



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL
COMPLAINT NO. 281 OF 2017

JARED GESAIRO OBWOKA ONKOBACOMPLAINANT

VERSUS

KEPHAS OCHIENG ONDIEKI..... 1ST RESPONDENT

KENYA AFRICAN NATIONAL UNION..... 2ND RESPONDENT

KENYA AFRICAN NATIONAL UNION

ELECTION BOARD.....3RD RESPONDENT

KANU ELECTION TRIBUNAL.....4TH RESPONDENT

INDEPENDENT ELECTORAL AND

BOUNDARIES COMMISSION.....5TH RESPONDENT

JUDGMENT

1. The Complainant, is a KANU aspirant for Member of County Assembly, Kimumu Ward, Moiben constituency. His case is that the 2nd Respondent failed to conduct nomination exercise for Kimumu ward and his attempts to have the party resolve the issue has borne no results.
2. The Complainant submitted that there were only two aspirants for the position of MCA Kimumu ward and he is aware that the 2nd Respondent has submitted the name of the 1st Respondent to IEBC and as a consequence he stands to suffer irreparable loss. The Complainant submits that he stands to lose a lot in terms of his political career, resources used for campaign and all the cost of registration

3. It is his submission that he expected the nomination of candidate to be free and fair even in the absence of primaries. To support his complaint, the Complainant relies upon Article 91 of the Constitution together with section 40, 41 and 45(2) of the Political Parties Act 2011.
4. The Complainant further submitted that he filed an appeal before the KANU appeals tribunal that ordered for nominations to be conducted.
5. He is urging this Tribunal to annul the nomination certificate awarded to the 1st Respondent and in its place award him the nomination certificate for MCA Kimumu ward under the 2nd Respondent Party.

2nd Respondent case

6. The 2nd Respondent case is that 2nd Respondent exercised its powers pursuant to article 24(9) of the KANU Constitution revised 2012 and part 5 paragraph 6 of the KANU nomination Rules 2017 that grants the National Executive Council the right to directly nominate the candidate.
7. It is their submission that no nominations were held in Kimumu ward and none was scheduled to be conducted. However, he submits that the two aspirants were directed to engage in a consensus and agree on a single candidate. They could not agree and referred the matter back to the National Elections Board for a decision on who to nominate.
8. The 2nd Respondent avers that the Complainant has alluded to the provision of article 24(9) of the KANU constitution and cannot now turn around and plead violation of his rights. Moreover, the complainant has failed to demonstrate how his fundamental rights have been violated by the respondents.
9. It is the Complainant further submission that this Tribunal lacks jurisdiction under section 40(2) of the Political Parties Act and article 21(1) of the KANU

Constitution as the Complainant is yet to commence the internal dispute resolution mechanism.

10. He urged the Tribunal to dismiss this complaint with costs.

Analysis

11. The issue arising for determination is *whether this Tribunal can grant the nomination certificate to the Complainant herein.*

12. The Complainant case is that the nomination exercise for Kimumu ward was to be held from 21st, 24th and 26th April 2017 an argument impugned by the 2nd Respondent who stated that no nominations were to be conducted for Kimumu ward a fact well within the knowledge of the two aspirants.

13. The Complainant further alleges that one Arap Bii the coordinator of the 2nd Respondent held several meetings with the 1st Respondent to his exclusion. According to the Complainant, these meetings led to the 1st Respondent being issued with the nomination certificate. Therefore, the Complainant is seeking that the nomination certificate issued to the 1st Respondent be nullified and he be issued with it. On the other hand, the 2nd Respondent relied upon the party's constitution to argue that it is the reserve of the party to directly nominate a candidate.

14. It is not in dispute that nominations exercise for Kimumu ward was never conducted, and that the party directed the aspirants to engage in consensus and agree on a single candidate. This Tribunal has not been informed of what became of the consensus engagement. It is no clear how a process that was to be through consensus ended up leading to the issuance of a nomination certificate to one at the exclusion of the other. The dispute revolves around the exclusion of the Complainant in the process leading to the nomination of and issuance of the nomination certificate to the 1st Respondent. The Complainant faults the process

leading to the nomination of the 1st Respondent. In addition, he faults the coordinator Arap Bii for engaging the 1st Respondent and excluding him.

15. As a Tribunal we register our reservations on the process used by the 2nd Respondent in nominating the 1st Respondent as its candidate for Kimumu ward. In as much as the 2nd Respondent is referring to the Parties constitution, he fails to demonstrate that the party complied with its own processes. We note that the 2nd Respondent has made general statements without specificity of how the nomination process leading to the nomination of the 1st Respondent was arrived at.

16. As a result of this finding, we proceed to allow the undated complaint filed on the 23rd May 2017 in the following terms

- a. The nomination certificate issued to the 1st Respondent by the 2nd Respondent is hereby declared null and void.*
- b. The Respondent National Election Board is directed to determine the Party Nominee for Kimumu Ward, Moiben Constituency, Uasin Gishu County, Member of County Assembly seat in a manner compatible with the Party Constitution, Election and Nomination Rules within the next 48 hours of the publication herein.*
- c. In the interest of Party unity each party to bear its own costs*

Orders accordingly.

DATED and DELIVERED AT NAIROBI this 25TH DAY OF MAY 2017

1. Kyalo Mbobu
Chairman

2. James Atema

Member

3. Hassan Abdi

Member