



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI  
COMPLAINT NO 170 OF 2017

HARRISON MBURU GATUMBI.....COMPLAINANT  
VERSUS  
JUBILEE PARTY.....1<sup>ST</sup> RESPONDENT  
JUBILEE PARTY ELECTIONS BOARD..... 2<sup>ND</sup> RESPONDENT  
KIMANI MICHAEL MUGO.....INTERESTED PARTY

JUDGMENT

Introduction

1. The Claimant participated in the 2<sup>nd</sup> Respondent’s nominations for Member of County Assembly, Karen Ward 1381, within Nairobi County. They contested the 1<sup>st</sup> Respondent’s nominations held on 26<sup>th</sup> April, 2017 which the Claimant claims he won. His victory was overturned when the 2<sup>nd</sup> Respondent nullified the results for Ngong Forest Primary School polling station without giving reasons.
2. He also alleges that the 1<sup>st</sup> Respondent had allowed non party members to proceed with voting at Karen C and PCEA Kuwinda polling stations on 26<sup>th</sup> April, 2017 and did not use the register of voters. Voters were allowed to use their Identity Cards to vote while their names did not appear in the IEBC or the party’s register.
3. He further alleges that his appeal was dismissed on 8<sup>th</sup> May, 2017, orally, without written reasons being supplied to him.

1<sup>st</sup> and 2<sup>nd</sup> Respondent's Case

4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed an affidavit sworn by Stephen Ombasa the 1<sup>st</sup> Respondent's advocate on 11<sup>th</sup> May, 2017. The deponent averred that the complainant had been a respondent in JPAT Appeal Number 351 of 2017. It was averred that both parties had adduced evidence of substantial irregularities at Ngong Forest Primary School. An unsigned and undated draft judgment was annexed to the affidavit.

Analysis

5. 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. 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.
6. In this regard, it was held in *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.
7. We are satisfied that the appeal which upset the Claimant's victory was allowed orally and no written ruling has ever been provided to him. The draft ruling is not signed or dated with the effect that the decision was taken without providing the Claimant with written reasons is null and void and of no effect in law. The same is annulled.
8. We have also found that there were irregularities, which in our view would affect the result of the party primaries. These include allowing those whose

names were not in the register to vote at Kuwinda PCEA and Karen C polling stations. *See Moses Wetangula v Musikari Kombo [2014] eKLR.*

Reliefs

9. We allow this complaint and make the following orders:
  - (a) A declaration be and is hereby issued to the effect that the 1<sup>st</sup> Respondent failed to conduct free and fair nominations for the position of member of County Assembly, Karen Ward 1381, Nairobi County.
  - (b) The 1<sup>st</sup> Respondent is hereby directed to conduct a fresh nomination exercise for the position of Member of County Assembly, Karen Ward 1381, Nairobi County within 48 hours from the pronouncement of this judgment.
  - (c) In the interest of party unity each party shall bear the Claimant's costs of this complaint.

DATED AT NAIROBI THIS 15<sup>TH</sup> 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)**