

**Kipruto Chepsergon Chomboi v Kanu National Elections Board &  
another [2017] eKLR**

---



**REPUBLIC OF KENYA**

**IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI**

**COMPLAINT NO. 255 OF 2017**

**KIPRUTO CHEPSEKON CHOMBOI ..... COMPLAINANT**

**VERSUS**

**KANU NATIONAL ELECTIONS BOARD ..... RESPONDENT**

**AND**

**NOAH KIPKURUI CHEPKETCH ..... INTERESTED PARTY**

**JUDGMENT**

**Case summary**

1. The Complainant/Claimant moved this Tribunal on 13<sup>th</sup> May, 2017 challenging the Respondent's decision not to conduct Party nomination primaries for Member of National Assembly, Mogotio Constituency. He urged that despite being a contender and a duly gazetted candidate, by the Party, for that position, the Respondent has denied him the opportunity by not conducting the Party's nomination exercise.
2. He sought the following orders:
  - (i) *A declaration that the Claimant is a contender and as best the only candidate for the Respondent's as the nominee candidate for the 8<sup>th</sup>*

## Kipruto Chepsergon Chomboi v Kanu National Elections Board & another [2017] eKLR

---

*August 2017 General Elections for Member of National Assembly in respect of Mogotio Constituency, Baringo County.*

- (ii) An order directing the Respondent to conduct the nominations and issue the Claimant or any other winner from such nominations with the party's nomination certificate for Member of National Assembly in respect of Mogotio Constituency, Baringo County.*
- (iii) In the Alternative a permanent injunction restraining the Respondent from issuing the Interested Party or any other member of the Respondent or person with the party's nomination certificate or endorsement/blessing for the 8<sup>th</sup> August 2017 General Elections for Member of National Assembly in respect of Mogotio Constituency, Baringo County.*

### Submissions

3. The Complainant submitted that the Respondent had scheduled to conduct Party nomination primaries on 29<sup>th</sup> April, 2017 for Member of National Assembly for Mogotio Constituency. That the Complainant was among the candidates that qualified to participate in the exercise after registration and payment of the nomination fees prescribed by the Party. Unfortunately, the same were not held.
4. Aggrieved by that failure, he lodged a complaint with the KANU Appeals Tribunal, and on 11<sup>th</sup> May, 2017, he submitted that the Appeals Tribunal ruled that nominations be held to identify the party flagbearer for Mogotio Constituency on Saturday, 13<sup>th</sup> May, 2017. Two (2) hours after this ruling, the Complainant urged, he received a call from a person well known as an official from the Respondent and was told that the nominations would not take place

## Kipruto Chepsergon Chomboi v Kanu National Elections Board & another [2017] eKLR

---

due to lack of funds to conduct the same. That the reasons given were unreasonable, unfair, irregular and insufficient.

5. He submitted that despite several visits to the Respondent's office, he has been denied the nomination certificate. However, he has now learnt that the Respondent wants to give the nomination certificate to the Interested Party. He contends that this breaches the Respondent's constitution and the Political Parties Act, and the Constitution.
6. It is his case that he is a member of the Respondent's Party, KANU, and a lawful contender for Member of National Assembly in respect of Mogotio Constituency. He cites the case of **Speaker of the National Assembly vs Karume (2008) 1KLR (425)** thus: *"where the law provides a particular procedure for conduct of elections for any particular level or any act of Parliament then the procedure must strictly be followed."*
7. In reply to the Interested Party's submission as regards the letter dated 18<sup>th</sup> November 2016, the Complainant submitted that the letter was a non-starter as by that date, the Interested Party was still a member of Jubilee Party and only defected in 2017.
8. The Respondent submitted that the Interested Party expressed his interest in the seat in a letter dated 25<sup>th</sup> November 2016. That the Complainant never wrote any letter expressing any interest in the same, hence he cannot allege not being selected by Party. Further, that the Claimant, as a member, expressly submitted himself to the NEB, which invoked the powers under Article 24(9) of the KANU constitution (Revised 2012) and KANU Nominations Rules (Amended 2017). He cannot now turn around and plead violation of his rights. That he is stopped by his own actions and has therefore moved this Tribunal inappropriately.

## **Kipruto Chepsergon Chomboi v Kanu National Elections Board & another [2017] eKLR**

---

9. The Interested Party filed a Replying Affidavit sworn on 18<sup>th</sup> May, 2017 in which he deposes that he was unanimously endorsed by the Mogotio KANU branch officials on 7<sup>th</sup> February 2017 and the decision ratified unanimously by the National Executive Council (NEC) and issued with a direct nomination. He contends that the Appeals tribunal is yet to give its decision, hence argues that IDRMs had not been completed. That he also complied with the requirements for nominations are required by the Party and he has not breached any constitutional provision of the Respondent.
10. It is his submissions that the Political Parties Act allows political parties to opt for any mode of nomination. Hence, questions the Complainant's demonization of Article 24(9) on direct nominations. He argues that the gazettement of aspirants for Mogotio Constituency nomination primaries was erroneous as it was done despite directive of NEC for direct nomination of Mr. Noah Chepkech. The primaries were only meant to be for Members of County Assembly. Lastly, he submitted that the Appeals Tribunal has never directed the Party to reach a consensus.

### **Issues for determination**

11. The issue for determination is whether the Respondent should be ordered to conduct nominations for Member of National Assembly, Mogotio Constituency.

### **Determination**

12. Upon evaluation of the record before us, it is evident that the Respondent gazetted the Complainant as one of the aspirants for the Party primaries for Mogotio Constituency. Both the Complainant and the Interested Party have tendered evidence to prove that they paid the requisite Kshs. 100, 000,

## **Kipruto Chepsergon Chomboi v Kanu National Elections Board & another [2017] eKLR**

---

nomination fees, and indeed got clearance certificates from the Party. All parties agree that indeed the nominations were to be held 29<sup>th</sup> April, 2017. Upto this juncture, we find that the Complainant had a legitimate expectation that he will participate in a nomination exercise.

13. The nominations did not take place, the Respondent giving lack of funds as a reason. A reason the Complainant terms unreasonable. While The Complainant submitted that he appealed to the Appeals Tribunal which directed that nominations do take place on 13<sup>th</sup> May, 2017, we have not seen this decision/direction. On record is a letter the Complainant wrote to the Party Chairperson regarding the failure to reach consensus on Mogotio Constituency KANU MP Nominee. In this letter, the Complainant informs that Chairperson that the meeting failed to reach a consensus and referred the matter to the NEB. He then urges the chairperson to arrange for nominations. We are unable to agree that the lack of consensus in this meeting and its referral of the matter to the NEB meant that it was a definite nomination exercise ordered. We find that the meeting reported its deadlock to the Party Organ that would resolve the issue.
14. All parties have alluded to the Party's constitution. We have perused the same and noted the procedure for nominating candidates in Article 24. We also note that after the failure to hold the nomination exercise on 29<sup>th</sup> April, 2017, the Complainant has been kept abreast of what the Party is doing: he received communication on the reasons for failure to conduct the nomination (which reasons he termed unreasonable); and he was part of a meeting that deliberated the possibility of reaching a consensus on the candidate. This meeting referred the matter to the Party's NEB when consensus failed.

## Kipruto Chepsergon Chomboi v Kanu National Elections Board & another [2017] eKLR

---

15. Consequently, while we acknowledge the Complainant's legitimate expectation to be nominated as the Party's flagbearer for Mogotio Constituency, we reiterate this Tribunal reluctance to interfere with internal Party's operations especially where the same are conducted in accordance with the party's constitution and rules. While we are inclined to refer the matter back to the Party's NEB for finalization, we echo our sentiments in *Complaint No. 167 of 2017, James Munyi Ngangu v Orange Democratic Movement & another* thus: "We would like to observe that where a nomination exercise has been annulled by either the respective Party's Appeals Tribunal and/or this Tribunal and a fresh process ordered, it is prudent that a political party moving to execute such an order should give audience to all the parties involved. Such a practice is not only sound in law but it also helps entrench democracy and accountability within political parties." While the issue here is not annulment of a nomination exercise and an order for a fresh process, we believe that the justice of this matter lies in the Party giving audience to all parties herein.

16. We make the following orders:

(i) *The Complaint dated 13<sup>th</sup> May, 2017 is allowed in the following specific terms:*

*(a) The Respondent's National Elections Board is directed to determine the Respondent's, candidate for Member of National Assembly, Mogotio Constituency, Baringo County in a manner compatible with the Party's constitution, and Election and Nomination Rules within the next 48 hours of the pronouncement of this Judgment.*

(ii) *The Respondent to bear the costs for the Complainant.*

(iii) *In the interests of justice, other parties to bear their own costs.*

**Kipruto Chepsergon Chomboi v Kanu National Elections Board &  
another [2017] eKLR**

---

17. Orders accordingly.

**DATED and DELIVERED AT NAIROBI this ..... DAY OF MAY 2017**

**Kyalo Mbobu** .....

**Chairman**

**James Atema**.....

**Member**

**Hassan Abdi**.....

**Member**