



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 223 OF 2017

VINCENT NGW'ONO MANYINSA.....APPLICANT

VERSUS

WIPER DEMOCRATIC PARTY.....1ST RESPONDENT

WIPER DEMOCRATIC PARTY

NATIONAL ELECTIONS BOARD.....2ND RESPONDENT

ERIC MOGIRE.....3RD RESPONDENT

JUDGMENT

Background

1. The present dispute relates to the 1st Respondent's nominations for Member of the County Assembly, Masige East Ward, Bobasi Constituency, Kisii County carried out on 23 April 2017.
2. The Petitioner had contested the party primaries for the said electoral seat and he asserted that he won and was issued with a certificate of election result signed by the Chair of the National Elections Board, pending issuance of the final nomination certificate. However, when he went to collect his final certificate on 9 May 2017, he was notified that the same had been issued to another candidate. Despite attempts to pursue internal dispute resolution, the issue had not been resolved at the party level. He adduced letters dated 8 and 9 May 2017 in support of his assertion that he had attempted IDRM.

3. The Petitioner approached this Tribunal by way of a Notice of Motion and Affidavit dated 10 May 2017. He prayed that the Returning Officer Masige East Ward be compelled to appear before the Tribunal and produce the original final tallying sheet as entered during the counting process and that the Petitioner be declared the duly elected nominee for the 1st Respondent.
4. The 1st Respondent, by an affidavit sworn by its Executive Director Dr Jared Sosi asserted that this matter was not properly before this Tribunal on the basis that the same issues raised by the Petitioner were the same as those raised at the party level. He contended that the Claimant had not concluded IDRMs as set out in rule 22 of the 1st Respondent's election and nomination rules.
5. It was also the 1st Respondent's contention that the notification of election result issued to the Claimant was not a final decision and that the notification attached by the Claimant had been tampered with. He annexed a copy of what he asserted was the 1st Respondent's notification of results.
6. The 1st Respondent also took issue with the date when the Claimant alleged to have received communication from the 1st Respondent concerning the nomination certificate. It was their assertion that the Claimant had supplied contradictory information in this regard and that their allegations could not be trusted.
7. On 13 May 2017, the Claimant filed a further affidavit attaching communication between him and the party referring to him as the winner and inviting him to collect his nomination certificate from the party leader. The communication was dated 8 and 9 May 2017.

Issue for Determination

After careful consideration of the record before us, we find that two issues arise for determination:

- a. Whether this Tribunal has jurisdiction over the dispute
- b. Whether the outcome of the nomination exercise could be established

ANALYSIS

a. Whether this Tribunal has jurisdiction over the dispute

8. The jurisdiction of this Tribunal is well established by section 40 of the Political Parties Act. Insofar as the present dispute involves a party member and their party, it falls within the jurisdiction of this Tribunal. If a dispute meets the criteria in section 40 (1), the next requirement to be met is exhaustion of the party's internal dispute resolution mechanism (IDRM). Section 40(2) requires that a Complainant first exhaust the IDRM of the party before approaching the Tribunal.
9. We have previously held where there has been an attempt to exhaust IDRM, this Tribunal becomes well seized of the matter, even where the IDRM decision is still pending. This is because there are instances when the internal party mechanisms are lax or are intent on frustrating candidates. Such party members should not be left without a remedy. The Claimant has demonstrated, through a letter dated 8 May 2017 that he attempted to resolve the matter at the party level. Given the short timelines that the candidates were operating under, and the alleged notification by the party that the certificate had been issued to someone else, it is clear that the Claimant was apprehensive that his win would be rendered nugatory. We therefore find that the Complaint is properly before this Tribunal.

b. Whether the outcome of the nomination exercise could be established

10. There is no dispute that the 1st Respondent's primaries were conducted on 23 April 2017. What is contested is the outcome of that nomination exercise. From the evidence before us, we are unable to conclusively determine the nomination

exercise process or its outcome. The Claimant avers that he won, while the 1st Respondent through its Executive Director raises credibility issues with the exercise in that the 3rd Respondent's agents disappeared with ballot boxes from some polling stations only to resurface after midnight.

11. Nevertheless, we find that the 1st Respondent, having conducted the said exercise, was the best placed to guide this Tribunal as to the outcome of that exercise. While the 1st Respondent contended that the Claimant was not the winner, they did not adduce a notification of election result for the said seat issued to any other candidate. Annexure JMS-2 related to a different electoral seat and was therefore did not assist this Tribunal to reach a determination in respect of the present Complaint.
12. We are therefore unable to determine with certainty who won in the nomination exercise and whether the process was capable of producing a winner.

Orders

13. In light of the foregoing, we make the following orders:
 - a. Any certificate of nomination issued by the 1st Respondent as a result of the nomination held on 23 April 2017 be and is hereby nullified.
 - b. A fresh nomination exercise be conducted forthwith in accordance with the 1st Respondent's constitution and the elections and nomination rules in a transparent and democratic manner, taking into account the interest of all parties.
 - c. That each party will bear its own costs.

Dated at **NAIROBI** this **13th DAY** of **MAY** 2017

M. O. Lwanga (Presiding Member)

Desma Nungo..... (Member)

Dr. Adelaide Mbithi (Member)