



REPUBLIC OF KENYA  
IN THE POLITICAL PARTIES TRIBUNAL AT NAIROBI  
COMPLAINT NO 213 OF 2017

SAMUEL ANYANGU LUTTA.....COMPLAINANT

VERSUS

JUBILEE PARTY.....1<sup>ST</sup> RESPONDENT

GODFREY WATEBANA WASICHE.....INTERESTED PARTY

JUDGMENT

*Introduction*

1. This judgment concerns the Jubilee party nominations for member of County Assembly, Kholera Ward, Matungu Constituency. The Claimant is dissatisfied with the way the nomination was conducted and seeks suitable relief from this court. He contends that no nominations were conducted and the interested party was hand-picked for the position.

*Claimant's Case*

2. The claimant asserts that Vide a Gazette Notice Volume CXIX No. 49 the Respondent published the following names as aspirants for the position: Samuel Anyangu Lutta, Godfrey Lutebana Wasiche and Pamela Mbiwioli Khaundi. The nominations were scheduled for 25<sup>th</sup> April, 2017, but nothing happened on that date.
3. The Returning Officer wrote to the County Elections Board on 25<sup>th</sup> April, 2017 informing it about the lack of voting material. On 26<sup>th</sup> April, 2017, the complainant sought the intervention of the County Election Board Chairperson

who informed the Claimant that he was awaiting official communication from Headquarters.

4. Shortly after that, the Claimant was shocked to hear the Interested Party declare himself 'winner' of an election that had never taken place. Claimant appealed to the Jubilee Tribunal on 27<sup>th</sup> April, 2017.
5. The Jubilee Tribunal in its ruling of 5<sup>th</sup> May, 2017 confirmed that no nominations took place. It further noted that in the absence of any nominations having been held, it lacked jurisdiction to declare any of the participants winner. It referred the matter back to the National Elections Board to "decide" who would be the party's flag bearer for the position in Kholera Ward, Matungu Constituency.
6. On 1<sup>st</sup> May, 2017 the complainant came across a list marked "Kakamega County Jubilee Unopposed MCAs" with the interested party's name on it. He is aggrieved that the list was generated while his appeal was still pending the ruling of 5<sup>th</sup> May, 2017.

***Respondent and Interested Party's Case***

7. The Respondent and Interested Party did not file any responses to these proceedings within the times allocated to them.

***Analysis***

8. The main issue for determination is whether the Respondent's decision to nominate the interested party is in the circumstances of this case lawful, reasonable and procedurally fair.
9. There is no dispute that competitive nominations were not conducted for the disputed position. As a matter of fact, the Jubilee Appeals Tribunal arrived at the same conclusion in its ruling of 5<sup>th</sup> May, 2017. However, the tribunal referred the matter back to the National Elections Board to 'decide' on the party's flag bearer. The Tribunal was shirking its duty to grant effective relief to the parties in this case. We are at a loss as to how the Jubilee Tribunal having been satisfied that no

nominations were held, could not go ahead to direct the conduct of a nomination exercise. It instead gave the party the free hand to effect a direct nomination.

10. In *Complaint No 192 of 2017 Charles O Okwemba v United Democratic Party* we held as follows:

**This Tribunal will not, absent justifiable reasons, excuse a direct nomination where two or more candidates have been cleared to contest a party primary.** In this regard, in *Complaint No 53 of 2017 Salah Yakub Farah v KANU National Elections Board & 2 others* we held that: In view of the above, we hold that the Claimant having been cleared by the party had a legitimate expectation that the party would conduct primaries where he would get a fair chance to compete. **We find that the 3<sup>rd</sup> Respondent violated the Claimant's legitimate expectation that nominations would conducted when it purported to undertake a direct nomination while there were at least two candidates for the position of Member of National Assembly, Fafi Constituency.** Moreover, under Article 47(2) of the Constitution and section 4 of the Fair Administrative Action Act, 2015 the party was expected to inform the Claimant of the party's decision not to conduct any nomination exercise in Fafi Constituency. **We hold that the Respondents could not undertake a direct nomination where there were two aspirants anticipating competitive nominations.**

19. We adopt that holding and applying it to the facts of this dispute. Similarly, in *John Mruttu v Thomas Ludindi Mwadeghu & 2 others* we held as follows concerning the utility of direct nominations para 32:

We also perceive that the discretion to award direct nominations, if properly deployed, can *inter alia* be a formidable tool to promote the representation, in legislative assemblies, of marginalized groups and communities such as women, persons with disabilities, youth, as well as ethnic and other minorities. Political parties would then be in a position to fulfill their obligations under Article 91 of the Constitution *inter alia* to respect and promote human rights and fundamental freedoms, and *gender equality* and *equity* and to promote the objects and principles of the Constitution and the rule of law.

20. We went on to state at para 33:

Be that as it may, the power to grant direct nominations is not in our view an absolute power or a blank cheque to reward party stalwarts and cronies at the expense of ordinary party members. Instead, such a decision must adhere to the rules of natural justice and comply with the Constitution and all relevant statutes including the Political Parties Act and the Fair Administrative Action Act, 2015. The discretion is therefore not a panacea or magic cure for badly conducted party primaries.

21. We hold that the decision to award the interested party a direct nomination in this case did not adhere to the rules of natural justice or comply with the Constitution and other relevant statutes including the Political Parties Act and the Fair Administrative Action Act, 2015. Also, since the decision, was in violation of the complainant's legitimate expectation of competitive primaries, it is null, void and of no effect in law.

*Relief*

19. The claimant's complaint is allowed. We make the following orders:
- (a) **A declaration be and is hereby issued to the effect that the 1<sup>st</sup> Respondent failed to conduct free and fair nominations for member of County Assembly, Kholera Ward, Matungu Constituency, Kakamega County.**
  - (b) **A declaration be and is hereby issued to the effect that the 1<sup>st</sup> Respondent's decision to award a direct nomination, and the certificate of nomination awarded to, the interested party, is null, void and of no effect in law**
  - (c) **An order be and is hereby issued directing the 1<sup>st</sup> Respondent to conduct a fresh nomination exercise for member of County Assembly, Kholera Ward, Matungu Constituency, Kakamega County within 48 hours from the pronouncement of this judgment**
  - (d) **The Respondent shall bear the Claimant's costs of this complaint.**

DATED and DELIVERED at Nairobi this 16<sup>th</sup> day of May 2017

Kyalo Mbobu .....  
Chairperson

James Atema .....  
Member

Hassan Abdi .....  
Member