



THE REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT 268 OF 2017

MBOGO JOHN JOSEPH NJUGUNA..... CLAIMANT

VERSUS

JUBILEE PARTY OF KENYA..... RESPONDENT

JUDGMENT

1. The present Complaint relates to the Respondent's nominations for Member of the County Assembly, Kiru Ward, Mathioya Constituency, Murang'a County conducted on 26 April 2017. The Claimant contested the said seat.
2. The Claimant approached this Tribunal by way of a Statement of Claim dated 16 May 2017 seeking a declaration that he was the duly nominated candidate, a permanent mandatory injunction to direct the Respondent to issue to the nomination certificate to the Claimant and a stay of execution of the decision of the Respondent to issue a nomination certificate to Michael Githii Gakungu, who had been declared the winner by the Respondent's National Appeals Tribunal (hereinafter IDRM) by a decision dated 8 May 2017.
3. It was the Claimant's contention that the nomination exercise was free and fair and that the results as declared by the Returning Officer indicated that he had won. However, upon going to the Respondent's offices to claim the nomination certificate on 11 May 2017, he was notified that the same had been issued to Gakungu Michael Githii, whom he contended had come second in the party primaries.

4. The Claimant further asserted that even though the nomination exercise was free and fair, the Constituency Returning Officer failed to declare the result using the prescribed form 3 (e). He had therefore written to the Respondent on 28 April 2017 seeking declaration of results using Form 3 (e), NAT Appeal 126 of 2017.
5. The Claimant further claimed that he was not notified when the Respondent's National Appeals Tribunal heard and determined Appeal 484 of 2017 filed by Michael Githii Gakungu against the Returning Officer wherein his nomination certificate was cancelled by its decision dated 8 May 2017, thereby violating his constitutional rights to fair hearing and his political rights. He therefore alleges that the Respondent's decision to nullify his nomination ought not to be allowed to stand.
6. In support of his Claim, the Claimant supplied a tally sheet containing aggregate results in respect of Kiru Ward allegedly prepared by the Constituency Returning Officer, a copy of his appeal to the Respondent's National Appeals Tribunal and what he contended were official results from all polling stations,
7. Despite directions being issued on 19 May 2017 that the Respondent files their response and written submissions by 24 May 2017, none were filed. Moreover, while the Claimant in his submissions refers to a Supplementary Affidavit sworn by the Returning Officer, Robert Muiruri, none appears on record. We will therefore determine the matter on the basis of the documents submitted by the Claimant.

ISSUES FOR DETERMINATION

8. From a review of the material on record, it appears that the only issue that arises for determination is whether the Claimant won the nomination for Member of the County Assembly, Kiru Ward, Mathioya Constituency.

ANALYSIS

9. We have perused the 28 Presiding Officers' forms indicating the results per polling station, which were not questioned, including at the IDR, and which indicate what the results were.
10. The Claimant adduced two documents, which demonstrated that the Returning Officer declared Mbogo Joseph John Njuguna as the winner. It is unclear under what circumstances the retallying was done by the OCPD Mathioya and whether it was in accordance with the party rules for a retallying to be ordered after the Returning Officer had declared the results, without a specific directive from an organ of the party.
11. It is not disputed that the Claimant was not heard in Appeal 484 of 2017, even though his nomination was directly in issue. We therefore find that the Claimant's case has merit.

ORDERS

12. In light of the foregoing, we make the following orders:
 - a. A declaration that the Claimant is the duly nominated Jubilee Party of Kenya candidate for the position of the Member of the County Assembly for Kiru Ward, Mathioya Constituency, Murang'a County.
 - b. Notification to issue to the Independent Electoral and Boundaries Commission.
 - c. We direct that each party to bear its own costs.

Dated at **NAIROBI** this**25th** **DAY** of **MAY** 2017

- 1. M. O. Lwanga (Presiding Member)**
- 2. Paul Ngotho (Member).....**
- 3. Dr. Adelaide Mbithi (Member)**