



**REPUBLIC OF KENYA**  
**POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 168 OF 2017**

**FRANKLIN IMBENZI.....CLAIMANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT**

**RONALD MELKIZEDEK MILARE.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Summary of the Case**

1. The Claimant is disputing the judgment of the 1<sup>st</sup> Respondent’s Special County Appeals Tribunal, which revoked the Claimant’s provisional nomination certificate and issuing the same to the 2<sup>nd</sup> Respondent without according him a hearing. The Claimant was one of the contestants in the 1<sup>st</sup> Respondent party primaries held on 30<sup>th</sup> April 2017 for the position of the County Assembly Member, Harambee Ward, Makadara Constituency within Nairobi County.
2. The decision of the 1<sup>st</sup> Respondent’s Special County Appeals Tribunal was a consequence of an appeal filed before it by the 2<sup>nd</sup> Respondent who was challenging the Claimant’s nomination the County Assembly Member, Harambee Ward. It is the Claimant’s case that neither his advocate nor him was given the opportunity to present his case despite being present at the proceedings. In addition, the Returning Officer who was in charge of the said nominations was not called by 1<sup>st</sup> Respondent’s Special County Appeals Tribunal to shed light on the appeal.
3. The Claimant has moved to this Tribunal seeking for orders that:

- a) the decision of the 1<sup>st</sup> Respondent County Appeals Tribunal of awarding the 2<sup>nd</sup> Respondent the nomination certificate be set aside for being unlawful.
  - b) the decision of the 1<sup>st</sup> Respondent County Appeals Tribunal of issuing the 2<sup>nd</sup> Respondent with the nomination certificate was tainted with illegality since the Claimant was not heard.
4. In response, the Respondents opposed the Claimant's assertions terming them as being baseless and without justification especially considering that the Claimant allegedly altered the tallies to suit his circumstances. As a result, the Respondent's counsel has prayed to this Tribunal to uphold the verdict of the 1<sup>st</sup> Respondent County Appeals Tribunal and dismiss the Claimant's case forthwith.

#### **Issues for Determination**

5. What therefore remains in contention is whether the Claimant was accorded a fair hearing by the 1<sup>st</sup> Respondent County Appeals Tribunal.

#### **Analysis**

6. The requirement for fair administrative action is one of the essential fundamental human rights enshrined in the Bill of Rights of the *Constitution of Kenya, 2010*. *Article 47* of the *Constitution* in this respect requires every person who is a subject of an administrative action to be accorded an expeditious, efficient, lawful, reasonable and procedurally fair opportunity.
7. This demands that an individual must be given written reasons for the actions if such person's fundamental rights and freedoms are likely to be adversely affected by an administrative action. *Article 50 (1) k* in this respect specifically demands that one must be accorded the opportunity to adduce and challenges evidence. The case of *Stephen Nendela vs. County Assembly of Bungoma and 4 Others [2014] eKLR* at *paragraph 28* and *29* explains that accused person does not refer to a person accused in a criminal trial only, but also any person accused of any allegation which if proved against such a person, the consequence will be prejudicial to him.

8. In order to actualise this vital condition, the Fair Administration of Actions Act, 2015 has been enacted with the goal to *“provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal and promote efficient administration.”*
9. In this respect, *section 4 (1) (2) (3) and (4)* of the *Fair Administration of Actions Act, 2015* carefully and saliently particularises the activities that must be undertaken by the administrator of actions in order to conform with the requirements of *Article 47* of the *Constitution of Kenya, 2010*.
10. **Subsection 1** stipulates that *“Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair”* while *Subsection 2* provides that *“Every person has the right to be given written reasons for any administrative action that is taken against him.”*
11. *Subsection 3* to this end requires the administrator of actions to ensure the service of prior and adequate notice of the nature and reasons for the proposed administrative action, an opportunity to be heard and make representations in that regard, notice of the right to legal representation, where applicable, making available the information, materials and evidence to be relied upon in making the decision or taking the administrative action et cetera.
12. *Subsection 4* on the other hand obligates the administrator of actions to accord the person against whom the administrative action is taken the chance to attend the proceedings, in person or in the company of an expert of his choice, be heard, cross examine persons giving adverse evidence against him and request for an adjournment of the proceedings, where necessary to ensure fair hearing.
13. Question: was the Claimant accorded a fair hearing by the 1<sup>st</sup> Respondent County Appeals Tribunal?
14. In order to answer this question, it is crucial to point out that the dispute at hand has arisen from the activity of a political party, the Respondent, in relation to one of

its members. To be specific, the 1<sup>st</sup> Respondent took steps and withdrew the Claimant's nomination certificate without taking into consideration the Claimant's right to be heard, adduce and challenge evidence presented against him by the 2<sup>nd</sup> Respondent.

15. As a political party, the 1<sup>st</sup> Respondent was required to act in accordance with the law and respect the fundamental rights and freedoms of its members in whatever decision the 1<sup>st</sup> Respondent makes. The 1<sup>st</sup> Respondent's party constitution in *rule 19.2.9* stipulates that Appeals tribunal will determine disputes in accordance with the *Constitution of Kenya, 2010* and other laws.
16. This means that the 1<sup>st</sup> Respondent ought to give a party member a reasonable opportunity to be heard and make a defence to the allegations or charges made against him or her in accordance with the rules of natural justice and fair play. However, to deny the Claimant or his advocate the right to answer to the charges facing him at the 1<sup>st</sup> Respondent County Appeals Tribunal clearly flew on the face of the well established principle and the right to fair administrative action
17. Indeed, from the evidence adduced before this Tribunal, the Claimant was called to appear before the 1<sup>st</sup> Respondent County Appeals Tribunal but was denied the right respond to the allegations labelled against by the 2<sup>nd</sup> Respondent.
18. It is trite that a political party member facing an administrative action must be entitled to fair administrative action. This Tribunal is under sacred obligation to ensure that the 1<sup>st</sup> Respondent's actions does exactly that and comply with the provisions of the *Constitution of Kenya, 2010* and the *Fair Administrative of Actions Act, 2015* in relation to fair administrative action.
19. We are guided by the decision of the High Court in *Republic v Truth, Justice and Reconciliation Commission Ex-Parte Beth Wambui Mugo [2016] eKLR* at paragraph 60 where it was held that:

*The minimum ingredients of fair hearing are provided in Article 47 of the Constitution. I say the minimum because under Article 20 of the Constitution every person is entitled to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom and in applying a provision of the Bill of Rights, a court is enjoined inter alia develop the law to the extent that it does not give effect to a right or fundamental freedom and to adopt the interpretation that most favours the enforcement of a right or fundamental freedom. Article 47 of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.*

20. In this regard, for a hearing to be said to be fair, one should be sufficiently informed of the allegations facing him and he should be given adequate or reasonable notice to enable him deal with it.
21. In this case, we find that the Claimant's rights to fair administrative action was flouted when he was denied the right to answer to the charges brought against him at the 1<sup>st</sup> Respondent County Appeals Tribunal. For that reason, we hold that the Claimant has succeeded to establish sufficient grounds to warrant the setting aside of the decision of 1<sup>st</sup> Respondent County Appeals Tribunal dated 6<sup>th</sup> May 2017.

### **Orders**

22. In the premises, we allow this Complaint and make the following orders:

- a) The Claimant was not accorded a fair hearing as contemplated by the law.*
- b) We set aside the decision of the 1<sup>st</sup> Respondent County Appeals Tribunal dated 6<sup>th</sup> May 2017 that nullified the Claimant's nomination.*
- c) Accordingly, the nomination certificate issued to the 2<sup>nd</sup> Respondent is hereby declared null and void.*
- d) The 1<sup>st</sup> Respondent is also ordered to issue the Claimant with the nomination certificate for the position of the County Assembly Member, Harambee Ward, Makadara Constituency within Nairobi County within 48 hours of this judgment forthwith.*
- e) No order will be made as to costs in order to foster party unity and growth of party democracy. Orders accordingly.*

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF MAY 2017**

**Kyalo Mbobu (Chairman) .....**

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

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