



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL

COMPLAINT NO. 187 OF 2017

JOHN NJOROGE CHEGE.....COMPLAINANT

-VERSUS-

MERCY GAKUYA.....1<sup>ST</sup> RESPONDENT

JUBILEE NATIONAL ELECTIONS BOARD.....2<sup>ND</sup> RESPONDENT

JUDGMENT

Summary of the Complaint

[1] This Complaint concerns the Jubilee party nomination exercise for the position of Member of Parliament, Kasarani Constituency held on 26<sup>th</sup> April 2017 where the 1<sup>st</sup> Respondent was declared winner. Aggrieved by this outcome, the Complainant lodged an appeal with the Jubilee Elections Appeal Tribunal (hereinafter referred to as party's IDRM) which was heard on 4<sup>th</sup> May 2017. The Complainant avers that on 9<sup>th</sup> May 2017, he was called by the party's IDRM and informed that his appeal was not successful, hence this complaint before the Tribunal.

Jurisdiction

[2] The 1<sup>st</sup> & 2<sup>nd</sup> Respondent submitted that the complaint is premature as the 2<sup>nd</sup> Respondent's IDRM is yet to render its decision. Further, the 2<sup>nd</sup> Respondent argued in his submissions that the Complainant has invoked the jurisdiction of the party's IDRM and this Tribunal's simultaneously, and that the issues raised in both are not the same. On this basis, the complaint should be dismissed.

[3] It is pertinent to note that the complaint before us is not an appeal of the party's IDRM process but a fresh claim. As provided for under section 40(2) of the Political Parties Act No. 11 of 2011, all the Complainant needs to demonstrate before this Tribunal is an attempt to canvass his dispute before the party's IDRM.

We are satisfied that the Complainant has complied with this statutory requirement and that the Tribunal is properly seized of the matter.

**Analysis and determination**

- [4] It is clear from the foregoing that the main issue for determination is *whether or not the 1<sup>st</sup> Respondent was rightfully declared the winner of the said exercise*;
- [5] In his complaint dated 8<sup>th</sup> May 2017, the Complainant avers to several irregularities that took place during the nomination exercise. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent have challenged these allegations on the basis that no substantive evidence has been adduced in support of the same. The 1<sup>st</sup> Respondent avers that she did indeed win the nomination process and has attached a declaration of results duly signed by the Returning Officer.
- [6] This Tribunal is convinced that based on the record before it, the Complainant has not discharged the evidentiary burden in proving the allegations in his complaint. The Complainant submitted that the facts in his complaint are similar to those in *Complaint No. 59 of 2017*. However, the evidentiary burden was discharged to the satisfaction of the Tribunal in *Complaint No. 59 of 2017* which is not the case in this matter. With no evidence to the contrary, we are satisfied with the declaration of results signed by the Returning Officer as proof of the 1<sup>st</sup> Respondent's win.

**Orders**

- [7] Having considered the pleadings, the documents on record and parties' written submissions, we are not persuaded that the complainant has proved his case on a balance of probabilities. Accordingly, we make the following orders:
  - a) The complaint dated 8<sup>th</sup> May 2017 is hereby dismissed.
  - b) In the interest of party unity, each party shall bear its own costs of these proceedings.

**DATED and DELIVERED AT NAIROBI this 11<sup>TH</sup> DAY of MAY 2017**

- 1. **M. O. Lwanga (Presiding Member)** .....
- 2. **Desma Nungo (Member)**.....

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