



REPUBLIC OF KENYA

IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI

COMPLAINT NO. 270 OF 2017

TOM OMOLLO KASERACOMPLAINANT

-VERSUS-

ORANGE DEMOCRATIC MOVEMENT.....RESPONDENT

JUDGMENT

Summary of the Complaint

1. The present Complaint concerns the Orange Democratic Movement (ODM) party nomination exercise for the position of Member of County Assembly for Kachieng Ward in Nyatike Constituency held on 24th April 2017. Aggrieved by the process, the Complainant lodged an appeal with the Respondent's Migori County Elections Appeal Tribunal (hereinafter referred to as party's IDRMM) arguing that the process was marred with numerous irregularities and that the results of the exercise were manipulated in favour an alleged, one of the winner, Brian Osodo. On 29th April 2017, the IDRMM ruled in favour of the Complainant and held that the provisional certificate issued to the said, Brian Osodo, should be cancelled and the Complainant should be issued with the final nomination certificate.
2. The Complainant in his Supporting Affidavit filed on 16th May 2017, alleges that the Respondent was duly notified of the IDRMM decision but declined to grant him the final nomination certificate or incorporate his name in the final list of successful candidates to be presented to the Independent Electoral Boundaries Commission.

The Complainant is now before this Tribunal seeking redress. He wants the Respondent to comply with its own party processes and structures that have been put in place to determine rightful ticket holders.

Analysis and Determination

3. It is clear that the sole issue for determination, is *whether or not the nomination certificate should be issued to the Complainant*.
4. We have perused the IDRMM decision delivered on 29th April 2017 which considered the Complainant's allegations of electoral malpractices which included few ballot papers at the polling station, pre-marked ballot papers, exclusion of results from three polling stations and manipulation of the final election results to favour one aspirant. The IDRMM found that the alleged winner, Brian Osodo, was not legally and procedurally elected. The circumstances before the IDRMM led it to determine that the nomination certificate issued to the said Brian Osodo should be cancelled and instead, issue a final one to the Complainant.
5. The Respondent was duly served but chose not to defend their position. As such, the Complainant's averments remain uncontroverted.
6. In addition, we note from the evidence before us, that no appeal was lodged against the IDRMM decision and it would thus appear that the party process concluded in favour of the Complainant.
7. The party, through its organ (the IDRMM) has already determined that the Complainant need be issued with the final nomination certificate.

Orders

The Amended Statement of Claim dated 17th May 2017 has merit. We find it appropriate to make the following orders:

- a) The Respondent be and is hereby ordered to issue to the Complainant the final certificate of nomination as the Respondent's nominee for the position of Member

of County Assembly, Kachieng Ward, Nyatike Constituency forthwith; and to forward the said Complainant's name to the Independent Electoral Boundaries Commission;

- b) The Respondent be and is hereby restrained from issuing the final certificate of nomination to any other person or name apart from the Complainant as the nominee of the Respondent for the position of Member of County Assembly, Kachieng Ward, Nyatike Constituency;
- c) No orders as to costs.

DATED and DELIVERED AT NAIROBI this 19TH DAY of MAY 2017

1. M. O. Lwanga (Presiding Member)

2. Paul Ngotho (Member).....

3. Dr. Adelaide Mbithi (Member)