



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 109 OF 2017

ISAIAH OSORO NYARIBO.....COMPLAINANT

VERSUS

THE WIPER PARTY.....1ST RESPONDENT

ZACHARY NYAYIEMI MOTURI.....2ND RESPONDENT

JUDGMENT

BACKGROUND

1. The present Complaint relates to the 1st Respondent's nomination for Member of the National Assembly, North Mugirango Constituency, Nyamira County held on 23 April 2017. Both the Complainant and the 2nd Respondent were candidates in the said nomination exercise.
2. Results from some of the polling stations, particularly Itibo and Bomwagamo were disputed and set aside by the presiding officers. It was contended that these results would be dealt with by the 1st Respondent in Nairobi and a report made.
3. On 25 April 2017, the Complainant wrote to the 1st Respondent and simultaneously lodged a complaint in accordance with the 1st Respondent's rules. The Complainant contends that on 29 April 2017, he was notified that a repeat exercise in respect of Itibo polling station was underway, but the said exercise was never conducted as voters were driven away. He therefore contended that it was an anomaly for the results to be used to declare the winner whereas there were disputed results.

4. He therefore prayed for a nullification of the results of Itibo polling station, and for a repeat of nominations in that polling station. In the alternative, the Claimant prayed that the 1st Respondent be directed to declare the results excluding those of the disputed Itibo polling station results and that the Complainant be declared the winner of the nomination exercise.
5. The 2nd Respondent disputed the Claimant's assertion that the nomination exercise was marred with irregularities. It was their contention that the nomination exercise was smooth. He disputed the Claimant's allegations of ballot stuffing and that the results of some polling stations were set aside as alleged by the Complainant. He asserted that he had been declared the winner and that he was not aware of any complaint in respect of the nomination exercise. In support of his assertion that he had been declared winner, he attached a notification of election result stamped 5 May 2017.
6. The Claimant swore a further affidavit dated 7 May 2017 attaching results from some polling stations, what he contended were results from Itibo polling station and a copy of his party membership card.
7. While the 1st Respondent was directed on 7 May 2017, no reply or written submissions were filed. Their reply would have assisted the court in a determination of this matter.

ISSUES FOR DETERMINATION

8. From the material on record, we find that the following issues arise for determination:
 - a. Whether the nomination exercise was free and fair;
 - b. Whether the Claimant is entitled to the prayers sought

ANALYSIS

a. Whether the nomination exercise at Itibo polling station was free and fair

9. The Claimant contended that the results of the polling exercise at Itibo polling station were disputed and as a result, they ought not to have been included in the determination of the winner. However, other than unofficial results annexed to his further affidavit, he did not call any witnesses to attest to that fact. As asserted by the 2nd Respondent, a police report or the testimony of the presiding officer would have bolstered his allegation in this regard. To overturn an election result, it is not enough to make general claims. Given the public interest nature of electoral disputes, a claimant needs to provide more than generalised allegations to succeed in nullifying an election exercise. Since the same was not adduced, we are not satisfied that the nomination exercise in respect of Itibo polling station was not free and fair.

b. Whether the Claimant is entitled to the reliefs sought.

10. The Claimant's main grievance is in relation to the polling at Itibo. He prayed in the alternative that the results from that polling station be excluded and that on the basis of the remaining results, this Tribunal declare him the winner. The Claimant's submissions in our view do not justify granting the prayers in relation to the nullification and to the exclusion of the disputed stations. Having found that he had not satisfied this Tribunal that his prayers are merited, we find that the Claimant is not entitled to the reliefs sought.

Orders

11. Having considered the pleadings and evidence annexed thereto and the submissions by counsel, we are persuaded that the claim is not merited. We are not satisfied that the Claimant has proved his claim on a balance of probabilities. In the circumstances, we order as follows:

- a. The Amended Statement of Claim dated 8 May 2017 fails.

b. Each party bears its own costs.

Dated at NAIROBI this 10th.... DAY of MAY 2017

1. M. O. Lwanga(Presiding Member)
2. Paul Ngotho(Member)
3. Desma Nungo(Member)
4. Dr. Adelaide Mbithi(Member)