



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI
COMPLAINT NO 132 OF 2017

DAVID RUONGO OKELLO.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT.....1ST RESPONDENT

PETER OLUOCH OWERA..... RESPONDENT

JUDGMENT

Introduction

1. The parties in this complaint are aspirants for the position of member of County Assembly, Huruma Ward, Mathare Constituency, Nairobi County. They participated in the party primaries held on 30th April, 2017 by the 1st Respondent. The claimant asserts that while he won the nominations, alleges the 1st Respondent has issued the nomination certificate to the 2nd Respondent.

Claimant's Case

2. The Complainant claims that he was declared the winner by the Returning Officer having garnered 657 votes as against 590 votes obtained by the 2nd Respondent. He claims that he has recently learned through an undisclosed source that the 1st Respondent has issued the nomination certificate to a third party.
3. In support of his case, the Complainant submitted a visual CD (VCD) recording alleged to have been taken as the Returning Officer declared him winner. The

video is accompanied by two certificates required by section 65(5) and (6) of the Evidence Act, Cap 80.

1st Respondent's Case

4. The 1st Respondent filed an affidavit sworn by Jared Owande Odhiambo, the Returning Officer on 11th May, 2017. In this affidavit, the Returning Officer had at first confirmed that he had declared the complainant as winner of the primaries at the Constituency tallying centre at St Teresa's Girls Secondary School in the presence of all agents, clerks and presiding officers. He had also sworn that the nomination certificate should have been issued to the Complainant.

2nd Respondent's Case

5. The 2nd Respondent in his response filed a notice of preliminary objection on the basis that this Tribunal lacks jurisdiction, under section 40(2), as the complaint was filed prematurely. The gist of the preliminary objection is that the complaint herein was filed prior to any attempts at internal dispute resolution mechanisms.
6. He also submitted that the claim that he had been awarded the certificate was a bare claim without proof. He also dismissed as hearsay, the assertions by the Claimant that he had left the party. He urged the Tribunal to dismiss the claim against him.
7. During case management, we directed that we would deliver a composite ruling on the preliminary objection together with our decision on merits.

Issues for determination

8. Having reviewed the pleadings, submissions and evidence on record, these are the two main issues for determination in this complaint:

(a) Whether this Tribunal has jurisdiction over the complaint

(b) Who won the nominations for member of County Assembly, Huruma Ward on 30th April, 2017?

(c) What is the appropriate relief in the circumstances?

Analysis

9. The gist of the 2nd Respondent's preliminary objection is that the complaint herein was filed prior to any attempts at internal dispute resolution mechanisms. The 2nd Respondent correctly avers that under section 40(2) of the Political Parties Act, a claim is not justiciable before this Tribunal unless a party has exhausted internal dispute resolution mechanism.
10. Nevertheless, in the case of *Ibrahim Abdi Ali v Mohamed Abdi Farah & Another, PPDT Complaint No. 29 of 2015* we held that:

We are aware of the fact that Section 40(2) of the Political Parties Act 2011 demands that the Tribunal cannot be moved “unless the dispute has been heard and determined by the internal political party dispute resolution mechanisms”. However, this does not mean that an individual must always wait for a hearing and a final determination from his party's internal dispute resolution mechanism before he can come to the Tribunal. Where a party can show that he made honest attempts at resolving the dispute within the party but the party's process was not satisfactory for such reasons as delay, the individual cannot be faulted for moving to the Tribunal even where his party has not concluded a hearing and a determination of his matter. The Tribunal must be free to consider each case on its merits and to determine when to allow a case from a complainant who, for some reason, has not come with a final determination from his party's internal dispute resolution structures to ensure that such complainants are not disadvantaged in any way.

11. In view of the tight timelines, including before this Tribunal, we are reluctant to dislodge the Claimant from this Tribunal's seat of justice at this point in time. We decline to strike out the claim in its entirety, but will proceed to consider it on merits. In *Complaint No 48 of 2017 John Mruttu v Thomas Mwacheghu at para*
Party primaries and other elections in a multi-ethnic nation such as Kenya are highly contested and it would be remiss of us to resolve a dispute arising from a party primary on a procedural point.
12. Be that as it may, we hold that the effect of prematurely filing this complaint could have deprived the party of the opportunity to resolve the dispute amicably in a manner that enhances cohesion within the party. In the interest of party unity and political togetherness, we would have referred this dispute back to the party for amicable resolution. We have however noted the letter dated 9th May, 2017 from the 1st Respondent stating that its internal dispute resolution mechanism has already closed shop.
13. In the premises we are satisfied by the uncontroverted evidence in the affidavit of the Returning Officer that the complainant herein won the nominations having garnered 657 votes as against 590 votes obtained by the 2nd Respondent.

Reliefs

14. In *Complaint No 48 John Mruttu v Thomas Ludindi Mwacheghu & 2 others* we held that in every matter over which we have jurisdiction, this Tribunal can grant any order that is just and equitable in accordance with section 11(1) of the Fair Administrative Action Act, 2015. The proper discharge of this Tribunal's mandate requires it to grant effective remedies, which means the most appropriate remedy in the circumstances of the case. We have found that the initial nominations were terminated in a manner that violated the 2nd Respondent's right to be heard.

15. Accordingly, the justice of this case requires us to make the following orders:

- (a) An order be and is hereby issued directing the 1st Respondent to issue the complainant with the nomination certificate for position of member of Nairobi County Assembly, Huruma Ward, Mathare Constituency. Nairobi County.
- (b) In the interest of party unity, we direct each party to bear its own costs of this claim.

DATED and DELIVERED at Nairobi this 13th day of May 2017

Kyalo Mbobu

Chairperson

James Atema

Member

Hassan Abdi

Member