



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 162 OF 2017

HON. SILVERSE LISAMULA ANAMI.....COMPLAINANT

VERSUS

JUSTUS KIZITO MUGALI1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

RULING

Background

1. By a Judgment issued by the Tribunal on 10th May, 2017, the Tribunal ordered the 2nd Respondent to forthwith conduct party nomination exercise in accordance with its party constitution and election and nomination rules. Among the findings made by the Tribunal is that the 2nd Respondent contravened its own rules and regulation by clearing a person who is not eligible to take part in the 2nd Respondent's nomination exercise.

Application

2. The 2nd Respondent/Applicant has now filed a Notice of Motion application dated and filed on 12th May, 2017. The 2nd Respondent seeks to set aside the decision to enable the Complaint be reheard on merit and with full participation of all the listed Respondents. In the alternative to the above prayer, the 2nd Respondent prays that the Complaint be dismissed for want of jurisdiction. The application is premised on grounds that the orders were made in the absence of the 2nd Respondent, a critical party in these proceedings who was not properly

served. A letter from the Registrar of Political Parties was submitted indicating that the Complainant is not a party member of the Applicant submitting that the Claimant therefore had no locus bringing the said complaint in the first instance.

Analysis

3. The letter presented from the Applicant confirms the political status of the Complainant, not at the date when the nominations occurred or when the complaint was filed but at a date when the proceedings before this Tribunal were concluded. Further, the information sought is initiated after the proceedings and there is no reason why this information could not have been obtained prior to the proceedings or determination thereof by this Tribunal.
4. The Complainant was allowed to participate in the nomination exercise. It would be presumed that the 2nd Respondent had satisfied itself of the membership status of the Complainant before allowing him to participate. All along, the nomination process and the subsequent IDRMs including proceedings before this Tribunal, the membership of the Complainant seems not to have been in issue. There is no evidence to determine that the Complainant was not a member of the 2nd Respondent as at the time the complaint was filed, a basis upon which jurisdiction over this matter would arise. Membership status as at the date of signing could better be determined by a certification from the party.

Orders

5. We are not persuaded that the application meets the requisite threshold for grant of any of the orders sought. The application therefore fails and is dismissed with no order as to costs.

DATED AT NAIROBI THIS 13TH DAY OF MAY 2017

1. Milly Lwanga Odongo (Presiding Member)

2. Desma Nungo...(Member)

3. Dr. Adelaide Mbithi.....(Member)