of Conduct are derived from the provisions of Articles 82,84, 86 and 88 of the Constitution, and that the IEBC has the responsibility to put in place appropriate structures and mechanisms to eliminate electoral malpractices. Further, the appellant argued that the establishment of its Electoral Code of Conduct Enforcement Committee was constitutionally sound, and gave it powers to summon persons alleged to have breached the Electoral Code of Conduct.

The appeal was opposed by Hon. Sabina Chege, the respondent, who had been summoned by the appellant's said Committee. She submitted that IEBC was not a quasi-judicial body as provided for under the Constitution. She also submitted that the Second Schedule was unconstitutional in as far as it conferred powers to the IEBC Committee to investigate and determine a fine or punishment. The respondent also filed a Cross-Petition in which she argued that the IEBC has only powers to develop an Electoral Code of Conduct but not to enforce it; and that, in any case, she had never subscribed to the said Code nor was she a candidate for the general election. She argued, *inter alia*, that the IEBC had no constitutional powers to investigate, charge, summon her or witnesses to the complaint thereof.

In arriving at its determination, the Supreme Court remains faithful to the edict that a Constitution must be interpreted purposively and holistically and as an integrated whole, each clause supporting the other and not destroying it.

The Court, therefore, has determined that the Electoral Code of Conduct is designed to enable the IEBC to perform its constitutional and statutory mandate, and the appellant is empowered to enforce the Code of Conduct through the issuance of summons and conducting trial proceedings. The Electoral Code of Conduct is constitutionally sound; to find otherwise would be to hamper IEBC's constitutional mandate.

The Supreme Court, therefore, cannot agree with the Court of Appeal or the High Court, that IEBC acted in excess of jurisdiction, by issuing summons to and conducting hearings, pursuant to which it meted sanctions against the respondent. We are persuaded that the appellant has jurisdiction to summon witnesses and to conduct hearings in relation to a complaint of breach of the Electoral Code pursuant to Article 88 (4)(e) of the Constitution in complement with Article 252 (3) of the Constitution. It is clear from the Constitution and the above provisions of the Elections Act, that it is mandatory for political parties, candidates, and members of the referendum committees who participate in an election or referendum under the Constitution to comply and subscribe to the Electoral Code.

The Supreme Court, however, noted that the appellant other than stating in its pleadings did not adduce any evidence to confirm that indeed the Jubilee Party subscribed to the Electoral Code for the election period which time was running from the January 20, 2022 to the declaration of the results of the general election that were held on August 9, 2022. The Court further noted that the Jubilee party was also not a party in this cause. Neither could it glean from the record that the appellant adduced proof that respondent was either a member or official of the Jubilee Party. Due to the inconclusive nature of the evidence the Court held that the respondent cannot be found liable in the instant case. The Court also found the Cross Petition incurably defective for failing to comply with the Rules of the Court.

Accordingly, the Court makes the following Orders:

- (i) The Appeal partially succeeds to the extent that the IEBC had jurisdiction to summon, hear complaints and make findings thereon, where there is breach of the Electoral Code pursuant to Article 88 (4) (e) of the Constitution.***
- (ii) The Appeal also partially succeeds to the extent that the Electoral Code of Conduct is constitutionally sound.***
- (iii) The Appeal, to the extent that the Respondent is to be found liable, is hereby dismissed.***
- (iv) The Cross-Petition is hereby struck out.***
- (v) Each party to bear its costs before this Court, the Court of Appeal and the High Court.***
- (vi) We hereby direct that, the sum of Kshs. 6,000/- deposited as security for costs upon lodging this appeal, be refunded to the Appellant.***

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