

Emily Achieng Obilo Omondi v Orange Democratic Movement Party  
[2017] eKLR

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REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI  
COMPLAINT NO. 212 OF 2017

EMILY ACHIENG OBILO OMONDI..... COMPLAINANT/APPLICANT  
VERSUS  
ORANGE DEMOCRATIC MOVEMENT PARTY ..... 2<sup>ND</sup>  
RESPONDENT  
AND  
DAN OCHIENG WERE.....INTERESTED  
PARTY

**RULING**

**Background**

1. By a judgment dated 10<sup>th</sup> May 2017, the Tribunal *inter alia* ordered that the final nomination certificate be issued to the Complainant for the position of Member of County Assembly, Kokwanyo Kakelo Ward in Kabondo Kasipul Constituency and nullified the provisional and/or final nomination certificate issued to the Interested Party.
2. Aggrieved by this decision, the Interested Party initially filed an application dated 13<sup>th</sup> May 2017 seeking to review the judgment and seeking to declare the certificate held by the Claimant as null and void. The application is based on the ground that the judgment is fundamentally erroneous since Homa Bay County Appeals Tribunal found the allegations made by the Complainant not provable and dismissed her petition. The further ground is that the Interested Party did not participate in the

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proceedings of the Tribunal. The application is supported by the affidavit of the Interested Party. This application was stood over generally, on 13<sup>th</sup> May 2017 to allow the applicant time to file a Further Affidavit attaching all relevant documents.

3. By an application dated 15<sup>th</sup> May 2017, the Interested Party filed another application seeking the Tribunal to review its judgment delivered on 10<sup>th</sup> May 2017 and to compel the 2<sup>nd</sup> respondent to issue a nomination certificate to the Complainant. This application is supported by the affidavits of Apollo Mboya, the Chairman of the Respondent's Special County Assembly Tribunal and Anthony Moturi, the Legal and Parliamentary Liaison Officer. Among the grounds raised is that the Special County Appeals Tribunal which rendered its decision in favour of the Claimant has equal jurisdiction as the Homa Bay Appeals Board which had rendered its decision earlier on 24<sup>th</sup> April, 2017. Further, the Homa Bay County had a County Appeals Board which heard and determined this matter and any appeals therefrom should have been directed to the National Appeals Tribunal of the Respondent and not the Special County Appeals Board.
4. In his submissions, the Interested Party relies on Rule 19 of the 2<sup>nd</sup> Respondent's Election and Nomination Rules which establishes two tribunals, the County Appeals Tribunal and the National Appeals Tribunal. The Chairperson of the County Appeals Tribunal avers that he sat with his panel to hear and determine the Claimant's appeal without notice that the matter had been heard and determined by the Homa County Appeals Tribunal. The Interested party filed skeleton submissions which we have considered.
5. The Complainant filed her Replying Affidavit in opposition to the application. She avers that the Interested Party had called her and even met with her during the pendency of the proceedings of the Special County Appeals Tribunal. She reiterates that her complaint was heard by a competent organ of the ODM party and is

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unaware of any other competent organ to hear the dispute. The Complainant avers that the affidavit of Anthony Moturi and the report of the Homa Bay County Appeals Tribunal annexed in the application are a forgery.

**Issue for Determination and Analysis**

6. The sole issue for determination is whether the interested party has demonstrated sufficient cause for review of the Tribunal's judgment.
7. We have considered the application and the evidence adduced by the applicant. We are satisfied with the service of process upon the Respondent and the Interested Party. The Complainant's dispute was heard by a competent party organ where the decision was made in her favour. With respect to submissions concerning processes before the 2<sup>nd</sup> Respondent's IDRM and the levels of hierarchy, the Tribunal has reiterated that it is not an extension of the party organ as to be subjected to the internal political party processes. The Tribunal, in making its determination, independently considers evidence presented before it, taking into account the principles of democracy and transparency and the internal dispute resolution mechanism. The applicant has therefore not demonstrated sufficient grounds for review of our judgment and decree under Order 45 of the Civil Procedure Rules.

**Order**

8. Consequently, the application dated 15<sup>th</sup> May 2017 is hereby dismissed with costs.

**DATED and DELIVERED AT NAIROBI this 19<sup>th</sup> DAY OF MAY 2017**

**1. M. O. Lwanga ..... (Presiding Member)**

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2. Desma Nungo .....(Member)

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