



**REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 112 OF 2017**

**PHILIP MAOBE.....CLAIMANT**

**VERSUS**

**JOSHUA ONDORA.....1<sup>ST</sup> RESPONDENT**

**ORANGE DEMOCRATIC MOVEMENT.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant and 2<sup>nd</sup> Respondent are aspirants for the 1<sup>st</sup> Respondent's ticket for member of National Assembly, South Mugirango Constituency, Kisii County. The parties competed in the party primaries held on 28<sup>th</sup> April, 2017. The Claimant alleges that he was declared winner of the nominations, but the nomination certificate has instead been issued to the 1<sup>st</sup> Respondent. He invokes the Tribunal's jurisdiction under section 40(1) of the Political Parties Act, 2011.

**Claimant's Case**

2. The Claimant avers that he won the 2<sup>nd</sup> Respondent's nominations of 28<sup>th</sup> April, 2017 and was declared winner with 8,247 while the 1<sup>st</sup> Respondent came second with 7,753 votes.
3. However, on the morning of 4<sup>th</sup> May, 2017 the complainant learned that the Chairperson of the ODM Kisii Elections Board had presented a certificate dated 29<sup>th</sup> April, 2017 to the 1<sup>st</sup> Respondent.
4. The Complainant avers that the 2<sup>nd</sup> Respondent has no authority to cancel results of a concluded nomination exercise and whose return has been certified by the Returning Officer. He asserts that he was entitled to fair hearing before the 2<sup>nd</sup> Respondent if a complaint, dispute or appeal had been filed with any party organ.

5. No appeal had been lodged against his win and the issuance of the certificate back dated to 29<sup>th</sup> April, 2017 was mischievous.
6. As a result, the complainant avers that the 2<sup>nd</sup> Respondents actions were unfair, unlawful, illegal, arbitrary and unconstitutional and infringed the complainant's right to fair hearing.

**2<sup>nd</sup> Respondent**

7. The 1<sup>st</sup> Respondent swore a Replying Affidavit dated 16<sup>th</sup> May, 2017. He admitted that the nominations had earlier been scheduled for 2<sup>nd</sup> April, 2017, but were postponed to 28<sup>th</sup> April, 2017 because the complainant's name was missing.
8. He depones that he won the rescheduled nominations with 7,753 votes, while the complainant had 5,858 votes. He was issued with a nomination certificate dated 29<sup>th</sup> April, 2017 and the complainant shook his hands and admitted defeat.
9. He further submitted that as the complainant had not lodged his complaint before the party within 48 hours, the complainant lacked locus before this Tribunal.
10. The 2<sup>nd</sup> Respondent annexed to a provisional certificate, the declaration of results and a nomination certificate dated 29<sup>th</sup> April, 2017.

**Analysis**

11. The 2<sup>nd</sup> Respondent asserts that he garnered 7,753 votes. This claim is corroborated by the Claimant. This is also the figure entered into the provisional nomination certificate issued to the 2<sup>nd</sup> Respondent on 28<sup>th</sup> April, 2017 by B O Onyango. Further, the 2<sup>nd</sup> Respondent has annexed the returns from the polling stations showing precisely how the figure of 7,753 votes was arrived at. Those returns also indicate that the complainant got 5,858 votes. On the balance of probabilities, we are satisfied that the 2<sup>nd</sup> Respondent garnered 7,753 votes.

12. On the other hand, there is no other document or similar piece of evidence to corroborate the claim that he garnered 8,247 votes. The only place this figure appears is in the provisional nomination certificate dated 28<sup>th</sup> April, 2017 similarly issued to him by one B O Onyango.
13. We also note that while the Complainant claims to have learned about the 2<sup>nd</sup> Respondent's backdated certificate on the morning of 4<sup>th</sup> May, 2017, his purported letter of complaint produced as exhibit **PM-1**, is curiously backdated by a month to 4<sup>th</sup> April, 2017. We also note that while the undated photo graph produced as exhibit **PM-2** claims that one Cosmas Okondo is the one who issued the 2<sup>nd</sup> Respondent with a provisional nomination certificate, the certificate on record was issued by one B O Onyango whom both parties agree was the Returning Officer.
14. The Claimant had the burden of proving that he obtained 8,247, which burden he has not discharged.
15. What is clear to us is that one of the certificates held by one of the parties could be a forgery. We cannot tell which and we say no more lest we prejudice subsequent investigations by relevant agencies.
16. The complaint is dismissed with costs to the Respondents.

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2017**

**Kyalo Mbobu (Chairperson)** .....

**James Atema (Member)** .....

**Hassan Abdi (Member)** .....