



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 181 OF 2017

ALEXENDER KHAMASI MULIMI.....1<sup>ST</sup> CLAIMANT  
MICAH ANGATIA ZAKAYO.....2<sup>ND</sup> CLAIMANT  
MARK KASEMBELI FUNDIA.....3<sup>RD</sup> CLAIMANT  
ADIANO MATE.....4<sup>TH</sup> CLAIMANT  
  
VERSUS  
  
AMANI NATIONAL CONGRESS..... RESPONDENT

JUDGMENT

The Claim

1. The 1<sup>st</sup> to 4<sup>th</sup> Claimants aver that they won nominations for candidates of member of County Assembly for Mahiakalo, Butali/Chegula, Manda/Shivanga and Shirere Wards respectively. In this regard, we were referred to documents at page 21, 32, 44 and 56 of the Claimant’s bundle of documents filed on 9<sup>th</sup> May 2017. The National Elections Board (NEB), however, issued the certificates to their respective opponents. The Respondent’s Internal Dispute Resolution Mechanism has refused to accept, hear and determine complaints lodged by the Claimants on the matter on 8<sup>th</sup> May, 2017.

2. The Claimants are therefore seeking redress from the Tribunal for the Respondent to issue them with their respective Nomination Certificates. The Claimants rely on Rules 6.33 to 6.40 of the Respondent's Constitution, Article 36, 38, 40 & 50 of the Constitution and Section 31 of the Elections Act No. 24 of 2011. Each of the Claimants have sworn an affidavit in support of the claim. A Further Affidavit has also been sworn by the 1<sup>st</sup> Claimant on 10<sup>th</sup> May, 2017 in which he makes reference to Rule 6(b) of the Respondent's Constitution that a complaint in respect of a dispute be submitted within four days of the dispute.
  
3. The 1<sup>st</sup> Claimant also acknowledges that he lodged a complaint of bribery and election malpractice being Complaint No. 79 of 2017 to the Internal Dispute Resolution Committee (IDRC) in which a decision was made on 9<sup>th</sup> May, 2017. He further confirms in paragraph 9 of the Further Affidavit that the 2<sup>nd</sup> to 4<sup>th</sup> Claimants did not have any dispute in respect of the nomination conducted on 20<sup>th</sup> & 29<sup>th</sup> April 2017. A written authority from the 2<sup>nd</sup> to 4<sup>th</sup> Claimants has been adduced allowing the 1<sup>st</sup> Claimant to swear the affidavit on their behalf. Written submissions were filed on behalf of the Claimants. The Claimants referred us to the case of **George Mike Wanjohi -vs- Steven Kariuki & 2 Others [2014] eKLR** on the finality of results declared by a Returning Officer.

### **The Response**

4. The Respondent through its Secretary General Godfrey Osotsi has filed a Replying Affidavit dated and filed on 10<sup>th</sup> May, 2017. It concedes that it is in the process of complying with the decision issued by its IDRC. The Respondent also submits that the 2<sup>nd</sup> and 4<sup>th</sup> Claimants never filed complaints relating to the nominations. The

2<sup>nd</sup> to 4<sup>th</sup> Claimants were informed that they were time barred and were merely trying to circumvent the rules in stating that their complaints were rejected to enable them litigate on the issue of nominations.

5. The Respondent further indicates that the Party Constitution and Nomination Rules allow the Secretary General and Chairman of the Party to sign the Nomination Certificates. He adds that the Rules alluded by the Claimants' case are outdated. In specific response to the 1<sup>st</sup> Claimant's case, the Respondent disputes the results alluded to by the 1<sup>st</sup> Claimant including those of Nyayo Tea Zone, which, according to the Respondent, was not a gazetted Polling Station.

**Issue for determination**

6. From the pleadings filed and arguments adduced, the Tribunal frames the following two issues for determination:
  - a) *Whether or not the Tribunal has jurisdiction to hear and determine over this claim;*
  - b) *Whether or not the Claimants should be issued with the nomination certificate.*

In addressing these issues, we note that each Claimant is considered on his own merit.

- a) *Whether or not the Tribunal has jurisdiction to hear and determine over this claim*

7. At the onset, we wish to point out that the Tribunal has taken a position that a party has to demonstrate that Internal Dispute Resolution Mechanism was

resorted to prior to filing the complaint before the Tribunal. It is already conceded that the 2<sup>nd</sup> to 4<sup>th</sup> Claimants never filed any complaint with the IDRC arising out of the nomination exercise.

8. Rule 6(b) of the Respondent's IDRC Rules 2017 requires any Claimant to lodge his complaint not later than 4 days after the date on which the disputed decision was given to or served upon him. The nomination exercise for the 1<sup>st</sup> and 4<sup>th</sup> Claimants was conducted on 20<sup>th</sup> April, 2017 while those of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants were conducted on 29<sup>th</sup> April, 2017. It is not in doubt that the 1<sup>st</sup> Claimant filed his dispute before IDRC on 21<sup>st</sup> April, 2017 well within the stipulated timelines. To this extent, only the 1<sup>st</sup> Claimant complied with the IDRM requirement.
9. The Complainants have annexed their complaints dated 8<sup>th</sup> May, 2017 in which they sought to be issued with Nomination Certificates. This was barely a day before the complaint was filed at Political Parties Disputes Tribunal. The said complaints were rejected on the grounds that they were time barred as these were complaints relating to the nomination exercise carried out on 20<sup>th</sup> April, 2017 and 29<sup>th</sup> April, 2017. Indeed, by 8<sup>th</sup> May, 2017, the Claimants were well beyond the timelines stipulated under the Respondent's Constitution to which the Claimants are subject to as members.
10. However, a perusal of the complaint dated 8<sup>th</sup> May, 2017 indicates that the dispute was in respect of the Nomination Certificate and not the nomination exercise itself. The Nomination Certificate issued to one, Williams Musundi to the exclusion of the 1<sup>st</sup> Claimant is indicated to have been issued on 4<sup>th</sup> May 2017. Accordingly, this can be construed to be a new dispute that was well within the 4 days' timeline.

We do not agree with the Respondent's rejection of the complaints on grounds that they were time barred. We are therefore satisfied that the dispute is rightfully before this Tribunal.

b) *Whether or not the Claimants should be issued with the nomination certificate.*

11. From the Claimant's written submissions file on 10<sup>th</sup> May, 2017, the issue before the Tribunal is whether or not the Respondent can deny the Claimants Nomination Certificates despite them having been declared winners. Turning to the declaration of results of the nomination, it is not disputed that the Returning Officer is mandated under Article 3.5.8 of the Respondent's Constitution to confirm and sign final county tallies after casting of votes. The Claimant is obliged to discharge the evidentiary burden of proof.
12. The position regarding the 1<sup>st</sup> Claimant is already cleared. The Respondent has indicated that it is in the process of implementing the decision of IDRC. We see no reason to interfere with this process.
13. As for the 2<sup>nd</sup> to 4<sup>th</sup> Claimants, they have adduced copies of nomination results to support their respective claims. The Respondents refute the said results. The forms adduced by the Claimants appear to be in the nature of a report and not a declaration. Moreover, the Tribunal is unable to determine that the person making such documents was indeed the Returning Officer. There was no evidence to support the tallied results or the author thereof. A perusal of the documents referred to as the declaration forms reveal that those relied upon by the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants and annexed at page 32 to 34 and 44 to 45 respectively differ from those

attached and relied upon by the 4<sup>th</sup> Respondent. The Tribunal found it rather unusual that there would be a discrepancy on the document used by the Returning Officers within the wards. The Tribunal is not well placed to inquire into and make a conclusive determination of the results in the absence of any testimony or production of the same by the author or maker of the said documents.

14. None of the Claimants were issued with the provisional certificates. The reference to the notification to the Claimants to collect Certificates from the Respondent's ANC-AMANI is unsupported. The SMS printout adduced as evidence is couched as a general message sent to all aspirants and not any of the Claimants specifically. Though the same is signed off in the names of the Respondent's Secretary General, there is no evidence that the message is authored or sent on behalf of the Respondent. In the circumstances, we are not satisfied that the Claimants have been able to discharge the evidentiary burden in proving claim.

**Orders**

15. Considering the evidence and totality of the circumstances of this case, we are not persuaded to grant the orders sought in the complaint dated 9<sup>th</sup> May, 2017. We accordingly dismiss that complaint with no orders as to costs.

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

**1. M. O. LWANGA (PRESIDING MEMBER) .....**

2. PAUL NGOTHO (MEMBER).....
3. DR. ADELAIDE MBITHI (MEMBER).....
4. DESMA NUNGO (MEMBER).....