



REPUBLIC OF KENYA
POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 205 OF 2017

KELVIN ODHIAMBO OKOTH.....COMPLAINANT
VERSUS
ORANGE DEMOCRATIC MOVEMENT PARTY.....1ST RESPONDENT
ODM NATIONAL ELECTION BOARD.....2ND RESPONDENT
IEBC.....3RD RESPONDENT
OLWAL GEORGE OMONDI.....1ST INTERESTED PARTY
AGNES AKECH NYAGOL.....2ND INTERESTED PARTY

JUDGMENT

Summary of the Case

1. The Claimant, the 1st and 2nd Interested Parties were contestants in the 1st Respondent's party primaries held on 25th April 2017 for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County. The Claimant was declared the winner of the said nominations having garnered 2,275 votes against the 1st and the 2nd Interested Parties who garnered 2,174 and 720 respectively. This was according to the unsigned tally sheet from unnamed Constituency Returning Officer.
2. Apparently, all the three were issued with the final nomination certificates. However, it was only the Claimant and 2nd Interested Party who were issued with the provisional nomination certificates albeit by two differently people. The Claimant was issued a provisional nomination certificate by one Thomas Riaga

while the 2nd Interested Party got hers from one Bethuel Milando. Both Thomas Riaga and Bethuel Milando purported to be Kisumu East Constituency Returning Officer.

3. The Claimant vide a letter dated 5th May 2017 complained to the 1st Respondent's National Elections Board, which letter was never acted upon. The Claimant has now approached this Tribunal for the following reliefs:

a) A declaration that the Claimant is the bone fide 1st Respondent's nominee for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County.

b) A permanent injunction to restrain the 1st and the 2nd Respondent from presenting the name of the Interested Parties to the 3rd Respondent as the nominee for Kolwa Central Ward.

4. In reply, the 1st and the 2nd Interested Parties have also alleged being winners for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County.

Issues for Determination

5. The primary issue is whether the 1st Respondent's party primaries for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County were credible.

Analysis

6. This issue calls into the question the credibility of the 1st Respondent's nomination process to determine the nominee for the position of the Member of County Assembly, Kolwa Central Ward. Credibility of an election process is one crucial conditions that must be satisfied in order for an election exercise to be said to have been free and fair. Other requirements include the electors being allowed to vote through secret balloting, free from violence, intimidation and

improper influence or corruption, conducted by an independent body, transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.

7. These requirements also underlie the citizens' rights and freedoms contained in *Article 38* of the *Constitution of Kenya, 2010*, and as such, are binding on a political party's nomination exercise. *Article 38* guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.
8. To this end, *Article 91 (1) (d)* of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya.
9. The relevant point for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections. The 1st Respondent's nomination rules also guarantee the rights and freedoms of their members to a free, fair and credible elections. Indeed, it is not in doubt that 1st Respondent conducted party primaries on 25th April 2017 with the goal to determine the nominee for the County Assembly Member, Kolwa Central Ward, Kisumu County.

10. As a political party that is duly registered in Kenya, the 1st Respondent owed to its members the obligation to conduct a free, fair and credible nomination process. This meant, among other things, that the exercise ought to have been credible and accurate results of the same recorded by the Returning Officer.
11. Upon the perusal of the evidence before us, the identity of the Returning Officer for Kisumu East Constituency is not clear. It is also difficult to tell whether the tallied results from the unsigned tally sheet were indeed true. In a nutshell, we were unable to find any credible evidence to support the contention that Returning Officer accurately recorded the results of the nomination.
12. For this reason, it is difficult verifying the results alleged by the Claimant, the 1st and 2nd Interested Parties. Put differently, it is not clear as to who, among the Claimant, the 1st and the 2nd Interested Parties won the 1st Respondent's nomination exercise for the position of the County Assembly Member, Member, Kolwa Central Ward, Kisumu County.

Orders

13. In the premises, this Tribunal orders as follows:
 - a) *That the Claimant's case be and is hereby dismissed.*
 - b) *That the 1st Respondent be and is hereby restrained from issuing the final nomination certificate to any person for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County.*
 - c) *That, in the event that the 1st Respondent has issued the final nomination certificate to any individual for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County the same is hereby declared null and void.*

- d) That the 1st Respondent be and is hereby ordered to conduct fresh nominations for the position of the Member of County Assembly, Kolwa Central Ward, Kisumu County within the next 24 hours of this judgment.*
- e) No orders as to cost in order to foster party unity, growth and democracy. Orders accordingly.*

DATED AT NAIROBI THIS 16th DAY OF MAY 2017

Kyalo Mbobu (Chairman)

James Atema (Member).....

Hassan Abdi (Member).....