



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO 130 OF 2017

BEATRICE CHEBOMUI.....COMPLAINANT
VERSUS
HELLEN TEPLELEI.....1ST RESPONDENT
CHAMA CHA MASHINANI
ELECTIONS BOARD..... 2ND RESPONDENT
CHAMA CHA MASHINANI..... 3RD RESPONDENT

JUDGMENT

Introduction

1. The Claimant participated in the 2nd Respondent’s nominations of 20th April, 2017 for the Bomet County Women Representative seat. She garnered 50,763 votes and won, followed by the 1st Respondent who garnered 47,277 votes. One Racheal Ngeno who garnered 20,279 votes came third in the race. The Claimant moves this Tribunal against the 2nd Respondent’s decision to recount the votes without prior notice or her involvement.

Claimant’s Case

2. Having been declared winner, the complainant maintains that she had a legitimate expectation that the 2nd Respondent would issue her with a nomination certificate.
3. However, a week later, she received information through the media about a recount for Chapalungu sub-county. There was no formal communication from the 2nd Respondent. She protested formally vide her letter dated 27th April, 2017, but there was no response.
4. Prior to the recount, the officially declared votes were as follows:

Hellen Taplelei	18,077
Beatrice Chebomui	11,499
Racheal Ngeno	5, 637

The outcome of the recount was as follows

Hellen Taplelei	23,772
Beatrice Chebomui	11,511
Racheal Ngeno	(Unknown)

5. She alleges that the purported recount was marred with irregularities *inter alia* as polling officials and agents were not involved. The recount was conducted by Bomet County Administration Staff contrary to party rules. The purported recount was conducted at Blue House County instead of Chepalungu sub-county tallying centre. Additionally, the recount was carried out 8 days after the primaries and declaration of results.
6. She further alleges that the ballot boxes containing the cast ballots had their seals broken and had been placed in the custody of Chepalungu Sub County Administrator who had been consistently biased against her. Her entreaties to the party have gone unheeded as a result of which she seeks relief from this court.

2nd and 3rd Respondents' Case

7. The 2nd and 3rd Respondents raised a preliminary objection premised on the fact that the affidavit of David Kipsang Koske was a forgery so that the complaint should be struck out or dismissed with costs.
8. They further admit that a recount was conducted, but only as a result of a complaint filed by the 1st Respondent to the 2nd and 3rd Respondents. As a result of that complaint, the NEB opted to recount the votes, which it did on 28th April, 2017.
9. It is stated that the recount took place in the presence of agents for the complainant and the 1st Respondent.

Issues for Determination

10. These are the issues for determination
 - (a) Whether the allegations of a forged witness statement amount to a "preliminary objection"
 - (b) Was the decision to conduct a recount was reasonable, lawful and procedurally fair?

Analysis

- (a) Whether the allegations of a forged affidavit amount to a "preliminary objection"

11. The 2nd and 3rd Respondents raised a preliminary objection, seeking that the suit be struck out, on the grounds that the affidavit filed by the Claimant was a forgery. A preliminary objection is raised on a pure point of law as per *Mukisa Biscuit Manufacturing v West End Distributors [1969] EA 696*. In this case, whether or not the affidavit is a forgery, is a question of fact requiring examination of witnesses. The preliminary objection is disallowed.

(b) Was the decision to conduct a recount reasonable, lawful or procedurally fair?

12. There is no evidence on record that the complainant was ever informed of the reasons for the decision made on 22nd April, 2017 to recount the votes for Chepalungu sub-county.
13. The right to reasons is a constitutional right guaranteed in Article 47(2) and explicated by section 4(3) of the Fair Administrative Action Act, 2015. The Act requires that information on the nature of the administrative action together with prior and adequate reasons must be given to the person whose rights are affected.
14. Reasons for decisions by political parties are not only a part of the principles of natural justice and fairness, but also enable an affected party member to know the possibility of and grounds for potential appeal to this Tribunal. Reasons also enable this Tribunal to have a better appreciation of the decision thus conduct a better appeal or review.
15. In this regard, it was held in *Priscillah Wanjiku Kihara v Kenya National Examination Council (KNEC) [2016] eKLR* that where an administrator fails to give reasons, the court can infer that there were no good reasons.
16. We are satisfied that the decision to recount the votes for Chepalungu sub-county was made without providing the Claimant with written reasons. The same is null, void and of no effect in law and is hereby annulled.

Reliefs

17. We allow this complaint and make the following orders:
- a) A declaration be and is hereby issued to the effect that the 3rd Respondent's decision to recount the votes, and to issue to the 1st Respondent with a nomination certificate, for the position of Women's**

Representative, Bomet County based on the outcome of the recount is null, void and of no effect in law.

- b) An order be and is hereby issued directing the 3rd Respondent to issue the complainant with a nomination certificate for the position of Women Representative, Bomet County within 48 hours from the pronouncement of this judgment.**
- c) In the interest of party unity each party shall bear their own costs.**

DATED AT NAIROBI THIS 15TH DAY OF MAY 2017

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Kyalo Mbobu (Chairperson)

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James Atema (Member)

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Hassan Abdi (Member)