



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 262 OF 2017

OSCAR LORE OTIENOCOMPLAINANT

-VERSUS -

ORANGE DEMOCRATIC MOVEMENT..... 1ST RESPONDENT

JARED OKOTH OKODE..... 2ND RESPONDENT

JUDGMENT

1. Both the Claimant and the 2nd Respondent participated in the Orange Democratic Movement nominations for Member of County Assembly Mathare North Ward. The Complainant is aggrieved by the Special County Appeals Tribunal (CAT) decision to declare the 2nd Respondent the nominee candidate for Member of County Assembly Mathare North Ward. He moves this Tribunal seeking that the nomination certificate issued to the 2nd Respondent Jared Okoth Okode be recalled, revoked and that he be declared winner. Further that he be issued with nomination certificate.
2. The Complainants case is that he won and was declared winner with 1203 votes against the 2nd Respondent 1192 votes. Following this, when the 1st Respondent had prepared and was on his way to deliver the nomination certificate the driver

was attacked and the nomination certificate torn into pieces by the 2nd Respondent. He relies upon a police abstract to prove his case.

3. The Complainant avers that the 1st Respondent through some of its unscrupulous officers issued a nomination certificate to the 2nd Respondent as nominee of Member of County Assembly of Mathare North Ward. He relies upon regulation 4.1.3 as read together with 18.8 of the Elections and nomination rules to argue that it is only the Constituency Returning Officer who is allowed to declare results and in this instance the Results ought to have been declared by Abraham Oyugi Dollah.
4. The Complainant urges the Tribunal to nullify the decision of the 1st Respondent to issue the 2nd Respondent with a nomination certificate.

2nd Respondent case

5. The 2nd Respondent submission is that this complainant is scandalous, vexatious and lacks merit. He sets out the following issues for determination namely; whether he was duly nominated; and whether the 1st respondent has the mandate to overturn a nomination and to withdraw an interim certificate and issue to the Rightful winner.
6. It is his submission that the declaration of the Complainant as the nominee elect was marred with irregularities whereby the presiding officer was ambushed and kidnapped by the Complainant who then forced him to manipulate and announce results. He admits that there was violence and blames it on the Complainant.
7. This submission is corroborated by the affidavit of the Returning Officer Abraham Oyugi Dollah and the Presiding Officer Calvins Odhiambo Kobe who confirmed that the Complainant was declared winner under duress. Moreover the Returning Officer produced as evidence the tally sheets showing that the 2nd respondent had garnered 1245 votes against the Complainant 1024 votes.

8. The 2nd Respondent urges this Tribunal to uphold the decision of the CAT and dismiss the complaint with costs.

Analysis

9. From the forgoing submission the issue arising for determination is *whether the Complainant was the nominee for Mathare North Member of County Assembly.*
10. The Complainant herein is alleging that his nomination certificate was torn into pieces by the 2nd Respondent when it was being delivered to him. This is confirmed by the police abstract reference OB/16/7/5/2017 which states that; *'We have confirmed the report of destroyed nomination certificate of an ODM aspirant within Pan-Afric hotel which was reported at Capitol Hill Hotel.'*
11. We are baffled, at how a nomination certificate was being prepared for delivery to a winner at a location that is not the tally centre. In addition its destruction occurred at the Pan-Afric Hotel and not where the tallying was being conducted. No explanation has been given to explain why this was happening at the pan-afric hotel.
12. We also take note all parties agree that the Returning Officer was Abraham Oyugi Dollah and that he was the one to announce the results and declare the winner. In this instant, the Returning Officer submission is that he was waylaid and forced to announce the Complainant as the winner. Further that according to the tallied results the 2nd Respondent had emerged the winner having garnered 1245 votes. We also take into account that the Complainant despite claiming that he won in the elections did not provide any evidence to support this averments.
13. In this regard we refer to Rule 18.8 (i) and (ii) of the ODM Election and Nomination Rules on announcement of results and issuance of nomination certificates which provides that; *"Each returning officer shall tabulate and collate certify results received from presiding officers at the polling station level and promptly announce the results in presence of all candidates or their agents*

The returning officer shall thereafter issue a certificate of return showing the total number of votes cast....”

14. From this guideline, and submissions of parties we find that, the declaration that the Complainant was the winner and nominee for Mathare North was done un-procedurally and in total contravention of the party’s rules and regulation. As such we are guided by the Returning Officers own pronouncement that the 2nd Respondent was the duly nominated candidate for Mathare North Constituency having garnered 1245 votes against the Complainants 1024 votes.
15. As a consequence, we dismiss the undated Complaint herein filed on the 16th May 2017 with no orders as to costs.

Orders accordingly.

DATED and DELIVERED at Nairobi this day of May, 2017.

1. Kyalo Mbobu

Chairman

2. James Atema

Member

3. Hassan Abdi

Member

