



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 276 OF 2017

MAURICE OMONDI ONDIEKCOMPLAINANT

-VERSUS -

ORANGE DEMOCRATIC MOVEMENT..... 1ST RESPONDENT

KENNETH ONYANGO ODHIMBO..... 2ND RESPONDENT

JUDGMENT

1. Both the Complainant and the 2nd Respondent participated in the Orange Democratic Movement nomination exercise for Member of County Assembly Miwani Ward, Muhoroni Constituency, Kisumu County. The Complainant's case is that upon conclusion of the nomination exercise he was declared winner having garnered 4031 votes against the 2nd Respondent 997 votes. Consequently, he was issued with both provisional nomination certificate and the final nomination certificate.
2. The Complainant submits that, it has come to his realization that the 1st Respondent has submitted the name of the 2nd Respondent who became distant third in the said nomination exercise to IEBC. To support his case, he relies upon the tabulation of results, the provisional nomination certificate and the final nomination certificate.
3. The Complainant urges the Tribunal to grant an order directing ODM to recall the 2nd Respondent's name and in its place to issue the 2nd Respondent with a nomination certificate.

2nd Respondent case

4. The 2nd Respondent submission is that he participated and won in the nomination exercise having garnered 1,366 votes against the Complainant's 1,330 votes. Following this he was issued with a nomination certificate and his name submitted to IEBC.
5. It is his submission that this Tribunal lacks jurisdiction under section 40(2) of the Political Parties Act to hear and determine this matter. He relied upon the case of *Ibrahim Abdi Ali v Mohamed Abdi Farah & Another PPDT Complaint 2 of 2016* which held that a party must show that they have made honest attempts to resolve the matter internally.
6. In response to the argument that the nomination certificate was issue to the Complainant herein, the 2nd Respondent stated that the same was forged. He submitted that the Returning Officer for Muhoroni Constituency was Mr. Peter Otiang'a Midega and not Charles Monyenye who signed the said provisional certificate. The 2nd Respondent referred to the affidavits of Peter Otianga Midega the Muhoroni Constituency returning officer, Aloyce Owaa Sombe, the Miwani Ward presiding officer, all dated 19th May 2017 together with letter of appointment of Peter Otianga Midega as returning officer Muhoroni Constituency.
7. The 2nd Respondent urges the Tribunal to dismiss this Complaint with costs.

Analysis

8. After carefully reviewing the pleadings filed together with respective submissions of the parties, the following issues call for determination:
 - a. Whether this Tribunal has jurisdiction under section 40(2) to hear and determine this Complaint.
 - b. Whether this Tribunal can order the 1st Respondent to issue the nomination certificate for Member of County Assembly Miwani Ward, Muhoroni Constituency, Kisumu County, to the Complainant.

9. With regard to jurisdiction we are guided by the High Court decision in *Joseph Mboya Nyamuthe V The Orange Democratic Movement & 4 others Election Appeal No 5 of 2017* which held that *those disputes that can go directly to the Tribunal are those covered by paragraph (d) (f) and (fa) hence their exclusion from Section 40(2).*
10. As such this being a dispute arising out of party primaries under Section 40(fa) we find that we have jurisdiction to determine this dispute.
11. Having said so we proceed to determine the second issue; *whether this Tribunal can order the 1st Respondent to issue the nomination certificate for Member of County Assembly Miwani Ward, to the Complainant*
12. The Complainant's case is that he won and was issued a provisional nomination certificate dated 25th April 2017. According to the Complainant the nomination certificate was issued by the returning officer one Charles Monyenye. In response, the 2nd Respondent has impugned the authenticity of the provisional certificate by claiming that it was signed by an un-authorized person. The 2nd Respondent made reference to the letter of appointment of Peter Otiang'a Midega as a returning officer for Muhoroni Constituency, to argue that Peter Otiang'a Midega was the only authorized person to announce the results and issue a nomination certificate.
13. We also note that the returning officer Peter Otiang'a Midega has sworn an affidavit stating that while at the tallying centre at Chemelil Complex, he announced and declared the 2nd Respondent the winner having garnered 1,366 votes as per the results forwarded to him by the presiding officer of Miwani ward. This was further corroborated by the affidavit of Aloyce Owaa Sombe the presiding Officer Miwani Ward.
14. We have also perused the tabulated tally sheets relied upon by the Complainant, and we note that the tally sheet refers to results for all the elective seats. Further, the tally sheet has been signed off by Kennedy O. Otiato and is dated 26th April 2016.

15. We note the submission of the Complainant as regard his nomination. We find the same to be non-conclusive and full of gaps. While the nominations certificate issued to the Complainant is dated 25th April 2017, the results tally sheets is dated 26th April 2017. Clearly, the nomination certificate being relied upon seems to have been issued before the results were declared. Be that as it may, while the Complainant contends that the returning officer was Charles Monyenye, the tally of results he produces were signed by one Kennedy O. Otiato.
16. That being the case, we find that the Complainant has not discharged his burden of proof. He has not adduced sufficient evidence to proof that he won the nomination exercise for Miwani Ward neither has he demonstrated that the nomination certificate issued to the 2nd Respondent was irregularly issued by a returning officer authorized to issue the same. The upshot is we find that the Complaint herein lacks merit.
17. As a consequence, we dismiss the Complaint dated 17th May 2017 with costs to the 2nd Respondent's.

Orders accordingly.

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

1. Kyalo Mbobu

Chairman

2. James Atema

Member

3. Hassan Abdi

Member