



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 269 OF 2017

JONATHAN BARASA KANE.....COMPLAINANT

VERSUS

AMANI NATIONAL CONGRESS PARTY.....RESPONDENT

JUDGMENT

Summary of the Case

1. The Claimant participated in the Respondent's party primaries held on 25th April 2017 for the position of Member of National Assembly, Webuye West Constituency, Bungoma County and emerged the winner having garnered 618 votes against his close competitors Michael Walekhwa and Ronald Nato who garnered 601 and 448 votes, respectively. However, the Claimant claimed that Respondent issued the nomination certificate to one Philip Wamuto who came distant 4th according to the tallied results.
2. The Claimant also averred that he visited the Respondent's office to lodge his complaint but was surprised to learn that there was a dispute already filed with Respondent's internal disputes resolution committee by one of his competitors one Michael Walekhwa. The Claimant further claimed that the Respondent's committee made a finding that the nomination process was marred with irregularities, which impacted on the outcome.
3. As a result, the Claimant approached this Tribunal for the following reliefs:

- a) A declaration that the Claimant is the bone fide Respondent's nominee for the position of the Member of National Assembly, Webuye West Constituency, Bungoma County.
 - b) An order directing the Respondent to issue the Claimant with nomination certificate.
 - c) An order setting aside the nomination certificate already to Philip Wamuto by the Respondent.
4. Come the 18th May 2017, the Tribunal ordered the Claimant to serve Respondent, which service was effected by one Stephen Njonjo on the same day. However, time came and passed without the Respondent doing so leaving this Tribunal without an option but to proceed and determine this matter in consideration of the strict timelines for nominations.

Issues for Determination

5. The primary issue is whether the Respondent was justified in denying the Claimant nomination certificate.

Analysis

6. The whole issue in this case turns our attention to the provisions of **Article 38** of the **Constitution of Kenya, 2010**, which guarantees the right of every citizen to make political choices, which includes the rights to form and participate in the activities of a political party. In this regard, one has the right to take part in a free, fair and regular elections based on universal suffrage and the free expression of will to vie for any office of any political party to which such a person is a member.
7. To this end, **Article 91 (1) (d)** of the Constitution specifically obligates political parties in Kenya to abide by the democratic principles of good governance, promote and practice democracy through regular, fair and free elections within the party.

8. To fulfil these constitutional requirements, *section 9* of the *Political Parties Act, 2011* read together with the *Second Schedule* of the same sets out the key issues that must be contained in the constitutions of all duly registered political parties in Kenya. The relevant point for our purposes in the matter is the rule that a political party constitution must establish guidelines for, among other things, the nomination of candidates for elections.
9. Indeed, the Respondent conducted party primaries with the intention to determine its nominee for the position of the Member of National Assembly, Webuye West Constituency. Consequently, being that the Claimant won the said nominations, this Tribunal holds the view that the Claimant had legitimate reasons to be given the nomination. This was, however, not done; instead, the Respondent issued the nomination certificate to one Philip Wamuto who came distant fourth according to the votes tallied.
10. Equally troubling is the fact that in spite of coming to a conclusion that the party primaries for the position of the Member of National Assembly, Webuye West Constituency was flawed, the Respondent still went ahead to issue Mr Philip Wamuto with the nomination certificate as oppose to order for a repeat of the nominations. In conclusion, since the Claimant garnered the most votes and since the same was neither controverted nor opposed by the Respondent, it is only fair and just he be issued with the nomination certificate for position of the Member of National Assembly, Webuye West Constituency.
11. For the reasons advanced above, this Tribunal is persuaded by the Claimant's arguments that the Respondent contravened its own rules when it failed to issue the Claimant with the nomination certificate. In other words, we find no justification in the actions of the Respondent of denying the Claimant the nomination certificate.

Orders

12. In the premises, this Tribunal orders as follows:

- a) That the Claimant's case be and is hereby allowed.*
- b) That the Respondent be and is hereby restrained from issuing the nomination certificate to the said Philip Wamuto or any other person for the position of the Member of National Assembly, Webuye West Constituency other than the Claimant.*
- c) That, in the event that the Respondent has issued the nomination certificate to another individual for the position of the Member of National Assembly, Webuye West Constituency, other than the Claimant, the same be and is hereby declared null and void.*
- d) That the Respondent be and is hereby ordered to issue the Claimant with the nomination certificate for the position of the Member of National Assembly, Webuye West Constituency within 24 hours of this judgment forthwith.*
- e) The Respondent be and is hereby ordered to bear for the Claimant's cost. Orders accordingly.*

DATED AT NAIROBI THIS 25TH DAY OF MAY 2017

Kyalo Mbobu (Chairman)

James Atema (Member).....

Hassan Abdi (Member).....