



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 207 OF 2017

SAMUEL OKOTH HAWALA.....COMPLAINANT

-VERSUS -

ORANGE DEMOCRATIC MOVEMENT..... RESPONDENT

JUDGMENT

Summary of the Case

1. The Claimant is aggrieved by the failure of the Respondent to implement and or give effect to the judgment dated 4th May 2017 delivered by the special County Appeals Tribunal. In the following terms:

In view of the new evidence provided and having considered this appeal we hereby make the following directives: that the petition be forwarded to the National Elections Board to revoke the nomination certificate issued to Mr. James Obiero Otare and issue the same to Mr. Samuel Okoth Hawala.

2. The Claimant submits that upon being aggrieved by the nomination process and outcome of the 2nd Respondent for Member of County Assembly in Siaya Township Ward, proceeded to lodge an appeal before the Special County Appeals Tribunal being Samuel *Okoth Hawala v Enos Onyango Okumu*.
3. It is the complainant's submission that the Respondent ought to be bound and abide by the decision of its own organ. In the event it is aggrieved, it has a right

to challenge the same by filing an appeal. The Complainant argues that in the present case no such appeal has been rendered and hence the decision stands as a valid decision.

4. The complainant submits that the Respondent has breached his right to fair hearing under Article 47 of the Constitution as read together with the Fair Administration Act, 2015, the right to political right as guaranteed under Article 38 of the Constitution and the principles espoused under Article 10 of the Constitution.
5. He argues that his expectation is for the Respondent to give effect to the decision and communication to him in writing on the way forward in light of the aforesaid decision. It is the responsibility of the Respondent to abide by its decision by upholding and respecting its party organs and the directives of such organs. He relies upon the case of *Keroche Industrial Limited V Kenya Revenue Authority & 5 Others Misc Civil Application 743 of 2006*.
6. The Complainant urges the Tribunal to allow the present complaint by compelling the Respondent to issue him with the nomination certificate for the position of Member of County Assembly for Siaya Township Ward, Alego Usonga Constituency, Siaya County.
7. The Respondent despite being served failed to enter appearance.

Issue for determination

8. The issue arising for determination is *Whether the Respondent has defied the order of the ODM special County Appeals Tribunal issued on 4th May 2017:*
9. It is the Claimant's submission that the CAT decision held that he was the rightfully chosen nominee. A perusal of the CAT decision contradicts the Complainant's statement. It directs the National Elections Board to revoke the nomination certificate and issue it to the complainant. This decision was issued

pursuant to an application for review of the ruling of 2nd May 2017 by the CAT. It stated as follows;

'This application was filed by Samuel Okoth Hawala an aspirant of Siaya Township Ward requesting a review of the ruling dated 2nd May 2017 '

10. This contradicts the claimants own statement that he was the rightful nominee. Further the Complainant has not provided a copy of the decision being referred to dated 2nd May 2017. This casts doubt in the decision of the CAT. The Complainant ought to have gone over further and provided other evidence to show that he was the rightful winner.

11. We also are alive to our other decision in the case of *Complaint No. 31 of 2017, Peterson Mittau v Daniel Muange and 3 Others*, where we held that it is mischievous and improper for a Party not to comply with the decision of its very own Internal Dispute Resolution Mechanism. Consequently, we order that;

- a. The Respondent's National Election Board is directed to determine the Party Nominee for Siaya Township Member of County Assembly in a manner compatible with the Party Constitution, Election and Nomination Rules.*
- b. In the interest of Party unity each party to bear its own costs*

12. Orders accordingly.

DATED AT NAIROBI THIS 13TH DAY OF MAY 2017.

- 1. Kyalo Mbobu**
(Chairman)
- 2. James Atema**
(Member)

3. Hassan Abdi (Member)

(Member)