



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 134 OF 2017

TOM MIGIRO ORENGE.....COMPLAINANT

VERSUS

ORANGE DEMOCRATIC MOVEMENT1ST RESPONDENT

ABINA MOGIRE.....2ND RESPONDENT

JUDGMENT

Summary of the Case

1. Both the Claimant and the 2nd Respondent were contestants in the party primaries of the 1st Respondent held on 29th April 2017 for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County. The Claimant was declared the winner of the said nominations having garnered 316 votes against the 2nd Respondent's 314 votes and was even issued with a provisional nomination certificate. However, the 1st Respondent instead issued the final nomination certificate to the 2nd Respondent.
2. The Claimant vide a letter dated 7th May 2017 complained to the 1st Respondent's County Appeals Tribunal, which letter was never acted upon. The Claimant has now approached this Tribunal for the following reliefs:
 - a) A declaration that the Claimant is the bone fide 1st Respondent's nominee for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County.

Tom Migiro Orenge v Orange Democratic Movement & another [2017] eKLR

- b) A declaration that the award of the nomination certificate to the 2nd Respondent or any other person other than the Claimant as the 1st Respondent's nominee for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County, if any, is null and void.
- c) An order compelling the 1st Respondent to issue the Claimant with the final nomination certificate for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County.
3. In reply, the 2nd Respondent opposed the Claimant's case and implored this Tribunal to dismiss the same saying that he, the 2nd Respondent, was the winner of the 1st Respondent's party primaries having got 322 against the Claimant's 316 votes as per the purported copy of a letter of one Dick Opata who was the Returning Officer of Embakasi Central Constituency. The 2nd Respondent was also issued with a provisional nomination certificate.

Issues for Determination

The primary issue is whether it was the Claimant or the 2nd Respondent who won the 1st Respondent's party primaries for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County.

Analysis

4. This issue calls into the question the credibility of the 1st Respondent's nomination process to determine the nominee for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County. For an election exercise to be said to have been free and fair, the following conditions must be met, namely: the electors must have voted through secret balloting, free from violence, intimidation and improper influence or corruption, conducted by

an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.

5. These requirements also underlie the citizens' rights and freedoms contained in *Article 38* of the *Constitution of Kenya, 2010*, and as such, are binding on a political party's nomination exercise. *Article 38* guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.
6. To this end, *Article 91 (1) (d)* of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party.
7. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya. The relevant point for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections.
8. The 1st Respondent's nomination rules also guarantee the rights and freedoms of their members to a free, fair and credible elections. Indeed, it is in doubt that 1st Respondent conducted party primaries on 29th April 2017 with the goal to determine the nominee for the County Assembly Member, Matopeni/Spring Valley Ward, Nairobi County.

Tom Migiro Orenge v Orange Democratic Movement & another [2017]
eKLR

9. As a political party that is duly registered in Kenya, the 1st Respondent owes to its members the obligation to conduct a free, fair and credible nomination process. This meant, among other things, that the exercise ought to have been credible and accurate results of the same recorded by the Returning Officer.
10. However, upon the perusal of the evidence before us, we were unable to find any credible evidence to support the contention that Returning Officer accurately recorded the results of the nomination. For this reason, it is difficult verifying the results alleged by both the Claimant and the 2nd Respondent. Put differently, it is not clear as to who, between the Claimant and the 2nd Respondent won the 1st Respondent's nomination exercise for the position of the County Assembly Member, Matopeni/Spring Valley Ward, Nairobi County.

Orders

11. For the reasons advanced above, this Tribunal orders as follows:

- a) That the 1st Respondent be and is hereby restrained from issuing the final nomination certificate to any other person for the position of the Member of County Assembly Matopeni/Spring Valley Ward, Nairobi County.*
- b) That, in the event that the 1st Respondent has issued the final nomination certificate to the 2nd Respondent or any another individual for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County, the same is hereby declared null and void.*
- c) That the 1st Respondent be and is hereby ordered to conduct fresh nominations for the position of the Member of County Assembly, Matopeni/Spring Valley Ward, Nairobi County within 24 hours of this judgment forthwith.*
- d) No orders as to cost in order to foster party unity, growth and democracy.*

Orders accordingly.

DATED AT NAIROBI THIS 16TH DAY OF MAY 2017

Kyalo Mbobu (Chairman)

James Atema (Member).....

Hassan Abdi (Member).....